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CITY OF OAKLAND

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DELPHINE ALLEN, et al.,

Plaintiffs,

v.

CITY OF OAKLAND, et al.,

Defendants.

Case No. C 00-4599 TEH

DEFENDANT CITY OF OAKLAND'S JUNE 28, 2016 PROGRESS REPORT PURSUANT TO SEPTEMBER 28, 2015 ORDER REQUIRING QUARTERLY REPORTS

Defendant City of Oakland ("City") files the attached progress report pursuant to the Court's September 28, 2015 Order Requiring Quarterly Reports on Arbitrations which provides: "Defendants shall continue to implement these recommendations and shall file quarterly progress reports on or before March 31, June 30, September 30, and December 31 each year." September 28, 2015 Order at 1:12-16 (Dkt. No. 1071). The next report is due on June 30, 2016.

The City also includes three attachments: (A) City Attorney Memo re: OPD Departmental Counsel; (B) City Administrator Memo re: OPD Departmental Counsel; and (C) Mayor's 2015 Police Accountability Report.

Dated: June 28, 2016

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By: /s/ Barbara J. Parker
Attorneys for Defendants
CITY OF OAKLAND, et al

CITY OF OAKLAND

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June 28, 2016

***DELPHINE ALLEN v. CITY OF OAKLAND*, et al.**

PROGRESS REPORT NO. 4

This is the City's fourth Progress Report. The Court ordered that the City provide quarterly Progress Reports, beginning on December 31, 2015. In our last progress report, we (1) provided summaries of police-related arbitration decisions, (2) informed the Court that the City had implemented nearly all of the recommendations in the Court Investigator's April 2015 report, and (3) committed to begin implementing the recommendations in the Court Investigator's March 2016 report.

We have not received any police-related arbitration decisions since we filed our last progress report. Furthermore, only one item remains outstanding from the Court Investigator's April 2015 report.[1] Accordingly, this report focuses on the City's progress in implementing the recommendations in the Court Investigator's more recent, March 21, 2016 report.

I. Implementation of March 2016 Recommendations

1) Supervisor Accountability

Recommendation:

Wherever appropriate in the police discipline process, OPD should examine not only whether a supervisor knew of misconduct that he or she did not report, but also (1) whether a supervisor ordered or otherwise caused the misconduct; and (2) whether the supervisor failed to sufficiently supervise the officer accused of misconduct.

[1] The one outstanding item from Court Investigator's April 2015 report is the recommendation for OPD, in consultation with OCA, to address outdated rules and polices. OPD continues to work on updating its entire policy manual and remains on track to complete the project by late 2016 or early 2017.

Status:

OPD now examines not only whether a supervisor knew of misconduct that he or she did not report, but also (1) whether a supervisor ordered or otherwise caused the misconduct; and (2) whether the supervisor failed to sufficiently supervise the officer accused of misconduct.

Projected Time Frame for Completion: Done.

2) Policy & Training Recommendations

Recommendation:

The Department should establish a process to seek from IAD, Skelly officers, supervisors, attorneys, or others recommendations to improve Department policies, trainings, and police discipline process. One possibility is to assign a coordinator, possibly within OIG, to serve as a clearinghouse for these recommendations. Whatever process is established for responding to these recommendations, it should result in (a) recommendations being routed to the appropriate personnel for response and, if appropriate, implementation of necessary changes; (b) a response to the party making the recommendation; and (c) documentation of the process.

Status:

The IAD Civilian Manager is currently tracking all closed IAD investigations and logging each matter in which a training or policy recommendation was issued. The tracking process began with cases that closed from January 1, 2016, to the present. The IAD Civilian Manager has designated an IAD staff member to perform a monthly query that reports all closed cases for the previous month. Each closed case is then reviewed to determine whether a policy or training recommendation had been issued by the investigator. If a policy or training recommendation was issued, that specific recommendation is logged and reported to both the Training Division and to Research and Planning for review, discussion, and potential modification of training and/or policy. This process has been in effect for nearly three months and there has been sound dialogue. Because this is an open and ongoing project, the IAD Civilian Manager will continue to elicit feedback from all parties on methods that will generate the most effective means of incorporating viable recommendations.

Projected Time Frame for Completion: Done

3) Training Materials and Instructors

Recommendation:

The Department should instruct SMEs that testifying as to the substance of training they administer is required to serve as an SME. OPD should also ensure that its databases track all forms of officer training, whether as a result of academy, supervisor request, or discipline, in a centralized and easily searchable location. To the extent possible, the records should identify the topics of each training. OPD should also make every effort to ensure materials for related trainings are easily identified and accessible. And the Training Section should provide records and materials to attorneys preparing for arbitration in an efficient manner.

Status:

The Training Section will continue to ensure that SMEs testify as requested. The Training Section Commander has requested that the OCA inform the Personnel and Training Division Commander or the Training Section Commander on any such request(s) to ensure follow through. All forms of training are currently being tracked via the Training Management System (TMS) and Personnel Assessment System (PAS). This task has been completed in conjunction with Recommendation #2. Training that is requested as a result of a Training Needs Assessment or otherwise conducted by Training Section will be documented in PAS by the In-service Training Coordinator. The OCA has been informed of this practice. This tracking process will be further improved when PRIME goes live. A new Training database to replace TMS would also assist, but it is unknown when a new Training database will be implemented.

Projected Timeframe for Completion: Done

4) Comparable Discipline

Recommendation:

The Department should consider comparable discipline in all cases, should document that process where appropriate, and should be prepared to present evidence at arbitration regarding its consideration of comparable discipline. Additionally, should an officer grieve his or her discipline to Step 3, Employee Relations ("ER") should conduct its own analysis of whether the imposed discipline is consistent with past discipline in similar cases, and include that determination in its Step 3 response.

Status:

The Chief of Police is considering past discipline in all cases. The Chief of Police is documenting the rationale for imposing discipline when the discipline differs significantly from what has previously been imposed for the same offense. The Chief of Police is prepared to testify as to the basis of discipline at arbitration. In addition, Employee Relations has been analyzing comparable discipline when it considers officers' grievances.

Projected Time Frame for Completion: Done

5) IAD Civilian Manager

Recommendation:

The Civilian Manager within IAD should be responsible for developing institutional memory within IA, potentially through the development of an IAD manual.

