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**PLAINTIFFS' STATEMENT**

**PLAINTIFFS' CURRENT POSITION**

The Independent Monitor for the OPD has issued one NSA Sustainability Period Report (Sixth Report) since the last Case Management Conference statement. The original sustainability period involved the monitoring of the “last remaining and most critical Negotiated Settlement Agreement Tasks: 2, 5, 20, 24, 25, 26, 30, 31, 34, 41, and 45.” (Dkt. 1525, p. 2)

According to the Sixth NSA Sustainability Period Report of the IMT, OPD is in compliance with ten of these eleven Tasks:

1. Task 2 Timeliness Standards and Compliance with IAD Investigations –in compliance when most recently assessed by the IMT in the 79<sup>th</sup> Report and in compliance per the Fifth NSA Sustainability Period Report. However, according to the Fifth and now Sixth NSA Sustainability Report, the Department’s compliance status with this task may be in jeopardy.
2. Task 5 Internal Affairs Division (IAD) Complaint Procedures – in compliance when assessed by the IMT in the 79<sup>th</sup> Report; “Deferred” in the First NSA Sustainability Period Report, then deemed “not in compliance” according to the Second, Third, Fourth, and Fifth NSA Sustainability Period Reports, before now returning to compliance in the Sixth IMT Report.
3. Task 20 Span of Control – in compliance when most recently assessed in the Third NSA Sustainability Period Report.
4. Task 24 Use of Force Reporting Policy – in compliance per the sixth NSA Sustainability Period Report.
5. Task 25 Use of Force Investigations and Report Responsibility – in compliance per the Sixth NSA Sustainability Period Report.
6. Task 26 Force Review Board (FRB) – in compliance when most recently assessed in the Third NSA Sustainability Period Report).
7. Task 30 Executive Force Review Board (EFRB) – in compliance when most

1 recently assessed in the Third NSA Sustainability Period Report).

2 8. Task 31 Officer-Involved Shooting Investigations Review Protocol – in  
3 compliance when most recently assessed in the Third NSA Sustainability  
4 Period Report.

5 9. Task 34 Stop Data – in compliance when most recently assessed in the  
6 Third NSA Sustainability Period Report.

7 10. Task 41 Use of Personnel Assessment System (PAS) and Risk  
8 Management – in compliance when most recently assessed in the Third NSA  
9 Sustainability Period Report.

10 As of this writing, OPD is not in compliance with one NSA task:

11 1. Task 45 Consistency of Discipline – this was in partial compliance during  
12 the First NSA Sustainability Period Report, then was moved to full  
13 compliance during the period covered Second NSA Sustainability Period  
14 Report. However, during the Third, Fourth, Fifth, and now Sixth  
15 Sustainability Period Reports, the IMT reported “no compliance finding” for  
16 this Task.

17 Plaintiffs’ attorneys agree with the IMT that OPD is not currently in  
18 compliance with Task 45 and are troubled by the downward trajectory of Task 2.  
19 Four of the five Tasks that are being actively monitored by the IMT during the  
20 Sustainability Period were in compliance at the date of the most recent Case  
21 Management conference and remain in compliance according to the IMT’s Sixth  
22 NSA Sustainability Period Report. Task 5 is newly in compliance as of this report.  
23 Plaintiffs will therefore focus on Tasks 2, 5 and 45, which will determine whether  
24 OPD is able to achieve full compliance with the NSA in the coming months.

25 **I. TASK 2 (TIMELINESS STANDARDS AND COMPLIANCE WITH IAD**  
26 **INVESTIGATIONS)**

27 Task 2 requires that the Internal Affairs Department (IAD) of the OPD  
28 complete internal investigations in a timely manner. This task was inactive from

1 2015 to July 2019, before abruptly falling out of compliance in the 62<sup>nd</sup> IMT Report.  
2 Task 2 was out of compliance until February 2022, when OPD once again met the  
3 mathematical threshold required for compliance.

4 OPD policy requires that “at least 85% of Class I misconduct investigations  
5 and at least 85% of Class II misconduct investigations must be completed within  
6 180 days to be considered timely.” Per DGO M-03, Class I offenses “are the most  
7 serious allegations of misconduct and, if sustained, shall result in disciplinary  
8 action up to and including dismissal and may serve as the basis for criminal  
9 prosecution.”

10 The IMT reviewed 41 Class I misconduct cases during the period covered by  
11 the Sixth OPD Sustainability and determined that 35 of these cases were completed  
12 in a timely manner. This represented an 85% timely-completion rate, which put  
13 OPD at exactly the 85% minimum-threshold required for compliance with NSA  
14 Task 2. During the period covered by the previous two OPD Sustainability Reports,  
15 the IMT determined that 89% and 87% of Class I misconduct cases were,  
16 respectively, completed in a timely manner. These compliance rates represent a  
17 marked decrease from one year ago, in December 2022, when the Second  
18 Compliance Report found that 100% of Class I misconduct cases were completed in  
19 a timely matter. (Second Sustainability Period Report, p. 3)

20 The IMT also reviewed 137 Class II cases during the period covered by the  
21 Sixth OPD Sustainability Report and found that 130 were in compliance with  
22 established timelines. This represents a 96% timely completion rate, which is on par  
23 with the 95% timely completion rate during the period covered by the Fifth  
24 Sustainability Period Report.

25 Plaintiffs’ attorneys have previously lauded OPD for its progress on this  
26 Task, and it is empirically true that the Department remains at the NSA-mandated  
27 numerical thresholds required for compliance with Task 2. However, OPD was  
28 previously in compliance with this task for so long that it became inactive, before

1 suddenly falling out of compliance with no warning. It is therefore critical that  
2 OPD remain vigilant about meeting the timeliness deadlines mandated by Task 2  
3 going forward, lest they once again slip out of full compliance with Task 2.

4 The IMT's review of Class I cases during the period covered by the Sixth  
5 Sustainability Period Report indicates that OPD just barely met the compliance  
6 threshold, completing the very minimum percentage of such investigations in the  
7 required timeframe. Compliance with this Task is simply a matter of arithmetic,  
8 and the 85% rate achieved by OPD during the reporting period covered by the Sixth  
9 Sustainability Period Report is the absolute minimum required by the NSA (and, as  
10 Plaintiffs; attorneys have repeatedly noted, the mandated 85% timely-completion  
11 rate is substantially lower than what is required by most other consent decrees).

12 Put another way: Task 2 compliance is categorically different from the other  
13 Tasks that remain under the purview of the IMT insofar as the threshold for  
14 compliance is strictly mathematical. Had even one more Class I investigation fallen  
15 outside of the established timelines, OPD would have once again fallen out of  
16 compliance with this Task. Given this, Plaintiffs' attorneys encourage IAD to  
17 continue to aim for a compliance rate well above what is mandated by the NSA, so  
18 that the Department's compliance with this Task isn't contingent on any single  
19 investigation. The downward trend over recent reporting periods is extremely  
20 concerning and, if this trajectory continues, OPD will fall out of compliance with  
21 Task 2 imminently. This cannot happen if OPD wishes to exit the Sustainability  
22 Period.

## 23 **II. TASK 5 (COMPLAINT PROCEDURES FOR IAD)**

24 Task 5 pertains to Complaint Procedures for the Internal Affairs Division,  
25 and consists of several subtasks, all of which the IMT had previously found in  
26 compliance, including:

- 27 • Task 5.1, which requires that when a citizen wishes to file a complaint,  
28 the citizen is brought to a supervisor or IAD, or a supervisor is



1 summoned to the scene.

- 2 • Task 5.2, which requires that if there is a delay of greater than three  
3 hours in supervisory response, the reason for the delay must be  
4 documented.
- 5 • Task 5.3, which requires that where a complainant refuses to travel to  
6 a supervisor, or wait for one, personnel make all reasonable attempts  
7 to obtain specific information to assist in investigating the complaint.
- 8 • Task 5.4, which requires that specific information be documented on a  
9 complaint form and submitted to the immediate supervisor or, in  
10 his/her absence, the appropriate Area Commander.
- 11 • Task 5.5, which requires that the supervisor or Area Commander  
12 notify Communications and forward any pertinent documents to IAD.

13 During the Sustainability Period the IMT had focused on subtasks 5.15 to  
14 5.19 and subtask 5.21, which address the quality of completed IAD investigations.

15 Prior to the Sustainability Period, IMT determined that IAD investigations  
16 had improved to the standards mandated by the NSA and, in February 2022, OPD  
17 attained full compliance with Task 5. However, the First OPD Sustainability  
18 Report moved the status of Task 5 from “in compliance” to “deferred compliance”,  
19 and OPD was downgraded to “not in compliance” in the Second OPD Sustainability  
20 Report. In the subsequent Third, Fourth, and Fifth Sustainability Reports, OPD  
21 remained out of compliance with this Task.

22 Specifically, in the Fifth Sustainability Period Report, the IMT wrote:

23 In the aftermath of the report by [the Clarence Dyer firm], the  
24 Department was expected to create and implement specific policies  
25 relevant to the Internal Affairs function. While there has been  
26 organizational effort in this regard, to date, these policies have not  
27 been finalized. Further, there have been personnel issues within the  
28 Internal Affairs Division that are unsettling. We are hopeful that both  
the policy and the leadership issues will be successfully addressed.  
(Fifth Sustainability Period Report, p. 9)

1           The most recent Sixth Sustainability Report finds that “the Department has  
2 now created and implemented specific policies relevant to the Internal Affairs  
3 function.” (Sixth Sustainability Report, p. 9). It appears that OPD has finalized the  
4 policy changes that have been in the works since the Clarence Dyer Reports was  
5 published. Plaintiffs’ attorneys have been active participants in this process and can  
6 report that many of the policies they have worked to craft with various stakeholders  
7 within the Department are now published and in effect.

8           When the NSA was put into effect in 2003, there were three components to  
9 each task: Policy Compliance, Training Compliance and Practice Compliance.  
10 Plaintiffs’ attorneys are satisfied that the policy component is in compliance.  
11 According to the OPD Office of Inspector General, OPD is in basic compliance with  
12 the training component of these tasks. As for practice compliance, Plaintiffs’  
13 attorneys have been informed that these policies have been in effect since November  
14 30, 2023. It would be helpful if the Monitor could meet and confer with the OPD  
15 and inform us if the Department has achieved practice compliance with these tasks  
16 and if not, their best estimate as to when they expect such compliance to be  
17 attained.

### 18 **III. TASK 45 (CONSISTENCY OF DISCIPLINE POLICY)**

19           Task 45 requires that discipline is imposed in a fair and consistent manner.  
20 OPD was in compliance with this NSA Task at the outset of the Sustainability  
21 Period. However, following the publication of the Clarence Dyer Report, the IMT  
22 downgraded OPD’s compliance status with Task 45 to “no compliance finding”,  
23 citing “systemic and other deficiencies cited by the outside investigators were  
24 exacerbated by investigative and disciplinary decisions, which were premised on the  
25 status and positional considerations of both violators and decision-makers. (Dkt.  
26 1577, Third Sustainability Period Report, p. 32). OPD has remained out of  
27 compliance with Task 45 ever since, including in the most recent Sixth  
28 Sustainability Period Report.

1 The Sixth Sustainability Report describes the Department’s work “to address  
2 cultural issues which, when unaddressed, perpetuate actual or perceived  
3 disparities” as a “work in progress.” (Sixth Sustainability Period Report, p. 17)  
4 Specifically, the IMT notes that the Department has made efforts to address  
5 disparities within the Department “through both analysis and policy”, but that  
6 disparities nevertheless “continue within the Department.” (Sixth Sustainability  
7 Period Report, p. 17)

8 At the end of 2023, OPD issued a report titled “*2022 Analyses of Race in*  
9 *Internal Investigations Outcomes and Discipline: Supplemental Report Examining*  
10 *Failure to Accept or Refer Complaints*” (“OIA FTARC Report”). (See Exhibit 1) This  
11 report follows an earlier investigation which discovered differences “in the discipline  
12 between white and Black officers for the allegation of a Manual of Rules Violation  
13 for Failure to Accept or Refer a Complaint (FTARC).” (OIA FTARC Report, p. 3).  
14 According to the supplemental report, there were 112 allegations of FTARC.

15 The below table, incorporated on page 6 of the OIA FTARC Report, provides a  
16 breakdown of FTARC allegations compared to the demographics of OPD:

17 Breakdown of FTARC Allegations Compared to the Demographics of the Department

18 2022	% of Members in the Dept	% Allegations Received	% Sustained Allegations
19 Asian/Filipino	19%	16% (18)	18% (8)
20 Black	20%	18% (20)	27% (12)
21 Hispanic	28%	29% (32)	31% (14)
22 Other/Unknown	3%	4% (4)	12% (1)
White	29%	34% (38)	22% (10)
Total	100%	100% (112)	100% (45)

23 Another table, also on page 6 of the OIA FTARC Report, shows the sustained  
24 rate for FTARC allegations within OPD:

25 ///

26

27

28

## Sustained Rate of FTARC Allegations

2022	Sustained Rate
Asian/Filipino	44% (8/18)
Black	60% (12/20)
Hispanic	43% (14/32)
Other/Unknown	25% (1/4)
White	26% (10/38)
Total	40% (45/112)

The OIA FTARC Report itself noted that the wildly divergent sustained rates for white sworn members (26%) and Black sworn members (60%) represent “a statistically significant difference.” (OIA FTARC Report, p. 6).

The OIA FTARC Report also examined the rationale for other-than-sustained findings for Failure to Accept and Refer a Complaint allegations by race in 2022. A chart, with a breakdown by “theme” and race, is incorporated on page 9 of the OIA FTARC Report:

Themes for Other Than Sustained Findings By Race

2022	ASIAN	BLACK	HISPANIC	WHITE	OTHER	Total
Can't prove officer heard	60% (6)	38% (3)	50% (9)	54% (15)	33% (1)	51% (34)
Did not hear	30% (3)	0%	39% (7)	14% (4)	33% (1)	22% (15)
No misconduct allegations made	10% (1)	38% (3)	6% (1)	11% (3)	0%	12% (8)
Subject fulfilled their duty	0%	25% (2)	6% (1)	21% (6)	33% (1)	15% (10)
Total	100.00% (10)	100% (8)	100% (18)	100% (28)	100% (3)	100% (67)

This chart indicates that white and Asian officers were much more likely than Black officers to be not sustained or exonerated because Internal Affairs could

1 not prove that an officer heard the subject's request. The "cannot prove officer  
2 heard" theme only applied to 38% of FTARC non-sustained findings for Black  
3 officers, but 54% and 60% of such findings for white and Asian officers, respectively.

4 Plaintiffs' attorneys have noted that supervisors and command staff often  
5 receive lighter discipline than rank-and-file officers. It was therefore unsurprising  
6 that the OIA review of the FTARC data in 2022 revealed that Officers received  
7 more FTARC allegations than command-level personnel, and that those allegations  
8 were sustained at higher rates for officers than command-level personnel:

9 Allegation Findings by Rank and Race

Rank	Unfounded	Exonerated	Not Sustained	Sustained	Grand Total
<b>Lieutenant of Police</b>	<b>0%</b>	<b>0%</b>	<b>100% (1)</b>	<b>0%</b>	<b>100% (1)</b>
White	0%	0%	100% (1)	0%	100% (1)
<b>Sergeant of Police</b>	<b>47%</b>	<b>6% (1)</b>	<b>18% (3)</b>	<b>29%</b>	<b>100% (17)</b>
Black	0%	17% (1)	17% (1)	67% (4)	100% (6)
Hispanic	50% (1)	0%	0%	50% (1)	100% (2)
White	78% (7)	0%	22% (2)	0%	100% (9)
<b>Police Officer</b>	<b>29% (27)</b>	<b>1% (1)</b>	<b>28% (26)</b>	<b>43% (40)</b>	<b>100% (94)</b>
Asian	22% (4)	0%	33% (6)	44% (8)	100% (18)
Black	21% (3)	0%	21% (3)	57% (8)	100% (14)
Hispanic	33% (10)	0%	23% (7)	43% (13)	100% (30)
Other	50% (2)	0%	25% (1)	25% (1)	100% (4)
White	29% (8)	4% (1)	32% (9)	36% (10)	100% (28)
<b>Grand Total (Allegations)</b>	<b>31% (35)</b>	<b>2% (2)</b>	<b>27% (30)</b>	<b>(45)</b>	<b>100% (112)</b>

21 (OIA FTARC Report, p. 14)

22  
23 As this graph shows, officers account for 84% of FTARC allegations, while  
24 Sergeants account for just 15% and Lieutenants account for less than one percent.  
25 Officers were also sustained at a much higher rate (43%) than Sergeants (29%),  
26 while Lieutenants were not sustained at all.

27 Given that black officers were more likely to be sustained than their  
28 colleagues, and that officers were more likely to be sustained than command-level

1 personnel, it follows black officers were sustained at the highest rates and white  
2 commanders were sustained at the lowest rates. Specifically, the Sustained rate for  
3 Black officers was 57%, the highest of any officer race group. The Sustained rate for  
4 Black Sergeants was a whopping 67%, the highest of any Sergeant race group. And  
5 the Sustained rate for white Sergeants – zero percent – was the lowest for any  
6 Sergeant race group. (OIA FTARC Report, p. 14)

7 OPD’s Office of Internal Accountability should be applauded for this thorough  
8 investigation. The authors of this report were candid, meticulous, and specific  
9 about the obvious discrepancies that the data reveal. However, the myriad  
10 disparities in OPD’s internal discipline system described in the FTARC Report do  
11 not meet the standards mandated by Task 45 of the NSA. OPD cannot be in  
12 compliance with Task 45 while it imposes inconsistent discipline.

13 What is the solution to the disparity issues that plague Task 45? One  
14 solution is to give sergeants less discretion in imposing FTARC discipline. In  
15 December, 2023, the OPD promulgated Special Order 9213 which attempted to set  
16 forth specific standards when “a person expresses specific dissatisfaction with an  
17 aspect of police service to a member, but does not request to file a complaint or to  
18 speak with a supervisor”. This followed a memo from Deputy Chief Clifford Wong on  
19 September 18, 2023 which gave recommendations “to aid the Department within  
20 findings and disciplinary outcomes”. A lesson plan was formulated to educate  
21 Department members on Special Order 9213. The OPD has informed us that all  
22 officers have received this training.

23 The results of all this activity need to be reported to the OPD Chief, the  
24 Police Commission, the Monitor/Compliance Director, and the Plaintiffs’ Attorneys.  
25 It is imperative that FTARC findings and discipline be done in a race neutral  
26 manner. We look forward to the results of all of these reforms and expect a sharp  
27 drop in the inequities disclosed to date. At the same time,  
28 we want a solution that does not stifle police community relations to the point that

1 the focus shifts to the officers feeling that they must constantly ask citizens if they  
2 want to file a complaint.

### 3 CONCLUSION

4 Recently, plaintiffs' attorneys became aware of the fact that there is only  
5 one female in the current Academy class. We have brought this issue up over the  
6 years as a major failure of the Oakland Police Department. Despite our concerns,  
7 not only has there been no progress, but the OPD is moving backwards in the  
8 number of women it recruits into the Academy.

9 The OPD is aware of this shortcoming and has proposed a comprehensive  
10 program to recruit more women into the OPD Academy. Whether these promises  
11 are fulfilled will play out in the future. However, the fact remains that an Academy  
12 Class with one woman in it is a level unknown to Plaintiffs' attorneys in years. This  
13 problem must be corrected without delay.

14 While OPD has reattained compliance with Task 5, the IMT once again found  
15 "no compliance status" regarding Task 45. The recent "OIA FTARC Report" by the  
16 Oakland Police Department Office of Inspector General makes a very strong case  
17 that the OPD is not in compliance with this task. Other statistics suggest that OPD  
18 is backsliding on Task 2, and only met the very minimum threshold for compliance  
19 with that Task. Put another way: while the Department represents that it is on the  
20 cusp of full compliance with the NSA, it has not yet achieved compliance with Task  
21 45, and its Task 2 compliance is extremely tenuous. There is still work to be done.

22 While the "OIA FTARC Report" is disturbing, the fact that it could be written  
23 at all by an OPD member demonstrates how far the Department has come in recent  
24 years. The level of introspection and analysis, despite a result highly critical of the  
25 Oakland Police Department, demonstrates a level of introspection that is deserving  
26 of high praise for the report's completeness as well as the fact that it was not  
27 censored or dramatically rewritten by the command staff.

28 Plaintiffs' attorneys must once again note that we are aware of skyrocketing

1 numbers of complaints against OPD in 2023. This spike is troubling and worthy of  
 2 scrutiny and introspection by the Department and might impact multiple NSA  
 3 Tasks.

4 According to the most recent (336<sup>th</sup>) Compliance Update reviewed by  
 5 Plaintiffs' attorneys, year-to-date misconduct complaints and sustained misconduct  
 6 complaints have increased dramatically:

7 **Complaints**

	# Complaints YTD 2023	# Complaints YTD 2022	# Cases Sustained YTD 2023	# Cases Sustained YTD 2022
Misconduct	1098	851	79	53
Service*	453	433		
<b>Total</b>	1551	1284		

11 **Note:** The sustained cases exclude allegations involving preventable on-duty vehicle collisions.

12  
 13 OPD previously explained that the rise in complaints was related to an  
 14 increase Class II allegations, including: a 56% increase in complaints related to  
 15 improper search/seizure/arrest, a 103% increase in complaints related to care of  
 16 property, a 46% increase in complaints related to preventable collisions, a 33%  
 17 increase in complaints related to general performance of duty, and an 11% increase  
 18 in complaints related to conduct toward others. (334<sup>th</sup> Compliance Update, pp. 1-2).  
 19 Subsequent Compliance Update Reports have not detailed what actions, if any, the  
 20 Department has taken to uncover and/or address the reasons for this spike across  
 21 the board, which may very well impact multiple NSA Tasks.

22 Plaintiffs' attorneys also note that the 336<sup>th</sup> Compliance Update actually  
 23 encompasses data from January through September 2023. Apparently, the City of  
 24 Oakland and the Department are continuing the process of rebuilding multiple  
 25 computer-based systems following the February 8, 2023 ransomware attack on  
 26 Oakland. The 336<sup>th</sup> Biweekly Compliance Update notes that "the Vision database  
 27 has not yet returned to fully operational status. User may once again enter data  
 28 but the ability to extract "reports" and compare data from within Vision has not yet



1 been fully restored.” (336<sup>th</sup> Compliance Update, p. 1)

2       This attack on the City’s and the Department’s computer infrastructure is, of  
3 course, an external criminal act. It is nonetheless critical that these systems are  
4 restored to their full functionality and/or rebuilt as soon as possible. Task 34  
5 requires OPD to complete a basic report on all vehicle stops, field investigations,  
6 and detentions, and to compile this information into a database that can be  
7 searched, queried, and reported by OPD. Task 41 pertains to the Use of a Personnel  
8 Assessment System (PAS) and Risk Management, and requires OPD to develop a  
9 risk management system to audit the performance of specific members, employees,  
10 supervisors, managers, units, and the Department as a whole. Neither of these  
11 Tasks can be in actual, real-world compliance unless and until Vision functionality  
12 is fully restored.

13       Finally, as of this writing, it is widely reported that the Oakland Police  
14 Commission has forwarded three candidates for Oakland’s next Chief of Police to  
15 Mayor Sheng Thao. Mayor Thao has rejected these candidates. Recently, the Police  
16 Commission announced it would submit further nominations to the Mayor on or  
17 about March 1, 2024.

18       While having no Chief of Police for over one year by March 1, 2024 might  
19 ordinarily be extremely disruptive to any police department, the guidance of Acting  
20 Chief Allison has gone a long way to preventing this from happening. He has done  
21 a commendable job of leading the OPD through what otherwise would be a more  
22 chaotic time in its history.

23       It must be noted that this selection process has been far less transparent  
24 than the previous search for a permanent Chief of Police. During the search that  
25 ultimately led to the appointment of Chief Armstrong in 2020-2021, the finalists  
26 participated in public events where citizens were able to ask questions about their  
27 vision for the Department they wish to lead. Various local organizations, including  
28 the Oakland Chapter of the NAACP and the Coalition for Police Accountability,

1 have called on Mayor Thao to hold a public forum for any finalists for the Chief  
2 position, and Plaintiffs' attorneys agree that such transparency would benefit all  
3 parties, including the citizens of Oakland.

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1 In this status report, the City discusses: (1) Internal Affairs complaint  
2 procedures (Task 5), (2) consistency of discipline policy (Task 45), (3) Internal  
3 Affairs timelines (Task 2), (4) the Department’s risk management program and use  
4 of stop data (Tasks 34 & 41), (5) officer recruiting, and attrition, and diversity, (6)  
5 force and force investigations (Tasks 24, 25 & 30), and (7) the City’s additional work  
6 supporting sustained substantial compliance.

7 **I. INTERNAL AFFAIRS COMPLAINT PROCEDURES (TASK 5)**

8 The Monitor agreed in its most recent report that the Department has  
9 regained compliance with Task 5.

10 **A. Key Measures Implemented by the Department in or Prior to**  
11 **April 2023 Maintained the Integrity of Internal Investigations**  
12 **in the Short Term Pending Official Policy Changes.**

13 As the City worked to publish new and revised policies mandating changes to  
14 the Department’s internal investigations processes, on or prior to April 4, 2023 the  
15 Department began employing practices to immediately prevent recurrence of the  
16 types of deficiencies identified in the outside investigator’s report. Dkt. 1597, *Joint*  
17 *Case Management Statement 2-3* (Apr. 4, 2023). These stopgap measures  
18 strengthened the Department’s investigation processes and allowed the Department  
19 to immediately correct Task 5 deficiencies in the short term while awaiting official  
20 changes in policy. Since the Department began employing these temporary  
21 measures, the Monitor has not reported deficiencies in the Department’s internal  
22 investigations of the type or significance of those reported in or prior to January  
23 2023. As discussed in greater detail in our last court filing, the Monitor’s June and  
24 September assessments of Task 5 (Dkts. 1593 & 1602, *Fourth and Fifth NSA*  
25 *Sustainability Period Reports of the Independent Monitor*) were substantially  
26 similar to its assessments during the eight-month period it previously found the  
27 Department “in compliance” with Task 5. Dkt. 1604, *Joint Case Management*  
28 *Statement 26-27* (Sept. 19, 2023) (comparing recent assessments with Dkt. 1505,  
*Seventy-Ninth Report of the Independent Monitor 8-9* (Feb. 22, 2022) and Dkt. 1519,

1 *Eighty-First Report of the Independent Monitor* 8-9 (Apr. 26, 2022)). The Monitor’s  
2 June and September 2023 reports noted long-term compliance on most subtasks.  
3 Dkt. 1593, *Fourth NSA Sustainability Period Report* at 7; Dkt. 1602, *Fifth NSA*  
4 *Sustainability Period Report* at 7. In fact, during the two reporting periods from  
5 April to September, the Monitor did not identify any issues that would keep the  
6 Department from regaining compliance apart from the lack of formal policy  
7 mandates.

