

INTRADEPARTMENTAL CORRESPONDENCE

May 9, 2014
14.2

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT
(IAID NO. 14-015)

RECOMMENDED ACTIONS

1. That the Board of Police Commissioners REVIEW and APPROVE the attached Categorical use of Force Investigations Audit.
2. That the Board of Police Commissioners REVIEW and APPROVE the attached Executive Summary thereto.

DISCUSSION

In accordance with the Los Angeles Police Department's Audit and Inspection Plan for Fiscal Year 2013/2014, Internal Audits and Inspections Division conducted a Categorical Use of Force Investigations audit.

If additional information regarding this audit is required, please contact Arif Alikhan, Special Assistant for Constitutional Policing, at (213) 486-8730.

Respectfully,



CHARLIE BECK
Chief of Police

Attachment

LOS ANGELES POLICE DEPARTMENT

CATEGORICAL USE OF FORCE

INVESTIGATIONS AUDIT

(IAID No. 14-015)



CONDUCTED BY

INTERNAL AUDITS & INSPECTIONS DIVISION

CHARLIE BECK
Chief of Police

Fiscal Year 2013/2014

TABLE OF CONTENTS

CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT

PAGE NO.

<u>EXECUTIVE SUMMARY</u>	i	
<u>PURPOSE</u>	1	
<u>PRIOR AUDITS</u>	1	
<u>METHODOLOGY</u>	1	
<u>SUMMARY OF FINDINGS</u>	2	
<u>DETAILED FINDINGS</u>	3	
OBJECTIVE No. 1	RECORDED INTERVIEWS	3
OBJECTIVE No. 2	INTERVIEW WITNESSES AT CONVENIENT SITES AND TIMES	4
OBJECTIVE No. 3	NO GROUP INTERVIEWS	4
OBJECTIVE No. 4	INTERVIEW ON-SCENE SUPERVISORS REGARDING THEIR CONDUCT	5
OBJECTIVE No. 5	COLLECT AND PRESERVE EVIDENCE	5
OBJECTIVE No. 6	CANVASS FOR WITNESSES	6
OBJECTIVE No. 7	INCONSISTENCIES IN STATEMENTS	6
OBJECTIVE No. 8	NOTIFICATION OF CATEGORICAL USE OF FORCE MISCONDUCT	7
OBJECTIVE No. 9	COMPLETENESS	7
OBJECTIVE No. 10	CANNED LANGUAGE	8
OBJECTIVE No. 11	INCONSISTENT INFORMATION	8
OBJECTIVE No. 12	LEGALITY OF CATEGORICAL USE OF FORCE	9
OBJECTIVE No. 13	ARTICULATION OF UNDERLYING ACTIONS	9

OBJECTIVE No. 14	USE OF FORCE CONFORMED WITH DEPARTMENT POLICY	10
OBJECTIVE No. 15	ON-SCENE SUPERVISION	10
OBJECTIVE No. 16	SUPERVISORY POST-INCIDENT REVIEW	11
OBJECTIVE No. 17	COMPARISON OF INVESTIGATOR SUMMARY WITH WITNESS STATEMENTS	11
OBJECTIVE No. 18	ADEQUACY OF THE INVESTIGATION	12
ACTIONS TAKEN		12

EXECUTIVE SUMMARY
CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT
Internal Audits and Inspections Division
Fourth Quarter, Fiscal Year 2013/14

PURPOSE

In accordance with the Los Angeles Police Department's (Department) Audit and Inspection Plan for Fiscal Year 2013/14, Internal Audits and Inspections Division (IAID) conducted a Categorical Use of Force (CUOF) investigations audit.

Internal Audits and Inspections Division conducted this audit under the guidance of generally accepted government auditing standards, specifically pertaining to performing the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. Internal Audits and Inspections Division has determined that the evidence obtained provides a reasonable basis for the findings and conclusions based on our audit objectives.

METHODOLOGY

Internal Audits and Inspections Division selected a judgment sample of 18 CUOF investigations¹ out of a total of 25 CUOF investigations completed between March 1, 2013, and September 1, 2013.

A judgment sample was chosen so that auditors could ensure a thorough examination of high risk CUOF investigations was conducted.

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¹The sample was comprised of one head strike, two in-custody deaths, one law enforcement related injury, and 14 officer-involved shootings.

SUMMARY OF FINDINGS

The following table describes the audit objectives, and summarizes the findings for each audit objective.