Status:

IAD has identified the relevant subjects that are applicable to IAD daily operations. A majority of those subjects have steps and procedures that were previously drafted. While extremely useful with relevant information, none of them have been updated since the date of authorship and in some cases, these procedures are more than nine years old. In addition, these procedures have never been assembled in any type of booklet form for IAD staff or kept in a central electronic location for ease of access. The IAD Civilian Manager has assigned specific subjects to members within IAD that have knowledge in these areas to review the content and incorporate any pertinent updates. In addition, there are subjects that have never been formalized in writing. The IAD Civilian Manager is presently drafting language to incorporate those items into the IAD manual. All assignments are presently being tracked.

Projected Time Frame for Completion: September 2016

6) Skelly Officer Training

Recommendation:

OCA and OPD should continue to work together to update Skelly hearing officer training and refresh Skelly officers on at least an annual basis.

Status:

OCA and OPD will continue to train *Skelly* officers, at least on an annual basis.

Projected Time Frame for Completion: Done

7) Police Arbitration Reforms

Recommendation:

OCA and the City should continue to press for improvements in the police arbitration process, including sharing discovery and witness lists before arbitration and agreeing to a fixed panel of arbitrators.

Status:

The City will continue pressing for reforms to the arbitration process, including mutual discovery and a fixed arbitrator panel.

Projected Time Frame for Completion: Done

8) OPD Departmental Counsel

Recommendation:

The current relationship between OPD and OCA for services beyond discipline investigations and arbitrations is inadequate and puts the Department's discipline process at risk. OPD should hire its own internal general counsel, who reports directly to the Chief. The City should provide the necessary funding to the Department for this position.

Status:

As discussed in our April 2016 progress report, OCA has assigned, on an interim basis, an experienced supervising attorney to serve as OPD's Departmental Counsel. The Police Department has provided positive feedback to the City Attorney and the City Administrator about the Interim Departmental Counsel.

Over the coming months, OPD and OCA will work closely together to recruit and select a permanent Departmental Counsel, with deference given to the Chief's hiring preference. The City Attorney and the City Administrator have

memorialized their process for recruiting, hiring, evaluating and reassigning Departmental Counsel (Attachments A and B).

Projected Time Frame for Completion: September 2016

9) Deputy City Attorney Full-Time Equivalent

Recommendation:

In order to maintain the position of the Deputy City Attorney currently assigned to IAD, future Oakland City budgets should include a full-time-equivalent attorney that is specifically charged with providing legal services to OPD related to IAD investigations, police arbitrations, and other police discipline matters. Should OCA fail to provide OPD with the services of that attorney, or should that attorney fail to provide the level of service required by OPD, the Mayor and City Administrator should send a budget amendment to City Council to reduce the City Attorney's departmental budget allocation in an amount equivalent to the Deputy City Attorney's salary.

Status:

On June 21, 2016, the City Council voted to implement this recommendation as part of the Council's adoption of mid-cycle budget amendments.

Projected Time Frame for Completion: July 2016

10) Labor and Employment Supervisor

Recommendation:

The current Deputy City Attorney overseeing the Labor and Employment Unit should be reclassified as "Special Counsel – Labor and Employment." The position should require expertise in labor and employment matters, and should hold responsibility for overseeing OCA's work related to police discipline investigations and arbitrations. This will be an at-will classification, as the at-will status will help ensure that the person in this position continues to be held responsible for his or her efforts to oversee labor and employment matters, including police discipline investigations, grievances, and arbitrations.

Status:

The City's Department of Human Resources Management has begun the process of creating the new job classification. The process involves meeting and conferring with the union and presenting a resolution to council recommending that the Civil Service Board authorize the Special Counsel – Labor and Employment classification.

Projected Time Frame for Completion: September 2016

11) Quarterly Reports to City Council

Recommendation:

OCA should report to City Council quarterly on recent arbitration decisions, its efforts to support the police discipline process, and recent developments in police discipline. OPD should simultaneously provide a separate quarterly report to the City Council regarding IAD investigations, police personnel trainings, updates to police policy, and recent developments in police discipline. Both OPD and OCA should simultaneously provide their reports to the Mayor and City Administrator.

Status:

The City Administrator and OCA scheduled quarterly public reports to the Council on OPD's and OCA's efforts to increase and sustain police accountability. The first quarterly reports have been submitted to the Council and include all information the Court investigator recommended. The first report was scheduled to be presented on May 17, 2016 to City Council. However, at the May 17th meeting, the City Council rescheduled the item to go to the Public Safety Committee first. The reports currently are scheduled for the July 12 Public Safety Committee meeting. Thereafter, the quarterly reports will be presented to the Council on the third Tuesdays of July, October, January and April each year.

Projected Time Frame for Completion: Done

12) Monthly Meetings with City Administrator

Recommendation:

Both OCA and OPD should meet with the City Administrator monthly to report on pending investigations and arbitrations, changes to OPD trainings and policies, and the working relationship between OPD and OCA.

Status:

OPD, OCA and the City Administrator have been holding a monthly meeting to discuss these matters.

Projected Time Frame for Completion: Done

13) Dissemination of Public Information

Recommendation:

The Mayor should disseminate easily accessible information to the public, on at least an annual basis, regarding police discipline in Oakland.

Status:

On June 15, 2016, the Mayor's office produced its first biannual report, covering the period up to December 31, 2015 (Attachment C). The report was posted to the Mayor's webpage, distributed via email, and made available to members of the public who attended the Mayor's Safe Oakland Speaker Series.

Projected Time Frame for Completion: Done

14) OIG Performance Measurements

Recommendation:

OIG should develop a plan to measure the performance of OPD at various points in the process of police discipline, including intake, investigation, Skelly hearings, and arbitration. OIG should also measure whether OPD is receiving the support that it needs to carry out fair discipline. The Mayor and City Administrator should present a budget that provides OIG with the resources it needs, including accredited auditors, to perform this additional function.

Status:

OIG has adjusted its audit plan for the remainder of 2016 to include more focused reviews of discipline-related processes and issues. The audit plan was approved following review and collaboration with the Monitor, the Independent Monitoring Team, and Plaintiffs' attorneys. The revised and improved scope of auditing work includes objectives designed to measure the presence or absence

of Office of the City Attorney partnership during the investigative and discipline process.

Several audits related to discipline, discipline processes, or officer misconduct have already been completed, planned, or are now in progress. In May, OIG reviewed the tenure and training of investigators assigned to the Internal Affairs Division, and the OIG Monthly Report for July will contain reviews of the consistency of discipline and evaluation of the Skelly process. The September and October 2016 OIG Reports are planned to audit completed Internal Affairs Investigations and recent discipline arbitrations and results.

