

INTRADEPARTMENTAL CORRESPONDENCE

April 19, 2017
14.2

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: NON-CATEGORICAL USE OF FORCE PROCESS AUDIT (AD NO. 16-025)

RECOMMENDED ACTIONS


1. It is recommended that the Board of Police Commissioners REVIEW and APPROVE the attached Non-Categorical Use of Force Investigation Audit.

DISCUSSION

Audit Division conducted the Non-Categorical Use of Force Investigations Audit to evaluate compliance with Department policies and procedures.

If additional information regarding this audit is required, please contact Arif Alikhan, Director, Office of Constitutional Policing and Policy, at (213) 486-8730.

Respectfully,



CHARLIE BECK
Chief of Police

Attachment

LOS ANGELES POLICE DEPARTMENT

NON-CATEGORICAL USE OF FORCE INVESTIGATIONS

(AD No. 16-025)



Conducted by
AUDIT DIVISION

CHARLIE BECK
Chief of Police

March 2017

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NON-CATEGORICAL USE OF FORCE INVESTIGATIONS AUDIT
Conducted by
Audit Division
2016

PURPOSE

In accordance with the Los Angeles Police Department (Department) Annual Audit Plan for 2016, Audit Division (AD) conducted the Non-Categorical Use of Force (NCUOF) Investigations Audit to assess compliance with Department policies and procedures as they relate to the evaluation, review, and oversight of NCUOF investigations.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards, except AD has not obtained the required external peer review. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.¹

BACKGROUND

Non-Categorical Use of Force investigations are classified into two categories: Level I and II. Level I investigations involve one or more of the following:

1. An allegation of unauthorized force is made regarding the force used by a Department employee(s).
2. The force used results in a serious injury that does not rise to the level of a Categorical Use of Force incident.
3. The injuries to the person upon whom force was used are inconsistent with the amount or type of force reported by involved Department employee(s).
4. Accounts of the incident provided by witnesses and/or the subject of the use of force substantially conflict with the involved employee(s') account.

All other NCUOF investigations are classified as Level II. Level I investigations, unlike Level II, require all subject and public witness interviews be tape-recorded, or justification shall be provided.

PRIOR AUDITS

- Results from the prior NCUOF investigations audit (Fiscal Year 2014/15) indicated the Department had room for improvement with regard to Post-Incident Supervisory Review (89 %).

¹ Audit Division has tentatively scheduled external peer review for 2017. Lack of peer review did not affect the audit and the assurance provided. (U.S. Government Accountability Office, *Generally Accepted Government Auditing Standards*, December 2011 Revision.)

PRIOR RECOMMENDATIONS

The audit determined that there were no systemic problems; therefore, no recommendations were made.

SCOPE AND METHODOLOGY

For purposes of this audit, only Level I investigations were selected for examination to determine compliance with Department policies and procedure.

Audit Division queried all Level I NCUOF investigations closed between January 1, 2016 and June 30, 2016, and identified 125 investigations. A statistically valid sample was obtained which consisted of 44 investigations.² The audit measured 12 objectives encompassed by a total of 21 tests.

SUMMARY OF FINDINGS

Of the 12 objectives evaluated, most demonstrated the Department did well with compliance. Two particular objectives however show room for improvement

Objective No. 9(a) Prohibiting Group Interviews had a 91 percent compliance rate, a nine percent reduction from the previous audit. This resulted from investigating officers conducting the group interviews. Objective No. 5(b) Area Commanding Officer's (CO) 14-Day Review of the Investigation had a 77 percent compliance rate, an 18 percent reduction from the previous audit. This resulted from non-supervisory personnel conducting the 14-day review of the NCUOF investigations.

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² A one-tailed test with a 95 percent confidence level and a five percent error rate yielded a statistically valid random sample of 44 investigations. Testing results from the statistically valid sample can be projected to the population.

The following table summarizes and compares the findings of both audits.