TABLE 1 - SUMMARY OF FINDINGS

Objective Number	Objective Title	Percentage
1	Recorded Interviews	94% (17/18)
2	Interview Witnesses at Convenient Sites and Times	100% (18/18)
3	No Group Interviews	100% (18/18)
4	Interview On-scene Supervisors Regarding Their Conduct	94% (17/18)
5	Collect and Preserve Evidence	100% (18/18)
6	Canvass for Witnesses	100% (18/18)
7	Inconsistencies in Statements	100% (18/18)
8	Notification of Categorical Use Of Force Misconduct	100% (18/18)
9	Completeness	100% (18/18)
10	Canned Language	100% (18/18)
11	Inconsistent Information	100% (18/18)
12	Legality of Categorical Use of Force	100% (18/18)
13	Articulation of Underlying Action	100% (18/18)
14	Use of Force Conformed with Department Policy	94% (17/18)
15	On-Scene Supervision	100% (18/18)
16	Supervisory Post-Incident Review	100% (18/18)
17	Comparison of Investigator Summary with Witness Statements	100% (18/18)
18	Adequacy of the Investigation	94% (17/18)

ACTIONS TAKEN / MANAGEMENT'S RESPONSE

On January 21, 2014, IAID met with the Commanding Officer (C/O) of Force Investigation Division (FID) in order to discuss the findings of this audit. The C/O of FID expressed general agreement with the findings. Because of continuous improvements and consistent levels of compliance noted, IAID did not recommend any changes in process or procedure. In fact, IAID praised FID for their continuous efforts to improve the investigative process and final investigative summary. In addition, the C/O of Professional Standards Bureau reviewed this report and was in general agreement.

CONCLUSION

Internal and external controls for each CUOF investigations include multiple levels of review. These controls are in place at FID, the Office of the Chief of Police, the Office of the Inspector General, and the Police Commission. These controls also appear to be effective as evidenced by reported compliance rates and year to year improvements. Effective controls as well as risks should be taken into consideration when applying methodologies. For future methodologies, IAID is considering limited testing that would address both controls and risks regarding CUOF investigations.

CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT
Internal Audits and Inspections Division
Fourth Quarter, Fiscal Year 2013/14

PURPOSE

In accordance with the Los Angeles Police Department's (Department) Audit and Inspection Plan for Fiscal Year (FY) 2013/14, Internal Audits and Inspections Division (IAID) conducted a Categorical Use of Force (CUOF) investigations audit.

Internal Audits and Inspections Division conducted this audit under the guidance of generally accepted government auditing standards, specifically pertaining to performing the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. Internal Audits and Inspections Division has determined that the evidence obtained provides a reasonable basis for the findings and conclusions based on our audit objectives.

PRIOR AUDITS

The last CUOF investigations audit was completed in the Fourth Quarter, FY 2008/09. No recommendations were made at that time.

METHODOLOGY

Internal Audits and Inspections Division selected a judgment sample of 18 CUOF investigations¹ out of a total of 25 CUOF investigations completed between March 1, 2013, and September 1, 2013.

A judgment sample was chosen so that auditors could ensure a thorough examination of high risk CUOF investigations was conducted.

Definition of a Categorical Use of Force

The Department defines a CUOF incident as one of the following:

- Use of deadly force, also referred to as an Officer Involved Shooting (OIS);
- Use of an upper body control hold that may include the use of a modified carotid, full carotid or locked carotid;
- Use of force resulting in injury requiring hospitalization, commonly referred to as a Law Enforcement Related Injury (LERI);
- Head Strike (HS) with an impact weapon; and,
- In-Custody Death (ICD).

¹The sample was comprised of one HS, two ICDs, one LERI, and 14 OISs.

SUMMARY OF FINDINGS

The following table describes the objectives, and summarizes the findings for each audit objective.

TABLE 1 - SUMMARY OF FINDINGS

Objective Number	Objective Title	Percentage
1	Recorded Interviews	94% (17/18)
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12	Legality of Categorical Use of Force	100% (18/18)
13	Articulation of Underlying Action(s)	100% (18/18)
14	Use of Force Conformed with Department Policy	94% (17/18)
15	On-Scene Supervision	100% (18/18)
16	Supervisory Post-Incident Review	100% (18/18)
17	Comparison of Investigator Summary with Witness Statements	100% (18/18)
18	Adequacy of the Investigation	94% (17/18)

DETAILED FINDINGS

Objective No. 1 – Recorded Interviews

Criteria

Department policy requires FID investigators to record all interviews (i.e., audio, or video recording) of involved officers and witnesses. If interviews were not recorded FID investigators are required to provide justification for not doing so.¹

Audit Procedures

Witness interviews require the cooperation of the witness. If a witness imposes restrictions on the interview that may violate the Department's policy and/or procedures, good investigatory practices require that the interviewer agree to the witness' restrictions and conduct the interview. If a witness refuses to be tape recorded, an investigator is expected to document this refusal and conduct the interview without recording it.

