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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19

20 DELPHINE ALLEN, et al.) Case No. 00-cv-04599 WHO
21)
22 Plaintiffs,) **JOINT CASE MANAGEMENT**
23) **STATEMENT**
24 v.)
25 CITY OF OAKLAND, et al.,) Date: April 11, 2023
26) Time: 3:30 p.m.
27) Courtroom 2, 17th Floor
28) Hon. William H. Orrick
29)
30)
31)
32)

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TABLE OF CONTENTS

1

2 **PARTIES’ JOINT STATEMENT**..... 1

3 **PLAINTIFFS’ STATEMENT**..... 5

4 PLAINTIFFS’ CURRENT POSITION 5

5 I. TASK 5 (COMPLAINT PROCEDURES FOR IAD) 6

6 II. TASK 45 (CONSISTENCY OF DISCIPLINE POLICY)..... 12

7 CONCLUSION..... 17

8 **CITY’S STATEMENT**..... 18

9 OVERVIEW 18

10 I. INTERNAL AFFAIRS COMPLAINT PROCEDURES (TASK 5)..... 18

11 A. The Department is Already Employing Practices to Prevent the Deficiencies

12 Identified by the Outside Investigator and to Strengthen Internal

13 Investigations in the Immediate Term..... 19

14 B. Mandating Practices in Policy Will Provide Long-Term Sustainability of

15 Protections and Improvements..... 23

16 1. The Department’s Two Proposed Alternative Recommendations..... 24

17 II. CONSISTENCY OF DISCIPLINE POLICY (TASK 45) 29

18 II. INTERNAL AFFAIRS TIMELINES (TASK 2)..... 33

19 III. THE DEPARTMENT’S MAINTAINS AN EFFECTIVE RISK MANAGEMENT

20 PROGRAM (TASKS 34 & 41)..... 33

21 A. The Department Continues to Meaningfully Use Stop Data as Part of its Risk

22 Management Process..... 34

23 V. OFFICER RECRUITING, ATTRITION, DEPARTMENT

24 DIVERSITY 36

25 VI. OFFICERS USE REASONABLE FORCE AND DEPARTMENT FORCE

26 REVIEW IS DEPENDABLE..... 42

27 A. Force and Force Investigations (TASKS 24 & 25)..... 42

28 B. Force Boards (TASKS 26 & 30)..... 44

CONCLUSION 45

OAKLAND POLICE COMMISSION’S STATEMENT 46

THE OPOA’S STATEMENT..... 50

1
2
3
4
5
6
7
8
9
10
11
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14
15
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PARTIES’ JOINT STATEMENT

At the last hearing, the Court asked the parties to “engage in a discussion of how to move forward in a way that finally achieves compliance.” Plaintiffs’ counsel and the Mayor, City Administrator, City Attorney, Police Department, Police Commission Chair, Inspector General, and the Community Police Review Agency (CPRA) Director have been meeting together to discuss how to best implement the outside investigator’s recommendations as well as other ways to strengthen the Department’s internal investigation processes. A member of the Monitoring Team has also attended those meetings. During additional party meetings involving leaders from each of these City entities and plaintiffs’ counsel, the parties have shared perspectives on what we need to ensure the Department sustains substantial compliance with the NSA absent further Court oversight.

The parties have reached some consensus about how to move forward in a way that finally achieves compliance and ensure that the City can sustain substantial compliance absent Court oversight.

To the extent the parties do not concur, each party sets forth its further position in the party’s statement to the Court.

The parties agree that the Department has sustained compliance on 49 of 51 NSA tasks. The parties agree, however, that the Department must strengthen its internal investigation processes to remedy the deficiencies identified in the outside investigator’s January 2023 report. The Department must also ensure that those processes result in fair and consistent discipline.

The Department is creating and revising its policies and practices to implement the outside investigator’s recommendations or better alternatives, though the changes extend beyond merely responding to the recommendations. The parties agree that the following seven new or revised policies must be in effect before the City can demonstrate the Department’s ability to sustain substantial compliance with the NSA absent Court oversight: Department General Order

1 (DGO) D-22, Personal Relationships (new); Criminal Investigation Division (CID)
2 Recusal Process Policy (revised); DGO M-04.1, Criminal Investigation of Members
3 (revised); IAD Policy and Procedure Manual (revised); IAD Training Bulletin VT.01
4 (revised); CID Policy and Procedure Manual on Training (revised); and an
5 Information Bulletin on psychological fitness for duty evaluations (new).

6 Although the parties have made progress concurring on the content of new
7 policy and revisions to existing policy, there remains work to be completed. The
8 Department has sent drafts of six of the seven policies and associated tracking
9 forms (TF) and report templates to the Monitoring Team and plaintiffs' counsel for
10 feedback: DGO D-22, Personal Relationships; CID Recusal Policy; Internal Affairs
11 Division (IAD) Policy and Procedure Manual; and IAD Training Bulletin VT.01,
12 Internal Investigations Procedures. The Department has received and incorporated
13 Monitoring Team feedback on DGO-22, Personal Relationships; and CID Recusal
14 Process Policy.

15 After the Department incorporates feedback from the Monitoring Team and
16 plaintiffs' counsel, it will send the policies to the Police Commission. Pursuant to
17 charter section 604(b)(5), the Commission has 120 days to review, approve, or revise
18 these policies. The City's labor unions must also be given reasonable time to meet
19 and confer regarding new or revised Department General Orders. Once a final
20 policy has been reviewed and approved by all appropriate City entities, the
21 Department's practice is to send it back to the Monitoring Team to review any
22 substantive changes. Although it is rare, in one instance (i.e., body-worn camera
23 policy) that additional layer of review resulted in additional changes suggested by
24 the Monitoring Team that required the policy to be resent to and reapproved by the
25 Police Commission which delayed policy implementation.

26 While the parties await publication of the policies, the Department will begin
27 to implement certain practices consistent with these policies that are key to
28 correcting the deficiencies identified in the outside investigator's report.

1 First, the Chief of Police must read all internal investigation reports
2 involving a recommended finding of sustained for any allegation that could result in
3 termination (i.e., has “T” as one of the possible consequence on the Discipline
4 Matrix; this includes Manual of Rules violations for obedience to laws felony/serious
5 misdemeanor and DUIs, and use of force), or a recommended finding of sustained
6 for obedience to laws misdemeanor/infraction. Second, prior to case presentations to
7 the Chief, the deputy chief in an investigator’s chain of command must review cases
8 with recommended sustained findings for allegations that could result in
9 termination, and allegations of violations of obedience to laws
10 misdemeanor/infraction. Third, the Bureau of Risk Management Deputy Chief must
11 review cases involving not sustained recommended findings for allegations that
12 could result in termination if sustained, and not sustained allegations of violations
13 of obedience to laws misdemeanor/infraction. Fourth, the Department has added an
14 executive summary to investigators’ presentation template that notes whether the
15 case involves any of the following: subject removed or downgraded to witness,
16 deletions or changes in MOR violation allegations, or an addendum of disagreement
17 by any reviewer on the recommended findings. Fifth, any internal investigation
18 involving an allegation that was the subject of a District Attorney or Public
19 Defender misconduct referral must be reviewed by the Bureau of Risk Management
20 Deputy Chief and Chief of Police, regardless of the recommended findings.

21 In addition to the Department’s work directly impacting internal
22 investigations on the front end, the Department must also engage in additional
23 work to evaluate the results of its investigations, including investigation outcomes
24 and discipline. While the Department’s creation and use of a written methodology to
25 evaluate the consistency of discipline is significant, the deficiencies identified in the
26 January 2023 report show that inconsistencies may not always be reflected in the
27 data. The Department must, therefore, engage not only in a statistical analysis of
28 the data but in a qualitative analysis when appropriate. For example, the

1 Department observed in 2022 (and in previous years) that a greater number of
2 Black officers (in comparison to white officers) received discipline in the form of
3 written reprimand rather than counseling and training. While not a statistically
4 significant difference, it is an observable, apparent difference. In response, the
5 Department began an additional qualitative investigation of these cases. That
6 qualitative investigation remains ongoing. The Department is preparing a
7 supplemental report to its 2022 Investigative Outcome and Discipline Report.

8 The Department will demonstrate its commitment and ability to sustain
9 substantial compliance by adhering to the practices described above and
10 implementing the new and revised policies listed herein. When the seven policies
11 are in effect, and the Department has further evaluated the consistency of case
12 outcomes and discipline, the parties will reassess their perspectives about the
13 Department's ability to sustain substantial compliance absent further Court
14 oversight. The parties are optimistic that at that time they will have a more
15 definitive assessment about how close they believe the City is to sustaining on its
16 own substantial compliance with the NSA.

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PLAINTIFFS' STATEMENT

PLAINTIFFS' CURRENT POSITION

The Independent Monitor for the OPD has issued one NSA Sustainability Period Report since the last Case Management Conference statement. This sustainability period involves 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 Third NSA Sustainability Period Report of the IMT, OPD is in compliance with nine 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 79th Report and in compliance

per the Third NSA Sustainability Period Report);

2. Task 20 (Span of Control – in compliance per the Third NSA Sustainability Period Report);

3. Task 24 (Use of Force Reporting Policy – in compliance per the Third NSA Sustainability Period Report);

4. Task 25 (Use of Force Investigations and Report Responsibility – in compliance per the Third NSA Sustainability Period Report);

5. Task 26 (Force Review Board (FRB) – in compliance per the Third NSA Sustainability Period Report);

6. Task 30 (Executive Force Review Board (FRB) – in compliance per the Third NSA Sustainability Period Report);

7. Task 31 (Officer-Involved Shooting Investigations Review Protocol) – in compliance per the Third NSA Sustainability Period Report);

8. Task 34 (Stop Data – in compliance per the Third NSA Sustainability Period Report);

9. Task 41 (Use of Personnel Assessment System (PAS) and Risk

1 Management – in compliance per the Third NSA Sustainability Period
2 Report)

3
4 As of this writing, OPD is not in compliance with two NSA tasks:

5 1. Task 5 (Internal Affairs Division (IAD) Complaint Procedures – in
6 compliance when assessed by the IMT in the 79th Report, but “Deferred” in
7 the First NSA Sustainability Period Report and deemed “not in compliance”
8 according to the Second and Third NSA Sustainability Period Reports.)

9 2. Task 45 (Consistency of Discipline – this was in partial compliance during
10 the First NSA Sustainability Period Report, then was deemed in full
11 compliance during the period covered draft Second NSA Sustainability Period
12 Report. However, in the third, most-recent Sustainability Period Report, the
13 IMT reported “no compliance finding” for this Task. Although this language
14 is vague, and not elaborated upon by the IMT, this is clearly a step down
15 from the IMT’s previous finding of “full compliance”
16

17 Plaintiffs’ attorneys agree with the IMT that OPD is not currently in
18 compliance with Tasks 5 and 45. The other nine Tasks that are being actively
19 monitored by the IMT during the Sustainability Period were also in compliance
20 during the period covered by the previous (Second) Sustainability Report and have
21 not materially changed since the January 2023 Case Management Conference in
22 this matter. Plaintiffs will therefore focus on Tasks 5 and 45, which are not in
23 compliance, and which will determine whether OPD is able to achieve full
24 compliance with the NSA and/or continue with the Sustainability Period.

25 **I. Task 5 (Complaint Procedures for IAD)**

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

- 1 • Task 5.1, which requires that when a citizen wishes to file a complaint,
2 the citizen is brought to a supervisor or IAD, or a supervisor is
3 summoned to the scene.
- 4 • Task 5.2, which requires that if there is a delay of greater than three
5 hours in supervisory response, the reason for the delay must be
6 documented.
- 7 • Task 5.3, which requires that where a complainant refuses to travel to
8 a supervisor, or wait for one, personnel make all reasonable attempts
9 to obtain specific information to assist in investigating the complaint.
- 10 • Task 5.4, which requires that specific information be documented on a
11 complaint form and submitted to the immediate supervisor or, in
12 his/her absence, the appropriate Area Commander.
- 13 • Task 5.5, which requires that the supervisor or Area Commander
14 notify Communications and forward any pertinent documents to IAD.

15 On March 23, 2016, the Court issued an Order indicating that irregularities
16 and potential violations of the NSA occurred in IAD investigation 15-0771. Multiple
17 officers were ultimately terminated and disciplined in that matter, which involved
18 the widely reported sexual exploitation of a minor, and the Department's calamitous
19 handling of the investigation into this matter led to this Court to appoint an outside
20 firm to investigate and report on this matter as well as the departure of the then-
21 Chief of Police.

22 In the years since this sex scandal and the resultant Swanson Report, the
23 IMT had focused on subtasks 5.15 to 5.19 and subtask 5.21, which address the
24 quality of completed IAD investigations. The IMT determined that subsequent IAD
25 investigations improved to the standards mandated by the NSA and, in February
26 2022, OPD reattained full compliance with Task 5. It appeared that OPD had made
27 real, sustainable progress with regard to Internal Affairs Investigations.

28 However, the First OPD Sustainability Report moved the status of Task 5

1 from “in compliance” to “deferred compliance”, and OPD was downgraded to “not in
2 compliance” in Second OPD Sustainability Report. According to the Third
3 Sustainability Period Report, OPD remains out of compliance with this all-
4 important Task.

5 Specifically, in the Third Sustainability Period Report, the IMT writes:

6 Investigations conducted by outside investigators retained by the City
7 resulted in several serious disciplinary determinations. These matters
8 called into question the capacity of the Department to investigate its
9 own personnel. The outside investigators also cited a host of systemic
10 and other deficiencies that need to be addressed both in the creation of
11 requisite policies and their resultant implementation. While some
12 progress to remediate these issues has commenced, the Department
13 remains not in compliance with Task 5. (Dkt. 1577, Third
14 Sustainability Period Report, p. 9)

15 Plaintiffs’ attorneys first became aware of the details of this investigation on
16 January 18, 2023, when the “Conclusions and Recommendations Re: Vehicle
17 Collision and Elevator Discharge Incidents” drafted by the independent law firm,
18 Clarence Dyer, & Cohen LLP (Clarence Dyer, & Cohen Report), were filed in the
19 docket and publicly disclosed in full. (Dkt. 1564, “Clarence Dyer Report”)

20 We are mindful that we all have roles to play in this process that has lasted
21 more than 22 years. We may have disagreements but that should not be read as
22 reflective of our lack of respect for one another.

23 Accordingly, Plaintiffs’ attorneys do not agree with all the findings made by
24 Clarence Dyer because some of these findings were not supported by direct evidence
25 and were more the product of conclusions that were capable of other conclusions
26 based on the same facts. However, we do agree with Clarence Dyer’s general
27 conclusions about the department and their recommendations.

28 This document echoes the catastrophic failures that plagued OPD at earlier
points in the NSA process, and affirmed the IMT’s conclusion that OPD is out of
compliance with Task 5. The Clarence Dyer Report documented definitive,

1 comprehensive, and pervasive cultural and systemic problems within Department,
2 as well hugely significant failures by individuals in the OPD command staff.

3 The specific details were elaborated in the public Clarence Dyer Report and
4 were also summarized in Plaintiff's most recent Case Management Conference
5 Statement. Two other Reports of Investigation by the Clarence Dyer firm were also
6 provided to Plaintiffs' attorneys -- and other stakeholders, including the Police
7 Commission -- pursuant to a protective order. Although large portions of these
8 documents were subsequently leaked to the press and are now publicly available,
9 Plaintiffs' attorneys will not comment on the specifics contained therein in this Case
10 Management Conference.

11 After the public disclosure of these documents, as well as the most recent
12 Case Management Conference before this Court, Mayor Sheng Thao terminated
13 then-Chief of Police Armstrong, citing her commitment "to ensure that the Police
14 Department and the City can prove, once and for all, that Oakland is ready to
15 ensure constitutional policing without federal oversight... in order to finally bring
16 an end to Oakland's federal oversight – and not risk the investments we've made for
17 over 20 years – it's an absolute requirement that my administration, including the
18 Chief of Police, be able to work closely with the monitoring team and speak credibly
19 before the court."¹

20 The Clarence Dyer Report published in the *Allen* docket "identified certain
21 procedural irregularities and possible violations of OPD policy committed by OPD
22 members who conducted the initial criminal and administrative investigations"
23 (Clarence Dyer, & Cohen Report, p. 8), which resulted in a third investigation into
24 the way that OPD's Internal Affairs and Criminal Investigation Division undertook
25 their investigations of the elevator discharge.

26 ///

27
28 ¹ <https://www.oaklandca.gov/news/2023/statement-of-oakland-mayor-sheng-thao>

1 The Clarence Dyer, & Cohen Report concluded that:

2 During the course of the three confidential Internal Affairs Division
3 investigations referred to above – one for the vehicle collision incident,
4 the second for the elevator discharge incident, and the third for the
5 investigation into the Department’s handling of the elevator discharge
6 – outside investigators encountered multiple deficiencies in process
7 and policy that undermined the full and complete discovery of the
8 facts. While some of these deficiencies stem from gaps in Department
9 policies, other deficiencies flowed from the Department’s failure to
10 follow or implement existing Department policies. Most disturbingly,
11 some of the deficits appear to stem from a failure of leadership and a
12 lack of commitment to hold members of the Oakland Police
13 Department accountable for violations of its own rules... **These
14 investigations revealed issues and shortcomings that go
15 beyond the conduct of individual officers to the very question
16 of whether the Oakland Police Department is capable of
17 policing itself and effectively holding its own officers
18 accountable for misconduct.**

19 (Clarence Dyer, & Cohen Report, p. 9, emphasis NOT original)

20 Although we do not agree with every word of the Clarence Dyer report,
21 Plaintiffs’ attorneys do agree that there were widespread systemic failures, as well
22 as individual failures by some high ranking OPD personnel, that are incongruous
23 with the letter and the spirit of Task 5 of NSA. The IMT’s Third Sustainability
24 Period Report also highlights “a host of systemic and other deficiencies” (Dkt. 1577,
25 Third Sustainability Period Report, p. 9) that resulted in the IMT’s “not in
26 compliance” finding for this Task.

27 The Clarence Dyer Report found that the three investigations in its purview
28 “were dogged by a lack of forthrightness by multiple members, both subjects and
witnesses, that betrayed a lack of commitment to the pursuit of truth by the
Internal Affairs process.” (Clarence Dyer, & Cohen Report, p. 10). This cannot be
reconciled with the requirements mandated by Task 5 of the NSA, specifically, or
the spirit of the NSA as a whole.

///

1 During the January 2023 Case Management Conference, Judge Orrick
2 stated:

3 Prior to the next CMC, I expect the City to have adopted each of the
4 recommendations in the report with respect to the Internal Affairs
5 Division and Criminal Investigations Division or to explain why what
6 it has done in the alternative is more effective.” (Dkt. 1570, Transcript
7 of Remote Zoom Video Conference Proceedings, p. 4).

8 These recommendations were as follows:

- 9 a. OPD should require all personnel involved in the investigation, review,
10 supervision, and approval of IAD and CID cases to conform to the
11 recusal standards of applicable policies (Dkt. 1564, p. 11)
- 12 b. OPD should adopt a policy that requires approval and documentation
13 of all changes to draft Reports of IAD Investigations. (Dkt. 1564, p. 12)
- 14 c. OPD should adopt a policy that requires all briefings regarding
15 ongoing IAD investigations to be documented. (Dkt. 1564, p. 13)
- 16 d. OPD should adopt a policy that requires the Chief of Police to read
17 reports of IAD investigations before signing them. (Dkt. 1564, p. 13)
- 18 e. OPD should adopt a Department-specific policy regarding acceptable
19 personal relationships between sworn members and when and how
20 those relationships must be reported. (Dkt. 1564, p. 13)
- 21 f. OPD should review its implementation and training regarding the
22 policies governing use by OPD members of OPD-issued cellular
23 telephones and personal cellular telephones for all Department-
24 business and to prohibit the use of personal cellular telephones for
25 work-related communication. (Dkt. 1564, p. 14)
- 26 g. OPD should revise its rule regarding physical fitness for duty to
27 explicitly include mental health. (Dkt. 1564, p. 15)
- 28 h. 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. (Dkt. 1564, p. 15)

21 As of the filing of this Case Management Statement, the Oakland Police
22 Department has made progress on the drafting of these policies. Plaintiffs’ counsel
23 will have a more updated account of this progress at the time of the Case
24 Management Conference. Plaintiffs’ counsel also believe that these policies should
25 be approved by the Monitor, officers should be trained by the OPD in these policies,
26 and then a suitable period should take place subject to Monitor approval where the
27 OPD is certified as in compliance with these tasks.

1 The Clarence Dyer Report concludes that “The multiple failures, at every
2 level, to hold this sergeant responsible, belie OPD’s stated position that it can police
3 itself and hold its members accountable for misconduct. Instead, investigators were
4 left with the impression that the system is designed not to uncover the truth and
5 hold those who commit misconduct to account, but instead to find ways to minimize
6 misconduct such that OPD members are able to avoid serious discipline.” (Dkt.
7 1564, p. 16). OPD has therefore breached the terms of the Sustainability Period for
8 a second consecutive Sustainability Report Period, and it is clear to Plaintiffs’
9 attorneys (and, per the Third Sustainability Report, the IMT) that OPD is still not
10 currently in compliance with Task 5.

11 The OPD’s misuse and overuse of “unfounded” findings on Internal Affairs
12 cases has been a problem that has been raised by Plaintiffs’ attorneys since the
13 start of the Negotiated Settlement Agreement. Unfortunately, this problem has not
14 gone away and persists to this day.

15 California law prohibits public discussion of the specifics of many Internal
16 Affairs findings. We will be happy to discuss this situation further with appropriate
17 safeguards consistent with California law.

18 **We are mindful that unfounded Internal Affairs findings cannot be**
19 **used for any reason including to identify problem officers in Risk**
20 **Management meetings.** (as opposed to findings of not sustained and sustained).
21 We are sure that this is a motivation for the excessive use of “unfounded” by the
22 Internal Affairs Bureau. Until this problem is rectified, we cannot agree that OPD
23 is in compliance with Task 5.

24 **II. Task 45 (Consistency of Discipline Policy)**

25 Task 45 requires that discipline is imposed in a fair and consistent manner.
26 Even though the IMT determined that OPD was in compliance with this NSA Task
27 during the Second Sustainability Period, Plaintiffs’ attorneys were unable to make a
28 recommendation on OPD’s compliance with this Task at the time of the most recent

1 (January 2023) Case Management Conference.

2 As noted in Plaintiffs' January 2023 Case Management Conference
3 Statement, the Clarence Dyer Report detailed a scenario where discipline was
4 imposed without a full and complete review of the facts uncovered by the Internal
5 Affairs Division. A discipline process where the Chief of Police did not read Reports
6 of Investigation before signing them could not be compatible with Task 45.
7 Similarly, a scenario where the IA commander could demand revisions to a Report
8 of Investigation (ROI) over the objections of his subordinates without any
9 documentation about such a directive was antithetical to the goal of fair and
10 transparent discipline within the Department.

11 It is therefore unsurprising that the IMT's Third Sustainability Report cites
12 the Clarence Dyer Report as a basis for downgrading OPD's compliance status with
13 Task 45 to "no compliance finding." The IMT found that:

14 Systemic and other deficiencies cited by the outside investigators were
15 exacerbated by investigative and disciplinary decisions, which were
16 premised on the status and positional considerations of both violators
17 and decision-makers. (Dkt. 1577, Third Sustainability Period Report,
18 p. 32)

19 The Clarence Dyer Report also noted "investigators were left with the
20 impression that the system is designed not to uncover the truth and hold those who
21 commit misconduct to account, but instead to find ways to minimize misconduct
22 such that OPD members are able to avoid serious discipline." (Clarence Dyer, &
23 Cohen Report, p. 15).

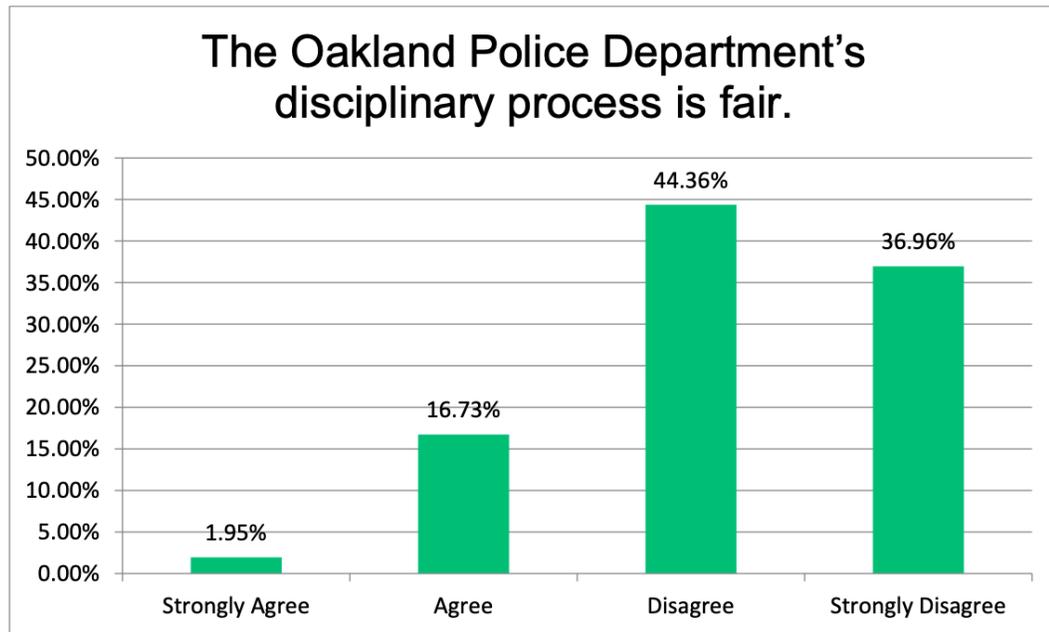
24 This echoes some of the findings of the Hillard Heintze disparity study.
25 Although that study had widely acknowledged data problems that rendered some of
26 the resultant analysis functionally useless, there was also a survey element
27 unrelated to data-scraping from OPD's risk management systems.

