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Memo

To: Deputy Chief Tammie Gregg, U.S. Department of Justice
Deputy Chief Jamie Fields, Detroit Police Department

From: Joseph S. Buczek

Date: September 8, 2009

Subject: Status of Current Assessments of Compliance at August 31, 2009

PURPOSE

On July 24, 2009, Judge Cook issued a Court Order finding it necessary to suspend all monitoring immediately. On August 11, 2009, Judge Cook issued another Court Order, which among other things, directed “the current monitoring team to prepare a closing memorandum that will identify any work which has been completed between the date of the filing of the twenty third quarterly status report on July 16, 2009 and July 24, 2009 (the date of the temporary suspension of the monitoring in this case).”¹

USE OF FORCE CONSENT JUDGMENT (UOF CJ)

USE OF FORCE

Paragraph U18 – Use of Force; Paragraph U22 – Firing at/from Moving Vehicle; Paragraph U24 – Intermediate Force Device; Paragraphs U25-26 – Chemical Spray Policy

In connection with paragraphs U18, U22, and U24-26, monitoring activity was scheduled to focus on examining the most recent serious UOF incidents and critical firearm discharges (listing of specific incidents available upon request) in order to assess the DPD’s compliance with UOF CJ requirements regarding the implementation of the use of force policy, including

¹ Although the Court directed a report for an eight-day period of work, the Monitoring Team interpreted the Court’s direction to include work commenced during the twenty-fourth quarter reporting period up to and including July 24, 2009. The twenty-fourth quarter reporting period commenced June 1, 2009. Work completed between June 1, 2009 and July 24, 2009 is reported in this memorandum and is not duplicative of work reported in the twenty-third quarterly report.

firearms, the DPD's intermediate force device, and the use of chemical spray. Members of the Monitoring Team had requested, received and begun analysis of the initial arrest reports and related documentation for several, but not all incidents. Access to the completed investigations was requested but had not yet been provided.

The above monitoring activity was to be supplemented by a review of the DPD's UOF audit, which was to cover all UOF incidents DPD-wide² and was due to be submitted on July 31, 2009.

ARREST & DETENTION

Paragraphs U49-51, 60 Revision of Policies and Requirements of Arraignment within 48 Hours; Requirement of Warrant Request; Documentation of Late Request for Arraignment Warrants and Late Arraignments; Daily Reporting Requirements

In order to assess the DPD's compliance with paragraphs U49 through 50 and U60 during the current quarter, a sample³ of 72 warrantless arrests was selected, and the DPD provided access to the applicable warrant requests and arraignments, including Case Reports and related auditable forms. Documentation for all 72 arrests selected was reviewed. Of the 72 arrests, 33 detainees were released prior to arraignment or released to another law enforcement agency. The remaining 39 detainees were presented for arraignment. For three of these 39 arrests, the detainees were presented for arraignment after 48 hours had elapsed with no exigent circumstances documented.⁴ This translates into a compliance rate of 95.8% (69 of 72).

The 48-hour rule of paragraph U50 was not applicable to 11 of the 72 arrests selected for review, as the DPD released the detainee without seeking a warrant request.⁵ For one arrest the DPD was unable to produce supporting information. For 59 of the remaining 60 arrests to which the requirements of paragraph U50 were applicable, the warrant requests were submitted within 48 hours. This translates into a compliance rate of 98.3% (59 of 60).

Of the 72 arrests selected for review, five arrests required an auditable form because either a warrant request was not submitted within 48 hours or the detainees were not presented for arraignment within 48 hours, or both. The required auditable form was completed in all five instances. This translates into an overall compliance rate of 100% (5 of 5).

Lastly, for one of the five required Commander reviews for violation of prompt judicial review, the review occurred and was completed within 24 hours of receipt. For the remaining four

² The DPD Audit Team had indicated its intention to submit a combined UOF audit as required by paragraphs C65 and U94.

³ The warrantless arrests sample spanned the period March 10, 2009 through March 17, 2009.

⁴ For the three detainees, the amount of time that elapsed before arraignment ranged from approximately 54 hours to approximately 127.

⁵ In some instances, the underlying charges were minor, not requiring the warrant request.

required Commander reviews, there was no evidence that the Commander review occurred, as the Commander failed to complete the applicable section on the forms or the auditable form was not available for review.⁶ This translates into a compliance rate of 20% (1 of 5).