8 **B. Mandatory Changes to Internal Investigation Processes Are**  
9 **Now Memorialized in Official Department Policy to Sustain the**  
10 **Integrity of Investigations in the Long Term.**

11 The Department has published and implemented all outstanding policies  
12 originating from the outside investigator’s recommendations and addressing all  
13 identified deficiencies. Chart 1 shows the new and revised policies that further  
14 strengthen the Department’s internal investigation processes, and the dates each  
15 policy was officially published in the Department’s online policy management  
16 platform.

17 As soon as the Department published and implemented formal policy changes  
18 to its internal investigations processes to address the outside investigator’s  
19 recommendations, the Monitor changed its Task 5 assessment back to “in  
20 compliance.” Dkt. 1618, *Sixth NSA Sustainability Period Report of the Independent*  
21 *Monitor* 9 (Dec. 18, 2023). This further supports the conclusion that but for policy  
22 implementation, the Department was otherwise in compliance with Task 5 during  
23 the two prior reporting periods between April and September 2023.

24 For these reasons, the City asks that the Court consider crediting the  
25 Department with Task 5 compliance beginning on or about April 4, 2023.

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**Chart 1: New and Revised Policies Implemented in Response to Recommendations**

**Yellow = Recommendation added by the City**

<b>Recommendation</b>	<b>New or Revised (Rev.) Policies and Related Documents</b>	<b>Status</b>
<p>OPD should adopt a Department-specific policy regarding acceptable personal relationships between sworn members and when and how those relationships must be reported.</p>	<p>DGO D-22, Personal Relationship Disclosure Policy (new)</p>	<p>New policy published by the Department in PowerDMS (online policy repository) on Nov. 30, 2023.</p>
<p>OPD should require all personnel involved in the investigation, review, supervision, and approval of IAD and CID cases to conform to the recusal standards of applicable policies.</p>	<p>CID Recusal Policy 23-02 (rev.) Internal Affairs Division (IAD) Meeting Attendance Roster (rev.) Investigator and Reviewer Conflict/Recusal Forms (rev.)</p>	<p>Revised policy published by the Department in PowerDMS on Nov. 30, 2023.</p>
<p>OPD should adopt a policy that requires approval and documentation of all changes to draft Reports of IAD Investigations.</p>	<p>IAD Policy and Procedure Manual (rev.) Training Bulletin V-T.01, Internal Investigation Procedure Manual (rev.) Internal investigation report template (rev.) Addendum [reviewer disagreement] template (rev.)</p>	<p>Revised policies published by the Department in PowerDMS on Nov. 30, 2023.</p>

1		Executive Summary/Presentation template (rev.)	
2			
3		Command Review Checklist (rev.)	
4			
5			
6	OPD should adopt a policy that requires all briefings regarding ongoing IAD investigations to be documented.	IAD Policy and Procedure Manual (rev.)	Revised policy published by the Department in PowerDMS on Nov. 30, 2023.
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11	OPD should adopt a policy that requires the Chief of Police to read reports of IAD investigations before signing them.	IAD Policy and Procedure Manual (rev.)  [Note: Chief is mandated to read a subset of sustained cases. A deputy chief must also review of subset of sustained cases as well as a subset of not-sustained cases. The Department revised its Executive Summary of the case presentation outline which displays facts and circumstances that should raise flags and spur follow-up questions.]	Revised policy published by the Department in PowerDMS on Nov. 30, 2023.
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21	OPD should review its implementation and training regarding policies governing OPD members' use of OPD- issued cellular telephones and personal cellular telephones, and prohibit the use of personal cellular telephones for work-related communication.	Updated training PowerPoint.  Conducted additional lineup training.  Created quiz for members.	Completed prior to Apr. 2023. <i>See</i> Dkt. 1579, Joint Case Management Statement 27 (Apr. 4, 2023).
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<p>OPD should revise its rule regarding physical fitness for duty to explicitly include mental health.</p>	<p>Information Bulletin (IB) re Psychological Fitness for Duty Assessments (new)</p> <p>[Note: Department completed an IB rather than changing the Manual of Rules (MOR) fitness for duty definition which could result in members' mental health issues being viewed and treated as misconduct.]</p>	<p>Completed. Information Bulletin re Psychological Fitness for Duty Evaluations published on Aug. 29, 2023.</p>
<p>OPD, through its Office of Internal Accountability, should review and improve its policies, practices, and training regarding investigations of members accused of criminal misconduct to ensure rigor and accountability.</p>	<p>DGO M-4.1, Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel (rev.)</p> <p>CID Investigative Training Program 23-01</p>	<p>Revised policy DGO M-4.1 published by the Department in PowerDMS on Nov. 30, 2023.</p> <p>CID Investigative Training Program 23-01 published on Sept. 12, 2023</p>
<p>Improve communication and coordination with CPRA and OPC. Facilitate CPRA's ability to select appropriate cases for parallel investigation and CPRA's ability to conduct separate, independent investigations.</p>	<p>IAD Policy and Procedure Manual (rev.)</p> <p>DGO M-4.1, Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel (rev.)</p>	<p>Revised policies published by the Department in PowerDMS on Nov. 30, 2023.</p>

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1 **II. CONSISTENCY OF DISCIPLINE POLICY (TASK 45)**

2 The City was surprised that the Monitor’s most recent report offered “no  
3 compliance finding” on Task 45. The City’s position is that it has achieved  
4 substantial compliance with Task 45.

5 **A. The Department Has Moved Beyond Compliance with the**  
6 **Technical Task Requirements, and for the Last Several Years**  
7 **Has Built an Effective Process to Detect and Eliminate**  
8 **Disparity.**

9 The requirements for Task 45 are set forth in each of the Monitor’s reports  
10 preceding its assessment:

11 OPD shall revise and update its disciplinary policy to ensure that  
12 discipline is imposed in a fair and consistent manner.

13 1. The policy shall describe the circumstances in which disciplinary  
14 action is appropriate and those in which Division-level corrective  
15 action is appropriate.

16 2. The policy shall establish a centralized system for documenting and  
17 tracking all forms of discipline and corrective action, whether imposed  
18 centrally or at the Division level.

19 3. All internal investigations which result in a sustained finding shall  
20 be submitted to the Discipline Officer for a disciplinary  
21 recommendation. The Discipline Officer shall convene a meeting with  
22 the Deputy Chief or designee in the affected chain-of-command for a  
23 confidential discussion of the misconduct, including the mitigating and  
24 aggravating factors and the member/employee’s overall performance.

25 4. The COP may direct the Discipline Officer to prepare a Discipline  
26 Recommendation without convening a Discipline Conference.

27 For nearly 20 years, the Monitor “assessed Task 45 by reviewing the  
28 structure of the disciplinary process, the outcomes of cases with sustained findings,  
and whether the required information was included in the [Vision] database. The  
Department also developed a Disciplinary Matrix.” Dkt. 1578, *Third NSA  
Sustainability Period Report of the Independent Monitor* 31 (Apr. 3, 2023). The  
Monitor used to devote several pages discussing and analyzing the Department’s

1 compliance with these task requirements. *See, e.g.*, Dkt. 1494, *Seventy-Seventh*  
2 *Report of the Independent Monitor* 15-18 (Dec. 8, 2021). This is in stark contrast  
3 with the Monitor’s six-sentence and four-sentence commentaries in its last two  
4 sustainability period reports, respectively, which omit any analysis of the task  
5 requirements.

6 In fact, the Monitor conceded that “those criteria were satisfied.” Dkt. 1578,  
7 *Third NSA Sustainability Period Report* at 31. It was only after the Department of  
8 its own volition commissioned a study of its investigation and discipline outcomes  
9 and the “Department’s increasing capacity for analysis [ ] led to its current practice  
10 of involving internal statistical reviews of discipline-related data,” that the Monitor  
11 began withholding a compliance finding. *See id.* The Monitor’s recent criticisms are  
12 focused solely on the sufficiency of the Department’s ongoing years-long efforts to  
13 pioneer sustainable transformation of its discipline process using a data-driven  
14 approach. *Id.* These extraordinary efforts, however, and the memorialization in  
15 policy of its effective analytical processes, prove that the Department is in  
16 compliance with and deserves an “in compliance” assessment on Task 45.

17 **B. The Department’s Effective, Sustainable Process is the**  
18 **Culmination of Years of Tangible Progress.**

19 The Department has a policy that requires IAD’s ongoing review of  
20 investigation outcomes and discipline to flag potential disparity as early as possible.  
21 Policy requires the Department to produce an annual report of its investigation  
22 outcomes and discipline analyses. The Department has created and refined with the  
23 assistance of Stanford University researchers and the Monitor a comprehensive  
24 methodology for analyzing investigation outcomes and discipline. As part of that  
25 process, the Department rebuilt its data collection and reporting mechanisms to  
26 ensure its data was robust and reliable. The Department has increased data-field  
27 reporting and refined the methodology for analysis as its facility with the use and  
28 interpretation of the data expands. The Department used the written methodology

1 to complete a thorough investigation of its 2022 investigation outcomes and  
2 discipline. The Department identified an area of concern and ultimately successfully  
3 determined despite a very small sample size that there was some disparity: Black  
4 officers were sustained at a higher rate for Failure to Accept or Refer Complaints  
5 (Unintentional). The Department further investigated to determine what was  
6 causing the disparity. As is often the case with social science data analyses, the  
7 Department did not find a single cause or a direct causal link. But the Department  
8 used its methodology to locate points in the investigation process where bias might  
9 more readily creep in—points in the process where individual investigators’ decision  
10 making may have a greater impact on a case outcome. The Department identified  
11 two key points in the process: (1) addition of an allegation by an investigator during  
12 the course of their investigation of a complaint of other misconduct, and (2)  
13 interpretation and application of the Department’s rule to the facts of a particular  
14 case.

15 To eliminate the disparity, the Department revised Departmental General  
16 Order M-03, Complaints Against Department Personnel and Procedures (revised by  
17 Special Order 9213 on Dec. 5, 2023) to promote consistent interpretation and  
18 application of policy. The Department further revised M-03 to allow allegations of  
19 unintentional failure to accept complaints that are discovered by investigators in  
20 the course of investigating unrelated allegations (referred to as “self-discovered”  
21 allegations) to be handled with a supervisory note to file (SNF) if there is no pattern  
22 of misconduct. This will allow the Department to handle the types of allegations  
23 where disparity was observed consistently with the way it handles other self-  
24 discovered Class II (lower level) misconduct allegations. The Department also  
25 revised Internal Investigations Training Bulletin V-T.1, and IAD Policy &  
26 Procedures Manual to improve transparency in Division Level Investigation (DLI)  
27 reporting. *See* Chart 1, *supra*. Thus, in 2023 the Department revised three of the  
28 five policies the Monitor lists as “incorporating the requirements of Task 45.” In

1 addition, the Department added a quality control training for all commanders to its  
2 2023 Command Retreat Seminars, as well as formal tracking to identify differences  
3 in recommended findings on allegations within the Department as well as between  
4 the Department and the CPRA or other oversight body. *See Ex. 2, Department*  
5 *Response Memorandum Re Supplemental Reporting Examining Failure to Accept or*  
6 *Refer Complaints* (Sept. 2023), also at [https://www.oaklandca.gov/documents/2022-](https://www.oaklandca.gov/documents/2022-internal-investigation-outcome-and-discipline-reports)  
7 [internal-investigation-outcome-and-discipline-reports](https://www.oaklandca.gov/documents/2022-internal-investigation-outcome-and-discipline-reports) (last visited Dec. 29, 2023).  
8 These concrete steps demonstrate the Department's ability to thoughtfully analyze  
9 data, investigate beyond the data, and direct meaningful change.

10 The Department has now twice repeated the cycle of following through on its  
11 analysis of investigation outcomes and discipline data, each time demonstrating a  
12 stronger aptitude for effectively addressing observed disparity. *See Ex. 2,*  
13 *Department Response* (Sept. 2023); and *Department Response to Risk Analysis Unit*  
14 *Disparity Study* (Sept. 2022), <https://www.oaklandca.gov/topics/police-data>  
15 [https://cao-94612.s3.us-west-2.amazonaws.com/documents/Dept-Response-and-OIA-](https://cao-94612.s3.us-west-2.amazonaws.com/documents/Dept-Response-and-OIA-Discipline-Equity-and-Internal-Proc-Justice-Report-Sept-2022.pdf)  
16 [Discipline-Equity-and-Internal-Proc-Justice-Report-Sept-2022.pdf](https://cao-94612.s3.us-west-2.amazonaws.com/documents/Dept-Response-and-OIA-Discipline-Equity-and-Internal-Proc-Justice-Report-Sept-2022.pdf) (last visited Jan.  
17 3, 2024). The Department's completed work has resulted in a sustainable, effective  
18 process for ensuring fairness in internal investigation outcomes and discipline. The  
19 Department's achievement well exceeds any measures or expectations set forth in  
20 the Monitor's compliance assessments from 2003 through 2021.

21 The Department is on schedule to begin its initial analysis of the 2023  
22 internal investigation outcomes and discipline data in the first quarter of 2024 as  
23 soon as it confirms the 2023 dataset is complete. The Department hopes to have at  
24 least some preliminary written analysis completed by the end of March 2024. As it  
25 continues to repeat its annual cycle of analyzing case outcomes and discipline, the  
26 Department may uncover disparity in investigation outcomes or discipline.  
27 Discovering that disparity may exist, however, should never dictate lack of task  
28 compliance. Rather, the focus more appropriately lies with the Department's

1 demonstrated willingness and ability to effectively address observed disparities.

2         The Monitor’s recent brief commentary on Task 45 credits the Department  
3 with “creating tangible and sustainable policies and practices to ensure that  
4 members of the organization are treated equitably [ ] through both analysis and  
5 policy.” *See* Dkt. 1618 at 17. The Monitor’s sole criticism is that the Department  
6 needs to “strive to address cultural issues which, when unaddressed, perpetuate  
7 actual or perceived disparities.” *Id.* The Department’s commission of a first-of-its-  
8 kind discipline disparity study and development of its own sustainable methodology  
9 to internally detect unfairness in investigation outcomes and discipline is, for all  
10 practical purposes, the definition of striving to address in a transparent manner the  
11 cultural issues that perpetuate actual or perceived disparities.

12         While the City appreciates that NSA task compliance is not a check-the-box  
13 exercise, “I know it when I see it” is not an appropriate compliance standard. For  
14 the foregoing reasons, the City believes an in-compliance assessment on Task 45 is  
15 appropriate and is hopeful that the Monitor reaches the same conclusion in its next  
16 report.

### 17 **III. INTERNAL AFFAIRS TIMELINES (TASK 2)**

18         The Department remains in compliance with Task 2. *Sixth NSA Sustainability*  
19 *Report of the Independent Monitor, supra* at 3. In the third quarter of 2023, the  
20 Department timely completed 85% of Class I and 96% of Class II investigations. *Id.*  
21 The Department completed the discipline recommendation process within 30  
22 calendar days of a sustained allegation in 98% of cases. *Id.*

23         The Department is working collaboratively with the CPRA to ensure both  
24 entities are making best efforts to permit the Department to achieve compliance  
25 with the timelines required under this task. There will likely always be instances,  
26 however, where either one or both entities require more than 180 days to complete  
27 Class I investigations in a manner that maintains appropriate quality and  
28 thoroughness of serious and/or complex investigations.

1 In addition, the Department is continually assessing its procedures to  
 2 improve investigative efficiency and timely completion. The Department is  
 3 currently exploring whether there are certain types of allegations where an  
 4 abbreviated investigation may be appropriate. For example, allegations of unlawful  
 5 arrest where officers have an arrest warrant or the arrest is otherwise mandated by  
 6 law or policy. Focusing time and resources on allegations that warrant more  
 7 rigorous investigation and analysis will ultimately improve overall investigative  
 8 efficiency and case completion rates.

9 Finally, the Department has had to redouble its efforts to timely complete  
 10 investigations in the wake of the ransomware attack on the City early last year. The  
 11 attack resulted in significant disruption to internal investigations and investigation  
 12 tracking that continues to impact the investigation timelines. Despite challenges,  
 13 the Department has continued to meet its internal investigation timelines.

#### 14 **IV. THE DEPARTMENT MAINTAINS AN EFFECTIVE RISK 15 MANAGEMENT PROGRAM (TASKS 34 & 41)**

16 The Department's risk management program provides a valuable  
 17 foundation to discuss issues involving individual officers, patterns among  
 18 officers, and stop data.

##### 19 **A. The Department's Ongoing Effort to Reduce Racial Disparity in 20 Non-Dispatch and Non-Intelligence Led Police Stops.**

21 The City remains mindful that at the heart of this case is racial disparity in  
 22 policing. The Department has a well-established culture of vigilance rooted in its  
 23 risk management program through which it constantly reexamines practices that  
 24 may have a disparate impact or unintentionally foster bias.

25 Stop data, particularly for non-dispatch stops,<sup>1</sup> represents potential risk—it

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26 <sup>1</sup> A non-dispatch stop is a stop made because an officer observes a violation of the  
 27 law and chooses to initiate contact. An example would be an officer observes a  
 28 vehicle going through a red light without stopping. *OPD Quarterly Stop Data Report  
 Q2 2023 1*, <https://www.oaklandca.gov/resources/2023-stop-data-and-reports> (last  
 visited Sept. 18, 2023). A dispatch stop is a stop made when an officer responds to  
 an incident after a police dispatcher receives a call and relays information to the  
 officer. *See id.*

1 may reveal disparity in police practices and must be analyzed as part of the  
2 Department's risk management interests. The Department has used data and  
3 directives to reduce non-dispatch, non-intelligence led stops. The Department  
4 analyzes non-dispatch and non-dispatch, non-intelligence led stops separate from  
5 dispatch stops to focus in on the types of stops where bias may creep in, stops that  
6 are not the result of a dispatch call or specific intelligence, stops where an  
7 individual officer's decision making may play a greater role.

8         The Department is and has been particularly concerned with the historical  
9 overrepresentation of African Americans among those detained in police stops. The  
10 Department's focus on reducing stops that may be the result of prejudice or  
11 unconscious bias has yielded a significant reduction in African American stops,  
12 especially in the last several years. The Department's annual average non-dispatch  
13 stop rate for African Americans between 2014 to 2020 was greater than 56%, with a  
14 quarterly high of 66% in 2016. *See* Dkt. 1423, *Joint Case Management Statement* 30  
15 (Feb. 12, 2021); and Dkt. 1515, *Joint Case Management Statement* 50 (Apr. 20,  
16 2022). In 2021, the Department's African American non-dispatch stop rate fell to  
17 50%. And in 2022 and 2023, the Department's African American non-dispatch stop  
18 rate was well below 50%. *See Fig. 1.*

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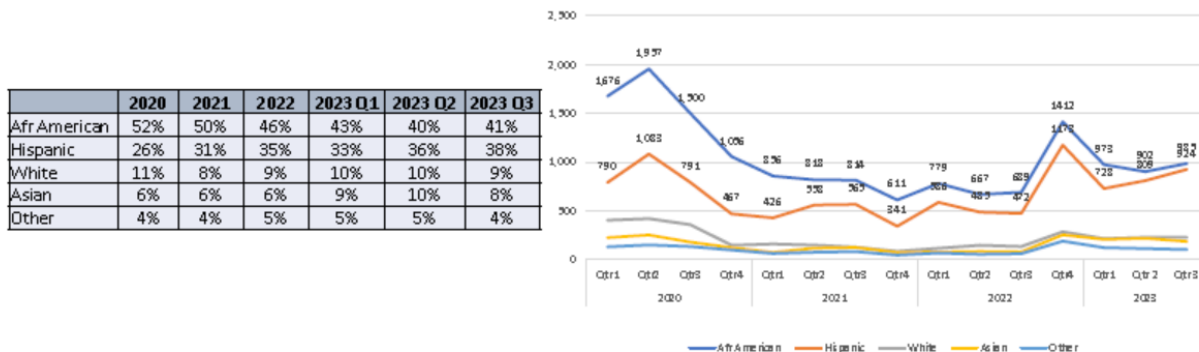
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### Non-Dispatch Stops by Race Jan 2020-Sep 2023



**Non-Dispatch, Non-Intel Stops by Race Jul-Sep 2023**

- Areas 1-6 stopped African Americans at the highest rate (37%-53%), followed by Hispanics (17%-39%)
  - Areas 4 and 5 had the highest percentage of African American stops, 53% and 52% respectively.
- Traffic Units stopped Hispanics at the highest rate (45%), followed by African Americans (35%).
- The other Units who made Non-Dispatch, Non-Intel stops during Q3 2023 made 11 or less stops.

**Fig. 1, Slide from Nov. 2023 Citywide Risk Management Meeting**

When intelligence-led stops<sup>2</sup> are removed, the Department’s African American stop rate is even lower, dropping to 37% in the second and third quarters of 2023. See Fig. 2.

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<sup>2</sup> Intelligence-led stops are a subset of non-dispatch stops and require officers to possess knowledge from an articulable source that leads to the initiation of a stop. *OPD Quarterly Stop Data Report Q2 2023, supra* at 2. The source of information may be very specific, such as a named or described suspect, or general information about a recent crime trend tied to a specific location and involved individuals. *Id.*



	2020				2021				2022				2023		
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
<b>Black or African American</b>	45%	48%	47%	49%	44%	45%	41%	44%	47%	45%	39%	38%	40%	37%	37%
<b>Hispanic or Latino</b>	27%	31%	28%	29%	32%	33%	35%	35%	39%	32%	40%	37%	34%	35%	41%
<b>White</b>	16%	11%	13%	10%	13%	10%	8%	9%	6%	10%	10%	10%	10%	11%	9%
<b>Asian</b>	7%	6%	7%	6%	6%	7%	10%	8%	4%	8%	7%	9%	10%	12%	9%
<b>Other</b>	5%	5%	5%	6%	5%	5%	6%	5%	4%	5%	4%	7%	6%	5%	3%

**Fig. 2, Quarterly Non-Dispatch, Non-Intelligence Led Stop Rate by Race 2020-2023, data available at <https://www.oaklandca.gov/resources/stop-data> (last visited Jan. 3, 2024).**

**B. The Department Analyzes Complaint Trends to Determine Where Additional Training or Investigation May Be Necessary or Beneficial.**

From 2022 through the third quarter of 2023, the Department observed an overall upward trend in the number of misconduct complaints against Department members. The Department received the most complaints in the second quarter of 2023 (583). That number fell to 489 in the third quarter of 2023. *See Fig. 3.*

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**Fig. 3, Slide from Nov. 2023 Citywide Risk Management Meeting**

Many complaints include multiple misconduct allegations. Thus, while there were 492 complaints in the third quarter of 2023, those complaints involved hundreds more allegations. The most frequent misconduct allegations in 2023, accounting for 540 allegations, were Performance of Duty (POD) – Unintentional/Improper Search, Seizure, or Arrest; POD – General; Use of Force Comparable to Level 4; Conduct Toward Others – Demeanor; Preventable Collision; Care of Property; and Failure to Accept or Refer a Complaint (Unintentional). *See Fig. 4.*

“Performance of Duty – General” encompasses misconduct allegations involving an officer’s job responsibilities that are not specifically captured in another, more specific Performance of Duty misconduct category. *See Fig. 5.*

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### 2023 Top Complaint Allegations

**Allegations by Complaint Date Jan-Sep 2023**

MOR Violation	Q1	Q2	Q3	2023 Q1-Q3 Total	Change between Q2 and Q3
PERFORMANCE OF DUTY - UNINTENTIONAL/IMPROPER SEARCH, SEIZURE, OR ARREST	314	272	221	807	-19%
PERFORMANCE OF DUTY - GENERAL	182	204	133	519	-35%
USE OF PHYSICAL FORCE COMPARABLE TO LEVEL 4	62	91	74	227	-19%
CONDUCT TOWARD OTHERS - DEMEANOR	70	53	56	179	6%
DEPARTMENT PROPERTY AND EQUIPMENT - PREVENTABLE COLLISION	20	20	22	62	10%
PERFORMANCE OF DUTY - CARE OF PROPERTY	33	22	21	76	-5%
FAILURE TO ACCEPT OR REFER A COMPLAINT (UNINTENTIONAL)	31	42	13	86	-69%

**Allegations by Approval Date Jan-Sep 2023**

MOR Violation	Sustained Findings	All Findings	Sustained Rate
PERFORMANCE OF DUTY - UNINTENTIONAL/IMPROPER SEARCH, SEIZURE, OR ARREST	0	590	0%
PERFORMANCE OF DUTY - GENERAL	32	398	8%
USE OF PHYSICAL FORCE COMPARABLE TO LEVEL 4	2	216	1%
CONDUCT TOWARD OTHERS - DEMEANOR	19	129	15%
DEPARTMENT PROPERTY AND EQUIPMENT - PREVENTABLE COLLISION	39	41	95%
PERFORMANCE OF DUTY - CARE OF PROPERTY	1	44	2%
FAILURE TO ACCEPT OR REFER A COMPLAINT (UNINTENTIONAL)	50	111	45%

\* Allegations by Complaint Date and Allegations by Approval Date are different data sets. They do not include the same cases. Allegations by Approval Date are cases that were approved during Jan-Sep 2023, but may have been received in prior years.

**Fig. 4, Slide from Nov. 2023 Citywide Risk Management Meeting**

### POD – General Complaint Allegations by Category (Sworn Only) Jan – Sep 2023

Category	# of Allegations	% of Allegations
Arrest	49	11%
Callback	5	1%
Contact	19	4%
Driving	15	3%
Handcuffing	41	10%
Internal	6	1%
Investigation	174	41%
Report	26	6%
Safety	18	4%
Service	53	12%
Other	23	5%
<b>Total</b>	<b>429</b>	<b>100%</b>

**POD General Category Key**

- 1. Arrest:** complaints that involve failure to arrest, cite or serve
- 2. Callback:** complaints where callbacks were not initiated as requested
- 3. Contact:** complaints where contact was not initiated
- 4. Driving:** any complaint regarding pursuits, OPD vehicles, or unsafe driving
- 5. Handcuffing:** complaints about handcuffing
- 6. Internal:** internally generated complaints
- 7. Investigation:** complaints about something related to the preliminary investigation
- 8. Report:** complaints involving report documentation (inaccuracies, omissions, or failure to complete a report)
- 9. Safety:** complaints about alleged unsafe practices by OPD or potentially dangerous situations
- 10. Service:** complaints about lack of response for calls for service or deficiencies during a call for service
- 11. Other:** complaints without any specific details or that don't fit into another category (some look like they should be a different MOR)

**POD – General Allegation Findings Jan – Sep 2023 (Sworn Only)**

MOR Violation	Sustained	Not Sustained	Exonerated	Unfounded	Informally Resolved	Admin Closure	Grand Total
POD General	27	8	233	46	26	7	347

**Fig. 5, Slide from Nov. 2023 Citywide Risk Management Meeting**

1 Comparing the sustained rates for internal investigations completed in 2023  
2 involving the same types of allegations most frequently the subject of complaints in  
3 2023, it is significant to note that there were no sustained findings for  
4 unintentional/improper search, seizure, or arrest; and only two sustained findings  
5 for use of force comparable to Level 4. *See Fig. 4*. Therefore, although there was an  
6 increase in allegations of these types, case findings do not thus far indicate an  
7 increase in or pattern of officer misconduct involving force or constitutional rights  
8 violations. The Department took action, however, to address the number of  
9 preventable vehicle collisions and sustained allegations of failure to accept or refer a  
10 complaint (unintentional). *Id.* The Department discussed risk mitigation at length  
11 for both categories of misconduct—preventable vehicle collisions and failure to  
12 accept or refer complaints—during the Citywide Risk Management Meeting in  
13 November 2023, as well as in Bureau level and Area level meetings. In addition, as  
14 noted above the Department recently completed a thorough analysis of complaints  
15 involving failure to accept or refer complaints (unintentional) and, as a result,  
16 changed complaint policy (DGO M-03) and is conducting training on the changes to  
17 policy.