28 This portion of the Hillard Heintze Disparity Study found that OPD
personnel believe "who you know, and to which cliques you belong, influence

1 whether an investigation will be sustained and what level of discipline will be
 2 administered”², and that the “IAD and disciplinary processes are not transparent.”
 3 (Hillard Heintze Disparity Study, p. 23). It also found the IAD policy which allowed
 4 sergeants to be “fact finders and adjudicators has the potential to lessen an
 5 investigator’s neutrality” and that this system “is not consistent with promising
 6 practices used in departments similar in size to Oakland.” (Disparity Study, p. 11).

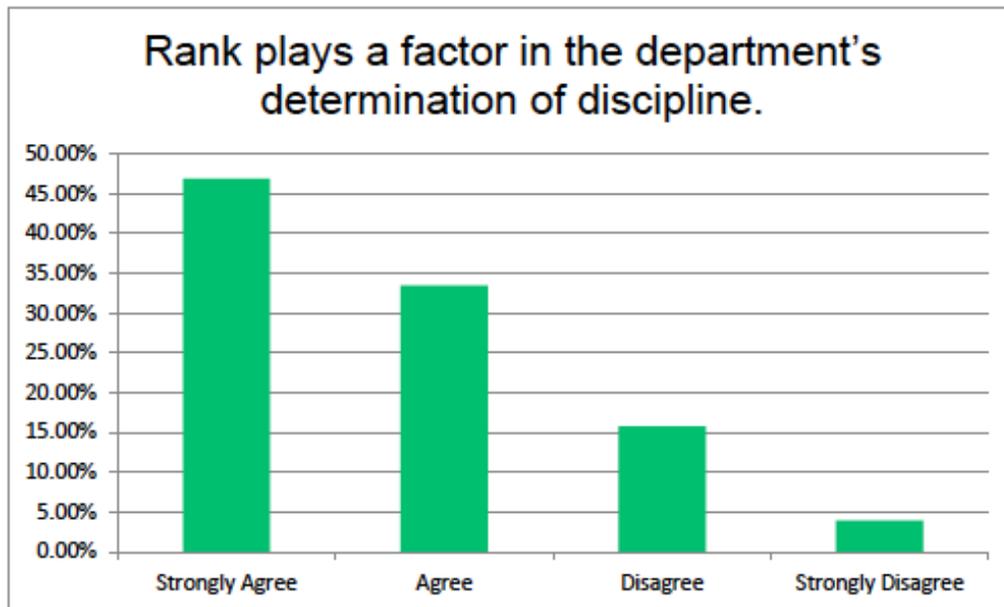
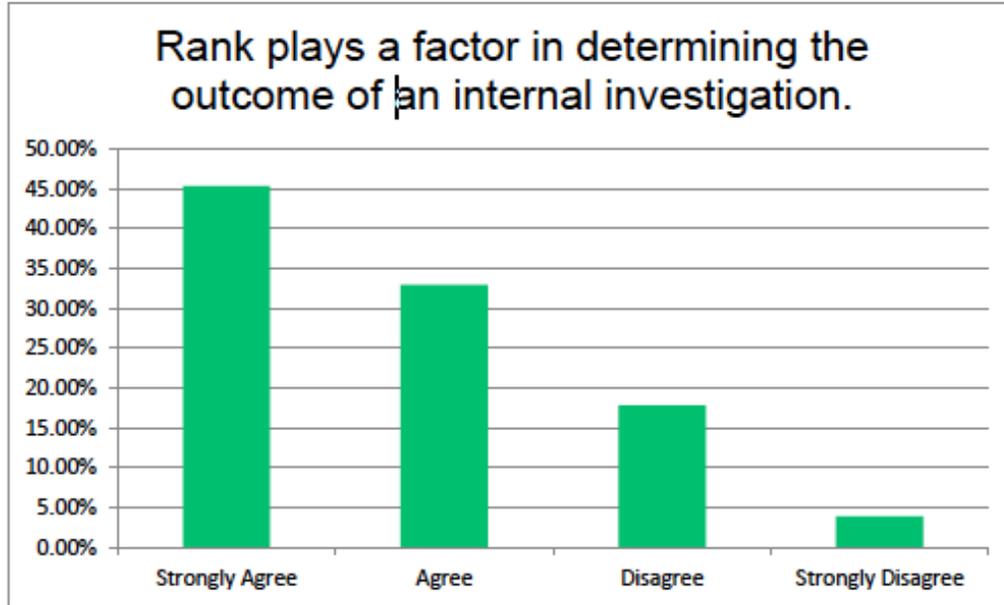
7 The Hillard Heintze study also determined that just 18.68% of sworn
 8 respondents believe that OPD’s disciplinary process is fair, while 81.32 percent of
 9 respondents disagreed with the statement “OPD’s disciplinary process is fair.”
 10 (Disparity Study, p. 17)

11
 12 Only 18.68 percent of the sworn respondents agreed or strongly agreed that the disciplinary process is fair.



24 ² This has also been highlighted by the Police Commission in the run-up to this Case Management
 25 Conference. Attachment 2 to the Police Commission Special Meeting for 03/30/23 Agenda Packet
 26 notes that “Related to Task 45...OPD needs far more granular information about the widely
 27 expressed perception of unfair discipline, including information about what OPD employees perceive
 28 as “cliques.” The Commission currently has an Ad Hoc Committee that is tasked with investigating
 allegations made by the members of the Oakland Black Officers Association (OBOA) that they are
 subject to more severe discipline than other officers (Police Commission Special Meeting, p. 11 of
 25).” Plaintiffs’ attorneys agree with the Commission’s request for more granular data regarding
 perceived discipline disparities within the Department.

1 Similarly, the survey data revealed that nearly 80% of OPD respondents
 2 “agreed or strongly agreed that rank plays a factor in determining the outcome of
 3 an internal investigation and the determination of discipline.” (Disparity Study, p.
 4 22)



1 The above charts and data speak to ongoing problems within the Oakland
2 Police Department related to Task 45 and consistency of discipline. The incident
3 involving an OPD sergeant, as detailed in the Clarence Dyer report, is a concrete
4 example of discipline disparities that a super-majority of OPD personnel believe to
5 be problematic. Although personnel issues prevent Plaintiffs’ attorneys from
6 specifying every reason for our view in this matter, City of Oakland officials with
7 access to this entire investigation (as well as the IMT) know the details of why we
8 feel this way. The portion of the Clarence Dyer report in the public Court docket
9 shows that the minimal discipline the sergeant initially received – based on an IA
10 process that command staff meddled in and/or intentionally averted their gaze from
11 – was blatant favoritism related to the Sergeant’s status within the Department
12 and specific community interest groups.

13 A discipline system that is “unfair” in the eyes of more than five of every six
14 employees is untenable, and not up to the standard mandated by Task 45 of the
15 NSA. Indeed, during Plaintiffs’ attorneys many years of involvement with OPD, we
16 have noticed that supervisors and command staff often receive lighter discipline
17 than rank-and-file officers. The Clarence Dyer, & Cohen Report’s findings
18 regarding the vehicle collision and subsequent investigatory and disciplinary
19 process is an illustrative example of exactly this dynamic.

20 Finally, recent IA data has shown that African Americans are
21 disproportionately disciplined in “unintentional failure” to refer citizens who wish to
22 file a complaint to the appropriate complaint agency. It is concerning to us that this
23 area—one that gives sergeants the most discretion to file any complaint against a
24 subordinate—is the single most significant area where racial disparities appear.
25 This must be remedied (as noted in our joint statement) and be subject to
26 appropriate review.

27 Accordingly, the Department remains in breach of the parameters of the
28 Sustainability Period as originally set out in the Negotiated Settlement Agreement.

1 **III. Conclusion**

2 The IMT has determined that OPD is out of compliance with Task 5 and has
3 downgraded OPD's compliance with Task 45 to "no compliance status". Plaintiffs'
4 attorneys believe OPD is not in compliance with Task 45.

5 In January of this year, OPD was in full compliance with ten of the eleven
6 NSA Tasks. As of this writing, OPD is compliance with only nine. Multiple
7 command-level officers have been disciplined for rules violations that directly
8 impact NSA Tasks 5 and 45. The Department is, objectively, backsliding.

9 Tasks 5 and 45 are foundational to the NSA, and to constitutional policing. If
10 the OPD cannot perform competent Internal Affairs Investigation or discipline its
11 own officers fairly, there will always be questions as to whether they can police
12 themselves, or provide equal justice in the community they serve. Plaintiffs'
13 attorneys will never agree that the OPD has attained compliance if members of the
14 Command Staff attempt to hide misconduct from appropriate supervisors (including
15 the Police Commission), and/or impose inconsistent discipline based on who you
16 know, your race, or what rank you have. These are concrete, incontrovertible
17 breaches of the letter of NSA Tasks 5 and 45, respectively.

18 It is also clear that Court and IMT oversight is still required. **OPD is not in**
19 **compliance with the NSA.** Plaintiffs' attorneys therefore urge the Court to
20 modify the Sustainability Period until, at the very least, OPD regains full
21 compliance with each and every NSA Task.

1 **CITY'S STATEMENT**

2 **OVERVIEW**

3 For the past nine months the City has sustained substantial compliance with
 4 all but two NSA tasks, Task 5, Internal Affairs Complaint Procedures, and Task 45,
 5 Consistency in Discipline Policy. To the extent that its sustained compliance
 6 continues through the one-year mark on Tasks 20, 24, 25, 26, 30, 31, 34, and 41, the
 7 City asks that the Court remove these eight tasks from further affirmative
 8 assessment by the Monitoring Team after May 31, 2023, similar to the previous
 9 reduction in task assessments imposed by the Court in its May 2022 Order. The
 10 City asks that after June 1, 2023, the Monitoring Team affirmatively assess only
 11 the three tasks related to internal investigations: Tasks 5, 45, and 2, Internal
 12 Affairs Timelines. While the City expects that the Department will sustain
 13 compliance with Task 2 timelines through the one-year sustainability period, it
 14 nonetheless appreciates how closely Task 2 is tied to Task 5. The Department must
 15 ensure that its improvements in the quality of its internal investigations do not
 16 result in a decline in timeliness. Reducing the number of affirmatively assessed
 17 tasks will allow the City to focus more of its resources where they are needed the
 18 most in the immediate term.

19 In this status report, the City discusses the following: (1) strengthening the
 20 Department's internal investigation processes (Task 5), (2) consistency of discipline
 21 policy (Task 45), (3) internal affairs timelines (Task 2), (4) the Department's risk
 22 management program and use of stop data to reduce racial disparities (Tasks 34 &
 23 41), (5) officer recruiting, and attrition, and diversity, and (6) force and force
 24 investigations (Tasks 24, 25, 26 & 30).

25 **I. STRENGTHENING INTERNAL INVESTIGATIONS PROCESSES**
 26 **(TASK 5)**

27 The Department has fully completed one of eight of the outside investigator's
 28 recommendations. The additional seven recommendations involve developing new

1 policy or revising existing policy. The Department has begun practices to
2 immediately address the deficiencies identified by the outside investigator while it
3 completes policy development and revision.

4 **A. THE DEPARTMENT IS ALREADY EMPLOYING PRACTICES TO**
5 **PREVENT THE DEFICIENCIES IDENTIFIED BY THE OUTSIDE**
6 **INVESTIGATOR AND TO STRENGTHEN INTERNAL**
7 **INVESTIGATIONS IN THE IMMEDIATE TERM**

8 The Department completed the additional training on DGO I-19, Electronic
9 Communication Devices (Sep. 20, 2022), regarding the use of Department-issued
10 versus personal cell phones for work-related purposes. *See Ex. 1, Memorandum re I-*
11 *19 Training Review and Update* (Mar. 2023). The Department also implemented
12 certain practices in response to the outside investigator's other recommendations
13 until formal policy is developed or revised.

14 Since Chief Allison assumed his role, he has been reading all internal
15 investigation reports with any sustained findings. Consistent with the parties' joint
16 statement and the Department's proposed policy changes, moving forward Chief
17 Allison must continue to read all reports of investigation with recommended
18 sustained findings that could result in termination (i.e., has "T" as one of the
19 possible consequences on the Discipline Matrix; this includes Manual of Rules
20 violations for obedience to laws felony/serious misdemeanor and DUIs, and use of
21 force), or recommended sustained findings for obedience to laws
22 misdemeanor/infraction. All internal investigation briefings are documented with
23 notes of the briefings. Any significant changes to investigation reports are approved
24 and the change and approval is documented and saved in the investigation file and
25 in the chronological log. These changes include downgrade of a subject to a witness,
26 removal of a subject, change or removal of a manual of rules allegation, and changes
27 to or disagreement with recommended findings. The Department consults the City's
28 human resources risk management team to follow the City's process for
psychological fitness for duty assessments. The Department follows the City's "anti-

1 fraternization” instruction and local ordinance regarding conflicts and reporting
2 relationships. See City of Oakland Administrative Instruction (AI) 72 (Oct. 28,
3 2005); Oakland Municipal Code, Chapter 2.40, Prohibition on Nepotism in City
4 Employment, sec. 2.40.030 Disclosure of Relationships, sec. 2.40.040, Prohibited
5 Supervisory Relationships. These practices will address in the immediate term the
6 deficiencies identified in the outside investigator’s report.

7 In addition to practices directly responsive to the outside investigator’s
8 recommendations, the Department is taking additional measures to strengthen its
9 internal investigation processes in the immediate term. Prior to presentation to the
10 Chief, a Deputy Chief reviews all reports of investigation with recommended
11 sustained findings that could result in termination or for obedience to laws
12 misdemeanor/infraction (the same category for which the Chief reads the
13 investigation reports). The Bureau of Risk Management Deputy Chief reviews cases
14 involving recommended *not sustained* findings on any allegation that could result in
15 termination if sustained or obedience to laws misdemeanor/infraction. The Chief of
16 Police and Bureau of Risk Management Deputy Chief review internal investigations
17 involving any allegation that was the subject of a prosecution or defense (e.g.,
18 District Attorney or Public Defender) misconduct refer, regardless of the
19 recommended finding. Investigation presentation templates now prominently
20 display on the first page if a case involves the downgrade of a subject to a witness,
21 removal of a subject, change or removal of a manual of rules allegation, and changes
22 to or disagreement with recommended findings. High-profile case briefings to the
23 Chief, which include but are not limited to IAD and CID investigations of members
24 accused of criminal conduct, occur at least monthly with a notetaker.

25 The Department has also taken measures to improve communication about
26 internal investigations with the Commission and CPRA. The Department has
27 granted the CPRA Director direct access to the IAD Vision database. The OIG
28 already has direct access to Vision. The Department will provide a tutorial to the

1 CPRA Director about use and navigation of Vision. In addition, the Department
2 and, temporarily until the policy is in effect, the City Attorney's Office, will advise
3 the Commission and CPRA of any new proposals to hire outside investigators to
4 conduct internal investigations, and provide update status reports on subjects and
5 misconduct allegations under consideration in any outside investigations already in
6 progress. In addition, any new third-party investigation contract must include a
7 term that allows the Commission and CPRA to obtain status updates directly from
8 the investigator (the content of updates may be limited to ensure independence of
9 any parallel ongoing or anticipated CPRA investigation). Finally, CID has expanded
10 the information it provides City leadership and oversight bodies including the
11 Commission and CPRA when a Department member has been arrested or cited or is
12 under investigation for criminal conduct. Ensuring that the Commission and CPRA
13 are aware of high-profile investigations early on will allow the Commission to
14 promptly identify internal investigations that may not be charter-mandated CPRA
15 cases but nevertheless may warrant Commission direction for CPRA to investigate
16 or spur the Commission to prioritize certain document requests or policy reviews. Of
17 course, all current measures employed by the Department are based on its policy
18 proposals and may ultimately be modified in final formal policy approved by the
19 Police Commission.

20 In addition to measures that the Department has taken to strengthen its
21 internal investigation processes on the front end, the City's Office of Inspector
22 General (OIG) is responsible for identifying and addressing deficiencies in internal
23 investigations on the back end, through audits of Tasks 5 and 45 (and assessing
24 compliance with all NSA tasks), even after Court oversight ends. *See Oakland City*
25 *///*

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1 Charter, sec. 604(f)(5).³ As part of its audit function, the OIG prepares an annual
2 report on the following items: the Department's processes and procedures for
3 investigating alleged misconduct; the Department's processes and procedures for
4 determining the appropriate level of discipline for sustained findings of
5 misconduct; the CPRA's processes and procedures for investigating alleged
6 misconduct; the Agency's processes and procedures for determining the
7 appropriate level of discipline for sustained findings of misconduct; trends and
8 patterns regarding Department training and education, and the Department's use
9 of any early warning system(s); training and/or policy issues that arise during the
10 investigations of complaints; and trends and patterns regarding use of force and
11 Department sworn employee-involved shootings. Oakland Municipal Code, sec.
12 2.45.120.

13 The OIG has been engaged with the Department regarding proposed policy
14 changes in the immediate term, and the City appreciates the OIG's continuing
15 feedback and assistance. The OIG's annual report cycle is based on the City's fiscal
16 calendar and, therefore, the OIG's annual report pursuant to local ordinance is
17 expected to be completed in or about September 2023. As part of the process,
18 however, the OIG has begun collecting data and background information from the
19 Bureau of Risk Management about the Department's internal investigations and
20 complaint procedures. The OIG has also met with Department Human Resources
21 and the Training Division commander. The OIG is preparing additional
22 information requests to assist in its evaluations.

23 The Department estimates it will take four months before final policies
24 mandating internal investigation procedures are published. Immediately

25 _____
26 ³ The OIG has aimed to avoid audits that duplicate the Monitoring Team's work.
27 This avoids competing protocols and findings and results in assessment of a greater
28 number of Department practices. The OIG's forthcoming audit on Task 42, the
Department's Field Training Program has been delayed due to the recent
ransomware attack on the City. The OIG expected to complete the audit in April
2023 but it now estimates completion and publication in or about May 2023.

1 implementing practices responsive to the outside investigator's recommendations
2 and employing additional measures identified by the Department will ensure rigor
3 and integrity in the Department's internal investigation processes.

4 **B. MANDATING PRACTICES IN POLICY WILL PROVIDE LONG-
5 TERM SUSTAINABILITY OF PROTECTIONS AND
6 IMPROVEMENTS**

7 The Department remains in the process of developing and revising policy in
8 response to deficiencies identified in the outside investigator's January 2023 report
9 and the corresponding recommendations. The Department's Office of Internal
10 Accountability is leading and coordinating the Department's review of Department
11 practice and policy regarding CID and IAD investigations of members accused of
12 criminal misconduct, as well as policy, practice, and training related to improving
13 the overall rigor and integrity of the Department's internal investigations processes.
14 In most instances, the OIA has identified multiple Department policies or related
15 policy documents that it has recommended the Department develop or revise to
16 effectively address the identified deficiencies. *See Chart 1: Department Progress in
17 Response to Recommendations*, below. The OIA has also recommended additional
18 revisions to policies under review to further strengthen the Department's internal
19 investigation processes beyond revisions that are simply directly responsive to the
20 recommendations. The Progress Chart below shows which policies are being
21 developed or revised in response to each recommendation and the status of each
22 policy or recommended measure. The outside investigator's recommendations are
23 shaded in green.

24 The Department's proposal is to directly implement six of the eight
25 recommendations (including the completed training on the use of Department-
26 issued versus personal cell phones). The Department proposes a variation of two of
27 the recommendations which the Department believes will more effectively and
28 efficiently address the underlying issues from which they originated.

28 ///

1 **1. THE DEPARTMENT’S TWO PROPOSED ALTERNATIVE**
2 **RECOMMENDATIONS**

3 First, instead of mandating that the Chief read all reports of internal
4 investigations, the Department has proposed draft policy that requires the Chief to
5 read and sign a particularly significant subset of case reports. Specifically, the
6 Department has proposed that at a minimum, the Chief must read all reports with
7 a recommended sustained finding for any allegation that could result in termination
8 (i.e., has “T” as a possible consequence on the Discipline Matrix; this includes
9 Manual of Rules violations for obedience to laws felony/serious misdemeanor and
10 DUIs, and use of force), or a recommended finding of sustained for obedience to laws
11 misdemeanor/infraction. In addition, the Department has proposed revisions to the
12 investigators’ presentation outline to ensure that certain facts and circumstances
13 are highlighted for discussion. These revisions include adding an executive
14 summary at the beginning of the outline that prominently flags whether the case
15 involves any of the following circumstances: subject removed or downgraded to
16 witness, deletion or change of any alleged Manual of Rules violations, or an
17 addendum of disagreement by any reviewer on the recommended findings. The
18 Department has also proposed Deputy Chief-level review for cases involving any
19 allegation with a recommended finding of either sustained or not sustained on any
20 allegation that could result in termination and obedience to laws
21 misdemeanor/infraction. Finally, under this proposal, the Chief of Police and
22 Bureau of Risk Management Deputy Chief review internal investigations involving
23 any allegation that was the subject of a prosecution or defense (e.g., District
24 Attorney or Public Defender) misconduct refer, regardless of the recommended
25 finding. The Department believes this combination of measures will result in
26 greater improvement in the rigor of its internal investigations and ensure accurate
27 reporting of key facts and circumstances that frequently necessitate further
28 discussion and explanation. The Department’s proposed alternative provides layers

1 of redundancy that the Department believes will strengthen its internal
2 investigation processes more than simply having the Chief read all investigation
3 reports. In addition, it allows the Chief at least some flexibility in prioritizing the
4 many and varied items the Chief must handle on a day-to-day basis.

5 The second recommendation for which the Department proposes a variation
6 is the recommendation that the Department should revise its rule regarding
7 physical fitness for duty to explicitly include mental health. Expanding the Manual
8 of Rules (MOR) fitness for duty definition which currently includes only a *physical*
9 *fitness* requirement to expressly include psychological fitness for duty may result in
10 members' mental health issues being viewed and treated as misconduct. Instead,
11 the Department proposes creating an Information Bulletin (IB) that will include
12 information about the City's policy and practice involving psychological fitness for
13 duty evaluations but tailored to the Department. The Department currently follows
14 the City's practice under the direction of City Employee Relations and Risk
15 Management. The City's practice is referenced in its administrative instruction
16 regarding procedures for providing reasonable accommodation to job applicants and
17 employees, *see* AI-139 (Jul. 1, 2009). The Department anticipates the IB will reflect
18 who may request a fitness for duty evaluation of an officer, under what
19 circumstances an officer may be required to undergo an evaluation, an officer's
20 obligations when an officer is directed to undergo an evaluation, the Department's
21 obligations with regard to confidentiality of evaluations and requests for
22 evaluations, and the officer's and Department's rights and obligations involving a
23 return to limited or full duty following an evaluation. The idea behind proposing an
24 IB is to educate the Department and all members about the psychological fitness for
25 duty evaluation process to empower the Department to exercise its ability to ask for
26 such evaluations when appropriate and to support its members by providing
27 transparency about the process and communicating unequivocally that they will not
28 be disciplined solely on the basis of concerns about psychological fitness. The IB will

1 also aim to provide a description of mental healthcare and wellness resources
2 available to Department members.

3 **Chart 1: Department Progress in Response to Recommendations**

4 Recommendation	5 New or Revised Policies and Related Documents	6 Status
7 OPD should adopt a Department-specific policy regarding acceptable personal relationships between sworn members and when and how those relationships must be reported.	8 DGO D-22, Personal Relationship Disclosure Policy (new)	9 Incorporated feedback from Monitoring Team and plaintiffs' counsel. 10 Next step is to send these to the Police Commission for review.
11 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.	12 CID Recusal Policy 23-02 (rev.) 13 IAD Meeting Attendance Roster (rev.) 14 Investigator and Reviewer Conflict/Recusal Forms (rev.)	15 Incorporated feedback from Monitoring Team and plaintiffs' counsel. 16 Next step is to send these to the Police Commission for review.
17 OPD should adopt a policy that requires approval and documentation of all changes to draft Reports of IAD Investigations.	18 IAD Policy and Procedure Manual 23-01 (rev.) 19 Training Bulletin V-T.01, Internal Investigation Procedure Manual (rev.) 20 Internal investigation report template (rev.) 21 Addendum [reviewer disagreement] template (rev.) 22 Executive	23 Sent to Monitoring Team and plaintiffs' counsel for feedback. Working on incorporating feedback and considering additional changes.

