

REPORT OF
THE INDEPENDENT MONITOR
FOR THE
DETROIT POLICE DEPARTMENT



Kroll

*Office of the Independent Monitor
of the Detroit Police Department*

REPORT FOR THE QUARTER ENDING
MAY 31, 2004

ISSUED JULY 15, 2004

EXECUTIVE SUMMARY

On June 12, 2003, the United States Department of Justice (DOJ) and the City of Detroit (City) (collectively, the parties) filed two Consent Judgments (CJs) with the United States District Court for the Eastern District of Michigan (Court).¹ The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's [Detroit Police Department's] implementation"² of the Consent Judgments. On July 18, 2003,³ the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson, with the assistance of Kroll, Inc., as the Independent Monitor in this matter. This is the third quarterly report of the Independent Monitor.

During the quarter ending May 31, 2004, the Monitor examined 57 paragraphs or subparagraphs of the UOF CJ and 23 paragraphs or subparagraphs of the COC CJ. Of these, the City and the DPD complied with 2 and failed to achieve compliance with 76;⁴ the Monitor withheld its determination of the DPD's compliance with the remaining 2 paragraphs.⁵

The Monitor recognizes the progress that has been made in the following areas, among others:⁶

- The DPD has promulgated several policies this quarter in connection with the UOF CJ, including the Arrest,⁷ Chemical Spray,⁸ Firearms,⁹ and Foot Pursuit Policies. The Monitor

¹ The two judgments are the Use of Force and Arrest and Witness Detention Consent Judgment (UOF CJ) and the Conditions of Confinement Consent Judgment (COC CJ).

² UOF CJ at paragraph U124 (hereinafter UOF CJ paragraphs will be referenced by "U"). COC CJ at paragraph C79 (hereinafter COC CJ paragraphs will be referenced by "C").

³ The "effective date" of the Consent Judgments.

⁴ The Monitor determined that the DPD partially met the requirements of 2 paragraphs during the quarter (paragraphs U71 and C61). Partial "compliance" occurs when the City and the DPD has met the requirements of one or more components of a particular paragraph (i.e. policy, training, implementation and audit requirements), but not all required components. For this report, the Monitor is including this information to demonstrate the DPD's progress in some areas. However, the paragraphs for which the DPD has partially met the requirements receive an overall assessment of non-compliance, and are included among the 76 paragraphs classified as non-compliant in this report. The compliance components for each paragraph are further discussed in the Introduction to this report.

⁵ For each paragraph, the Monitor's review and findings, to date, are included in this report.

⁶ In general, there may be some efforts toward compliance that the DPD has made that are not included in this report although the Monitor has made an effort to mention progress with paragraphs that are not scheduled to be evaluated this quarter (i.e., policy submissions). As explained in the Introduction section, the Monitor is scheduled to review certain paragraphs during certain quarters. Throughout the report, the schedule for the Monitor's review is outlined. The Monitor's assessment schedule does not affect the due dates that the DPD and the City must adhere to that are outlined in the Consent Judgments.

evaluated the Arrest Policy and identified several deficiencies, as discussed herein under paragraph U42. The Monitor will evaluate the Foot Pursuit Policy, which was approved by the Chief of Police on March 17, 2004 and by the Board of Police Commissioners (BOPC) on April 22, 2004, as scheduled during the Fourth Quarter.¹⁰ The Chemical Spray and Firearms policies will be reviewed during the Fourth Quarter by either the DOJ or the Monitor.

- In connection with the COC CJ, the DPD promulgated the Holding Cells Areas Policy (Directive 305.4) at the end of the quarter. According to the DPD, the policy covers paragraphs C39, C40, C42, C43, C45, and C49-57. The policy was approved by the Chief of Police on May 5, 2004 and by the BOPC on May 27, 2004. The policy was sent to the DOJ and the Monitor after the end of the quarter with a cover letter dated June 15, 2004.
- The DPD also promulgated two additional policies that are not specifically required by the Consent Judgments, a Canine Operations Policy and a Detainee Bonding Policy. According to the DPD, the Canine policy was submitted to bring the department into compliance with the UOF CJ. The Detainee Bonding Policy was submitted as part of the DPD's overall Detention Management Operations Program. These policies were submitted to the DOJ and the Monitor with cover letters dated May 31, 2004. The Monitor will review these policies during the Fourth Quarter.
- The DPD issued two training directives this quarter, the Material Witness Training Directive and the In-Car Video Training Directive. The Monitor will evaluate these directives as scheduled during the Fourth Quarter.¹¹
- A review of a sample of Office of the Chief Investigator (OCI) investigations revealed that the OCI has implemented several of the procedures required by the UOF CJ regarding civilian complaints.
- The Monitor commends the DPD for accepting our offer of technical assistance (TA) regarding the drafts of eight of its auditable forms. Although these auditable forms are a good starting point, they cannot be finalized until the DPD's policies are finalized and implemented. Furthermore, none of the forms adequately address the requirements of the

⁷ The Arrest Policy (Directive 202.1) and Training Directive 04-01 were submitted to the DOJ and the Monitor with a cover letter dated April 28, 2004. The directive was approved by the Chief of Police and then by the Board of Police Commissioners on March 18, 2004.

⁸ The Chemical Spray Device Policy (Directive 304.3) were submitted to the DOJ and the Monitor with a cover letter dated May 26, 2004. The directive was approved by the Chief of Police on April 1, 2004 and by the BOPC on May 13, 2004.

⁹ The Firearms Policy (Directive 304.1) was submitted to the DOJ and the Monitor with a cover letter dated May 26, 2004. The Chief of Police approved the policy on April 1, 2004 and the BOPC approved it on May 13, 2004.

¹⁰ The DOJ and the Monitor received the Foot Pursuit Policy with a cover letter dated May 10, 2004.

¹¹ The Monitor is scheduled to review the underlying paragraphs for these training directives (U56-57 for material witnesses and U98 for in-car video cameras) during the quarter ending August 31, 2004.

Consent Judgments and insufficient guidance has been provided by the DPD regarding the details to be captured on them.

- The Monitor recognizes that the DPD has made progress by implementing specific procedures or interim forms in several areas, including paragraphs C24 (Emergency Preparedness Program), C29 (Minimum Standards for Medical Protocols), C33 (Suicide Precaution Clothing), C49 (Food Storage and Service), and C61 / U71 (Proposed Policy for Community Review and Comment). Once the verbal mandates are memorialized into written policies and procedures and the interim forms are finalized and implemented throughout the department, the DPD will potentially be able to achieve compliance in these areas.
- The Monitor commends the City and the DPD for providing initial Consent Judgment training pursuant to paragraph U111 for approximately 3,439 DPD members, both sworn and civilian. The DPD's aggressive lesson plan listed numerous steps that will be taken to disseminate the Consent Judgment information. The Monitor is seeking additional information on this educational campaign. Notably, the City and the DPD must still provide training to relevant City employees outside of the DPD.

Major areas of concern identified during the quarter ending May 31, 2004 include the following, among others:

- The Monitor continues to be concerned about the DPD's failure to develop and issue effective policies that adhere to the requirements of the Consent Judgments. As noted in the Monitor's previous reports, the Consent Judgments require the DPD to develop and/or revise policy in numerous areas throughout DPD operations. Achieving compliance with these policy requirements is integral to achieving compliance with all other substantive provisions of the Consent Judgments. Although the DPD continues to make efforts in the policy development area, as outlined in this report and the Monitor's First and Second Quarterly Reports, the vast majority of the policies have not yet been developed or do not meet the requirements of the Consent Judgments.
- The Monitor is also concerned about the general lack of significant progress in bringing the holding cells used by the DPD into compliance with the COC CJ. The COC CJ is scheduled to terminate two years after the effective date of the judgment if the DPD and the City have substantially complied with each of the provisions of the judgment and have maintained substantial compliance for at least one year.¹² Significantly, none of the paragraphs that were evaluated under the COC CJ were found to be in compliance during the Third Quarter.

¹² Paragraph C106.

REPORT CONTENTS:

SECTION ONE: INTRODUCTION.....1

SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND ARREST AND WITNESS DETENTION CONSENT JUDGMENT4

I. USE OF FORCE POLICY.....4

A. General Use of Force Policies.....4

B. Use of Firearms Policy.....6

C. Intermediate Force Device Policy.....6

D. Chemical Spray Policy.....6

II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW.....7

A. General Investigations of Police Action7

B. UOF and Prisoner Injury Investigations7

C. Review of Critical FirearmS Discharges and In-Custody Deaths9

III. ARREST AND DETENTION POLICIES AND PRACTICES.....13

A. Arrest Policies13

B. Investigatory Stop Policies15

C. Witness Identification and Questioning Policies16

D. Prompt Judicial Review Policies18

E. Hold Policies19

F. Restriction Policies19

G. Material Witness Policies19

H. Documentation of Custodial Detention19

I. Command Notification.....21

IV. EXTERNAL COMPLAINTS22

A. Intake and Tracking25

B. External Complaint Investigation28

V.	GENERAL POLICIES.....	34
VI.	MANAGEMENT AND SUPERVISION	40
	A. Risk Management Database.....	41
	B. Performance Evaluation System.....	45
	C. Oversight.....	45
	D. Use of Video Cameras	49
	E. Discipline	50
VII.	TRAINING	51
	A. Oversight and Development	51
	B. Use of Force Training	57
	C. Firearms Training.....	59
	D. Arrest and Police-Citizen Interaction Training.....	60
	E. Custodial Detention Training.....	61
	F. Supervisory Training	62
	G. Investigator Training.....	62
	H. Field Training.....	62
VIII.	MONITORING, REPORTING, AND IMPLEMENTATION.....	63
SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF		
CONFINEMENT CONSENT JUDGMENT		64
I.	FIRE SAFETY POLICIES	64
II.	EMERGENCY PREPAREDNESS POLICIES	66
III.	MEDICAL AND MENTAL HEALTH CARE POLICIES	68
IV.	PRISONER SAFETY POLICIES	77
V.	ENVIRONMENTAL HEALTH AND SAFETY POLICIES	78
VI.	POLICIES CONCERNING PERSONS WITH DISABILITIES.....	79
VII.	FOOD SERVICE POLICIES	79
VIII.	PERSONAL HYGIENE POLICIES.....	83
IX.	USE OF FORCE AND RESTRAINTS POLICIES.....	84

X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW.....84

XI. EXTERNAL COMPLAINTS85

XII. GENERAL POLICIES.....86

XIII. MANAGEMENT AND SUPERVISION88

XIV. TRAINING92

XV. MONITORING AND REPORTING92

CONCLUSION94

APPENDICES:

- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor

SECTION ONE: INTRODUCTION

On June 12, 2003, the DOJ and the City filed two Consent Judgments with the United States District Court for the Eastern District of Michigan. The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's implementation" of the Consent Judgments. On July 18, 2003, the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson, with the assistance of Kroll, Inc.,¹³ as the Independent Monitor in this matter. This is the third report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor¹⁴ outlined the history of the DOJ investigation, the TA letters and the DPD's reform efforts. The Monitor also summarized the complaint filed against the City and the DPD and the overall content of the Consent Judgments.¹⁵ The Monitor's duties and reporting requirements were also described. As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,¹⁶ the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments.¹⁷ The paragraphs that were scheduled for review in the third quarter, which ended on May 31, 2004, are assessed in this report.

The Monitor's role requires us to conduct compliance assessments, make recommendations, provide technical assistance and report on the DPD's compliance with the Consent Judgments. The Monitor carries out this role with a healthy respect for the critical role the Department plays in enforcing the law and the significant risks taken by DPD officers each day. The Consent Judgments are meant to improve the overall policing in the City of Detroit.

Currently, the DPD is non-compliant with the majority of the provisions in the Consent Judgments. Although the DPD continues to make efforts in various areas, as described

¹³ The primary members of the monitoring team are Joseph Buczek, Ronald Davis, Hazel de Burgh, Ronald Filak, Thomas Frazier, Christi Gullion, Denise Lewis, Edward Nagel, Jeffrey Schlanger, David Schoenfeld, and Sherry Woods.

¹⁴ The word "Monitor" will be used to describe both the Monitor and the monitoring team throughout this report.

¹⁵ Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at http://www.usdoj.gov/crt/split/documents/dpd/detroit_cover_2.html.