Two additional police performance auditors were hired by the end of 2015 and the OIG is now fully staffed with three auditors and a police performance audit supervisor. All recently requested funds for police performance auditor staff training has been funded, approved, and granted at both the Department and City Administrator level.

Projected Time Frame for Completion: Done or plans in progress for the remainder of 2016

II. Conclusion

The City's goal is to make and sustain OPD as a national model of constitutional and effective public safety services. We remain proud of the progress the City has made thus far and are committed to sustaining the reforms and continuing to strive to improve our performance and our relationships with all the communities that we serve and protect.

At the same time, we are deeply concerned about recent allegations of serious misconduct by some officers.

As Mayor Schaaf has stated publicly, we are committed to holding those responsible for wrongdoing fully accountable and removing them from positions where they are offending the public trust. Anything that impedes these outcomes is counterproductive and compromises justice.

Communities across the country are now scrutinizing the culture of their police departments, a culture that too often has been tolerant of unethical or unlawful behavior. We are determined to change the culture of the Oakland Police Department to reflect and support the vast majority of officers who are dedicated and professional public servants working to move our police department and our city forward.

Given the recent personnel changes and ongoing investigations into police misconduct, as of June 17, 2016 the OPD command staff reports directly to the City Administrator while the City is conducting a national search for a new police chief. Tactical and operational decisions will remain with OPD commanders as they always have. The City Administrator will oversee all personnel and administrative matters in accord with her powers under Article V of the City Charter. This reporting structure will reinforce the importance of civilian oversight of the Police Department, especially given the recent allegations of misconduct by officers in the Department.

In this report, references to the Chief of Police do not indicate a specific chief, but instead refer to the functions of the position as currently carried out by the Acting Assistant Chief of Police and/or the City Administrator.

Barbara J. Parker
City Attorney

Libby Schaaf
Mayor

Sabrina Landreth
City Administrator

Attachments:

A. City Attorney Memo re: OPD Departmental Counsel
B. City Administrator Memo re: OPD Departmental Counsel
C. Mayor's 2015 Police Accountability Report

1912254v1

ATTACHMENT A

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Sabrina Landreth
City Administrator

From: Barbara J. Parker
City Attorney

Date: June 23, 2016

Re: Interdepartmental Cooperative Process for Recruiting, Hiring, Evaluating and Reassigning Departmental Counsel to the Oakland Police Department (OPD)

The City Attorney recognizes the value of and commits to a cooperative approach in the hiring process for Departmental General Counsel (GC) to the Police Department (OPD). This memorandum outlines the responsibilities of the Office of the City Attorney (OCA) in this cooperative process.

OCA will work with the Chief of Police (Chief) to shape the job announcement to attract applicants with the strengths and expertise that are important to both offices. OCA will closely review and evaluate all applications, conduct interviews of qualified eligible candidates for the position, and determine who the finalists should be. After this, OCA will present a list of no fewer than two finalists to the Chief.

OCA will provide the Chief with a reasonable time frame in which to interview the finalists if the Chief so chooses. OCA will discuss its assessments of the finalists with the Chief and will listen to the Chief's views regarding the finalists. The City Attorney will not unreasonably refuse to hire and assign the attorney who receives the Chief's endorsement.

The topic of legal services for OPD will be a standing item on the agenda for the City Attorney's monthly meetings with the City Administrator and Chief. During each of these meetings, OCA will discuss any issues the Chief and/or City Administrator may raise concerning the quality and/or quantity of legal services the Departmental Counsel (or other OCA attorneys) provide to OPD. The City Attorney will follow up on any such

issues and will take corrective action as appropriate.[1] The City Attorney will carefully consider requests by the City Administrator and/or Chief for a Departmental Counsel reassignment and will not unreasonably deny such requests.

The City Attorney will attempt to resolve any concerns the Mayor, City Administrator and/or Chief may raise at the end of each fiscal year regarding the legal services OCA provided to OPD during the year. OCA understands that if OCA, the Mayor and the City Administrator do not reach a resolution that addresses the Mayor's and City Administrator's concerns, the Mayor and City Administrator may provide a proposal to the City Council to adjust OCA's budget.

Very truly yours,

BARBARA J. PARKER
City Attorney

cc: Chief of Police

1914629v3

[1] Additionally, if OPD believes advice it receives from its Departmental Counsel is incorrect, the Chief may request a second opinion and OCA, in accordance with its longstanding practice, will secure such opinion from outside counsel. OCA also secures outside conflict counsel when she or he has a conflict of interest regarding a particular matter.

ATTACHMENT B

CITY OF OAKLAND

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Sabrina B. Landreth
City Administrator

(510) 238-3302
FAX (510) 238-2223
TDD (510) 238-2007

MEMORANDUM

To: City Attorney and Chief of Police
From: Sabrina Landreth, City Administrator SBL
Date: June 24, 2016
Re: Interdepartmental Cooperative Process for Recruiting, Hiring, Evaluating and Reassigning Departmental Counsel to the Oakland Police Department (OPD)

The City Administrator recognizes the importance of allowing the Chief of Police (Chief) to have the opportunity to provide input into the hiring of the Departmental General Counsel (GC) to the Police Department (OPD) and commits to participation in a cooperative approach for doing so. This memorandum outlines the responsibilities of the City Administrator's Office and Chief in this cooperative process.

The Chief is hereby instructed to work with the City Attorney to shape the job announcement to attract applicants with the strengths and expertise that are important to both offices. The Chief will review the finalists for the job that OCA recommends. The Chief may elect to conduct interviews. The Chief will discuss assessment of the finalists with OCA and will listen to OCA's analysis regarding the potential effectiveness of each finalist. The Chief will then endorse one of the finalists. The City Administrator and Chief expect that OCA will not unreasonably refuse to hire and assign the attorney who receives the Chief's endorsement.

The City Administrator will ensure that the topic of legal services for OPD will be a standing item on the agenda for the City Administrator's and Chief's monthly meetings with the City Attorney. The City Administrator and/or Chief shall raise any issues they may have concerning the quality and/or quantity of legal services OPD receives from the Departmental Counsel (or other OCA attorneys) during each of these meetings. The City Administrator and Chief will seek to identify potential problems early so that the City Attorney may intervene and take corrective action where appropriate. Where corrective action proves unsuccessful, the City Administrator and/or Chief will advise the City Attorney in the event they believe the City Attorney should assign a new GC to OPD. The City Administrator understands that the City Attorney will not unreasonably deny such requests.

