

LOS ANGELES POLICE COMMISSION

***Follow-Up Report on
Non-Categorical
Use of Force Investigations***



OFFICE OF THE INSPECTOR GENERAL

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FOLLOW-UP REPORT ON NON-CATEGORICAL USE OF FORCE INVESTIGATIONS

On June 11, 2013, the Office of the Inspector General (OIG) presented a report on its review of the Los Angeles Police Department's (LAPD or Department) investigations of Non-Categorical Use of Force (NCUOF) incidents. At that time, the Board of Police Commissioners ("the Commission") directed the OIG to complete a follow-up report on the initial implementation of recommendations contained in the report. The Commission also requested that the OIG examine those NCUOF incidents that result in civil litigation. This request was prompted by a discussion by the Commission of whether the Department's current practices properly classify as a Level I those incidents that result in conflicting evidence, significant injury, or complaints of unreasonable or unauthorized force.

I. EXECUTIVE SUMMARY

To respond to the Commission's request, the OIG requested from the Department Risk Manager a list of all force-related lawsuits filed during calendar years 2011 and 2012, and determined that 34 of the 94 force-related lawsuits involved an incident that was investigated and reviewed as a NCUOF.

Although this follow-up review focused primarily on the NCUOF classification process, the OIG noted the presence of other issues previously noted in its original report on the topic. These include NCUOF investigators not identifying apparent conflicts and IAG investigators not attempting to interview all witnesses on tape or framing all allegations. It should be emphasized that the OIG and the Department have previously identified and developed recommendations relating to those issues, and that the investigations reviewed here were completed before those recommendations could be implemented.

This report identifies several concrete steps the Department has taken or will take to address areas of concern, including the issues noted above. The OIG also notes that the implementation of on-body video cameras, as called for by the Commission within the next year, is expected to significantly impact the investigation of NCUOF incidents by providing additional high-quality evidence and simplifying the process of recording subject and witness interviews.

Nevertheless, this review reinforces the importance of strengthening built-in safeguards to ensure that high-risk NCUOF incidents are properly identified and investigated. According to records provided by the Department's Legal Affairs Division (LAD) and the City Attorney's Office, the City has paid out a total of approximately \$555,000 in judgments and settlements for 15 NCUOF-related lawsuits filed in 2011 and 2012.¹ At the time of writing, there were an additional 10 active NCUOF-related lawsuits. While the results of civil litigation are subject to

¹ Lawsuit data current as of December 4, 2013. Payout amounts ranged from \$500 to \$112,000, and 9 of the 34 lawsuits were dismissed or resulted in a defense verdict.

many factors outside the Department's control, it is nonetheless crucial that the Department have the internal capacity to sufficiently investigate NCUOF incidents and identify areas of potential liability.²

II. OVERVIEW OF NCUOF INCIDENTS

As described in the OIG's original review of NCUOF incidents, reportable uses of force by LAPD officers fall into two major categories. Categorical Use of Force (CUOF) incidents include more serious incidents, such as those involving deadly force or the hospitalization or death of the subject, while NCUOF incidents include all other reportable uses of force.³ NCUOF incidents typically make up around 95 percent of all reportable uses of force.⁴

A key aspect of the investigation of a NCUOF is its classification as either a Level I or Level II incident. Level I cases, according to Department policy, are incidents that involve at least one of the following:

- a substantial conflict in a suspect or witness statement
- injuries or other evidence that is inconsistent with the force reported
- a complaint of unauthorized force
- fractures or injuries requiring sutures

Level II cases are incidents that do not include any of the above.

Although the investigative processes for all NCUOF incidents -- requiring interviews of all persons present and the collection of all relevant evidence -- are the same, the distinction between Level I and Level II cases is significant. For Level I cases, the Department mandates that interviews with non-Department subjects and witnesses be audio-recorded. This, however, is not required for Level II investigations. Instead, investigators in Level II cases must only document whether each interview was consistent with the officers' account, along with any non-substantial discrepancies that they noted.⁵ Because of the lack of audio, such assessments generally cannot be verified or audited, and the reviewer must rely on the investigator's characterization of the interviews. The OIG has found that approximately 90 percent of all NCUOF investigations are classified as Level II.