18 The Department continues to demonstrate understanding and effective use of  
19 its data through its risk management program. The Department's systematic risk  
20 analysis has informed recent policy modifications, training, and command  
21 directives.

## 22 **V. OFFICER RECRUITMENT, ATTRITION, AND DEPARTMENT** 23 **DIVERSITY**

24 The Department continues its strategic outreach efforts to attract and  
25 actively recruit officers who reflect the diversity of Oakland, racially and otherwise,  
26 and who live in or have meaningful ties to the City. *See OPD Biannual Staffing*  
27 *Report (Nov. 29, 2023)* 12-21, available at  
28 <https://oakland.legistar.com/calendar.aspx>, Dec. 19, 2023 Concurrent Meeting of the

1 Oakland Redevelopment Successor Agency and the City Council, Agenda Item 9  
2 (last visited Dec. 15, 2023).

3       Between April and September 2023, the Department hosted or attended 59  
4 recruitment events. *Id.* at 16. Fifty-four of the 59 events were in-person; five  
5 occurred virtually, online. *Id.* Thirty-one of the in-person recruitment events  
6 occurred in Oakland. *Id.* The in-person Oakland events included cadet recruitment  
7 at two local high schools, career fairs at Merritt College, Laney College, and the  
8 Native American Health Center, and the Black Women Thrive Summit. *Id.* at 18-  
9 21. The Department has also promoted diversity, equity, and inclusion by providing  
10 extra assistance to potential applicants through multiple physical ability test  
11 workshops—including a workshop specifically for women, oral exam workshops, and  
12 webinars. *Id.* The Department launched a Zoom workshop in August entitled “Life  
13 in the Academy” to give potential applicants a real-life look inside Oakland’s police  
14 academy and the lives of actual trainees. *Id.* at 20.

15       **A. Recent Academy Demographics.**

16       In November 2023, the Department commenced its 193rd Basic Academy.  
17 The academy is a 24-week program which will run through May 10, 2024. Tables 1  
18 and 1A below reflect the demographics of the 22 police officer trainees who entered  
19 the 193rd Academy. Two of the trainees are Oakland residents.

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**Table 1: OPD's 193rd Basic Academy Demographics (Nov. 2023)**

Gender		Race/Ethnicity		Residency		Language		Education	
Female	5	Asian	5	Oakland	2	Spanish	5	High School	5
Male	17	Black or African American	4	Other	20	Portuguese	2	Some College	9
		Hispanic	6			Arabic	1	AA/AS	2
		White or Caucasian	5			Dari	1	BA/BS	6
		Other	2			Farsi	1		
						Hindi	1		
						Japanese	1		
						Punjabi	1		
<b>Total</b>	<b>22</b>	<b>Total</b>	<b>22</b>	<b>Total</b>	<b>22</b>	<b>Total</b>	<b>13</b>	<b>Total</b>	<b>22</b>

**Table 1A: Race/Ethnicity & Gender in OPD's 193rd Academy (Nov. 2023)**

Race/Ethnicity	Female	Male
Asian	2	3
Black or African American	2	2
Hispanic		6
White or Caucasian	1	4
Other		2
<b>Total</b>	<b>5</b>	<b>17</b>

**B. The Impact of Officer Recruitment and Attrition on Officer Diversity.**

Officer attrition and the Department's recruiting efforts continue to contribute to changes in the demographics of sworn officers. After experiencing an elevated attrition rate in 2021 and the first half of 2022, rising as high as 11 officers per month, the Department has averaged an attrition rate of 3-4 officers per month for the past eighteen months. *Id.* at 15; *Oakland Police Dept. Quarterly Staffing Report (Q1 2023)* 15, available at <https://oakland.legistar.com/calendar.aspx>, Sept.

1 26, 2023 Public Safety Committee Meeting, Agenda Item 4 (last visited Dec. 15,  
 2 2023). The Department expects that average rate to continue into 2024. *OPD*  
 3 *Biannual Staffing Report (Nov. 29, 2023)*, *supra* at 15. That rate is slightly lower  
 4 than the 5-officers-per-month attrition rate between 2016-2020. *See* Dkt. 1541,  
 5 *Joint Case Mgmt. Statement* 39 (Oct. 6, 2022). Demographic changes have resulted  
 6 in a complement of officers that more closely resembles the City's racial  
 7 demographics. *OPD Biannual Staffing Report (Nov. 29, 2023)*, *supra* at 14.

8 **Table 2: Race/Ethnicity and Gender of OPD Sworn Staff (Sept. 30, 2023)**  
 9 **Compared With 2021 Oakland Population Demographics**

Race/Ethnicity	Female	Male	Total Percentage of Sworn Staff	US 2021 Census-Oakland Population <sup>3</sup>
Asian	8	101	15.3%	15.7%
Black or African American	24	126	21%	22%
Filipino or Pacific Islander	2	29	4.3%	0.5%
Hispanic or Latino	40	167	29%	27.2%
Native American	1	2	0.4%	1.0%
Undeclared/Other	4	21	3.5%	--
White	25	163	26.4%	28.6%
<b>Total</b>	<b>104</b>	<b>609</b>	<b>99.9%</b>	<b>95%</b>

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26 <sup>3</sup> Population by race in the city of Oakland. Source: United States Census Bureau.  
 27 Quick Facts Oakland city, California 2021,  
 28 <https://www.census.gov/quickfacts/oaklandcitycalifornia> (last visited Sept. 8,  
 2023).(note that the Hispanic category may include other races while other  
 categories are exclusively non-Hispanic).

1           **C.     The Department’s Efforts to Recruit, Retain, and Support**  
2           **Advancement of Female Officers.**

3           While the Department employs sworn female officers at nearly two  
4 percentage points higher than the state and national average, the Department  
5 seeks to increase its sworn female ranks, generally, as well as increase the  
6 representation of women in supervisory and commander roles. A commitment to  
7 diversity and inclusion includes focusing on recruitment and retention of  
8 underrepresented groups which, in law enforcement, includes women.

9           In order to increase its recruitment of female officers, the Department has  
10 signed up with and is working with a coalition of police leaders, researchers, and  
11 professional organizations known as the 30x30 initiative to advance the  
12 representation and experiences of women in all ranks of policing. *See*  
13 <https://30x30initiative.org/> (last visited Jan. 3, 2024). The goal is to increase the  
14 representation of women in police recruit classes to 30 percent (30%) by the year  
15 2030 and to ensure police policies and culture intentionally support the success of  
16 qualified women officers throughout their careers.

17           Currently, the Department is modifying its recruitment materials to make  
18 them more geared to female recruits by increasing the representation of women in  
19 its recruiting materials and highlighting the benefits of a career in law enforcement  
20 that tend to attract women—emphasizing the opportunities for personal growth,  
21 professional development, and the positive impact officers can make in our  
22 community. In addition, the Department is developing a minimum of five  
23 recruitment videos depicting individual female officers narrating their personal  
24 experiences serving as an officer in Oakland. The videos will be played on social  
25 media and other recruiting sites to showcase a day in the life of a female Oakland  
26 police officer.

27           The Department attends at least one annual conference focusing on women in  
28 law enforcement, and offers ongoing preparatory programs, workshops, and



1 physical fitness training sessions to help interested female candidates better  
2 understand the job requirements of a police officer and develop the necessary  
3 skills. *See OPD Biannual Staffing Report (Nov. 29, 2023), supra* at 18-21. Providing  
4 resources and support particularly designed for women helps build confidence and  
5 trust and increase the likelihood of success for female applicants.

6 As a result of the Department's efforts, five of the 22 officer trainees who  
7 entered the 193rd Academy were female, constituting 23% of the total entering  
8 class.

9 **VI. OFFICERS USE REASONABLE FORCE AND DEPARTMENT FORCE**  
10 **REVIEW IS DEPENDABLE (TASKS 24, 25 & 30)**

11 The Department has continued to sustain competent internal review,  
12 oversight, and improvement of force and force reporting. Officers' uses of force are  
13 generally appropriate and reported and reviewed as required by policy, and  
14 supervisors and command personnel are generally identifying and properly  
15 addressing any concerns. *See Sixth NSA Sustainability Period Report, supra* at 11.

16 The Department has, for more than a year now, conducted its own internal  
17 command oversight and assessment of force and force investigations using a process  
18 patterned after the Monitor's review process. A Deputy Chief leads a rotating group  
19 of commanding officers in reviewing use of force reports. The reviewing group  
20 addresses concerns it identifies with supervisory notes files (SNFs), Department-  
21 wide and line-up training, and where appropriate the initiation of internal affairs  
22 investigations. *Id.* The command review group also identifies ongoing positive  
23 trends—including improved planning and communications, more detailed force  
24 reports, more positive communications with the public, improved de-escalation  
25 techniques, and sergeants and officers' chain-of-command identifying and  
26 addressing deficiencies. *Id.*

27 During the quarterly Monitor site visit in November 2023, the deputy chief  
28 leading the command review team presented the Department's assessment of Level

1 3 and Level 4 use of force reports completed between July and August 2023. *Id.* The  
2 Department reviewed and reported out not only on the 30 use of force reports  
3 reviewed by the Monitor but on additional force reports. *Id.* at 10-11. The  
4 Department identified and addressed all but one of the Monitor’s comments and  
5 concerns. *Id.* at 11. The Department also identified and addressed some additional  
6 concerns that the Monitor did not identify. *Id.*

7 In its most recent report, the Monitor recognized the following additional  
8 accomplishments:

- 9 • During the sustainability period, the Department has maintained an  
10 aggregate reduction in the percentage of force incidents involving  
11 African Americans in cases reviewed by the Monitor. The percentage  
12 fell from 76% in the Monitor’s April 2022 report to 52% in the  
13 Monitor’s most recent report. *Compare Eighty-First Report of the*  
14 *Independent Monitor, supra* at 11 with *Sixth NSA Sustainability*  
15 *Period Report, supra* at 10;
- 16 • Throughout all six sustainability periods, supervisors have generally  
17 identified deficiencies in officer reporting and identified and addressed  
18 Manual of Rules (MOR) violations (*id.* at 15);
- 19 • The Department’s force oversight and review command team identified  
20 and properly addressed concerns prior to the Monitor identifying  
21 concerns (*id.*);
- 22 • In the three Level 1 force reports prepared following Executive Force  
23 Review Boards (EFRBs) (Task 30), the Boards addressed all concerns  
24 with field reporting (*id.* at 10);
- 25 • Deliberations were satisfactory in all three EFRBs that occurred  
26 during the reporting period (*id.* at 18);
- 27 • There were “few instances” where officers failed to identify themselves  
28 as police officers or used unprofessional language while dealing with a  
member of the public (*id.* at 15);
- There were no patterns of officers using boilerplate or pat language or  
omitting specific information or details to justify their use of force,  
though there were two isolated reports where some pat language was  
used which were addressed by the Department (*id.*);
- Area Captains identified and appropriately addressed concerns with  
use of force reporting and documentation in their monthly audits of  
Type 32 uses of force (*id.* at 11);

///

- 1 • Officer and supervisors are reporting, reviewing, and documenting  
2 their review of Type 32 uses of force with “continued consistency.” *Id.*  
3 at 10; and
- 4 • Supervisors identified and properly addressed all late body-worn  
5 camera activations (*Sixth NSA Sustainability Period Report, supra* at  
6 10).

7 **A. The Department’s Office of Internal Accountability (OIA)**  
8 **Recently Completed Two Audits Involving Force Reporting.**

9 The OIA’s recent audit findings are consistent with the Monitor’s  
10 assessments of Type 32 reporting compliance. *See Oakland Police Department’s*  
11 *Office of Internal Accountability, Use of Force Daily Logs and Vision Reconciliation*  
12 *& Type 32 Review* (Nov. 29, 2023), [https://cao-94612.s3.us-west-](https://cao-94612.s3.us-west-2.amazonaws.com/documents/FINAL-Type-32-Review-29Nov23.pdf)  
13 [2.amazonaws.com/documents/FINAL-Type-32-Review-29Nov23.pdf](https://cao-94612.s3.us-west-2.amazonaws.com/documents/FINAL-Type-32-Review-29Nov23.pdf) (last visited  
14 Jan. 3, 2024). Type 32 force is the lowest reportable force type. It is essentially a  
15 catch-all category used to capture force to overcome the resistance of a person  
16 during an arrest or detention, or force used to defend oneself or another person from  
17 a combative person, and not categorized as any other particular type of force. The  
18 OIA reviewed documentation of Type 32 uses of force during the first seven months  
19 after implementation of Special Order 9208, *Documentation of the Use of Force*.

20 The purpose of the inspection was to assess Department compliance with the  
21 updated reporting and review requirements, to assess general levels of supervision  
22 for this force type, and to analyze the newly collected Type 32 use of force data in  
23 Vision. The focus of this audit was on Type 32 incidents where no other force was  
24 used. The OIA assessed policy compliance by officers involved in the Type 32 use of  
25 force incidents, as well as their respective supervisors and commanders; the  
26 supervisors’ review of the involved officers’ body-worn camera videos, when  
27 applicable; and trends across incidents involving Type 32 force.

28 To conduct the audit, the OIA reviewed crime reports, use of force reports,  
body-worn camera footage, and data collected in the Department’s Vision use-of-  
force module related to Type 32 force. The audit concluded that nearly 100% of

1 officers, sergeants, and lieutenants complied with the updated Type 32 reporting  
2 and review requirements. There was only one police officer out of 77 who did not  
3 properly report a Type 32 use of force in an incident, and this lack of documentation  
4 was referred to the officer's chain of command for further handling.

5 The OIA also conducted an inspection in the wake of the ransomware attack  
6 to ensure that all reported uses of force documented on the Use of Force Daily Logs  
7 from February 1, 2023, through April 30, 2023—the period impacted by the cyber-  
8 attack—were entered into Vision. The inspection concluded that all uses of force  
9 were entered into Vision.

#### 10 **B. The City Completed its Revision of Body-Worn Camera Policy.**

11 On December 19, 2023, the Department implemented a revised body-worn  
12 camera policy, DGO I-15, *Body-Worn Camera Program*. The Department and the  
13 Police Commission worked together on the policy revision. The revised policy was  
14 published in November 2023 but became effective in mid-December following  
15 training on the new policy provisions. In conjunction with the Department's  
16 upgraded body-worn camera system, the revised policy is critical to the  
17 Department's ability to sustain its consistently rigorous force and force reporting  
18 reviews.

19 Based on the foregoing, the Department remains confident in its ability to  
20 sustain its demonstrated proficiency in force review.

### 21 **VII. THE CITY CONTINUES TO COMPLETE ADDITIONAL WORK TO** 22 **SUPPORT LONG-TERM SUBSTANTIAL COMPLIANCE**

#### 23 **A. The Department's Examination of its Use of "Unfounded"** 24 **Findings in Internal Investigations.**

25 The Department recently completed a months-long thorough examination of  
26 internal investigations in "unfounded" allegations to determine whether the  
27 Department is consistent in its categorization of internal investigation findings.  
28 More specifically, the Department considered how it applies "unfounded" findings

1 versus “exonerated” findings. If a misconduct allegation against an officer is  
2 “exonerated,” this means that the alleged conduct occurred but the conduct was  
3 permitted by law and policy and thus was not misconduct. In contrast, an  
4 “unfounded” finding means that a preponderance of evidence showed that the  
5 alleged conduct did not occur. The Department’s concern about this issue arose in  
6 part from its understanding that complainants making allegations that are  
7 ultimately “unfounded” may perceive such a finding as a conclusion that the  
8 complainant is not truthful or otherwise invalidating the complainant’s experience.

9       The Department’s Office of Internal Accountability worked closely with a  
10 Stanford University researcher to analyze a sampling of 200 of the 504 total  
11 “unfounded” allegations in 79 internal investigations closed between June 2022 to  
12 May 2023.

13       As a result of the examination, the Department took certain actions to  
14 improve consistent application of “unfounded” and “exonerated” findings. Ex. 3,  
15 *Review of Unfounded, Department Response* (Nov. 2023). First, the Department  
16 amended the template for its “close-out letter,” the letter that it sends to a  
17 complainant when an internal investigation is completed. The close-out letter is  
18 typically the Department’s only method of sharing information about an otherwise  
19 non-public internal investigation with a complainant. When allegations are  
20 determined to be “unfounded,” and the letter communicates that finding, a  
21 complainant may be left with the impression that the Department found the  
22 complainant untruthful, not credible, or otherwise did not believe the complainant.  
23 The Department therefore amended the template letter to acknowledge the voice  
24 and perspective of the complainant and add some additional detail about what  
25 investigation findings mean. These changes should reduce the potential for  
26 complainants to feel distress based on a misapprehension of the findings in an  
27 investigation. *See id.* (updated with revised Att. A).

28       Second, the Department developed an Information Bulletin to foster more

1 consistent application of “unfounded” versus “exonerated” findings. *See id.* (updated  
2 with revised Att. B). Third, the Department developed a training module for all  
3 supervisors and IAD personnel regarding the nuances of approaching and  
4 structuring conduct assessments. *Id.* Finally, the Department now annually  
5 assesses the rate of “unfounded” findings and inspects a sample of cases with  
6 “unfounded” allegations to assess the consistency of the use of this category of  
7 finding. *Id.*

8 While the Department’s examination of the use of “unfounded” findings is not  
9 directly tied to Task 5 or 45, the City anticipates that the changes to Department-  
10 wide training as a result of the Department’s completion of this project will result in  
11 greater integrity in the Department’s internal investigations processes generally,  
12 including greater consistency in case outcomes.

13 **B. The City’s Office of Inspector General and Police Commission**  
14 **Prioritize Audits to Ensure Continued Compliance with All Tasks**  
15 **Involving the Department’s Internal Affairs Division and Racial**  
16 **Disparity in Policing.**

17 The City’s civilian oversight bodies, the OIG, Police Commission, and CPRA,  
18 continue to contribute to and support NSA compliance and long-term sustainability.

19 The OIG announced that priorities for 2024 include an audit of Task 34,  
20 Vehicle Stops, Field Investigations, and Detentions; review of Department General  
21 Order M-19 – Prohibitions Regarding Racial Profiling and Other Bias-Based  
22 Policing; and inspecting IAD-Related tasks that the Monitor no longer actively  
23 reviews (Task 3, IAD Integrity Tests; Task 4, Complaint Control System for IAD;  
24 Task 7, Methods for Receiving Complaints; Task 8, Classification of Complaints;  
25 Task 9, Contact of Complainants; Task 11, Summary of Complaints Provided to  
26 OPD Personnel; and Task 13, Documentation of *Pitchess* Responses). *See Ex. 4, OIG*  
*Annual Audit Work Plan, Fiscal Year 2024 3-4* (Dec. 11, 2023).

27 The OIG has been and continues to engage in recommending new policy and  
28 policy revisions with particular focus on addressing deficiencies identified in specific



1 the residents of Oakland. Officer Le graduated from the Department's 183rd  
2 Academy in February 2020. For the past two years, he served as the Community  
3 Resource Officer in West Oakland, where he devoted himself to strengthening the  
4 bond between law enforcement and community residents. Just a few weeks before  
5 he was killed, the Department awarded Officer Le the Grubensky Medal for helping  
6 save the life of a fellow officer who had suffered a heart attack. The award bears the  
7 name of Officer John William Grubensky who died rescuing a family in the 1991  
8 Oakland hills fire. Prior to joining the Department, Officer Le served as a security  
9 guard at the Ronald V. Dellums Federal Building in Oakland.

10       Officer Le's tireless efforts fostering positive relationships will have lasting  
11 impact. He will be remembered for his kindness, his smile, and the positive change  
12 he brought to the lives of everyone around him. Officer Le is a true hero who  
13 sacrificed his life protecting our community. Officer's Le's death serves as a tragic  
14 reminder that police officers put their lives on the line every day. The City  
15 appreciates the courageous individuals who have answered the vital calling to serve  
16 the public as peace officers.

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1                                    **THE OAKLAND POLICE COMMISSION'S STATEMENT**

2            Real and enduring culture change in the Oakland Police Department (herein  
3 "OPD") can only be achieved through the help of independent and robust civilian  
4 oversight by the Oakland Police Commission (herein "the Commission"), the  
5 Community Police Review Agency (herein "CPRA"), and the Office of the Inspector  
6 General (herein "OIG").

7    **I.        OPD Demonstrated a Cultural Inability to Police Itself.**

8            There is a gap between public trust and OPD. This gap exists because of a  
9 police culture that does not center community, transparency, and accountability. It  
10 also exists because the oft-touted minimum standard of "constitutional policing" is  
11 insufficient to instill community trust and create the conditions for culture change.

12            During the 2023 Case Management Conference, the Court pointed to "a  
13 cultural inability of OPD to police itself" and a "culture that plays favorites and  
14 protects wrongdoers that undercuts the foundations of constitutional policing."  
15 (*Delphine Allen v. the City of Oakland*, Docket No. 1587, Hearing Transcript, 6:1-4  
16 April 11, 2023). The Court posed the key question underlying the City's ongoing  
17 struggle not just with NSA compliance but more generally with community trust in  
18 policing: what needs to happen to create real and enduring culture change in the  
19 Oakland Police Department (OPD)? We believe that the City of Oakland and its  
20 residents can overcome this obstacle to true culture change in policing through  
21 civilian oversight.

22    **II.        Civilian Oversight Enforces Police Accountability and Drives**  
23                    **Culture Change.**

24            The issue of the police not being able to police themselves is not singular to  
25 OPD. Instead, this problem is one being grappled with throughout our country. For  
26 the culture of policing to transform permanently, there must be powerful civilian  
27 oversight that creates community centered policies, conducts regular and consistent  
28 auditing, conducts independent investigations, and has City-wide commitment and

1 investment. The consistent, informed, and diverse voice of the community, amplified  
2 through these civilian oversight entities, ensure the continued commitment to and  
3 prioritization of police accountability and community safety. In Oakland, that  
4 civilian oversight is being handled by the Commission, the CPRA, and the OIG.  
5 When the Negotiated Settlement Agreement (NSA) ends, the Commission, the  
6 CPRA, and the OIG will take up the mantle of police accountability.

7         This is not a novel idea. Civilian oversight is being embraced across the  
8 country by court monitors. U.S. District Court Judge Gary Allen Feess granted  
9 primary oversight responsibilities of the Los Angeles Police Department to the Los  
10 Angeles Police Commission and the Office of Inspector General after phasing out  
11 the consent decree and oversight of the court monitor. The U.S. Department of  
12 Justice recently agreed to transition oversight of the Seattle Police Department  
13 from the court monitor to the Office of the Inspector General while calling on the  
14 court monitor to assess the Community Police Commission's capacity to provide  
15 accountability. When the federal government's consent decree with the Detroit  
16 Police Department terminated, U.S. District Court Judge Avery Cohen noted the  
17 importance of the eleven-member Detroit Board of Police Commissioners and that it  
18 should continue as a civilian oversight board dealing with complaints. These  
19 transitions underscore the importance of civilian oversight in police accountability.

20         Civilian oversight also drives culture change further than audits and  
21 investigations can. Community voice empowered, through civilian oversight informs  
22 police departments of the harms their actions may cause even if those actions  
23 comply with written policy. This will inform police departments about the impact of  
24 their actions causing departments to reflect on whether those actions are in the best  
25 interest of the community and whether relevant policies should be created, changed,  
26 or removed to lessen the impact on the community, while still fulfilling their  
27 responsibility to protect and serve. Through this feedback loop, civilian oversight  
28 can change the culture of the police department to be in line with the values of the

1 community served. Community voice can be the moral compass the department  
2 needs for culture change.

3 Oakland's residents and leadership also believe civilian oversight is the way  
4 to create and sustain police accountability. In 2016 and 2020, Oakland residents  
5 voted to establish the Commission, the CPRA, and an independent OIG. In April  
6 2023, Interim Chief of Police Darren Allison acknowledged to the Court that  
7 transitioning to community oversight was the future of police accountability in  
8 Oakland. Also in April 2023, Mayor Sheng Thao told the Court that "the ultimate  
9 goal ... is ensuring that the Department is part of the community and that it is  
10 truly sharing the community's values," and that the start of that process is "a police  
11 department that is overseen by the community with policies that reflect community  
12 values." Civilian oversight is the future of police accountability in Oakland.

13 **III. Effective Civilian Oversight Must be Centered, Resourced, and**  
14 **Collaborative.**

15 Civilian oversight is an essential and difficult charge. However, it is widely  
16 understood by cities across the country as the answer to permanent culture change  
17 and police accountability. Such an important and difficult charge can only be met by  
18 centering civilian oversight in police accountability. This requires civilian oversight  
19 that is truly integrated into the City, funded at appropriate levels, relied upon to  
20 develop policy driven by community needs and concerns, and empowered to audit,  
21 investigate, and develop data and experienced based knowledge and expertise to  
22 drive permanent culture change and define police accountability. With well  
23 supported oversight entities, OPD will not be able to operate in the shadows and  
24 officers will have no other option but to fully accept community-centered policing  
25 with its emphasis on transparency and accountability in achieving public safety.

26 Civilian oversight in Oakland will only work if there is true collaboration  
27 among the departments, city leaders, and the federal monitoring team. It is  
28 important not to exclude civilian oversight entities from the work which we are

1 charged by the community, the City Charter, and municipal code to carry out. The  
2 City and the Independent Monitoring Team (IMT) can make civilian oversight  
3 successful by embracing the Commission, OIG, and CPRA as part of the leadership  
4 and recognize the specific role and expertise each entity brings to the table. As long  
5 as police perspective continues to dominate in key discussions regarding police  
6 oversight, we will not see a true shift in policing in Oakland. An example of this  
7 persistent culture is reflected in the IMT's most recent report, which states: OPD  
8 "must strive to address cultural issues which, when unaddressed, perpetuate actual  
9 or perceived disparities. We see this as an effort in progress and will continue to  
10 work with both the department and the Plaintiffs' attorneys, to bring this task into  
11 compliance." (6th NSA Sustainability Report of the Independent Monitor for the  
12 Oakland Police Department, December 15, 2023 at 17.) The Commission, CPRA,  
13 and OIG are not regularly and meaningfully brought into conversations internally  
14 regarding this work prior to engagement with outside stakeholders. This fact, in  
15 tandem with IMT's focus on working with the Department, effectively prohibits the  
16 perspective and expertise of the City's civilian oversight structure in addressing  
17 these issues.

18       The City has made some progress investing in effective civilian oversight in  
19 its recent budget cycle. This budgetary investment in CPRA and OIG has allowed  
20 each entity to begin its work in earnest. The City's commitment to civilian oversight  
21 must continue to grow, meaning both the centering of civilian oversight and the  
22 dedication of resources must continue in earnest. The dedication of appropriate  
23 resources can be furthered by using resources currently applied to NSA monitoring.  
24 Currently, court oversight is costing the city approximately \$1 million per year to  
25 the court monitoring teams as well as untold time and resources of police officers  
26 expended on litigation processes. **The financial resources going to monitoring**  
27 **effectors could be applied directly to enhance civilian oversight.** The result  
28 will be more support for helping the police department stay in compliance and not

1 relapse once court oversight ends.