At the end of every fiscal year, as part of the annual Budget process, the City Administrator, Chief and the Mayor will conduct a performance review of the level of service OCA provided to OPD that year. If the review finds OCA has provided inadequate legal services, the Mayor and City Administrator will discuss their findings with the City Attorney. If the Mayor, City Administrator, and City Attorney do not reach a resolution that addresses the Mayor's and City Administrator's concerns, the Mayor and City Administrator may provide a budget amendment to the City Council to adjust the City Attorney's budget.

ATTACHMENT C

Principled Policing: The Mayor's 2015 Police Accountability Report

MAYOR'S MESSAGE

For Oakland to achieve its goal of improving safety for the entire community, it is essential that residents have faith in the Oakland Police Department (OPD). Community members must be able to trust that the decisions police make are fair, and the outcomes of those decisions are just. Principled, community-based policing will re-establish and maintain a relationship of trust and cooperation with the Oakland community to increase safety.

Oakland has looked across the nation and deep within to improve the culture and operations of our police department. By adopting nationally-recognized best practices, and closely collecting and examining data, OPD has enacted new training procedures, hiring and promotion practices, and enforcement and discipline policies that have led to more principled policing. These measures help ensure the integrity of law enforcement actions, and produce better safety outcomes.

While the efforts I will outline in this report represent measurable, important improvements, we fully recognize that this work is not done. The road that led us to this place has been extremely painful for far too many Oaklanders, especially those in our communities of color. There is a long and shameful history of abuses of authority by members of the Oakland Police Department from which we are actively working hard to recover and rebuild community trust.

Part of restoring trust is bringing greater transparency to police data so residents know firsthand how our police department is meeting the goals it has outlined for itself, as well as those specified by the Court Negotiated Settlement Agreement the department entered into in 2003 (**Progress on the Negotiated Settlement Agreement** section). While the negotiated settlement agreement has been prescriptive, many of the lasting changes our police department has made are the result of direct community action and the department's own initiative.

The report that follows is another example of a proactive step we are taking to bring about meaningful change. This is the first in a series of bi-annual reports I will be releasing as mayor to outline where the City of Oakland is in its effort to ensure police accountability and provide a closer and more accessible look at the data around police discipline.

In addition to a narrative that offers much-needed context for the work OPD has taken on, this report provides data on the number of discipline cases received in 2015, the types of allegations made and the outcome of the cases investigated. It also looks at the policies dictating how discipline is handled by OPD and the steps being taken to ensure that disciplinable acts do not occur in the first place. Reliable metrics give us a baseline from which to improve and a measure by which we can be held accountable. This is why we are being deliberate in collecting and making this data available.

I know that recent reports of alleged off-duty police misconduct outrage all of us and damage this community's trust in law enforcement. I remain extremely disturbed about the allegations of off-duty misconduct in this department. We are thoroughly investigating these recent allegations

to uncover the truth and hold anyone who engaged in on-duty or off-duty misconduct fully accountable.

On May 13, 2016 in response to recent allegations of off-duty officer misconduct, former Police Chief Sean Whent, City Administrator Sabrina Landreth and I announced a series of measures to reinforce the integrity of police investigations into misconduct, and ensure that officer conduct meets the highest professional and ethical standards.

1) Issued a new executive order on investigative integrity. Effective, May 13, 2016 any allegations of criminal misconduct by an employee of the Oakland Police Department, on or off duty, will be immediately reported to the district attorney in the county where the incident is alleged to have occurred.

2) To further safeguard the independence of the District Attorney's investigation, only DA personnel who have not previously worked for the Oakland Police Department will be assigned to any investigatory team involving OPD.

3) In addition, the Police Chief called for a joint audit by the City Auditor Brenda Roberts and the OPD Inspector General to examine OPD recruitment and early warning systems for any practices or patterns that would identify unsuitable candidates from the applicant pool, and ensure the continued suitability of current officers to be on the force.

4) We use objective standards and tests to ensure we do not relax standards for police recruits just to fill academies, nor to graduate a certain number of officers. The Oakland Police Academy is 29 weeks with an additional 16 weeks of Field Training which is a total of roughly 1,100-1,200 hours for every trainee. This is nearly double the POST (Peace Officers Standards and Training) requirement of 664 hours. Beginning with the next class in July there will be an extra week in the academy and a specific block of instruction related to off-duty ethics.

Unlike many law enforcement agencies around the country that have responded poorly to the national outcry over police accountability, the Oakland Police Department has been pioneering in its gathering and transparent sharing of police data. Having this data means we can better hold ourselves accountable for policies and practices, but also for how they manifest themselves in outcomes. While the array of data may at times show varying degrees of success, the action we take to improve these outcomes demonstrate this department's sincere commitment to building a learning organization that is always working to make Oakland a safer and more equitable community.

Oakland Mayor Libby Schaaf

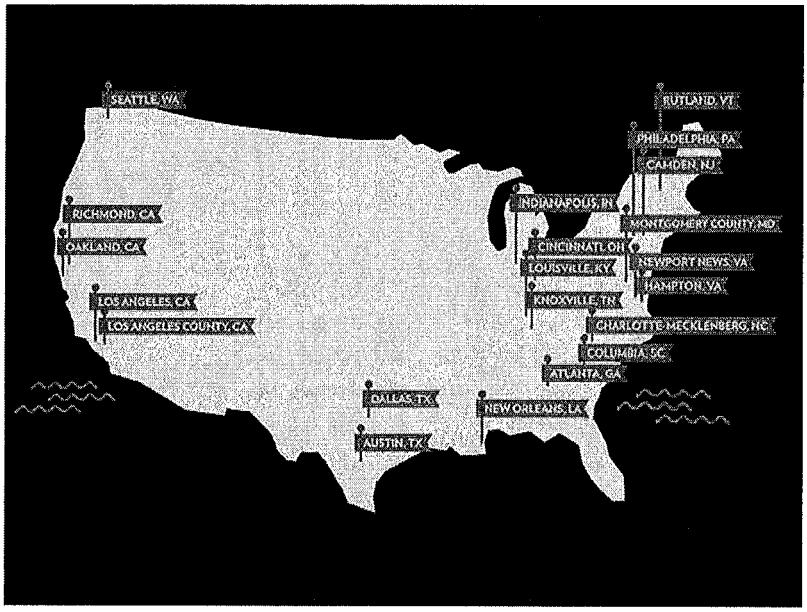
INTRODUCTION

The purpose of this report is to provide data regarding police discipline to ensure accountability of Department actions. The period of evaluation for this report is January through December of 2015. It will be published by the Mayor's Office bi-annually. The next report will cover the first half of 2016 and be released within the next six months. In addition to data on police accountability, (**Appendix B**), this report provides updates on the following areas:

1) Oakland as a national leader for open police data;
2) Police discipline;
3) Reductions in uses of force;
4) Progress on the Negotiated Settlement Agreement.