² In compiling its data, the OIG noted that the Department's databases do not appear to consistently cross-reference relationships among NCUOF, complaint, and lawsuit data. Given the risk management applications of such tracking, and to facilitate the Department's ability to analyze this information, the OIG recommends that the Department move to ensure that effective and accurate tracking systems for these relationships are in place.

³ For a full explanation of these categories, please see the OIG's original report on this topic.

⁴ Counted by incident, which may include multiple uses of force by multiple officers.

⁵ The OIG notes that some investigators go above and beyond this requirement, providing written summaries or even recordings of each interview. Such detail is optional, however.

As previously recognized by the Commission, one potential safeguard for cases where the NCUOF investigator does not flag possible conflicts or allegations of officer misconduct -- or cases where the subject initially refuses to be interviewed -- is the complaint investigation. According to protocols put into place by the Consent Decree, all allegations of misconduct by LAPD employees must be documented (framed) and fully investigated. In particular, the policy requires that “[t]he interviews of all complainants, involved Department employees, and witnesses shall be conducted individually (no group interviews) and shall be recorded.”⁶ While a Level I investigation may fulfill this requirement, it is nonetheless incumbent upon the IAG investigator to ensure that such interviews are part of the record.

The policy also requires that the Department investigate, through the complaint process, all allegations contained in a lawsuit or claim for damages received by the Department. As such, the examination of complaints related to a lawsuit provide an opportunity for the review of both the content of a plaintiff’s claims and the Department’s handling of cases that pose a clear risk of exposure.

III. NCUOF-RELATED LAWSUITS FILED IN 2011-2012

According to data provided by Legal Affairs Division (LAD), 94 force-related lawsuits were filed against the Department or its members between January 1, 2011 and December 31, 2012.⁷ The OIG reviewed each of these to determine whether it was associated with a reported use of force. By examining data provided by LAD and cross-referencing each case with the Department’s use of force database, the OIG determined that 34 of the cases were associated with a reported NCUOF incident.⁸

Overall, the OIG found that 26 of the 34 NCUOF investigations associated with a lawsuit were classified as Level II, meaning that the Department identified no substantial conflicts and that no complaints of unauthorized force were made. In all but one of those cases, the Department found all of the associated uses of force to be in policy. Thirty-three of those incidents were subsequently re-investigated by IAG as part of a complaint investigation, with none of the allegations of unauthorized force ultimately being sustained.⁹ One of the related lawsuits ultimately resulted in a judgment for the plaintiff and 14 were settled by the City, for a payout total of 554,739. Ten cases remain active.¹⁰

⁶ The policy also notes: “Should a non-employee complainant or witness refuse to be recorded, an attempt shall be made to record the refusal on tape or on a signed statement of refusal.” (LAPD Manual 3/815.01)

⁷ Cases classified as force-related generally included initial claims or causes of action of excessive force, assault, and/or battery, or alleged a civil rights violation based on the use of force by an officer.

⁸ An additional 25 cases were associated with a reported CUOF incident, and the remainder was not associated with a reported use of force. For a full breakdown, please see the table on page 10.⁸

⁹ Two cases were still open and could not be reviewed by the OIG.

¹⁰ As of December 4, 2013.

Because of the follow-up nature of this report, the OIG did not conduct a full, substantive review of each case. Instead, it focused specifically on the question of whether the Department's current practices adequately identify and document complaints or material differences among statements. Many of the OIG's observations in this area were consistent with issues identified in its previous study, which the Department has already begun to take steps to remedy. As such, this report briefly notes the findings of the follow-up review and the current status of the Department's response.

A) Classification and Investigation

Because the classification of more than half of the cases as Level II incidents appeared potentially at odds with the subsequent filing of a lawsuit, the OIG reviewed the original interview record for each of the plaintiffs. In 16 of the 26 Level II cases, the plaintiff or plaintiffs reportedly refused to provide an interview as part of the NCUOF investigation, which likely explains why these investigations were not upgraded to a Level I at the time. In the other instances, the plaintiff did provide an interview, and the investigator determined that it was consistent with the officers' account. The OIG was generally unable to verify these assessments because of the non-tape-recording of the interviews, but did note a few Level II case files that included apparent conflicts or omissions among accounts.