The Department met the standards for this objective if interviews of all witnesses, involved officers, and the person upon whom force was used were taped recorded or videotaped. Investigations for which a tape recorder malfunctioned, or a person refused to be interviewed, refused to be tape recorded, was unresponsive, or was unable to be located, and justification for not recording the interview was documented, also met the standards for this objective.

Findings

Seventeen (94%) of the 18 CUOF investigations met the standards for this objective. The remaining one case is detailed below:

FID No. F042-12, Officer Involved Shooting -Hit

An interview with one officer was missing the introductory due to a battery failure with the tape-recorder. The interview started mid-conversation and reflected the battery failure; however, there was no investigative note or explanation in the investigative summary.

Management's Response

The Commanding Officer (C/O) of FID concurs with IAID's finding. According to FID, when the detective was taping the witness, he noticed a battery failure. As a result of this incident, the C/O of FID has instructed all FID investigators to document incomplete interviews resulting from equipment malfunctions in the investigator's note section of the CUOF investigation report.

¹ See Department Manual Section 3/794.37.

Objective No. 2 – Interview Witnesses at Convenient Sites and Times

Criteria

Department Policy requires FID investigators to interview all civilian witnesses at locations and time(s) convenient to them, whenever it is practical and appropriate.²

Audit Procedures

Each of the 18 CUOF investigations was reviewed to determine whether the investigations contained documentation that interviews were conducted at convenient sites and times. In the absence of such documentation, the investigations were examined to determine whether there was any evidence that the interview was conducted at an inconvenient site or time, and if so, whether the investigation documented justification based upon good investigatory practices.

The Department met the standards for this objective if the investigations contained documentation that interviews were conducted at convenient sites and times, or justification based on good investigatory practices was documented, or for which there was no objection to the sites and times.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

Objective No. 3 – No Group Interviews

Criteria

Department Policy requires all FID investigators to prohibit group interviews.³

Audit Procedures

A *group interview* was defined as an interview in which one or more witnesses to the CUOF incident was present or could hear another witness being interviewed, or in which two or more witnesses were interviewed together. An acceptable group interview was defined as a group interview that was conducted at the insistence of the witnesses, or because the witness refused to be interviewed unless in the presence of another witness, or when circumstances made it unavoidable and there was a documented explanation.

The Department met the standards for this objective if the CUOF investigation did not contain evidence of a group interview, or justification was documented for a group interview.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

² Department Manual Section 3/794.37.

³ Department Manual Section 3/794.37.

Objective No. 4 – Interview On-scene Supervisors Regarding Their Conduct

Criteria

Department Policy requires FID investigators to interview all involved on-scene supervisors (applies only to those actively involved in managing the scene) regarding their management of the scene during the incident.⁴

Audit Procedures

A *supervisor* was defined as a sworn officer at the rank of Detective II, Sergeant I, or above.

An *on-scene supervisor* was defined as a supervisor who was in a position to have witnessed, directed, or participated in the CUOF, or a supervisor with vital information about the circumstances surrounding the CUOF incident.

The Department met the standards for this objective if the CUOF investigation documented on-scene supervisors were interviewed regarding their conduct.

Findings

Seventeen (94%) of the 18 CUOF investigations met the standards for this objective. The remaining one case is detailed below:

FID No. F068-12, Officer Involved Shooting-Hit

The sergeant who took the public safety statement from one of the involved officers was not interviewed.

Objective No. 5 – Collect and Preserve Evidence

Criteria

Department Policy requires FID investigators to coordinate, collect, and preserve all appropriate evidence.⁵

Audit Procedures

Collect and preserve was defined as seized, booked, or maintained by the appropriate investigative authority. If booking the evidence was impractical, photographing the evidence and documenting that photographs were taken was acceptable.

The Department met the standards for this objective if the CUOF investigation contained all appropriate evidence, or justification was documented as to why evidence was not collected or preserved.

⁴ Department Manual Section 3/794.37.

⁵ Department Manual Section 3/794.37.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

Objective No. 6 – Canvass for Witnesses

Criteria

Department Policy requires FID investigators to coordinate, collect, and preserve all appropriate evidence, including canvassing the scene to locate possible witnesses if appropriate.⁶

Audit Procedures

Canvass was defined as searching door-to-door (or the equivalent, depending on the location) for witnesses. The Department met the standards for this objective if the CUOF investigation contained evidence of canvassing for witnesses, or provided justification for not canvassing the scene.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

Objective No. 7 – Inconsistencies in Statements

Criteria

Department policy requires FID investigators to identify and document all inconsistencies in officer and witness interview statements.⁷

Audit Procedures

An *inconsistency* was defined as a material discrepancy or conflict between statements made by two or more witnesses, not merely information included in one witness' statement but missing from another. *Material discrepancy* was defined as any inconsistency that could have an impact on the investigation.