¹⁶ Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

¹⁷ The minimum duration of the COC CJ is eight quarters. The minimum duration of the UOF CJ is twenty quarters. The Monitor's review schedule does not effect the due dates mandated by the Consent Judgments for the City and the DPD.

throughout this report, the department faces major challenges in some of the areas that are integral to achieving compliance. As mentioned in our previous reports, the most prevalent of these challenges is policy development, which must take place in an effective manner before many of the other reforms can be achieved. It was noted in the Monitor's Second Quarterly Report that the DPD has engaged in a number of efforts and has adopted various internal procedures that hopefully will be of great assistance in policy development and in other areas. However, even with the revised process, several of the recent policies submitted continue to contain deficiencies. The Monitor looks forward to reviewing recent policy submissions and renews our standing offer to provide TA in the policy development and other areas.

The Monitor is still in the process of developing "Methodologies to Aid in Determination of Compliance with the Consent Judgments" (the Methodologies) in consultation with the parties. The Methodologies will generally outline the methods that will be employed by the Monitor to determine compliance by the City and the DPD with each substantive provision of the Consent Judgments. The City and the DPD have the Monitor's draft Methodologies for the majority of the paragraphs in the Consent Judgments. In the meantime, the Monitor has offered to discuss its Methodologies for any given paragraph at any time. Furthermore, the Monitor provides monthly updates on our monitoring activities during monthly meetings with the parties. The Monitor expects to finalize the draft Methodologies during the Fourth Quarter.

In the course of conducting compliance assessments, among various other things, the Monitor conducts interviews of various City and DPD personnel and other individuals. It is the Monitor's general practice, unless otherwise noted, to use matrices to ensure that the same general questions and subject matter are covered in interview.

Significantly, the one-year anniversary date of the Consent Judgments will occur during the Fourth Quarter, on July 18, 2004. The COC CJ could terminate two years after its effective date¹⁸ if the City and the DPD have substantially complied with each of the provisions of the judgment and have maintained substantial compliance for at least one year.

With the Fourth Quarter Report, the Monitor will publish a "Report Card," which will summarize the *overall* grade of compliance with each paragraph and subparagraph¹⁹ of the Consent Judgments. The Report Card will provide a "snapshot" of the DPD's compliance with each of the substantive provisions of the Consent Judgments, and will also serve as a tool to evaluate the DPD's progress in complying with those provisions.

The Monitor also continues to be dedicated to making this process a transparent one. To that end, we have provided the parties with assessments of compliance throughout the third quarter. The Monitor has also made numerous recommendations and provided TA to the DPD regarding compliance with the Consent Judgments. Furthermore, a draft copy of this report was made

¹⁸ July 18, 2003 is the effective date of the Consent Judgments.

¹⁹ Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.



Office of the Independent Monitor
of the Detroit Police Department

REPORT OF THE INDEPENDENT MONITOR
FOR THE QUARTER ENDING May 31, 2004
Issued July 15, 2004

available to the parties to provide an opportunity to identify factual errors.²⁰ The Monitor continues to share the interest of all parties in having the City and DPD achieve substantial compliance with the Consent Judgments in a timely manner.

²⁰ As required by paragraphs U142 and C97.

SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND ARREST AND WITNESS DETENTION CONSENT JUDGMENT

This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending May 31, 2004.

I. USE OF FORCE POLICY

This section of the UOF CJ (paragraphs U14-26) requires the DPD to make revisions to its Use of Force (UOF) policies. Specifically, the DPD must revise its general UOF policy, use of firearms policy and chemical spray policy. The DPD must choose an intermediate force device, develop policy for the device, incorporate the device into the UOF continuum, and provide annual training on the use of the device.

A. GENERAL USE OF FORCE POLICIES

This section comprises paragraphs U14-19. The Monitor first assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2003. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U14-17 and U19 – Revision of Policy (Definition of UOF); UOF Continuum; Opportunity to Submit; Prohibition on Choke Holds; Strike to Head Equals Deadly Force

Paragraph U14 requires the DPD to revise its UOF policies to define force as that term is defined in the UOF CJ.

Paragraph U15 requires the UOF policy to incorporate a UOF continuum that:

- a. identifies when and in what manner the use of lethal and less than lethal force are permitted;
- b. relates the force options available to officers to the types of conduct by individuals that would justify the use of such force; and
- c. states that de-escalation, disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units are often the appropriate response to a situation.

Paragraph U16 requires the UOF policy to reinforce that individuals should be provided an opportunity to submit to arrest before force is used and provide that force may be used only when verbal commands and other techniques that do not require the UOF would be ineffective or present a danger to the officer or others.

Paragraph U17 requires the UOF policy to prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.

Paragraph U19 requires the UOF policy to provide that a strike to the head with an instrument constitutes a use of deadly force.

Background

The Monitor last assessed the DPD's compliance with paragraphs U14-17 and U19 during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance with these paragraphs due to the fact that the policies that addressed their requirements were included in revised Directive 304.2 "Use of Force," which was submitted to the DOJ for review and approval but subsequently withdrawn from consideration to make further revisions.

Current Assessment of Compliance

According to the DPD, the UOF policies required by paragraphs U14-17 and U19 have been included in the UOF Policy, Directive 304.2, which is currently being reviewed. The DPD has indicated that this revised policy is expected to be submitted to DOJ for review and approval during the quarter ending August 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U14-17 and U19.

Paragraph U18 – Revision of Policy within 3 Months

Paragraph U18 requires the DPD to develop a revised UOF policy within three months of the effective date of the UOF CJ. The policy must be submitted for review and approval of the DOJ. The DPD must implement the revised UOF policy within three months of the review and approval of the DOJ.

Background

The Monitor last assessed the DPD's compliance with paragraph U18 during the quarter ending November 30, 2003. As with paragraphs U14-17 and U19, the Monitor found the DPD in non-compliance with paragraph U18 because the revised UOF policy was withdrawn from the DOJ's consideration and, therefore, not finalized within three months of the effective date of the UOF CJ.

Current Assessment of Compliance

As of the end of the quarter, the DPD had not formally submitted any revised UOF policies to the DOJ for review and approval.²¹

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U18.

B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending February 29, 2004. The Monitor found the DPD to be in compliance with paragraph U22 but in non-compliance with paragraphs U20-21 and U23. The assessments of non-compliance were primarily due to incomplete policy revisions.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U20-23 during the quarter ending August 31, 2004.

C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor assessed the DPD's compliance with this paragraph for the first time during the quarter ending February 29, 2004, finding the DPD to be in non-compliance due to incomplete policy revisions.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U24 during the quarter ending August 31, 2004.

D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending February 29, 2004. The Monitor found the DPD to be in non-compliance with these paragraphs due to incomplete policy revisions.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U25-26 during the quarter ending August 31, 2004.

²¹ Recently, the Chemical Spray Policy (paragraphs U25-26) and Firearms Policy (paragraphs U20-23) were promulgated by the DPD (approved by the Chief of Police and the BOPC) on April 1, 2004. The promulgated policies were submitted to the DOJ and the Monitor with a cover letter dated May 26, 2004. Either the DOJ or the Monitor will review these policies for compliance.

II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearms discharges and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for Garrity statements²² and develop an auditable form to document any prisoner injury, UOF, allegation of UOF and instance where an officer draws a firearm and acquires a target. The DPD Shooting Team must respond to and investigate all critical firearms discharges and in-custody deaths, and the DPD must develop a protocol for conducting investigations of critical firearms discharges. Finally, the UOF CJ requires the DPD to create a command level force review team (CLFRT) that is charged with critically evaluating and reporting on critical firearms discharges and in-custody deaths.

A. GENERAL INVESTIGATIONS OF POLICE ACTION

This section comprises paragraphs U27-33. The Monitor assessed the DPD's compliance with paragraph U27 during the quarter ending November 30, 2003, finding the DPD in non-compliance. The Monitor assessed the DPD's compliance with paragraphs U28-33 for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The findings of non-compliance were primarily due to the fact that the relevant policies and protocols had not yet been fully developed or submitted.

The Monitor is schedule to again assess the DPD's compliance with paragraphs U27-33 during the quarter ending August 31, 2004.

B. UOF AND PRISONER INJURY INVESTIGATIONS

This section comprises paragraphs U34-36. The Monitor assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessment follow.

²² Paragraph U31 requires the DPD and the City to develop a protocol for when statements should (and should not) be compelled pursuant to Garrity v. New Jersey, 385 U.S. 492 (1967).

Paragraphs U34-36 – Documentation of UOF and Prisoner Injury; Notification Requirements; Command Investigation Time Limits

Paragraph U34 requires the DPD to revise its reporting policies to require officers to document on a single auditable form any prisoner injury, UOF, allegation of UOF, and instance in which an officer draws a firearm and acquires a target.

Paragraph U35 requires the DPD to revise its policies regarding UOF and prisoner injury notifications to require:

- a. officers to notify their supervisors following any UOF or prisoner injury;
- b. that upon such notice, a supervisor must respond to the scene of all UOF that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor must respond to all other UOF on a priority basis. Upon arrival at the scene, the supervisor must interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention;
- c. the supervisor responding to the scene to notify the Internal Affairs Division (IAD) of all serious UOF, UOF that result in visible injury, UOF that a reasonable officer should have known were likely to result in injury, UOF where there is evidence of possible criminal misconduct by an officer or prisoner injury; and
- d. IAD to respond to the scene of, and investigate, all incidents where there is evidence of possible criminal misconduct by an officer, a prisoner dies, suffers serious bodily injury or requires hospital admission, or involves a serious UOF, and to permit IAD to delegate all other UOF or prisoner injury investigations to the supervisor for a command investigation.

Paragraph U36 requires the DPD to revise its UOF and prisoner injury investigation policies to require:

- a. command UOF preliminary and final investigations to be completed within 10 and 30 days of the incident, respectively; such investigations must include a synopsis of the incident, photographs of any injuries, witness statements, a canvas of the area, a profile of the officer's prior UOF and allegations of misconduct, and a first-line supervisory evaluation;
- b. IAD investigations to be completed within 60 days of the incident; and
- c. copies of all reports and command investigations to be sent to IAD within 7 days of completion of the investigation.

Background

The Monitor last assessed the DPD's compliance with paragraphs U34-36 during the quarter ending November 30, 2003, finding the DPD in non-compliance. The Monitor concluded that the DPD was in non-compliance with these paragraphs due to the fact that the policies that addressed their requirements were included in revised Directive 304.2 "Use of Force," which

was submitted it to the DOJ for review and approval but subsequently withdrawn from consideration to make further revisions.

Current Assessment of Compliance

According to the DPD, the policies required by paragraph U34-36 have been included in the UOF Policy, Directive 304.2, which is currently being reviewed. The DPD has indicated that this policy is expected to be completed during the quarter ending August 31, 2004.

The DPD is currently utilizing an interim U34 auditable form that is expected to be revised, as necessary, based on the final policy.²³ The form initially developed by the DPD to meet the requirements of Paragraph U34 did not adequately address all requirements and it provided insufficient guidance to officers regarding the details to be captured on it.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U34-36.

C. REVIEW OF CRITICAL FIREARMS DISCHARGES AND IN-CUSTODY DEATHS

This section comprises paragraphs U37-41. The Monitor assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessment follow.

Paragraph U37 – Creation of Shooting Team

Paragraph U37 requires the DPD's Shooting Team, which is composed of officers from the Homicide Section and IAD, to respond to the scene and investigate all critical firearms discharges and in-custody deaths.

Background

The Monitor last assessed the DPD's compliance with paragraph U37 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the protocol for conducting the investigations that the team is charged with was not developed as of the end of the quarter.

²³ The Monitor has been providing interim TA on the development of this and other auditable forms. Such TA was provided informally, and was also provided in writing on June 25, 2004. The Monitor notes that the majority of the final policies upon which these auditable forms should be based have not yet been submitted to the Monitor. Additional revisions to the auditable forms may be necessary depending on the content of the final policies.

Current Assessment of Compliance

According to the DPD, a Shooting Team has been created and implemented to respond to the scene and investigate all critical firearms discharges and in-custody deaths as required by paragraph U37. There are two teams: one team to respond to and investigate fatal firearms discharges and in-custody deaths, consisting of six or seven officers; and one team to respond to and investigate non-fatal firearms discharges, consisting of five or six officers. These teams are chaired by the Deputy Chief of Professional Accountability Bureau (PAB). However, the protocol for conducting the investigations that the team is charged with has not yet been developed.²⁴

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U37.