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	<p>Summary/Presentation template (rev.)</p> <p>Command Review Checklist (rev.)</p>	
<p>OPD should adopt a policy that requires all briefings regarding ongoing IAD investigations to be documented.</p>	<p>IAD Policy and Procedure Manual 23-01 (rev.)</p>	<p>Sent to Monitoring Team and plaintiffs' counsel for feedback. Working on incorporating feedback and considering additional changes.</p>
<p>OPD should adopt a policy that requires the Chief of Police to read reports of IAD investigations before signing them.</p>	<p>IAD Policy and Procedure Manual 23-01 (rev.)</p> <p>[Note: Department proposing an alternative. Chief mandated to read subset of sustained cases. Deputy Chief review of subset of sustained cases as well as subset of not-sustained cases. Executive summary of presentation outline displays facts and circumstances that may raise red flags.]</p>	<p>Sent to Monitoring Team and plaintiffs' counsel for feedback. Working on incorporating feedback and considering additional changes.</p>
<p>OPD should review its implementation and training regarding the policies governing use by OPD members of OPD-issued cellular telephones and personal cellular telephones for all Department-business and to prohibit the use of personal cellular telephones for work-related</p>	<p>Updated training PowerPoint.</p> <p>Conducted additional lineup training.</p> <p>Created quiz for members.</p>	<p>Completed. <i>See Ex. 1.</i></p>

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communication.		
OPD should revise its rule regarding physical fitness for duty to explicitly include mental health.	<p>Information Bulletin (IB) re Psychological Fitness for Duty Assessments (new)</p> <p>[Note: Department proposing an alternative: an IB rather than changing the Manual of Rules (MOR) fitness for duty definition.]</p>	Department working on initial draft.
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>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>DGO I-19, Electronic Device Policy (rev.) [Additional TBD]</p>	<p>Sent DGO M-4.1 and CID Investigative Training policies sent to Monitoring Team and plaintiffs' counsel for feedback.</p> <p>OIA policy review ongoing.</p>
<p>Improve communication with CPRA and OPC. Facilitate CPRA's ability to select appropriate cases for parallel investigation without jeopardizing CPRA's ability to conduct truly separate, independent investigations.</p>	<p>IAD Policy and Procedure Manual 23-01 (rev.)</p> <p>DGO M-4.1, Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel (rev.)</p>	Sent both policies to Monitoring Team and plaintiffs' counsel for feedback. Working on incorporating feedback received on IAD Policy and Procedure.

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II. CONSISTENCY OF DISCIPLINE POLICY (TASK 45)

In March 2023, the Department published its 2022 Internal Investigation Outcome and Discipline Report. *See* <https://cao-94612.s3.amazonaws.com/documents/2022-Internal-Investigation-Outcome-and-Discipline-Report.pdf> (Mar. 2023) (last viewed Apr. 1, 2023). The annual report was the Department's first opportunity to employ its working methodology. The most straightforward part of the methodology is to determine whether there are statistically significant differences in case outcomes or officer discipline based on race, rank, or gender. There were no statistically significant disparities based on race, rank, or gender in 2022 case outcomes or officer discipline. *See id.* at 14, and Table 1.

Table 1: Snapshot of 2022 Internal Investigation Outcomes and Discipline Data, from February 2023 Citywide Risk Management Meeting

	All Investigations	DLs and DLI Summary Findings	IA Investigations and IA Summary Findings	Internal Origin	External Origin
White	11% (34/323)	9% (16/187)	15% (18/124)	65% (13/20)	7% (21/303)
Black	11% (23/212)	9% (13/147)	18% (10/55)	30% (3/10)	10% (20/202)
Hispanic	9% (30/317)	7% (15/213)	17% (15/90)	36% (4/11)	8% (26/306)
Asian/Filipino	7% (16/240)	4% (6/168)	15% (10/65)	33% (3/9)	6% (13/231)
Other/Unknown	18% (7/38)	10% (2/21)	31% (5/16)	100% (2/2)	14% (5/36)
Total	10% (110/1130)	7% (52/736)	17% (58/350)	48% (25/52)	8% (85/1078)

	All Investigations	DLs and DLI Summary Findings	IA Investigations and IA Summary Findings	Internal Origin	External Origin
Male	10% (94/957)	7% (45/628)	17% (49/289)	53% (23/43)	8% (71/914)
Female	9% (16/173)	6% (7/108)	15% (9/61)	22% (2/9)	9% (14/164)
Total	10% (110/1130)	7% (52/736)	17% (58/350)	48% (25/52)	8% (85/1078)

	All Investigations	DLs and DLI Summary Findings	IA Investigations and IA Summary Findings	Internal Origin	External Origin
Officer	9% (99/1049)	7% (50/699)	16% (49/307)	51% (21/41)	8% (78/1008)
Sgt or Above	14% (11/81)	5% (2/37)	21% (9/43)	36% (4/11)	10% (7/70)
Total	10% (110/1130)	7% (52/736)	17% (58/350)	48% (25/52)	8% (85/1078)

These initial overall findings across all 2022 cases did not end the Department's analysis. In the past, the Department has observed differences on discipline imposed on Black officers for lower level misconduct when compared to

1 white officers. Specifically, the Department previously observed that the
2 Department tended to impose counseling and training discipline more often for
3 misconduct committed by white officers, while Black officers might more frequently
4 receive a written reprimand. *See id.* at 12. Written reprimand is viewed as greater
5 discipline on the discipline spectrum than counseling and training. These observed
6 differences involved a very small number of cases; the Department could not test
7 whether such a small difference was statistically significant. But the Department
8 remained keenly aware of these differences and has always been clear about its
9 intention to continue to look for such differences in the data even though the
10 number of cases involved may not permit the Department to determine if the
11 differences are statistically significant. Therefore, the Department purposely
12 examined the case data to determine whether there were any similar differences in
13 the 2022 discipline. The Department observed some differences.

14 The 2022 data showed that Black officers more frequently received written
15 reprimand discipline in comparison to white officers who received counseling and
16 training discipline for the same misconduct violations. The overall difference in
17 Class II allegation outcomes was Black officers received counseling and training in
18 5 instances and written reprimand in 5 instances, while white officer received
19 counseling and training in 18 instances and written reprimand in 2 instances. *See*
20 *id.* On the one hand, these cases reflect twice as many sustained cases for white
21 officers and the number of cases in each category is too small to conduct a statistical
22 analysis; but on the other hand, we cannot ignore the observed apparent difference.
23 Thus, the Department further examined other case details to determine if it could
24 explain this apparent difference. The Department had some success learning more
25 about the circumstances behind the discipline imposed in each case.

26 As an initial matter, although these cases all involved Class II misconduct,
27 the sustained findings spanned several different rules violations. Thus, the
28 Department looked for direct comparisons for discipline meted out to Black and

1 white officers for the same rule violation. *See id.* at 12-13. There, the Department
2 zeroed in on violations for failure to accept or refer a complaint (unintentional)
3 where 9 white officers received counseling, in comparison to 3 Black officers who
4 received counseling and 2 Black officers who received written reprimand. In
5 addition, the Department noted that for this particular rule violation, more Black
6 officers received suspensions: 7 Black officers were suspended for this misconduct
7 while only one white officer was suspended. Although as an overall matter Black
8 officers are not suspended more often than white officers, the Department's drill-
9 down investigation into this particular rule violation led them to find and focus in
10 on this additional patent difference. *See id.* at 13.

11 The Department's analysis led it to discover that the difference in the 2022
12 discipline for Black and white officers for failure to accept or refer a complaint
13 (unintentional) was explained by officers' prior similar misconduct. Officers who
14 had prior violations of the same rule received greater discipline. Thus, as an initial
15 matter there is a race neutral explanation for the difference in discipline imposed.
16 But this did not end the Department's inquiry. The Department's next question
17 was: are Black officers more likely than officers of other races to have allegations
18 lodged against them for failing to accept or refer a complaint? And, inversely, are
19 white officers less likely to have allegations lodged against them for failing to accept
20 or refer a complaint? The Department recognizes both that these are important
21 questions to ask, and difficult questions to answer. The Department is continuing
22 its analysis and intends to publish a supplemental report to the 2022 Internal
23 Investigation Outcomes and Discipline Report to further provide insight into these
24 issues. While the Department is not certain at this time where the analyses may
25 lead, the Department's next steps include a review of investigating sergeants'
26 sustained rates by race for failure to accept or refer a complaint. *Id.* at 15.

27 In its most recent report, the Monitoring Team criticized the Department for
28 having "yet to create a separate, stand-alone [technical] report" that in part might

1 serve as a “basis for tracking discipline disparity over time.” Dkt. 1578, *Third NSA*
2 *Sustainability Report of the Independent Monitor* 32 (Apr. 3, 2023) (corrected report). In
3 its annual internal investigation outcomes and discipline report, the Department
4 aims to share its step-by-step approach as it follows its written working
5 methodology, including sharing all of its data analysis. When possible, the
6 Department prefers to include its data analysis within the text of the report or in an
7 appendix rather than prepare a separate, technical report. With a single report,
8 readers have context for each dataset the Department prepares and each statistical
9 test the Department uses. In addition, when the Department developed its working
10 methodology it specifically considered whether it should include some analysis of
11 aggregate data beyond one year. After discussing this possibility with researchers
12 from the Monitoring Team and Stanford, the Department intentionally decided not
13 to do aggregate data analysis because of the significant difference in data collection
14 and policy in the years preceding 2022 and to focus on looking for patterns that are
15 the result of current or more immediate practices. Of course, the Department’s
16 methodology is a *working* methodology. The Department purposefully used that
17 title because it intends to continue to modify the methodology as appropriate to
18 strengthen its analyses. But there is no reason that the Department cannot use its
19 annual reports and analysis therein as the basis to track disparity over time.

20 Employing its primarily data-driven methodology to analyze investigation
21 outcomes and findings enables the Department to consistently identify and
22 investigate statistically significant disparities and observed differences across all
23 case outcomes and officer discipline. The Department appreciates, however, that
24 this methodology, while sound and necessary, may not capture all inconsistencies in
25 case outcomes or discipline. For example, one or two cases that are poorly
26 investigated or where favoritism is employed are unlikely to trigger anomalies in
27 the data or reveal a pattern of inconsistency. That is why strengthening measures
28 to improve the quality of the Department’s investigations, including case review

1 redundancies, as well as having an after-the-fact audit of internal investigations is
2 also necessary to ensure consistency and fairness in case outcomes and discipline.
3 The measures the Department is taking to improve its internal investigation
4 processes, therefore, will contribute not only to compliance with Task 5 but also
5 Task 45. Whether these policy measures are truly “foundational issues” of Task 45
6 versus Task 5 is not a distinction worth debate. *See id.* The City’s work to
7 strengthen its internal investigations practices will certainly benefit aspects related
8 to both tasks and, more importantly, to both appropriate and equitable officer
9 accountability.

10 The City is optimistic that once it completes its supplemental investigation of
11 the subset of cases for failure to accept or refer a complaint (unintentional) and
12 implements measures designed to ensure rigor and integrity in the Department’s
13 internal investigations, that the Monitoring Team will replace its “no compliance
14 finding” with the “in compliance” finding previously earned by the Department.

15 **III. INTERNAL AFFAIRS TIMELINES (TASK 2)**

16 The Department remains in compliance with Task 2. *Id.* at 3. In the fourth
17 quarter of 2022, the Department timely completed 88% of Class I and 99% of Class
18 II investigations. *Id.* The Department continues to routinely complete the discipline
19 recommendation process on all cases with sustained findings within 30 calendar
20 days as required by policy. *Id.*

21 **IV. THE DEPARTMENT MAINTAINS AN EFFECTIVE RISK 22 MANAGEMENT PROGRAM (TASKS 34 & 41)**

23 The Department’s risk management program continues to provide a valuable
24 foundation to discuss issues involving individual officers as well as patterns among
25 officers and data. The Department’s effective use and understanding of data and
26 information in the risk management process is reflected in commanders’ selection of
27 and expansion on appropriate and meaningful topics outside of the data analysis
28 that typically constitutes the central focus of risk management meetings. The

1 Monitoring Team complimented the Department on these practices in its most
 2 recent report, making reference to specific observations to the February 2023 risk
 3 management meetings:

4 The Captains and their staff were all engaged in a productive
 5 discussion focused on risk – a discussion that extended to include
 6 consideration of the implications of current crime levels on officer
 7 activity. That has not been a regular agenda item for these meetings.
 8 There was also a significant focus on how younger officers could benefit
 9 from understanding and engaging with the risk management process.
 10 It is also noteworthy that, early in the meeting, the Acting Chief
 11 emphasized the importance of the PAS process for helping officers to be
 12 successful in their careers. That became a significant focus in the
 13 meetings and is a direct reflection of an element of risk management
 14 that is emphasized in the NSA.

15 *Id.* at 30. The Department’s comfort with its risk management program⁴
 16 shows. Command staff and supervisors have advanced their discussions
 17 “beyond what is available in the Vision database” and developed flexibility in
 18 their approach to analyzing and using data and information to identify and
 19 mitigate Department risk. *See id.* at 29.

20 **A. THE DEPARTMENT CONTINUES TO MEANINGFULLY USE
 21 STOP DATA AS PART OF ITS RISK MANAGEMENT PROCESS**

22 The Department has long recognized that stop data, for all stops but
 23 particularly for non-dispatch stops, “represents potential risk consistent with the
 24 risk management interests of the Department.” Dkt. 1557, *Second NSA
 25 Sustainability Period Report of the Independent Monitor* 28 (Dec. 22, 2022). As a result,
 26 stop data has been fully integrated with the risk management process and includes
 27 reviews of dispatch and non-dispatch stops, actions taken including searches, and
 28 outcomes including citation or arrests or noting that no action resulted from the
 stops. The Department routinely evaluates and discusses stop data, including the
 reflected impacts of policing on various racial or ethnic groups. Figure 1, below, is

⁴ The Department’s risk management program operates pursuant to *DGO R-01, Risk Management* (published Apr. 2022). Although the policy was published in April 2022 mandating adherence to certain practices and timelines, the Department had already employed many of those practices, some for as long as several years. *See, e.g.,* Dkt.1565, Joint Case Management Statement 32 (Jan. 23, 2023).

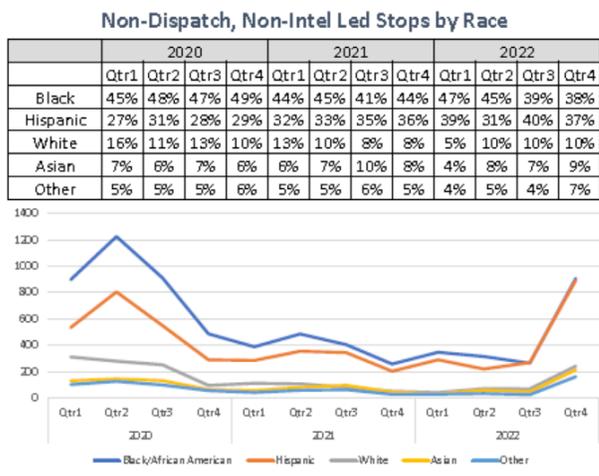
an example of a typical Citywide Risk Management slide displaying and integrating related datapoints to help the Department assess if officers' actions are consistent with Department directives and priorities and how those actions impact various racial populations.

Stop Data

- Dispatch stops declined 11% in 2022 and non-dispatch stops increased 24% in 2022 (Q4 drove the increase)
- Intelligence-led rate for non-dispatch stops is at 41% for the year, down from 42% in 2021.
- African Americans comprise 41% of non-dispatch, non-intel led stops, decrease of 2%. Hispanics comprise 37%, a 3% increase from last year.
- Traffic stops make up 88% of non-dispatch, non-intel led stops this year compared to 81% last year.
- 96% of traffic stops are moving violations, in line with Departmental directives.
- The work done in Q4 resulted in an overall 76% citation rate for traffic violations in 2022 compared to 72% in 2021.

Stops by Traffic Officers in Q4 2022

- Officers assigned to the traffic squad made 1,764 traffic violation stops (driver only). Of these, 99.7% were moving violations.
- 35% of traffic violations involved African American subjects. 37% of subjects were Hispanic.
- A citation was issued 98.5% of the time.
- 26% of the stops occurred in Area 5, 22% in Area 6, and 19% in Area 4.



By regular assignment as of Oct 3, 2022

Fig. 1, Slide from Feb. 2023 Citywide Risk Management Meeting

The Department has used stop data in this manner to develop effective strategies to reduce stops of African Americans, a population historically overrepresented in law enforcement actions. The Department has consistently reported to the Court on its non-dispatch stop rate as way of tracking its progress. In the fourth quarter of 2022, the Department's African American non-dispatch stop rate was 42%. See *OPD Quarterly Stop Data Report Q4 2022 4*, <https://www.oaklandca.gov/resources/2022-stop-data-and-reports> (last visited Mar. 29, 2023). That rate was slightly lower for non-dispatch stops that were not intelligence led.⁵ For non-dispatch, non-intelligence led stops, the African American

⁵ A non-dispatch stop is a stop made because of an officer observes a violation of the law and chooses to initiate contact. An example would be an officer observes a vehicle going through a red light without stopping. *OPD Quarterly Stop Data Report*

1 stop rate fell below 40% for the last two quarters of 2022. *See Fig. 2*. Prior to 2021,
 2 the Department's African American non-dispatch stop rate was never below 50%.
 3 Since 2021, the Department's African American non-dispatch stop rate has been
 4 below 50% in six of eight quarters. *Id.*; *see also* Dkt. 1515, *Joint Case Management*
 5 *Statement 54 Fig.4* (Apr. 20, 2022). This is directly attributable to the Department's
 6 use of stop data not only to implement strategies to effectively mitigate risk but to
 7 effectively monitor those strategies and modify them as appropriate to ensure
 8 sustained long-term change.

9 **V. OFFICER RECRUITMENT, ATTRITION, AND DEPARTMENT** 10 **DIVERSITY**

11 The Department continues its strategic outreach efforts to attract and
 12 actively recruit officers who reflect the diversity of Oakland, racially and otherwise,
 13 and who live in or have meaningful ties to the City. *See Oakland Police Dept.*
 14 *Quarterly Staffing Report (4th Quarter 2022)* 10-16 (Feb. 28, 2023),
 15 <https://www.oaklandca.gov/resources/info-memo> (last visited Apr. 1, 2023).

16 The Department's recruitment for the 192nd Academy is ongoing; the
 17 Department has not commenced any additional academies since our last court
 18 hearing. Between October and December 2022, the Department hosted or attended
 19 18 recruitment events. *Id.* at 15-16. There were 17 in-person events, 11 of which
 20 occurred in Oakland, and three online events. *See Fig. 2*, below. For each event, the

21 Q4 2022 at 1, *supra*. Intelligence-led stops are a subset of non-dispatch stops and
 22 require officers to possess knowledge from an articulable source that leads to the
 23 initiation of a stop. *Id.* at 2. The source of information may be very specific, such as
 24 a named or described suspect, or general information about a recent crime trend
 25 tied to a specific location and involved individuals. An officer's knowledge and
 26 intent at the time the stop is initiated is important in determining whether the stop
 27 is intelligence-led. An example is officers observe a vehicle with the left front
 28 headlight out. *Id.* The vehicle also matches the description and partial license plate
 of one involved in a series of recent robberies. They conduct a traffic enforcement
 stop for section 24400(a) of the Vehicle Code. By using information and intelligence,
 our efforts are directed at the relatively few people who cause the most harm in our
 neighborhoods. *Id.* at 3. Stops based on objective information and specific directives
 may reduce bias in officer decision-making during non-dispatch stops. The overall
 reduction of stop activity results in a reduced policing "footprint" within the
 community. *Id.*

1 Department tracked the number of individuals who showed interest in police officer
 2 trainee (POT) positions (graduating from the academy and becoming a sworn
 3 officer), the cadet program (part-time positions for young adults attending high
 4 school and college to provide an introduction to various sworn and non-sworn
 5 positions within the Department), or dispatcher positions (non-sworn). *Quarterly*
 6 *Staffing Report (4th Quarter 2022)* at 15-16, *supra*.

7 4Q2022 Recruitment – Outreach Events

8 Date	Event	Location	Number of Attendees	Inquiries: Number and Type
9 1-Oct-22	Oaktober Fest	3401 Fruitvale Ave Oakland	200	POT 15 Dispatcher 4 Cadet 3
10 2-Oct-22	Oaktober Fest	3401 Fruitvale Ave Oakland	200	POT 5 Dispatcher 2 Cadet 2
11 4-Oct-22	Criminal Justice Career Fair	25800 Carlos Bee Blvd Hayward	200	POT 30 Dispatcher 15 Cadet 10
12 8-Oct-22	Black College Expo	NRG Park Houston, TX	600	POT 25 Dispatcher 3 Cadet 2
13 13-Oct-22	Travis Air Force Base Career Event	Travis AFB Fairfield	300	POT 5 Dispatcher 1 Cadet 0
14 16-Oct-22	Practice Physical Ability Test	Merritt College, Oakland	15	POT 15 Dispatcher 0 Cadet 0
15 16-Oct-22	OPD Board Workshop	Police Administration Building	10	POT 10 Dispatcher 0 Cadet 0
16 19-Oct-22	OPD Recruiting Zoom Webinar	Online	70	POT 70 Dispatcher 0 Cadet 0
17 22-Oct-22	Recruiting Event	Crossfit Gym San Ramon	30	POT 10 Dispatcher 0 Cadet 0
18 31-Oct-22	Halloween Trunk or Treat	Verdese Carter Park Oakland	700	POT 25 Dispatcher 25 Cadet 13
19 5-Nov-22	Asian Cultural Fair	Lincoln Square Recreation Center Oakland	200	POT 3 Dispatcher 2 Cadet 4
20 12-Nov-22	Black College Expo	Sacramento State University Sacramento	500	POT 10 Dispatcher 2 Cadet 0
21 13-Nov-22	Oral Board Workshop	Police Administration	10	POT 7 Dispatcher 0

		Building		Cadet 0
1-Dec-22	Recruit Military Event	Scottish Rite Center San Diego	1,000	POT 30 Dispatcher 25 Cadet 6
3-Dec-22	Oakland Chinatown Improvement Council Winter Festival	8th & Franklin Oakland	200	POT 10 Dispatcher 3 Cadet 4
4-Dec-22	Oakland Chinatown Improvement Council Winter Festival	8th & Franklin Oakland	350	POT 20 Dispatcher 8 Cadet 6
11-Dec-22	Physical Training Workshop	6th & Jefferson Oakland	8	POT 8 Dispatcher 0 Cadet 0
22-Dec-22	Toys for the Town Giveaway	Police Administration Building	2,500	POT 3 Dispatcher 4 Cadet 0

Fig. 2.

The Department's recruiting efforts are contributing to changes in the racial demographics of sworn officers. Department attrition in 2021 and 2022 also contributed to changes in officer demographics. After experiencing an elevated attrition rate in 2021 and the first half of 2022, however, the rate has dropped to just below the average attrition rate observed from 2016-2020. The Department's sworn officer attrition rate for the second half of 2022 averaged 4 officers per month. *Quarterly Staffing Report (4th Quarter 2022)* at 6, *supra*. Demographic changes have resulted in a complement of officers that more closely resembles the City's racial demographics. See Table 2.

///

Table 2: Race/Ethnicity* by Year – OPD Sworn Staff as of Dec. 31, 2022

Race/Ethnicity	US 2021 Census-Oakland Pop. ⁶	OPD 2019	OPD 2020	OPD 2021	OPD 2022
Asian	15.8%	13.3%	18.1%	18.6%	15.2%
Black or African American	22.7%	16.8%	16.7%	18.7%	20.6%
Hispanic	27%	26.9%	28.2%	28.0%	28.6%
Other	0.1%	6.6%	3.0%	3.3%	3.3%
White	34.4%	36.4%	34.0%	31.5%	28.3%

*Note: “Asian” includes Filipino, “Other” includes Native American and Undeclared

Table 2A: Race/Ethnicity and Gender – OPD Sworn Staff as of Dec. 31., 2022

Race/Ethnicity	Female		Male	
Asian	8	7.69%	98	16.53%
Black or African-American	24	23.08%	119	20.07%
Filipino	2	1.92%	26	4.38%
Hispanic or Latino	38	36.54%	161	27.15%
Native American	1	.96%	2	.34%
Undeclared-Other	3	2.88%	18	3.04%
White or Caucasian	28	26.93%	169	28.49%
Total	104	100%	593	100%

While the Department has typically seen an annual increase in the percentage of female sworn officers over the past several years, the Department did not see an increase in the percentage of female officers in 2022 despite its targeted efforts to recruit and retain women. See Table 3. The Department nonetheless still maintains a greater percentage of female officers than the state and national average. *Id.* In addition, the race and ethnicity among the Department’s female sworn ranks remains diverse. See Table 2A.