OPEN POLICE DATA: OAKLAND AS A NATIONAL LEADER

In 2014, President Obama launched the Task Force on 21st Century Policing to identify the best means to provide an effective collaboration between law enforcement and local communities that reduces crime and increases trust.



In response to several of the Task Force recommendations that speak to the importance of technology and transparency, the White House launched the Police Data Initiative (PDI) in May 2015. PDI is a community of practice that includes leading law enforcement agencies, technologists, and researchers committed to improving the relationship between citizens and police through uses of data that increase transparency, build community trust, and strengthen accountability.

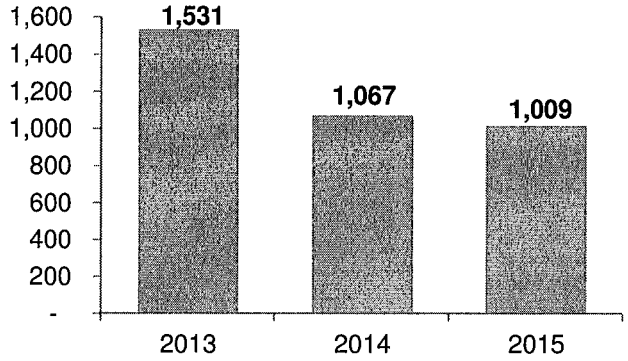
The Oakland Police Department (OPD) was one of two dozen law enforcement agencies around the country initially selected by the White House to participate in this initiative. The group has since grown to 53 cities. Lynn Overmann, Senior Policy Advisor to the White House Chief Technology Officer for Criminal Justice was in Oakland on May 19, 2016 to present on the national effort to increase public access to police data. She discussed how opening up police data to the public and using advanced analytics increases police accountability and community trust.

OPD POLICE DISCIPLINE: MAKING SENSE OF THE DATA

The practices, policies and procedures that govern police conduct are clearly outlined for both sworn and civilian staff. In addition, training is given to assist members of the department in performing their assigned and sworn duties with principle at the highest level. OPD closely tracks and monitors complaints against officers and has a system for reviewing those

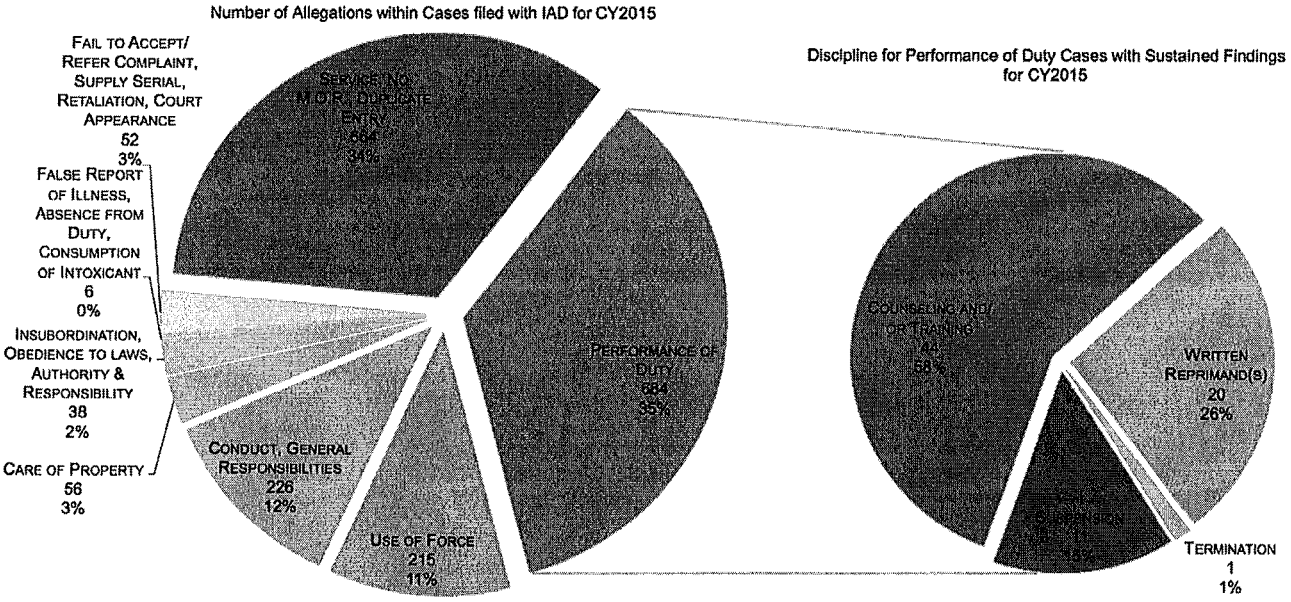
complaints. Complaint cases are reviewed by OPD's Internal Affairs Division (IAD), as well as other division supervisors. OPD's complaint acceptance policy can be viewed by the public here.

Figure 1. IAD Complaints Received 2013-2015



As seen in **Figure 1**, IAD received 1,531 complaints in 2013 and 1,067 in 2014, representing a 30 percent decrease. The complaint process was restructured pursuant to a policy revision in 2013. As a result, there continues to be a significant corresponding decrease in IAD cases and an inherent increase in communication with the community, particularly by way of field supervisor responses to incidents. This downward trend continued in 2015 with a combined total of 1,009 misconduct cases representing both Internal Affairs cases and those reviewed by division supervisors.

Figure 2. Individual Policy Violations alleged for Cases filed with IAD in CY2015



A review of 2015 complaint trends revealed that complaints most commonly lodged against the Police Department did not contain allegations of misconduct against specific officers or employees. Complaints categorized as "Service Complaints" voice concern with a police practice mandated by policy or law such as towing of a vehicle, or report a delay in service (such as a long wait for an officer's presence due to call for service volume). In 2015, 343

alleged service complaints were received, while an additional 312 allegations were determined to contain no alleged violation of rule or law regarding a specific Police Department officer or employee.

