



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: LeRonne L. Armstrong
Chief of Police, Oakland
Police Department

SUBJECT: OPD NSA Status Update

DATE: November 7, 2022

City Administrator Approval

Date: Nov 30, 2022

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report From Oakland Police Department (OPD) On OPD's Progress Toward Compliance With The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen, Et Al., V. City Of Oakland, Et Al.

EXECUTIVE SUMMARY

On or about June 1, 2022, the United States District Court for Northern California determined that the City of Oakland had achieved substantial compliance with the Negotiated Settlement Agreement (NSA). The City began its one-year sustainability period on June 1, 2022. The federally appointed Independent Monitor's [First NSA Sustainability Period Report](#), filed on October 3, 2022, confirmed the Oakland Police Department (Department) is sustaining compliance with 49 of the 51 NSA tasks.¹ The Monitor continued to assess Task 45, Consistency of Discipline Policy, in partial compliance, and deferred a current compliance assessment on Task 5, Internal Affairs Complaint Procedures pending the outcome of two pending investigations. The Court held a case management conference on October 13, 2022 (See **Attachment A: October 13, 2022 Court Hearing Transcript**). The City remains in the sustainability period at this time, though the Court noted that there are items that the Police Department must continue to work on between now and the next court hearing on January 10, 2023.

BACKGROUND

In 2003, the City of Oakland entered into the NSA with the plaintiffs to settle the *Allen v. City of Oakland* lawsuit (the "Riders" case). The NSA requires implementation of 51 tasks to promote police integrity and prevent unconstitutional policing. A court-appointed Monitor reviews and reports on compliance with each task and determines whether the task is "in compliance." On October 24, 2019, Council requested via the Rules and Legislation Committee a "Negotiated Settlement Agreement (NSA) Bi-Monthly Update." On January 14, 2020, OPD presented a report to the Public Safety Committee. OPD later released a "Bi-Monthly OPD NSA Status Update" memorandum dated February 8, 2021 to the City Council and Mayor which was

¹ The Monitor is affirmatively assessing eleven tasks during the sustainability period, although the City must continue to sustain compliance on all tasks.

published on the City's website.² At the May 11, 2021 Public Safety Committee, Council's request for a bi-monthly update *written report* was changed to a *verbal* bi-monthly update. At the July 22, 2021 Rules Committee, however, Council renewed its request for an informational written report to the Public Safety Committee on progress with the NSA. OPD's last informational report was presented to the Public Safety Committee on June 14, 2022.

ANALYSIS AND POLICY ALTERNATIVES

Contours of the One-Year Sustainability Period and Department Efforts to Ensure Sustainability

Per the Court's May 12, 2022 Order, the sustainability period is set to run from June 1, 2022 to May 31, 2023. Tasks 2, 5, 20, 24, 25, 26, 30, 31, 34, 41, and 45 remain actively monitored by the Monitor. During the sustainability period, the Monitor conducts quarterly site visits and issues quarterly reports. Prior to the sustainability period, the Monitor conducted monthly site visits and issued monthly reports. To ensure continued internal monitoring of 11 NSA tasks on a monthly basis, the Department implemented an internal compliance assessor program, comprised of commanders and managers throughout the Department. Each of the 11 tasks has a leader at the rank of Captain or above and two to three adjunct assessors. The assessors are responsible for monitoring compliance with their assigned task and reporting to the Executive Team. Since the assessor review began in June 2022, there has been over 100 use of force and internal affairs investigations along with other actively monitored task data, identified training issues in some and referred others for internal investigations, tracked personnel assignments, timelines for use of force and internal affairs cases, initiated standardization protocols within Executive Force Review Boards, and tracked the Personnel Assessment System unit's supervisory monitoring progress and timelines. The review teams are being administrated out of the Office of Internal Accountability and are designed to persist long after the official sustainability period closes. The efforts demonstrated herein reveal the Department's commitment to long-term sustainability.