Based on the foregoing, the DPD is in compliance with the policy and implementation requirements of paragraphs U49, U50 and U51. The DPD is compliance with the policy requirements of paragraph U60 but is not yet in compliance with the implementation requirements of paragraph U60.

Paragraphs U53, U55, U57 – Documentation of All Holds; Documentation of Restrictions; Requirement to Obtain a Court Order Prior to Taking a Material Witness into Custody

At the onset of the current reporting period, pursuant to pre-established protocol, document requests were submitted to the DPD for requisite information to assess compliance with paragraphs U53, U55 and U57. The DPD responded with information; the review and assessment of the information was suspended prior to completion.

EXTERNAL COMPLAINTS

Paragraphs U61, U67-69 – Revision of External Complaint Policy; Complaint Investigations Policy; External Complaint Review Process Time Limits; External Complaint Dispositions

No monitoring activities were commenced in connection with paragraphs U61 and U67-69, as monitoring efforts were to be based on review of the DPD's Allegations of Misconduct (AOM)⁷ audit and the Office of Chief Investigator (OCI) External Complaint⁸ audit, which were to cover complaint incidents and investigations conducted by the OCI, Internal Affairs and Command level investigations. These audits were expected to be submitted on July 31, 2009 and August 31, 2009 respectively.

⁶ Forms that were not available for review are forms that were not provided to the Monitor and there is no evidence that a form was completed.

⁷ The DPD Audit Team had indicated its intention to submit a combined AOM audit as required by paragraphs C65 and U94.

⁸ The DPD Audit Team had indicated its intention to submit the OCI Audit as required by paragraph U97.

GENERAL POLICIES

Paragraphs U72-77 – Police Action in Violation of DPD Policy; Sergeants in the Field; Officers to Report Misconduct; Off-Duty Police Action; Handling of Prisoners; Foot Pursuit Policy

At the onset of the current reporting period, pursuant to pre-established protocol, document requests were submitted to the DPD for requisite information for review to assess compliance with paragraphs U72 through U77. The DPD responded with information; the review and assessment of the information was suspended prior to completion.

RISK MANAGEMENT

Paragraphs U78-90 – The Management Awareness System (MAS)

The MAS was fully assessed during the previous reporting period.⁹ Based on the system's performance, the DPD was not yet in compliance and much work remained to improve the system. The DPD was to conduct further troubleshooting and take corrective action on the system in anticipation of further testing. Additionally, further technical assistance was being considered. A date for further evaluation had not yet been scheduled.

Paragraph U91 – Performance Evaluations

To assess compliance with paragraph U91, a document request was submitted to the DPD on July 21, 2009, requesting 93 evaluations that were randomly selected for testing. These were not received as of July 24, 2009.

Paragraphs U100-102 – In-Car Video

Members of the Monitoring Team evaluated the DPD's in-car video system with the DOJ and their expert during the previous reporting period.¹⁰ Based on the evaluation and the expert's recommendation, the DPD elected to invest in an entirely new system, and was to submit a new Request for Proposal for comments by the expert by August 4, 2009.

⁹ The quarter ending May 31, 2009.

¹⁰ The status of the system was the subject of a focus issue included in the related report (Report for the Quarter Ending May 31, 2009).

TRAINING

Paragraphs U109 – Approved Lessons Plans/Scenario-Based Training

Members of the Monitoring Team developed and provided Technical Assistance, per the DPD's request, in the form of an Instructor Development class for 15 DPD trainers on June 30, July 1 and July 2, 2009. Monitoring Team members also attended and observed multiple Use of Force training sessions on July 6, July 7 and July 8, 2009.

Although scenario-based training was included in the training observed, lack of instructor facilitation skill was apparent during classroom monitoring of the training. Instructors either deviated from the approved lesson plan or were unable to address everything in the lesson plan in the time allotted. As such, the DPD is in non-compliance with Paragraph U109.

CONDITIONS OF CONFINEMENT CONSENT JUDGMENT

MEDICAL/MENTAL HEALTH POLICIES

Paragraphs C26-27, C30-32 – Medical and Mental Health Screening Program Development; Standards and Protocols; Infectious Disease Policy; and Prescription Medication Policy

Members of the Monitoring Team conducted unannounced onsite inspections of DPD facilities containing holding cells on June 15 and 16, 2009. This comprised a review of detainee documentation and observations of the intake and screening processes during the inspections. Analysis of the findings from these inspections was not complete as of July 24, 2009. Testing in this area was to be supplemented by a review of the DPD's Medical/Mental Health Programs and Policies (MMHPP) audit,¹¹ which was expected to be submitted on July 31, 2009.