Paragraph U38 – Protocol for Investigations of Critical Firearms Discharges

Paragraph U38 requires the DPD to develop a protocol for conducting investigations of critical firearms discharges that, in addition to the requirements of paragraphs U27-36, requires:

- a. the investigation to account for all shots fired, all shell casings, and the locations of all officers at the time the officer discharged the firearm;
- b. the investigator to conduct and preserve in the investigative file all appropriate ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests; and
- c. the investigation to be completed within 30 days of the incident. If a Garrity statement is necessary, then that portion of the investigation may be deferred until 30 days from the declination or conclusion of the criminal prosecution.

Background

The Monitor last assessed the DPD's compliance with paragraph U38 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the protocol had not been developed by the end of the quarter.

Current Assessment of Compliance

The protocol for conducting investigations of critical firearms discharges as required by paragraph U38 is under development. According to the DPD, a separate Garrity Protocol has been developed pursuant to paragraph U31 and is undergoing revisions based on applicable U.S. Supreme Court rulings. Both protocols are currently under review by DPD.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U38.

²⁴ Nevertheless, the Monitor has requested initial documentation including the names and assignments of the team members, a listing of all critical firearm discharges and in custody deaths from March 1 through May 31, 2004, and any finalized documentation discussing the creation, duties, membership and operation of the team.

Paragraph U39 – Command Level Force Review Team

Paragraph U39 mandates that the DPD must require a CLFRT to evaluate all critical firearms discharges and in-custody deaths. The team must be chaired by the Deputy Chief who directly supervises IAD. The DPD must establish criteria for selecting the other members of the team.

Background

The Monitor last assessed the DPD's compliance with paragraph U39 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the CLFRT was not operational, nor were the criteria for team member selection established, as of the end of the quarter.

Current Assessment of Compliance

As required by paragraph U39, the CLFRT will be chaired by the Deputy Chief of the PAB. The DPD, according to its Third Status Report, is calling the CLFRT the Command Level Board of Review (CLBR). According to the DPD, procedures to establish criteria for selecting other team members to the CLBR have been developed. The CLBR is not yet operational and the criteria for team member selection has not been submitted to the Monitor. The Monitor understands that a Board of Review policy, which will govern the team's operations, has been developed and is currently under review by the Risk Management Bureau.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U39.

Paragraph U40 – Time Limits for Command Level Force Review Team

Paragraph U40 mandates that the DPD policy that defines the CLFRT's role must require the team to:

- a. complete its review of critical firearms discharges that result in injury and in-custody deaths within 90 days of the resolution of any criminal review and/or proceedings and all other critical firearms discharges within 60 days and require the Chief of Police to complete his or her review of the team's report within 14 days;
- b. comply with the revised review of investigations policies and procedures;
- c. interview the principal investigators; and
- d. prepare a report to the Chief of Police in compliance with the revised investigatory report and evaluation protocol.

Background

The Monitor last assessed the DPD's compliance with paragraph U40 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that policy defining the CLFRT's role was not finalized as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the Board of Review Policy, Directive 304.4, which includes the CLBR's role, as required by paragraph U40, has been revised. This policy is currently under review by the DPD.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U40.

Paragraph U41 - Aggregate Review

Paragraph U41 requires the Chair of the CLFRT to annually review critical firearms discharges and in-custody deaths in aggregate to detect patterns and/or problems and report his or her findings and recommendations, including additional investigative protocols and standards for all critical firearms discharge and in-custody death investigations, to the Chief of Police.

Background

The Monitor last assessed the DPD's compliance with paragraph U41 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that policy regarding CLFRT-related requirements was not finalized as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the Deputy Chief of the PAB, who will serve as Chair of the CLBR, has prepared a report on the analysis of the circumstances surrounding fatal and non-fatal officer-involved shootings.²⁵ This report is currently under review at the DPD.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U41.

²⁵ In connection with paragraph U43, the DPD provided a 2003 Force Investigations Section Report of all police critical incidents (this report was attached to the DPD's Third Status Report). Although this report discusses critical incidents, it is noted that the CLBR is not yet operational and is not currently evaluating critical firearm discharges and in-custody deaths as required by paragraph U39. Furthermore, the DPD has not completed the revisions to its investigations policies and procedures to which the CLBR is required to comply under paragraph U40b or fulfilled any other requirements of paragraph U40, which defines the CLBR's role. Therefore, the report referenced by the DPD does not satisfy the requirements of this paragraph.

III. ARREST AND DETENTION POLICIES AND PRACTICES

This section of the UOF CJ (paragraphs U42-60) requires the DPD to make significant changes to its policies, practices and procedures related to arrests, stops and frisks, witness identification and questioning, the detention of material witnesses, arrestee restrictions, custodial detention, prompt judicial review, holds and command notification regarding arrests and witness detention issues. For many of these areas, the DPD must develop auditable forms to document officer violations of the UOF CJ requirements or to capture certain events.

This section also requires DPD supervisors to conduct reviews of all reported violations and take corrective or non-disciplinary action. In addition, precinct commanders and, if applicable, specialized unit commanders, are required to review within seven days all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought, and to review on a daily basis all reported violations of DPD prompt judicial review, holds, restrictions and material witness policies. The Commanders' reviews must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

A. ARREST POLICIES

This section comprises paragraphs U42-43. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U42 – Revision of Arrest Policies / Paragraph U43 – Review of All Arrests

Paragraph U42 requires the DPD to revise its arrest policies to define arrest and probable cause as those terms are defined in the UOF CJ and prohibit the arrest of an individual with less than probable cause.

Paragraph U43 requires the DPD to review the merits of each arrest and opine as to whether or not adequate probable cause existed to support the arrest. The review must be made at the time an arrestee is presented at the precinct or specialized unit and memorialized within 12 hours of the arrest. For those arrests in which adequate probable cause does not exist, or for which the DPD does not request a warrant, the DPD is required to generate an auditable form memorializing such circumstances within 12 hours of the event.

Background

The Monitor assessed the DPD's compliance with paragraphs U42 and U43 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each.

The Monitor concluded that the DPD was in non-compliance based on the fact that its proposed revised arrest policy failed to address the definition of probable cause as defined by the UOC CJ. Furthermore, it neither required a review of each arrest within 12 hours nor the documentation on a separate auditable form of those arrests not supported by probable cause or for which a warrant was not requested.²⁶

Current Assessment of Compliance

During the current quarter the DPD issued Directive 202.1, which included revised arrest policy. This directive was reviewed and approved by the DPD and the BOPC on February 13, 2004 and March 18, 2004, respectively.

The Monitor reviewed the revised policy and noted the following:

- As with the policy previously reviewed by the Monitor and described in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD's revised issued policy fails to adequately address the definition of probable cause as defined by the UOF CJ at paragraph U1, subparagraph hh.
- The DPD requirement that a "DPD supervisor shall review every arrest; and in all instances in which a probable cause determination is made, document same on the original PCR within 12 hours of the arrest" suggests that there will be instances in which an arrest is reviewed by a supervisor but not necessarily documented. Rather, DPD policy should simply require that all arrests be reviewed by a supervisor when the arrestee is presented at the precinct and such review, including a written evaluation of the existence of probable cause, memorialized within 12 hours.
- The policy does not adequately address or establish the process for reporting arrests where an arraignment warrant was not sought.

In addition, the DPD's preliminary auditable form does not adequately address the requirements of paragraph U43, and the form cannot be finalized until the DPD's policy is finalized.²⁷

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraphs U42 and U43.

²⁶ The DPD subsequently retracted the policy and withdrew it from DOJ and/or the Monitor's review.

²⁷ As described above, in our assessment of compliance with paragraphs U34-36, the Monitor has been providing interim TA on the development several auditable forms, including this form. The majority of the final policies upon which these auditable forms should be based have not yet been submitted to the Monitor. Additional revisions to the auditable forms may be necessary depending on the content of the final policies.

B. INVESTIGATORY STOP POLICIES

This section comprises paragraphs U44-45. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U44 – Revision of Policies

Paragraph U44 requires the DPD to revise its investigatory stop and frisk policies to define investigatory stop and reasonable suspicion as those terms are defined in the UOF CJ. The policy must specify that a frisk is authorized only when an officer has a reasonable suspicion to fear for his or her safety and that the scope of the frisk must be narrowly tailored to these specific reasons.

Background

The Monitor assessed the DPD's compliance with paragraph U44 for the first time during the quarter ending November 30, 2003. The Monitor concluded that the DPD was in non-compliance largely due to its failure to issue revised policy and procedure with regard to stops and frisks.

Current Assessment of Compliance

During the current quarter, the DPD's revised Stop and Frisk policy addressing the specific requirements of paragraphs U44 and U45 was approved by the DPD and submitted to the BOPC for review and comment. As such, the DPD had yet to finalize this policy as of the end of the current quarter. Furthermore, the DPD's revised Arrest Policy, which was reviewed and approved by the DPD and the BOPC as described above in connection with the current assessment of compliance with paragraphs U42 and U43, contains definitions of investigatory stop and reasonable suspicion that do not comport with the definitions required by paragraphs U1z and U1kk, respectively.

Based on the foregoing, the Monitor finds that that the DPD remains in non-compliance with paragraph U44.

Paragraph U45 – Documentation Requirement

Paragraph U45 requires the DPD to document all investigatory stops and frisks by the end of the shift in which the police action occurred. The DPD must review all investigatory stops and frisks and document on an auditable form those unsupported by reasonable suspicion within 24 hours of receiving the officer's report.

Background

The Monitor assessed the DPD's compliance with paragraph U45 for the first time during the quarter ending November 30, 2003. The Monitor concluded that the DPD was in non-compliance largely due to its failure to revise and implement policy and procedures that adequately addressed paragraph U45 requirements.

Current Assessment of Compliance

The Monitor determined that as of the end of the current quarter the DPD had yet to issue policy and guidance regarding the requirement that all investigatory stops and frisks be documented by the end of the shift in which the police action occurred.²⁸

During the current quarter the DPD revised several auditable forms, including the auditable form used to document stops and frisks not supported by reasonable suspicion. The Monitor's audit team reviewed this form and determined that further revisions were required.²⁹

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraph U45.

C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U46 – Revision of Policies

Paragraph U46 requires the DPD to revise its witness identification and questioning policies to comply with the revised arrest and investigatory stop policies. The DPD must prohibit the seizure of an individual without reasonable suspicion, probable cause or consent of the individual and require that the scope and duration of any seizure be narrowly tailored to the reasons supporting the police action. The DPD must prohibit the conveyance of any individual to another location without reasonable suspicion, probable cause or consent of the individual.

²⁸ During the current quarter, the Monitor requested and received a copy of a draft audit report of stops and frisks completed by the DPD's Audit Unit. The audit encompassed all 13 precincts and 18 specialized units. The audit concluded that the DPD is not in compliance with all of the requirements of paragraph U45. However, given that this was a draft audit, which has also been withdrawn by the DPD, the Monitor has not considered the audit's findings in evaluating compliance with paragraph U45.

²⁹ As discussed previously, on June 25, 2004, the Monitor provided formal interim TA to the DPD on the development of several UOF CJ auditable forms, including this form. The majority of the final policies upon which these auditable forms should be based have not yet been submitted to the Monitor. Additional revisions to the auditable forms may be necessary depending on the content of the final policies.

Background

The Monitor assessed the DPD's compliance with paragraph U46 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance. The Monitor reviewed proposed policy revisions provided to the DOJ on October 23, 2003³⁰ and determined that they did not fully meet the requirements of paragraph U46.

Current Assessment of Compliance

The DPD's revised witness identification policy³¹ was being reviewed by the DPD's management as of the end of the current quarter. As such, it has yet to be provided to the BOPC for review and comment, posted to the DPD's website for public review and comment, or submitted to the DOJ for review and approval, as required by paragraph U47.

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraph U46.

Paragraph U47 – Submission to DOJ within 3 months

Paragraph U47 requires the DPD to develop revised witness identification and questioning policies within three months of the effective date of the UOF CJ. The revised policies must be submitted for review and approval of the DOJ. The DPD must then implement the revised witness identification and questioning policies within three months of the review and approval of the DOJ.

Background

The Monitor assessed the DPD's compliance with paragraph U47 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance. The Monitor concluded that the DPD was in non-compliance based on inadequate existing policy, inadequate proposed policy and the retraction of proposed policy for review from the DOJ.

Current Assessment of Compliance

As described above in the current assessment of paragraph U46, DPD management was reviewing the revised Witness Identification policy as of the end of the current quarter. The revised policy will be forwarded to the DOJ for review and approval once it is approved by DPD management.

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraph U47.

³⁰ The DPD subsequently retracted the policy and withdrew it from DOJ and/or the Monitor's review.

³¹ This revised policy is currently referred to as "The Crime Scene Investigation Policy, Directive 203.1."