The Department has published all policies identified by the court as critical in prior case management conferences, including policies about the use of social media and electronic devices (cell phones). The Department is also working with the Police Commission to revise the body-worn camera policy and anticipates this policy will be completed prior to the January 2023 case management conference.

Monitor's First Sustainability Period Report (Oct. 2022)

The Department remains in compliance with 49 of the 51 original NSA tasks. Since the last update to Council in June 2022, the Monitor conducted one site visit and published one report in accordance with the Court's May 12, 2022 Order. The May 2022 Order narrowed the focus of the Monitor from all 51 NSA related tasks to 11 tasks that will remain actively monitored through May 2023. The Department increased its internal review efforts of the 11 NSA tasks to ensure continued compliance and long-term sustainability.

² <https://www.oaklandca.gov/resources/info-memo>

The Monitor's First NSA Sustainability Period Report provided an assessment of the 11 tasks listed in the May Order. Nine of the 11 Tasks were found in full compliance. The two tasks that did not receive a full compliance assessment were Task 5 and Task 45.

Task 5 (Internal Affairs Complaint Procedures)

The Monitor deferred compliance on Task 5 due to concerns regarding two Internal Affairs investigations that were referred to an outside law firm and which remain under investigation. In 12 other Internal Affairs cases that were assessed, the Monitor did not disagree with any of the findings though in one case, and believed the Department failed to address additional allegations against other employees. Because the two investigations involve internal misconduct and remain pending at this time, the Department cannot discuss details of those cases. The Monitor and Court will review the investigations once they are completed and make a compliance assessment of Task 5 at that time.

Task 45 (Consistency of Discipline Policy)

The Monitor continued to find the Department in partial compliance with Task 45. The Monitor's prior report, the [*Eighty-First Report of the Independent Monitor*](#), filed on April 26, 2022, criticized the Department for (1) not conducting an employee perception survey, (2) not examining officer separations from the Department, (3) failing to make any recommendations that directly relate to possible impacts by race, and (4) failing to further inspect the disparity observed in 2019 DLIs. *Id.* at 30-31.

On September 21, 2022, the Department issued a report "Oakland Police Department Office of Internal Accountability Discipline Equity and Internal Procedural Justice Report: Collected Documents Reflecting the Department's Examination of Data and Information to Improve Equity in the Internal investigation and Discipline Process, Academy and Field Training Programs, and Officer Diversity."

This document is a collection of 5 separate reports that have been in the works for the past year. The reports covered individual topics related to Task 45 and internal equity in the Department, with particular focus on identifying and addressing racial disparity in internal investigations and discipline. The report addressed the areas of criticism noted by the Monitor in its *Eighty-First Report*. The Department's report included: (1) a further inspection of 2019 Division Level Investigations to further understand and address the racial disparity observed, (2) results from an employee survey on perceptions of the internal investigation and discipline process, (3) updated data on academy and field training demographics, (4) updated 2022 investigation outcome and discipline data, and (5) Department attrition and impact on diversity.

In its First NSA Sustainability Period Report, the Monitor raised concerns about the Department's issuance of the Discipline Equity report without first allowing the Monitor, plaintiffs' counsel, and others to review a draft, the limitations of the Department's analysis, and the lack of clarity in the Department's relationship with Stanford University researchers.

While the Monitoring Team agreed that the Department sustained compliance on all other tasks, it offered some critical feedback to the Department. For example, on Tasks 24 and 25 (use of force reporting and investigation), the Monitoring Team raised questions about three taser

deployments, all involving fleeing subjects. The Department was able to answer the questions and resolve concerns about one incident but ultimately the Department determined further investigation was necessary for the other two taser deployments. As a result, the Department referred the two taser use of force cases to the Internal Affairs Division (IAD). The taser deployment in one of the two referred cases was already under investigation by Community Police Review Agency (CPRA). The two IAD cases and parallel CPRA case remain pending. The Department acknowledges that it should be self-identifying the types of questions raised by the Monitoring Team in the two taser cases and seeking clarification or further investigation when appropriate without prompting from the Monitoring Team.