Findings by Objective and Comparison to Prior Year's Audit

Obj. No.	Audit Objective	2014/15 Standards Met Percentage		2016 Standards Met Percentage	
1	Consistency of Investigations	37/37	100%	43/44	98%
2	Underlying Actions	37/37	100%	44/44	100%
3	Supervisory Oversight				
3(a)	At-Scene Supervision	9/9	100%	21/21	100%
3(b)	Post-Incident Supervisory Review	33/37	89%	42/44	95%
3(c)	Watch Commander's Insight	37/37	100%	43/44	98%
3(d)	Approval of Reports by an On-Duty Watch Commander/OIC or Designee of Supervisory Rank	35/36	97%	42/44	95%
4	Evaluation of Investigations				
4(a)	Interviewing All Department Employees, Suspects, and Witnesses	35/37	95%	43/44	98%
4(b)	Inclusion of Audio-Recordings	28/28	100%	37/37	100%
5	Management Oversight				
5(a)	Review of Investigation at Area/division and Bureau Levels	37/37	100%	43/44	98%
5(b)	Area Commanding Officer's 14-Day Review of the Investigation	35/37	95%	34/44	77%
6	Review of Appropriate Evidence and Documentation	36/37	97%	44/44	100%
7	Evaluation of Interviews and Statements				
7(a)	Addressing Substantial Statement Conflicts	22/22	100%	32/32	100%
7(b)	Consistency between Summarized Statement and Audio-Recording	25/25	100%	37/37	100%
8	Activation of the Digital In-Car Video/Body Worn Video			17/17	100%
9	Conduct of Investigations				
9(a)	Prohibiting Group Interviews	37/37	100%	40/44	91%
9(b)	Interviewing At-Scene Supervisors	9/9	100%	18/18	100%
9(c)	Collecting and Preserving Evidence	10/10	100%	25/25	100%
9(d)	Canvassing the Scene to Locate Witnesses	37/37	100%	44/44	100%
9(e)	Photographs of Department Employee's Injuries (Information Only)	NA	NA	NA ³	NA
10	Reporting Allegations of Misconduct	9/9	100%	16/16	100%
11	Notifying the Department without Delay	37/37	100%	44/44	100%
12	Adequacy of Investigations			44/44	100%

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³ See Detailed Findings, Objective 9(e), page 20 for details.

DETAILED FINDINGS

Objective No. 1 – Consistency of Investigations

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident”; and Section 245.12, “Completing the Narrative – Level I Incident,” sets the minimum standards for evaluating the consistency of NCUOF investigations.

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident,” states:

Supervisor’s Responsibility. When a Non-Categorical use of force incident occurs, an **uninvolved** supervisor from the employee's command or from the nearest Area when either the employee’s command is closed or the employee’s supervisor is not available to respond, shall be assigned to conduct the administrative investigation. . . .

Note: An involved supervisor is defined as a supervisor who provided guidance or direction during the use of force, or participated in on-scene pre-planning or directing related to the incident. A supervisor who participated in or witnessed the use of force, planned the event, or was present at a forced blood withdrawal from a suspect shall not investigate the incident.

The supervisor assigned to conduct the investigation shall:

- Respond and conduct an on-scene investigation;

Exception: When an on-scene investigation is impractical due to exigent circumstances, such as a hostile group or an off-duty employee’s distance from the City, the supervisor shall consult with his/her watch commander or officer in charge and arrange for a reasonable alternative.

- Collect and preserve all appropriate evidence and canvas the scene to locate witnesses, when appropriate;
- Conduct individual interviews with the subject of the use of force, witnesses, and all Department employees who either witnessed and/or were involved in the incident (group interviews are prohibited);
- Determine an initial classification of the Non-Categorical use of force as either a Level I or Level II incident;
- Identify and document any inconsistencies from interviews conducted;
- Interview all involved supervisors regarding their actions taken;
- Review any related crime and/or arrest report or Employee’s Report, Form 15.07.00, after it has been approved by the watch commander/OIC but prior to completing the use of force investigation, to ensure that the incident as depicted in

the related report(s) is consistent with the use of force investigation. A Follow-Up Investigation, Form 03.14.00, may be used to make any necessary corrections to the related report or to provide additional information;

- Complete a Non-Categorical Use of Force Report, Form 01.67.05, including an attached narrative; and,
- Forward the completed Non-Categorical Use of Force Report along with all related reports, to the watch commander/officer in charge. Generally, a Non-Categorical Use of Force Report should be completed before the investigating supervisor's end of watch. However, complex incidents may require additional time not to exceed two calendar days following the incident.

Watch Commander's Responsibility. A watch commander/Officer In Charge (OIC) reviewing a Non-Categorical use of force investigation shall document his/her insight on a Non-Categorical Use of Force Internal Process Report, Form 01.67.04. As part of this evaluation, watch commanders/OICs shall:

- Evaluate whether or not the amount of force used was reasonable and consistent with actions reported by the involved Department employee(s), ensuring that all relevant tactical, use of force, and policy issues are addressed. The watch commander/OIC shall evaluate the force that was used, not the force options that could have been considered;
- Ensure that all supervisors are interviewed regarding their conduct at the scene during the incident; and,
- Evaluate the actions of each of these supervisors.