Paragraph U48 – Documentation of Interviews and Interrogations

Paragraph U48 requires the DPD to memorialize all interviews, interrogations and conveyances during the shift in which the police action occurred. The DPD is also required to document, on a separate auditable form, any interrogation, interview or conveyance in violation of DPD policy within 12 hours of the event.

Background

The Monitor assessed the DPD's compliance with paragraph U48 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance primarily based on the fact that current policy failed to require the documentation of interviews, interrogations and conveyances.

Current Assessment of Compliance

As described above in the current assessment of paragraph U46, DPD management was reviewing the revised Witness Identification policy as of the end of the current quarter. In addition, the DPD revised the Witness Identification and Questioning auditable form based on recommendations made in the Monitor's first quarterly report.³² According to the DPD, the revised policy and form will be forwarded to the DOJ for review and approval once they are approved by DPD management.

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraph U48.

D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance based upon the DPD's failure to implement required policy and procedures within the time frame specified in the UOF CJ, as well as shortcomings in the proposed policy and a required form. However, the Monitor was encouraged by the progress made in complying with the requirements of this section.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.

³² As discussed previously, on June 25, 2004, the Monitor provided formal interim technical assistance to the DPD on the development of several UOF CJ auditable forms, including this form. The majority of the final policies upon which these auditable forms should be based have not yet been submitted to the Monitor. Additional revisions to the auditable forms may be necessary depending on the content of the final policies.

E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance based upon the DPD's failure to implement required policy and procedures within the time frame specified in the UOF CJ.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.

F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance primarily due to the fact that revised policies had not yet been submitted and current policies failed to address all of the requirements of this section.

The Monitor is schedule to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.

G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance primarily due to the fact that revised policies had not yet been submitted and current policies failed to address all of the requirements of this section.

The Monitor is schedule to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.

H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises only paragraph U58. The Monitor assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2003, finding the DPD in non-compliance. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U58 – Revision of Policy

Paragraph U58 mandates the DPD to revise its arrest and detention documentation to require, for all arrests, a record or file to contain accurate and auditable documentation of:

- a. The individual's personal information;
- b. Crime(s) charged;
- c. Date and time of arrest and release;
- d. Date and time the arraignment warrant was submitted;
- e. Name and badge number of the officer who submitted the arraignment warrant;
- f. Date and time of arraignment;
- g. Date and time each warrant was lodged and cleared, if applicable; and,
- h. Custodial status e.g. new arrest, material witness or extradition

Background

The Monitor assessed the DPD's compliance with paragraph U58 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance based on the fact that the applicable forms utilized by the DPD failed to capture much of the information required by the paragraph.

Current Assessment of Compliance

During the current quarter, in an attempt to gain a better understanding of the flow of documentation created pursuant to an arrest, the Monitor requested and reviewed a limited sample of Preliminary Complaint Reports (PCR), logs and Intake Forms. Consistent with the Monitor's prior review, much of the information required by paragraph U58 is readily available at the time of arrest but is either not recorded or recorded on several different forms, making it extremely time-consuming and virtually impossible to review for proper recording.

In its Report for the Quarter Ending November 30, 2003, the Monitor recommended that the DPD modify current forms to require the capture of required information on as few forms as practicable. The DPD is currently in the process of revising its PCR pursuant to this recommendation, recognizing that the current process does not adequately capture required information.

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraph U58.

I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The findings of non-compliance were primarily due to the fact that the relevant policies and protocols had not yet been submitted.

The Monitor is schedule to again assess the DPD's compliance with paragraph U60 during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with paragraph U59 during the current quarter. The results of our current assessment follow.

Paragraph U59 – Commanding Officer Review

Paragraph U59 requires all DPD Commanders of a precinct and, if applicable, of the specialized unit to review in writing all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought. The commander's review shall be completed within 7 days of receiving the document reporting the event, and shall include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

Background

The Monitor assessed the DPD's compliance with paragraph U59 for the first time during the quarter ending February 29, 2004. The Monitor concluded that the DPD was in non-compliance due to the fact that underlying policies addressing the paragraph's requirements had not been finalized as of the end of the quarter.³³

Current Assessment of Compliance

According to the DPD, the requirements of paragraph U59 have been incorporated into its Arrest Policy, which was reviewed and approved by the DPD and the BOPC.³⁴ The Monitor determined that the arrest policy does not include all of the requirements of paragraph U59.³⁵ The DPD has not finalized other policies that may be relevant to the commander's review under

³³ The policy had been submitted to the Chief of Police, whose review and approval was pending as of the end of the quarter.

³⁴ Please refer to the Current Assessment of Compliance for paragraphs U42-43 for additional information regarding the Arrest Policy.

³⁵ For example, as described above in connection with our assessment of U42, the policy does not adequately address or establish the process for reporting arrests where an arraignment warrant was not sought. The failure to adequately report such arrests precludes the DPD from ensuring that they are reviewed by a Commander.

paragraph U59, including the investigatory stop and frisk and witness identification and questioning policies.³⁶

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraph U59.

IV. EXTERNAL COMPLAINTS

This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the OCI and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.³⁷

Section IV's introductory section comprises paragraphs U61-63. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003. The Monitor also assessed compliance with paragraph U62 during the quarter ending February 29, 2004.

The Monitor again assessed the DPD's compliance with paragraphs U61-63 during the current quarter. The results of our current assessment follow.

Paragraph U61 – Revision of External Complaints Policy

Paragraph U61 requires the DPD and City to revise their external complaint policy to clearly delineate the roles and responsibilities of OCI and the DPD regarding the receipt, investigation and review of external complaints. At a minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints.

³⁶ As described above under the current assessment of compliance with paragraph U45, during the current quarter, the DPD provided a draft audit report of its findings in connection with its Stop and Frisk audit. Inclusive in the audit were steps that attempted to determine whether a commanding officer's review occurred once a stop or frisk was conducted without established reasonable suspicion and, if so, whether the review was timely documented, complete, and resulted in any actions or recommendations. The audit's preliminary finding was that the DPD was in 100% non-compliance with the requirements of paragraph U59. Again, given that this was a draft audit, which has also been withdrawn by the DPD, the Monitor has not considered the audit's findings in evaluating compliance with paragraph U59.

³⁷ The OCI reports to the BOPC and is responsible for conducting all external complaint investigations.

Background

The Monitor last assessed the DPD's compliance with paragraph U61 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that policy addressing the requirements of the paragraph was not finalized as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the external complaint policy required by paragraph U61 has been included in the Citizen Complaint Policy, Directive 102.6, which is currently being revised. The DPD has indicated that this revised policy will be completed during the quarter ending August 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U61.

Paragraph U62 – Informational Campaign

Paragraph U62 requires the DPD and the City to develop and implement an informational campaign regarding external complaints including:

- a. informing persons they may file complaints regarding the performance of any DPD employee;
- b. distributing complaint forms, fact sheets and informational posters at City Hall, OCI, all DPD precincts, libraries, on the internet and, upon request, to community groups and community centers;
- c. broadcasting public service announcements that describe the complaint process; and
- d. posting permanently a placard describing the complaint process, with relevant phone numbers, in the lobby of each DPD precinct.

Background

The Monitor last assessed the DPD's compliance with paragraph U62 during the quarter ending February 29, 2004, finding the DPD in non-compliance as the DPD had not satisfied all of the requirements of subparagraphs b through c.

Current Assessment of Compliance

62a Informing persons that they may file complaints

The methods by which the DPD will inform persons that they may file complaints regarding the performance of any DPD employee are included under subparagraphs U62b-d. The Monitor will not be conducting a separate assessment of compliance with this subparagraph.

62b Distribution of complaint forms, fact sheets and informational posters

During March 2004, the Monitor evaluated the DPD's external complaint informational campaign at each of the thirteen precincts, ten neighborhood city halls, and on the internet. The Monitor determined that all thirteen precincts have posted complaint informational posters as required by paragraph U62b. Seven of ten neighborhood city halls have posted informational posters as required by paragraph 62b. Although a complaint form and fact sheet were included on the DPD's internet site, there was no informational poster.³⁸

The DPD submitted the informational brochure/contact form, fact sheet, informational placard, and electronic bulletin board posting form to the DOJ and the Monitor with a cover letter dated May 19, 2004. The Monitor will review these submissions to determine whether they comply with the requirements of this paragraph.³⁹ The contact form is for DOJ review and approval and is discussed separately under paragraph U63.

62c Informational Campaign Broadcasts

The Monitor evaluated the public service announcement (PSA) revised by the OCI that describes the complaint process, as required by paragraph 62c, and determined that the revised announcement has been improved significantly. However, the Monitor recommends that the PSA specifically inform citizens that complaints forms, in addition to the other informational items, are available at City Hall and libraries and may be mailed, faxed or dropped off at any DPD precinct, bureau, section or unit or at the OCI.⁴⁰ The citizens should understand that they may use the various means available to file a complaint or a compliment and are not limited to one method or another.

The PSA should also make citizens aware that all officers in patrol cars have informational brochures and contact forms available while on duty. Finally, the citizens should be informed that if they would like for the OCI to contact them to take a complaint, they can submit a contact form by hand, mail or fax to OCI or to any DPD precinct, bureau, section or unit and the OCI will contact the citizen upon receiving the form.

62d Informational Campaign Placards

In March 2004, the Monitor evaluated the DPD's external complaint informational campaign, including the posting of complaint information placards, at each of the thirteen precincts and found that two of the thirteen precincts did not have complaint informational placards

³⁸ Given that the DPD was found to be in non-compliance with the requirements of this paragraph, the Monitor did not conduct site visits at each of the 23 city library branches. These and other relevant site assessments will be conducted during the next scheduled assessment of compliance with this paragraph.

³⁹ The DOJ provided the DPD with comments and recommendations for revisions to these materials on June 23, 2004 (after the end of the current quarter).

⁴⁰ The PSA states that *information regarding making complaints* may be found at City Hall and libraries and, upon request, at community groups and community centers. In addition to information regarding making complaints, paragraph U62b requires that complaint forms be available at these locations.

permanently posted in their lobbies. The OCI was made aware of the missing placards and informed the Monitor that the placards would be replaced.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U62.⁴¹

Paragraph U63 – Informational Brochures and Contact Forms

Paragraph U63 requires all officers to carry informational brochures and contact forms in their vehicles at all times while on-duty. The DPD must develop a contact form within 60 days of the effective date of the UOF CJ and submit it for review and approval of the DOJ. This contact form must be implemented within 60 days of the review and approval of DOJ. The DPD must require all officers to inform an individual of his or her right to make a complaint, if an individual objects to an officer's conduct. The DPD must prohibit officers from discouraging any person from making a complaint or refusing to take a complaint.

Background

The Monitor last assessed the DPD's compliance with paragraph U63 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the contact form was not approved by the DOJ as of the end of the quarter.

Current Assessment of Compliance

The informational brochure and contact form required by paragraph U63 was developed by the OCI during the current quarter. The DPD and OCI resubmitted the revised informational brochure, including the contact form, to the DOJ for review and approval with a cover letter dated May 19, 2004.⁴² At the end of this quarter, the DOJ was in the process of reviewing the submission.⁴³

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U63.

A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003. The Monitor

⁴¹ Given that subsections b-d are essentially independent of each other, and it is possible for the DPD to achieve compliance with one subsection but remain in non-compliance with another, the Monitor intends to assign separate compliance grades for each subsection in future reports.

⁴² Paragraph U63 requires that the contact form be submitted to DOJ for review and approval. Information concerning the dates of previous submissions of these documents to the DOJ and comments received from the DOJ to the DPD are included in the Monitor's Report for the Quarter Ending November 30, 2004.

⁴³ On June 23, 2004 (after the end of the current quarter), the DOJ provided the DPD with comments and recommendations for revisions to these materials.

again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessment follow.

Paragraph U64 – Policies Regarding Intake and Tracking

Paragraph U64 requires the DPD and City to revise their policies regarding the intake and tracking of external complaints to define complaint and misconduct as those terms are defined in this Agreement and require all officers and OCI employees to accept and document all complaints filed in writing or verbally, in person or by mail, telephone (TDD), facsimile or electronic mail.

Background

The Monitor last assessed the DPD's compliance with paragraph U64 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the policies that address the paragraph's requirements were not finalized as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the policies required by paragraph U64 have been included in the Citizen Complaint Policy, Directive 102.6, which is currently being revised. The DPD has indicated that this revised policy will be completed during the quarter ending August 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U64.