Review of 2015 complaint trends also revealed that of the allegations which alleged officer or employee misconduct, 684 allegations were received that an officer or employee did not perform his or her assigned duties and responsibilities as required or directed by law or departmental rule. Violations of performance of duty include, but are not limited to, the following:

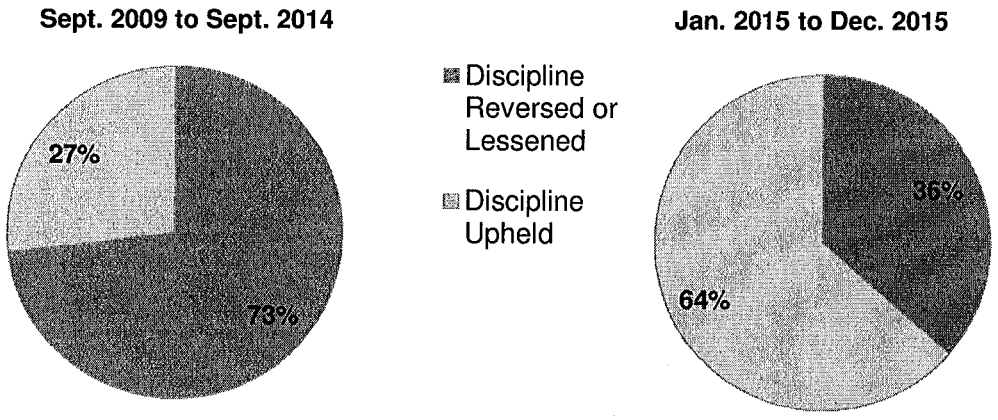
- Intentional illegal search, seizure, or arrest;
- Unintentional or improper search, seizure, or arrest;
- Failure to perform duties as required or directed by law, Departmental rule, policy, or order;
- Improper care of the property of persons; and
- Changing a work assignment without authority.

As seen in **Figure 2**, Of the 684 allegations, 76 cases resulted in findings that were sustained. The resulting disciplinary action was one termination, 11 suspensions, 20 written reprimands, and 44 counseling or training referrals.

The City received 11 arbitration decisions in 2015. The arbitrator fully upheld the City's discipline in seven (or 64 percent) of those cases. In three cases (or 27 percent), the discipline was reduced, and in one case (or 9 percent) the discipline was overturned. Due in part to a review of OPD discipline cases and arbitration results, the City of Oakland – including the OPD, Mayor's Office, City Administrator's Office and City Attorney's Office – has strengthened the OPD investigation and discipline process to help ensure that fair and consistent investigations which sustain misconduct are upheld during the arbitration process. These steps include regular collaborative review of resulting discipline processes, expanded scope of work with the City Attorney's Office, and a revised discipline process within the Department to strengthen and substantiate the appropriateness of recommended discipline.

In the five years from September 2009 through September 2014, arbitrators fully upheld the City's discipline in seven of 26 cases (or 27 percent). For 2015, The City more than doubled its historic success rate, with discipline in 7 of 11 cases (or 64 percent) fully upheld, (**Figure 3**).

Figure 3. Outcomes of Arbitration Cases



REDUCTIONS IN USES OF FORCE

OPD defines Use of Force as:

- ***Use of Force*** - Any physical or mechanical intervention used by a member or employee to defend, control, overpower, restrain or overcome the resistance of an individual.
- ***Reasonable Force*** - That amount of force that is objectively reasonable to affect a lawful police purpose and protect the safety of members or others based upon the totality of the circumstances.
- ***Lethal Force*** - Any force that creates a substantial risk of causing death or serious bodily injury.
- ***Less-Lethal Force*** - Any use of force, other than lethal force, which by design and application is less likely to cause serious bodily injury or death.
- ***Officer-Involved Shooting*** - Any non-accidental discharge of a firearm by an officer outside of training.

OPD evaluates any state-sanctioned use of force in four levels:

FORCE LEVEL: LEVEL 4	
A firearm intentionally pointed at a person	An on-duty firearm discharge to dispatch an injured animal
A Weaponless Defense Technique: hair grab, pressure to mastoid or jaw line, shoulder muscle grab	A Weaponless Defense Technique Control Hold: escort (elbow), twist lock, arm-bar, bent-wrist
FORCE LEVEL: LEVEL 3	
Oleoresin Capsicum/Pepper Spray applied to a person	The baton used for a non-striking purpose
The use of a Taser	A Weaponless Defense Technique: hand/palm/elbow strikes, kicks, leg sweeps, takedowns
Any impact weapon w/o contact	An on-duty firearm discharge at an animal
FORCE LEVEL: LEVEL 2	
Any strike to the head	Any unintentional firearm discharge w/o injury
Carotid restraint w/o the loss of consciousness	A police canine bites
Use of impact weapons w/contact	Any use of force w/injury
FORCE LEVEL: LEVEL 1	
Any use of force resulting in death	Any unintentional firearm discharge w/injury
Any intentional firearm discharge at a person	Any intentional impact weapon strike to the head
Any force w/a substantial risk of causing death	Any UOF investigation that is elevated to a Level 1
Serious bodily injuries	