2 **IV. The Oakland Police Commission, the Community Police Review**  
3 **Agency, and the Office of Inspector General are up to the Task of**  
4 **Civilian Oversight.**

5 ***A. Oakland Police Commission: A Policy and Civilian Oversight Body***  
6 ***that Enhances Accountability to Precipitate a Change in Culture***

7 Community voice is essential to police accountability and effective public  
8 safety. As a civilian oversight entity, the Commission has a primary role in  
9 facilitating and ensuring the reflection of best practices and community voice in our  
10 policing standards. By design, the Commission is comprised of nine community  
11 members that broadly represent Oakland's diversity and includes knowledge and  
12 experience in various fields relevant to policing. It is empowered by the City  
13 Charter to drive changes in policy regarding NSA tasks and to hold public hearings  
14 on OPD's policies, rules, practices, customs, General Orders, and budget.

15 The Commission has an active NSA compliance Ad Hoc committee, which  
16 broadens commissioner and public participation in NSA compliance. The ad hoc was  
17 established to focus on Tasks 5 and 45, its continued purpose is to monitor all the  
18 NSA tasks, while examining other systematic cultural issues.

19 ***B. Community Police Review Agency: Culture change driven and***  
20 ***supported by CPRA's independent, civilian investigations***

21 The Commission oversees the CPRA, a civilian run, community-centered  
22 enforcement body. It is comprised of expert investigators with knowledge regarding  
23 policing and the ability to independently drive outcomes in investigations of OPD  
24 misconduct.<sup>1</sup> Importantly, CPRA's central role in sustaining and furthering police  
25 accountability does not stop at holding individual officers to account, but also  
26 supervisors and commanders, thus avoiding the pitfalls revealed by the Clarence  
27 Dyer & Cohen reports and investigators. It is also transparently highlighting its  
28 investigative process, presenting the results of investigations to the community, and  
conducting regular outreach to receive feedback, ensuring that investigations,  
policy, and data are presented in a truly accessible, community-driven format.

1           The City demonstrated a commitment to CPRA by doubling its budget for  
2 fiscal year 2023 – 2025. This will allow approximately 16 new positions to be added  
3 in preparation of a transition of responsibilities from OPD’s internal affairs unit to  
4 CPRA. As CPRA grows, it will be primed to take over cases beyond just public  
5 complaints. With an expanded staff, CPRA will be even better positioned to ensure  
6 accountability on a case-by-case basis, carefully scrutinize each case, bring an  
7 unbiased perspective to training and policy, conduct investigations in a timely  
8 fashion, identify patterns of misconduct, and coordinate with the Commission for  
9 policy change, OIG, OPD, City leadership, and community stakeholders.

10           CPRA’s work provides a unique and untapped viewpoint into the cultural  
11 challenges the court sought to identify. Over the course of an investigation, various  
12 CPRA employees and the Commission also gain insight into OPD culture. An  
13 investigator, who watches thousands of hours of uncut body-worn camera footage,  
14 gains insight into the culture of officers on the streets of Oakland. A supervisor who  
15 coordinates case management gains insight into the culture within IAD. CPRA’s  
16 Executive Director meets with Police Department leadership to adjudicate  
17 discipline, gains insight into OPD’s internal deliberations on each case, and is well-  
18 positioned to recommend improvements to OPD and the Commission where  
19 necessary.

20           Through the investigative process, in addition to holding officers accountable,  
21 CPRA can assess the effectiveness of OPD’s policies and training, and illuminate  
22 deficiencies and push forward effective resolutions. The investigative process serves  
23 more than its central function of ensuring individual officer accountability. **It**  
24 **provides a more transparent, community-centered path to best practices,**  
25 **grounded in fact, with each investigation providing data points and**  
26 **highlighting opportunities for growth.** A growing CPRA will expand the City’s  
27 ability to capture data that reflects a picture of the state of policing and what is  
28 needed to make improvements.

1 If appropriately resourced, CPRA can greatly enrich data collection and  
2 analysis, such as geocoding incidents, documenting misconduct incidents by type,  
3 capturing demographic information, and painting an overall clearer picture of how,  
4 when, and where misconduct occurs. Robust data collection will allow civilian  
5 oversight to assist in early intervention, identify clusters of alleged misconduct, and  
6 diagnose potential problems therein. Transparency is fundamental to  
7 accountability, and because of its independence CPRA can provide critical data,  
8 information and feedback about the state of policing and the internal culture to  
9 stakeholders and the public, unfiltered through the police lens.

10 ***C. The Office of the Inspector General: Sustaining and furthering big-***  
11 ***picture and granular change through OIG's audit authority***

12 Overseen by the Commission, OIG plays a crucial role in the structure of the  
13 City's civilian oversight. In alignment with Oakland City Charter Section 604(f)(5),  
14 OIG is already working diligently to "...audit the Department's compliance with the  
15 fifty-two (52) tasks described in the Settlement Agreement in United States District  
16 Court Case number C00-4599, Delphine Allen, et al., v. City of Oakland, et al., and  
17 make recommendations to the Department, the Commission and City Council based  
18 on its audit(s)..." As an independent civilian oversight agency, OIG audits and  
19 assesses OPD's policies, procedures, and practices, develops data from this work,  
20 enabling the Commission and the public to evaluate compliance with the law, OPD  
21 policies, community expectations, and best practices in transparency. As the  
22 auditing arm of Oakland's civilian oversight structure, the OIG will continue to  
23 provide the Police Commission, City Council, and other action holders, with clear  
24 recommendations to advance/maintain OPD's compliance with departmental  
25 policies and the law "... even after the Settlement Agreement expires."

26 Ensuring OIG is well-resourced will strengthen the City's ability to decrease  
27 instances of police misconduct. Since its inception in 2022, the OIG grew from an  
28 office of just the Inspector General, the sole staff member for six months, to a team

1 of six. The six staff members are comprised of subject matter experts from across  
2 many disciplines, that include police performance auditing, police misconduct  
3 investigations, community engagement, and policy and data analytics. The OIG and  
4 the City Administration will continue to work together to evaluate the resources  
5 necessary for the office to continue effective oversight of OPD. With their evolving  
6 staff, depth of expertise, and expanding resources, the OIG completed several  
7 reports and provided multiple recommendations, that include compliance  
8 evaluation of the Department's Field Training Program, policy recommendations  
9 and input, an annual report and an engagement strategy-(Ex. 4). These items are  
10 publicly available on the OIG website. *See*  
11 <https://www.oaklandca.gov/departments/inspector-general>.

12 Utilizing the qualitative data collected through implementation of their  
13 communication and engagement strategy, and a corresponding survey, OIG recently  
14 released its *Annual Audit Work Plan for Fiscal Year 2024*. Ex. 4. This community-  
15 informed plan includes proactive projects such as the OPD Staffing Study and  
16 Resource Analysis, a review of IAD cases, and comprehensive analyses of  
17 Departmental General Orders to name a few.

18 To carry out this work effectively and efficiently, OIG will sustain and  
19 expand its stakeholder engagement, data gathering, and disclosure strategies  
20 within the fiscal year. Through comprehensive and easily accessible work products,  
21 OIG seeks not only to provide action holders with the best tools to make informed  
22 decisions; but also, to be of optimal service to the entire Oakland community, while  
23 remaining transparent.

## 24 **V. Conclusion**

25 Civilian oversight is poised to play a central role as part of City leadership  
26 and in the day-to-day work of police transparency and accountability. It will ensure  
27 sustained improvements in hiring that reflects the diversity of the community, the  
28 highest standards in training, policy and practice, and consistently and fairly



1 holding officers accountable to those standards. At its essence, civilian oversight  
2 role will ensure real and sustained cultural change.

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**THE OPOA’S STATEMENT**

While the Intervenor Oakland Police Officers Association (“OPOA”) is not privy to all of the internal discussions and collective efforts of the Independent Monitoring Team (“IMT”), City of Oakland (“City”), Plaintiff’s counsel or the Oakland Police Department (“OPD”), the Association has a collective sense that full compliance with the Negotiated Settlement Agreement (“NSA”) is near at hand.

Since the last Case Management Conference, the OPOA has been presented with various proposals concerning modifications to Department policies related to the NSA. Specifically, several revised policies emanating from the recommendations set forth in the Report of Investigation for the Oakland Police Department report issued by Clarence Dyer and Cohen dated December 18, 2022. While some of the recommendations did not result in actions prompting the meet and confer process, those that did were the subject of accelerated good faith efforts and resulted in policies advancing the goals of the NSA and interests of all involved parties.

The Court should be aware that on January 3<sup>rd</sup> the Board of Directors of OPOA held its annual election of officers and previous president, Barry Donelan had chosen not to run for a position on the OPOA Board and Sergeant Huy Nguyen was elected president. Sergeant Nguyen is a veteran of the Oakland Police Department and has been with the Department for 24 years. Additionally, Sergeant Nguyen has been on the OPOA Board of Directors for 10 years and is acutely aware of the importance of OPD reaching full compliance with the NSA.

The OPOA remains committed to work collaboratively with all parties to reach full compliance with the NSA.

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Respectfully submitted,

Dated: January 19, 2024 BARBARA J. PARKER, City Attorney  
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\*Per Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of the document has been obtained from each of the other Signatories

# EXHIBIT 1

# Oakland Police Department

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## Office of Internal Accountability

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## 2022 Analyses of Race in Internal Investigation Outcomes and Discipline: Supplemental Report Examining Failure to Accept or Refer Complaints

**Oakland Police Department**  
**Office of Internal Accountability**  
455 7<sup>th</sup> Street, 9<sup>th</sup> Floor | Oakland, CA 94607 | Phone: (510) 238-3868

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## I. Background

The 2022 Internal Investigation Outcome and Discipline Report discovered differences, albeit among a small sample size, in the discipline between white and Black officers for the allegation of a Manual of Rules Violation for Failure to Accept or Refer a Complaint (FTARC). This follow up inspection focuses on the internal application of that specific area of identified difference.

From the OPD Manual of Rules (MOR):

*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.*

From the OPD Discipline Matrix:

- 398.76 - Class 1                      REFUSAL TO ACCEPT OR REFER A COMPLAINT      (INTENTIONAL)  
Discipline:                      1<sup>st</sup> Offense: S5-T                      2<sup>nd</sup> Offense: T
- 398.76 - Class 2                      FAILURE TO ACCEPT OR REFER A COMPLAINT      (UNINTENTIONAL)  
Discipline:                      1<sup>st</sup> Offense: C-S5                      2<sup>nd</sup> Offense: S2-S5                      3<sup>rd</sup> Offense: S5-S30

In 2022 there were 112 allegations of FTARC investigated. 45 of those allegations were Sustained. The remainder were other than sustained (Exonerated, Not Sustained, or Unfounded). The 45 Sustained allegations emanated from 19 overall investigations.

## II. Summary of Findings and Recommendations

This follow-up inspection of FTARC allegations was an analysis of various aspects of the administrative investigation which may have led to the identified disparity. The mandate was to locate areas of discretion within the Internal Affairs processes for findings and discipline and to suggest solutions for limiting the opportunity for such discretion to result in biased outcomes.

What follows is the OIA's understanding of various reasons for how the infrastructure around FTARC could have allowed for disparate outcomes, and the offering of recommendations to address the issues within the process.

Findings 1 and 2 address issues of policy and training. Findings 3 and 4 address issues of an individual investigator and of a unit within Internal Affairs having an outsized influence upon the process.

### Finding 1

[\(Section IV\)](#)<sup>1</sup>

Many determinations of finding for FTARC require, by current policy, an assessment of whether the subject was "unsure" if someone wanted to make a complaint and therefore should have asked "clarifying questions." This standard assigns the investigator the unenviable task of having to judge the subject's certainty about a situation at the time it occurred, but through the lens of hindsight. This is an area of opinion and discretionary judgement, which may lead to biased outcomes.

#### Recommendation 1

Section III.A.7 of Department General Order M-03 ("unsure" and clarifying questions") should be revisited and addressed in order to limit the opportunity for judgement, discretion and bias to play as central a role as it has done in 2022.

### Finding 2

[\(Section IV, Section V\)](#)

Eleven of the nineteen cases resulting in at least one of the 45 FTARC Sustained findings were sustained while relying on subjective argumentation, some of which included language not otherwise standardized via training or policy. Some investigations declared a subject "should have" comported themselves in a particular manner, perhaps not one prescribed by policy, but one which seemed reasonable in the investigator's estimation.

#### Recommendation 2

The Department should consider quality control training for commanders reviewing IAD investigations or DLIs to ensure consistent quality, content, and lack of subjective argumentation unless specifically called for.

### Finding 3

[\(Section VI\)](#)

There are inconsistent Sustained Rates for FTARC between those investigated as DLIs and those investigated as IAD investigations, a dynamic that is complicated by the role and actions of the DLI Coordinator Unit within the Internal Affairs Division.

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<sup>1</sup> Follow hyperlink to go straight to relevant section.



#### Recommendation 3

The Department should consider requiring the DLI Coordinator Unit show their work, documenting recommendations or changes to investigations emanating from the Unit in a transparent manner, whether via chron log or other means.

#### Finding 4

##### [\(Section V.4\)](#)

A single Sergeant of Police investigated 49% of all FTARC allegations in the Department in 2022 (55/112). The same sergeant was the most prolific accuser<sup>2</sup> of internally generated allegations of FTARC against other employees in 2022.

#### Recommendation 4

The Department should consider the manner in which allegations of FTARC are added to investigations and explore a checks and balances approach to adding such allegations on any given case to any given subject member.

#### Finding 5

##### [\(Section VII\)](#)

Differing recommended findings or recommended discipline by investigators, the chain of command, CPRA, and others are not currently tracked by the Department in an analyzable manner. This area is one wherein discussion, negotiation, and compromise may occur and one wherein judgement by a singular deciding figure (the Chief of Police) often holds as final. It is an important facet of any future analysis of internal affairs matters.

#### Recommendation 5

The Department should consider tracking differing recommended findings and differing recommended disciplines between investigators, the chain of command, CPRA, and others in an accessible and analyzable manner, perhaps via VISION.

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<sup>2</sup> Within this report, “accuser” refers to the person who identified FTARC as an allegation against a subject and motivated the adding of said allegation to the list of Manual of Rules violations to be investigated.

### III. Overview of Sustained 2022 FTARC Allegations

In 2022, there were 112 allegations for FTARC. Table 1 provides the breakdown by race and compares it to the percentage breakdown of the Department. It also includes the breakdown of sustained allegations. Compared to their representation in the Department, white sworn members are over-represented in the number of allegations received but under-represented in the number of sustained allegations.

- Black sworn members are under-represented in the number of allegations received and over-represented in the sustained allegations.

Breakdown of FTARC Allegations Compared to the Demographics of the Department

2022	% of Members in the Dept	% Allegations Received	% Sustained Allegations
Asian/Filipino	19%	16% (18)	18% (8)
Black	20%	18% (20)	27% (12)
Hispanic	28%	29% (32)	31% (14)
Other/Unknown	3%	4% (4)	12% (1)
White	29%	34% (38)	22% (10)
Total	100%	100% (112)	100% (45)

Since Black sworn members are under-represented in the number of allegations received, and over-represented in the number of sustained allegations, their sustained rate would be higher than the sustained rate of white sworn members.

Sustained Rate of FTARC Allegations

2022	Sustained Rate
Asian/Filipino	44% (8/18)
Black	60% (12/20)
Hispanic	43% (14/32)
Other/Unknown	25% (1/4)
White	26% (10/38)
Total	40% (45/112)

- White sworn members had a sustained rate of 26% while Black sworn members had a sustained rate of 60%, a statistically significant difference.

## IV. Themes for Findings

Themes were identified that captured the reason for the sustained finding. For the 45 sustained allegations, 68 reasons for the sustained finding were identified. In some instances, multiple reasons for the sustained allegation were identified. From these 68 reasons, four themes were developed. Note that because some allegations engage with multiple themes, the percentages below need not sum up to 100%.

62% of the sustained allegations involved the asking of clarifying questions. DGO M-03 articulates what members are required to do regarding complaints. If a member is unsure if an individual would like to file a complaint, they shall ask clarifying questions.

Within Department General Order M-03, the following language can be found (emphasis added):

7. *If a member or employee is **unsure** whether a citizen wishes to make a complaint, he/she shall:*
  - a. *Not discourage or deter citizens from exercising their right to complain to the Department or the CPRB;*
  - b. *Ask **clarifying questions**, including but not limited to:*
    - 1) *Would you like to speak to a supervisor?*
    - 2) *Do you want to make a complaint?*
  - c. *Provide the citizen with an OPD Informational Business Card and/or Complaint Form (TF-3208) with his/her name, serial number and CAD Incident Number;*
  - d. *Enter a CAD notation to the call;*
  - e. *Use the Radio Disposition Code of "IBC" (Informational Business Card); and*
  - f. *Call the Communications Section Supervisor with the date of the referral, incident number and brief description of the incident to be added to the Complaint Referral Log (TF3367) within 24 hours of the referral.*

The next most common theme (identified in 47% of sustained allegations) involved not notifying or not properly notifying a supervisor the individual wanted to make a complaint.

The third most common theme (33%) was not providing or not following the Information Business Card (IBC) process. DGO M-03 Complaints Against Departmental Personnel states that if an employee receives a complaint, they shall provide the complainant an IBC. They shall additionally enter a CAD notation, use the Radio Disposition Code of "IBC", and call the Communications Supervisor so the information can be added to the Complaint Referral Log. Additionally, if a member is unsure if a citizen wishes to make a complaint, they are to provide an IBC.

Finally, in four instances, the sworn member did not recognize an allegation of misconduct was being made. Three of the four members were sergeants, and one was an officer.

## FTARC Allegation Themes

Theme	% of Allegations with this Theme
<b>Sustained</b>	
Did not ask clarifying questions.	62%
Did not properly advise the supervisor.	47%
Did not provide or follow the IBC card process.	33%
Did not recognize that a complaint was being made.	9%
<b>Other Than Sustained</b>	
Could not prove the subject heard an allegation of misconduct.	51%
Subject was not in a position to hear an allegation of misconduct being made.	22%
Subject accepted or referred the complaint in accordance with policy.	15%
No allegation of misconduct was made to, or in front of, the subject.	12%

\* Total may be greater than 100% because some allegations had more than one theme identified.

73% of the other than sustained findings involved *assessing the officer's proximity to the complainant* when allegations were made. Individual investigators used different perspectives and evidence to come to findings regarding proximity, but all noted whether it *seemed reasonable* for any given officer on any given scene to have heard the allegations and been therefore required to have either asked clarifying questions, or to have summoned a Sergeant to the scene to accept a complaint.

## Themes for Sustained by Race

2022	ASIAN	BLACK	HISPANIC	WHITE	OTHER	Total
Did not ask clarifying questions.	<b>75% (6)</b>	<b>46% (7)</b>	31% (8)	<b>40% (6)</b>	<b>100% (1)</b>	<b>43% (28)</b>
Did not properly advise the supervisor.	25% (2)	27% (4)	<b>38% (10)</b>	27% (4)		31% (20)
Did not provide or follow the IBC card process.		27% (4)	27% (7)	27% (4)		23% (15)
Did not recognize that a complaint was being made.			4% (1)	1% (1)		3% (2)
Total	100% (8)	100% (15)	100% (26)	100% (15)	100% (1)	100% (65)

\* Total may not equal 100% because some allegations had more than one theme identified.

- The most common theme used to recommend a Sustained finding for Asian, Black, White and Other race groups was "Did not ask clarifying questions."

## Themes for Other Than Sustained Findings By Race

2022	ASIAN	BLACK	HISPANIC	WHITE	OTHER	Total
Can't prove officer heard	60% (6)	38% (3)	50% (9)	54% (15)	33% (1)	51% (34)
Did not hear	30% (3)	0%	39% (7)	14% (4)	33% (1)	22% (15)
No misconduct allegations made	10% (1)	38% (3)	6% (1)	11% (3)	0%	12% (8)
Subject fulfilled their duty	0%	25% (2)	6% (1)	21% (6)	33% (1)	15% (10)
Total	100.00% (10)	100% (8)	100% (18)	100% (28)	100% (3)	100% (67)

The theme “cannot prove the officer heard” (and therefore cannot prove the officer was obligated by policy to have taken any action to accept or refer a complaint) is akin to a “Not Sustained” finding. Thus, it follows that those allegations were likely appropriately added, as the question remained unresolved even at the end of the investigation.

The theme “did not hear” is akin to an “Exonerated” finding, in that it acknowledges a misconduct allegation may have been made, but that the subject officer did not hear it and was therefore not obligated by policy to have taken any action to accept or refer a complaint.

Within internally generated allegations, if the theme “No allegations of misconduct made” is akin to saying, the complainant made no allegations of misconduct against an officer, so the officer was under no policy obligation to take any action to accept or refer a complaint. Why was FTARC alleged at all?

Similarly, if the officer fulfilled their duty and accepted or referred a complaint, was the FTARC allegation added prematurely, without examining all the evidence first?

The theme “No allegation of misconduct” appeared in 12% of the “other than sustained” cases. The theme “Subject fulfilled their duty” appeared in 15% of the cases. Combined, these two small shares of the themes accounted for 27% of the total.

To investigate these two themes further, we focused on internally generated allegations, ostensibly by members who are familiar with the MOR and the parameters surrounding compliance with said MOR.

## Other Than Sustained by Theme and Race (Internally Generated Allegations Only)

2022	ASIAN	BLACK	HISPANIC	OTHER	WHITE	Grand Total
Can't prove officer heard	5	3	7	1	13	29
Did not hear	1		7		4	12
No allegations made	1	2	1		2	6
Subject fulfilled their duty		1	1	1	3	6
Grand Total	7	6	16	2	22	53

12 of the 53 (23%) other than sustained, internally generated, allegations used themes of “No misconduct allegations made” or “Subject fulfilled their duty.”

Yet, 50% (3 of 6) of the other than sustained allegations against Black members relied on themes of “No allegations made” or “Subject fulfilled their duty.” This was the largest rate for those two themes out of any race group, except for Other. (Asian: 1/7, Hispanic: 2/16, Other: ½, White: 5/13)

If the themes “No misconduct allegations made” and “Subject fulfilled their duty” are indicative of unnecessary allegations against officers, then Black subjects received a higher percentage per capita of such allegations than other races.

#### IV.1 Externally Generated

One of the early surprises in examining the data was the higher Sustained rate for externally generated allegations versus internally generated. An examination of the 8 Sustained Externally generated allegations revealed they emanated from 4 investigations.

The following themes emerged in reviewing justifications used for sustaining the personnel. The themes were consistent with those identified from the examination of all Sustained findings in 2022. The majority of sustained allegations were Sustained over some failure surrounding the asking of “clarifying questions.”

#### Themes use for Sustained finding in Externally Generated FTARC Allegations

Theme	Allegations	Cases
Did not ask clarifying questions	6	2
Did not properly advise the supervisor.	1	1
Did not recognize that a complaint was being made.	1	1
Total	8	4

However, this is a specific area of the policy with which a non-employee would not be familiar. Thus, while the allegation was generated externally, the reasons offered for the Sustained finding were based on a reading of policy and processes surrounding said policy, a very *internal* arena.

- There was no instance wherein a complainant specifically alleged that a subject had failed to ask two specific clarifying questions of them, yet that was the dominant theme and the foundation for 75% of the sustained externally generated allegations.

The disconnect between what the public complained about and the Sustained findings of sometimes only the FTARC allegation is further indication of the room for discretion and interpretation in the application of the policy requirements to the MOR and then against the facts of a case.

#### IV.2 When Other Parties Recommend Different Findings

An investigator's recommended finding is not the only factor in the final decision-making process. There are other parties and intervenors who may present their own opinion of the allegations for consideration by the Chief of Police. Such intervenors include the Community Police Review Agency (CPRA), the Division Level Investigation (DLI) Coordinators, as well as any link in the reviewing Chain of Command who disagree with an investigator's recommendation.

There were 19 cases with at least 1 Sustained FTARC finding in 2022, accounting for 45 Sustained FTARC allegations. Different recommendations were offered in 11 (24%) of the 45 total allegations which ended up being Sustained in 2022, addressed within five separate investigations.

#### 2022 Different Recommendations Resulting in Sustained Findings

Sustained Case #	Race of Subject Member(s)	Investigator Recommendation	Alternate Recommendation by	Alternate Recommendation
2	1 White	Exonerated	Second Investigator (different patrol supervisor)	Sustained
3	1 Black, 2 White	Unfounded	DLI Coordinator	Sustained
5	2 Black, 1 Hispanic, 1 Asian, 1 White	Unfounded	CPRA	Sustained
11	1 Hispanic	Unfounded	CPRA	Sustained
13	1 Black	Unfounded	DLI Coordinator	Sustained

When a different recommendation existed, the recommendation therein was always to Sustain. The different recommendation of Sustained was affirmed as the final finding 100% of the time.

- The different recommendations were based on a different framing of the analysis of the same facts by the addendum author.
  - 40% (2) of the different recommendations emanated from the DLI Coordinators.
  - 40% (2) of the different recommendations emanated from the CPRA.
  - 20% (1) of the different recommendations emanated from a secondary investigator.
- Four Black subject members were Sustained as a result of different recommendations, which was 40% of the total Sustained FTARC allegations against Black members in 2022.
- Four White subject members were Sustained as a result of different recommendations, which was 44% of the total Sustained FTARC allegations against White members in 2022.

- Two Hispanic subject members were Sustained as a result of different recommendations, which was 20% of the total Sustained FTARC allegations against Hispanic members in 2022.
- One Asian subject member was Sustained as a result of different recommendations, which was 17% of the total Sustained FTARC allegations against Asian members in 2022.
- 

Themes from the Different Recommendations fell into at least one, but sometimes more, of the below categories.

#### Different Recommendation - Sustained FTARC Themes

2022	Asian	Black	Hispanic	White	Grand Total
Did not ask clarifying questions.		1			1
Did not ask clarifying questions. Did not log IBC card		1		2	3
Did not notify the Sgt. Did not follow IBC card policy.				1	1
Did not properly advise the Sgt.	1	1	1	1	4
Did not recognize the comments as a complaint.			1		1
Sgt should have taken the complaint.		1			1
<b>Grand Total</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>11</b>

- The theme “did not ask both clarifying questions” accounted for 50% of the different recommendations for Sustained against Black and White subject members.

### IV.3 Case Review for Different Recommendations with Theme “Did not Ask Both Clarifying Questions”

#### *Table 8 Case #3 Review* (1 Black subject & 2 White subjects Sustained)

The initial investigator was a sergeant assigned to a field duty. In 2017, during a car stop, verbal complaining were made by the complainant about racial motivations for “the police” (not the officers in specific) stopping him regularly. The officers asked if the complainant wanted to speak to a supervisor. The complainant stated he did not and added that he wasn't trying to give anyone a hard time, he was just frustrated. The officers provided the complainant their business cards (IBC).