The OIG also reviewed the content of any subsequent claims for damages and lawsuits and found that, as expected, the plaintiff or plaintiffs alleged in every case that the force used was excessive or otherwise unauthorized.¹¹ In most cases, those documents also provided an account of the incident that conflicted with that of the officers. Each of those cases should therefore have been effectively upgraded to a complaint investigation, requiring the framing of all allegations, recorded interviews with all involved and witnessing persons, and the full investigation of all claims of misconduct.

As mentioned earlier, however, the OIG noted the presence of a number of investigative issues -- previously identified in its original report -- that appeared to stem from a lack of clarity about the interaction between the NCUOF and complaint investigations. Significantly, the OIG found that few Level II investigations were upgraded to Level I in cases where a complaint was made after the initial investigation was completed, even in instances where the NCUOF incident had not been adjudicated at the time the complaint was received.

To the Department's credit, many of those complaints did nonetheless result in a full investigation of the new claims by IAG, including attempts to conduct audio-record interviews of all relevant parties and to ensure that all allegations were thoroughly addressed. Other complaints/lawsuits, however, received a less thorough review that relied substantially on the findings of the original NCUOF investigation. This occurred despite the fact that each original investigation -- in direct contrast to the subsequent lawsuit -- did not flag any conflicts or force-

¹¹ While all of the incidents were ultimately associated with a lawsuit, some of the investigations reviewed by the OIG were initiated upon receipt of an earlier public complaint or a claim for damages. The OIG's review encompassed any such source documents used in the investigation.

related complaints, and did not include all required audio-recorded interviews. The OIG also noted instances where investigators did not fully frame all allegations made by the complainant or plaintiff.

Each of these concerns was brought to the Department, which, as described in the following sections, has made a number of efforts to remedy the issues.

1) NCUOF Investigation and Evaluation Issues

Use of Force Review Division (UOFRD), which reviews and approves each NCUOF investigation, has undertaken steps to implement an ongoing NCUOF training program across the Department. The program began informally, with the lieutenant in charge of NCUOFs traveling to each geographic area or division on a rolling basis and making presentations to personnel during roll call meetings. According to UOFRD, these sessions currently occur approximately once or twice a week and touch on a number of areas related to the use of force and its investigation. For example, the training explains the Department's use of force policy and its process for investigating NCUOF incidents, and discusses ways to avoid common errors in the documentation and investigation of those incidents. In an effort to formalize and institutionalize this process, UOFRD has also recently secured and filled a dedicated sergeant-level training position. Beginning in 2014, that sergeant will begin a regular training schedule at the bureau level and area levels, and is expected to rotate among bureau command staff meetings once per quarter. Although the OIG has not yet had the opportunity to observe these trainings, it expects to do so in the upcoming year.

A second project undertaken with the involvement of UOFRD is the development of a new Special Order and policy setting forth procedures for the documentation and investigation of NCUOF incidents. The draft Order, which will ultimately be submitted to the Commission for approval, directly addresses many of the OIG's concerns and implements the recommendations agreed to by the Department. With regard to the OIG's most recent findings, the new policy will clarify the following issues:¹²

- Any statement that "materially differs" from that of the officers should result in a Level I classification. The Order will specify that this assessment should include any material differences among accounts of a suspect's actions, as well as accounts of the force used by officers.
- In cases where a complaint of unauthorized force is made after the initial investigation phase has ended, the Department will follow a specified process to ensure that prompt attempts are made to re-interview each involved person and witness on tape. Depending on when the complaint is made, this responsibility will fall to either the original investigating area or to IAG.

¹² A full accounting of each of the revisions to be implemented is included at the end of this document.

According to UOFRD, much of the Order has already been developed, and it is expected that it will be submitted for policy review in the near future. In the meantime, the Department has already acted to reinforce expectations by distributing email communications regarding the OIG's recommendations. These were sent to all training coordinators and commanding officers (captains, commanders, and chiefs) and, along with providing a list of the OIG's recommendations, requested that those personnel facilitate the training of their officers on those topics. The OIG has had the opportunity to review those emails and is satisfied that they provide an adequate interim response as the new policy is being prepared.