Figure 3. OPD Use of Force Incidents by Level, CY2014-CY2015

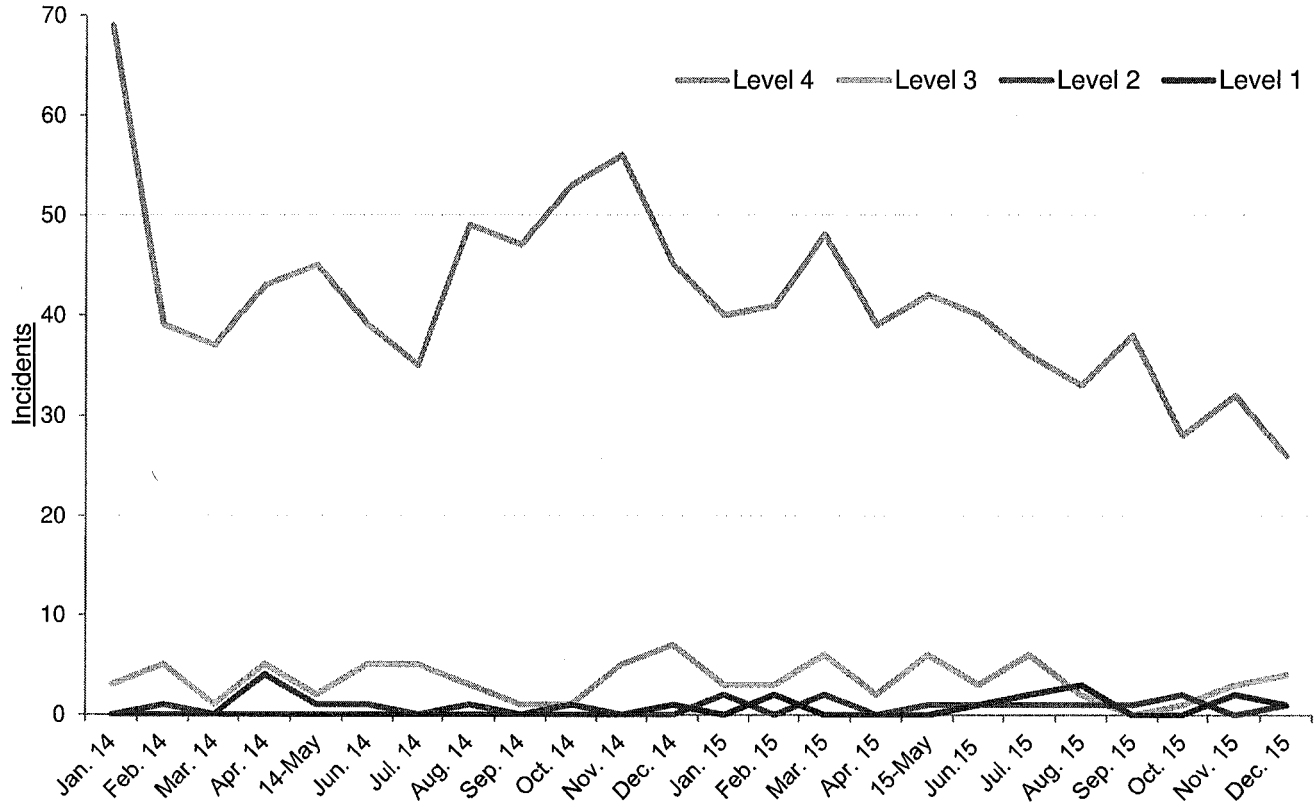


Table 1. Use of Force Incidents in CY2015

Level	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Total
Level 4	40	41	48	39	42	40	36	33	38	28	32	26	**443**
Level 3	3	3	6	2	6	3	6	2	0	1	3	4	**39**
Level 2	2	0	2	0	1	1	1	1	1	2	0	1	**12**
Level 1	0	2	0	0	0	1	2	3	0	0	2	1	**11**
Total	**45**	**46**	**56**	**41**	**49**	**45**	**45**	**39**	**39**	**31**	**37**	**32**	**505**

The Oakland Police Department has made a strategic effort to reduce the use of force. We have had positive results in reducing force by:

- *Increased Training*- We have increased classroom training to remind officers of the legal requirements for using force – even lower level uses of force, such as the pointing of a firearm at a person. We have added additional dynamic training that includes simulated arrests, video simulators and role playing with non-lethal firearms as well as other force options. Additionally, more officers are trained in crisis Intervention techniques with a focus on interacting with persons experiencing mental distress.
- *Enhanced Policy*- Oakland Police Department policies and procedures emphasize decision making which weighs the need for immediate apprehension against the amount of risk immediate apprehension creates for community members, officers, and the person

to be apprehended. Policies are implemented which require and value accomplishing police objectives with respect and minimal reliance on the use of physical force.

- *Improved Review*- Executive commander and review board analyses of serious uses of force require assessments as to whether actions leading up to the use of force made a use of force more likely to occur. Analysis also requires an enumeration of other available options which could have or should have been considered.
- *Using Body-Worn Cameras*- The Oakland Police Department was the first large agency in the United States to equip all uniformed officers with body-worn cameras. Not only is there correlation between body-worn camera use and recent reductions in uses of force and complaints, but the Department is forging new ways of evaluating body-worn camera footage within contexts of officer performance data, citizen contact analysis, and risk management.
- *Increased Oversight*- All uses of force by Oakland police officers are reported, tracked, and reviewed. The lowest level uses of force are reviewed by the supervisor and commander of the officer using the force through a review of video. Higher level uses of force are investigated by the Oakland Police Department Homicide Section, the Internal Affairs Division, and the Alameda County District Attorney's Office.

PROGRESS ON THE NEGOTIATED SETTLEMENT AGREEMENT

In July 2000, the Police Department discovered that four police officers who worked the night shift in West Oakland, the self-named "Riders," had allegedly abused their authority by using unlawful force, planting evidence and fabricating police reports. The alleged conduct of these officers gave rise to a lawsuit brought by multiple plaintiffs seeking both monetary compensation and specific reforms in the Department.

In January 2003, the City of Oakland resolved the litigation by mutually agreeing to a court-approved Negotiated Settlement Agreement (NSA) that required 51 tasks be completed toward major changes in how the Department reports and investigates use of force. The Agreement set up an effective system to identify potential problem officers, investigate complaints related to officer conduct and ensure that officers who train others are the best in the Department.

The NSA also required the development and implementation of systems to strictly monitor officer performance. These systems also require the prompt and appropriate disciplining of officers who violate rules and policies or who fail to report rule-breaking by others. The City of Oakland has invested valuable resources so that citizens will have confidence in the system and know that their complaints are handled properly and without delay.

The primary goals of the NSA are:

- To enhance our ability to protect the lives, rights, dignity and property of the community we serve.
- To use the best available practices for police supervision, training and accountability.

The Department was in full compliance with 32 of the 51 required Tasks, and in partial compliance with 16 additional tasks, by 2010. As a result, the number of Tasks under "Active Monitoring" was reduced to 22. By January 2015, 19 of these 22 Tasks had reached full compliance.

A Court Order in May of 2015 modified the monitoring plan to make more efficient use of monitoring resources while focusing on the long-term sustainability of the reforms in the NSA. Tasks which had been assessed as in sustainable compliance with NSA standards became inactive. At present, only three Tasks of the Agreement are subject to active monitoring: Task 5, complaint procedures for Internal Affairs; Task 34, assessment of vehicle stops, investigations and detentions; and Task 45, consistency of discipline. Monitoring of the remaining tasks has led—in part—to the production of this report. The public needs to be informed of progress as well as how much work still remains. In order to achieve the goal of a police department that sustains its commitment to principled policing, transparency and accountability are paramount.