5 years later, during the filing of a separate complaint, the complainant confirmed he had not wanted to in 2017, and still did not want to, file a complaint against the officers for the 2017 conduct. The DLI Coordinator recommended Sustained, citing a section within the policy relevant to circumstances wherein an officer was “unsure” and was therefore required to ask, “clarifying questions,” but made no analysis nor offered any evidence of the officer’s certainty (“sureness”) before recommending Sustained.

#### *Table 15 Case #5 Review* (1 Black subject)

A complainant called OPD to file a complaint against officers for conduct. During the phone conversation with a field supervisor who was assigned to accept the complaint, the complainant expressed frustration with the manner in which the supervisor interrupted her. The supervisor accepted the initial complaint against the officers but did not inquire as to whether the complainant wanted to file a complaint against the supervisor themselves. During subsequent review of that recorded phone conversation in the IAD intake phase, the allegation of FTARC was added against the supervisor.



The assigned investigating Sergeant re-contacted the complainant and specifically inquired as to whether the complainant wanted to then file a complaint against the subject supervisor about the nature of the subject's phone conversation. The complainant affirmed they did. The initial investigator accepted the complaint and conducted the investigation. The investigating sergeant recommended Unfounded.

Left unanswered was whether the complainant had wanted to file a complaint against the supervisor on the phone during the initial phone call, *in that moment, while on the phone with the subject supervisor* and was otherwise thwarted or denied in doing so.

The addendum was authored by a DLI Coordinator. Language in the addendum seemed to offer a standard not listed in policy or training documents in OPD:

*Knowledge that a complainant is upset with a member should **reasonably** trigger the above two questions which DGO M-3 states shall be asked.*

The two questions referred to are the "clarifying questions", which are relevant, per policy, when a member is "unsure" as to whether someone wants to make a complaint. "Upset" is not a standard that's been trained internally or legislated in policy.

The word "reasonably" is indicative of a subjective assessment. The subject was specifically asked about their certainty and stated they were "sure" the complainant didn't want to file a complaint at the time.

In the addendum, the DLI coordinator relied on the fact the complainant later advised the investigating sergeant they did indeed want to file complaint against the subject supervisor. There was no analysis or clarification as to whether the complainant had wanted to file a complaint against the subject in the initial interaction, or only later, once asked about it directly by the investigating sergeant in the subsequent interview.

The DLI coordinator goes further in alleging the investigating sergeant and their chain of command should receive supervisory notes in their personnel file for having come to the "incorrect" conclusion.

#### IV.4 Case Reviews of Different Recommendations Confirm Subjectivity

The review of two cases wherein "clarifying questions" were intrinsic to the Alternate Recommendation revealed areas of discretion and judgement which were subjective. Any judgement as to another person's "certainty" (whether or not an officer was "unsure" and therefore subject to policy requirements to clarify said uncertainty) is difficult to standardize.

Recommended Sustained findings for Black subjects come from various investigating entities. Different recommendations than those offered by the investigator prevailed as the final finding from the Chief of Police. Different recommendations accounted for 40% of the Sustained findings against Black members in 2022. The themes used to Sustain said Black members via different recommendations were subjective and open for varying viewpoints and analysis.

## V. Sergeants and their Role in Investigations

### V.1 Rank as a Factor

Rank is an area of difference between personnel, and one that has previously been identified as a believed source of disparity in findings and discipline, as found in 2022's Discipline and Internal Procedural Justice Report.<sup>3</sup> All of the sustained allegations against personnel in 2022 were investigated by investigators holding the rank of Sergeant. This is consistent with common practice at the Department.

#### Allegation Findings by Rank and Race

Rank	Unfounded	Exonerated	Not Sustained	Sustained	Grand Total
<b>Lieutenant of Police</b>	<b>0%</b>	<b>0%</b>	<b>100% (1)</b>	<b>0%</b>	<b>100% (1)</b>
White	0%	0%	100% (1)	0%	100% (1)
<b>Sergeant of Police</b>	<b>47%</b>	<b>6% (1)</b>	<b>18% (3)</b>	<b>29%</b>	<b>100% (17)</b>
Black	0%	17% (1)	17% (1)	67% (4)	100% (6)
Hispanic	50% (1)	0%	0%	50% (1)	100% (2)
White	78% (7)	0%	22% (2)	0%	100% (9)
<b>Police Officer</b>	<b>29% (27)</b>	<b>1% (1)</b>	<b>28% (26)</b>	<b>43% (40)</b>	<b>100% (94)</b>
Asian	22% (4)	0%	33% (6)	44% (8)	100% (18)
Black	21% (3)	0%	21% (3)	57% (8)	100% (14)
Hispanic	33% (10)	0%	23% (7)	43% (13)	100% (30)
Other	50% (2)	0%	25% (1)	25% (1)	100% (4)
White	29% (8)	4% (1)	32% (9)	36% (10)	100% (28)
<b>Grand Total (Allegations)</b>	<b>31% (35)</b>	<b>2% (2)</b>	<b>27% (30)</b>	<b>(45)</b>	<b>100% (112)</b>

In 2022, Officers received the highest percentage (84%) of the FTARC allegations in 2022 and were Sustained at the highest rate (43%).

Sergeants received 15% of the FTARC allegations in 2022 and were Sustained 29% of the time.

Lieutenants received <1% of the FTARC allegations in 2022 and were Sustained 0% of the time.

Incorporating race, the Sustained rate for:

- Black Officers was the highest of any officer race group. (57%)
- Black Sergeants was the highest of any Sergeant race group. (67%)
- White Sergeants was the lowest of any Sergeant race group. (0%)

### V.2 By Origin of Allegation

Sergeants serve as the investigator on most IAD and DLI investigations, recommending findings at the conclusion of their investigation. However, the investigating sergeant may or may not be the same one

<sup>3</sup> <https://cao-94612.s3.amazonaws.com/documents/Dept-Response-and-OIA-Discipline-Equity-and-Internal-Proc-Justice-Report-Sept-2022.pdf>

to have initiated an allegation of FTARC against a subject. Before examining the results of investigations, we will examine the origins of FTARC allegations in 2022.

*Externally Generated Allegation:* One that emanates directly from a non-OPD employee. For example, a FTARC allegation would be labeled externally generated if a citizen complainant specifically stated an officer had not taken steps to accept or refer a complaint responsive to the citizen’s voiced concern about misconduct on the part of an OPD employee.

*Internally Generated Allegation:* One that emanates from an OPD employee. A FTARC allegation would be labeled internally generated if an OPD employee identified potential misconduct by another employee in the course of their own duty – for example as a result of investigating another complaint and reviewing the case.

There are three phases of an investigation wherein allegations of any MOR can be added. At each phase, a human is responsible for making such assessments, whether they be the accuser, the receiver, the investigator or the reviewers. There are opportunities for different understandings of how to apply the MOR framework to the facts. Each phase is reliant on the interpretation of the facts of a case and the application of the Manual of Rules to the policy and then the analysis of both to the facts of the case.

1. The Intake Phase
    - a. Allegation may be added by the complainant. (Externally generated)
    - b. Allegation may be added by the supervisor within any Division who accepted a complaint and authored the initial memorandum (referred to as a Preliminary Inquiry, or “P.I.”).
    - c. Internal Affairs Intake technicians and officers may identify and add allegations as they process the P.I. and compile the case file.
    - d. Internal Affairs Intake Section supervisors or commanders may similarly identify and add allegations during the course of their Intake review.
  2. The Investigative Phase
    - a. An assigned investigator may add the allegation at any time during their investigative process.
  3. The Review Phase
    - a. A reviewing supervisor or commander (to include the DLI Coordinators a Chain of Command up through the Chief of Police when applicable, may add the allegation.)
- 89% (100 of the 112) of the 2022 FTARC allegations were generated internally.

Rates of FTARC Findings, Internally Generated vs Externally Generated

2022	Sustained	Other Than Sustained
<b>Internally</b> Generated	38% (37/100)	62% (63/100)
<b>Externally</b> Generated	66% (8/12)	34% (4/12)

The low Sustained rate for internally generated allegations was unexpected. Internal accusers of FTARC (OPD members who identify a possible violation) appear to have added the allegation to investigations at an early juncture in the process. A larger number of final other-than-sustained findings implies a lack of evidence was unearthed via subsequent investigation. Thus, the standard for adding an allegation to a subject was lower than the standard to subsequently Sustain the same subject.

- Internal allegations of FTARC appear to have been added more liberally than only when the accuser had an affirmative indication the MOR violation had occurred.

An examination of the eight externally generated Sustained allegations revealed they emanated from just four investigations. The following themes emerged in reviewing justifications used for sustaining the personnel.

Theme use for Sustained finding in Externally Generated FTARC Allegations (2022)

Theme	Allegations	Cases
A complainant's demand for Officer names and serial numbers should have triggered further steps be taken to accept or refer a complaint.	4	1
An officer asked if a complainant wanted to speak with their supervisor but did not specifically ask if the complainant wanted to file a complaint.	2	1
Officer did not summon their Sergeant upon specific request from a complainant.	1	1
Complainant alleged generalized racial motivation for actions taken by police officers. The complaint lacked specific, articulable actions taken that were alleged to have been racially motivated. The Sergeant provided an Information Business Card (IBC), but did not open the complaint for further investigation.	1	1
Total	8	4

In 2022, the number of internal accusers per race group was as follows:

Number of Accusers by Race

Race of Accuser	Number of Accusers	Number of Personnel <sup>4</sup>	% Accusers of Total Personnel
Asian	2	197	1%
Black	1	281	.4%
Hispanic	1	272	.4%
Other	0	35	0%
White	12	259	5%

- White Members were the most likely to add allegations of FTARC in 2022.

The following table provides this information per FTARC allegations by race of accuser and race of subject member.

Internally Generated FTARC Allegations by Race of Accuser

2022	Asian Subject	Black Subject	Hispanic Subject	Other Subject	White Subject	Total

<sup>4</sup> Total combined sworn and professional staff, as of 31 Dec 22. Any employee may make an allegation of FTARC against another.

Race of Accuser	<u>Sustained</u>	<u>Other Than Sustained</u>	<u>Sustained</u>	<u>Other Than Sustained</u>	<u>Sustained</u>	<u>Other Than Sustained</u>	<u>Sustained</u>	<u>Other Than Sustained</u>	<u>Sustained</u>	<u>Other Than Sustained</u>	<u>Sustained</u>	<u>Other Than Sustained</u>
Asian			1	1		1				2	1	4
Black			1							1	1	1
Hispanic	1			1	1	2				1	2	4
White	7	10	7	6	9	14	1	3	9	21	33	54
Total	8	10	9	8	10	17	1	3	9	25	37	63
Total as %	44%	56%	53%	47%	37%	63%	25%	75%	26%	74%	37%	63%

White internal accusers accounted for 87 of the 100 internally generated FTARC allegations against all races in 2022.

- Black subjects were the only group for whom a majority of internally generated FTARC allegations were sustained (53%).

The following table explores the Sustained Rate per Race of the accuser.

Internally Generated Sustained Rate by Race of Accuser, Count of Allegations

Race of Accuser	Sustained	Other Than Sustained	Total	Sustained Rate
Asian	1	4	5	20%
Black	1	1	2	50%
Hispanic	2	4	6	33%
White	33	54	87	38%
Total	37	63	100	37%

White accusers accounted for 87% of the internally generated allegations for the year. The White accuser group's data weighed heavily upon the whole, as reflected in consistency between the 38% Sustained Rate from White accusers and the 37% Total Sustained rate. Between the other accuser race groups rates of Sustained vary widely, which may be attributed to the small sample size within those accuser groups.

- Two White IAD Sergeants accounted for the bulk of the internally generated Sustained allegations by white accusers (15/33 (45.45%)).

## Assignment of Internal Accusers

Race of Accuser	Assignment of Accuser	Number of Allegations
Asian	IAD	5
Black	IAD	2
Hispanic	BFO	6
White	BFO	17
	IAD	56
	OCOP	14
Total		100

BFO had 10 separate accusers, accounting for 23 allegations. IAD had 11 separate accusers, accounting for 63 allegations (63%) of the total allegations levied against subjects. The 7 White accusers assigned to IAD accounted for 56% (56/100) of the year's total internally generated allegations.

## Who are the Internal White Accusers?

Identifier	Rank	Gender	Assignment	Time at OPD (Yrs.)	Time in Rank (Yrs.)	Total FTARC Allegations	Sustained Rate for Allegations	Sustained FTARC Allegations against Black Subjects
A	Sgt	M	IAD Inv.	23	12	34	29% (10)	1
B	Ofc	M	IAD Intake	25	25	3	100% (3)	1
C	Sgt	M	Patrol	23	9	1	100% (1)	1
D	Lt	M	SOD	15	3	2	100% (2)	0
E	Sgt	M	IAD Inv.	16	7	6	83% (5)	1
F	Ofc	M	IAD Intake	26	26	7	71% (5)	2
G	OCOP	OCOP	OCOP			5	100% (5)	0
H	Sgt	M	Patrol	15	2	2	50% (1)	0
J	Sgt	F	Patrol	23	2	1	50% (1)	1
K	Sgt	M	IAD Inv.	9	1	4	0% (0)	0
L	Ofc	M	IAD Intake	9	9	1	0% (0)	0
M	Sg	M	IAD Inv.	23	7	1	0% (0)	0

The two White officers who levied Sustained FTARC allegations against Black members (B and F) both worked within IAD – Intake during the period and added the allegations during the Intake phase.

The White lieutenant (D) accounted for 2 allegations. The lieutenant added the allegation during the review phase and returned the file for the investigating sergeant to assess.

Only one White female sergeant (J) internally generated an allegation of FTARC which led to a Sustained finding (11%). Eight male sergeants internally generated an allegation of FTARC which led to a Sustained finding (89%).

The average time as an OPD member for the White accusers was 18.81 years. The average time in rank for the White accusers was 9.36 years.

### V.3 By Investigator

An allegation of FTARC cannot be resolved via Class II supervisory note in lieu of a finding. The recommendation as to finding offered by the investigator is taken into consideration during the review process and may ultimately be agreed with by the Chief of Police (final decider for finding).

All sergeants in the Department are capable and available to investigate allegations of misconduct. There are 121 Sergeants at the Department.

- 25 different sergeants investigated at least one FTARC allegation in 2022.

This section will look at whether there was a racial imbalance between those assigned to investigate FTARC allegations as compared to the body of sergeants as a whole. The assignments for the 25 FTARC investigators and distribution of sergeants throughout the Department was as follows:

#### Findings by Investigator Assignment and Race

Assignment	# of FTARC Investigators in 2022					# of Sergeants Per Division in 2022				
	Asian	Black	Hispanic	White	Total	Asian	Black	Hispanic	White	Total
BFO	3	1	3	8	60% (15)	6	9	16	37	75% (68)
IAD	3			4	28% (7)	6	2		7	17% (15)
Ceasefire		1		1	8% (2)	1	1	1	1	4% (4)
BRM				1	4% (1)	2	1		1	4% (4)
Total	24% (6)	8% (2)	12% (3)	56% (14)	100% (25)	16% (15)	14% (13)	19% (17)	51% (46)	100% (91)

Some sergeants did not investigate FTARC allegations in 2022 and some of them were assigned to other Bureaus or Divisions that are therefore not represented in the above table, including Bureau of Investigations and Bureau of Services. The Sergeants who investigated FTARC allegations in 2022 came from a pool of 91, representing BFO, IAD, Ceasefire, and BRM<sup>5</sup>.

15% (2/13) of Black sergeants from these represented divisions investigated an allegation of FTARC.  
30% (14/46) of White sergeants from these represented divisions investigated an allegation of FTARC.

Within the four listed Divisions, White sergeants were twice as likely to investigate an allegation of FTARC in 2022 than Black sergeants.

22% (15/68) of BFO sergeants investigated FTARC allegations. 47% of IAD sergeants investigated FTARC allegations. IAD sergeants were twice as likely to investigate an allegation of FTARC in 2022 than BFO sergeants.

<sup>5</sup> IAD falls under the Bureau of Risk Management umbrella, but was separated here due to the specific, relevant nature of the Division's function in investigating IAD cases, as contrasted with other sections of BRM (including the Training Section and the Office of Internal Accountability.)

## Recommended Findings per FTARC Investigator

Inv #	Inv. Race	Assign.	Black Subject		Non-Black Subject	
			<u>Sustained</u>	<u>Other Than Sustained</u>	<u>Sustained</u>	<u>Other Than Sustained</u>
1	W	BFO	100% (1)		100% (4)	
2	W	BFO	100% (1)			
6	H	BFO			50% (2)	50% (2)
7	H	BFO	100% (1)			
8	A	BFO				100% (2)
9	W	BFO				100% (1)
10	A	BFO				100% (1)
11	B	BFO				100% (1)
12	W	BFO		100% (1)		100% (3)
18	W	BFO				100% (1)
H	W	BFO			50% (1)	50% (1)
20	H	BFO			100% (2)	
22	W	BFO				100% (3)
23	W	BFO	50%(2)	50% (2)		100% (1)
24	A	BFO	100% (1)		100% (3)	
5	W	BRM				100% (1)
16	B	CF		100% (1)		100% (2)
21	W	CF			100% (2)	
3	W	IAD				100% (1)
A	W	IAD	34% (2)	66% (4)	35% (17)	65% (32)
13	A	IAD		100% (2)		100% (2)
14	A	IAD	100% (1)			100% (2)
15	A	IAD				100% (1)
E	W	IAD		100% (1)		
25	W	IAD				100% (4)

\*Note: The sergeants in the prior table represented by a letter (A, E, H) are the same sergeants represented by the same letter in the prior table entitled "Who Are the White Accusers?"

There were only two Sergeants who recommended Sustained findings for more than one FTARC allegation against a Black Subject member in 2022: Sergeant A and Sergeant 23.

#### *Sergeant 23*

Sergeant 23 generated no internal allegations of FTARC. Sergeant 23 was assigned investigations involving five different FTARC allegations.

Sergeant 23 was assigned to investigate two separate FTARC allegations against the same Black subject member. In one instance, Sergeant 23 recommended Sustained. In the other instance, Sergeant 23 recommended other than sustained.

The other than sustained recommendation was overruled by the then Chief of Police and the Black subject member received their second of two Sustained violations for FTARC in the space of one month.



#### V.4 Sergeant A

The inspection also sought to investigate aberrations within the data which might lead to a person, or particular unit, in the Department contributing to the disparate outcomes. When outliers were identified (such as with Sergeant A), a deeper, qualitative review was conducted.

The review of Sergeant A revealed that a source of deviation within their data was the number of internally generated FTARC allegations he levied and the Sustained Rate outcomes of those cases. While Sergeant A did not appear to be “over-sustaining”<sup>6</sup> any particular race group, there was an area<sup>7</sup> wherein the question arose whether Sergeant A was “under-sustaining”<sup>8</sup> the white race group. To inspect that, we conducted a qualitative review of Sergeant A’s investigative reports.

In examining the relevant cases, among other observations contained later in this section, we also found that just one of Sergeant A’s cases, containing eleven allegations against white members, was responsible for 52% of the sergeant’s findings against White members. The findings for those 11 members were other than sustained.

Had this single case been assigned to a different investigator, Sergeant A’s sustained rate for White members would have been more closely aligned with other races and the sergeant would not necessarily have been an outlier for Sustained Rates. Additionally, exploring the hypothetical further, had Sergeant A not been assigned the single case, would another assigned investigator have identified FTARC as an allegation needing to be added to all the subjects and would they have investigated it in the same manner?

There are a number of moderating and mediating factors which intertwine to affect the body of data that comprised 2022’s FTARC allegation investigations: the assignment of field personnel, which personnel responded to any given scene, what sergeant investigated the case, what member added an allegation of FTARC to the complaint, what evidence was available, the list goes on and on. There is discretion wielded in nearly every phase of the process.

Still, it was striking that one white Sergeant (Sergeant A) accounted for 34 of the 100 internally generated FTARC allegations in 2022, the most internally generated allegations by a single member, by far. Only two of the 34 (6%) FTARC allegations added by Sergeant A were against Black members, one of which was sustained. Sergeant A added the most allegations against White and Hispanic members (71%). None of the allegations added by Sergeant A against White members were sustained. Sergeant A has worked in IAD in different capacities over his career, totaling approximately 4 years and 8 months out of 23 years total. (20.36% of his career.)

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<sup>6</sup> Recommending a higher rate of sustained findings against one particular race group versus another.

<sup>7</sup> The area being FTARC allegations internally generated by Sergeant A and investigated by Sergeant A.

<sup>8</sup> Recommending a lower rate of sustained findings for one particular race group versus all others.

## Sergeant A's Internally Generated vs Assigned Allegations

2022		Unfounded	Exonerated	Not Sustained	Sustained	Total	Sustained Rate
Asian	Generated	1	0	1	4	6	67%
	Assigned	0	0	2	3	5	60%
Black	Generated	0	0	1	1	2	50%
	Assigned	1	0	1	2	4	50%
Hispanic	Generated	2	0	4	4	10	40%
	Assigned	4	0	0	0	4	0%
Other	Generated	1	0	0	1	2	50%
	Assigned	1	0	0	0	1	0%
White	Generated	3	0	11	0	14	0%
	Assigned	2	0	1	4	7	57%
<b>Grand Total</b>		15	0	21	19	55	35%

You'll recall from the prior section; Sergeant A was the most prolific *accuser* of FTARC allegations (34). In the table above, you can also see Sergeant A was the most prolific *investigator* of FTARC allegations across all races (55). Sergeant A recommended a Sustained finding for Black members for FTARC allegations 34% of the time and for other-than-Black members 35% of the time. However, in the above table, having broken apart the other-than-black member group into its components, you'll note Sergeant A's Sustained finding rate for White members was 0% when Sergeant A added the allegation, and 57% when the case was assigned to Sergeant A with the allegation already present. Sergeant A levied 14 allegations against White subjects, then found 11 Not Sustained and 3 Unfounded.

For no other race group did Sergeant A generate an allegation of FTARC and then other-than-sustain all of them as he did within the White group. The noticeable gap between Sergeant A's recommended findings per allegation origin was explored further via case review.

## Case Review - Sergeant A's Other Than Sustained Findings for White Subjects

Case #	Notes	Recommended Findings
1	This case is discussed in a later table, entitled "Sustained Cases with Areas of Concern." The area of concern would have affected the white subject sergeant, who was Unfounded, but within the report there was left open an unanalyzed concern, emanating from the subject sergeant's own statement and which may call into question the Unfounded finding.	1 Hispanic Officer: Sustained 1 Black Officer: Sustained 1 Other Officer: Sustained 1 Hispanic Officer: Not Sustained 1 White Sergeant: Unfounded
24	The justification for the Sergeant being Not Sustained cited external factors which could have blocked the Sergeant's hearing of the request to speak with a Sergeant. By contrast, it seemed the two officers heard the complainant make an allegation of misconduct but took no further action. The allegations emanated during a conversation, which had been an easy back and forth between the complainant and officers during the booking process at jail. At the allegation to the officers that they'd "fucked over my rights," the officers became momentarily silent toward the complainant. In their statements the officers denied recollection of hearing the allegations. There is not a substantive analysis of proximity or external factors that could have obscured the officers' hearing of the allegation. Instead, the Investigator opined, "This investigation finds that this one comment should not be viewed as an allegation of misconduct by (complainant)." The "one comment" standard does not appear elsewhere in 2022 FTARC cases.	1 White Officer: Not Sustained 1 Hispanic Officer: Not Sustained 1 White Sergeant: Not Sustained
9	No concerns identified.	1 White Sergeant: Not Sustained, 1 Black Sergeant: Not Sustained, 2 Asian Officer: Not Sustained, 3 Hispanic Officers: Unfounded 2 White Officers: Unfounded, 2 Asian Officers: Sustained, 3 White Officers: Sustained
11	The Chief overruled the Unfounded finding recommendation for the Hispanic Sergeant with a Sustained.	1 Hispanic Sergeant: Unfounded 1 Hispanic Officer: Sustained 1 Asian Officer: Not Sustained 1 Hispanic Officer: Not Sustained 1 White Sergeant: Not Sustained 1 White Sergeant: Unfounded 1 White Officer: Unfounded 1 White Lieutenant: Not Sustained 7 White Officers: Not Sustained

All 17 of Sergeant A's other than sustained recommended findings emanated from just 4 cases, each containing multiple subject officers of varying ranks and racial group membership.

Further, Case #11 accounted for 11 of Sergeant A's 17 (65%) other than sustained FTARC recommendations against White subjects in 2022. With one case containing so many allegations, and predominantly against White subjects, the weighting of such a case within Sergeant A's FTARC allegation portfolio was outsized as compared to its weight as a single case. Removing Case #11 from the mix would leave Sergeant A's sustained rate against White subjects for internally generated FTARC allegations at 0/6 (still 0%) rather than 0/14 (the current 0%).

More impactfully, with Case #11 accounting for 11 other-than-sustained findings for White members, a hypothetical removal of this case from the set would have fundamentally changed the outcome of apparent disparity for the whole years' worth of data. The overall Sustained Rate for White subjects was 26% in 2022. The hypothetical offered would have changed the White subject Sustained Rate to 37%, still lower than the 60% Sustained Rate for Black subjects, but an 11% swing from the Table 2 data. The lower numbers involved in a year's worth of data can lead to one investigation with multiple officers on the scene having an outsized effect upon the whole.

The two cases above (#1 and #24) wherein there seemed to be a question as to the justification for the findings serve as further evidence of the varied manner in which the assessment of FTARC occurs, sometimes even between cases conducted by the same investigator. Case #24's Unfounded recommendation for the White sergeant seemed logical and appropriate. The "one comment" argument was an outlier in this review and served to Not Sustain 1 Hispanic and 1 White officer. Hypothetically, if the investigation had found the two officers Sustained, the result would have delivered the following Sustained rate for Sergeant A's internally generated FTARC allegations:

- Hispanic: 50% (5/10), up 10%.
- White: 7% (1/14), up 7%.

Due to low numbers in the sample size, one allegation's hypothetical swing to a Sustained finding results in a 7% and 10% corresponding movement. The percentages reveal areas of concern but should be considered in the context of the small sample size serving as the foundation.

Sergeant A alone investigated 49% of all FTARC allegations in the Department in 2022 (55/112). Removing Sergeant A's own internally generated allegations, Sergeant A would have investigated 19% (21/112) of the total 2022 FTARC allegations.

To attempt to better understand how such a concentrated impact could have landed with a single investigator, the author inquired with the Internal Affairs Chain of Command. (Sergeant A was assigned to the Internal Affairs Division during 2022.) The Chain of Command responded with the following statement,

*(Sergeant A) is a trusted and efficient investigator. His judgement is valued, respected, and well-articulated. He routinely carries a case-load twice the size of other investigators in the Section and is capable of deep analysis while still adhering to timelines for investigations. His additions of (FTARC) allegations during 2022 was a product of being sensitive to the nature of the (FTARC) MOR, noting potential violations of it, and adding it to the case for all potential subject officers prior to*

*interviewing subject officers such that questioning about (FTARC) could be done in accordance with Government Code 3300 et. seq.*

The dominating number and percentage of all FTARC allegations investigated by Sergeant A may provide us the answer as to why White sergeants investigated FTARC allegations at a higher rate than other races.