Paragraph U65 – Factual Account by Intake Officer

Paragraph U65 requires the DPD and the City to permit the intake officer or employee to include a factual account and/or description of a complainant's demeanor and physical condition but not an opinion regarding the complainant's mental competency or veracity.

Background

The Monitor last assessed the DPD's compliance with paragraph U65 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the policies or procedures that address the paragraph's requirements were not finalized as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the requirements of paragraph U65 have been included in the Citizen Complaint Policy, Directive 102.6, which is currently being revised. The DPD has indicated that this revised policy will be completed during the quarter ending August 31, 2004. However, since this paragraph does not explicitly require a policy change and the OCI has included this

information in its SOP, during the current quarter the Monitor assessed whether the OCI is complying with the paragraph's requirements.⁴⁴

The Monitor reviewed a random sample of all OCI investigations that were completed in April 2004. There were 130 investigations that were completed by the OCI in April 2004; with complaint dates ranging from December 2002 through March 2004, of which 56 were selected for review. The allegations underlying the investigations varied, although the vast majority were for service, demeanor and procedure and there were several for force and arrest.

The Monitor reviewed the investigative files to assess the OCI's compliance with paragraphs U65, U66, U68 and U69.⁴⁵ The Monitor also evaluated compliance with paragraphs U67b, g and h.⁴⁶

With regard to paragraph U65, the Monitor determined that in some instances the complaint forms contained factual accounts and/or descriptions of the complainant's physical condition.⁴⁷ None of the complaint forms contained opinions regarding the complainant's mental competency or veracity.

Although the complaint forms indicate that intake officers are following the requirements of paragraph U65 in the sample of investigations that were reviewed by the Monitor, the DPD has not yet provided written policy or procedure to its intake officers regarding the requirements of paragraph U65.⁴⁸

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U65.

Paragraph U66 – Unique Identifier

Paragraph U66 requires the DPD and the City to assign all complaints a unique identifier, which shall be provided to the complainant, and a description of the basis for the complaint.

⁴⁴ Intake officers or employees include DPD supervisors at the precincts and designated personnel at OCI. The OCI SOP is applicable to OCI only. The DPD intends to include the specific requirements of this paragraph in the revised Citizen Complaint Policy. Therefore, compliance with this paragraph cannot be achieved until the policy is effectively developed and implemented.

⁴⁵ These paragraphs do not explicitly require policy revisions.

⁴⁶ Although paragraph U67 requires policy revisions, the Monitor reviewed these subparagraphs to assess whether the OCI is currently carrying out these requirements.

⁴⁷ The Monitor understands that complaints are taken at OCI or DPD by supervisors or designated employees. There is space at the bottom of the complaint form for the intake officer to provide a factual account and/or description of the complainant's demeanor and physical condition.

⁴⁸ As previously stated, the OCI SOP does not apply to DPD officers. Although the current unrevised Citizen Complaints Policy provides some guidance, it does not include all of the requirements of paragraph U65.

Background

The Monitor last assessed the DPD's compliance with paragraph U66 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the policies or procedures that address the paragraph's requirements were not finalized as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the requirements of paragraph U66 have been included in the Citizen Complaint Policy, Directive 102.6, which is currently being revised. The DPD has indicated that this revised policy will be completed during the quarter ending August 31, 2004. However, since this paragraph does not explicitly require a policy change and the OCI included this information in its SOP, during the current quarter the Monitor assessed whether the DPD was complying with the paragraph's requirements by reviewing a random sample of all OCI investigations completed in April 2004.⁴⁹

The Monitor's review determined that in every instance the OCI assigned all complaints a unique identifier, which was provided to the complainant along with a description of the basis for the complaint. All of the investigative files reviewed were assigned a Citizen Complaint Report (CCR) number. Each file contained a copy of a letter addressed to the complainant at the address that was provided by the complainant.⁵⁰ The letter included a copy of the complaint that described the basis for the complaint. The letter also notified the complainant of the CCR number. OCI's practice is to send these letters by regular U.S. mail.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U66.

B. EXTERNAL COMPLAINT INVESTIGATION

This section comprises paragraphs U67-69. The Monitor assessed the DPD's compliance with paragraphs U67 and U68 for the first time during the quarter ending November 30, 2003. During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U67 and U68, and assessed compliance with paragraph U69 for the first time. The results of our current assessment follow.

⁴⁹ As described above, in the current assessment of paragraph U65, the Monitor utilized the same sample to assess compliance with paragraphs U65; U66; U67(b), (g) and (h); U68; and U69.

⁵⁰ In many of the investigations, the investigator contacted the complainant to follow-up on various aspects of the complaint. In subsequent quarters, the Monitor will follow up with some of the complainants to determine whether they received the letter described in this paragraph. However, the OCI is required to investigate the complaint even if the complainant is unavailable.

Paragraph U67 – Revision of External Complaint Investigations Policy

Paragraph U67 requires the DPD and the City to revise its policies regarding external complaint investigations to:

- a. provide that all complaints be referred for investigation and resolution by OCI or, if the complaint alleges potentially criminal conduct by an officer, by IAD;
- b. permit informal resolution of complaints alleging only inadequate service or the complainant's innocence of a charge and require the investigation and resolution of all other complaints;
- c. refer all complaints to appropriate agency within five business days;
- d. require complainant be periodically kept informed of complaint status;
- e. develop written criteria for IAD and OCI investigator applicants;
- f. implement mandatory pre-service and in-service training for all IAD and OCI investigators;
- g. require IAD and OCI to complete all investigations within 60 days of receiving the complaint; and
- h. upon completion of investigation, the complainant shall be notified of its outcome.

Background

The Monitor last assessed the DPD's compliance with paragraph U67 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that Directive 102.6 "Filing Citizen Complaints," which will include the requirements of this paragraph, was still under review by the DPD as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the policies required by paragraph U67 have been included in the Citizen Complaint Policy, Directive 102.6, which is currently being revised. The DPD has indicated that this revised policy will be completed during the quarter ending August 31, 2004. Although this paragraph requires a policy change that has not yet taken place, in its review of OCI investigations completed in April 2004,⁵¹ the Monitor evaluated subparagraphs b, g and h.

In reviewing compliance with paragraph U67b, the Monitor determined that 17 of the 56 investigations involved complaints alleging inadequate service. Nevertheless, the OCI conducted formal investigations and resolutions of these complaints. More recently, over the

⁵¹ As described above, in the current assessment of paragraph U65, the Monitor utilized the same sample to assess compliance with paragraphs U65; U66; U67b, g and h; U68; and U69.

past 8 months, the OCI has been implementing a procedure of allowing for informal resolution of certain complaints as permitted by paragraph U67b.

In reviewing compliance with paragraph U67g, the Monitor determined that only 4 of the 56 investigations were completed within 60 days of receiving the complaint. The majority of the 56 complaints were received in 2003. The average time that it took to complete each investigation was 181 days.

In reviewing compliance with paragraph U67h, the Monitor determined that two months after the close of the investigation letters informing the complainant of the disposition of the investigation were sent out in 22 of the 56 investigations. The letters did not include a statement regarding whether non-disciplinary corrective action or disciplinary action was taken (if applicable). The DPD has not yet implemented a system by which complainants will be informed of disciplinary actions.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U67.

Recommendations

There were approximately 1,800 complaints taken in the year 2003. This year, likely due to the increased informational campaign regarding the external complaint process, the number of complaints appears to be increasing. OCI currently has 22 investigators, 5 sworn personnel and 17 civilians. Although the OCI recently hired two additional investigations, the Monitor is informed that this hiring is not likely to allow it to meet the 60-day deadline required by U67g. The Monitor recommends that the OCI and the DPD determine the reason that it is taking an average of 181 days for investigators to complete complaint investigations.

Paragraph U68 – External Complaint Review Process Time Limits

Paragraph U68 requires the DPD and the City to review and evaluate the external complaint process to require:

- a. the Chief Investigator to complete review of OCI investigations within seven days of supervisor's review;
- b. the Board of Police Commissioners to complete review of OCI investigations within forty-five days of Chief Investigator's review; and
- c. the Chief of Police to complete review of external complaints within seven days of Board of Police Commissioner's review.

Background

The Monitor last assessed the DPD's compliance with paragraph U68 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that Directive 102.6 "Filing Citizen Complaints," which will include the requirements of this paragraph, was still

under review by the DPD as of the end of the quarter. In addition, the OCI attempted to include the requirements of this paragraph in revisions to its SOP. The Monitor determined that the SOP failed to include some of the requirements of paragraph U68 and the related external complaints paragraphs. The OCI was revising the SOP based on the Monitor's recommendations and the requirements of the UOF CJ as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the policies required by paragraph U68 have been included in the Citizen Complaint Policy, Directive 102.6, which is currently being revised. The DPD has indicated that this revised policy will be completed during the quarter ending August 31, 2004. However, since this paragraph does not explicitly require a policy change and the OCI has included this information in its SOP, during the current quarter the Monitor assessed whether the DPD was complying with the paragraph's requirements by reviewing a random sample of all OCI investigations completed in April 2004.⁵²

The Monitor met with members of OCI on April 22, 2004 to discuss the status of compliance with paragraph U68. According to OCI, the Chief Investigator (CI) and the BOPC have been conducting reviews of the external complaint investigations as required by this paragraph. Although the CI does not always meet the 7-day deadline required by paragraph 68a, the BOPC is completing its review within 45 days of the CI's review, as required by paragraph 68b. The DPD has not yet implemented the review of external complaints by the Chief of Police, as required by paragraph 68c.

During the Monitor's review of the sample of 56 investigative files closed in April 2004, it was determined that the OCI complied with paragraph U68a, requiring that the CI complete a review of the OCI investigation, in 51 out of 56 instances. In three instances it was clear that the review was not conducted within 7 days. In the two other instances, it was difficult to determine whether a timely review took place due to a lack of information recorded on the Significant Event Log Sheet.⁵³

In connection with paragraph U68b, it was determined that 41 of the 56 reviews were completed by the BOPC within 45 days of the completion of the CI's review. The amount of review time spent by the BOPC is not tracked directly on the event log, requiring a review of additional documentation to make a determination. Furthermore, at the present time, it appears that 2 of the 5 Commissioners are conducting reviews of the investigations.

Although OCI indicated that the Chief of Police is conducting a review as required by paragraph 68c, there is no method to determine whether the review is taking place within seven days of the BOPC's review based on a review of the OCI's investigative files.

⁵² As described above, in the current assessment of paragraph U65, the Monitor utilized the same sample to assess compliance with paragraphs U65; U66; U67(b), (g) and (h); U68; and U69.

⁵³ This log sheet is included in each investigative file and is meant to be used to document investigative steps taken, including but not limited to sending letters, making phone calls, and conducting interviews.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U68.

Recommendations

Supervisors should ensure that OCI investigators document all investigative steps on the Significant Event Log Sheet. In addition to other tracking mechanisms that should be implemented, the log sheet should also capture the timeline for the BOPC's review and for the Chief of Police's review.

If in fact only 2 Commissioners are conducting the BOPC reviews of investigations, the Monitor recommends that additional Commissioners participate in conducting reviews so that the BOPC can meet the 45-day deadline required by paragraph U68b.

Paragraph U69 –External Complaint Dispositions

Paragraph U69 requires that each allegation in an administrative external complaint investigation be resolved by making one of the following dispositions:

- a. “unfounded,” where the investigation revealed no facts to support that the incident complained of actually occurred;
- b. “sustained,” where a preponderance of the evidence shows that the alleged conduct did occur and the actions of the officer violated DPD policies, procedures or training;
- c. “not sustained,” where there are insufficient facts to decide whether the alleged misconduct occurred; and
- d. “exonerated,” where a preponderance of the evidence shows that the alleged conduct did occur but did not violate DPD policies, procedures or training.

Background

This is the first time the Monitor assessed the DPD's compliance with paragraph U69.⁵⁴

Current Assessment of Compliance

According to the DPD, the policies required by paragraph U69 have been included in the Citizen Complaint Policy, Directive 102.6, which is currently being revised. The DPD has indicated that this revised policy will be completed during the quarter ending August 31, 2004. However, since this paragraph does not explicitly require a policy change and the OCI has included this information in its SOP, during the current quarter the Monitor assessed whether the DPD was complying with the paragraph's requirements by reviewing a random sample of all OCI

⁵⁴ The Monitor deferred its assessment of paragraph U69 during the previous quarter pending further reviews to determine whether investigators are being trained on the required dispositions and whether they are being implemented in external complaint investigations.

investigations completed in April 2004.⁵⁵ The Monitor also met with members of the OCI on April 22, 2004 to discuss the status of compliance with paragraph U69. The OCI submitted its revised SOP to the BOPC for review; it was approved on April 29, 2004. The OCI plans to provide informal in-house training on the SOP on an ongoing monthly basis.⁵⁶

The Monitor's review of the sample of 56 OCI investigations that were completed in April 2004 revealed that all of the investigations were resolved by using one of the four dispositions required by paragraph U69. The Monitor has not yet evaluated whether the dispositions were appropriate in light of the facts of each investigation that was reviewed.⁵⁷

Based on the foregoing, the Monitor has not yet completed its assessment of the DPD's compliance with paragraph U69.