APPENDIX A: Force Review Boards: Independent Accountability

The Oakland Police Department has developed and implemented Force Review Boards (FRBs) and Executive Force Review Boards (EFRBs). These boards convene to evaluate and review the factual circumstances surrounding force incidents and associated use of force investigations, in-custody death investigations, and vehicle pursuit-related deaths. FRBs and EFRBs are independent review panels within the Oakland Police Department. FRBs analyze and assess Level 2 use of force incidents and to make recommendations. EFRBs analyze and assess Level 1 use of force incidents; in-custody death incidents; deadly incidents related to pursuits; and other incidents at the direction of the Chief of Police.

FRBs are comprised of three command staff members, all of whom must hold the rank of Captain of Police or higher. EFRBs are comprised of three command staff members, at least one of whom must hold the rank of Deputy Chief of Police and serve as Board Chair. The other two members of the EFRB must hold the rank of Captain of Police or higher. FRB and EFRB members are selected by the Chief of Police The boards have two duties:

1. Determine whether the use of force complied with departmental policy
2. Identify any needed policy revision needed as a result of learnings from the investigation.

In 2015, FRBs reviewed 10 use of force instances, compared with nine in 2014:

2015

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

2014

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

APPENDIX B: Complaints and Allegations Data Tables

Table B.1: Number of Cases Accepted, CY 2015

Cases	1009
Allegations	1942

Table B.2: Summary of Allegations for Cases Filed with IAD, CY2015

Manual of Rules Violation Number	Allegation Description	# of Allegations
000.01	Service Complaint	341
000.02	No Violation	312
000.03	Duplicate Entry	11
234.00	Authority and Responsibilities	1
285.00	Authority and Responsibilities	6
314.03	General Conduct	11
314.04	Conduct Toward Others- Harassment and Discrimination	48
314.05	Conduct Toward Others-Workplace Violence	1
314.07	Conduct Toward Others- Demeanor	160
314.08	Conduct Toward Others-Relationships	1
314.15	Assistance	1
314.18	Member's General Responsibilities	1
314.30	Insubordination- Disobedience to Orders	4
314.32	Insubordination-Disrespect	2
314.38	Obstructing the Internal Affairs Process	1
314.39	Performance of Duty	608
314.42	Obedience to Laws, Ordinances, Rules or Orders	20
314.48	Reporting Violation of Laws, Ordinances, Rules or Orders	2
314.69	Gifts, Gratuities- Soliciting or Accepting	1
328.14	Loitering	1
328.49	Absence from Duty	2
328.53	False Report of Illness or Injury	1
328.63	Consumption of Intoxicants	3
342.00	Department property and Equipment	56
370.27	Use of Force	215
370.36	Custody of Prisoners	1
398.16	Court Appearances	1
398.70	Subversive Organizations	1
398.73	Retaliation	4
398.76	Refusal to Accept or Refer Complaint	21
398.77	Refusal to Supply Name and Serial Number	26
398.80	Truthfulness	1

Table B.3: Outcomes of Sustained Cases, CY2015

Suspension(s)	11
Counseling and/or Training	44
Written Reprimand(s)	20
Termination	1
Total Sustained Findings	**76**

Table B.4: OPD Arbitration Decisions, CY2015

Arbitration Decisions	11
Discipline Upheld	7
Discipline Reduced	3
Discipline Overturned	1

Table B.5: Total Arrests by OPD. CY2015

Category	Jan. 15	Fen. 15	Mar. 15	Apr. 15	May 15	Jun. 15	Jul. 15	Aug. 15	Sep. 15	Oct. 15	Nov.15	Dec 15
All Arrests	**1540**	**1433**	**1396**	**1516**	**1722**	**1444**	**1856**	**1628**	**1842**	**1941**	**1554**	**1786**
Arrests Associated with a Level 4 Use of Force (per reporting officer)	71	60	76	64	91	54	63	65	57	52	70	37
A Use of Force (levels 1,2,3 - per reporting officer)	7	8	12	4	12	10	9	9	1	3	8	6
A Use of Force (levels 1,2,3,4** - per reporting officer)	78	68	88	68	99	64	72	74	58	55	78	43
A Police Pursuit (per reporting officer)	9	6	10	11	13	9	12	8	2	4	5	0
An IA Complaint (per subject officer sworn only)	73	57	51	47	79	41	60	50	47	69	49	45
An In-Custody Injury	9	2	0	2	2	0	4	0	0	7	5	0
Officer Involved Shooting Level 1	0	2	0	0	0	1	0	3	0	0	1	0
Vehicle Collisions (excludes civilians)	9	3	0	1	0	0	9	3	1	4	2	0
Civil Suit (excludes civilians)	2	3	3	1	2	3	0	0	0	0	1	0

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Table B.6: Select Statistics of OPD by Sworn Position. CY2015

Statistics vs. Staffing	JAN 15	FEB 15	MAR 15	APR 15	MAY 15	JUN 15	JUL 15	AUG 15	SEP 15	OCT 15	NOV 15	DEC 15
Filled Sworn Positions	**695**	**694**	**688**	**720**	**723**	**722**	**719**	**712**	**705**	**700**	**725**	**721**
Total Arrests	2.216	2.065	2.029	2.106	2.382	2.000	2.581	2.287	2.613	2.773	2.143	2.477
Uses of Force (L 1, 2, 3)	0.010	0.012	0.017	0.006	0.017	0.014	0.013	0.013	0.001	0.004	0.011	0.008
All Uses of Force	0.112	0.098	0.128	0.094	0.137	0.089	0.100	0.104	0.082	0.079	0.108	0.060
A Police Pursuit (per reporting officer)	0.013	0.009	0.015	0.015	0.018	0.012	0.017	0.011	0.003	0.006	0.007	0.000
An IA Complaint (per subject officer sworn only)	0.105	0.082	0.074	0.065	0.109	0.057	0.083	0.070	0.067	0.099	0.068	0.062
An In-Custody Injury	0.013	0.003	0.000	0.003	0.003	0.000	0.006	0.000	0.000	0.010	0.007	0.000
Each Hour of Sick Leave (excludes civilians)	2.849	2.063	0.882	2.336	2.432	1.641	1.943	1.757	1.861	2.157	2.261	2.404
OIS Level 1	0.000	0.003	0.000	0.000	0.000	0.001	0.000	0.004	0.000	0.000	0.001	0.000
Vehicle Collisions (excludes civilians)	0.013	0.004	0.000	0.001	0.000	0.000	0.013	0.004	0.001	0.006	0.003	0.000
Civil Suit (excludes civilians)	0.003	0.004	0.004	0.001	0.003	0.004	0.000	0.000	0.000	0.000	0.001	0.000

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