///

⁶ Population by race in the city of Oakland. Source: United States Census Bureau. Quick Facts Oakland city, California 2021, <https://www.census.gov/quickfacts/oaklandcitycalifornia> (last visited Apr. 1, 2023).

Table 3: OPD Gender Percentages by Year Compared With 2021 National Percentage – OPD 2022 Sworn Staff as of Dec. 31, 2022

Gender	National Percentage 2021 ⁷	OPD 2019	OPD 2020	OPD 2021	OPD 2022
Female	13.3%	13.9%	14.6%	15.7%	14.2%
Male	86.7%	86.1%	85.4%	84.4%	85%

The Department is keenly aware of how few female sworn members hold supervisory positions. As of February 2023, female members comprised only 13 of 111 sergeants, one of 27 lieutenants, and zero of 9 captains. Two of the Department’s four deputy chiefs are women. Thus, while women make up 14.2% of the Department’s sworn membership, they hold less than 10.5% of current supervisory ranks (including the chief and assistant chief positions).

In 2022, the Department committed to the “30x30 pledge,” an effort to increase the percentage of female academy recruits to 30% by the year 2030. The nationwide 30x30 initiative arose in response to the historical underrepresentation of women in law enforcement. The initiative stems from the idea that a group must achieve at least 30% representation to empower that group to influence an organization’s culture.⁸ The initiative explores actions an agency can take to improve the representation and experiences of women in sworn positions in all ranks. The Department aims to increase its sworn female ranks generally, as well as increase the representation of women in supervisory and commander roles.

In late 2022, the Department’s Office of Internal Accountability (OIA) administered a survey developed by the 30x30 initiative. The initiative provided the

⁷ 2020 national statistics based on <https://www.statista.com/statistics/195324/gender-distribution-of-full-time-law-enforcement-employees-in-the-us/><https://www.ppic.org/publication/law-enforcement-staffing-in-california/> (last visited Apr. 1, 2023). Some prominent outlets devoted to advancing women in policing actually calculate the current national percentage much lower, closer to 12%. *See, e.g.,* <https://30x30initiative.org> (last visited Apr. 1, 2023)

⁸ <https://30x30initiative.org/about-30x30/> 40

1 survey template and the OIA modified it slightly to better fit our agency. Exhibit 2
 2 contains the OIA's March 2023 report on the results of the survey. The report was
 3 shared with the Department and the 30x30 initiative. Ex. 2, *30x30 Survey of Sworn*
 4 *Female Officers* (Mar. 2023).

5 The 2022 30x30 initiative survey garnered more responses (56) from sworn
 6 female members than the 2022 internal investigations and discipline survey (23).⁹

7 Key points and recommendations from OIA are included in Chart 2.

8 Chart 2: Key Findings and Recommendations Re Sworn Female Members' Responses to Department's Fall/Winter 2022 Survey	
9 Finding	10 Recommendation
11 While most respondents initially wanted to obtain a specialty assignment when they became a police officer, only 53% believe they have equal access to special/ancillary assignments.	12 The Department should study distribution of female sworn members throughout the Department and develop pathways to achieving equitable representation.
13 Female supervisors reported the biggest challenge was a lack of respect from other supervisors.	14 The Department should consider hosting a series of gender awareness trainings for supervisors to teach support skills that will contribute to equitable treatment of female sworn members.
15 Forty-four percent of sworn female members feel the promotion process allows for favoritism. Additionally, 29% believe the promotion process is subjective or biased, and the promotion process is opaque with little transparency about how decisions are made.	16 The promotional process, including pre-testing training opportunities, ranking within City created promotional lists, the post-test interview and essay process, availability of acting assignments, and the eventual promotions into higher ranks should be examined by the internal Race and Equity Team.
17 The most frequent theme of responses to an open-ended question about what the Department can do to make female sworn members feel valued was that the Department should show more appreciation of all officers.	18 The Deputy Chiefs of each Bureau should coordinate and host a quarterly event to show support and camaraderie with their assigned teams.

19 ⁹Notably, the 2022 internal investigation and discipline survey revealed that only
 20 57% of the 23 sworn female officers who responded agreed that they "feel respected
 21 by [their] supervisors."
 22

Chart 2: Key Findings and Recommendations Re Sworn Female Members' Responses to Department's Fall/Winter 2022 Survey

Finding	Recommendation
The most frequent theme of responses to an open-ended question about what the Department can do to encourage female sworn officers to promote was to provide a mentorship program.	The Department should consider expanding its mentorship program beyond the Academy. The Department should rely upon subject matter experts to create a framework for an incentivized and renewable mentorship program, not just for Academy members, but for mid-career employees as well.

The Department is engaged with the material provided by the 30x30 initiative. The Department received the internal survey report in mid-March 2023 and is working on its response to OIA's recommendations in addition to exploring other ideas. The Department appreciates that mentorship programs and leadership training are critical to retaining and increasing membership, particularly for officers from underrepresented groups which, in law enforcement, includes women.

VI. OFFICERS USE REASONABLE FORCE AND DEPARTMENT FORCE REVIEW IS DEPENDABLE

The Department has continued to demonstrate capability in sustaining substantial compliance on tasks involving use of force, reporting, and review. Officers' uses of force are generally appropriate and reported and reviewed as required by policy, and supervisors and command personnel are generally identifying and properly addressing any concerns. *See Second NSA Sustainability Report at 13, supra; Third NSA Sustainability Period Report at 13, supra.*

A. FORCE AND FORCE INVESTIGATIONS (TASKS 24 & 25)

The Department has continued its own internal command oversight and assessment of force and force investigations using a process patterned after the Monitoring Team's review process. That process has proven successful for identifying and addressing issues related to force reporting and review. The process is also sustainable in the long term. The Monitoring Team agrees that generally the Department's "chain of command is actively involved in the review of use of force

1 and is addressing areas of concern without the need for [the Monitoring Team] to
2 bring the concerns to [the Department's] attention.” *Third NSA Sustainability Period*
3 *Report* at 19, *supra*.

4 During the quarterly Monitoring Team site visit in February, a deputy chief
5 presented the Department's assessment of Level 3 and Level 4 use of force reports
6 completed between September and November 2022. The Department reviewed and
7 reported out not only on the use of force reports reviewed by the Monitoring Team
8 but on additional use of force reports. The Department identified concerns with
9 tactical issues, proper categorization of uses of force, and de-escalation techniques.
10 The Department also identified positive trends – including improved planning and
11 communications, more detailed use of force reports, and sergeants and the chain of
12 command identifying and addressing deficiencies. The Monitoring Team agreed
13 with the Department's self-assessment. *See id.* at 13.

14 In its most recent report, the Monitoring Team recognized the following
15 additional achievements:

- 16 • The percentage of force incidents involving African Americans
17 decreased 7% (*id.* at 12), a further reduction from the aggregate 22%
18 decrease achieved in the previous two quarters (*Second NSA*
Sustainability Period Report at 12, *supra*; and Dkt. 1540, *First NSA*
Sustainability Report of the Independent Monitor 12 (Oct. 3, 2022));
- 19 • There were no instances where the use of force was not de-escalated or
20 stopped reasonably when resistance decreased (*Third NSA*
Sustainability Period Report at 18);
- 21 • There were no instances where officers could have made additional
22 efforts to explain to subjects why detention was occurring prior to
23 using force (*id.*);
- 24 • There was continued improvement in officers identifying themselves as
25 police officers when appropriate and there was time to do so and “few
26 instances” where they did not do so (*id.* at 12, 18);
- 27 • There were no instances where officers failed to document specific
28 information and details justifying use of force or using “boilerplate” or
“pat” language in reports (*id.* at 17);
- There were no instances of unprofessional language or profanity (*id.* at
12);

- 1
- 2 • Supervisors identified and properly addressed all but one body-worn camera issue (delayed activation) (*id.*); and
 - 3 • The Department has conducted member training in multiple formats to address proper Taser use and review of Taser deployments which the Monitoring Team believes will address a cluster of previously identified concerns with Taser deployments (*id.* at 18).
- 4
- 5

6 Finally, the Department is pleased to report that on March 23, 2023, the
7 Oakland Police Commission approved revisions to DGO I-15.1, *Body-Worn Camera*
8 *Policy*. After the meet and confer process is complete, the Department will publish
9 the policy, begin training, and determine an appropriate effective date for the policy
10 based on training requirements. The revised policy in conjunction with the
11 Department's upgraded body-worn camera system is critical to the Department's
12 ability to sustain its consistently rigorous force and force report reviews.

13 **B. FORCE BOARDS (TASKS 26 & 30)**

14 During the Third NSA Sustainability Period, the Department held two Force
15 Review Boards to review Level 2 uses of force, and one Executive Force Review
16 Board to review a Level 1 use of force, an officer-involved shooting. *See id.* at 20-23.
17 The Monitoring Team did not disagree with any of the Boards' findings that officers'
18 used force in compliance with law and policy, or the one instance where the Board
19 determined that a use of force was out of compliance. *See id.* Furthermore, the
20 Monitoring Team recognized a number of positive qualities characteristic of the
21 Department's force boards that contribute to consistent and effective boards. For
22 example, the Monitoring Team "continue[d] to observe substantive discussion and
23 deliberations among the Board members," and noted that members "ask probing
24 questions of the force investigators and, where applicable, Department subject-
25 matter experts (SMEs) and IAD investigators." *Id.* at 21. The Boards "also spend a
26 great deal of time discussing issues ancillary to the issues of force such as tactics,
27 supervision, force alternatives, and training opportunities." *Id.*

28

1 Finally, the Monitoring Team reviewed two written Board reports completed
2 in December 2022 and January 2023 which it found were generally “well-written
3 and accurate accounts of the [Board] proceedings.” *Id.* at 20.

4 CONCLUSION

5 The City continues to experience high levels of homicides, armed robberies,
6 and gun crimes. Department members continue to work tirelessly in their mission
7 to apprehend those responsible for the violence and keep the community safe. In the
8 past week, the Department arrested multiple individuals responsible for a series of
9 armed robberies across Oakland. *Oakland Police Department Makes Multiple*
10 *Arrests in Robbery Series* (Mar. 29, 2023),
11 <https://www.oaklandca.gov/departments/police> (last visited Apr. 1, 2023). In the
12 past several months the City has also faced new significant challenges, including a
13 vicious ransomware attack in early February from which the City is still recovering.
14 The City’s commitment to constitutional policing is unwavering, however, no matter
15 the challenges it may face. It is the City and its independent oversight bodies, along
16 with the Department, who are together responsible for ensuring sustained
17 substantial compliance with the NSA. While certainly a focus of the City’s work has
18 been and will continue to be ensuring that the Department has an effective
19 framework for rigorous and honest self-assessment and accountability, the City has
20 made clear that it does not intend to rely solely on the police to police themselves.
21 The Department has made great strides in every aspect related to the NSA. Even
22 so, the City expects and demands additional improvements particularly focused on
23 the integrity of its internal investigations. The Department, too, expects and
24 demands these improvements of itself. And even with additional Department
25 improvement, the Mayor, City Administrator, City Attorney, Oakland Police
26 Commission, Officer of the Inspector General, and Community Police Review
27 Agency provide independent Department oversight and guidance. Separately and
28 collaboratively, these entities police the police.

OAKLAND POLICE COMMISSION’S STATEMENT¹⁰

The Oakland Police Commission is pleased to respond to the Court’s invitation to share our perspective on the value of a Sustainability Process and the best plan and prospects for a successful exit from the NSA.

The Police Commission was created through a 2016 ballot measure that amended our City Charter and vested in us broad authority to oversee the Oakland Police Department “to ensure that its policies, practices, and customs conform to national standards of constitutional policing.”

The 2016 ballot measure, along with a subsequent ballot measure in 2020, enshrines civilian oversight to supervise the Police Department, the Office of the Inspector General (OIG), which has authority to assess the Department's performance and adherence to constitutional policing practices and audit its policies and procedures, and the Community Police Review Agency (CPRA), which has authority to investigate public complaints of misconduct against police officers and internal complaints if directed by the Commission. This model was part of City leadership’s long-term plan for the City of Oakland to earn resolution of the Negotiated Settlement Agreement (NSA). The Commission’s bold exercise of its oversight authority, as informed by audit work of the OIG and investigatory work of the CPRA, should eventually replace the proactive compliance mandate currently imposed by the Monitor and the Independent Monitoring Team.

To earn NSA resolution, we appreciate that this Court and the Compliance

¹⁰ Counsel for the Oakland Police Commission provided the City’s counsel with this statement from the Oakland Police Commission and the referenced attached plan (Exhibit 3) for inclusion in the court filing pursuant to the Court’s January 24, 2023 request for the Commission’s perspective. The Oakland Police Commission’s authority arises from the City’s Charter. *See* The Charter of the City of Oakland, sec. 604, https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA (last visited on Apr. 2, 2023).

1 Monitor/Director both expect the City of Oakland to demonstrate that it will
2 routinely address major compliance incidents. The City can do so, first, by
3 identifying deeper structural and cultural issues those incidents reveal and, second,
4 by then implementing comprehensive response plans to keep its reform progress on
5 track. The Monitor’s Status Reports have routinely emphasized the proper scope of
6 a more comprehensive response plan as integrating “broader issues of personnel,
7 discipline, risk management, supervision, and leadership into a comprehensive
8 management plan.” The Oakland Police Commission’s Charter authority positions it
9 to support the City in developing this more comprehensive approach.

10 That’s because the Police Commission plays a broad oversight role, both in
11 leading the civilian oversight policymaking structure in Oakland and in supervising
12 a civilian-led investigation agency that prioritizes the integrity of investigations
13 into allegations against sworn officers. The Commission reforms Department
14 policies related to all NSA tasks. We set direction for the Police Chief, the Inspector
15 General, and the Executive Director of the CPRA. We can request reports about
16 important police reform issues from the Chief and the City Administrator. We set
17 the evaluation criteria for the Chief, the Inspector General, and the Executive
18 Director of the CPRA. We hold an annual hearing on the Police Department’s
19 budget before the City Council approves it. We serve as a public forum for a highly
20 informed community of Oakland residents and stakeholders, many of whom are
21 organized and deeply engaged to help us set the reform agenda at our twice-
22 monthly public meetings. Advocates for stringent police reform measures also serve
23 as featured community participants of the Commission’s policy committees, which
24 we establish to revise the Department’s policies, procedures, and general orders. In
25 the past year alone, the Commission has taken up close to 20 detailed policies,
26 standard operating procedures, and general orders, ranging from the limited
27 authorization to use military equipment to approving all of the changes the Monitor
28 has required the City to implement, each time incorporating community

1 involvement and perspectives without missing any deadlines imposed by state law
2 or this Court. Far more policies and procedures and general orders are in the
3 process of being created and revised, and we anticipate continuing to successfully
4 take on the policymaking work required to reform OPD.

5 Based on our mandate from the voters of Oakland, and recent invitations of
6 this Honorable Court, we understand that the Commission has a responsibility to
7 fully exercise all of its Charter powers to continuously set the policing agenda and
8 transform the Department from within, so that the constitutional policing measures
9 mandated by the NSA will take root beyond the Sustainability Period.

10 In the short term, the Department has taken up the recommendations issued
11 by the law firm of Clarence, Dyer, Cohen, LLP and started a detailed process of
12 implementing those recommendations via new and updated policies and training
13 materials. In addition, the Department has gone beyond those recommendations
14 and is examining other policy and procedure changes to enhance communication
15 between the Department and the CPRA and the Commission.

16 To set direction about ongoing reform efforts over the medium and long term,
17 the Commission has established a new subcommittee of Commissioners currently
18 led by Retired Judge Brenda-Harbin Forte as its Chair, other distinguished
19 Commissioners of Oakland, and featured community participants of the public to
20 lead the Commission in rendering its own determinations about what deeper
21 structural and cultural issues were evidenced by the events described in the CDC
22 Reports, in order to develop an appropriately comprehensive incident response
23 reform plan for the Commission and the City to implement over the coming months.
24 That plan is attached. Ex. 3, *OPC Memorandum, Discussion Outline of Reform Plan*
25 (Mar. 30, 2023).

26 From this latest sprint of reform work, one point of perspective the
27 Commission will share with the Court is to reemphasize the value of a near-term
28

1 transition of oversight to the Commission and the civilian departments it oversees.
2 With due respect to Clarence Dyer Cohen, LLP, recommended reforms to the Police
3 Department and the City require an in-depth understanding of the City's Charter
4 structure and the model of oversight it envisions, and key policymaking reform
5 work would have been well underway by now had the Commission been read into
6 the matter at an earlier juncture. Rather than coordinating the outside
7 investigation with an Oakland-overseen investigation led by the CPRA, civilian
8 oversight was siloed out of the process that resulted in the Reports of Investigation
9 and Recommendations that Clarence Dyer Cohen LLP issued. The Commission is
10 left to develop and implement big picture reforms on a short timeline, almost as an
11 afterthought. We continue to recognize the work of the Independent Monitoring
12 Team in helping the City of Oakland reform itself, and we are encouraged by the
13 opportunity to build on the Monitor's herculean track record the Court itself
14 emphasized. We would be remiss, though, if we did not respectfully share our
15 perspective that the Commission has been empowered by the voters because of
16 widespread community sentiment that Oakland residents can set the direction of
17 the reform work required to ensure Constitutional policing.

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EXHIBIT 1

CITY OF OAKLAND

Memorandum

To: Chief D. Allison
From: Lieutenant B. Hubbard
Date: 23 Mar 23

Re: DGO I-19 Training Review and Update

This memorandum provides a review and update for training DGO I-19 – Electronic Communication Devices.

In September 2022, DGO I-19 was published. The Training Section completed a digital presentation to accompany the policy and tasked all supervisors and commanders to provide the training to their respective teams. The strategy of commanders and supervisors providing the training proved effective because it allowed for a robust understanding of the policy, the opportunity for supervisors and commanders to provide their expectations, and for supervisors and commanders to confirm that members had their work cellphones on their person.

DGO I-19 and the digital presentation were uploaded to PowerDMS for members to read, understand, and “sign off.”

Clarence Dyer & Cohen LLC was retained in May 2022 to conduct an independent investigation into two OPD incidents and the public report of their findings was released in January 2023. The Training Section republished the training documents, again tasking sergeants and commanders to provide training to their teams.

In March 2023, the digital presentation was updated to include the following topics:

- Restrictions against deleting and resetting the phone or electronic device upon separation (termination, resignation, or retirement).
- The department’s authority to search one’s personal phone or electronic device, if reasonable.

To ensure understanding of the policy, a 10-question quiz will be added to PowerDMS, requiring all members to complete it before the policy is considered “signed off.”

The Training Section, in partnership with the Human Resources Section, will ensure that all officers graduating from the academy receive the training, along with new employees. Also, the training will be provided in each Continual Police Training (CPT) session provided to sergeants and officers and instructed by a Bureau of Risk Management (BORM) representative.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bryan Hubbard". The signature is written in a cursive style with a large initial "B" and a long, sweeping underline.

Bryan Hubbard
Lieutenant of Police
Training Section

1. T/F: All sworn members shall carry their work cell phone while on duty.
2. T/F: Because some confidential material may be on a work cell phone, they are not subject to public records requests, subpoenas, and discovery requests unless authorized by a magistrate.
3. Which of the following is true? Members are not to conduct personal business on their work phones unless:
 - a. A member calls to notify family members, physicians, etc., regarding an injury on the job.
 - b. A member calls to notify family members when required to work overtime without advance notice.
 - c. None of the above
 - d. Both A and B.
4. T/F: Electronic material (e.g., pictures, audio, text messages, electronically generated messages) potentially related to a criminal or internal investigation and recorded on work cell phones shall be handled as evidence.
5. Which of the following is true regarding the use of personal cell phones?
 - a. Members may use city email for official business on their personal phone.
 - b. Members who have timecard approval responsibilities may approve timecards on their personal phone.
 - c. Members who do not have access to their work cell phone may make urgent work-related phone calls or text messages from their personal phones.
 - d. Members not issued a work cell phone may conduct administrative work-related business (e.g., call the office, submit or approve timecards, etc.) using their personal cell phone.
 - e. All of the above are true.
6. T/F: Personal social media accounts or applications may be accessed or installed on work cell phones or electronic devices.
7. T/F: To alleviate the burden of carrying two phones, one may remove the SIM (subscriber identity module) card from a work cell phone or device and install it into a personally owned phone.
8. When may a member delete or reset their work cell phone to factory settings?
 - a. Upon separation from the department
 - b. When the phone is not operating properly
 - c. Before submitting it to the ITU
 - d. Never
9. T/F: The department reserves the right to inspect one's work cellphone, including call logs, messaging apps, browsing history, and social media applications.
10. T/F: Phone inspections by supervisors or commanders outside of planned or ordered inspections, audits, or investigations shall be documented in a memorandum to the Captain of Internal Affairs, no matter the inspection outcome.

EXHIBIT 2

30x30 Survey of Sworn Female Officers

Due to the historical underrepresentation of women in law enforcement, a coalition of police leaders, researchers, and professional organizations joined together to advance the representation and experiences of women in policing agencies across the United States by creating the 30x30 initiative. The 30x30 initiative is based on the importance of achieving at least 30% representation to empower a group to influence an organization's culture.¹ The Oakland Police Department committed to the "30x30 pledge," referencing an effort to increase the percentage of female academy recruits to 30% by the year 2030, which provides a series of actions the agency can take to improve the representation and experiences of women in sworn positions in all ranks.

As part of that pledge, the Department agreed to administer a survey developed by the 30x30 initiative. The initiative provided the survey template and the Department modified it slightly to better fit the agency.

The Department's only sworn female lieutenant emailed the anonymous survey link to all sworn female employees on November 29th, 2022. The lieutenant and a female sergeant also sent follow-up emails reminding officers to respond, encouraging participation during the following weeks. The survey closed on December 19th, 2022.

The survey received fifty-six responses out of a possible 103 sworn female members (a 54% response rate). The end of this report includes the aggregate responses to each question.

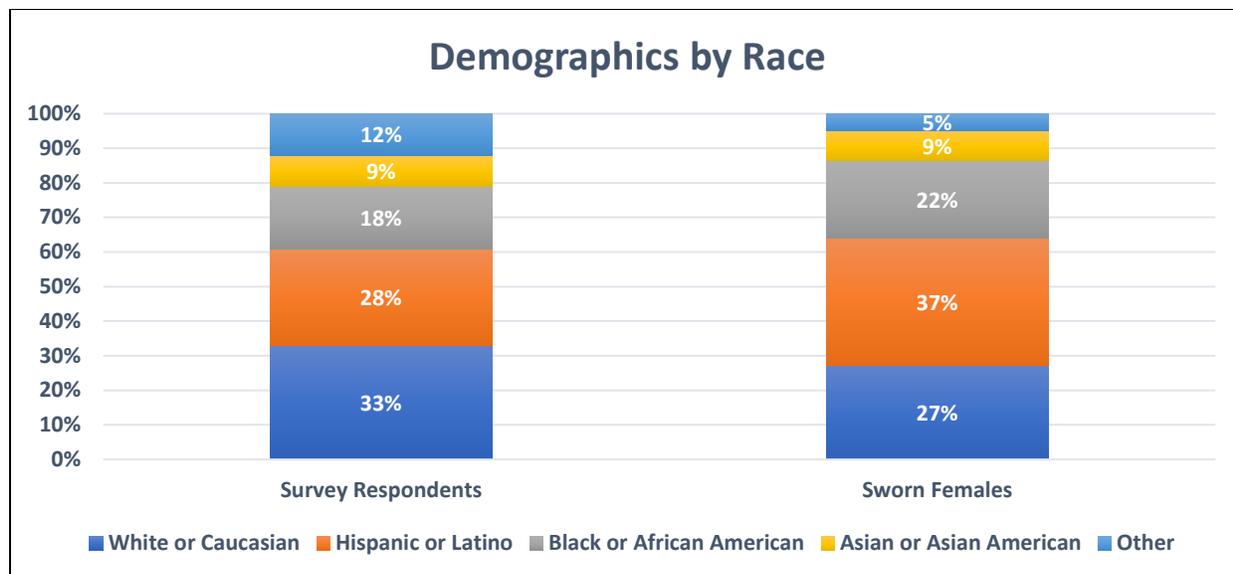
The Department conducted a survey of all sworn members in July 2022 about the internal affairs and discipline process. The July survey captured data by race and gender. Some questions on that survey were similar to questions on the 30x30 survey, allowing for some comparison of sworn female responses. There were 23 sworn female respondents to the July 2022 survey.