Department Manual, 2nd Quarter 2016, Vol. 4, "Line Procedures," Section 245.12, "Completing the Narrative – Level I Incident," states:

WITNESS STATEMENT(S). Supervisors shall interview the subject of force, witnesses, and all Department employees who either witnessed and/or were involved in the incident.

A **brief** written summary of the statement provided by the subject of the use of force and/or any witness is only required under this heading **if**:

- The interview was not tape-recorded (not applicable to Department employees); or,
- The person's account of the use of force is in substantial conflict with the involved employee(s) account. . . .

Consistent Statements. Statements provided by witnessing Department employees that are consistent with events as depicted in the related report shall be noted. Likewise, if statements provided by non-Department employee witnesses are consistent, this similarly shall be documented. . . .

INJURIES/MEDICAL TREATMENT. Document all visible and complained of injuries, including any medical treatment provided.

Audit Procedures

Auditors reviewed each investigation for consistent information within the investigation and its associated documents in the following areas:

- Officers and supervisors involved in the NCUOF were accurately identified;
- The types of force used were documented consistently; and,
- The suspect's injuries were documented consistently.

Investigations that did not contain inconsistencies, or contained inconsistencies that were addressed during the review process, met the standard for this objective.⁴

Findings

Forty-three (98%) of the 44 investigations met the standard for this objective. One investigation did not meet the standard for the reason listed below:

- Control No. 2019388 – A force option was not documented consistently throughout the investigation.

Objective No. 2 – Underlying Actions

Criteria

Department Manual, 2nd Quarter 2016, Vol. 1, "Policy," Section 556.10, "Policy on the use of Force"; and Vol. 4, "Line Procedures," Section 245.12, "Completing the Narrative – Level I Incident," indicates how information in NCUOF investigation documents should be assessed to determine whether the underlying action was appropriate, legal and in conformance with Department procedures.

Department Manual, 2nd Quarter 2016, Vol. 1, "Policy," Section 556.10, "Policy on the use of Force," states:

Objectively Reasonable. The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving - about the amount of

⁴Inconsistencies identified between tape-recorded interviews and the investigator's summaries of the interviews were evaluated in Objective No. 7(a) – Addressing Substantial Statement Conflicts.

force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application.” The force must be reasonable under the circumstances known to the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.

Department Manual, 2nd Quarter 2016, Vol. 1, “Policy,” Section 245.12, “Completing the Narrative – Level I Incident,” states:

Verbal Warning Requirements. Department employees are, in certain circumstances, required to provide a verbal warning prior to the use of less-lethal force. This section shall be used to document the name of the employee giving the warning and what was said. Likewise, in cases where a warning was required but not given, supervisors shall provide an explanation here. If no warning was required, no documentation is necessary.

Audit Procedures

Audit Division reviewed each investigation to determine whether the underlying actions of the personnel involved in the use of force incident were appropriate, legal, and in conformance with Department procedures. Additionally, if less-lethal force was used, AD reviewed the NCUOF package to determine whether a verbal warning was given prior to the deployment.

An investigation met the standard for this objective if the underlying actions of the personnel involved in the use of force incident were appropriate, legal, and in conformance with Department procedures; and if less-lethal force was used, a verbal warning was given prior to deployment.

Findings

Each (100%) of the 44 investigations met the standard for this objective.

Objective No. 3 – Supervisory Oversight

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 793.40, “Recordation of Training”; Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident”; and Section 245.12, “Completing the Narrative – Level I Incident,” set the minimum standards for the evaluation of supervisory oversight during an NCUOF investigation.

The audit measured the NCUOF investigations against these standards, and the results are reported below in Objectives Nos. 3(a-d).

Objective No. 3(a) – At-Scene Supervision

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident,” states:

As part of this evaluation, watch commanders/OICs shall: . . .

- Evaluate the actions of each of these supervisors.

Audit Procedures

Each investigation was reviewed to determine whether a supervisor at the scene during the incident directed, witnessed, or participated in the incident. If so, the investigation was reviewed to determine whether supervisory actions were within Department policy.

An investigation that documented an at-scene supervisor during the incident who directed, witnessed, or participated and acted within Department policy, met the standard for this objective.

Findings

Audit Division identified 21 investigations where supervisory personnel were at the scene during the use of force.

Each (100%) of the 21 investigations met the standard for this objective.

Objective No. 3(b) – Post-Incident Supervisory Review

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident,” states:

An employee who becomes involved in a reportable Non-Categorical use of force incident shall: . . .

- Report the full details of the use of force incident in the related Department arrest or crime report;
- Use an Employee's Report, Form 15.07.00, to report the full details of the use of force incident when a crime or arrest report is **not** required; . . .