⁵⁵ As described above, in the current assessment of paragraph U65, the Monitor utilized the same sample to assess compliance with paragraphs U65; U66; U67(b), (g) and (h); U68; and U69.

⁵⁶ In the interim, the revised OCI SOP has been provided to investigators for review and implementation.

⁵⁷ The Monitor will fully review the substance of a sample of investigative files once the DPD promulgates the investigative policies and finalizes investigative procedures required by various paragraphs in the UOF CJ.

V. GENERAL POLICIES

This section of the UOF CJ (paragraphs U70-77) requires the DPD to develop, revise, and/or enforce a variety of general policies. The DPD is required to ensure that all terms are clearly defined in policies that it develops, revises, and augments, and to make proposed policy revisions available to the community.

This section also requires the DPD to advise its personnel that taking police action in violation of DPD policy will subject them to discipline, possible criminal prosecution, and/or civil liability. In addition, the DPD must enforce its policies requiring all DPD officers to report misconduct committed by another DPD officer.

The DPD must also revise its policies regarding off-duty officers taking police action, revise its policies regarding prisoners and develop a foot pursuit policy. Finally, the DPD and the City are required to develop a plan for adequate deployment of supervisors in the field.

The Monitor assessed the DPD's compliance with paragraphs U70-71 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

The Monitor assessed the DPD's compliance with paragraphs U72-77 for the first time during the quarter ending February 29, 2004. The Monitor found the DPD in non-compliance with paragraphs U74-77, primarily due to the fact that the relevant policies had not yet been fully developed or submitted for approval. The Monitor withheld a determination of compliance in connection with paragraphs U72-73, pending the production of additional information. The Monitor received the required information and assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U72-77 during the quarter ending August 31, 2004.

Paragraph U70 – General Policies

Paragraph U70 requires the DPD to ensure that all terms contained within the UOF CJ are clearly defined when developing, revising and augmenting policies.

Background

The Monitor assessed the DPD's compliance with paragraph U70 for the first time during the quarter ending November 30, 2003. The Monitor concluded that the DPD was in non-compliance with the paragraph based on the fact that DPD policy revisions, and resulting definitions, were incomplete.

Current Assessment of Compliance

During the current quarter, the Monitor queried the DPD regarding the status of the revision and/or creation of policy and procedure to address the requirements of the UOF CJ. The Monitor determined that although the DPD has progressed in formulating and revising policy and procedure, most policy and procedure had yet to be finalized as of the end of the quarter.

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraph U70.

Paragraph U71 – Proposed Policy for Community Review and Comment

Paragraph U71 requires the DPD to continue to make available proposed policy revisions to the community for review, comment and education. The DPD must also publish proposed policy on its website to allow for comment directly to the DPD.⁵⁸

Background

The Monitor evaluated the DPD's compliance with paragraph U71 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

During the previous quarter the Monitor noted that the DPD posted proposed policy to its website that was not yet approved by either the BOPC, or where appropriate, the DOJ. The DPD removed the proposed policy after it retracted policy revisions submitted to the DOJ on November 25, 2003.

Current Assessment of Compliance

During the current quarter members of the Monitor's team met with the Executive Director of the BOPC to gain a better understanding of the methods by which the DPD informs the public of proposed policy and provides avenues for public response and input.

Every Thursday the BOPC conducts a meeting at which proposed policy, among other issues, is discussed. All Board meetings are open to the public, with one meeting per month designated as a "Community Outreach" meeting, which is held in one of the DPD's precinct areas. Minutes are maintained for each meeting. The BOPC is notified that proposed policy is available for review on the Thursday following its submission.⁵⁹ The proposed policy is provided to all Board members and then it is presented to the Board by the DPD. After the presentation, the proposal is open for discussion at all BOPC meetings while it is simultaneously disseminated to community city halls and posted on the DPD website.

⁵⁸ Paragraph C61 in the COC CJ mirrors the language of paragraph U71.

⁵⁹ Policy is submitted to the BOPC only once it has been reviewed and approved by the Chief of Police.

Once posted to the website, anyone accessing the website can point and click to respond to the BOPC with comment, question or concern. The BOPC regularly monitors its e-mail during business hours. To date, the BOPC has not received any comment or feedback from the public either via regular mail or e-mail. The only comments to-date occurred at BOPC meetings open to the public.

Should a citizen provide comment via e-mail, the Executive Director's protocol is to acknowledge receipt of the e-mail and provide the citizen's comments to the BOPC two days prior to the next scheduled meeting, along with other items scheduled for review. The Executive Director would analyze the comment and provide a copy of the comment and any recommendations to the BOPC. Copies of all citizen comment will be filed with the respective policy change documentation. In addition, the protocol calls for the BOPC to notify citizens regarding the outcomes of their comments.

Although the Executive Director's protocol for identifying, addressing and responding to citizen comment appears to be an adequate approach, unfortunately, it is not memorialized in writing. Rather, it is a process in place within the unit that is familiar to staff, but known only verbally. The Executive Director is aware of this deficiency and has expressed his commitment to memorialize procedure and protocol with regard to the receipt of public comment.

Based on the foregoing, although the DPD has implemented the requirements of this paragraph, it is in non-compliance with its policy and training requirements.⁶⁰ As a result, the Monitor finds the DPD in non-compliance with paragraph U71.

Paragraph U72 – Police Action in Violation of DPD Policy

Paragraph 72 requires the DPD to advise all officers and supervisors that taking police action in violation of DPD policy shall subject officers to discipline, possible criminal prosecution and/or civil liability.

Background

The Monitor attempted to assess the DPD's compliance with paragraph U72 for the first time during the quarter ending February 29, 2004. The Monitor withheld a determination of compliance pending further evaluation of the notification process to "all officers and supervisors" as required by paragraph U72.

Current Assessment of Compliance

As described in our Report for the Quarter Ending February 29, 2004, the Civil Rights Integrity Bureau (CRIB) submitted a message order on January 15, 2004 to issue a Department Teletype,

⁶⁰ In this instance "policy and training" refers to a written policy, procedure, protocol, training bulleting or other method that the DPD must develop to ensure the sustained adherence to the requirements of this paragraph.

TT-229.⁶¹ The purpose of this administrative message was to “advise all officers, including supervisors, that taking police action in violation of DPD policy shall subject officers to discipline, possible criminal prosecution, and/or civil liability.” TT-229 was officially distributed, Department-wide, on January 15, 2004. Instructions on the teletype indicated that it was to be read at seven (7) consecutive roll calls and placed in the command’s pinchback.⁶² The Monitor commends the DPD for taking this interim action.

During the current quarter the Monitor requested additional information on how exactly the DPD ensures all officers are notified of new policies. The DPD advised that offices are effectively informed of the requirements of U72 through Directive 101.1 entitled the “Directive System.” Directive 101.1 indicates that an administrative teletype is a communication to department personnel relative to operation of the department. The directive also states that “Administrative teletypes may affect department procedures on an interim basis.” As noted above, the DPD has indicated its intention to include the information in paragraph U72 and in TT-229 in the revised Code of Conduct, Directive 102.3. In the meantime, the administrative message is the only means by which this information has been disseminated.

The DPD also highlighted the portion of Directive 101.1 that states, “Failure to abide by the provisions in this manual shall be cause for appropriate disciplinary action” to indicate each officer is responsible for “knowing and abiding by th[e] provisions” in the manual. Directive 101.1-3 defines “Departmental Manual” as a “collection of department directives that may be presented in a written book format with binder or in a computer text file.” Once the DPD includes the information in paragraph U72 and TT-229 in a directive, then this portion of Directive 101.1 will be applicable.

The DPD also advised that policies, teletypes, administrative messages and other documents in the directive system are posted on the DPD’s Intranet. However, the DPD advised that although “officers have been made aware through verbal communication of the existence on the DPD Intranet and its content, as of this time there is no directive requiring officers to review the Intranet.”

The Monitor is concerned that officers working undercover or returning to work after an extended leave, sickness, suspension or furlough who have not had the opportunity, per se, to participate in roll calls, to review administrative messages or teletypes posted bulletin boards or filed in pinchbacks may not learn of new communications crucial to the performance of their job as mandated by the Consent Judgment. Given these plausible situations and the absence of a written directive that requires the acknowledgment of new communications, there is a significant risk that officers will make decisions and/or take actions inconsistent with the UOF CJ.

⁶¹ The Inter-Office Memorandum authorizing the issuance of TT-229 was approved by the Chief of Police on January 13, 2004. The DPD’s Risk Management Bureau was copied on the Inter-Office Memorandum that also authorized the RMB to make appropriate changes to the Detroit Police Department’s Manual, Directive 102.3, “Code of Conduct.”

⁶² A pinchback is a notebook that accumulates information to be disseminated at roll call.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U72.

Paragraph U73 – Sergeants in the Field

Paragraph 73 requires the DPD and the City to develop a plan to ensure regular field deployment of an adequate number of supervisors of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

Background

The Monitor attempted to assess the DPD's compliance with paragraph U73 for the first time during the quarter ending February 29, 2004. The Monitor withheld a determination of compliance pending the production of additional information used as the basis for determining supervisory field deployment to achieve compliance with paragraph U73.

Current Assessment of Compliance

As described in our Report for the Quarter Ending February 29, 2004, the DPD issued a memo on December 1, 2003 that instructed all Command Staff in precincts to staff each shift with a minimum of three Sergeants. Specialized Units were instructed to staff each shift with at least one Sergeant. The DPD based this staffing on a standard requiring one supervisor for every five officers. On any given shift the DPD typically deploys five cars per precinct with two officers per car. An additional five officers are assigned to administrative duty within the precinct station. This averages to 15 officers per shift.

During the current reporting period, the DPD provided the Monitor with an article, "*The Structural Dimensions of Community Oriented Police Departments*," and a fact sheet entitled "*Rider's Pattern and Practice Settlement Agreement*" that were the basis for the DPD mandating the staffing of one supervisor⁶³ for every five officers. The article discussed the structural differences between traditional police departments and community-oriented police departments, noting that the latter is a less complex organization with more occupational differentiation and less administrative density. Community-oriented police departments, therefore, operate with a structure of 6.5 officers per supervisor. The fact sheet, though less detailed in explanation, advised that departments should have a lower span-of-control, with one supervisor for every eight officers in Patrol.

In an effort to test whether the DPD was adhering to its self-mandated structure of one supervisor for every five officers, the Monitor requested and received daily attendance records for all precincts and specialized units for all shifts for the month March 2004. A review of select daily reports determined that the DPD adhered to its policy of one supervisor for every five officers for patrol and in most specialized units. However, in the Homicide Section, the Monitor was unable to determine whether each platoon was adequately staffed with at least one supervisor. A

⁶³ The UOF CJ defines a supervisor as any sworn officer at the rank of Sergeant or above.



Office of the Independent Monitor
of the Detroit Police Department

REPORT OF THE INDEPENDENT MONITOR
FOR THE QUARTER ENDING May 31, 2004
Issued July 15, 2004

determination could not be made because the daily attendance sheets for all platoons for all precincts were not complete.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U73.

VI. MANAGEMENT AND SUPERVISION

This section of the UOF CJ (paragraphs U78-105) requires the DPD to devise a comprehensive risk management plan that will consist of a risk management database, a performance evaluation system and an auditing protocol. The plan must also provide a mechanism for the regular and periodic review of all DPD policies, and for the regular occurrence of meetings of DPD management to share information and evaluate patterns of conduct that could potentially increase the DPD's liability. This section of the UOF CJ also includes requirements in connection with the DPD's use of video cameras, as well as the DPD's policy and practices regarding discipline.

The Monitor assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI., for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter, as the majority of related paragraphs from Section VI. were also assessed during the quarter. The results of our current assessment follow.