Demographics

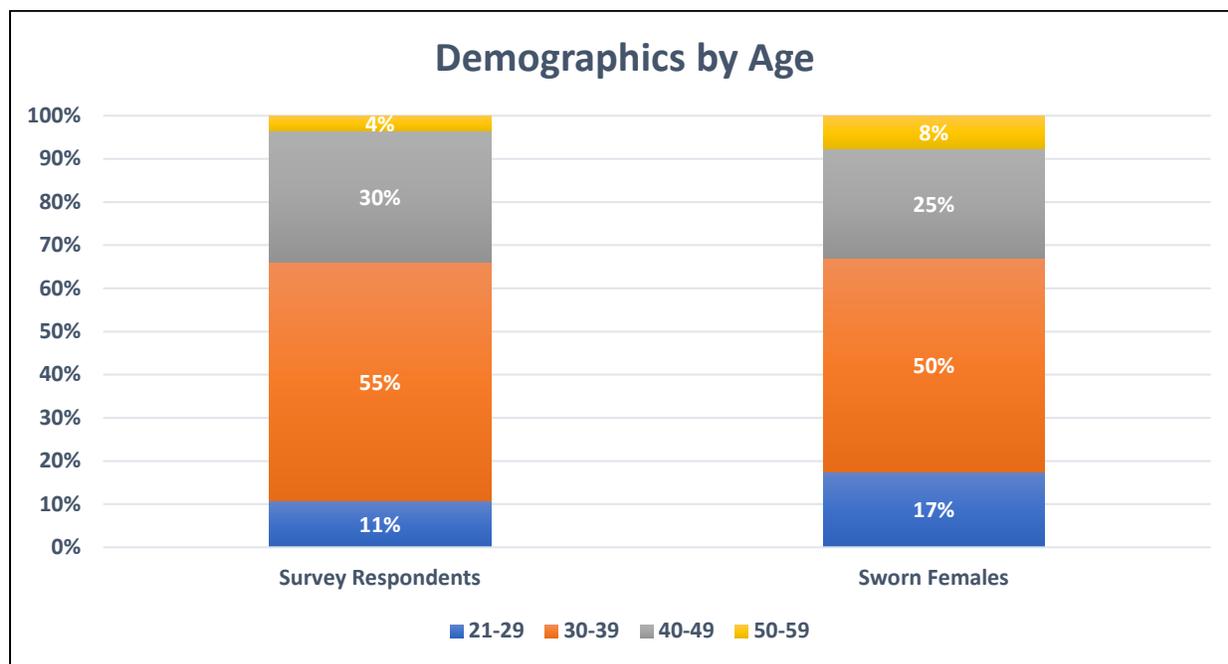
Although only slightly more than half of the Department's sworn female officers responded to the survey, the race and age demographics of the women who responded roughly reflect the Department's overall demographics for sworn female officers.

The race or ethnicity of the survey respondents is generally similar to the Department's current demographics. It should be noted that, unlike the Department's internal data set, the survey allowed respondents to select more than one race category, which may have contributed to some of differences present in the chart below.

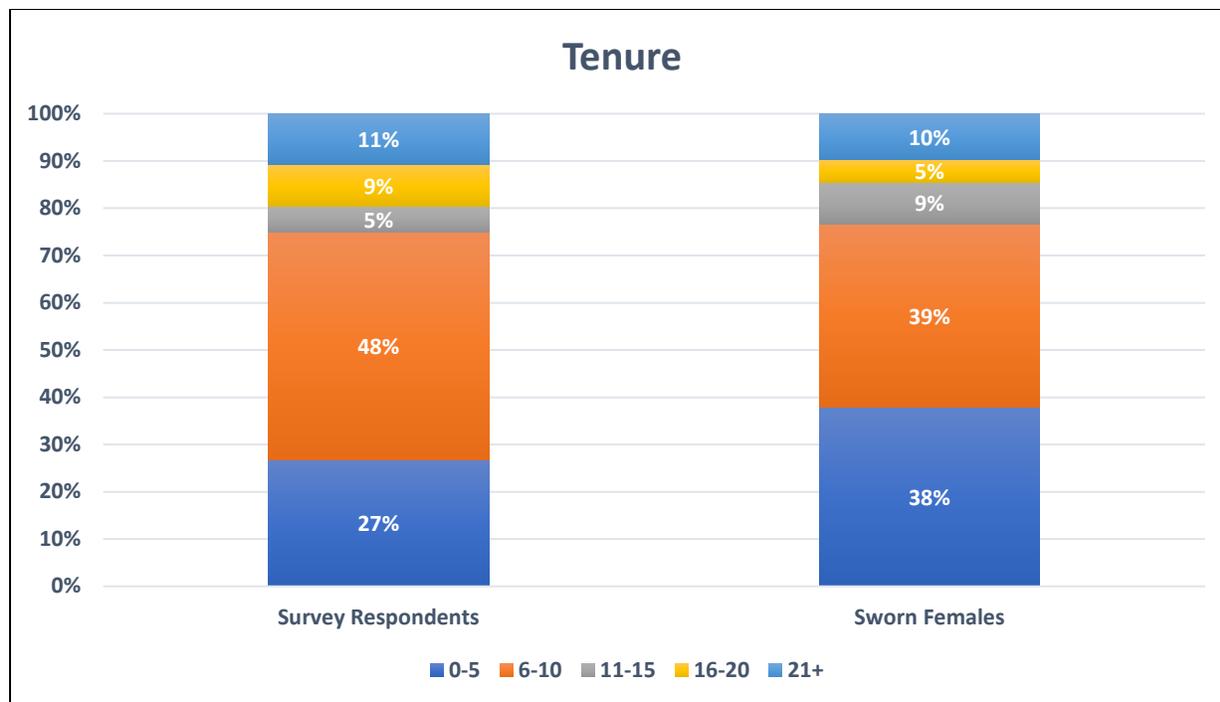
¹ <https://30x30initiative.org/about-30x30/>



By age, the majority of sworn female officers are between 30 and 39 years old.



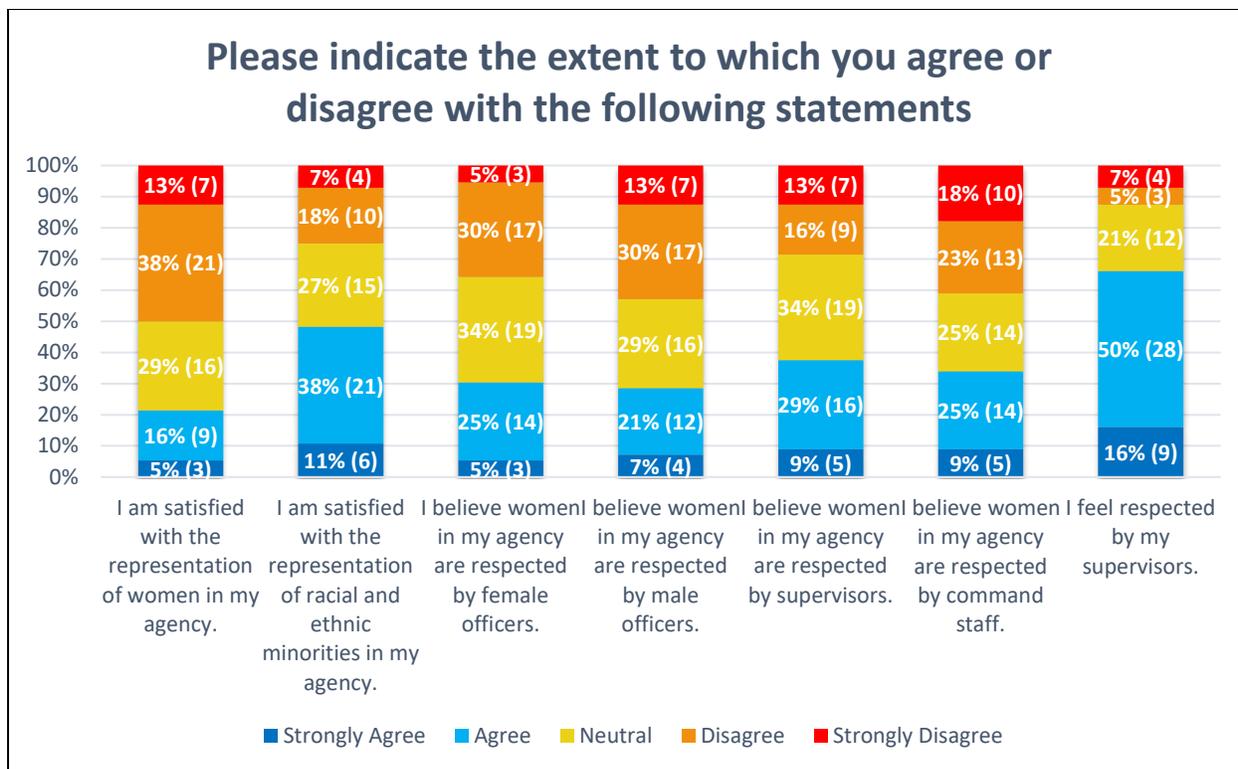
By tenure, most sworn female officers have between six and 10 years of service. The Department received a lower response rate from officers with zero to five years of service than those with 6-10 years of service.



General Agency Feedback

Overall, the majority of respondents appear to have neutral or positive feelings about levels of respect and racial and ethnic representation. The one statement where over half of respondents disagreed or strongly disagreed was: "I am satisfied with the representation of women in my agency."

The current survey also received more than twice the responses from female sworn members than the initial survey, indicating the current survey is more representative of female sworn members than the prior survey.



For more than half of respondents (55%), when they became a police officer their main aspiration was to obtain a specialty assignment. Almost half of respondents (48%) reported they are happy with their current position. Only 15% reported interest in promoting to a higher rank. While most respondents initially wanted to obtain a specialty assignment when they became a police officer, only 53% believe they have equal access to special/ancillary assignments.

The statement, “I feel respected by my supervisors” was asked in the July 2022 survey on the internal affairs process. In that survey, 23 individuals that identified as sworn females responded. The result from the July 2022 was less positive than those obtained from the current 30x30 survey. In the current survey, 57% of respondents agreed/strongly agreed with the statement, 13% were neutral, and 31% disagreed or strongly disagreed.

Mentoring

Slightly more than 60% (34 of 56) of respondents indicated they have or had a significant mentor during their career. The most common mentor was a supervisor or leader within the Department (65%), followed by other officers within the Department (26%). Additionally, most respondents indicated their significant mentors were male.

Promotions

Most respondents have been encouraged to promote (77%). Respondents were more often encouraged to promote by a male within the Department, rather than a female. Similarly, for those respondents who have ever been discouraged from promoting (29%), males within the Department were more often reported as the source of discouragement. Respondents reported being told promoting “wasn’t worth it”

was the most frequent form of discouragement. Seven respondents selected that reason. There was a tie (6 responses each) between “need more experience/not enough time in current role” and “bias against women in the role (implied)” for the second most common reason why respondents were discouraged from promoting.

More than half of respondents indicated they have taken extra steps to increase their promotability, though only 25% have actually sought promotion. The most common steps were training, seeking diverse assignments, and taking on extra duties and special projects. For those that have not sought promotion, the most frequent reason given was that they needed to accumulate more experience. Fewer, but still frequent, responses included that they like their current shift and they are not interested in the roles required of a ranking officer.

For those that have promoted, the biggest challenge during the promotion process was juggling work and home responsibilities. As a supervisor, the biggest challenge is a lack of respect from other supervisors.

Almost half of respondents have neutral feelings about the promotion process at OPD. Respondents were more likely to disagree/strongly disagree the process was fair (32%) than agree/strongly agree (21%). Forty-four percent of respondents feel the process allows for favoritism. Additionally, 29% believe the promotion process is subjective/biased, and the promotion process is opaque with little transparency about how decisions are made.

Harassment

Forty-five percent of respondents stated they had personally experienced harassment or discrimination based on their gender or other social identity (e.g., race, sexual orientation). The same percentage indicated they had also witnessed similar harassment or discrimination of others during their career. Of those respondents who witnessed harassment or discrimination, 46% (12/26) indicated they witnessed it “sometimes.” Thirty-one percent (8/26) indicated they witnessed it “often” or “very often.”

When asked to select all applicable descriptions from a nine-item list to describe the Department’s response to complaints of harassment or discrimination, 46% of respondents chose the agency “takes complaints of harassment or discrimination seriously and thoroughly investigates them.” 43% chose “agency is inconsistent in its actions.” Nearly 25% of respondents chose “agency culture discourages reporting harassment or discrimination.”

Family Leave

Forty percent of respondents indicated they had children (21/53). Most had children while they were an officer. Of those that used family leave, most utilized it only one time. Nine respondents indicated they used family leave more than one time. Additionally, of those that used family leave, most felt taking the leave impacted their career in a neutral or negative way. Only one respondent felt it had a somewhat positive impact. Despite not having positive feelings about how family leave impacts one’s career, 43% felt the agency was supportive of officers with families. 28% (15/53) also felt the agency was inconsistent in their support of officers with families.

Open-Ended Responses

The survey included two open ended questions. 1. "What can the Department do to make you feel more valued?" and 2. "What extra steps could the Department take to encourage more women to promote within the agency?" For the first question, the most common theme was for the Department to show more appreciation of officers (not just female). The appreciation could be verbal, in the form of written communication or awards, or tangible such as barbecues or coffee provided by the Department. The second most common theme for the first question was to only hire qualified candidates, regardless of race or gender. Officers may feel as if their hard work is devalued if standards are shifted to accommodate less qualified candidates.

For the second question, about encouraging women to promote, the most common theme was the Department needs a mentorship program. Additionally, the Department should fairly promote training opportunities/promotional courses to all officers and not just give opportunities to those in specialty assignments or those who are favored by leadership.

Summary

While the survey captured responses from more of the sworn female population of the Department and reflected a more positive opinion than that expressed by the unknown, smaller, cadre of female sworn respondents from the July 2022 survey, there are still some action items the Department might focus on to help elevate and empower female sworn members in their career.

While most respondents initially wanted to obtain a specialty assignment when they became a police officer, only 53% believe they have equal access to special/ancillary assignments. The Department should study distribution of female sworn members throughout the Department and develop pathways to achieving equitable representation.

As a supervisor, the biggest challenge was a lack of respect from other supervisors. The Department should consider hosting a series of gender awareness trainings for supervisors to teach support skills that will contribute to equitable treatment of female sworn members.

Forty-four percent of respondents feel the promotion process allows for favoritism. Additionally, 29% believe the promotion process is subjective or biased, and the promotion process is opaque with little transparency about how decisions are made. The promotional process, including pre-testing training opportunities, ranking within City created promotional lists, the post-test interview and essay process, availability of acting assignments, and the eventual promotions into higher ranks should be examined by the internal Race and Equity Team.

The Department should show more appreciation of officers (not just female). The Deputy Chiefs of each Bureau should coordinate and host a quarterly event to show support and camaraderie with their assigned teams. The Department should consider expanding its mentorship program beyond the Academy. The Department should rely upon subject matter experts to create a framework for an incentivized and renewable mentorship program, not just for Academy members, but for mid-career employees as well.

Survey Responses

Q1: Are you a woman, 18 years of age or older, who is currently serving or has served as a police officer in the United States?

Answered: 56

Skipped: 0

ANSWER CHOICES	RESPONSES
Yes	100% (56)
No	0% (0)

Q2: Please indicate the extent to which you agree or disagree with the following statements.

Answered: 56

Skipped: 0

	STRONGLY DISAGREE	DISAGREE	NEUTRAL	AGREE	STRONGLY AGREE
I am satisfied with the representation of women in my agency.	12.50% 7	37.50% 21	28.57% 16	16.07% 9	5.36% 3
I am satisfied with the representation of racial and ethnic minorities in my agency.	7.14% 4	17.86% 10	26.79% 15	37.50% 21	10.71% 6
I believe women in my agency are respected by female officers.	5.36% 3	30.36% 17	33.93% 19	25.00% 14	5.36% 3
I believe women in my agency are respected by male officers.	12.50% 7	30.36% 17	28.57% 16	21.43% 12	7.14% 4
I believe women in my agency are respected by supervisors.	12.50% 7	16.07% 9	33.93% 19	28.57% 16	8.93% 5
I believe women in my agency are respected by command staff.	17.86% 10	23.21% 13	25.00% 14	25.00% 14	8.93% 5
I feel respected by my supervisors.	7.14% 4	5.36% 3	21.43% 12	50.0% 28	16.07% 9

Q3: How many years have you been a sworn law enforcement officer?

Answered: 56

Skipped: 0

Years	Responses
0-5	26.79% (15)
6-10	48.21% (27)

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 Office of Internal Accountability
 Risk Analysis Unit

March 2023

11-15	5.36% (3)
16-20	8.92% (5)
21+	10.71% (6)

Range: 0 years – 24 years
 Mean: 9.2 years

Q4: How many years did you spend working patrol?

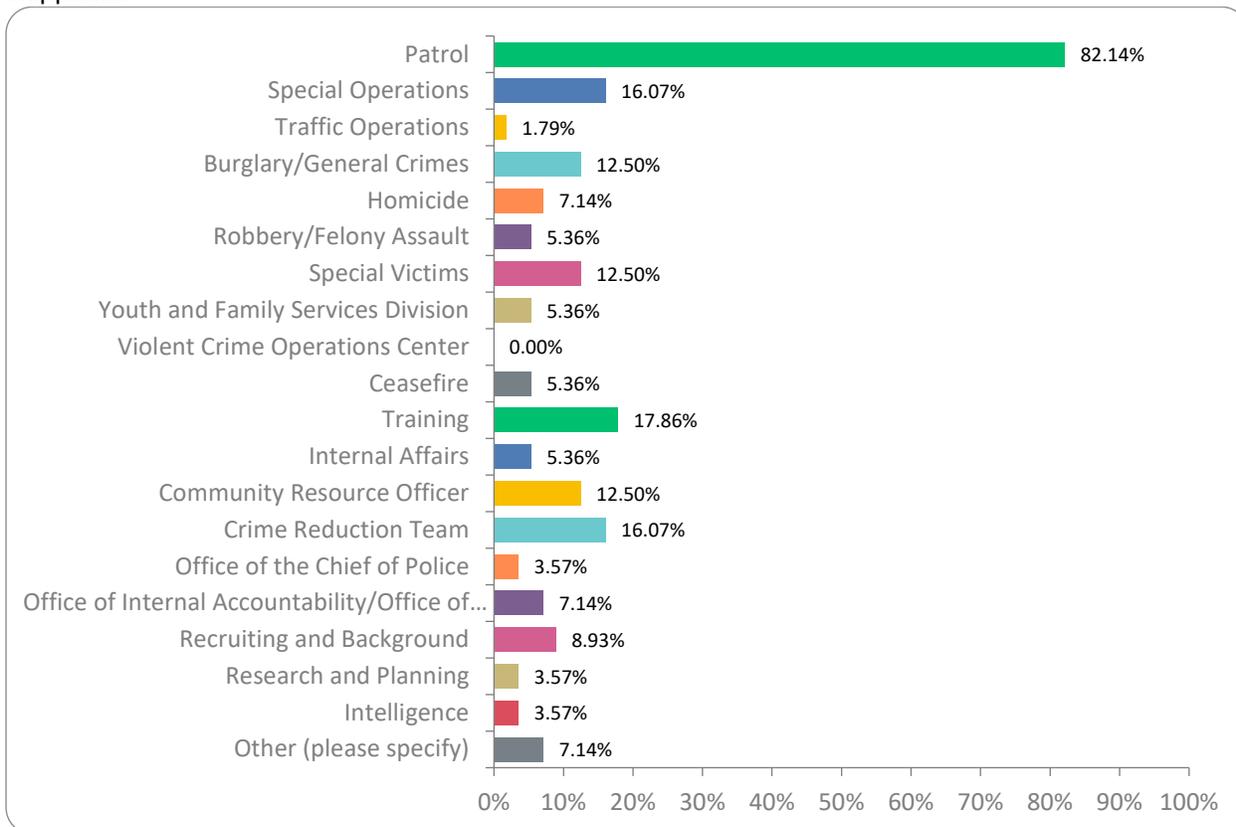
Answered: 56
 Skipped: 0

Years	Responses
0-5	55.27% (31)
6-10	33.92% (19)
11-15	8.93% (5)
16-20	1.79% (1)

Range: 0 years – 18 years
 Mean: 5.7 years

Q5: Please indicate your current assignment and any previous assignments you have held. Select all that apply.

Answered: 56
 Skipped: 0



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Q6: Have you had any significant mentors during your police career?

Answered: 56

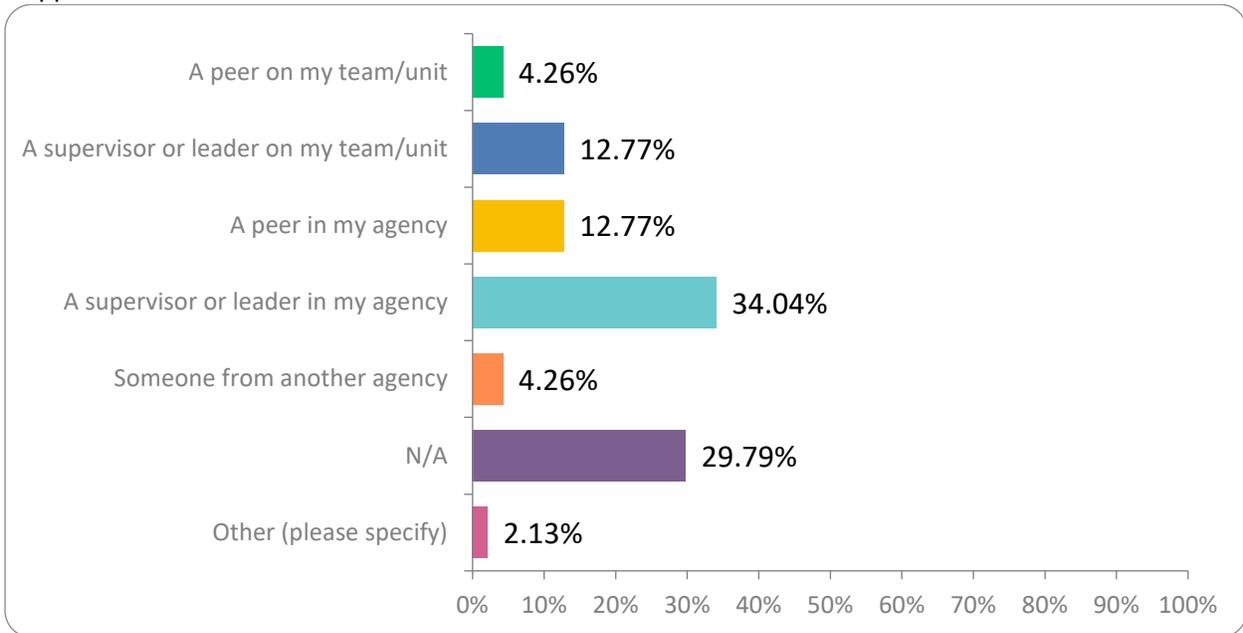
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ANSWER CHOICES	RESPONSES
Yes	60.71% (34)
No	39.29% (22)

Q7: If yes, who has been the most significant mentor to you during your career?

Answered: 47

Skipped: 9



Q8: Were any of your significant mentors women?

Answered: 56

Skipped: 0

ANSWER CHOICES	RESPONSES
Yes	28.57% (16)
No	41.07% (23)
N/A	30.36% (17)

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 Risk Analysis Unit

March 2023

Q9: Have you ever been involved in any formal mentoring program?

Answered: 56

Skipped: 0

ANSWER CHOICES	RESPONSES
Yes	12.50% (7)
No	87.50% (49)

Q10: Have you ever mentored another female officer?

Answered: 56

Skipped: 0

ANSWER CHOICES	RESPONSES
Yes	44.64% (25)
No	55.36% (31)

Q11: Has anyone ever encouraged you to promote?

Answered: 56

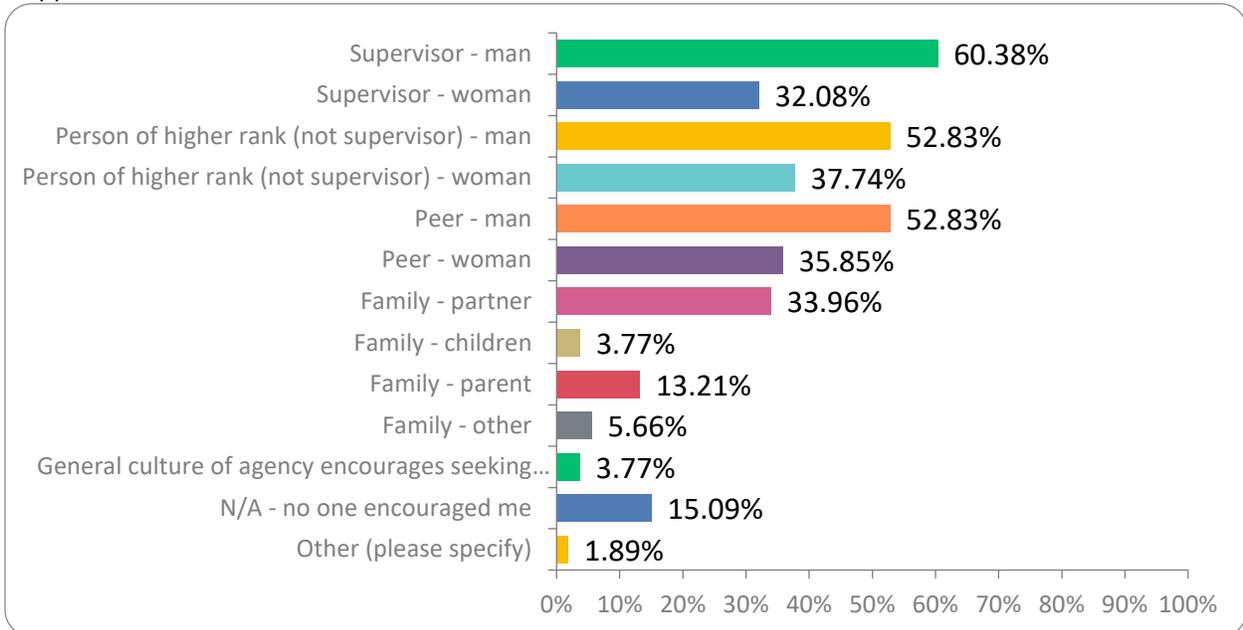
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ANSWER CHOICES	RESPONSES
Yes	76.79% (43)
No	23.21% (13)

Q12: If yes, who encouraged you? Select all that apply.