When a Non-Categorical use of force incident occurs, an **uninvolved** supervisor from the employee's command or from the nearest Area when either the employee's command is

closed or the employee's supervisor is not available to respond, shall be assigned to conduct the administrative investigation.

Generally, a supervisor who witnessed a Non-Categorical use of force incident should not conduct a use of force investigation. However, the watch commander may make exceptions on a case-by-case basis, based on exceptional operational needs. . . . Under no circumstances shall a supervisor involved in a use of force incident be permitted to conduct the investigation.

Department Manual, 2nd Quarter 2016, Vol. 1, "Policy," Section 245.12, "Completing the Narrative – Level I Incident," states:

Document all visible and complained of injuries, including any medical treatment provided. . . .

If a signed Authorization to Release Medical Information Form is obtained, Department personnel shall collect the necessary injury and medical information in accordance with Manual Section 4/648. . . .

Federal law now limits access to an individual's medical history and treatment information. Therefore, if a signed Authorization to Release Medical Information Form is **not** obtained, supervisors **shall not ask medical personnel** for injury and treatment information pertaining to an individual upon whom force was used. . . .

Due to potential criminal and civil liability issues, Department employees shall not accept any medical documentation regarding the subject of the use of force unless a signed Authorization to Release Medical Information Form is obtained.

Department Manual, 2nd Quarter 2016, Vol. 3, "Management Rules and Procedures, Section 793.40, "Recordation of Training," states:

In cases where formal training is directed as the result of a use of force review (i.e., any training provided by Personnel and Training Bureau, Training Division shall enter all completed training into the Training Evaluation and Management System II (TEAMS II). All other forms of directed training (e.g., divisional training) shall be entered into TEAMS II by the employee's Area/division.

Audit Procedures

Each investigation was examined for supervisory review of the incident as indicated below.

- Witnessing supervisors did not conduct the use of force investigation unless the Watch Commander documented justification for exceptional operational needs;
- Involved supervisors did not conduct the use of force investigation;
- Injuries sustained by suspect(s) as a result of the use of force were properly documented;

- Medical treatment was provided to recipients upon whom force was used in accordance with Department policy;
- Requests for signed medical release forms were documented when suspects received medical treatment and included in the investigation;
- Medical information was obtained in accordance with Department policy and Procedures; and,
- The Internal Process Report (IPR) indicated that all recommended training was provided and training was entered into Training Evaluation and Management System II (TEAMS II).

Findings

Forty-two (95%) of the 44 investigations met the standard for this objective. Two investigations did not meet the standard for the reasons listed below:

- Control No. 2019496 – An involved supervisor (gave a verbal direction to the involved officers) conducted the use of force investigation.
- Control No. 2019824 – The subject of the use of force was injured and the investigation did not document that medical treatment was provided.⁵

Objective No. 3(c) – Watch Commander’s Insight

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident,” states:

A watch commander/Officer In Charge (OIC) reviewing a Non-Categorical use of force investigation shall document his/her insight on a Non-Categorical Use of Force Internal Process Report Form 01.67. As part of this evaluation, watch commanders/OICs shall:

- Evaluate whether or not the amount of force used was reasonable and consistent with actions reported by the involved Department employee(s), ensuring that all relevant tactical, use of force, and policy issues are addressed. The watch commander/OIC shall evaluate the force that was used, not the force options that could have been considered;
- Ensure that all supervisors are interviewed regarding their conduct at the scene during the incident; and,
- Evaluate the actions of each of these supervisors.

⁵ Follow-up was conducted that confirmed the injured subject did receive medical treatment.

Audit Procedures

Each investigation was reviewed to determine if the watch commander's insight evaluated each officer's use of force and whether it was reasonable and consistent based on the actions of the suspect. Further, each watch commander's insight was reviewed to determine if an evaluation was made regarding the conduct of the supervisor(s) at the scene during the incident.

An investigation met the standard for this objective if it contained a "watch commander's insight" evaluating the type of force used by each officer, whether the type of force used was reasonable and consistent based on the actions of the suspect, and the conduct of each supervisor at the scene.

Findings

Forty-three (98%) of the 44 investigations met the standard for this objective. One investigation did not meet the standard for the reasons listed below:

- Control No. 2021297 – The Watch Commander's Insight for two involved officers was completed by the investigating supervisor.

Objective No. 3(d) – Approval of Reports by an On-Duty Watch Commander/OIC or Designee of Supervisory Rank

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, "Line Procedures," Section 245.10, "Reporting A Non-Categorical Use of Force Incident," states:

Non-Categorical use of force investigations and any related report(s) (i.e., the crime and/or arrest report or Form 15.07.00), **shall be approved by an on-duty watch commander/OIC or designee of supervisory rank.** The supervisor who conducted the Non-Categorical use of force investigation shall not approve the Non-Categorical Use of Force Report or the related report(s).