Simply put, with 49% of all allegations being investigated by one Sergeant (who is White), cases which might have otherwise been disseminated across other investigators, belonging to different race groups instead remained with Sergeant A.

## VI. Division Level Investigations (DLI) v Internal Affairs Division Investigations (IAD)

Investigations into misconduct take two forms within the Department. After being processed through the IAD Intake Section, a case file may either be assigned to a sergeant investigator in the Internal Affairs Investigations Section (referred to as Internal Affairs Investigations), or to a sergeant assigned to another part of the Department (referred to as Division Level Investigations).

Division Level Investigations (DLI) are, as prescribed by policy, contain largely Class II (lower level) offenses.<sup>9</sup> Internal Affairs Investigations (IAD) contain largely Class I (higher level) offenses. The packaging and assignment of a case as either a DLI or IAD investigation is the responsibility of the Internal Affairs Division - Intake Section, headed by a Lieutenant of Police, working for the IAD Commander (Captain). The assignment of cases may not always follow the strict delineations of policy, as the Lieutenant in charge of IAD Investigations Section may request some Class I cases be sent out as DLI when the caseload of the IAD Section has become untenable.

Once a case has been designated as a DLI, it is packaged into a case file and distributed via the Bureau of Field Operations – Administrative Section. Two Sergeants are currently assigned to this unit, working to disseminate, track, and retrieve numerous DLI case files as they are funneled back to the chain of command overseeing the subject officer. The Captain(s) and Lieutenant(s) overseeing the subject officer's chain of command may assign the DLI back to the subject officer's own Sergeant. If work load or operational concerns intervene, however, then the Captains and Lieutenants may choose to assign the DLI to a different Sergeant to investigate it.

Further, units other than those assigned to the Bureau of Field Operations may be assigned DLI to investigate and review when workloads overwhelm the field personnel. In these instances, the investigating and reviewing chain of command may have no regular supervisory responsibility over the subject officer.

The Internal Affairs Investigations Section sergeants' only role is to investigate allegations of misconduct. Sergeants assigned to other areas of the Department handle Division Level Investigations in addition to their normal duties. There are 121 sergeants in the Department, 8 of whom are assigned as Internal Affairs Investigators. There are therefore potentially 113 sergeants available to investigate Division Level Investigations ancillary to their regular assignment.<sup>10</sup>

In 2022, 25 sergeants investigated at least one allegation of FTARC. 18 of the 25 sergeants investigated said allegations as Division Level Investigations. 7 of the 25 sergeants investigated said allegations as Internal Affairs Investigations.

The following table displays the distribution of 2022 cases investigated as either DLI or IAD and how each type's findings were distributed.

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<sup>9</sup> DGO M-03 Complaints Against Departmental Personnel or Procedures, VI. A.: *Class I offenses shall be investigated by IAD and Class II offenses shall be investigated or resolved at the division-level unless otherwise directed by the COP, Assistant Chief of Police, Acting Chief of Police, or Deputy Chief of the Bureau of Risk Management.*

<sup>10</sup> 113 being the ceiling, as there are some Sergeants on Administrative or Medical leave, as well as some assigned to the Homicide Section, who are not additionally burdened with DLI assignment. Further, while no personnel other than sergeants investigated FTARC allegations in 2022, any supervisor or commander may assume responsibility as primary investigator.

## Type of Investigation and Findings

2022	Sustained	Exonerated	Not Sustained	Unfounded	Grand Total
Division Level Investigation	56% (24)	2% (1)	14% (6)	28% (12)	100% (43)
Internal Affairs Investigation	30% (21)	1% (1)	35% (24)	33% (23)	100% (69)
Grand Total	40%	2%	27%	31%	100%

Relatively few Sergeants, (eight) investigated 62% (69) of the total FTARC allegations, as Internal Affairs Investigations. The findings resultant from Internal Affairs Investigations were evenly distributed across Not Sustained, Sustained, and Unfounded, all in the low to mid 30% range.

By contrast, 18 Sergeants investigated the remaining 38% (43) of FTARC allegations as Division Level Investigations. The findings resultant from Division Level Investigations revealed a wider range between findings, with ~14% Not Sustained, ~28% Unfounded, and ~56% Sustained.

- The sustained rate for FTARC allegations investigated as DLIs was higher than those investigated within IAD Investigations.

Most of the difference seems to result from the lower usage of Not Sustained as a finding within DLIs, about a 1/3 of IAD. The larger number of sergeants investigating DLI FTARC allegations indicates the DLI investigating sergeants each worked on fewer FTARC per investigator than those sergeants assigned to IAD. This is consistent with normal practice in BFO wherein commanders are careful to not assign more than two DLI to a field supervisor at any given time. There is no policy prohibition against assigning more, but the added burden of a third DLI would overwhelm the sergeant's normal operational duties.

The wider range in use of findings may be indicative of the varied chains of command and locations from which DLIs matriculate through the investigative process as opposed to the IAD Investigations' more contained, controlled, City Attorney accessible, and less extraneously burdened process. IAD Investigators' only job function is to investigate misconduct allegations. IAD investigators work as part of a small unit with routine interactions with Executive Command and lawyers from the City Attorney's Office to help inform opinion and finding.

In contrast, DLIs are investigated by a wider swath of sergeants and reviewed by a wider swath of supervisors, all of whom are tasked with participating in the DLI process over and above their primary assignment functions. It is little wonder that whatever ethos informed the IAD Investigations' findings may not have scaled and represented in the same extent within the array of DLIs, thus accounting for an 80% difference in Sustained rates, and a threefold difference in non-sustained rates.

However, a moderating variable (the DLI Coordinator Unit (1 Acting Lieutenant, White, and 2 Sergeants, 1 White, 1 Asian)) is housed within IAD. The DLI Coordinators are intended to act as quality control for DLI investigations, reviewing content for appropriateness of findings, correcting formatting and grammatical errors, and preparing cases for presentation to the IAD Commander or Chief of Police. The DLI Coordinators may serve as advisors to Investigators, recommending findings or further investigative steps for an investigator to carry out.

- A DLI Coordinator’s work and influence is largely invisible within any given investigative file.

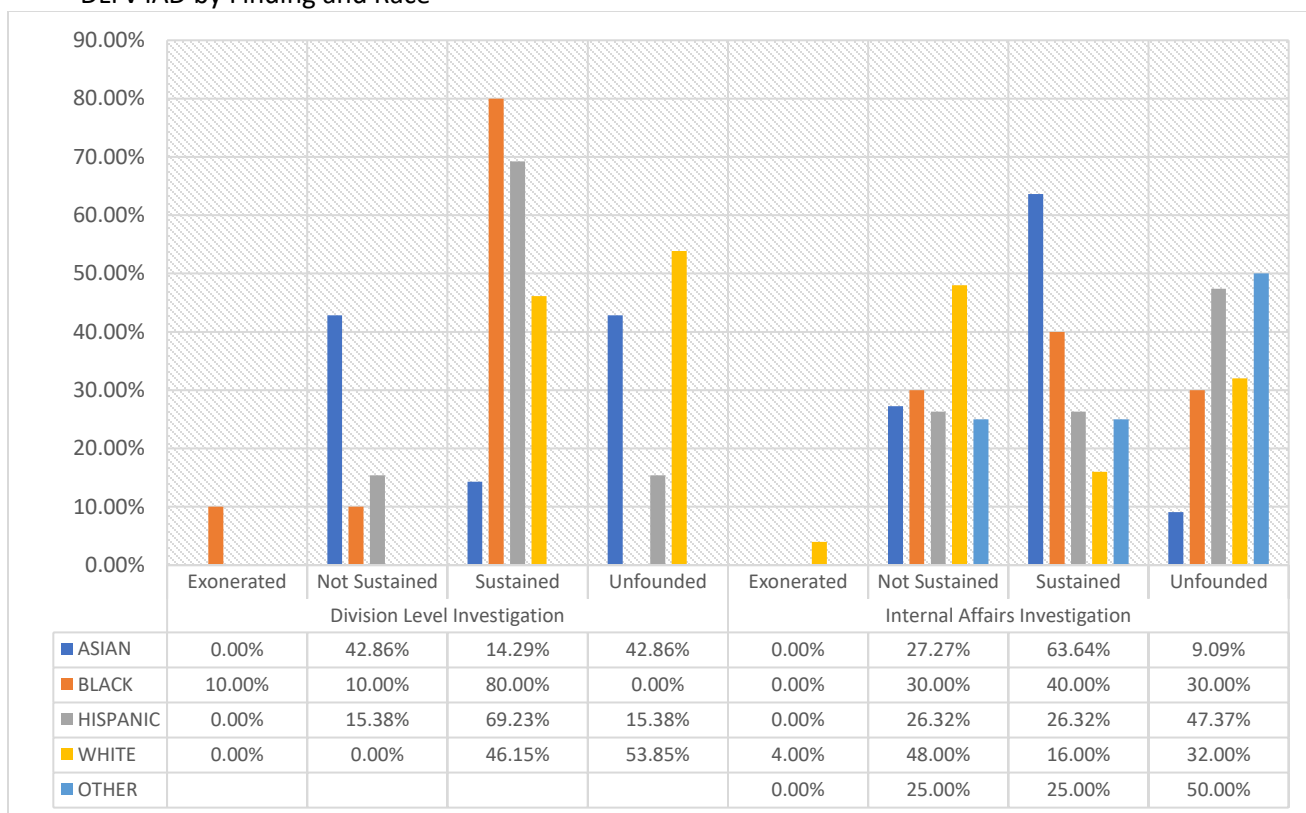
For instance, a final finding may be shown within the DLI Report of Investigation (ROI) as Sustained, but without an accompanying trail to show what the DLI-level Investigator’s initial recommended finding was, and what suggestions were offered, or pressure exerted, to change said finding, if any, by the DLI Coordinator.

The name of the DLI Coordinator shepherding any given case through the DLI investigative process may not appear anywhere in the file. In two instances in 2022, a DLI Coordinator authored an addendum (See Alternate Recommendations section for further) when they disagreed with a finding offered in a DLI investigation. The DLI Coordinators’ addenda only recommended Sustained findings in place of other-than-sustained findings.

Though a small sample, the addenda may be indicative of a different mindset towards using the Sustained finding with regard to FTARC allegations, resulting in the higher Sustained rate in DLI investigations than in IAD Investigations. A deeper look at addenda can be found later in this report.

Re-examining the DLI vs IAD allegations, with race of the subject officer as a factor, resulted in the following table.

DLI v IAD by Finding and Race



- The large difference in Sustained rates between races evident in the 2022 data, combined with the invisible nature in which the DLI Coordinator unit appears to operate within any given case file is of concern.



## VII. Discipline by Race

Having explored aspects of findings, we turn now to discipline disparity within the FTARC allegation.

The Department's Executive Command has stated to the Court that anonymization protocols instituted in 2022 during IAD Findings and Discipline Meetings were designed to eliminate the opportunity for bias to affect decision-making. The effects of the anonymization were not immediately auditable, as the Department has not initiated quantification of when anonymization protocol were strictly adhered to throughout a case presentation, or when it was undercut via BWC review, accidental mentioning of the subject's identity, or an instance wherein the Chief of Police had already been briefed on the matter.

### VII.1 Who is Recommending Discipline?

Within OPD, discipline recommendations emanate from a Captain or Lieutenant, but most often the Captain overseeing the Division within which the Sustained subject currently works. The discipline recommendation occurs after the determination of finding by the Chief, usually at a different meeting on another date. The recommender is provided recent Performance Appraisals, the IAD investigative report, and a pre-discipline report (standardized OPD form) to fill out, ensuring they account for mitigating and aggravating factors when ascertaining appropriate discipline recommendations. The OPD Discipline Matrix provides parameters per MOR violation and per count (1<sup>st</sup> Offense, 2<sup>nd</sup> Offense etc.) The recommender may hold a discipline conference with direct supervisors of the sustained subject officer to solicit feedback and recommendations.

The Captain presents their recommendation to the Executive Command Team (Deputy Chiefs, Assistant Chief and Chief of Police). The Community Police Review Agency may also present discipline recommendations at that time.

The Chief of Police determines final discipline. The pre-discipline report, with the final determination of discipline as authorized and signed by the Chief, is included in the IAD file.

Discipline recommendations were offered by 16 different individuals during 2022. There was no Asian or Other race discipline recommender in 2022.

- White recommenders accounted for 56% of the discipline recommendations in 2022.

FTARC Number of Discipline Recommendations by Race of Recommender

Race of Recommender	# of Discipline Recommendations 2022
Black	11
Hispanic	1
N/A	8
White	25
Grand Total	45

Not Applicable (N/A) was used when no Discipline Recommendation was offered. In these instances, the Chief was asked to ascertain discipline directly. This may occur in instances where the sustained subject has since resigned from the Department and has no direct chain of command. In one case, a Discipline Recommendation form was filled out by a white Lieutenant, but the recommendation was explicitly that there was no recommendation from the Chain of Command.

In 2022, the then-Chief of Police determined final discipline in 44 of the 45 sustained allegations. A Deputy Chief (who was Acting Chief briefly in 2022) determined final discipline in the remaining case.

## VII.2 Elevation / Lowering / Confirming of Recommended Discipline

Upon receiving recommended discipline, the Chief may elevate the level of discipline, lower it, or confirm the recommendation as final discipline. "N/A" in the below table indicates instances wherein there the Chief ascertained discipline without a discipline recommendation.

Sustained FTARC Allegation Recommended Discipline v Final Discipline and Race

<b>Movement from Recommended to Final Discipline</b>	<b>OTHER</b>	<b>ASIAN</b>	<b>BLACK</b>	<b>HISPANIC</b>	<b>WHITE</b>	<b>Grand Total</b>
Confirmed	1	5	6	7	5	24
Elevated			5			5
Lowered		1	1	4	1	7
N/A		2		3	4	9
Grand Total	1	8	12	14	10	45

- The only race group to receive elevated discipline by the Chief from the recommended discipline was Black subjects.

S(#) = Number of Days Suspension

WR = Written Reprimand

C&amp;T = Counseling and Training

## 2022 Discipline for FTARC Sustained Black Subjects

Case #	Recommended Discipline (RD)	RD within the Matrix?	Elevated (E)/ Lowered (L) / Confirmed (C)	Final Discipline	Final Discipline within the Matrix?	CPRA Parallel Investigation?	Notes
1	S1	Yes	C	S1	Yes	Yes	
2	C&T	Yes	C	C&T	Yes	No	
3	C&T	No (below)	E	WR	No (still below)	Yes	Subject had 1 prior offense for same. 2 other officers on same case received C&T and had no priors for same.
4	C&T	Yes	E	WR	Yes	Yes	No explanation documented.
5a	S5	Yes	E	S8	Yes	Yes	Subject had 1 prior offense for same and was sustained for other MOR violation on this case.
5b	S2	Yes	E	S3	Yes	Yes	Subject had 1 prior for same MOR.
10	WR	No (below)	E	S2	Yes	No	Subject had 1 prior for same MOR.
13	S2	Yes	C	S2	Yes	No	Subject had 1 prior for same MOR.
14	S2	Yes	C	S2	Yes	No	
15	S3	Yes	C	S3	Yes	No	
17	WR	Yes	L	C&T	Yes	No	No explanation documented.
18	C&T	Yes	C	C&T	Yes	No	

No discipline recommendations were received for discipline above the matrix range.

Two discipline recommendations were received for discipline below the matrix range. The subject officers in both cases had 1 prior offense for FTARC, which were subject to 2<sup>nd</sup> Offense ranges of discipline pursuant to the Department's progressive discipline practice.

Both below-matrix recommendations were offered by white male commanders (one Lieutenant and one Captain). One below-matrix discipline recommendation was elevated by the then-Chief to within the matrix for a second offense. The other was elevated, but to a Written Reprimand, still below the matrix for a second offense, but one rung more severe than the two other sustained subjects on the same case, neither of whom had prior offenses for FTARC.

One discipline recommendation was lowered, from within the matrix to still within the matrix. The recommendation was offered by a white male commander (Lieutenant). The discipline was lowered by a Deputy Chief serving in an Acting Chief role during the discipline meeting. The final discipline was consistent with what other officers received for their first offense of FTARC.

- There were 5 Sustained allegations receiving elevated discipline from the recommendation. Four of the five (80%) allegations were also investigated by CPRA. There appeared to be correlation between CPRA's involvement in the discipline recommendation and the final decision for discipline being elevated from the OPD recommendation.

In one of the cases (#4) the sustained subject had no prior offenses yet was elevated from the recommended C&T to WR, which was still within the matrix. The elevation appeared inconsistent with how other discipline was meted out for first offenses for FTARC. The subject was a Sergeant in this case, which may have weighed more heavily in the decision-making process. For comparison, another Sergeant (Hispanic) was sustained for their first offense of FTARC in 2022 and also received a Written Reprimand from the then Chief.

- The common reasons Black subjects received elevated discipline from the recommended discipline was for either:
  - having a prior offense for the same MOR violation (4/5) or
  - being a Supervisor (1/5).

However, the mere presence of a first offense in the record cannot retroactively ensure said first offense was equitably processed at the time. The occurrence of a second offense within a Black subject's IAD record may be further indication of a longer period of discipline disparity evidenced against those individuals, much as current first offenses may one day serve as but the first data point in an individual's discipline disparity trajectory if the Department does not remain vigilant in pro-actively locating and addressing such issues. A qualitative review follows.

## VIII. Qualitative Analysis of 2022 FTARC Allegations

As the first offenses for most of the 2022 sustained Black subjects occurred in various years' past, under different chains of command, with different IAD procedures in place, it was an imperfect comparison when we attempted to delve into those cases and draw parallels to 2022 case evaluations. Instead, to assess OPD's current procedures, findings and discipline integrity, the assessors undertook a qualitative analysis of all 112 investigated allegations of FTARC in 2022.

In 2022 there were 112 allegations of FTARC. Of those 112 allegations, 45 of them were found Sustained. The 45 Sustained allegations emanated from 19 investigations.

The following are notes on the 19 Sustained cases. Wherein opportunity for differing opinions, discretion, or bias was identified, it is noted.

### Sustained Cases with Areas of Concern

Sustained Case # <sup>11</sup>	Notes	Results
1	A 5150 WI detainee made numerous verbal allegations while being detained by Officers. No one relayed the allegations to the sergeant. The detainee was gone from scene by ambulance at the time the sergeant arrived. The sergeant had no cause to follow detainee or indication the detainee made allegations of misconduct. The sergeant had no duty to review UoF video (pursuant to policy at the time), but stated they actually did review snippets and clips and didn't notice any allegations. The allegation against the sergeant was deemed Unfounded for FTARC.  Yet, if the sergeant did review the video as claimed, how did they miss the screaming of allegations by the detainee?	Sustained: 1 Black, 1 Other, 1 Hispanic, 1 Asian Officers  Unfounded: 1 White Sergeant  Not Sustained: 1 Hispanic Officer
2	This case was reviewed previously in this report. Officers on scene were Sustained, but the sergeant was listed as a witness in the case and culpability was not assessed.	Sustained: 3 Hispanic, 1 White, 1 Black Officers  Witness Only: 1 White Sergeant
3	This case was reviewed previously in this report. The complainant did not want to file a complaint in 2017, nor in 2022, yet the officers were sustained for asking one but not a secondary clarifying question.	Sustained: 1 Black and 2 white Officers
4	No area of concern identified.	
5	Investigator produced an addendum to their own report, changing allegations for 4 subject officers (1 Black, 1 White, 1 Asian, 1 Hispanic) from Unfounded to Sustained. Officers assumed the on-scene sergeant, who was speaking directly with the complainant, would obtain relevant information for any complaints the complainant may have had. The sergeant received the same allegations the officers received, so their assumption was correct. The sergeant's failure to open the complaint, armed with the same information the officers had, trickled down to each officer that failed to personally debrief the sergeant with their own personal observations.	Sustained: 1 Hispanic, 1 Asian, 1 Black, 1 White Officers; 1 Black Sergeant

<sup>11</sup> These case numbers are not reflective of the actual identifying IAD case file numbers but are used only for differentiation within this report.

	<p>The addendum referred to the changes in findings as "it was decided," implying something less than agreement by the investigator.</p> <p>The CPRA's Sustained recommendation hinges on a reading of a portion of DGO M-03 which states officers shall "notify and provide his/her supervisor with all information obtained from the complainant as soon as practical." The same CPRA investigation applied this standard differently to other subjects in the same case, exonerating two officers for knowing affirmatively that all the same allegations they'd heard had been told to sergeant by the complainant, while sustaining the others for not knowing the same, even when the Sustained officers had seen the sergeant speaking directly with the complainant.</p>	
6	No area of concern identified.	
7	No area of concern identified.	
8	No area of concern identified.	
9	The subject officer stated they didn't hear allegations at the time. The Investigator argued the officer "should have" heard them. The sergeant, who was on scene alongside the subject officer, was Not Sustained with the same argument, having stated the same thing.	<p>Sustained: 2 Asian, 3 White Officers</p> <p>Not Sustained: 1 White Sergeant, 1 Black Sergeant, 2 Asian Officers</p>
10	No area of concern identified.	
11	<p>Investigator produced addendum to their own report, changing allegations for the sergeant subject (Hispanic) from Unfounded to Sustained. Per the addendum, "it was decided" by the Chief and the investigator was ordered to change the findings.</p> <p>The CPRA investigation relied upon a section of DGO K-04 (Reporting and Investigating Force) that says "If any force investigation <i>indicates</i> misconduct..." The CPRA applied that standard to an allegation from a citizen. It is debatable whether a mere allegation of misconduct is equivalent to an investigation which produces actual evidence indicating misconduct had occurred. This may have been a misapplication of policy during the analysis.</p>	<p>Sustained: 1 Hispanic Sergeant</p> <p>Unfounded: 1 White Officer, 1 White Sergeant</p> <p>Not Sustained: 1 Asian, 1 Hispanic, 7 White Officers, 1 White Sergeant, 1 White Lieutenant</p>
12	No area of concern identified.	
13	Addendum by DLI Coordinator, overruling investigating sergeant's finding. Sets a new standard that's not listed in policy or training: "Knowledge that a complaint is upset with a member should reasonably trigger the above two questions which DGO M-3 states shall be asked." "Upset" is not a standard that's found in OPD training or policy. The two questions referred to are "clarifying questions", which are appropriate when a member is "unsure" as to whether someone wants to make a complaint. The subject was specifically asked about this and he stated he was "sure." During the subsequent investigation, the investigator spoke with the complainant again, who said she did want to file a complaint against the subject for tone and demeanor. The DLI coordinator used the later affirmation of wanting to file a complaint against the subject for not previously asking "clarifying questions" of the complainant in the initial interaction. There is no analysis or clarification as to whether the complainant had wanted to file a complaint against the subject during the	Sustained: 1 Black Sergeant

	initial interaction, or only later, once asked about it directly by the investigator. The DLI coordinator alleged the investigating sergeant as well as the Lieutenant and Captain all came to the "incorrect" conclusion and should receive negative notes in their files.	
14	No area of concern identified.	
15	Officers attempted to arrest DV suspect who refused to exit residence. Officers left the apartment complex without making the arrest. As they left suspect shouted at them for their names and badge numbers. The officers said they'd give them to him if he came down (a ruse to make the arrest). The suspect said never mind, he'd get their car numbers. Officers did not leave IBC information in front of the suspect's house. There is no training or policy for how or where officers should leave IBC information for someone who is refusing personal contact with them.	Sustained: 3 Hispanic, 1 Black Officers
16	No area of concern identified.	
17	The officer "should" have asked clarifying questions to the complainant to see if she wanted to speak with a supervisor or file a complaint. The complainant, while speaking with the subject officer, did not say or express to him that she wanted to file a complaint, however the allegations of misconduct that she was "inferring" required him to ask clarifying questions. Reliance in the analysis of interpreting the complainant's inferences and what the subject should have picked up on is subjective.	Sustained: 1 Black Officer
18	Only Officer 1 was sustained for FTARC. The analysis leading to the allegation against the sergeant being Unfounded doesn't include the fact that Officer 2 had indicated to the sergeant the complainant was making allegations. The analysis relies only on Officer 1 telling the sergeant that everything was ok and he didn't need to speak with the complainant. The sergeant didn't deconflict the differing statements between Officer 1 and 2 and a complaint was not accepted or referred.	Sustained: 1 Black Officer  Unfounded: 1 White Sergeant
19	A complaint was accepted by the sergeant on scene. As the officers drove the complainant (an arrestee) to jail, the complainant added additional allegations. The officers knew a complaint had already been accepted and did not re-summon or update the sergeant with additional allegations. There is no training or policy covering how many times, or under what circumstances additional allegations need to be advised to the sergeant when a complaint has already been opened. The analysis cited the 'unsure' / 'clarifying questions' section of DGO M-03, which was not applicable.	Sustained: 1 Hispanic, 1 White Officers

Out of the 19 Sustained cases in 2022, the qualitative assessment identified areas of concern, including inconsistency, discretion, or subjective judgement in 58% (11/19).

Within these 11 cases were the following Sustained allegations against subjects, by race.

Sustained Allegations Within Cases Containing Areas of Concern

Race of Sustained	Number of Allegations Sustained within 11 Cases with Areas of Concern	Total Allegations 2022	Rate of Sustained (with Analyses Containing Areas of Concern)
Asian	4	18	22%
Black	9	20	45%
Hispanic	10	32	31%
Other / Unknown	1	4	25%
White	8	38	21%

- 45% of all the 2022 FTARC allegations against Black subjects came to a Sustained finding within investigative reports that relied on inconsistent, subjective, or discretionary analysis. This next highest race group percentage was Hispanic, at 31%.

Qualitative analysis revealed areas of concern (inconsistency, discretion, subjective judgement) in 11 of the 19 sustained FTARC cases in 2022.

- Common themes from the cases containing areas of concern included:
  - Reliance on “unsure” and “clarifying questions” sections of DGO M-03, whether the subject was “sure” or otherwise.
  - Sergeants speaking with complainants but receiving different information from complainant than what the complainant had stated previously to officer(s); the officer(s) being held responsible for those differences.
  - Sergeants were not assessed as subjects or were found “other-than-sustained.”



## Appendix A

## Chi-Square Calculation for Sustained Rate of FTARC Allegations

White sworn members had a sustained rate of 26% while Black sworn members had a sustained rate of 60%, a statistically significant difference.

	Other than Sustained			Sustained			Chi-Square	<i>p</i>
	Observed	Expected		Observed	Expected		Value	
White	28	23.6	1.06	10	14.4	0.65	4.97	0.026
Black	8	12.4	2.02	12	7.6	1.23		

## Sustained Rate of FTARC Allegations

2022	Sustained Rate
Asian/Filipino	44% (8/18)
Black	60% (12/20)
Hispanic	43% (14/32)
Other/Unknown	25% (1/4)
White	26% (10/38)
Total	40% (45/112)

## FTARC As Stand-Alone Sustained Allegation

There were 19 cases in 2022 wherein at least one allegation of FTARC was found Sustained, covering 45 separate allegations.