Paragraph U78 – Development of Risk Management Plan

Paragraph U78 requires the DPD to devise a comprehensive risk management plan, including:

- a. a risk management database (section A. below);
- b. a performance evaluation system (section B. below);
- c. an auditing protocol (section C. below);
- d. regular and periodic review of all DPD policies; and
- e. regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

Background

The Monitor last assessed the DPD's compliance with paragraph U78 during the quarter ending February 29, 2004, finding the DPD in non-compliance.

Current Assessment of Compliance

As explained in the Monitor's Report for the Quarter Ending February 29, 2004, in order to achieve compliance with the requirements of paragraph U78, the DPD must meet the requirements and adhere to the deadlines included in UOF CJ paragraphs that are pertinent to subparagraphs a. through c., as described above. Because the DPD is in non-compliance with the majority of the related paragraphs, a number of which are outlined below, it is also currently in non-compliance with paragraph U78.

A. RISK MANAGEMENT DATABASE

This section comprises paragraphs U79-U90. It provides specific requirements relative to the risk management database, including the development and implementation of a new computerized relational database for maintaining, integrating and retrieving data necessary for the supervision and management of the DPD. While the risk management database is being developed, paragraph U89 requires an interim system to be developed and implemented.

The Monitor assessed the DPD's compliance with paragraphs U80-83, U86-87, and U88a-c for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor assessed the DPD's compliance with paragraphs U79, U85, and U89 for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each.

The Monitor is scheduled to assess the DPD's compliance with paragraphs U84 and U88d. and e. for the first time,⁶⁴ and again assess compliance with paragraphs U85 and U89, during the quarter ending August 31, 2004.

During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U79-83, U86-87 and U88a-c. The results of our current assessments follow.

Paragraph U79 – Expansion of Risk Management Database

Paragraph U79 requires the DPD to enhance and expand its risk management system to include a new computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of the DPD. The DPD must ensure that the risk management database it designs or acquires is adequate to evaluate the performance of DPD officers across all ranks, units and shifts; to manage risk and liability; and to promote civil rights and best police practices. The DPD must regularly use this data for such review and monitoring.

Background

The Monitor last assessed the DPD's compliance with paragraph U79 during the quarter ending February 29, 2004, finding the DPD in non-compliance.

⁶⁴ The Monitor is not scheduled to assess compliance with paragraphs U88f and g until 2005, as the deadlines for compliance with these paragraphs are June 30, 2005 and December 31, 2005, respectively. However, if the DPD makes significant progress on an accelerated schedule, the Monitor will report on it. Paragraph U90 has no specific deadline; the Monitor will assess the DPD's compliance with this paragraph on an as-needed basis, as the DPD's actions pursuant to it are driven by the availability of relevant new technology and its experience with the operational Risk Management database.

Current Assessment of Compliance

As explained in the Monitor's Report for the Quarter Ending February 29, 2004, in order to achieve compliance with the requirements of paragraph U79, the DPD must meet the requirements and adhere to the deadlines included in the UOF CJ paragraphs that are pertinent to the risk management database.⁶⁵ Because the DPD is in non-compliance with many of these paragraphs, most of which were reviewed during the current quarter and are included below, it is also currently in non-compliance with paragraph U79.

Paragraphs U80-83, U86-88a.-c. – Risk Management Database Information; Identifying Information for Officers and Civilians; Data Input Plan; Report Protocol; Common Control Number; Information Maintained in Database; Schedule for Database

Paragraph U80 requires the new risk management database to collect and record the following information:

- a. all UOF reports and UOF investigations;
- b. all canine deployments;
- c. all canine apprehensions;
- d. all canine bites;
- e. all canisters of chemical spray issued to officers;
- f. all injured prisoner reports and injured prisoner investigations;
- g. all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct" or interfering with a city employee;"
- h. all firearms discharge reports and firearms discharge investigations;
- i. all incidents in which an officer draws a firearm and acquires a target;
- j. all complaints and complaint investigations, entered at the time the complaint is filed and updated to record the finding;
- k. all preliminary investigations and investigations of alleged criminal conduct;
- l. all criminal proceedings initiated as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers or agents, resulting from DPD operations or the actions of DPD personnel, entered at the time proceedings are initiated and updated to record disposition;
- m. all vehicle and foot pursuits and traffic collisions;

⁶⁵ Paragraphs U80-88.

- n. all reports regarding arrests without probable cause or where the individual was discharged from custody without formal charges being sought;
- o. all reports regarding investigatory stops and/or frisks unsupported by reasonable suspicion;
- p. all reports regarding interviews, interrogations or conveyances in violation of DPD policy;
- q. the time between arrest and arraignment for all arrests;
- r. all reports regarding a violation of DPD prompt judicial review policy;
- s. all reports regarding a violation of DPD hold policy;
- t. all restrictions on phone calls or visitors imposed by officers;
- u. all instances in which the DPD is informed by a prosecuting authority that a declination to prosecute any crime was based, in whole or in part, upon concerns about the credibility of a DPD officer or that a motion to suppress evidence was granted on the grounds of a constitutional violation by a DPD officer;
- v. all disciplinary action taken against officers;
- w. all non-disciplinary corrective action required of officers, excluding administrative counselling records;
- x. all awards and commendations received by officers;
- y. the assignment, rank, and training history of officers; and
- z. firearms qualification information of officers.

Paragraph U81 requires the new risk management database to include, for each incident, appropriate identifying information for each involved officer (including name, pension number, badge number, shift and supervisor) and civilian (including race, ethnicity or national origin, sex, and age).

Paragraph U82 requires the DPD to prepare, for the review and approval of the DOJ, a Data Input Plan for including appropriate fields and values of new and historical data into the risk management database and addressing data storage. The Data Input Plan must detail the specific fields of information to be included and the means for inputting such data; specify the unit responsible for inputting data; the deadlines for inputting data in a timely, accurate and complete manner; specify the historical time periods for which information is to be input and the deadlines for inputting the data in an accurate and timely fashion; and require that the data be maintained in a secure and confidential manner.

Paragraph U83 requires the DPD to prepare, for the review and approval of the DOJ, a Report Protocol for the risk management database that details the types of routine reports the DPD must generate and pattern identifications the DPD must conduct. The Report Protocol must:

- a. require the automated system to analyze the number of incidents and average level of activity for each individual officer and for all officers in a unit, and to identify patterns of activity for each data category;
- b. establish thresholds for the numbers and types of incidents requiring a review by an officer's supervisor of whether the officer or group of officers is engaging in at-risk behavior; and
- c. require the database to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.

Paragraph U86 mandates that where information about a single incident is entered into the risk management database from more than one document, the risk management database must use a common control number or other equally effective means to link the information from different sources so that the user can cross-reference the information and perform analyses.

Paragraph U87 requires the City to maintain all personally identifiable information about an officer included in the risk management database during the officer's employment with the DPD and for at least five years after separation. Information necessary for aggregate statistical analysis must be maintained indefinitely in the risk management database.

Paragraph U88 requires the DPD to develop and implement the new risk management database according to the following schedule:

- a. within 90 days of the effective date of the UOF CJ, the DPD must submit the Data Input Plan to the DOJ for review and approval within 30 days, and prior to this, share drafts of the Data Input Plan with the DOJ;
- b. by September 30, 2003, the DPD must submit the Report Protocol and Request for Proposals to the DOJ for review and approval within 30 days, and prior to this, share drafts of such documents with the DOJ;
- c. by October 31, 2003, the DPD must issue the Request for Proposals.

Background

The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The draft Data Input Plan, draft Report Protocol and draft Request for Proposals (RFP) that the DPD provided to the Monitor and the DOJ failed to address all requirements of each of the paragraphs. The Monitor met with the Risk Management Group (RMG) on October 3, 2003 and again on November 5, 2003 to provide oral and written recommendations based on the Monitor's review of the documents. In addition, on March 15, 2004, the DOJ provided written comments to the DPD regarding these documents. The DPD indicated that it was revising the documents based on these recommendations and the requirements of the UOF CJ. The revised documents were not submitted to the DOJ for review and approval as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the data to be collected and recorded and the appropriate identifying information for the new risk management database required by these paragraphs have been included in the Comprehensive Risk Management Plan, which was not finalized as of the end of the quarter; the Monitor understands that it is currently being developed by the DPD.

The Monitor met with members of the RMG on April 20, 2004 to discuss the status of compliance with these paragraphs. The Monitor was informed that the RFP has been revised to meet the requirements of applicable paragraphs based on comments from the DOJ and the Monitor. The RFP was submitted to the DOJ for review and approval with a cover letter dated May 19, 2004. The Data Input Plan and Report Protocol have not yet been revised to include comments from the DOJ and the Monitor; the Monitor understands such revisions are ongoing.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U80, U81, U82, U83, U86, U87 and U88a b, and c.

B. PERFORMANCE EVALUATION SYSTEM

This section comprises one paragraph, paragraph U91, which requires the DPD to ensure that performance evaluations for all DPD employees occur at least annually and include consideration of civil rights integrity, adherence to federal constitutional amendments and civil rights statutes and for supervisors, the identification of at-risk behavior in subordinates.

The Monitor assessed the DPD's compliance with this paragraph for the first time during the quarter ending February 29, 2004. The Monitor found the DPD in non-compliance, as its performance evaluation forms did not meet the specific requirements of paragraph U91. The Monitor is scheduled to again assess compliance with this paragraph during the quarter ending August 31, 2004.

C. OVERSIGHT

This section of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process,⁶⁶ which is critical to effective oversight of the DPD and is central to the department's reform efforts. It also mandates that the DPD perform quarterly audits of all precincts and specialized units on certain aspects of policing, including UOF investigations, prisoner injuries, misconduct investigations, arrests, stops and frisks, the handling of witnesses, custodial detention practices, and complaint investigations. This section further requires the DPD to perform periodic random reviews of scout car camera videotapes for training and integrity purposes, conduct periodic random surveys of scout car video recording equipment, and meet regularly with local prosecutors to identify any issues in officer, shift or unit performance.

⁶⁶ Paragraph U92.

Each of these oversight provisions requires the DPD to examine a variety of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

In July 2003, the DPD established the Audit Team (AT) within CRIB, which is responsible for planning and conducting the audits required by UOF CJ paragraphs U94-97. In addition, the AT will review and approve the audits conducted by the audit teams constituted by the Holding Cell Compliance Committee (HCCC), as required by the COC CJ. A civilian Audit Manager is leading the AT, and as of May 31, 2004, the AT comprised seven other civilian auditors and eight sworn members. The HCCC audit team comprised 47 persons from within the DPD, Detroit Health and Wellness Promotion (DHWP)⁶⁷ and the Detroit Fire Department (DFD).

The Monitor last assessed the DPD's compliance with paragraphs U92-99 during the quarter ending February 29, 2004, finding the DPD in non-compliance with all paragraphs except paragraphs U92 (Audit Protocol) and U99; the Monitor withheld determinations of the DPD's compliance with paragraph U92 due to unresolved issues relating to the frequency of audits and with paragraph U99 pending further assessment of the purpose and content of meetings with the Wayne County Prosecutor's Office and verification that they meet the requirements of the paragraph.

During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U92 and U99, and provided TA as requested by the DPD.⁶⁸ The results of our current assessments follow.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U92-U98 during the quarter ending August 31, 2004.⁶⁹

Paragraph U92 – Audit Protocol

Paragraph U92 requires the DPD to develop an Audit Protocol to be used by all personnel when conducting audits. The Audit Protocol must establish a regular and fixed schedule for all audits required by the UOF CJ⁷⁰ to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

⁶⁷ The DHWP was formerly known as the Detroit Department of Health (DDOH). The terms DDOH and DHWP will be used interchangeably in this report.

⁶⁸ TA was provided as required by paragraph U132.

⁶⁹ The Monitor was originally scheduled to assess the DPD's compliance with paragraphs U93, U95a-b and U96 during the current quarter. However, the parties have been discussing modifying the audit frequency requirements, which would impact the Monitor's assessment of these paragraphs. Accordingly, the Monitor has decided to defer evaluating paragraphs U93, 95(a) and (b), and 96 until the quarter ending August 31, 2004.

⁷⁰ This Audit Protocol must also address the audits required by the COC CJ (Paragraphs C65-72).

Background

As reported in the Monitor's Report for the Quarter Ending February 29, 2004, the DPD's AT submitted the finalized Audit Protocol on February 16, 2004.⁷¹ The Monitor reviewed the Audit Protocol and determined that it adequately addressed most of the topics that the Monitor believed should be included; however, due to the timing of its submission (near the end of the quarter), the Monitor did not complete its assessment of the training and implementation aspects of the Audit Protocol. In addition, at the request of the City, the DOJ and the City have been engaged in discussions regarding the modification of the Consent Judgment regarding the required frequency of the audits. Accordingly, the Monitor withheld a determination of compliance with paragraph U92.