Audit Procedures

Each investigation was reviewed to determine if an on-duty watch commander/OIC or designee of supervisory rank other than the investigating supervisor approved the primary report or any related reports.

An investigation containing primary or related reports approved by an on-duty watch commander/OIC or designee of supervisory rank other than the investigating supervisor met the standard for this objective.

Findings

Forty-two (95%) of the 44 investigations met the standard for this objective. Two investigations did not meet the standard for the reasons listed below:

- Control No. 2020301 – The primary report was approved by the investigating supervisor.
- Control No. 2020621 – The investigating supervisor completed a related report.

Objective No. 4 – Evaluation of Investigations

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident,” sets the minimum standards for evaluating a supervisor’s investigation of an NCUOF. The audit measured the NCUOF investigations against these standards and the results are reported below in Objectives Nos. 4 (a-b).

Objective No. 4(a) – Interviewing All Department Employees, Suspects, and Witnesses

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.12, “Completing the Narrative – Level I Incident,” states:

Supervisors shall interview the subject of force, witnesses, and all Department employees who either witnessed and/or were involved in the incident. . . .

Supervisors investigating a Level I incident shall tape record statements from the subject of the use of force and all non-Department employee witnesses.

Audit Procedures

Each investigation was reviewed to determine if:

- Interviews with all suspects and/or non-Department witnesses were tape-recorded for all use of force incidents.
- All Department employees, suspects, and witnesses were identified and interviewed.

An investigation met the standard for this objective if it documented that interviews with all suspects and/or non-Department witnesses were tape-recorded and all Department employees, suspects, and witnesses were identified and interviewed.

Findings

Forty-three (98%) of the 44 investigations met the standard for this objective. One investigation did not meet the standard for the reasons listed below:

- Control No. 2017412 – An unidentified witness is heard on an audio recording and is not identified in the investigation.

Objective No. 4(b) – Inclusion of Audio-Recordings

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.12, “Completing the Narrative – Level I Incident,” states:

Supervisors investigating a Level I incident shall tape record statements from the subject of the use of force and all non-Department employee witnesses.

Audit Procedures

Each investigation was reviewed to determine whether the required recordings were included for the associated interviews. Investigations that contained the required tape-recordings met the standard for this objective.

Findings

Audit Division identified 37 investigations documenting tape recorded statements as part of the investigation.

Each (100%) of the 37 investigations met the standard for this objective.

Objective No. 5 – Management Oversight

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 793.05, “Commanding Officer’s Responsibility”; and Section 793.10, “Bureau Commanding Officer’s Responsibility,” outline the standards for evaluating management oversight of investigations. The audit measured the NCUOF investigations against these standards and the results are reported below in Objectives Nos. 5(a-b).

Objective No. 5(a) – Review of Investigation at Area/division and Bureau Levels

Criteria

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 793, “Adjudicating a Non-Categorical Use of Force Incident,” outlines the Area/division and bureau CO’s responsibilities regarding reviews of investigations. Specifically, Department Manual Section 793.05, “Commanding Officer’s Responsibility,” states:

Upon receipt of a Non-Categorical use of force investigation, the area commanding officer shall: . . .

- Review all reports and make a recommendation on the disposition; and
- Sign the Use of Force Internal Process Report, Form 01.67.04.

Further, Section 793.10, “Bureau Commanding Officer’s Responsibility,” states:

Upon receipt of a Non-Categorical use of force investigation, the bureau commanding officer shall: . . .

- Review all reports and make a recommendation on the disposition; and
- Sign the IPR.

Audit Procedures

Each investigation was examined to determine whether management conducted a review of the investigation. Management’s review of the investigation consisted of:

- The Area/division CO’s review of all reports for each involved officer, and the completion of the IPR.
- The Bureau CO’s review of all reports for each involved officer, and the completion of the IPR.

Investigations that indicated Area/division and Bureau CO’s completed their review met the standard for this objective.

Findings

Forty-three (98%) of the 44 investigations met the standard for this objective. One investigation did not meet the standard for the reasons listed below:

- Control No. 2021253 – The “Reviewed Work History” entry completed by the Area CO on the IPR states “No.”

Objective No. 5(b) – Area Commanding Officer’s 14-Day Review of the Investigation

Criteria

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 793.05, “Commanding Officer’s Responsibility,” states:

Non-Categorical use of force investigations shall be reviewed by Area/division commanding officers or the acting commanding officer within 14 calendar days of the incident. Investigations not reviewed within the 14-day time frame require a written explanation on the Non-Categorical Use of Force Internal Process Report (IPR).