The Department met the standards for this objective if the CUOF investigation contained no inconsistencies, or documented inconsistencies in officer and witness statements.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

⁶ Department Manual Section 3/794.37.

⁷ Department Manual Section 3/794.37.

Objective No. 8 – Notification of Categorical Use Of Force Misconduct

Criteria

Department policy requires that when an employee becomes aware of possible misconduct by another Department employee, the employee shall immediately report the incident to a supervisor and/or directly to Internal Affairs Group (IAG). This requirement applies to all employees, including supervisory personnel and managers (the rank of captain or above), who learn of possible misconduct through the review of an employee's work. Generally, the supervisor accepting the complaint shall initiate the Complaint Form. Only supervisors shall initiate Complaint Forms.⁸

Audit Procedures

An allegation of misconduct may be reported to the investigator by any person, or may be discovered by the investigator during the course of the investigation. *Misconduct other than that alleged by the triggering item* was defined as misconduct not related to the CUOF incident or serious (criminal) misconduct; for example: an allegation from an arrestee that an officer was discourteous while the arrestee was being transported to the station following the CUOF incident.

The Department met the standards for this objective if evidence of misconduct other than that alleged by the triggering item was identified, and the investigating officer notified a supervisor, and an additional Complaint, Form 1.28, investigation was initiated.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

Objective No. 9 – Completeness

Criteria

Department policy requires FID investigators to provide a complete investigation of all CUOF incidents.⁹

Audit Procedures

Completeness was defined as the inclusion of all transcriptions, addenda items, and pages of the investigative report. Each of the 18 CUOF investigations was reviewed to determine whether it contained all required information. The Department met the standards for this objective if the CUOF investigation contained all required information.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

⁸ Department Manual Section 3/813.05.

⁹ Department Manual Section 3/794.37.

Objective No. 10 – Canned Language

Criteria

Department policy requires, the watch commander or a supervisor designated by the watch commander shall review all reports related to the arrest for appropriateness, legality, and conformance with Department policy and procedure taking into account the booking recommendation. Additionally, the watch commander or supervisor shall examine the reports for authenticity by ensuring that the reports do not contain any “canned” language, inconsistent information, or fail to articulate the legal basis for the action, or any indication that the information in the report is not authentic or correct. Subsequent to review, the watch commander or his/her designee shall indicate approval by signing (including serial number) the reports.¹⁰

Audit Procedures

Canned language was defined as language that is unoriginal, or that is generically applied to unique situations, calling into question the authenticity of the described event or information. The Department met the standards for this objective if the CUOF investigation did not contain canned language.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

Objective No. 11 – Inconsistent Information

Criteria

Department policy requires FID investigators to identify and document all inconsistencies.¹¹

Audit Procedures

Inconsistent information was defined as information within the CUOF investigation report (other than that reported in witness statements, as addressed in Objective No. 7) that was material to the CUOF investigation and conflicted with other information in the CUOF investigation report.

The Department met the standards for this objective if the CUOF investigation contained no evidence of inconsistent information.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

¹⁰ Department Manual Section 4/216.02.

¹¹ Department Manual Section 3/794.37.

Objective No. 12 – Legality of Categorical Use Of Force

Criteria

Defined under Penal Code Section 835a: “Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape or to overcome resistance.”

Audit Procedures

The legal basis for the use of force is defined under Penal Code Section 835a: “Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape or to overcome resistance.”

Each of the 18 CUOF investigations was reviewed to determine whether it documented articulation of the legal basis for the use of force. The Department met the standards for this objective if the CUOF investigation articulated the legal basis for the CUOF.

Findings

Each of the 18 (100%) CUOF investigations met the standards for this objective as they each articulated the legal basis for the use of force.

Objective No. 13 – Articulation of Underlying Actions

Criteria

Department policy requires that reasonable suspicion for detention is articulated in each arrest package and the action was appropriate, legal, and in conformance with Department policy.¹²

Audit Procedures

Underlying action was defined as an action taken by a police officer in conjunction with the use of force incident, i.e., any detention, search, seizure, or arrest connected with the CUOF incident.