Finally, UOFRD, in consultation with the OIG, has prepared a new Employee Supplemental Statement Form for use in NCUOF investigations. Designed to ensure that each involved and witnessing officer provides an individual, independent statement regarding his or her actions and observations during a NCUOF incident, the form is an important component of the revised process. It incorporates basic classification fields and space for officers to provide their account of the incident, along with guidance about the level of detail and articulation that is required. The form, which also includes instruction about how the form should be used and attached to the TEAMS record, has been reviewed by the OIG and relevant command staff and submitted to Planning and Research Division to be finalized. It is expected that electronic and paper versions of the form will be distributed shortly. The Department will also include direction relating to the new form in the pending Special Order.

2) *Complaint Investigation Issues*

The OIG has also consulted extensively with the new leadership of Professional Standards Bureau (PSB) and IAG to develop solutions for complaint-related issues identified in its reviews. As part of that effort, the OIG submitted a number of examples of representative cases to PSB for its review. IAG then undertook a full review of each of the 31 NCUOF-related lawsuit investigations in order to respond to the OIG's findings and, where applicable, identify additional areas for improvement. Along with that process, PSB has also drafted a set of next steps with regard to those issues.

In order to ensure that lawsuits stemming from NCUOF incidents are properly investigated, those cases will now be assigned to the Complaint Classifications Unit, which is already responsible for investigating any CUOF incident that results in a lawsuit. PSB has noted that NCUOF-related lawsuits are currently being assigned to units across IAG, resulting in inconsistent practices and results. Concentrating these cases within a specialized unit should improve their overall quality.

The Bureau is also in the process of finalizing an updated version of its complaint investigations handbook, titled "Complaint Investigations: A Guide for Supervisors." The Guide was last revised in 2000 and has been offline -- considered obsolete and invalid -- since 2009. This issue has been flagged as a concern during internal audits, as well as by the OIG, as the document is referenced in the Department manual as setting forth procedures for complaint investigations. According to PSB, the Guide will be finalized within the next 30 days and will directly address concerns identified by the OIG in relation to NCUOF incidents, including:

- Re-interview and audio-recording requirements
- Requirements for the framing and full investigation of all allegations
- Clear guidelines limiting the use of email interrogatories, which are to be used primarily to identify officers present during an incident
- Requirements regarding the initiation of a personal complaint upon receipt of a lawsuit or claim for damages

A draft of the Guide will be provided to the OIG for review and comment before it is finalized. Once it has been completed, it will be posted on the Department's web site as a reference for all personnel conducting complaint investigations. According to the Department, training on the OIG's IAG-related recommendations was also provided at an All Commanding Officers and Lieutenant Officers-in-Charge (OIC) Meeting. Those OICs were directed to train their personnel on the Department's expectations in this area.

3) *Next Steps*

The OIG has found that the Department has already begun to take significant steps to implement and institutionalize the agreed-upon policy changes and clarifications, and to reinforce current expectations. The OIG will continue to closely monitor the implementation of the recommendations and, upon their enactment, complete a follow-up examination of NCUOF investigations for the Commission's review.

B) System Safeguards

As described extensively in this report, the complaint process should act as a secondary -- and in most cases, more robust -- review of incidents where a person alleges the use of unauthorized force or other misconduct. The OIG has emphasized the importance of audio-recorded interviews in great part because that practice safeguards against any shortcomings resulting from the more minimal, and less transparent, review of incidents during the NCUOF process. Indeed, the OIG noted two instances where the complaint investigation uncovered deficiencies in the initial NCUOF review, resulting in additional training or discipline for the original investigator.