Audit Procedures

Each investigation was examined to determine if it was reviewed by the Area/division CO or the acting CO (or supervisory proxy) within the 14-day review period, or if not, justification was provided.

Investigations that were reviewed by a CO or the acting CO (or an authorized supervisory proxy) within the 14-day period met the standard for this objective.

Findings

Thirty-four (77%) of the 44 investigations met the standard for this objective. Ten investigations did not meet the standard for the reasons listed below:

- Control No. 2018230, 2019322, 2019932, 2020120, 2020272, 2020497, 2020515, 2020998, 2021043, 2021253 – The CO review was conducted by a non-supervisory Department employee.

Objective No. 6 – Review of Appropriate Evidence and Documentation

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident”; and Section 245.12, “Completing the Narrative – Level I Incident,” set the standards for the requirement to collect and preserve appropriate evidence.

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, on “Reporting a Non-Categorical Use of Force Incident,” states:

The supervisor assigned to conduct the investigation shall: . . .

- Collect and preserve all appropriate evidence . . . ;

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.12, “Completing the Narrative – Level I Incident,” states:

Photographs should be taken and included in all Non-Categorical use of force (NCUOF) investigations. If a photograph is impractical (e.g., the subject of the use of force refuses to be photographed, etc.), an explanation shall be documented in the NCUOF report. . . . Investigating supervisors are to ensure photographs are taken of the following:

- The subject of the use of force to document visible injury and any complained injury locations.

Audit Procedures

Each investigation was reviewed for inclusion of appropriate evidence related to the use of force investigation, and photographs of suspect injuries or lack thereof.

An investigation met the standard for this objective if it documented the collection and preservation of all appropriate evidence, and included-photographs of the use of force subject, or provided justification for not photographing the injury.

Findings

Each (100%) of the 44 investigations met the standard for this objective.

Objective No. 7 – Evaluation of Interviews and Statements

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.12, “Completing the Narrative – Level I Incident,” details the standards for evaluating conflicts and/or discrepancies within the investigations when comparing statements provided by a witness or subject of the use of force, and statements provided by involved Department employee(s). The audit measured the NCUOF investigations against these standards and the results are reported below in Objectives Nos. 7(a-b).

Objective No. 7(a) – Addressing Substantial Statement Conflicts

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.12, “Completing the Narrative – Level I Incident,” states:

INVESTIGATING SUPERVISOR’S NOTES. Supervisors shall use this heading to address substantial conflicts and/or discrepancies between statements provided by a witness or the subject of the use of force and statements provided by involved Department employees.

Audit Procedures

Each investigation was reviewed for documentation of any substantial conflict and/or discrepancies between statements provided by a witness or the subject of the use of force, and statements provided by involved Department employees.

An investigation met the standard for this objective if the investigating supervisor addressed any substantial conflict between recorded interviews and/or written statements from a witness or use of force subject, and Department employee statements.

Findings

Audit Division identified 32 investigations which contained conflicts in statements when compared to recorded interviews and/or written statements.

Each (100%) of the 32 investigations met the standard for this objective.

Objective No. 7(b) – Consistency between Summarized Statement and Audio-Recording

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.12, “Completing the Narrative – Level I Incident,” states:

A **brief** written summary of the statement provided by the subject of the use of force and/or any witness is only required under this heading **if**:

- The interview was not tape-recorded (not applicable to Department employees); or,
- The person’s account of the use of force is in substantial conflict with the involved employee(s) account. . . .

Tape-Recording Witness Statements. Supervisors investigating a **Level I** incident shall tape record statements from the subject of the use of force and all non-Department employee witnesses. . . . If tape recording is not practical or an individual refuses to be tape recorded, the person shall be listed in the narrative under “Witnesses” along with a explanation as to why his/her interview was not tape-recorded and a brief written summary of his/her non-taped statement.

Audit Procedures

Each recorded statement from the subject and witnesses was compared with the NCUOF investigation to determine whether the investigator documented inconsistencies from the recorded interviews.

Investigations for which the investigator documented inconsistencies, or for which there were no inconsistencies, met the standard for this objective.

Findings

Audit Division identified 37 investigations containing a summarized statement with an associated audio recording.

Each (100%) of the 37 investigations met the standard for this objective.

Objective No. 8 – Activation of the Digital In-Car Video/Body Worn Video

Criteria

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 579.13, “Digital In-Car Video System (DICVS) Use and Deployment,” outlines the standards for use of the digital in-car video system (DICVS).

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 579.13, “Digital In-Car Video System (DICVS) Use and Deployment,” states:

RECORDING LAW ENFORCEMENT ACTIVITIES.