Reasonable suspicion was defined as a set of specific and articulable facts that lead an officer to reasonably believe that a crime is occurring, is about to occur, or has occurred, and that the person detained is connected to that activity that is criminal in nature.

Probable cause to arrest was defined as a set of facts that would cause a reasonable person to form an “honest and strong belief” that the person to be arrested had committed a crime. A lawful arrest requires a “fair probability” that the person committed the crime.¹³

¹² Department Manual Section 4/216.01 and 4/216.02.

¹³ The standards of *reasonable suspicion* and *probable cause to arrest* were defined pursuant to the California Peace Officers Legal Sourcebook.

The legality of searches was based on the articulated existence of one of the following: consent, incident to arrest, probable cause, or exigent circumstances.

The Department met the standards for this objective if the CUOF investigation contained articulation of the underlying action.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

Objective No. 14 – Use of Force Conformed with Department Policy

Criteria

Department policy states: “Force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force is reasonable and necessary to protect others or themselves from bodily harm.”¹⁴

Audit Procedures

Each of the 18 CUOF investigations was reviewed to determine whether the use of force was within Department policy. The Department met the standards for this objective if the use of force was within Department policy.

Findings

Seventeen (94%) of the 18 CUOF investigations met the standards for this objective. The remaining one case is detailed below:

FID No. F075-12, Officer Involved Shooting- Non-Hit
The involved officer shot at a moving vehicle.

Objective No. 15 – On-Scene Supervision

Criteria

Department policy requires a supervisor in charge of a CUOF shall obtain sufficient information to conduct his/her duties at the scene.¹⁵

Audit Procedures

An *on-scene supervisor* for this objective was defined as a supervisor who was in a position to have witnessed, directed, or participated in the CUOF incident, or a supervisor who arrived afterwards in response to the event.

¹⁴ Department Manual Section 1/240.10.

¹⁵ Department Manual Section 3/794.37, 3/795, and 3/795.10.

The Department met the standards for this objective if the action of each on-scene supervisor was appropriate.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

Objective No. 16 – Supervisory Post-Incident Review

Criteria

Department policy requires the C/O of FID to review the completed CUOF investigation prior to the CUOF incident's adjudication by the use of force review board.¹⁶

Audit Procedures

Post incident review was defined as: FID C/O's review of the completed CUOF investigation prior to the CUOF incident's adjudication by the Use of Force Review Board (UOFRB). Each of the 18 CUOF investigations was reviewed for evidence of FID C/O's review. The Department met the standards for this objective when the CUOF investigation was signed by the FID C/O.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

Objective No. 17 – Comparison of Investigator Summary with Witness Statements

Criteria

Department policy requires FID investigators to identify and document all inconsistencies in officer and witness interview statements.¹⁷

Audit Procedures

Each of the 18 CUOF investigations was reviewed for general consistency of the Investigator's Summary with the witness statements. The Department met the standards for this objective if the CUOF investigations indicated consistency of the Incident Summary with the witness statements.

Findings

Each (100%) of the 18 CUOF investigations met the standards for this objective.

¹⁶ Department Manual Section 3/796.25.

¹⁷ Department Manual Section 3/794.37.

Objective No. 18 – Adequacy of the Investigation

Criteria

Department policy requires FID investigators follow established Department procedure for investigating all incidents for which it has investigative responsibility.¹⁸

Audit Procedures

An *adequate investigation* was defined as an investigation that did not leave the reader with any significant, unanswered questions that the investigator should have addressed, and/or one in which all identified witnesses were interviewed, or that contained documentation of why an identified witness was not interviewed.

Each of the 18 CUOF investigations was reviewed to determine whether each was adequate. The Department met the standards for this objective if the investigation was adequate as defined above.

Findings

Seventeen (94%) of the 18 CUOF investigations met the standards for this objective. The remaining one case is detailed below:

FID No. F070-12, Officer Involved Shooting- Hit

One of the suspects involved in the shooting was not interviewed by FID investigators.

Management's Response

The C/O of FID concurs with IAID's finding. According to FID, they were unaware that she was a suspect until an officer at the hospital over-heard her having a conversation with her father about the shooting. In addition, the C/O of Professional Standards Bureau reviewed this report and was in general agreement.

ACTIONS TAKEN / MANAGEMENT'S RESPONSE

On January 21, 2014, IAID met with the C/O of FID in order to discuss the findings of this audit. The C/O FID expressed general agreement with the findings. Because of continuous improvements and consistent levels of compliance noted, IAID did not recommend any changes in process or procedure. In fact, IAID praised FID for their continuous efforts to improve the investigative process and final investigative summary.

¹⁸ Department Manual Section 3/794.37.