Answered: 53

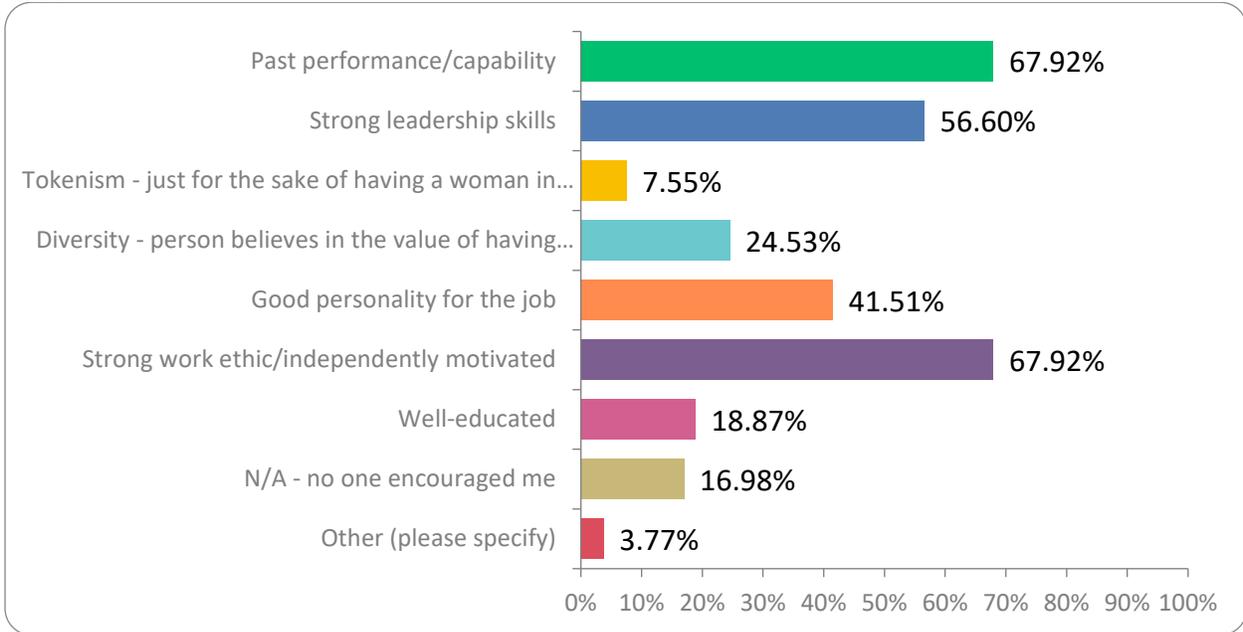
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Q13: Why do you think they encouraged you? Select all that apply.

Answered: 53

Skipped: 3



Q14: Has anyone ever discouraged you from promoting?

Answered: 56

Skipped: 0

ANSWER CHOICES	RESPONSES
Yes	28.57% (16)
No	71.43% (40)

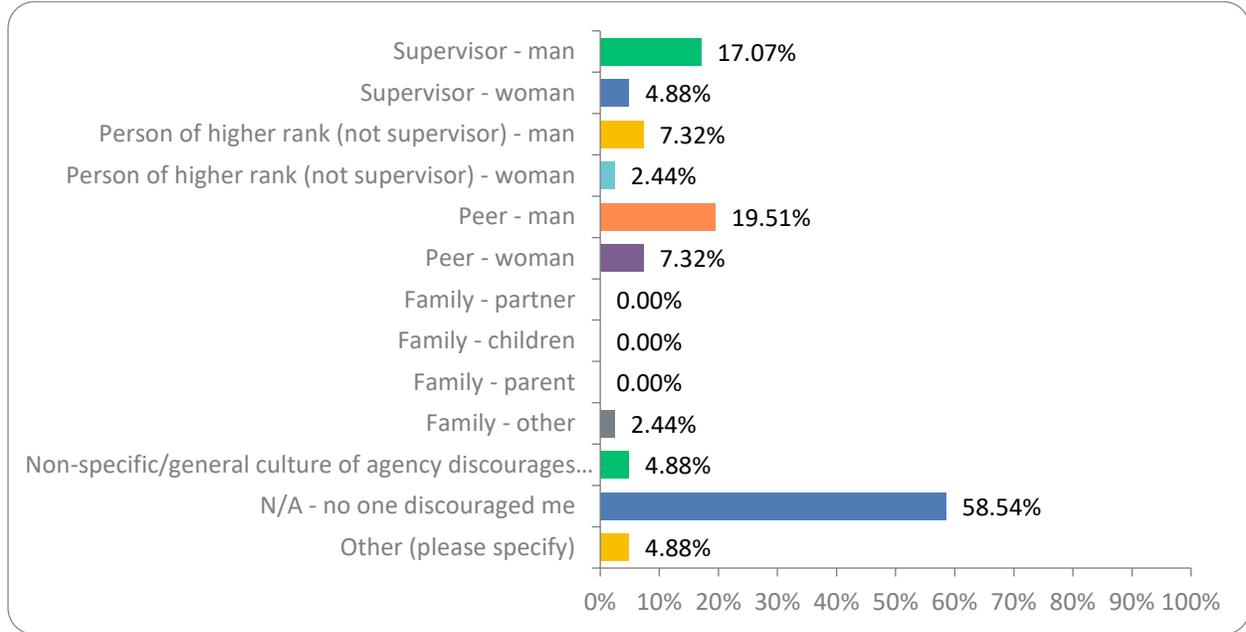
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Q15: If yes, please describe who discouraged you. Select all that apply

Answered: 41

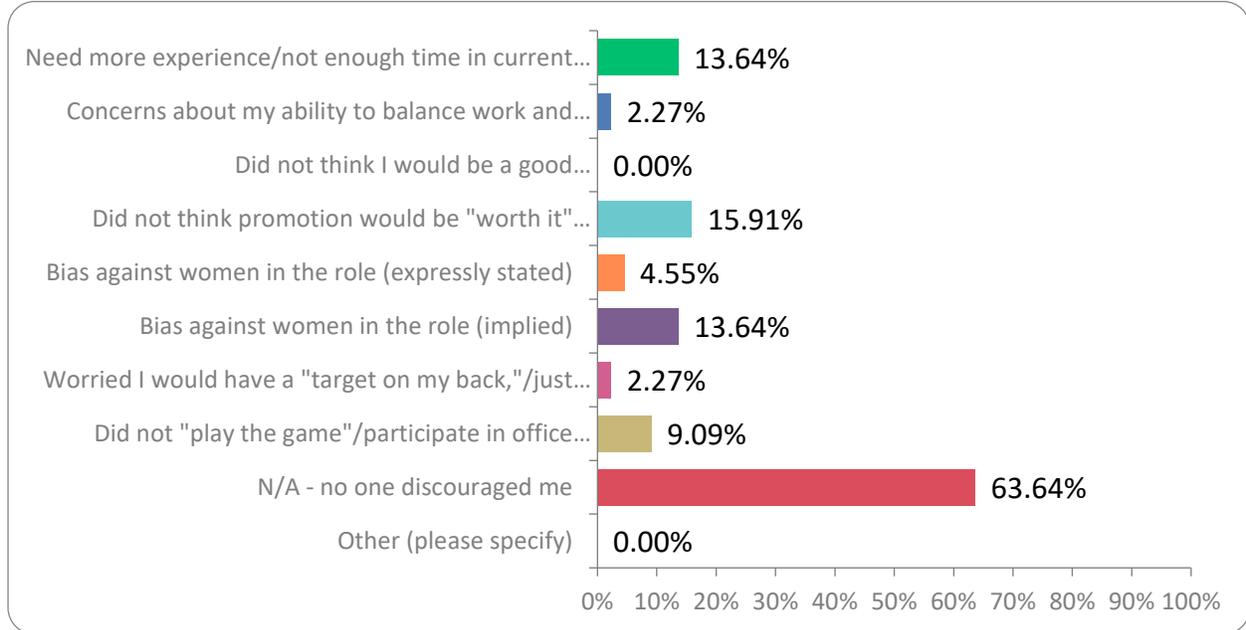
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Q16: If yes, why do you think they discouraged you? Select all that apply.

Answered: 44

Skipped: 12



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March 2023

Q17: Have you taken any extra steps to increase your promotability?

Answered: 56

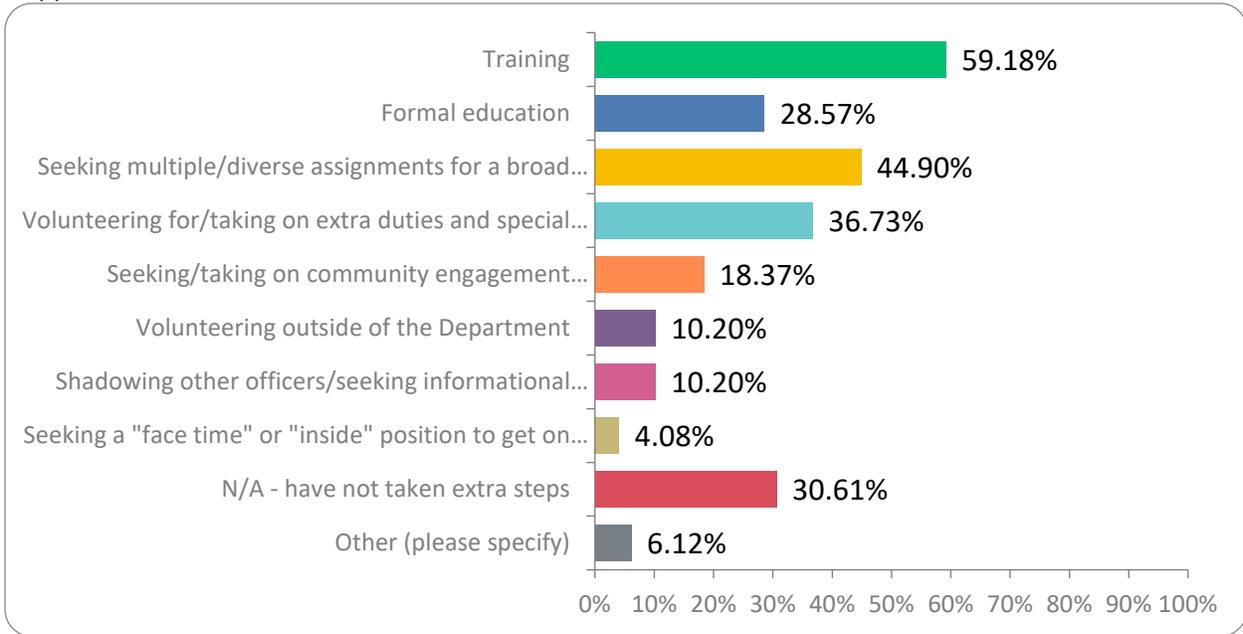
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ANSWER CHOICES	RESPONSES
Yes	60.71% (34)
No	39.29% (22)

Q18: If yes, what were they? Select all that apply.

Answered: 49

Skipped: 7



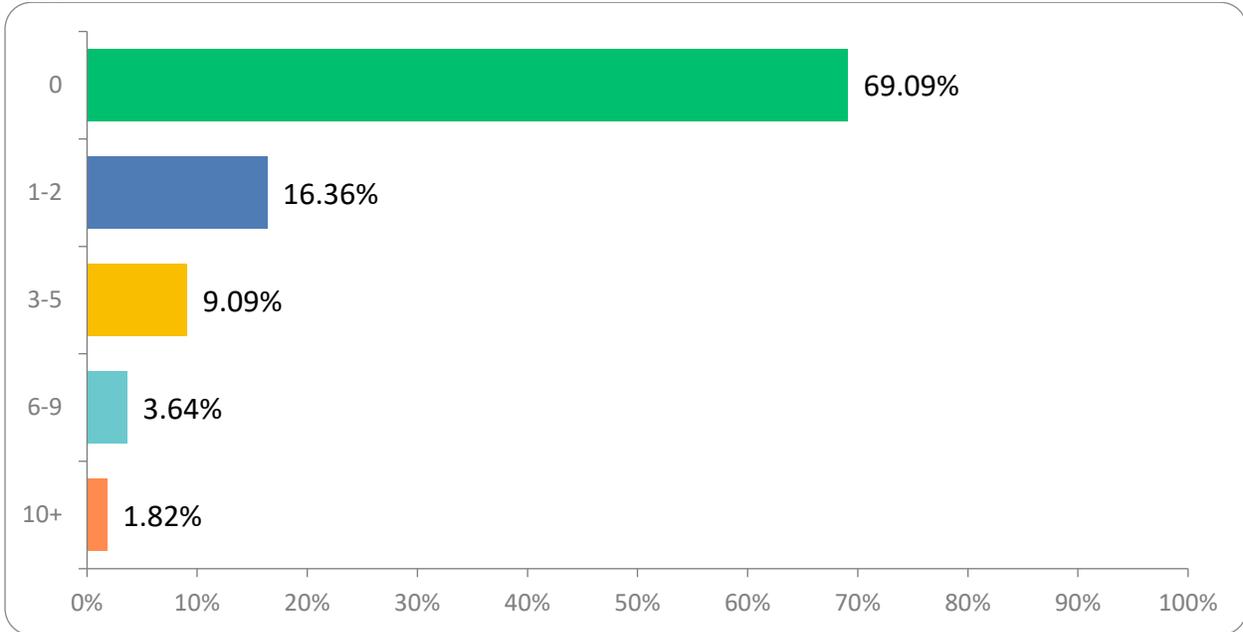
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Office of Internal Accountability
Risk Analysis Unit

March 2023

Q19: Over the course of your career, how many leadership/promotional courses and trainings have you attended that were required for all officers in your department?

Answered: 55

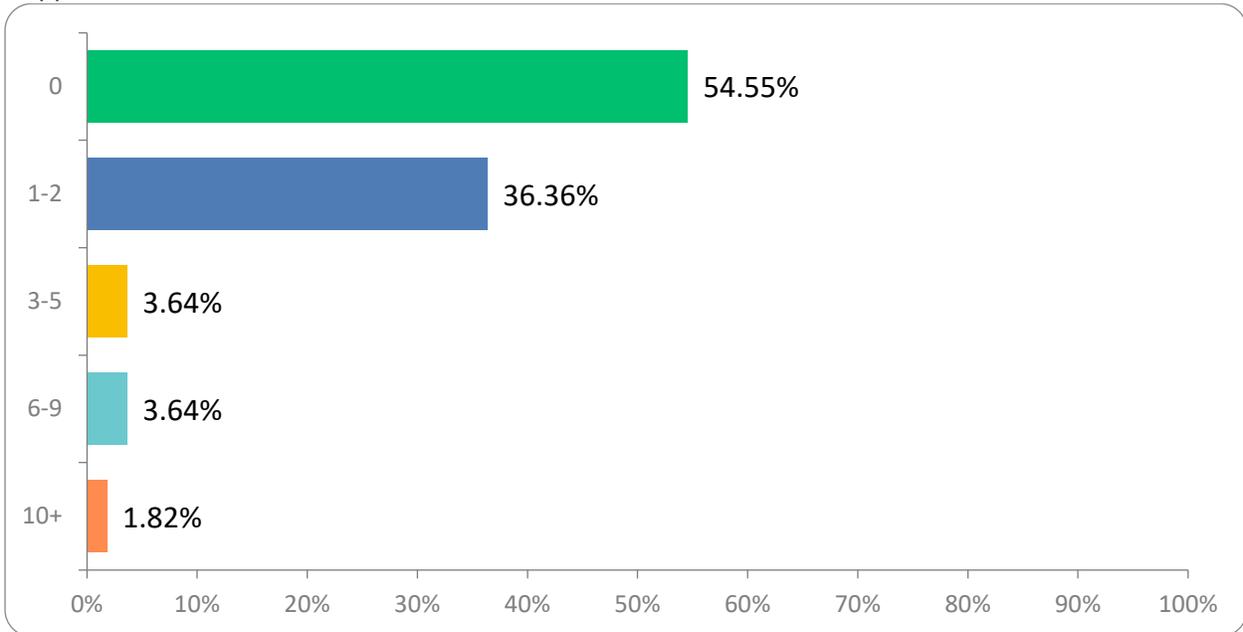
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Q20: Over the course of your career, how many leadership/promotional courses and trainings have you attended that were above and beyond what was required by your department?

Answered: 55

Skipped: 1



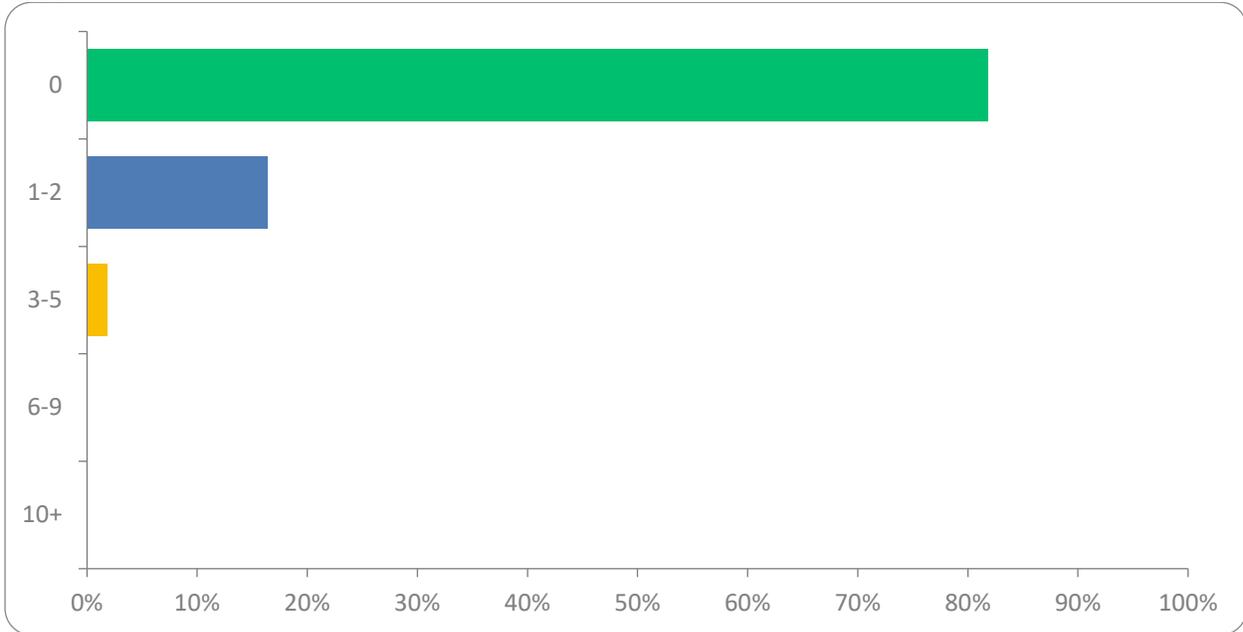
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Q21: Over the course of your career, how many leadership/promotional courses and trainings have you requested to receive, but were denied?

Answered: 55

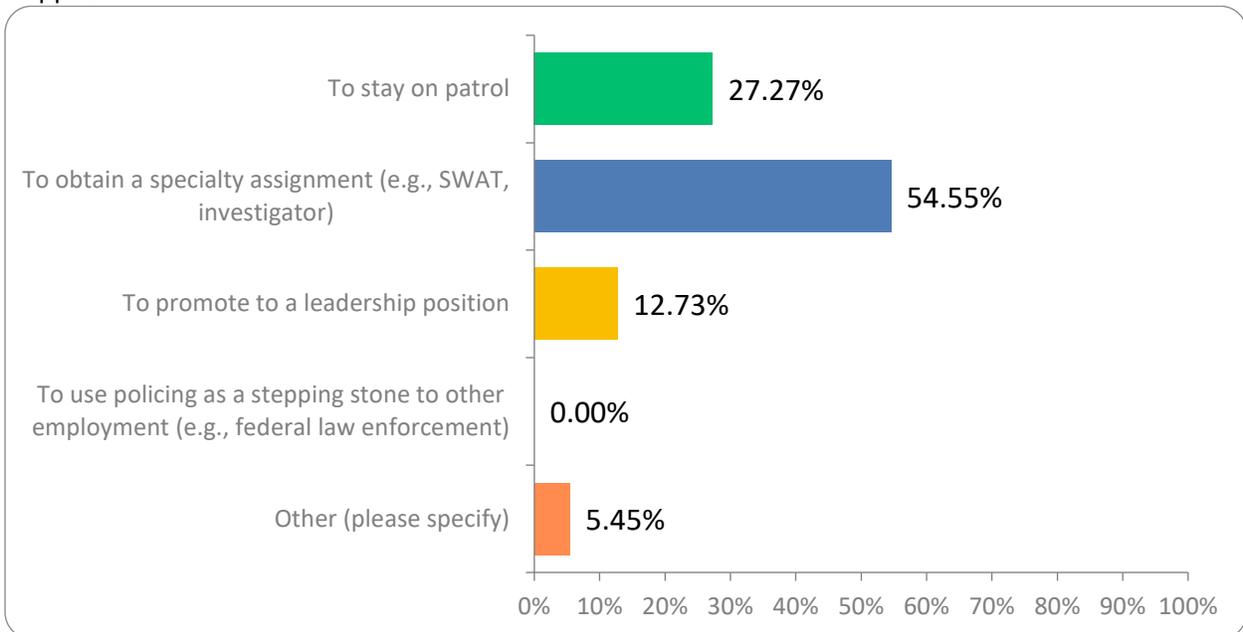
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Q22: What was your main career aspiration when you originally became a police officer?

Answered: 55

Skipped: 1



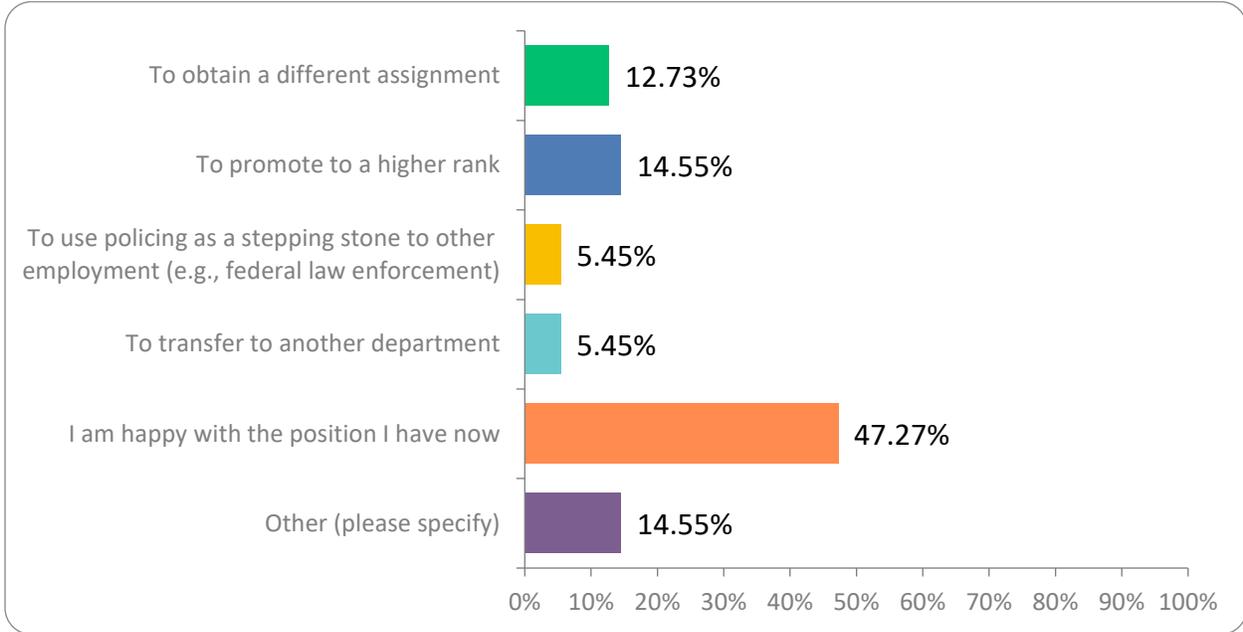
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March 2023

Q23: What is your current career aspiration?