Required Activation of the Digital In-Car Video System. Officers **shall** activate the DICVS during the initiation of the following activities:

- All vehicle stops;
- All Code 3 responses and pursuits;
- All suspect transports;
- All pedestrian stops (when practicable); and,
- Any other occasion when, in the officer’s judgment, it would be beneficial to do so. This may include, but is not limited to, stops and detentions, crimes in progress when recording is reasonably feasible, Mobile Field Force situations, or any situation, condition, or event presenting the potential for injury, loss of life, damage to property, or any potential risk-management issue.

Exception: Exigent circumstances may preclude officers from activating the DICVS. Each exception will be evaluated on a case-by-case basis.

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 579.15, “Objectives of Body Worn Video,” outlines the standards for use of body worn video (BWV).

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 579.15, “Objectives of Body Worn Video (BWV),” states:

WHEN ACTIVATION OF BODY WORN VIDEO EQUIPMENT IS REQUIRED.

Officers shall activate their BWV devices prior to initiating any investigative or enforcement activity involving a member of the public, including all:

- Vehicle stops;
- Pedestrian stops (including officer-initiated consensual encounters);
- Calls for service;
- Code 3 responses (including vehicle pursuits) regardless of whether the vehicle is equipped with In-Car Video equipment;
- Foot pursuits;
- Searches;
- Arrests;
- Uses of force;
- In-custody transports;
- Witness and victim interviews (except as specified below);
- Crowd management and control involving enforcement or investigative contacts; and,
- Other investigative or enforcement activities where, in the officer's judgment, a video recording would assist in the investigation or prosecution of a crime or when a recording of an encounter would assist in documenting the incident for later investigation or review. . . .

If an officer is unable to activate his or her BWV, prior to initiating any of these enforcement or investigative activities, the officer shall activate the device as soon as it is practical and safe to do so.

Audit Procedures

Audit Division reviewed each investigation where officers are directed by Department policy to activate either DICVS or BWV. Investigations for which the activation of DICVS or BWV is required and reviewed, met the standard for this objective.

Findings

Audit Division identified 17 investigations where activation of DICVS or BWV was documented in the investigation.

Each (100%) of the 17 investigations met the standard for this objective.

Objective No. 9 – Conduct of the Investigations

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident”; Section 245.11, “Non-Categorical Use of Force Reporting Levels”; and Section 245.12, “Completing the Narrative – Level I Incident,” were utilized to assess the conduct of the investigations.

The audit measured the investigations against these standards and the results are reported below in Objectives Nos. 9 (a-e).

Objective No. 9(a) – Prohibiting Group Interviews

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting a Non-Categorical Use of Force Incident,” states:

The supervisor assigned to the investigation shall: . . .

- Conduct individual interviews with the subject of the use of force, witnesses, and all Department employees who either witnessed and/or were involved in the incident (group interviews are prohibited).

Audit Procedures

Each investigation was reviewed to determine if there was an indication that a group interview was conducted.

Investigations for which there was no indication that a group interview was conducted, or for which justification was provided, met the standard for this objective.

Findings

Forty (91%) of the 44 investigations met the standard for this objective. Four investigations did not meet the standard for the reasons listed below:

- Control No. 2019388, 2020621, 2021027, 2021253 – Two witnesses to the use of force were not interviewed separately.

Objective No. 9(b) – Interviewing At-Scene Supervisors

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting a Non-Categorical Use of Force Incident,” states:

As part of this evaluation, watch commanders/OICs shall: . . .

- Ensure that all supervisors are interviewed regarding their conduct at the scene during the incident;

Audit Procedures

Each investigation was reviewed to determine if a supervisor was at-scene during the incident. For investigations involving an at-scene supervisor who witnessed, directed, or participated in the use of force, an evaluation was conducted to determine if the supervisor was interviewed regarding the supervisor's conduct during the incident.

An investigation met the standard for this objective if there was documentation that an at-scene supervisor who witnessed, directed, or participated in the use of force was interviewed regarding the supervisor's conduct.

Findings

Audit Division identified 18 investigations where a supervisor was at scene during the incident.

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

Objective No. 9(c) – Collecting and Preserving Evidence

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, "Line Procedures," Section 245.10, "Reporting a Non-Categorical Use of Force Incident," states:

The supervisor assigned to conduct the investigation shall: . . .

- Collect and preserve all appropriate evidence . . . ;

Audit Procedures

Each investigation was reviewed to determine if all physical evidence related to the use of force was documented consistently, collected, and preserved per Department policy.