Paragraphs C33-34 Suicide Precaution Clothing and Removal of Suicide Hazards

As described above, unannounced onsite inspections of DPD facilities containing holding cells were conducted on June 15 and 16, 2009. Members of the Monitoring Team confirmed that all facilities had an adequate supply of suicide gowns available and none of the holding cells contained suicide hazards. Additional inspections were scheduled to be conducted during the quarter ending August 31, 2009, and a review of the DPD's MMHPP audit was also planned in order to assess compliance with paragraphs C33 and C34.

¹¹ The DPD Audit Team had indicated its intention to submit a MMHPP audit as required by paragraph C68.

Paragraphs C35-38 Prisoner Safety/Security Screening Procedures

As described above, unannounced onsite inspections of DPD facilities containing holding cells were conducted on June 15 and 16, 2009. Members of the Monitoring Team reviewed detainee and cell check documentation, and conducted observations of the intake and screening processes during the inspections. Analysis of the findings from these inspections was not completed as of July 24, 2009. Testing in this area was to be supplemented by a review the DPD's Detainee Safety audit,¹² expected to be submitted on July 31, 2009.

Paragraphs C47-48 – Accommodations for Persons with Disabilities and Policy Concerning the Detention of Persons with Disabilities

As described above, the Monitoring Team conducted unannounced onsite inspections of DPD facilities containing holding cells on June 15 and 16, 2009. The Monitoring Team did not identify any detainees with disabilities at the time of the inspections, but confirmed the availability of the specific holding cell at the Northeastern District which has been fitted with a handicapped toilet and designated by the DPD for accommodating wheelchair bound detainees. The detention area staff queried by the Monitor was knowledgeable about the requirement to transfer wheelchair bound detainees to the NOE District. However, the most recent MMHPP Audit submitted by the DPD¹³ had determined the DPD was non-compliant because one of four disabled detainees was not accommodated as required. As a result, the Monitor intended on conducting additional inspections and reviewing the DPD's next MMHPP audit, which was expected to be submitted on July 31, 2009.

Paragraphs C52-53 – Use of Force on Prisoners in Holding Cells Policies; Prisoner Policies

In connection with paragraphs C52-53, the Monitoring Team intended to review the DPD's UOF and Prisoner Injury (PI) audits¹⁴ which were to cover all UOF and PI incidents that occurred in a holding cell and were due to be submitted on July 31, 2009. Depending on the sufficiency of the time-period and population/sample of incidents contained in these audits, the Monitor intended to supplement its testing by examining any recent UOF and PI incidents that occurred in holding cells.

Paragraph C54 – Prisoners in Handcuffs

As described above, unannounced onsite inspections of DPD facilities containing holding cells were conducted on June 15-16, 2009. Members of the Monitoring Team did not identify any detainees handcuffed to an object at the time of the inspections.¹⁵ The DPD also submitted

¹² The DPD Audit Team had indicated its intention to submit a Detainee Safety audit as required by paragraph C69.

¹³ The MMHPP Audit submitted by the DPD on January 31, 2009.

¹⁴ The DPD Audit Team had indicated its intention to submit these audits as required by paragraph C65.

¹⁵ Handcuffed detainees were observed, however none were handcuffed to an object.

documentation evidencing that HCCC executive staff members conducted an inspection of each holding cell facility on July 17-19, 2009, in which no detainees were observed handcuffed to an object.

A document request was submitted during July 2009 in anticipation of a review of HCCC checklists "Evaluation of the Operation of the Holding Cells" (DPD715), which includes an evaluation of whether detainees were being handcuffed to benches. The review was not completed as of July 24, 2009.

Paragraph C62 - Evaluation of Holding Cells

The DPD submitted documentation evidencing that HCCC executive staff members conducted inspections of each holding cell facility on July 17-19, 2009. These inspections were conducted to check the DPD's compliance with paragraph C54 (detainees handcuffed to an object) and paragraph C20 (no smoking in the holding cells) only. A document request was submitted during July 2009 in anticipation of a review of HCCC checklists "Evaluation of the Operation of the Holding Cells" (DPD715); however, it was not completed as of July 24, 2009. In addition, follow-up was planned but not completed in connection with problems such as broken equipment and lighting that were identified by these inspections in an effort to analyze if such problems had been resolved as a result of these inspections.