The complaint process is only triggered in those instances, however, where an individual affirmatively acts to file a complaint, claim for damages, or lawsuit, or where a Department member identifies potential misconduct and initiates a complaint. To some extent, the OIG expects that improvements in the NCUOF process will make it easier to audit all investigations, regardless of the presence of a complaint, by requiring independent officer statements and additional information about the force witnessed. Clearer guidelines about material conflicts and the process for upgrading an investigation should also assist supervisors in better identifying those cases that warrant greater scrutiny by the Department. Higher quality NCUOF investigations will also allow the Department to more quickly identify and remedy any policy problems or other areas of potential liability.

One area that continues to be difficult to audit, however, is the assessment by a NCUOF investigator that a Level II interview is substantially consistent with the officers' account of the

incident. The introduction of on-body video cameras, which are being field-tested by the Department, should mitigate this issue by facilitating the routine recording of interviews and offering additional evidence for the adjudication of each use of force. The OIG recommends that the Commission evaluate, as part of its consideration of the new camera policy, how those devices can be used during the use of force investigative process.

C) Result of Lawsuits

The OIG compiled the results of force-related litigation based upon two different sets of parameters. The first encompasses the current status of all force-related lawsuits filed in calendar years 2011 and 2012, including the 34 NCUOF-related lawsuits and 60 lawsuits related to other types of incidents. As shown in the chart below, many force-related cases are still active or on appeal as of this writing, but the majority of cases have been closed, with 29 cases resulting in a payout.

Type of Incident	All Force-Related Lawsuits Filed CY 2011-12 ¹³						
	Lawsuits	Active	Defense Verdict	Dismissed	Plaintiff Verdict	Settled	Payouts
Total Number of Cases	94	36	4	25	2	27	\$3,140,989
NCUOF incident	34	10	1	8	1	14	\$554,739
CUOF incident	25	13	2	6	1	3	\$2,350,000
Non-reportable UOF ¹⁴	15	6	1	4	-	4	\$164,000
No report found	18	7	-	5	-	6	\$72,250
No LAPD UOF	2	-	-	2	-	-	-
	NCUOF-Related Lawsuits Closed CY 2011-12						
	Lawsuits	Active	Defense Verdict	Dismissed	Plaintiff Verdict	Settled	Payouts
NCUOF-Related Cases	20	-	7	6	-	7	\$68,500

According to data provided by the City Attorney's Office, the City has paid out approximately \$555,000 for 2011-2012 lawsuits related to a NCUOF, with amounts ranging from \$500 to \$112,000. Thirteen of the 15 lawsuits resulting in a payout were associated with a Level II NCUOF incident. An additional 9 lawsuits were dismissed or resulted in a verdict for the defense.

The second dataset includes the results of those NCUOF-related lawsuits closed during calendar years 2011 and 2012, regardless of when they were opened. According to information provided by the Department, 20 such cases were closed during that period, with the majority having been

¹³ Data current as of December 4, 2013.

¹⁴ Includes two lawsuits related to a documented NCUOF incident but not investigated as such due to their occurrence during crowd-control operations.

dismissed or resulting in a defense verdict. Seven cases were settled for a total of \$68,500, with amounts ranging from \$500 to \$30,000.

Seven cases appear in both groups, meaning that they both opened and closed in 2011 or 2012. Of those, 4 were dismissed and three were settled for a total of \$8,000. The remaining closed lawsuits filed in 2011 or 2012 were concluded in 2013.

IV. STATUS OF RECOMMENDATIONS

The OIG's original June 2013 on this presented a list of recommendations developed by the OIG in conjunction with the Department, to improve or clarify policies and procedures for the investigation and evaluation of NCUOF incidents. The current status of each of those recommendations is provided below.

- 1. All officer accounts of a NCUOF (including those of witness officers) should be individually and independently documented in a prompt manner.**

Use of Force Review Division (UOFRD) has developed a Supplemental Employee Statement Form, which was circulated to the OIG and command staff for feedback and approval. The form has been submitted to Planning and Research Division for finalization and distribution.

- 2. The Department should update and reinforce current guidelines for the preparation of UOF reports and individual accounts to require that officers provide full, plain-language descriptions of all material subject and officer actions.**

UOFRD is including guidance on this topic as part of its ongoing trainings with officers on the NCUOF process. The division has recently filled a position for a dedicated training sergeant whose role will be to provide training alongside Training Division personnel on use-of-force-related issues, including this topic.