Investigations that provided documentation that all physical evidence related to the use of force was documented consistently, collected, and preserved per Department policy met the standard for this objective.

Findings

Audit Division identified 25 investigations which required the collection and preservation of evidence.

Each (100%) of the 25 investigations met the standard for this objective.

Objective No. 9(d) – Canvassing the Scene to Locate Witnesses

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting a Non-Categorical Use of Force Incident,” states:

The supervisor assigned to conduct the investigation shall: . . .

- . . . canvass the scene to locate witnesses, when appropriate;

Further, *Special Order No. 13*, May 26, 2004, “Non-Categorical Use of Force Reporting – Revised,” p. 8, states:

Supervisors shall document their efforts to canvass the area and locate evidence and witnesses, to include the scope of the search and the results of such efforts. Additionally, if no witnesses can be identified or located, an explanation shall be provided in this section;

Audit Procedures

Each investigation was reviewed for evidence of canvassing for witnesses. “Canvassing” was defined as searching the area for witnesses and evidence.

An investigation met the standard for this objective if it indicated canvassing occurred when appropriate, described the scope of the area canvassed, and outlined the results, or provided an explanation as to why no witnesses/evidence were located.

Findings

Each (100%) of the 44 investigations met the standard for this objective.

Objective No. 9(e) – Photographs of Department Employee’s Injuries - (Information Only)

This objective evaluated NCUOF investigations in which Department employees had visible injuries or complained of injuries, or when a criminal filing for an offense against a police officer was sought and photographs may have been taken at the discretion of the investigating supervisor.

Audit Division found that photographs were taken in 17 of the 28 investigations relevant to this objective.

Objective No. 10 – Reporting Allegations of Misconduct

Criteria

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 830.10, “Complaint Related to a Non-Categorical Use of Force,” outlines the guidelines for handling a complaint related to an NCUOF investigation.

Department Manual, 2nd Quarter 2016, Vol. 3, “Management Rules and Procedures,” Section 830.10, “Complaint Related to a Non-Categorical Use of Force,” states:

When a complaint is related to a Non-Categorical use of force, the investigating supervisor shall notify his/her watch commander or officer in charge immediately. The watch commander or officer in charge shall assess the situation and determine if immediate notification to Internal Affairs Group (IAG) is required.

If IAG does not respond and assume responsibility for investigating the incident as a personnel complaint, the supervisor shall complete the use of force investigation and include the complaint information in his/her report.

Audit Procedures

Each investigation was reviewed to determine if the supervisor investigating the use of force incident had reason to believe misconduct may have occurred, and if so, whether it was reported.

Investigations for which there was indication that misconduct may have occurred and was reported, met the standard for this objective.

Findings

Audit Division identified 16 investigations where misconduct may have occurred.

Each (100%) of the 16 investigations met the standard for this objective.

Objective No. 11 – Notifying the Department without Delay

Criteria

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting A Non-Categorical Use of Force Incident” outlines the guidelines regarding the notification of Department personnel when an NCUOF occurs.

Department Manual, 2nd Quarter 2016, Vol. 4, “Line Procedures,” Section 245.10, “Reporting a Non-Categorical Use of Force Incident,” states:

An employee who becomes involved in a reportable Non-Categorical use of force incident shall:

- Notify a supervisor without delay;

Audit Procedures

Each investigation was reviewed to determine if an employee involved in a NCUOF incident notified a supervisor without delay.

An investigation met the standard for this objective if it indicated that an employee involved in an NCUOF incident notified a supervisor without delay.

Findings

Each (100%) of the 44 investigations met the standard for this objective.

Objective No. 12 – Adequacy of the Investigation

Criteria

Department policy and procedures require that NCUOF investigations be reviewed to ensure that the final adjudication/finding for the use of force incident was adequately supported per Department standards.

Audit Procedures

Each investigation was reviewed to determine if the final adjudication/finding for the use of force incident was adequately supported per Department standards.

Findings

Each (100%) of the 44 investigations met the standard for this objective.

CONCLUSION

The Department had a 95 percent or higher performance standard in 20 of 22 objectives. The following three objectives reflected a less than 95 percent performance standard:

- Area CO's 14-Day Review of the Investigation (77%).
- Prohibiting Group Interviews (91%).

A continued emphasis of improvement in these two areas will assist in providing CO's with the necessary information to thoroughly evaluate and ensure that the Department's policies and procedures governing NCUOF's are complied with.

RECOMMENDATIONS

None.

ACTIONS TAKEN/MANAGEMENT'S RESPONSE

On December 8, 2016, AD discussed the findings with Use of Force Review Division. Use of Force Review Division expressed general agreement with the audit findings and the audit report.