Answered: 55

Skipped: 1



Q24: As a female sworn member, do you feel you have equal access to special/ancillary assignments?

Answered: 55

Skipped: 1

ANSWER CHOICES	RESPONSES
Yes	52.73% (29)
No	47.27% (26)

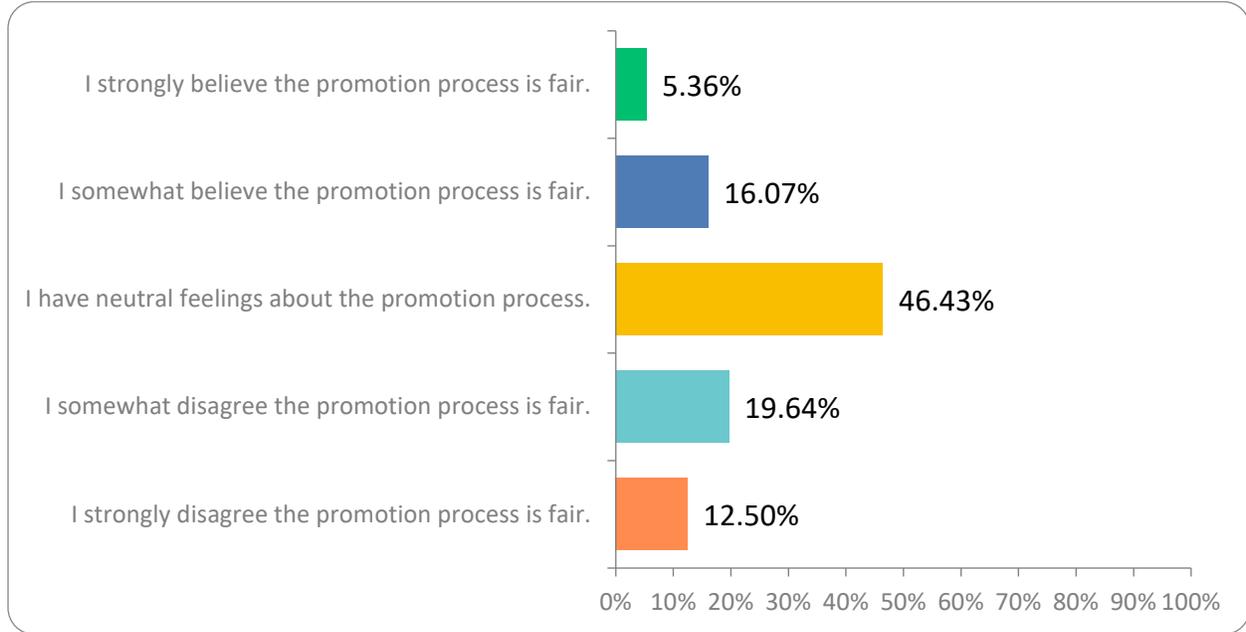
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March 2023

Q25: What is your perception of the promotion process at your agency?

Answered: 56

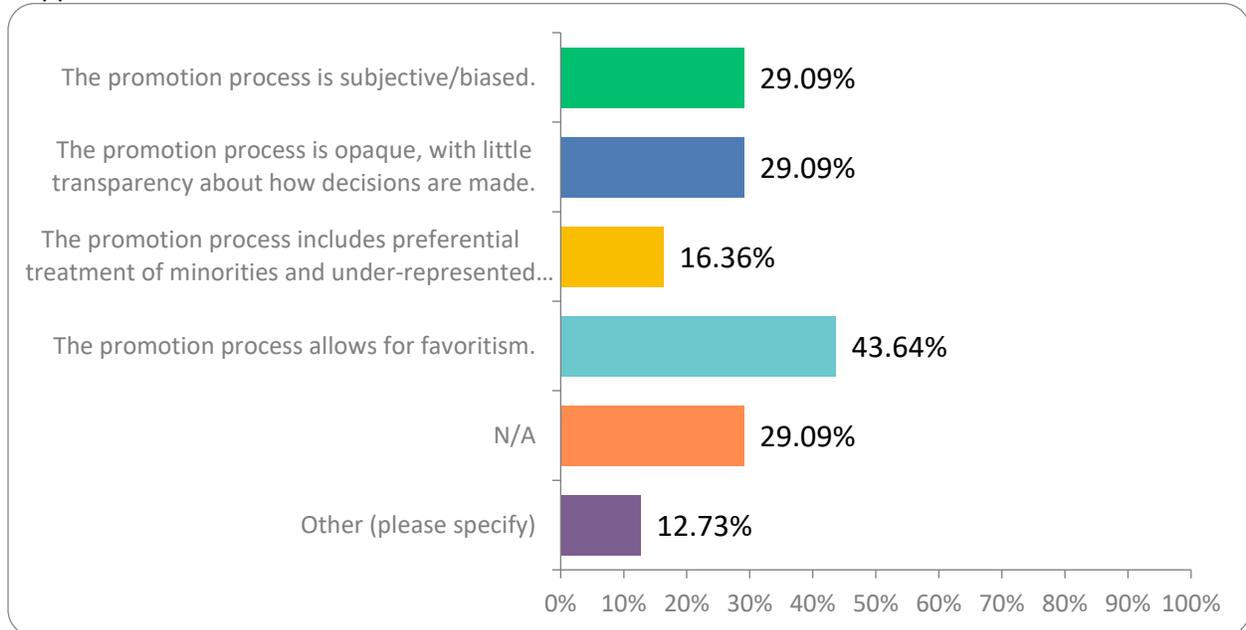
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Q26: Please select any statements that reflect how you feel about the promotion process.

Answered: 55

Skipped: 1



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March 2023

Q27: Have you ever sought promotion?

Answered: 56

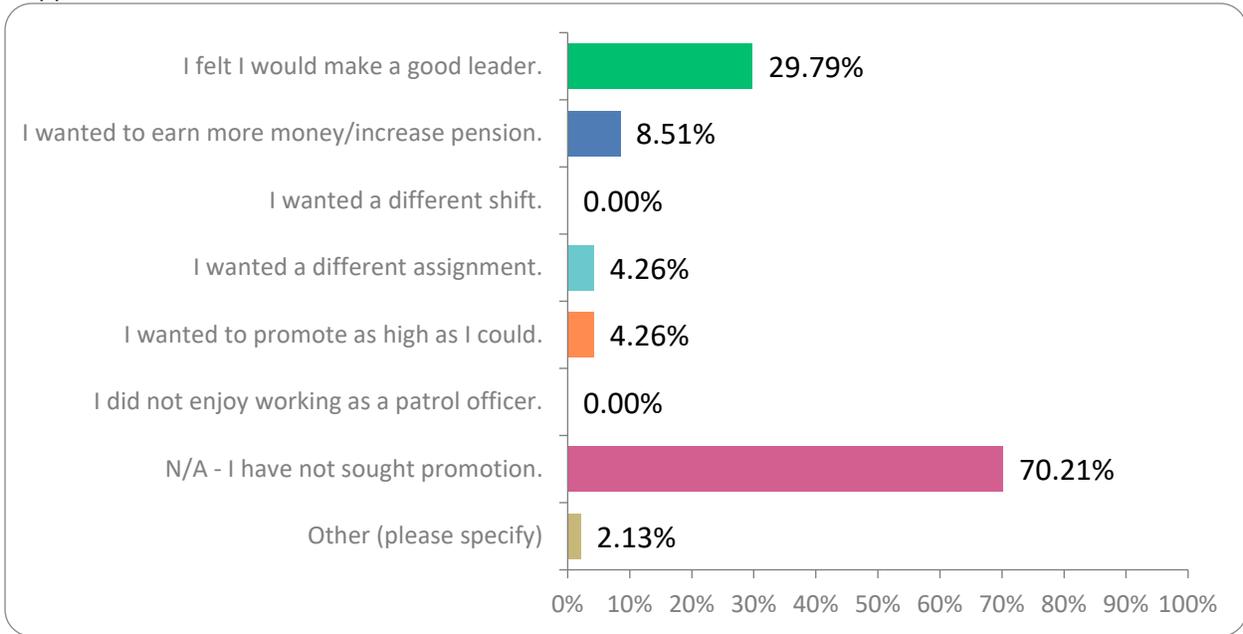
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ANSWER CHOICES	RESPONSES
Yes	25.00% (14)
No	75.00% (42)

Q28: If yes, why? Select all that apply.

Answered: 47

Skipped: 9



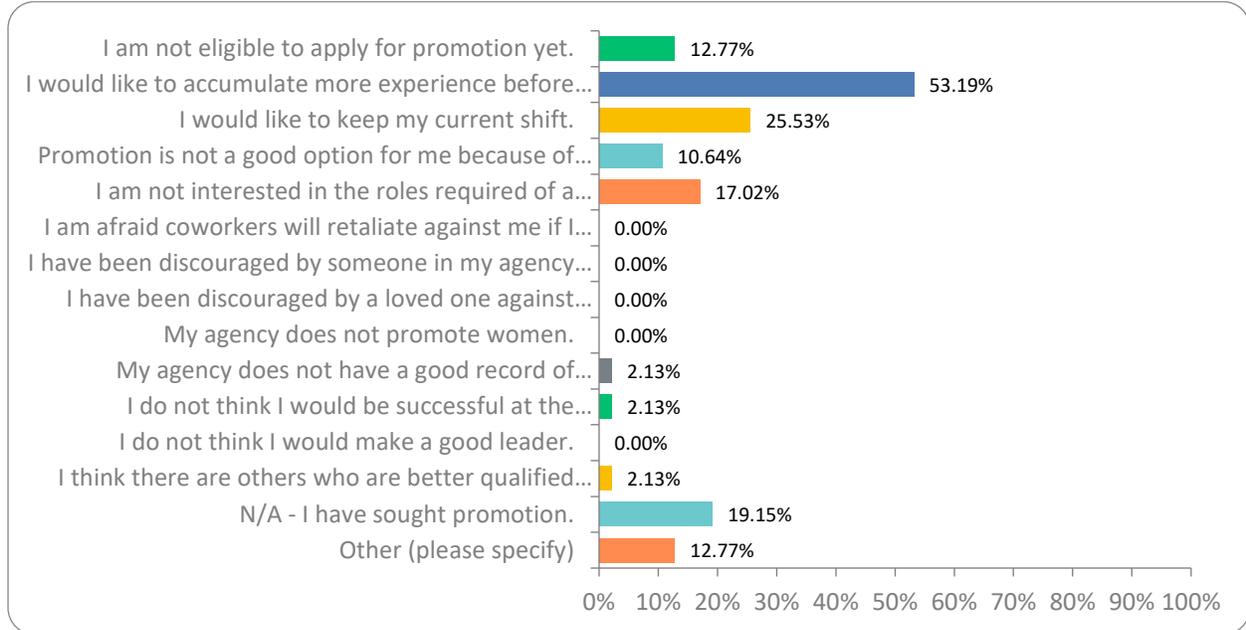
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 Office of Internal Accountability
 Risk Analysis Unit

March 2023

Q29: If no, why? Select all that apply.

Answered: 47

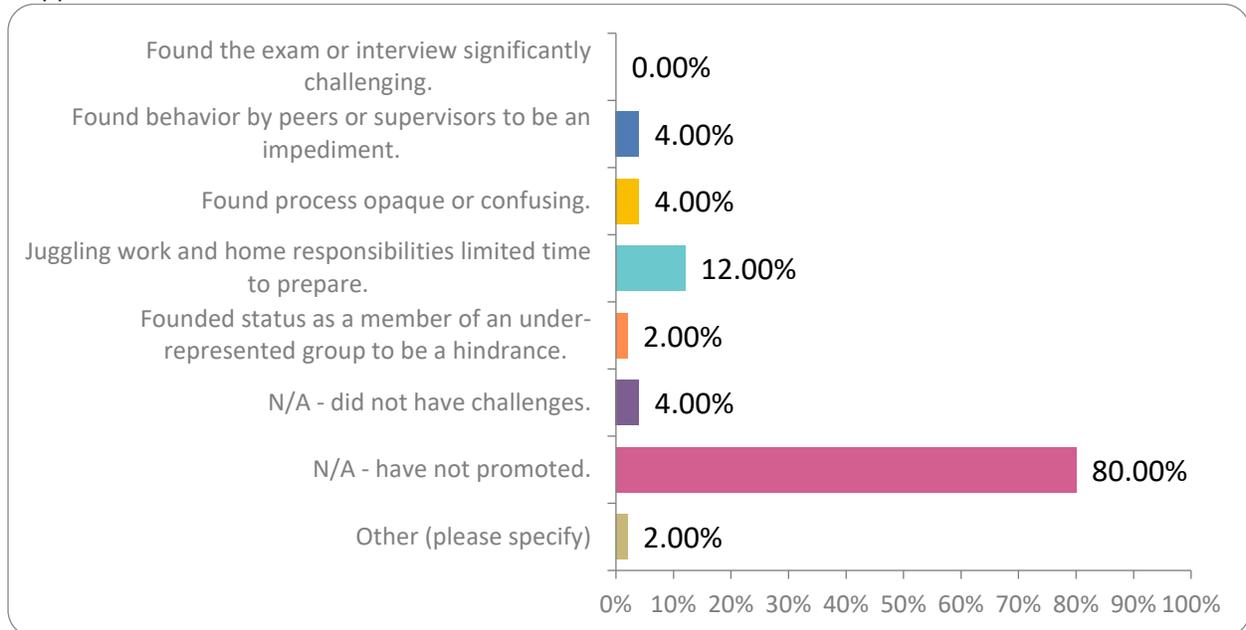
Skipped: 9



Q30: If you have promoted, what if any challenges have you faced during the promotion process? Select all that apply.

Answered: 50

Skipped: 6



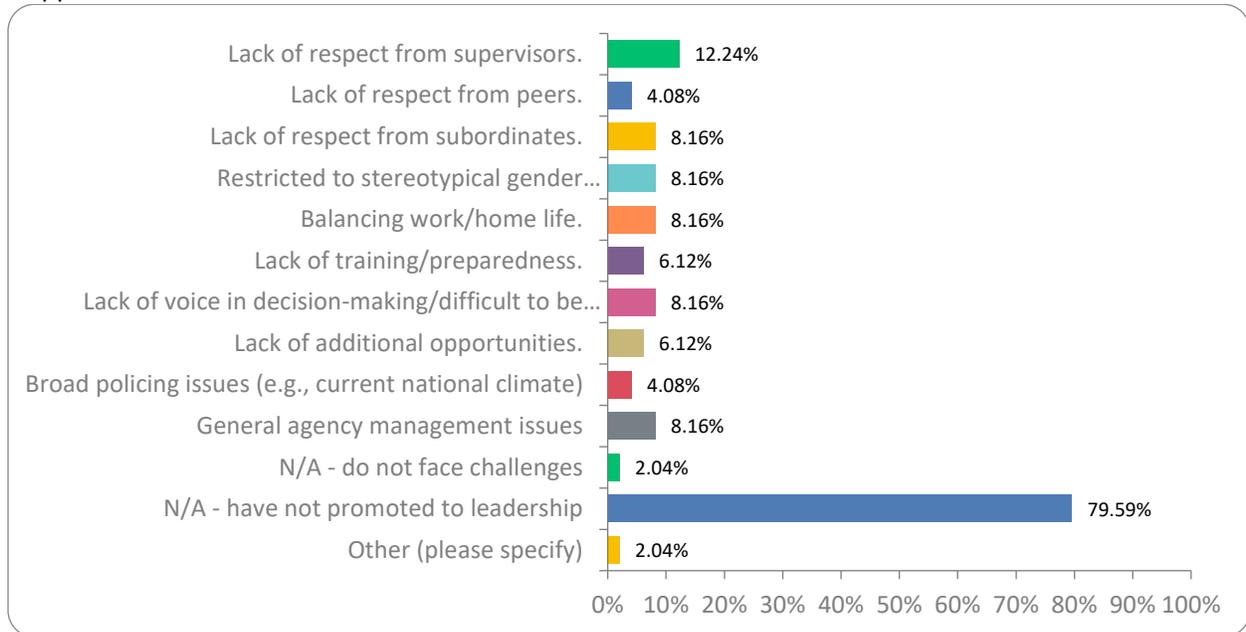
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 Risk Analysis Unit

March 2023

Q31: What (if any) challenges do you face in your position as a sergeant or above? Select all that apply.

Answered: 49

Skipped: 7



Q32: Have you ever personally experienced harassment or discrimination based on your sex or any other social identity (race, sexual orientation, etc.)?

Answered: 56

Skipped: 0

ANSWER CHOICES	RESPONSES
Yes	44.64% (25)
No	55.36% (31)

Q33: Have you ever witnessed harassment or discrimination of others during your career?

Answered: 56

Skipped: 0

ANSWER CHOICES	RESPONSES
Yes	44.64% (25)
No	55.36% (31)

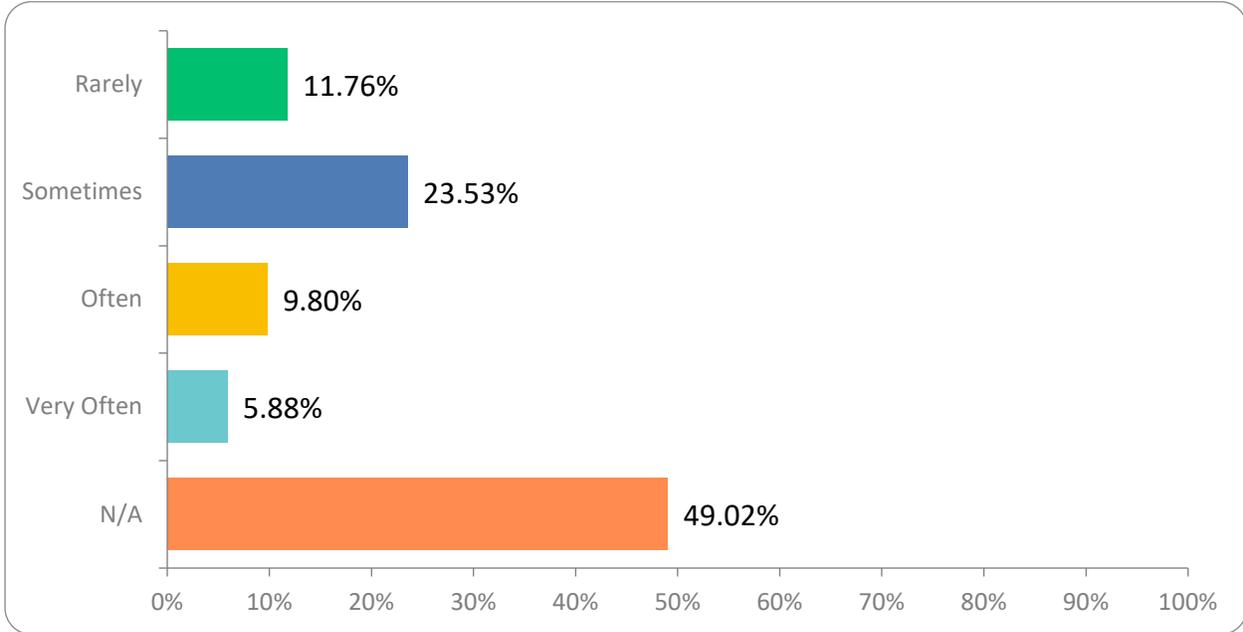
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Q34: If yes, how often have you witnessed harassment or discrimination?

Answered: 51

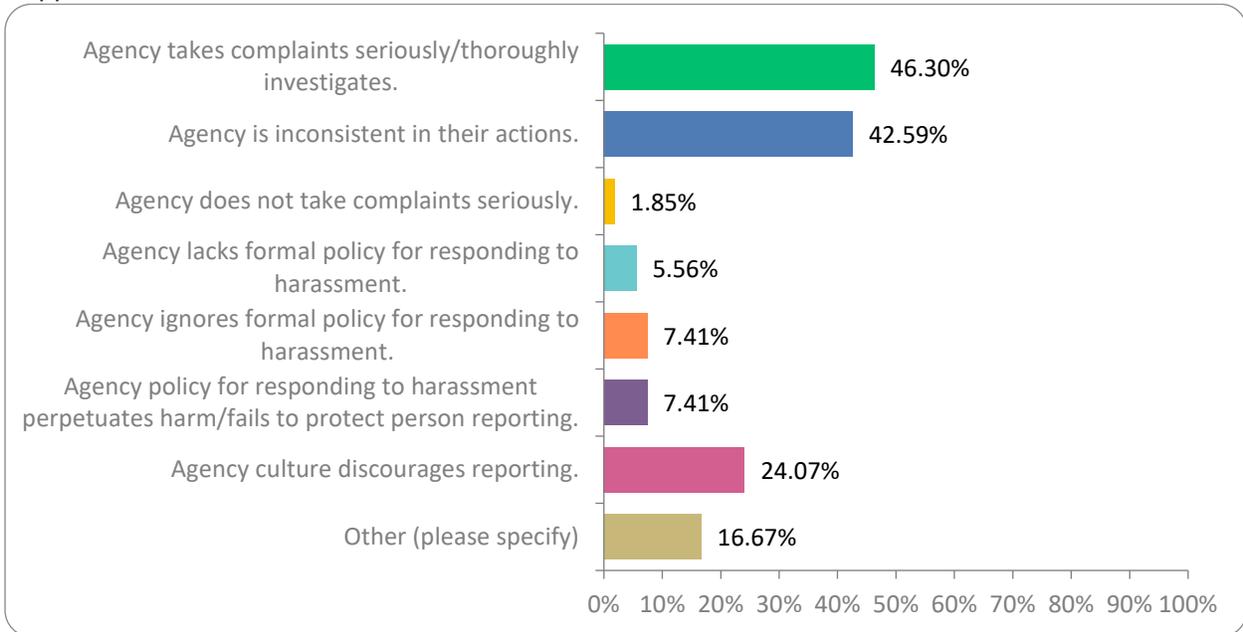
Skipped: 5



**Q35: How would you describe your agency’s response to complaints of harassment or discrimination?
 Select all that apply.**

Answered: 54

Skipped: 2



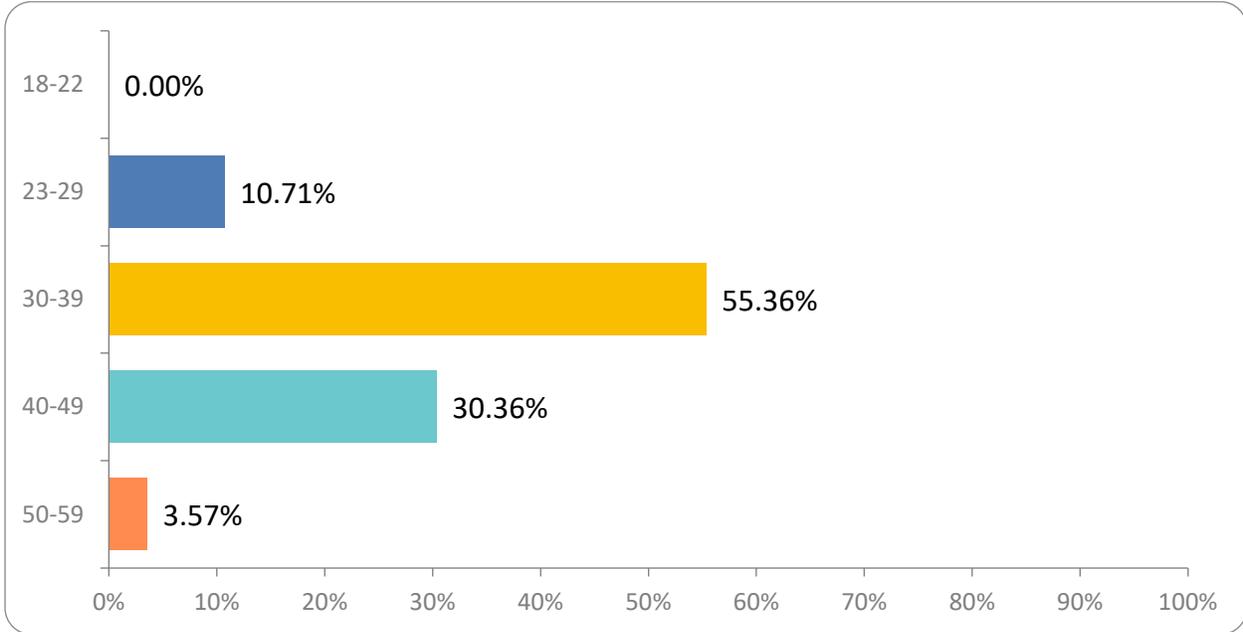
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March 2023

Q38: How old are you?