- 3. The Department should ensure that all IAG investigations of alleged unauthorized force comply with applicable Department policies, including those that were first investigated through the NCUOF process. In the event that an underlying NCUOF investigation involved interviews of non-Department persons that were not recorded as part of that process, it is incumbent upon the IAG I/O to attempt to re-interview and record those persons.**

Training was provided on this issue at a Professional Standards Bureau (PSB) All Commanding Officers & Lieutenant Officers-in-Charge (OIC) Meeting. All OICs were directed to train all their assigned personnel on this requirement. PSB has also determined that all NCUOF-related lawsuit investigations will be conducted by the Complaint Classifications Unit to ensure consistency and quality. Finally, PSB is finalizing an updated version of its complaint investigations handbook, "Complaint Investigations: A Guide for Supervisors," which will clarify this requirement.

- 4. The Department should develop written procedures for upgrading NCUOF investigations to a Level I in the event that qualifying information comes to light after the initial investigation has been completed, to include a process for promptly attempting to obtain recorded interviews.**

The Department is in the process of developing a draft NCUOF Special Order, which will include written policies for the upgrading of NCUOF investigations in such an instance.

- 5. I/Os should provide information about witnesses' vantage point and portion of force observed in every investigative file, including Level II investigations.**

The Department will have this mandate added to the draft of the pending NCUOF Special Order. It has also forwarded communications to commanding officers on this topic, and added this expectation to the UOFRD-provided training protocol for areas and bureaus.

- 6. The Department should define the term "substantially conflicts" in its policy, or adopt and define a more established term for its analysis, such as "materially differs." The Department should also clarify, for the purposes of a NCUOF investigation, what constitutes a reportable discrepancy.**

The Department will utilize the term "materially differs" for this purpose, the definition of which will be added to the draft of the pending Special Order. The Department will also provide information about what constitutes a reportable discrepancy and ensure that this aspect is included in current and future training.

- 7. The Department should clearly require that I/Os, as part of their determination, identify substantial conflicts relating to the subject's actions as well as those of the officers. Where it is determined that an apparent inconsistency or conflict does not rise to a Level I substantial conflict, the evidence and reasoning for this determination should be clearly documented in the file.**

The Department will add this requirement to the draft of the pending Special Order, and has reinforced this expectation through email communications.

- 8. The Department should train supervisors, watch commanders, and other evaluators to review all available documents for apparent inconsistencies and, where they are identified, attempt to resolve them using the preponderance of the evidence standard as part of the Watch Commander's Insight.**

This requirement will be part of the UOFRD-provided training protocol for areas and bureaus. UOFRD has also sent communications to all commanding officers and training coordinators reminding them of this protocol.

- 9. Because of the potential value of videotaped evidence, the Department should require the I/O and reviewers at every level to view and certify that they have reviewed any video recordings of the incident.**

The Department already expects all levels to review all videos and will require that they certify that they have done so. This process will be added to the draft of the pending Special Order, and UOFRD has sent communications to all commanding officers reminding them of this protocol.

- 10. The Department should develop additional training for supervisors in how to evaluate a use of force. In particular, supervisors should be trained in how to apply the objectively reasonable standard, as well as the role that tactical and other relevant Department standards should play in evaluating the incident.**

This requirement will be added the draft of the pending Special Order and the UOFRD-provided training protocol for areas and bureaus. UOFRD has also sent communications to all commanding officers and training coordinators reminding them of this expectation.

- 11. The Department should avoid framing allegations against "Unknown Officers" where an underlying NCUOF investigation contains the names of officers who used force during the incident. It should also clarify for all Department personnel that allegations regarding a use of force shall be framed even if they have previously been investigated under the NCUOF process.**

This topic was discussed at the PSB All Commanding Officers and Lieutenant OIC Meeting, and will be added to the revised complaint investigations handbook.

- 12. The Department should update the Manual to reflect current policy and practice. Until such revisions are implemented, IAG should exclusively use Section 556, or the associated Special Order, as its primary standard of review for allegations of unauthorized force.**

These manual revisions have been drafted and forwarded to Planning and Research Division.