Case Management Conference (Oct. 13, 2022)

The Court held a case management conference on October 13, 2022. During the hearing, the Court reiterated the five areas of particular importance to the Court.

1. Reducing racial disparities in vehicle, pedestrian, and bicycle stops.
2. Implementing Vision and its associated dashboards for effective risk management.
3. Recruiting officers who reflect the diversity of the community.
4. Ensuring all uses of force and instances of potential misconduct are accurately reported and rigorously investigated within set time frames.
5. Ensure disciplinary decisions and process are fair and equitable.

The judge complimented the Department for appearing to have structures in place to sustain the progress it has achieved in the first three areas. There was, the Court noted, still work to be done, and it noted concern with two ongoing Internal Affairs investigations being handled by an outside law firm and specifically ordered the Department to ensure its cooperation with the outside investigating firm. The Court withheld further judgment until the cases are complete. As to Task 45, the judge expressed interest in learning how OPD will address apparent racial disparities in discipline, such as black officers being more likely to receive suspensions and less likely to receive counseling than their white counterparts. The judge also expressed interest in the progress of the updated Body Worn Camera policy, which Assistant Police Chief Allison stated was well along the path toward draft completion and had hopes of being completed prior to the next case management conference with the court.

Next Steps

The next Case Management Conference (virtual, same Zoom link) is scheduled for January 10, 2023. The Department has committed to preparing specific methodology for use in future reviews and analysis of internal investigation and discipline data, and will address recommendations emanating from the discipline equity report. This work will be done in collaboration with Stanford University researchers.

Community Safety

OPD's efforts to develop processes and procedures to address all NSA tasks support the citywide priority of community safety, as well as responsive, trustworthy government. These efforts support contemporary, procedurally just policing that promotes community trust and public safety.

FISCAL IMPACT

This report is for informational purposes only and does not have a direct fiscal impact or cost.

PUBLIC OUTREACH / INTEREST

No public outreach was necessary outside of standard Council noticing and publishing requirements.

COORDINATION

OPD regularly consults with the City Administrator's Office and the Office of the City Attorney on NSA matters and reports.

SUSTAINABLE OPPORTUNITIES

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

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

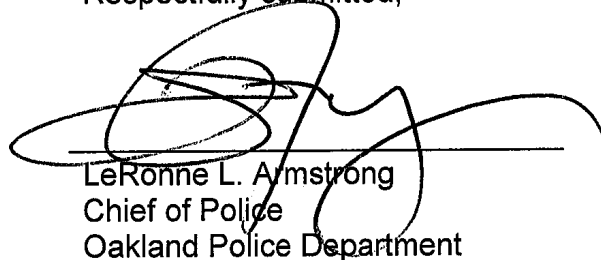
Race and Equity: In March 2019 OPD hired a consulting firm to conduct a review of potential disparities in the department's internal investigations of police misconduct and any resulting discipline. In response to the Police Discipline Disparity Study conducted by the consulting firm Hillard Heintze, OPD created a working group and Steering Committee on Racial Disparity in conjunction with the Internal Race & Equity Team (IRET) and Stanford researchers. All recommendations from the Hillard Heintze report have been implemented. The Department's Race & Equity Team continues to meet with the goal of ensuring the Department continues to build upon the progress made as a result of the recommendations. Every member of the Department will participate in Project Reset over the next year. OPD continues to partner with Stanford researchers and will produce an annual equity study to regularly monitor case outcomes and discipline for disparity.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends that the City Council receive an Informational Report from Oakland Police Department (OPD) on OPD's progress toward compliance with the NSA in the case of Delphine Allen, Et Al.

For questions regarding this report, please contact Deputy Chief Clifford Wong, Bureau of Risk Management, at cwong@oaklandca.gov.

Respectfully submitted,



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Attachments (1)

A: October 13, 2022 Court Hearing Transcript