## Cases Where Subjects Were Sustained for FTARC vs Other Allegations

Case #	FTARC Allegations Sustained	Other Allegations Sustained in the same Case	Cases Where at Least One Subject Was Black
1	4	4	✓
2	5	0	✓
3	3	0	✓
4	1	0	✓
5	5	1	✓
6	2	1	
7	1	2	
8	1	0	
9	5	2	
10	1	0	✓
11	2	0	
12	2	3	

13	1	1	✓
14	1	N/A (only allegation was for FTARC)	✓
15	4	4	✓
16	3	2	
17	1	0	✓
18	1	0	✓
19	2	0	
<b>TOTAL</b>	<b>45</b>	<b>20</b>	<b>11</b>

Within 9 of the 19 cases there were allegations for other MOR violations, but FTARC was the *only* allegation sustained. The nine cases accounted for 17 (38%) of the 45 Sustained allegations for year.

In 11 (58%) of the 19 cases at least one subject member was Black. A Black member was Sustained in 6 (67%) out of 9 of the cases where FTARC was the *only* allegation Sustained.

Put another way, 38% of the time wherein a subject of any race was Sustained for FTARC MOR violations they were other-than-sustained (exonerated, unfounded or not sustained) for the underlying conduct they may have unintentionally failed to accept or refer.

#### *Table 28 Case #2 Review*

In case #2, which resulted in a Sustained finding for one Black subject and three Hispanic subjects, and one White subject, FTARC was the only Sustained allegation, one for each. The other allegations under investigation included four allegations of improper search, seizure, or arrest, all of which were found Exonerated.

Officer 1 called their sergeant to the scene due to verbal allegations made by an arrestee. The sergeant interrupted the officer during the phone call, saying he was already in route. Once on scene the sergeant did not speak with Officer 1, who was guarding the arrestee. The Sergeant spoke with Officers 2 and 3. The Sergeant deferred investigative tactics and decisions to Officers 2 and 3 and asked no questions about complaints or force. The officers volunteered they had used low level force (Level 4 Type 32) to restrain the arrestee in handcuffs.

The arrestee's attitude evolved during the interaction and became compliant and friendly. Officer 1 later testified that he believed Officers 2 and 3 had updated the sergeant as to the initial allegation while the sergeant was on scene and later, as the arrestee's attitude changed, Officer 1 became sure the arrestee no longer wanted to make a complaint.

All officers were Sustained for FTARC for not informing the sergeant of the nature of the verbalized allegations at the early portion of the interaction. Officer 4 and 5, who were not directly involved in the calling of the sergeant or of meeting with the sergeant, but who were on scene and assisting, were deemed Sustained as well.

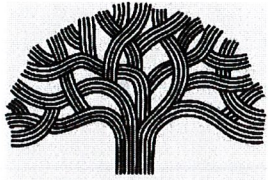
The investigation's analysis did not take into account that it was not Officer 1, 4 or 5's fault that Officers 2 and 3 failed to describe the allegations to the sergeant, nor does it allow for it to have been reasonable for those officers to have assumed Officers 2 and 3 would cover the relevant information with the sergeant.

The implication from the investigation was that, upon arrival on any scene where any allegation has been lodged, each officer is equally responsible for personally informing the sergeant of any perceived allegation, regardless of whether any individual officer who was likewise aware of the allegation, had already briefed the sergeant. Further, the analysis makes no assessment as to the sergeant's own responsibility to check with Officer 1, who called him to the scene for a reason.

In this case, Officer 4 was black, was on scene to assist Officer 1, 2 and 3, knew Officer 1 had called the sergeant to the scene, and knew Officers 2 and 3 had spoken with the sergeant. Officer 4 had an attenuated level of responsibility to ensure the sergeant was properly informed of the allegations made by the arrestee. This was not articulated or offered as mitigation in the analysis. The sergeant was white. His own culpability was not assessed as he was never a subject of the investigation but was rather labeled and interviewed as a witness. If the failure to accept or refer a complaint from the arrestee was one, it was a team failure, and the lack of opportunity to assess the sergeant's own involvement in the matter may be seen as a deficiency.

- The choice to label the sergeant as a witness and not assess their participation in the failure to accept or refer a complaint while on scene may be attributed to investigator's discretion. Yet, the same case was reviewed through multiple layers of chain of command, and the deficiency remained, thus diffusing responsibility for said deficiency across a number of personnel. This case serves as another example of the systemic problem of confusion, assumptions, and opportunities for discretion inherent in assessing FTARC allegations.

# EXHIBIT 2



CITY OF OAKLAND

# INTER OFFICE MEMORANDUM

**TO:** Office of Internal Accountability (OIA), Risk Analysis Unit (RAU)      **FROM:** Deputy Chief Clifford Wong  
Bureau of Risk Management (BRM)

**SUBJECT:** Supplemental Report Examining Failure to Accept or Refer Complaints      **DATE:** September 18, 2023

Chief of Police Approval

Date:

9/20/23

The purpose of this memorandum is to respond to the recently published Risk Analysis Unit’s Inspection of Failure to Accept or Refer a Complaint MOR Violations. The review produced several findings and four recommendations. The recommendations were intended to aid the Department with improving equity within findings and disciplinary outcomes. Below is the Department’s response to the Risk Analysis Unit’s recommendations.

### Finding #1

Many determinations of finding for FTARC require, by current policy, an assessment of whether the subject was “unsure” if someone wanted to make a complaint and therefore should have asked “clarifying questions.” This standard assigns the investigator the unenviable task of having to judge the subject’s certainty about a situation at the time it occurred, but through the lens of hindsight. This is an area of opinion and discretionary judgement, which may lead to biased outcomes.

### Recommendation #1

Section III.A.7 of Department General Order M-03 (“unsure” and clarifying questions”) should be revisited and addressed in order to limit the opportunity for judgement, discretion and bias to play as central a role as it has done in 2022.

### Department Response #1

The Department understands the finding and is proposing revisions to Department General Order M-03.

Current policy requires that employees ask two “clarifying questions” when the employee is “unsure” whether a person wishes to make a complaint.

- i. Do you want to speak with a supervisor?
- ii. Do you want to file a complaint?

An affirmative answer to either question elicits the same response by a member, which is to summon a supervisor to the scene. Yet, in 2022 officers were sustained for violations of the Manual of Rules for not asking *both* clarifying questions to every subject, regardless of how either question was answered. This was an inflexible standard prone to logical fallacies.

For example, a subject affirmed they wished to speak with a supervisor. The member summoned the supervisor. Under the 2022 policy, the member was then required to ask whether the subject wanted to file a complaint. Yet, the answer to the second question was largely irrelevant. An affirmative answer to the second question would yield the summoning of a supervisor, which was already occurring per the first question. A negative answer to the second question required no further action be taken by the member, and the supervisor was already summoned. In this scenario, there was no reason to ask the second question, yet a member would be considered Sustained for failing to ask it, regardless of its unproductivity.

The Department proposes the following changes to M-03: Section III.A.7, with the aim to reduce investigator discretion and improve equitable and consistent application of policy mandates.

7. *If a person expresses specific, articulable dissatisfaction with an aspect of police service to a member, but does not request to file a complaint or to speak with a supervisor, the member or employee shall:*
- a. *Not discourage or deter citizens from exercising their right to complain to the Department or the CPRA;*
  - b. *Ask the person if they would like to speak to a supervisor.*
  - c. *Provide the citizen with an OPD Informational Business Card and/or Complaint Form (TF-3208) with his/her name, serial number and CAD Incident Number;*
  - d. *Enter a CAD notation to the call;*
  - e. *Use the Radio Disposition Code of "IBC" (Informational Business Card); and*
  - f. *Call the Communications Section Supervisor with the date of the referral, incident number and brief description of the incident to be added to the Complaint Referral Log (TF-3367) within 24 hours of the referral.*

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### **Finding #2**

Eleven of the nineteen cases resulting in at least one of the 45 FTARC Sustained findings were sustained while relying on subjective argumentation, some of which included language not otherwise standardized via training or policy. Some investigations declared a subject "should have" comported themselves in a particular manner, perhaps not one prescribed by policy, but one which seemed reasonable in the investigator's estimation.

### **Recommendation #2**

The Department should consider quality control training for commanders reviewing IAD investigations or DLIs to ensure consistent quality, content, and lack of subjective argumentation unless specifically called for.

### **Department Response #2**

The Department, through the Training Section, will offer IAD investigation review standards and training for all Commanders (Lieutenants, Captains, Deputy Chiefs, Assistant Chief and Chief of Police) annually during at least one of the quarterly Command Retreat Seminars. The Training Section will develop the program over the course of the next few months and will be ready for deployment in the fourth quarter 2023. A similar training will also be developed for investigators.

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### **Finding #3**

There are inconsistent sustained rates for FTARC between those investigated as DLIs and those investigated as IAD investigations, a dynamic that is complicated by the role and actions of the DLI Coordinator Unit within the Internal Affairs Division.

### **Recommendation #3**

The Department should consider requiring the DLI Coordinator Unit show their work, documenting recommendations or changes to investigations emanating from the Unit in a transparent manner, whether via chron log or other means.

### **Department Response #3**

Pursuant to changes already underway in aforementioned policies responsive to the Clarence Dyer Cohen LLC report (Training Bulletin V-T.01 and IAD P&P 23-01) the Department will immediately institute the practice of the DLI Coordinators creating an accessible and transparent paper trail of its involvement in instigating substantive changes to findings during the production phase of internal affairs investigative work products. Per those policies, substantive changes (changes to findings, subject employees, or credibility assessments) instigated by the DLI Coordinators will have to be approved via the IAD Commander. After implementation of the policies, the Department will continually assess the need for additional requirements.

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### **Finding #4**

A single Sergeant of Police investigated 49% of all FTARC allegations in the Department in 2022 (55/112). Removing this sergeant's own internally generated allegations, the sergeant would have investigated 19% (21/112) of all 2022 FTARC allegations.

### **Recommendation #4**

The Department should consider the manner in which allegations of FTARC are added to investigations and explore a checks and balances approach to adding such allegations on any given case to any given subject.

### **Department Response #4**

The Department concurs with the recommendation. The revised policy requires the requestor of the change to acquire approval via their personal chain of command for *removing or changing* a MOR allegation but does not expressly require additional approval for adding an MOR violation. While there have been several drafts of Training Bulletin V-T.01, the version approved by the Police Commission and currently under review by the Unions (meet and confer) does not explicitly require approval for the *addition* of internally discovered allegations. This is a change the Department will address either before finalizing the policy or in a subsequent Special Order. The Department agrees that having an additional layer of review for adding self-discovered allegations will improve consistency.

At this time, the Department intends to add only a requirement for supervisory approval of added MORs that cannot be handled via an SNF. While FTARC allegations cannot be handled via a supervisory notes file (SNF) entry, there are many Class II MOR allegations that can be handled via SNF when internally discovered during the investigation.

Currently, investigators are required to document the allegation and explanation for the SNF, including a lack of any prior pattern, in the report of investigation which is reviewed by the chain of command. Should the chain of command or IAD have a concern with how the allegation was handled, they will address any concerns during the review process. However, because FTARC allegations cannot be handled via SNF, requiring supervisor approval to add MOR allegations will always apply to self-discovered FTARC allegations.

Thus, the Department through this policy change expects to achieve not only a more consistent application of its complaint policy and consistent treatment of FTARC misconduct allegations, but consistent treatment for other types of frequently self-discovered allegations as well.

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**Finding #5**

Differing recommended findings or recommended discipline by investigators, the chain of command, CPRA, and others are not currently tracked by the Department in an analyzable manner. This area is one wherein discussion, negotiation, and compromise may occur and one wherein judgement by a singular deciding figure (the Chief of Police) often holds as final. It is an important facet of any future analysis of internal affairs matters.


**Recommendation #5**

The Department should consider tracking differing recommended findings and differing recommended disciplines between investigators, the chain of command, CPRA, and others in an accessible and analyzable manner, perhaps via VISION.

**Department Response #5**

The Department will immediately require that differences between OPD investigators, chains of command, CPRA, or other outside investigative bodies, on recommended findings and recommendations for discipline be documented in the chronological log for each instance wherein said differences arise.

Respectfully,

  
\_\_\_\_\_  
Clifford Wong  
Deputy Chief of Police



# EXHIBIT 3



- This label indicates some conduct generally consistent with what the complainant alleged occurred, but that it was not *misconduct*.

Type C: High Expectations

- This label indicates the complainant desired some standard of police service or action which was outside the legal or policy limits of what the officer could provide. Thus, the complainant alleged *misconduct* against the officer for not doing what they wanted the officer to do.

Type D: Second-Order Facts

- This label indicates a two-phase assessment, usually of a statement made by the subject officer. The first phase is confirming whether the officer said anything remotely similar to what was being alleged. The second phase is then comparing the first phase against evidence, which would either confirm the officer's statement as correct, or condemn it as inaccurate. Example: An officer is alleged to have lied. First phase: Did the officer say the thing alleged to be a lie? Second phase: What facts or evidence exists to prove the officer's statement was untrue?

The Department recognizes and agrees with Dr. Monin's suggestion there is room for cases resulting in findings consistent with Type B, C, and D to be negotiable between "unfounded" and "exonerated," depending on the phrasing and scope of the investigative question.

All Internal Affairs investigations (Division Level Investigation (DLI) and Internal Affairs Investigations (IAD)), are processed through the Intake Section before assignment. Upon conclusion of the case, it is then reviewed through either the DLI Coordinator Unit or the IAD Investigations Section chain of command. Thus, for findings akin to Types B, C, and D, both the intake and chain of command reviewers can serve as quality control funnel points, ensuring investigative questions are phrased consistently, and final approvals rendered with an eye toward acknowledging *some* conduct occurred, but that it was appropriate and consistent with policy and law.

The Department will train all supervisors and IAD personnel pursuant to this more nuanced understanding of how to think about and structure assessments of conduct within the realm of administrative investigations, consistent with the October 2023 Training Bulletin on this topic (see Attachment B for reference.)

The Department's training will be conducted throughout November and December 2023 until all relevant personnel are suitably comfortable with the subject matter.

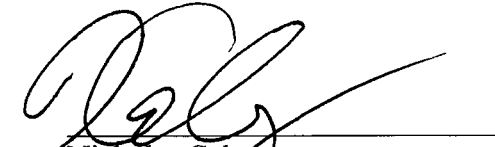
### III. Measures of Effectiveness

While the Department has, since 2018, drastically reduced the rate of Unfounded findings, it is reasonable to assume the updates herein will further shrink their footprint.

The Department's Internal Affairs Division will be responsible for annually assessing both the rate of the use of Unfounded findings against all other finding types as well as the appropriateness of the use of the Unfounded finding, via inspections of a sample of investigations wherein at least one of the findings was Unfounded.

The results of the inspection will be delivered in the first Quarterly IAD Information Bulletin of each calendar year for the next three years and as requested thereafter.

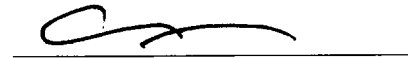
Prepared by,



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Nicholas Calonge  
Lieutenant of Police  
Office of Internal Accountability

Reviewed by,



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Anthony Tedesco  
Acting Deputy Chief of Police  
Bureau of Risk Management

# ATTACHMENT A

[Date]

[Name of Complainant]

[Address of Complainant]

**RE: IAD File Number [XX-XXXX]**

Dear [Name of Complainant]:

You initiated a complaint against the personnel or procedures of the Oakland Police Department (OPD). The employees of the Oakland Police Department are committed to the fair and equitable treatment of all residents and visitors to the City and we undertake robust investigations into allegations of misconduct, or failed policies and procedures, in our constant effort to evolve and serve our customers. We recognize that, even when an officer is professional and acting in line with policy, many interactions with police are unpleasant to citizens as these interactions, by necessity, involve a curtailing of citizens' autonomy, and can legitimately be experienced as questioning of their integrity, or an affront to their dignity. We hope future opportunities to serve your law enforcement needs result in a positive experience for you. The resolution to the complaint investigation is listed below.

An investigation was conducted into the circumstances surrounding your allegation(s) and investigative findings are listed here:

- 1. MOR Description – (*Template, remove italicized language before finalizing*)**
  - A. One sentence description of the Complainant's allegation.*
  - B. Result of the Investigation (Sustained, Not Sustained, Unfounded, or Exonerated).*
  - C. If applicable, whether any officers received discipline. SNFs may be referred to as "Counseled and Trained."*
  - D. If applicable, any department-wide training or recommended policy / procedure updates emanating from the investigation.*
  
- 2. Repeat Part 1 per allegation, as necessary.**

The Department thanks you once again for your concern and participation in this process. If you have any questions regarding this matter, please telephone me at (510) 238-3161 on any weekday between 9:00 AM – 5:00 PM.

You may have also filed a complaint with the Community Police Review Agency. To follow up on that investigation, please contact the CPRA at (510) 238-3159.

Sincerely,

[Name]

Lieutenant of Police  
Internal Affairs Division

Date: \_\_\_\_\_

## EXAMPLES OF MOR FINDINGS PARAGRAPHS

### Example 1:

**Performance of Duty: Care of Property** – The complainant alleged that \$800 cash was missing from his property after being placed under arrest. An investigation ensued, evaluating and analyzing evidence and, where applicable, subject and witness statements. The investigation did not disclose sufficient evidence to determine if the alleged conduct occurred. **The officer(s) were not sustained for misconduct in this matter.**

### Example 2:

**Use of Physical Force (Comparable to Level 2)** – The plaintiff alleged on June 1, 2020, police fired a direct impact munition at 14<sup>th</sup> St & Broadway. An investigation ensued, evaluating and analyzing evidence and, where applicable, subject and witness statements. The investigation disclosed sufficient evidence to determine that the alleged conduct occurred and was not in accordance with law or OPD rules, regulations, or policies. **An officer has been sustained for misconduct and has received a disciplinary recommendation of suspension.** The Department has redistributed Training Bulletin III-H Specialty Impact Munitions as a reminder of the Department's expectations and guidelines surrounding such uses of force.

## ATTACHMENT B



## INFORMATION BULLETIN

### OAKLAND POLICE DEPARTMENT

6 Dec 23

“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.”

### **How to Think About Unfounded Findings in Internal Investigations**

#### **Purpose**

This information bulletin is to standardize and clarify the structuring of investigative questions within administrative investigations to guide the investigator in examining the appropriateness of behavior that occurred rather than the absence of improper behavior.

The Department prefers investigations assess officers' conduct on scene and, when such conduct is deemed appropriate, to rely upon the Exonerated finding. Unfounded findings should only be used when the subject member performed no conduct related to the allegation. For example, (1) if an officer was not on the scene, (2) if an officer did not take part in the arrest at issue, (3) if an officer did not have any bodily contact with a subject/complainant, (4) if an officer did not have any verbal interaction with a subject/complainant, or (5) if an officer did not have any verbal interaction with any other person that was heard by or observed by a subject/complaint.

The first part of this bulletin cuts right to the heart of what the Department wants to see from investigative question phrasing. The second part of the bulletin discusses the background and genesis of how and why the Department wishes to see the investigative question phrasing become more standardized.

#### **I. Do This: Investigative Questions**

Investigators should frame their questions as assessments of whether the conduct or actions performed by the subject matter align with policy and/or the law. Investigators should inquire whether what the member did was lawful and appropriate rather than solely focusing on whether it was inappropriate. Structuring investigative questions should facilitate a more appropriate selection of Exonerated versus Unfounded outcomes.

Some Examples:

#### **Force**

Was any force used?

Was the force used upon (Insert Name) compliant with legal and policy requirements?

- Yes: Exonerated.
- No: Sustained.
- Cannot Determine: Not Sustained.
- The evidence reflected that there was no force used by the officer: Unfounded.

#### **Arrest**

Was an arrest made?

Was the arrest of (Insert Name) compliant with legal and policy requirements?

- Yes: Exonerated.
- No: Sustained.
- Cannot Determine: Not Sustained.
- The evidence reflected that the officer was not involved in the arrest: Unfounded.

### **Conduct Towards Others – Demeanor**

Was there an interaction between the complainant and the member?

Was the interaction between the complainant and the member compliant with policy requirements for appropriate demeanor?

- Yes: Exonerated.
- No: Sustained.
- Cannot Determine: Not Sustained.
- The evidence reflected that the member had no interaction with the complainant: Unfounded.

### **Performance of Duty**

Was the member on the scene?

Did the member's actions comport with the policy and legal requirements of the department?

- Yes: Exonerated.
- No: Sustained.
- Cannot Determine: Not Sustained.
- The evidence reflected that the member had no involvement in the incident: Unfounded.

### **Truthfulness**

Did the member provide a statement?

Was the statement made by (Insert Name) compliant with policy requirements to always be truthful?

- Yes: Exonerated.
- No: Sustained.
- Cannot Determine: Not Sustained.
- The evidence reflected that the member had no involvement in the incident and did not provide a statement: Unfounded.

## **II. Why The Department Wants You to Do the Above: The Background**

In 2023, in response to concerns over whether the Oakland Police Department appropriately utilized the finding of Unfounded when resolving administrative investigations, the Department requested the assistance of its Stanford University partners to analyze the matter and provide some recommendations. This information bulletin addresses an area of improvement revealed in their study. Namely, that the structure of the question posed by an investigator is deeply important to the subsequent findings and further, that the Department needed more offering on how to structure the questions.

An investigator may think about this allegation in two different ways: conduct that occurred and needs to be assessed for policy and legal compliance; or misconduct that assumes impropriety and needs to be assessed as a violation of a rule or regulation.

Assessing *conduct* requires acknowledging some interaction occurred and determining if the interaction was appropriate.



Assessing *misconduct* is less clear. It assumes the actions taken by the member were inherently incorrect. For example, the officer made an *illegal arrest*, or the member used *excessive force*. One then has to determine if the *misconduct* ever occurred. In phrasing the question as assessing *misconduct*, the investigator may inadvertently eliminate Exonerated as an option.

For example, let's assume the investigator structured their investigative question as such:

“Did the member perform an illegal arrest?”

Let's further assume the investigator determined the arrest was, in fact, legal. They've now left themselves with the below quandary between two findings.

1. **Unfounded:** This finding would indicate an *illegal arrest* did not occur. Yet, an *arrest* did occur. Using Unfounded should be reserved for those instances when there's proof that nothing remotely close to the allegation happened. In this case, the *arrest* is related to the allegation, so Unfounded cannot be the correct choice.
2. **Exonerated:** This finding would indicate the *illegal arrest* was policy and law-compliant. The Department does not condone *illegal arrests*. Exonerated is, therefore confusing and not the right choice for a finding either.

As you can see, the phrasing of the investigative question can inadvertently change the parameters for which findings can be used. **The structure of the question matters.** Thus, the following section sets some guidelines for how the Department structures an investigative question.

### ***How to Think About It***

The Department prefers investigators follow these steps when phrasing an investigative question. First, break down the allegation being assessed into two steps:

1. Assess whether the conduct occurred.  
Examples:
  - i. Was force used?
  - ii. Was an arrest made?
  - iii. Did the member speak with the complainant?

If the investigator answers “No” to a Step 1 question, then the finding may reasonably be Unfounded, depending on the details. Example: If no force was used, then no conduct occurred, and there is no need to assess the conduct for policy or legal compliance.

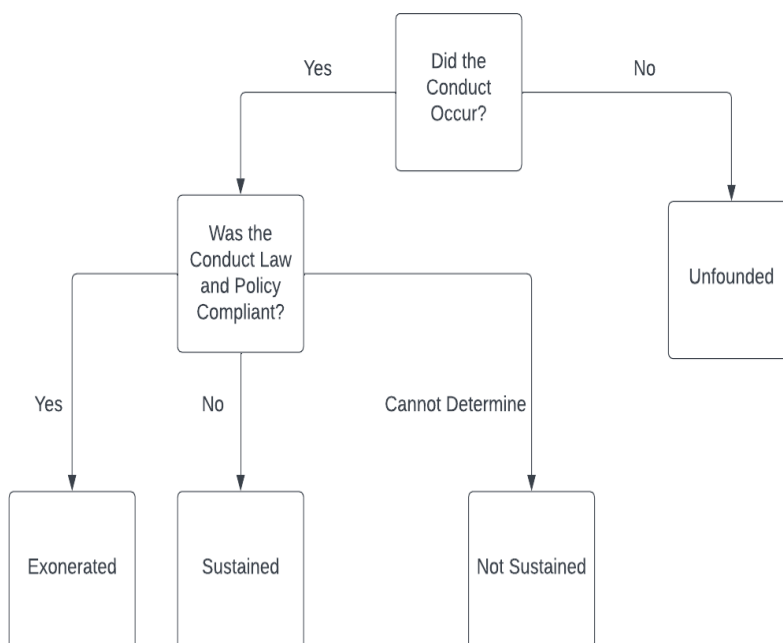
If the investigator answers “Yes” to a Step 1 question, then the investigator proceeds to Step 2. Once an investigator has proceeded to Step 2, Unfounded is no longer a viable option:

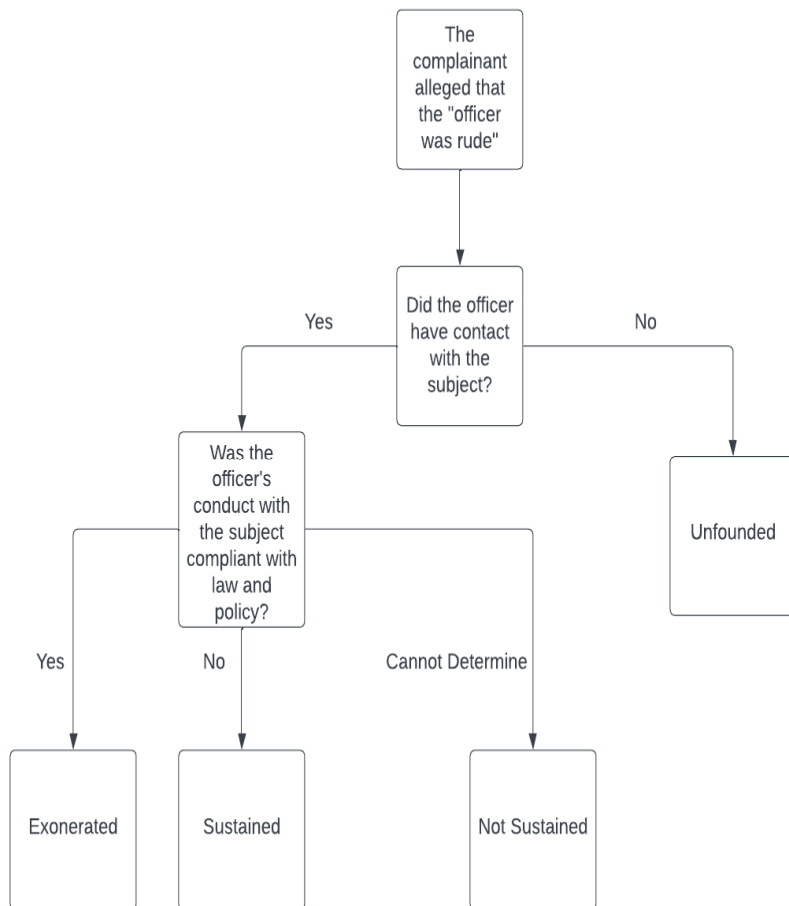
2. Assess whether the conduct was law and policy-compliant.  
Examples:
  - i. Was the force performed consistent with DGO K-03?
  - ii. Was the arrest made relying upon probable cause?
  - iii. Was the manner in which the member spoke with the complainant professional?