Answered: 56

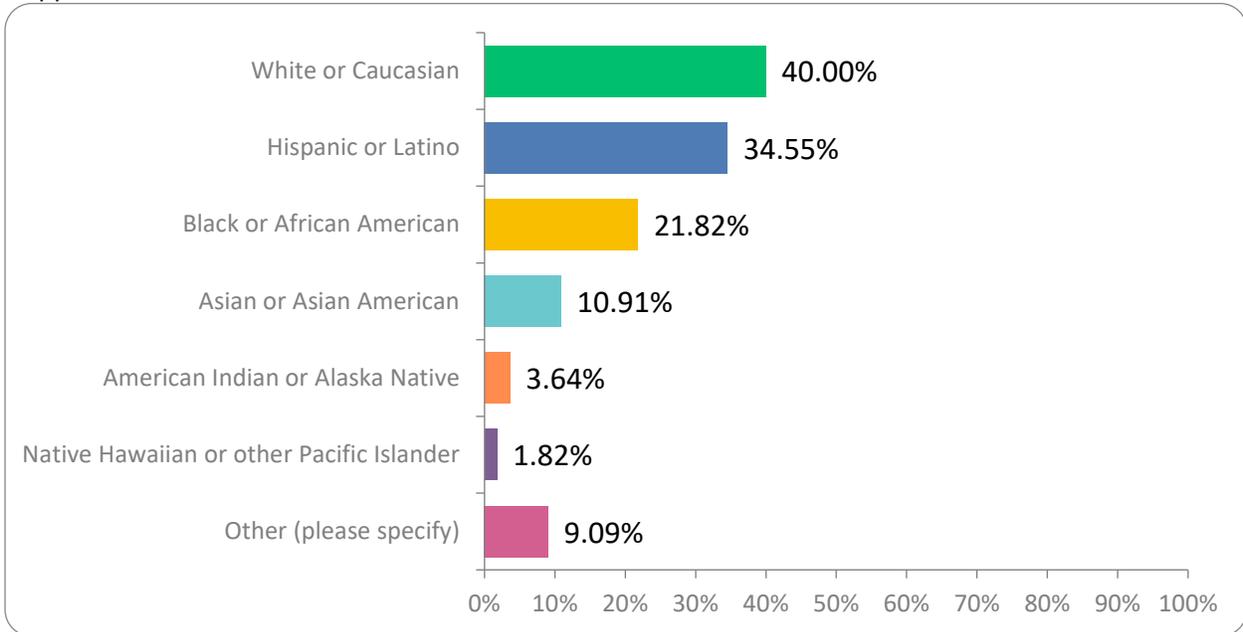
Skipped: 0



Q39: What is your race? Select all that apply.

Answered: 55

Skipped: 1



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Risk Analysis Unit

March 2023

Q40: What best describes your sexual orientation?

Answered: 53

Skipped: 3

ANSWER CHOICES	RESPONSES
Heterosexual	69.81% (37)
Lesbian/Gay	18.87% (10)
Other queer	1.89% (1)
Other (please specify)	9.43% (5)

Q41: What is the highest level of education you have completed?

Answered: 54

Skipped: 2

ANSWER CHOICES	RESPONSES
High school diploma/GED	7.41% (4)
Some college	14.81% (8)
Associate's degree	9.26% (5)
Bachelor's degree	53.70% (29)
Master's degree	14.81% (8)
Doctorate or other terminal degree (e.g., JD)	0% (0)

Q42: What is your relationship status?

Answered: 53

Skipped: 3

ANSWER CHOICES	RESPONSES
Single	32.08% (17)
Married	47.17% (25)
Long term partnership	18.87% (10)
Other (please specify)	1.89% (1)

Oakland Police Department
Office of Internal Accountability
Risk Analysis Unit

March 2023

Q43: Do you have children?

Answered: 53:

Skipped: 3

ANSWER CHOICES	RESPONSES
Yes	39.62% (21)
No	60.38% (32)

Q44: If you have children, at what phase of your career did you first have children, or first assume childcare responsibilities?

Answered: 52

Skipped: 4

ANSWER CHOICES	RESPONSES
Prior to my sworn police career	15.38% (8)
Officer	25.00% (13)
Sergeant	1.92% (1)
Lieutenant or above	0% (0)
N/A	57.69% (30)

Q45: How many times have you used family leave during your police employment?

Answered: 52

Skipped: 4

ANSWER CHOICES	RESPONSES
0	55.77% (29)
1	23.08% (12)
2	11.54% (6)
3	5.77% (3)
4	1.92% (1)
5+	1.92% (1)

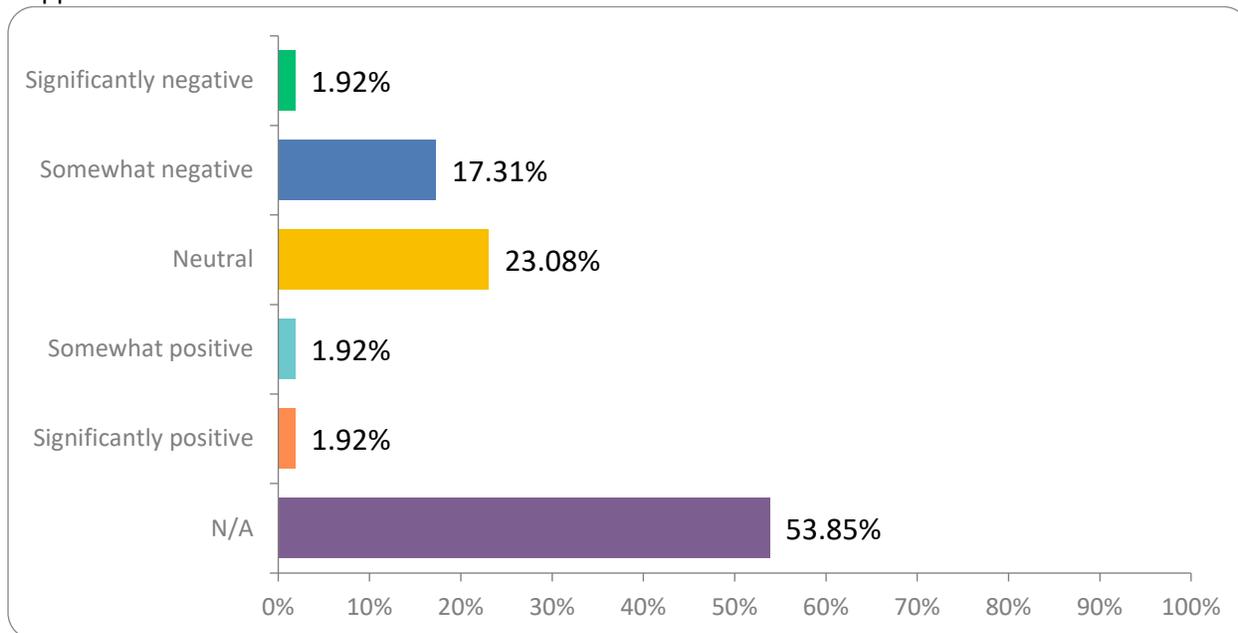
Oakland Police Department
 Office of Internal Accountability
 Risk Analysis Unit

March 2023

Q46: How do you think using family leave affected your career?

Answered: 52

Skipped: 4



Q47: How would you describe the support provided by your agency to officers with families? Select all that apply.

Answered: 53

Skipped: 3

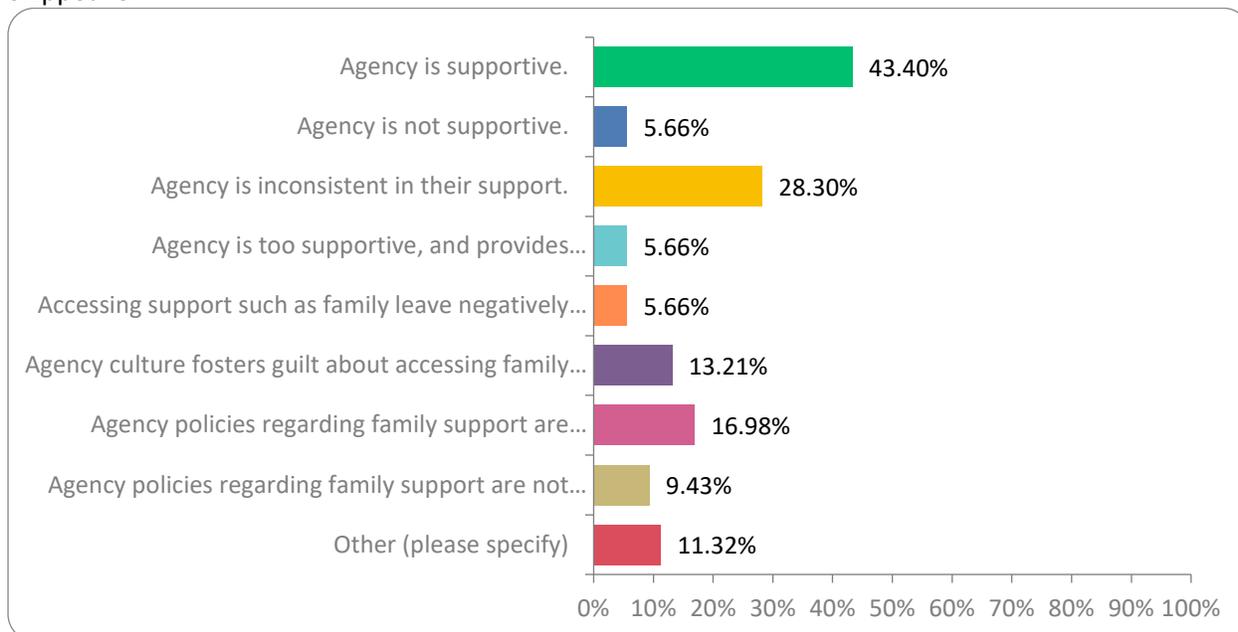


EXHIBIT 3

CITY OF OAKLAND



Oakland Police Commission

250 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

TO: NSA Parties

FROM: Oakland Police Commission (OPC)
Dr. Tyfahra Milele, Chair

SUBJECT: Discussion Outline of
Reform Plan to Bring the City
of Oakland Into Sustained
NSA Compliance

DATE: March 30, 2023

Introduction

This memorandum sets forth the outlines of a plan for the Oakland Police Commission (“Commission”) to reform the internal affairs investigation process of the Oakland Police Department (“OPD”) and ensure the City of Oakland is in sustained compliance with the goal of resolving the need for the Negotiated Settlement Agreement (“NSA”).

The proposals outlined in this memorandum operate on a parallel track with OPD’s own efforts to implement the recommendations made in the Reports of Investigation issued by Clarence Dyer Cohen, LLP related to IAD Numbers 22-0858 and 22-0443 (collectively, “CDC Report”). Those policies will make their way to the Police Commission under its Charter authority to approve or modify OPD policy changes, pursuant to Oakland City Charter Section 604(b)(5). In addition to OPD’s policy changes originating from the CDC Report, the Commission also has identified other policy areas for review during three public forum meetings and a formal solicitation to the public for written submissions in the month of March. Engaged stakeholders have proposed OPD policy changes, among other items, related to sworn officer use of Department-owned vehicles, the Department’s Discipline Matrix, disappearing messaging apps on cell phones, untruthfulness, coverups, failure to report, and body-worn cameras.

This plan builds on the current work by looking at deeper systemic and cultural issues, including those revealed by the major compliance incidents that were the subject of the CDC Report, and by focusing on the Commission’s unique Charter authorities to address those issues over time.

To formulate a final plan to address the issues outlined below, the Commission will identify information gaps the City and OPD can address, grapple in its public meetings with important policy questions, survey its relevant Charter and Municipal Code

authorities, and compile a final incident response plan for review by the NSA Parties and the Court.

The scope of reforms applies to all entities with authority over policing in Oakland, including the Commission itself and the entire City. Years of NSA Court transcripts warn us against artificially separating OPD from the City in implementing needed reforms.

OUTLINE OF ISSUES AND REFORM PLAN

A. SYSTEMIC AND STRUCTURAL ISSUES

1. Issue: Transition of the Monitor's Role to Full Community Oversight

Long after the NSA was entered, the overwhelming majority of Oakland voters passed two successive ballot measures to amend the Oakland City Charter (Measure LL in 2016 and Measure S1 in 2020) to create the Commission and codify its authority to oversee the OPD “to ensure that its policies, practices, and customs conform to national standards of constitutional policing.” These ballot measures make clear that Oakland residents want Oaklanders to oversee OPD.

Proposed Solution: To honor the will of Oakland voters, the Commission is committed to performing the same functions as the IMT is currently doing, with the eventual goal of ensuring constitutional policing is maintained by monitoring the NSA tasks even after NSA ends. The Commission can exercise all of its Charter authority and can give direction to the two civilian oversight agencies that now report to the Commission as a result of the Charter amendments: the Community Police Review Agency (CPRA), and the Office of the Inspector General (OIG). As envisioned in the Oakland City Charter, the Commission's exercise of its civilian oversight authority can be informed by directing the OIG to perform audits of a subset of completed IAD investigations (as the IMT is currently doing) to ensure that the public policy goals expressed in Task 5 are being met, and report the audit findings to the Commission so Commission can direct OPD to implement new or revised policies if needed.

Although the CPRA typically investigates public complaints of misconduct and recommends discipline, the Commission has authority to direct the CPRA to conduct parallel investigations of what would otherwise be solely internal affairs investigations, and report its investigation results and proposed discipline to the Commission so that the Commission can take appropriate action. The Charter provides that the CPRA “shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Commission.” (Oakland Charter Section 604(f)(1)).

The Commission also has authority, with City Council approval, to establish a permanent standing committee that can monitor compliance with all existing NSA tasks (not just Tasks 5 and 45) during Sustainability and in preparation for the eventual resolution of the NSA, after which the standing committee will continue its monitoring work on these same tasks. The Commission previously announced its intention to establish such a standing committee, and that plan is still in place. In short, the Commission should be allowed to exercise its Charter authority to perform the compliance work being done by the Monitor and the Independent Monitoring Team (IMT).

2. Issue: Untimely or Absent Notifications and Referrals to the Commission and CPRA

Dozens of high profile IAD investigations have been handled by outside firms, yet there is no comprehensive policy that formally standardizes these referrals, governs the details of required notice to the other Charter entities in Oakland, or details the process and timeline for the City to implement discipline based on them, particularly discipline of the Police Chief or other non-union police officers. The City has been applying individual provisions of M-03, the OPD General Order for processing and investigating allegations of Department employee misconduct, which on its face does not contemplate dozens of outside referrals.

The Oakland Charter Section 604(f)(1) provides in pertinent part:

[T]he [Community Police Review] Agency shall receive, review and prioritize all public complaints concerning the alleged misconduct or failure to act of all Department sworn employees, including complaints from Department non-sworn employees.

The Agency shall not be required to investigate each public complaint it receives, beyond the initial intake procedure, but shall investigate public complaints involving uses of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, untruthfulness, and First Amendment assemblies.

The Agency shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Commission.

As a result of CPRA's mandate to investigate *public* complaints, IAD only sends CPRA complaints made by members of the public. Complaints that are initiated within the Department, considered "internal complaints," are not sent to CPRA for investigation.

The Commission could have referred the IAD investigations that were the subject of the CDC Report to the CPRA in early 2022 had the Commission known about the outside referral at the time the City Administrator and Office of the City Attorney referred them to Clarence Dyer Cohen, LLP. Prompt referral to the CPRA would have given its investigators enough time to fully investigate the matter in parallel with the outside investigation and not miss any state-imposed completion deadlines.

Proposed Solution: The internal affairs investigation policy, including any policies as part of the M-03 series and those related to referrals to outside investigations, must be reformed. In addition, a broader multi-pronged approach is needed to address the issue. The Chair of the NSA Ad Hoc Committee also serves as Chair of the CPRA Policies Ad

Hoc Committee, and is hereby proposing to fold several conceptual ideas proposed by the CPRA Director into this set of proposed solutions, as follows:

- The Commission should review the referral process for the CPRA to take up non-civilian complaints, as well as the CPRA's policies and approach for taking on complaints that are traditionally handled internally by the Department.
- The City should enter into an MOU to require it to notify the Commission Chair and CPRA in writing whenever an internal complaint is referred to an outside agency for investigation. Such notification shall include sufficient information for the Commission and CPRA to understand all allegations that need to be investigated. The City shall also provide the Commission Chair and the CPRA a copy of any contract entered into with the outside agency.
- The Commission should direct OPD to report to the Commission on a monthly basis the number of public and internal IAD complaints, to track against the CPRA's monthly reported number.
- The Commission should direct OPD to submit all internal Complaint Investigation Reports (CIRs) to the CPRA via email, within 24 hours of initiation, with detailed allegations including brief narratives sufficient for the CPRA to clearly understand the allegations and the applicable policies and provisions of OPD's Manual of Rules.
- The Commission should direct OPD to notify the CPRA via email, within 24 hours of determination, of any criminal allegations or implications that arise during the course of an administrative investigation.
- The Commission should direct OPD to notify the CPRA via email, within 24 hours of any decision being made, to have an outside entity investigate issues or allegations of police misconduct.
- The Commission should direct CPRA to document the numbers, types, and brief narratives of the internal complaints received from IAD.
- The Commission should direct CPRA to investigate mandated allegations for the internal complaints in the same manner as is done with mandated allegations for public complaints.
- The Commission should direct CPRA to investigate any mandated and non-mandated allegations against executive level supervisors ranked Captain or higher.
- The Commission should direct CPRA to determine if there is an administrative investigation that should be conducted in relation to any criminal investigation and to document the rationale for the decision.
- The Commission should direct CPRA to reopen a case and conduct an investigation if the Commission decides, based on a brief narrative of the closed internal cases, that reopening is merited.

3. Issue: Lack of a Clear City Administrator Protocol for Serious Incident Notifications to OPC Chair, IG, and CPRA Director

Related to the general problem of untimely notifications is the lack of a proper protocol for alerting the OPC Chair, CPRA, and the Inspector General of an internal affairs investigation of the Chief of Police, the Assistant Chief, or any Deputy Chief. Such an investigation should be considered a “serious incident,” which is very narrowly defined in the Municipal Code. The City Administrator is responsible under the Municipal Code for developing a “protocol for notifying the Commission Chair, the Agency Director and the Inspector General of serious incidents within forty-eight (48) hours of the Chief knowing or having a reasonable suspicion that a serious incident has occurred.” (OMC 2.45.075.) The protocol also must include “a confidential status report to the Chair of the Commission, the Agency Director, and the Inspector General within ten (10) calendar days of the date on which the serious incident occurred, and a second confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the serious incident occurred.”

Proposed Solution: As a medium or long-term strategy, the City Council should consider broadening the definition of “serious incident” to include any internal affairs investigation of the Chief, Assistant Chief, and Deputy Chiefs. Recommendation of this revision falls squarely within the Commission’s Charter authority in Charter Section 604(h). If such a protocol is developed while the Monitor is still in place, the City Administrator should include a notification protocol for the City to follow when the Monitor notifies the City that he or the IMT suspect a serious incident has occurred.

4. Issue: Lack of City, Monitor, and IMT Coordination with OPC and CPRA

The lack of thorough and repeated Commission briefings about the Monitor’s concerns in early 2022 calls out for reform in overall approach to empowering civilian oversight. The Commission should have been brought into this matter at a far earlier stage, rather than learning about it from the Monitor’s public status reports. Without prompt and comprehensive notice about the substance of OPD compliance concerns, the Police Commission cannot know what documents to formally request (as it has Charter authority to do) to properly exercise all of its Charter authorities. Delayed notifications, in turn, prevent the Commission from promptly introducing new reforms at the same speed that fast-moving compliance incidents arise (as the Monitor does). For instance, the Commission could have promptly set about reforming investigation policies in early 2022, regardless of whether any OPD officer was ultimately sustained for discipline or dismissal. These revised policies could have already been implemented even before the CDC Report was issued.

Proposed Solution: In the short term, the City and OPD (and for the period of time when the Monitor is standing in the shoes of OPD) must immediately be required to provide

regular closed session briefings to the Police Commission and its direct reports on the status of compliance issues that pose a risk to the City's resolution of the NSA.

Over the medium term, the Commission and the City should coordinate to develop a recurring Commission agenda item that requests to receive all personnel documents from the City and OPD related to all its Charter authorities, consistent with Section 604(f)(2), and all three of the Department Heads under the Commission's authority should routinely recommend any confidential files and records related to the Commission's Charter authority that they believe the Commission should be requesting to successfully carry out its oversight authority.

Over the long term, the City may need to revisit Section 604(f)(2) of the Charter and determine if it is inconsistent with the purpose of civilian oversight for the Commission to be required to know about a confidential document it does not have before it can lawfully request and access that document.

B. CULTURAL ISSUES:

1. Issue: Chain of Command Instilling a Fear of Insubordination If Subordinate Officers Speak Up

Subordinate officers fear the prospect of insubordination, which chills their willingness to speak up, even when doing so would help keep Oakland in compliance with its reform tasks. This is a cultural issue that calls for a review of management training and a rethink of any aspects of chain of command culture that could compromise investigation integrity.

Proposed Solution: The Commission should review relevant aspects of OPD's management training and help its leadership conduct a rethink of any aspects of chain of command culture that could compromise investigation integrity. OPD and the City should develop an anonymous channel to report investigation integrity issues, so subordinate officers feel more comfortable that they will not face adverse actions for calling attention to compliance concerns. The Commission, the Office of the Inspector General, and the CPRA should have access to the anonymous channel reports to ensure it can properly exercise Department oversight. Establishing this anonymous channel would be consistent with Recommendation #8 in the 2021 report issued by the City's Reimagining Public Safety Task Force, which also mentions anonymous reporting (<https://cao-94612.s3.amazonaws.com/documents/Oakland-RPSTF-Report-Final-4-29-21.pdf>).

2. Issue: Lack of Distributed Leadership and Accountability at OPD

Distributed leadership is a leadership model favoring the shared responsibility and accountability of multiple individuals within a workplace. Under a distributed leadership model, the CDC Report's findings about the Police Chief would have extended to the

entire leadership team, including those who had knowledge of the pertinent events. There should have been documented standards setting the expectation of accountability for every individual in the decision-making chain, as well as witnesses to the decisions, that led to the Department failures culminating in the December 23, 2021 meeting.

Proposed Solution: OPD and the Commission must set the expectation going forward that all participants in the chain of decision-making related to internal investigations will be held to account for any issues they observed that compromise investigation integrity and best practices. In the medium term, the Commission should consider whether to require that every level of the chain of decision-makers involved in any given investigation must sign and be responsible for the finished product.

3. Issue: Availability of Mental Health Services and Support for Sworn Officers

Mental health challenges inherent to police work, if left unaddressed, lead to major compliance incidents. One investigation subject described another's symptoms to include night terrors related to job duties. Oakland's officers should get the best support and services we can offer. Untreated mental health issues on a police force have deleterious effects on individual officers, the culture of the entire police force, as well residents and community the force serves.

The City Council vested the Commission with the authority to review, comment, and propose the Department's budget for "the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues." (Oakland Municipal Code § 2.45.070(C), (D).)

Proposed Solution: The Commission should determine what services are offered and whether proactive outreach ensures officers feel supported in using the services. The Commission should also work to set about fostering a Department culture that rewards officers for self-care and commends them for seeking out and accepting needed services. Accepting mental health services should be standard operating procedures. The Department should explore whether there should be mandated mental health evaluations on a periodic basis. With everyone having to undergo mental health evaluations, there will be less stigma attached to seeking services voluntarily.

4. Issue: OPD Officer Perception of Alleged Favoritism in Discipline

Related to Task 45, the NSA Plaintiffs tie the findings and conclusions in the CDC Report to a general perception among a supermajority of officers that OPD's discipline is not fair. One oft-cited but ambiguous quote from OPD employees is: "who you know, and to which cliques you belong, influence whether an investigation will be sustained and what level of discipline will be administered."

Proposed Solution: OPD needs far more granular information about the widely expressed perception of unfair discipline, including information about what OPD

employees perceive as “cliques.” The Commission currently has an Ad Hoc Committee that is tasked with investigating allegations made by the members of the Oakland Black Officers Association (OBOA) that they are subject to more severe discipline than other officers, and will continue to work with an outside investigating firm to review these claims.

Conclusion

The Police Commission is designed to replace the proactive compliance work currently imposed by the Monitor and the Independent Monitoring Team, as the singular civilian oversight body with authority to make policy changes for OPD related to all NSA tasks, and the sole entity named in the City Charter that “shall oversee the Oakland Police Department.” (Charter Section 604(a)(1).)

Without committing to an exclusive list, the Commission should implement its final proposed plan using the following official actions:

- formal action by the Police Commission;
- official MOUs between the Commission, OPD, City officials, City agencies, and any other relevant Charter entities or stakeholders which will be made available to the public;
- new or revised OPD policies, procedures, training bulletins;
- recommendations pursuant to Charter Section 604(h) to the City Council to revise Sections 2.45.00 and 2.46.00 of the Municipal Code;
- seeking budget allocations to ensure and that cost savings from the transition of oversight from the Monitor and IMT are used to fully fund staff for the Commission, as well as the CPRA and the OIG, so they can all carry out their Charter obligations and maintain a proactive approach to reform; and
- recommendations to the City Council to put an additional ballot measure before the voters of Oakland.

Going forward, after the Police Commission approves a plan, implementation must, under the Charter, run through a public-facing, policy-specific ad hoc process that ensures significant input and engagement from members of the public as well as the full Commission, with all final actions to take place after the April 4 Joint Case Management Conference Statement deadline.