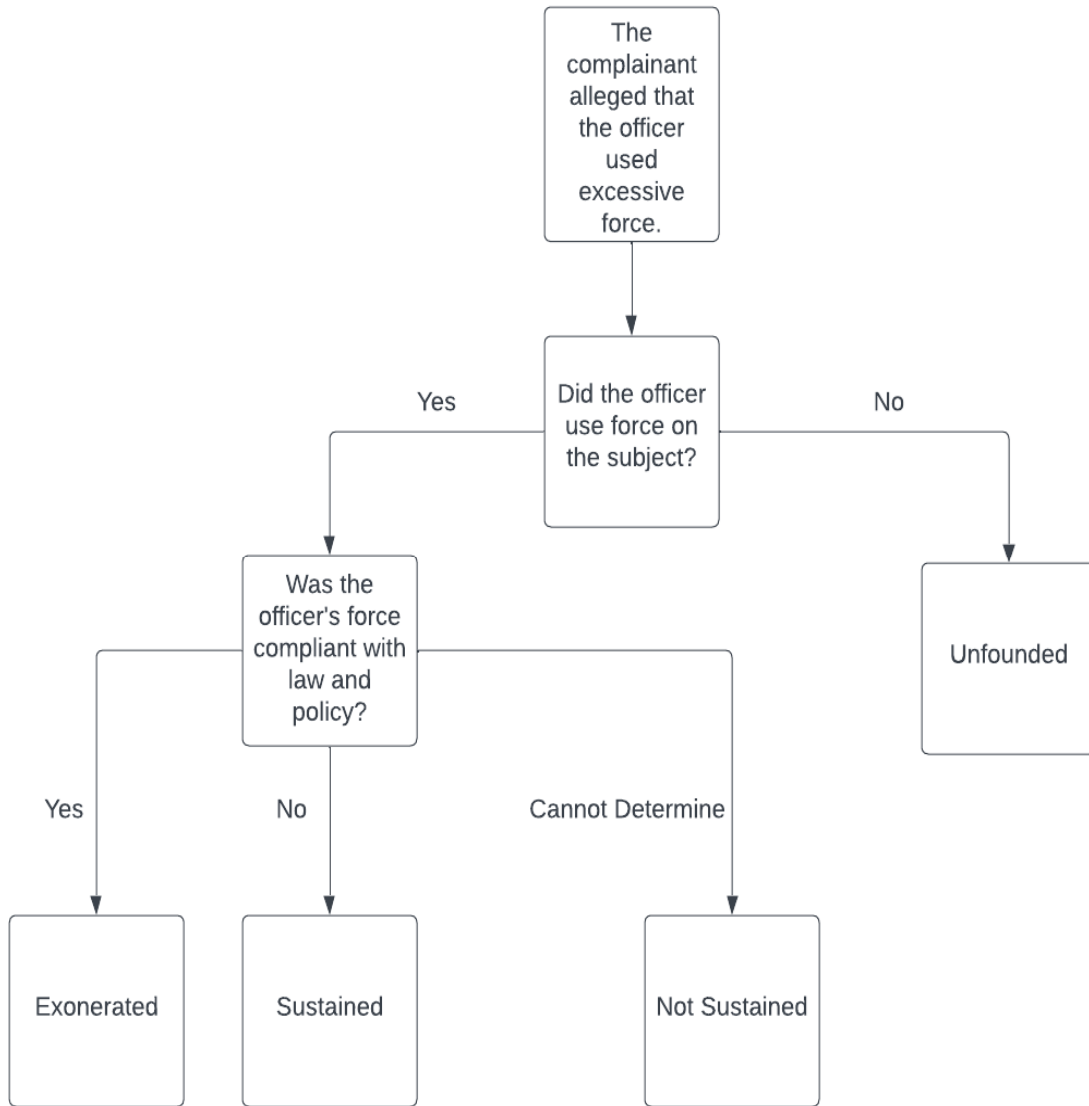
The answer to Step 2 will clearly indicate how to apply a finding to the case.

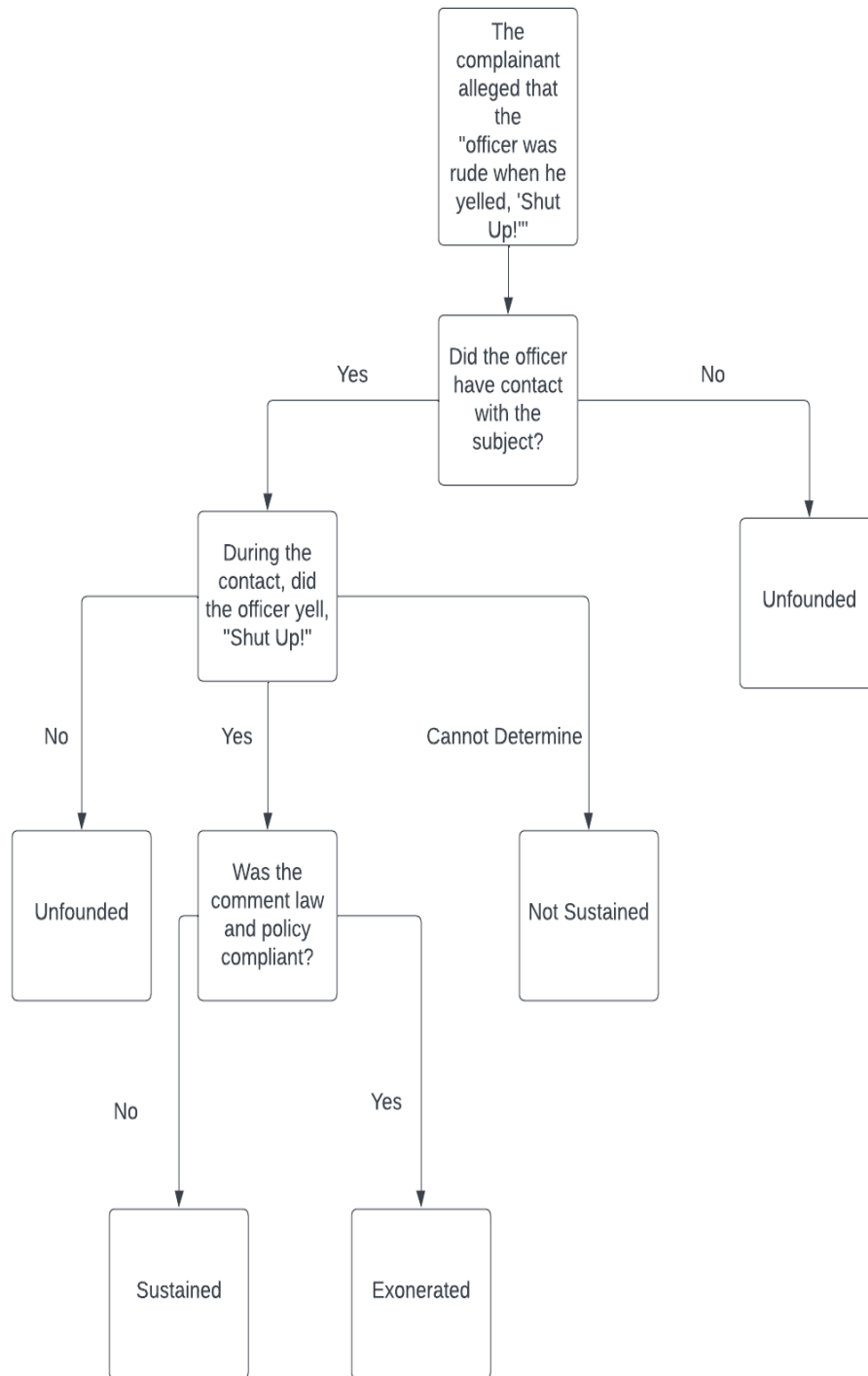
Chart 1: Two-Step Assessment to Reach a Finding

<i>Step 1</i>		
<b>Some Actions Taken / Officer was Involved / Some Conduct Occurred or Should have Occurred?</b>		
Yes		No
<i>Step 2</i>		
<b>Policy and Law Compliant?</b>		
Yes	No	Unable to Determine
Exonerated	Sustained	Not Sustained









# EXHIBIT 4



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**December 13, 2023**

To: Oakland Police Commission  
[VIA EMAIL ONLY]

Re: Annual Audit Work Plan for Fiscal Year 2024 | Supplemental Information

**Honorable Members of the Oakland Police Commission,**

Upon the release of its [Annual Audit Work Plan for Fiscal Year 2024](#), the Office of the Inspector General (OIG) would like to share supplemental information regarding its role as an instrument of Oakland's civilian oversight structure. Since its inception, in 2022, the OIG has assiduously worked to stabilize and enhance the city's civilian oversight system. In the past two years, the OIG led its police accountability work via [public reports and memos](#), like the [Compliance Evaluation of Departmental General Order B-08: Field Training Program](#), and its [2022-2023 Annual Report](#), where the office's findings and policy recommendations are listed.

Per, Oakland City Charter Section 604(f)5 the responsibility of the OIG is outlined as follows:

*The OIG shall audit the Department's compliance with the fifty-two (52) tasks described in the Settlement Agreement in United States District Court Case number C00-4599, Dephine Allen, et al., v City of Oakland, et al., and make recommendations to the Department, the Commission and City Council based on its audit(s), even after the Settlement Agreement expires. The OIG may review legal claims, lawsuits, settlements, complaints, and investigations, by, against involving the Department and the Agency, to ensure that all allegations of police officer misconduct are thoroughly investigated, and to identify any systemic issues regarding Department and Agency practices or policies.*

To complete the above-mentioned requirements, while informing the Oakland Police Commission's approach to providing effective civilian oversight, the OIG will continue and expand on the following strategies:

- Conduct required and proactive audits, evaluations, reviews, and inspections
  - Current and upcoming projects are outlined in the Annual Audit Work Plan
  - All projects align with OIG's 2024-2027 Strategic Plan
- Disclose all public reports and synopses in a transparent manner
- Utilize the office's recently installed TeamMate+ audit software and TeamMate Analytics to maximize efficiency and innovation
- Maintain a presence at relevant meetings to observe procedures, collect data and gather information that may inform the OIG's work, including:



- Internal Affairs Division Case Review
- Executive Force and Force Review Boards
- Independent Monitoring Site Visits
- OPD Risk Management Meetings
- Case Management Conferences
- City Council and Public Safety Committee Meetings
- Work collaboratively with stakeholders (community members, non-profits, elected and appointed officials, civilian oversight practitioners, etc.) to optimize project impact and community involvement
- Meet monthly with the Deputy Chief of the Bureau of Risk Management
- Schedule monthly meetings with the Police Chief to streamline communication

As OPD moves through its sustainability period, the OIG is committed to continued conversations with the Police Commission about its audits of police practices and procedures in Oakland. Via public reports and memos, the OIG hopes to deliver to the Police Commission sound findings and recommendations to inform their decisions.

While the OIG is only one component of the city's police accountability apparatus, we are committed to providing effective and efficient civilian oversight on behalf of every Oaklander. The enclosed Annual Audit Work Plan serves as a list of the tasks at hand. I look forward to the Commission's support of the OIG, as the office works to complete these projects with limited resources. Should you have any questions, please send me an email at [mphillips@oaklandca.gov](mailto:mphillips@oaklandca.gov).

Sincerely,

**Inspector General Michelle N. Phillips**  
City of Oakland, Office of the Inspector General



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# Office of the Inspector General

## Annual Audit Work Plan

Fiscal Year 2024 | December 11, 2023

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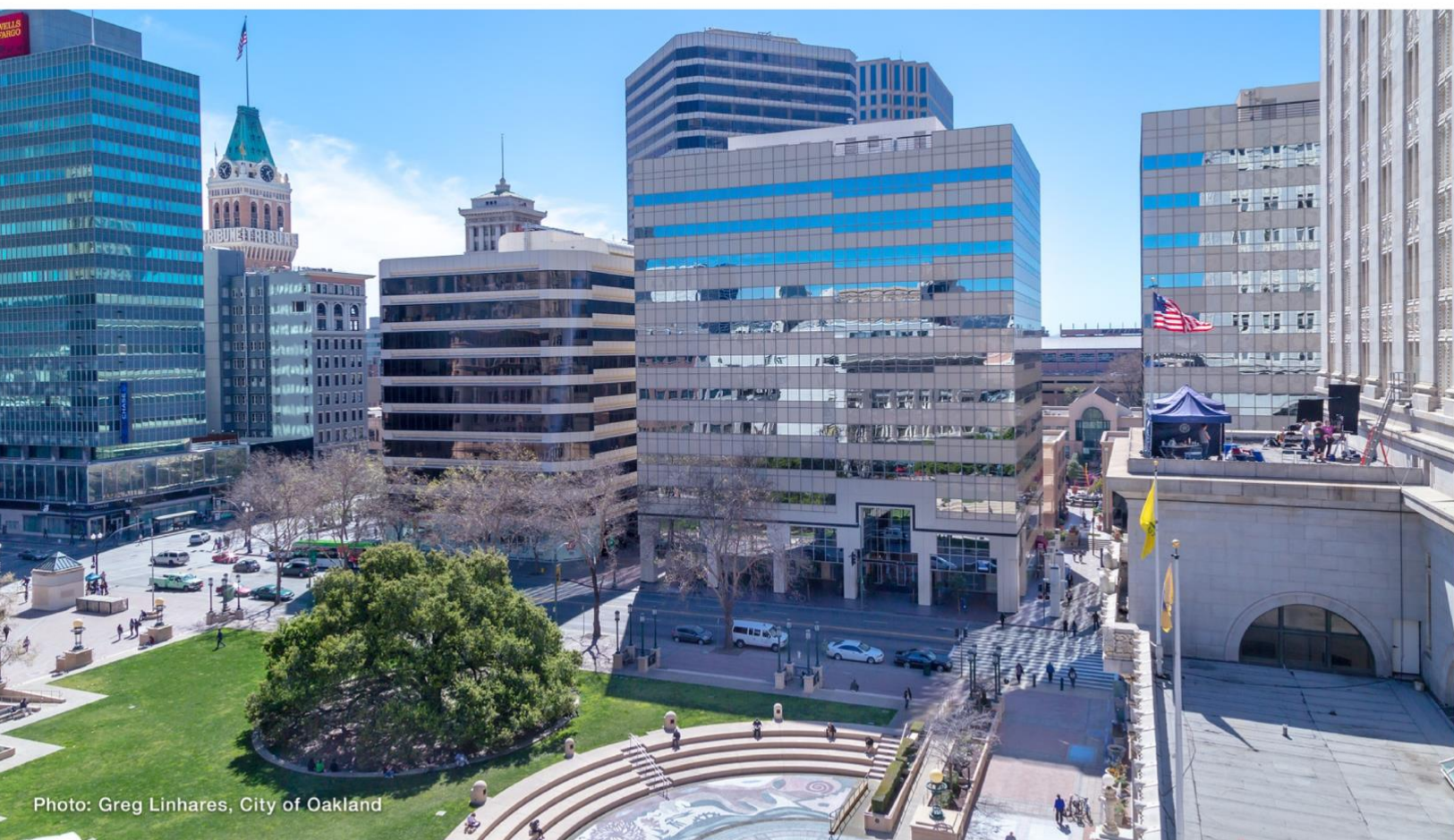


Photo: Greg Linhares, City of Oakland



**CITY OF OAKLAND**  
**OFFICE OF THE INSPECTOR GENERAL**

250 Frank H. Ogawa Plaza • Oakland, CA 94612



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**Dear Oaklanders,**

It brings me great joy to share with you the [Office of the Inspector General](#)'s (OIG) Annual Audit Work Plan for Fiscal Year 2024. As a department still in its infancy, we are proud to have established a civilian oversight agency that community members can trust and work daily to sustain our growing momentum. With only two years under our belt, we have learned greatly from the feedback of residents, community partners, elected and appointed officials, and fellow oversight practitioners. From this qualitative data, we have derived our Annual Audit Work Plan, which will serve as a roadmap for the projects we plan to accomplish over the fiscal year.

With 81% of Oakland voters approving [Measure S1](#), in 2020, the OIG was established to strengthen local police reform efforts. This overwhelming community support was engrained in 2020's national conversation around police practices and standards, following the tragic murder of George Floyd. Oakland itself has a rich history of police accountability, as the birthplace of the Black Panther Party, the location where Oscar Grant was killed by a Bay Area Rapid Transit Police Officer, and headquarters to one of the longest federally monitored law enforcement agencies, in the nation.

Stemming from the ruling of [Delphine Allen, et al. v. City of Oakland](#), more commonly known as the "Riders" case, the Oakland Police Department (OPD) has been under federal oversight for over 20 years. This ruling was a direct response to community members' complaints of mistreatment and civil rights violations at the hands of six veteran officers. Consequently, the corresponding and ongoing [Negotiated Settlement Agreement](#) (NSA) provided OPD fifty-two (52) tasks to address its policies, practices, and procedures, as well as discontinue what the court described in April 2023 as a "cultural rot."

As the auditing arm of Oakland's civilian oversight apparatus, which also includes the [Oakland Police Commission](#) and [Community Police Review Agency](#), it is our responsibility to oversee and make recommendations that optimize OPD's compliance with the NSA, departmental policies, and the law. Within the enclosed Audit Work Plan, you will find that the OIG aims to deliver on this mandate by conducting requested and proactive audits, evaluations, inspections, and policy reviews. Additionally, to enhance the quality of our work products, we will continue to observe relevant meetings for additional insight, highlight systemic social observations from the community, as well as utilize data-backed studies and reports. Through this multi-pronged and community-centered approach, I am confident that the OIG can and will help Oakland hold its police officers accountable.

Sincerely,

**Inspector General Michelle N. Phillips**  
City of Oakland, Office of the Inspector General

## I | Mission and Vision

The Office of the Inspector General (OIG) is an independent, non-partisan oversight agency that increases community trust and ensures accountability in the Oakland Police Department (OPD). In its administration of duties, the OIG works to implement a fair, thorough, and autonomous system of civilian oversight of law enforcement. The OIG does this by conducting independent and objective audits, evaluations, inspections, and reviews of the OPD and the Community Police Review Agency (CPRA). These methods promote constitutional, community-based policing, as well as a transparent, accessible, and fair system for police accountability. The office has welcomed community and agency engagement, to assist in identifying long-term, and systemic reform opportunities. The OIG also plans to establish an interactive dashboard that will promptly share relevant data and information with members of the public. This technology will optimize police services delivered to all the City of Oakland neighborhoods.

## II | The Office of the Inspector General's Work

The OIG's primary functions are to conduct performance audits, evaluations, inspections, and reviews; provide independent and objective analysis to the public; and make recommendations to the action holders including those responsible for governance and oversight. In some cases, the OIG may also review legal claims, lawsuits, settlements, complaints, and investigations by, against, or involving OPD and CPRA. This effort ensures allegations of officer misconduct are thoroughly investigated and provides an opportunity to identify systemic issues within OPD or CPRA's practices and policies. The OIG seeks to not only hold OPD accountable but to have community impact and public trust.

The OIG conducts its audits in compliance with the [Government Auditing Standards](#) set forth by the Government Accountability Office under the U.S. Comptroller General; as well as its evaluations, inspections, and reviews, under the [Principles and Standards for Offices of Inspector General](#) (Greenbook) set forth by the Association of Inspectors General.

In addition to audits, evaluations, inspections, and reviews, the OIG completes the following:

- **Annual Reports:** Per the Municipal Code, the OIG must prepare and issue an annual report that summarizes the OIG's activities and work performed during the Fiscal Year (FY) 2024.
- **Compliance and Monitoring:** The OIG periodically follows up on recommendations made to OPD, CPRA, and the Oakland Police Commission.
- **Special Projects:** The OIG may conduct audits, reviews, evaluations, inspections, and other projects under its purview, as requested by the Police Commission and City Council.

### III | Strategic Priorities

The OIG's authority, duties, and responsibilities are outlined in Section 604 of the Oakland City Charter and Chapter 2.45 of the Oakland Municipal Code. The OIG shall audit OPD's compliance with the fifty-two (52) tasks described in the Negotiated Settlement Agreement (NSA) *Delphine Allen, et al., v. City of Oakland, et al.*, case number COO-4599, and make recommendations to OPD, the Police Commission, and City Council, even after the NSA expires.

The purpose of the OIG's strategic priorities is to articulate long-term goals, derived from the office's mission, vision, operations, and community stakeholders. The strategic priorities encompass the OIG values and goals, which include, but are not limited to the following:

Values	Goals
Prudence	Sustainable Relationships
Integrity	Excellence
Impartiality	Transparency
Community	Innovation

Additionally, the OIG's strategic priorities are informed by a combination of jurisdictional requirements (outlined in the City Charter, Municipal Code, NSA), shareholder feedback, members of the public, as well as institutional knowledge of OPD's Departmental General Orders (DGOs), patterns and practices. The OIG identified three (3) strategic priorities:

1. Acquire a baseline of OPD staffing and resources to optimize their patrol, investigative, and administrative functions.
2. Sustain compliance of inactive Internal Affairs Division (IAD) related NSA tasks.
3. Assist with upholding Oakland residents' civil rights and civil liberties, as outlined in the Constitution, when interacting with OPD.

## IV | Projects

The proposed projects for FY 2024, were determined by the OIG's multisource observations, research, and analysis. As the environment of local policing shifts over time, the OIG may prioritize other projects not listed in this document. If circumstances (staff capacity, internal/external prioritization, etc.) change, this audit work plan may be amended to include, remove, delay, or move up corresponding projects.

In August 2023, the OIG surveyed community members' feedback on OIG's potential project priorities for FY 2024.

### **OPD Resourcing and Service Impact**

#### **OPD Compliance Review of Vehicle Stops, Field Investigations, and Detentions (Task 34)**

Task 34 of the NSA requires OPD officers to include specific data/information within their reports on vehicle stops, field investigations, and detentions. Per the NSA, This information must also be stored in an accessible and searchable database for authorized personnel. The objective of this audit will be to evaluate OPD's compliance with the Task 34 requirements and its associated DGOs.

#### **Policy Review: DGO M-19 – Prohibitions Regarding Racial Profiling and Other Bias-Based Policing**

DGO M-19: *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*, Report Writing Manual Inserts R-2: *Completing the Stop Data Collection Form*, N-1: *Notice to Appear (Misdemeanor Citations)*, and N-2: *Notice to Appear (Traffic Citations)* all incorporate Task 34 requirements. Compliance with DGO M-19 is of paramount importance, as it intersects with several areas of OPD's service impact. Given its significance, the OIG plans to prioritize the review and analysis of DGO M-19, which hasn't been updated since 2004.

#### **Policy Review: DGO B-08 – Field Training Program**

DGO B-08: *Field Training Program* policy has not been updated, in its totality, since 2014. The OIG completed a compliance evaluation in September 2023, which identified some areas of concern that required additional review. With the field training program serving as new officers' first opportunity to witness the culture of OPD, this policy review was prioritized.

## **Transparency, Accuracy and Accountability in “Inactive” IAD-Related NSA Tasks**

The NSA outlines reforms that mandate that OPD must be in *sustained* compliance with the included 52 tasks and subtasks to be in full compliance with the NSA. The OIG reviewed Section III: Internal Affairs Division of the NSA and identified several tasks that were formerly deemed in compliance. Consequently, these tasks are no longer being monitored and are categorized as “inactive.” The OIG has elected to conduct an updated inspection on the following seven tasks, established under section III, to ensure continued compliance:

- 1. IAD Integrity Tests (Task 3)**
- 2. Complaint Control System for IAD (Task 4)**
- 3. Methods for Receiving Citizen Complaints (Task 7)**
- 4. Classification of Citizen Complaints (Task 8)**
- 5. Contact of Citizen Complainant (Task 9)**
- 6. Summary of Citizen Complaints Provided to OPD Personnel (Task 11)**
- 7. Documentation of Pitchess Responses (Task 13)**

## **Special Projects: City Council or Police Commission**

### **OPD Staffing Study and Resource Analysis (City Council)**

Via an Oakland City Council policy directive, the City Administrator, or their designee (OIG) was directed to conduct a **staffing study and resource analysis of OPD**. The study’s objectives would be to:

- a. Identify current resources.
- b. Determine the number of officers needed in a particular geographic area.
- c. Decide how staffing and operational resources should be allocated

Identifying OPD service impact through a call for service audit and resource allocation review is best when tied to a staffing study. To determine whether police are responding to calls for service efficiently, it is critical to establish a baseline of the number of available officers, target timeframes, and how to maximize alternative responses. The OIG will oversee this study from inception to completion, including its bid process, vendor deliverables, stakeholder updates, and public transparency.

## **Case Review of IAD Cases 21-0862 and 22-0858 (Police Commission)**

In July 2021, IAD conducted an internal misconduct investigation into a Sergeant's actions in case 21-0862. The disputed findings in that investigation, brought to light by the Sergeant's subsequent actions, resulted in an external investigation. Further discovery noted that the case involved and implicated, other officers, supervisors, and command staff, including the former Chief of Police. The external investigation resulted in several recommendations to change OPD policies, which the Court ordered OPD to implement. In July 2023, the Police Commission directed the OIG to review this external investigation, case 22-0858, for additional policy recommendations.

## **Case Review of IAD Cases 07-0538, 13-1062 and 16-0146 (Police Commission)**

For more than 15 years, Oakland's Bey family has filed complaints against OPD, and their corresponding civilian oversight agencies for alleged misconduct. Although those complaints have all been subsequently closed, the Bey family has continued to call for additional review or action. In November 2021, before the inaugural Inspector General took office, the Police Commission voted to direct the Inspector General to review the above listed closed IAD cases (also referred to as the Bey Matter) for potential policy recommendations. The purpose of this review is to identify lessons learned, and provide recommendations for clear, sound OPD policies that address certain community concerns.



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# OIG's Annual Audit Work Plan Fiscal Year 2024

Learn more about the office's current and upcoming projects:

## OPD Staffing Study & Resource Analysis

The City Council requested the OIG oversee the study and analysis of OPD's current resources. This information will be critical to OIG's subsequent calls for service audit.



## Policy Review of DGO M-19

Last updated in 2004, the OIG is conducting a review of Departmental General Order M-19: Prohibitions Regarding Racial Profiling and Other Biased-Based Policing.



## IAD Cases 07-0538, 13-1062 & 16-0146 Review

The Police Commission directed the OIG to review cases related to several complaints against OPD & the Community Police Review Board.



## Policy Review of DGO B-08

As follow-up to its compliance evaluation, the OIG is doing a policy review of Departmental General Order B-08: Field Training Program.



## Inspection of Inactive IAD-Related NSA Tasks

The OIG has elected to inspect seven Internal Affairs Division related Negotiated Settlement Agreement Tasks that were previously deemed compliant.



## Compliance Review of Vehicle Stops, Detentions & Field Investigations

The OIG is completing a compliance review of Negotiated Settlement Agreement Task 34, which requires certain information within stop, detention and investigative reports.



## IAD Cases 21-0862 & 22-0858 Review

The Police Commission directed the OIG to review the policy recommendations derived from an external investigation of OPD misconduct.



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