Current Assessment of Compliance

During the current quarter, the Monitor continued its evaluation of the Audit Protocol relative to the following issues: training; dissemination of the Audit Protocol; annual declaration relative to compliance and standards; the quarterly audit requirement; and the periodic audit status reporting requirement.

Documentation provided regarding the distribution of and training on the Audit Protocol indicates that all 63 auditors identified by the DPD as persons involved in the conduct of audits have received a copy of the Audit Protocol and have signed the Annual Declaration of Auditing Agreement.⁷² The documentation also indicates that all 63 auditors received training on the content and requirements of the Audit Protocol.

On May 26, 2004, the Monitor attended an internal DPD CRIB AT training session for personnel involved with the conduct of DPD audits. The training, which addressed the policies and guidelines outlined in the Audit Protocol, was thorough and covered issues necessary to ensure quality audits. However, the Monitor noted that the training was very technical, particularly in the area of statistical sampling and Government Auditing Standards. Attendees included sworn and civilian DPD employees, as well as DHWP and DFP employees (i.e. not all professional auditors). Given the target audience, the Monitor considers that the training would have been more effective had it focused on the content of the Audit Protocol applicable to the auditors' tasks.

The Monitor also notes that the Audit Protocol does not reflect a documented program of continuing education, as described in the draft Methodologies provided to the DPD.⁷³ Rather, it indicates that, "...team members will receive training in pertinent areas...[on] an as

⁷¹ The DPD's failure to meet the October 16, 2003 deadline required by Paragraph U145 resulted in a finding of non-compliance for the quarter ending November 30, 2003. Because the Protocol was finalized and submitted during the current quarter, the October deadline has no bearing on compliance for this quarter.

⁷² This Agreement covers issues such as confidentiality, independence, objectivity, and integrity.

⁷³ In developing the Methodologies, the Monitor used the standards reflected in the U.S. General Accounting Office Government Auditing Standards ("GAS").

needed/identified [basis]...” The Monitor considers that ongoing training to the CRIB AT would be preferable to sporadic training and recommends that the Audit Protocol be revised to address this.

The Audit Protocol dated February 16, 2004 includes all audits required to be evaluated by the AT. These audits are set out in a quarterly audit schedule with each audit being required once per annum. The Monitor notes that the parties have been engaged in ongoing discussions regarding modifying the audit frequency requirements, which would impact the Monitor’s compliance evaluations. If the parties’ agreement were to be formalized to require its audits on an annual basis, the schedule reflected in the current Audit Protocol would be adequate. A revision that requires annual audits instead of quarterly audits would also likely defer the deadline for the completion of the AT audits to July 17, 2004.⁷⁴

Finally, the Audit Protocol does not address the requirement for the DPD to “...provide periodic audit status reports to the Chief of Police summarizing the DPD’s overall compliance and progress on each of the audits listed in the Audit Protocol for the recent fiscal year,” also described in the draft Methodologies.⁷⁵ According to the DPD AT, the DPD’s quarterly status report was supposed to provide sufficient information to the Chief of Police regarding the overall compliance and progress of the audits. Rather than providing a quarterly status report to the Chief of Police, the DPD provided a status report to the Independent Monitor and DOJ, which included information relating the status of the audits; the DPD did not provide comments relative to overall compliance, as the audits were not finalized at that time. The Monitor considers that a periodic status report to the Chief of Police that includes overall compliance and progress of the audits is essential for effective management of the Department.

Given the unresolved issues relative to the frequency of audits issue described herein, the Monitor continues to withhold an overall determination of the DPD’s compliance with paragraph U92.

Recommendations

1. The parties should formalize their discussions regarding modifying the audit frequency requirements as soon as possible.
2. The DPD should implement and document an ongoing training schedule for the CRIB AT in future Audit Protocols.
3. The DPD should provide the Chief of Police with either a periodic status report summarizing the DPD’s overall compliance or include that information in the DPD Status Reports; this should also be reflected in future Audit Protocols.

⁷⁴ This represents one (1) year from the date that the Court entered the UOF CJ..

⁷⁵ As described previously, the Monitor used the General Accounting Office GAS in developing the Methodologies.

Paragraph U99 – Regular Meetings with Prosecutors

Paragraph U99 requires the DPD to ensure regular meetings with local prosecutors to identify issues in officer, shift or unit performance.

Background

The Monitor last attempted to assess the DPD's compliance with paragraph U99 during the quarter ending November 30, 2003. According to the DPD, Quarterly Community Prosecution Meetings were held on October 3 and October 8, 2003. However, the Monitor was unaware of any issues that were identified as a result of these meetings, and withheld a determination of compliance with the paragraph pending further reviews to determine whether the meetings comply with its requirements.

Current Assessment of Compliance

The Monitor met with DPD personnel on April 20, 2004 to discuss the status of compliance with paragraph U99. According to the DPD, the Wayne County Prosecutor's Office and the DPD agreed to hold Quarterly Community Prosecution Meetings pursuant to paragraph U99 on the second Thursday of the applicable month, beginning January 2004. An agenda, attendee list and minutes for the meeting held on April 8, 2004 were provided to the Monitor. The documents and discussions with participants indicate that the DPD and local prosecutor's office discussed issues identified in officer, shift and unit performance as required by paragraph U99. The supervisors were tasked with following up on the issues that were identified. The Monitor plans to attend the next scheduled meeting on July 8, 2004⁷⁶ to further evaluate compliance. Furthermore, the Monitor will request information regarding actions taken by the City and the DPD in response to the issues identified at these meetings.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U99.

D. USE OF VIDEO CAMERAS

This section comprises paragraphs U100-102. It requires the DPD to develop a policy on the use of video cameras that provides a systematic approach for activation, recording, review and preservation of video cameras and tapes. Additionally, the DPD is required to repair and replace all non-functioning video equipment. Other paragraphs in the UOF CJ and COC CJ that require periodic random reviews of videotapes and periodic random surveys of recording equipment are U98 and C64, which are also discussed in this report.

Consistent procedures throughout the DPD in this area will facilitate the availability of information for investigative purposes and will assist in the identification of at-risk behavior and

⁷⁶ Upcoming scheduled meeting dates include July 8, 2004; October 7, 2004; and January 13, 2005.

violations of police procedure. These policies will also serve to protect DPD officers by providing an accurate record of encounters with citizens.

The Monitor assessed the DPD's compliance with paragraphs U100-102 for the first time during the quarter ending February 29, 2004. The Monitor determined that the DPD was not in compliance with the requirement to repair or replace all non-functioning video cameras, as the number of functioning pieces of video equipment was inadequate. The Monitor also found that, although the DPD's current policy met the video camera and video recording requirements of paragraphs U101 and U102, the DPD was not effectively implementing that policy. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.

E. DISCIPLINE

This section comprises paragraphs U103-105. It requires the DPD to eliminate the current backlog of disciplinary cases and to establish guidelines and create a scheduling process that will prevent backlogs from developing in the future. In order to provide guidelines for uniformity in discipline, the DPD must create a matrix that establishes a presumptive range of discipline for each type of rule violation.

The Monitor assessed the DPD's compliance with paragraphs U103-105 for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. Although the DPD indicated that it had developed and was reviewing draft policy and a draft discipline matrix intended to meet the requirements of these paragraphs, they had not been submitted as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U103-105 during the quarter ending August 31, 2004.

VII. TRAINING

This section of the UOF CJ (paragraphs U106-123) directs the DPD to coordinate and review all UOF and A&D training to ensure quality, consistency, and compliance with applicable law and DPD policy. Significantly, the DPD must provide annual training for all DPD recruits, officers and supervisors in a number of areas including UOF, arrests and other police-citizen interactions and custodial detention. Furthermore, the DPD must develop a firearms protocol and provide supervisory, investigator and field training. The department must also select and train trainers, evaluate all training, conduct needs assessments, and create and maintain individual training records for all officers. The UOF CJ provides specific requirements for review and reporting on these issues to the Monitor and the DOJ.

In previous reports, the Monitor noted that a substantial portion of the training required under the UOF CJ is based on departmental policy, which was still under revision, and that effective training curricula development must include consultation with the affected commands and with the individuals assigned to draft and/or revise the underlying policies. The Monitor also noted that the DPD Training Bureau is inadequately staffed to develop the number of lesson plans required by the UOF CJ and reported that the need for additional curriculum developers is being discussed internally by the City. In addition, a job description was written and forwarded to the City's Human Resources Department, and preliminary meetings were conducted with Wayne State University to identify curriculum development professionals. The Monitor is unaware of any additional progress by the DPD in connection with these issues during the current quarter.

A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106-111. The Monitor assessed the DPD's compliance with paragraphs U106-109 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor also commenced assessments of paragraphs U110-111 during that quarter.

The Monitor assessed the DPD's compliance with each of the paragraphs U106-111 during the current quarter. The results of our current assessments follow.

Paragraph U106 – Coordination of Training

Paragraph U106 requires the DPD to coordinate and review all UOF and A&D training to ensure quality, consistency and compliance with applicable law and DPD policy. The DPD must conduct regular subsequent reviews, at least semi-annually, and produce a report of such reviews to the Monitor and the DOJ.

Background

The Monitor assessed the DPD's compliance with paragraph U106 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not developed a plan to coordinate and review all UOF and A&D training or to produce a report of such reviews.

Current Assessment of Compliance

As of the end of the current quarter, the DPD was in the process of reviewing training curricula as required by this paragraph. As stated in our Report for the Quarter Ending November 30, 2003, UOF and A&D training curricula cannot be effectively and fully developed, revised or reviewed until the UOF and A&D policies are finalized; the DPD had not yet finalized UOF policy as of the end of the quarter.⁷⁷

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U106.

Paragraph U107 – Michigan Law Enforcement Officers Training Council Standards

Paragraph U107 requires the DPD, consistent with Michigan law and the Michigan Law Enforcement Officers Training Council standards, to:

- a) ensure the quality of all UOF and A&D training;
- b) develop UOF and A&D training curricula;
- c) select and train DPD officer trainers;
- d) develop, implement, approve and oversee all training and curricula;
- e) establish procedures for evaluating all training curricula and procedures; and
- f) conduct regular needs assessments to ensure that training governing UOF and A&D are responsive to the knowledge, skills and abilities of the officers being trained.

Background

The Monitor assessed the DPD's compliance with paragraph U107 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not developed or implemented any of the procedures or processes necessary to accomplish any of the areas outlined in subparagraphs U107a. through f., nor had it fully developed UOF and A&D training curricula as of the end of the quarter.

⁷⁷ One of the A&D policies, the Arrest Policy, was submitted to the Monitor with a cover letter dated April 28, 2004. However, the other A&D policies are still being developed or reviewed.

Current Assessment of Compliance

The Michigan Commission on Law Enforcement Standards (MCOLES) certifies the DPD Training Academy and prepares the recruit curriculum for all basic police training, statewide. According to the DPD, it intends to ensure that UOF and A&D training is conducted in accordance with MCOLES' standards and otherwise comply with the requirements of this paragraph.

The DPD submitted the In-Service Training Protocol to the Monitor with a cover letter dated January 19, 2004. However, as of the end of the quarter, the DPD had yet to finalize all of the UOF and A&D policies and training curricula, nor had it implemented procedures or processes necessary to accomplish many of the requirements of subparagraphs U107a. through f.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U107.

Paragraph U108 – Individual Training Records

Paragraph U108 requires the DPD to create and maintain individual training records for all officers, documenting the date and topic of all pre-service and in-service training completed on or after the effective date of the UOF CJ.

Background

The Monitor assessed the DPD's compliance with paragraph U108 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

The DPD indicated that it will utilize Michigan Commission on Law Enforcement Standards' (MCOLES) Michigan Information and Tracking System (MITN) to meet the requirements of paragraph U108. However, the DPD had not provided training, implemented or audited the system as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, it is currently in the process of entering the individual training information required by this paragraph into the MITN system. In addition, all in-service training sign-in forms have been revised to accommodate a unique MITN number for each officer. However, there is no indication that the DPD has updated individual officer training records documenting all pre-service and in-service training completed on or after July 18, 2003

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U108.

Paragraph U109 – Approved Lesson Plans / Scenario-Based Training

Paragraph U109 requires the DPD to ensure that only mandated objectives and approved lesson plans are taught by instructors and that instructors engage students in meaningful dialogue regarding particular scenarios, preferably taken from actual incidents involving DPD officers, with the goal of educating students regarding the legal and tactical issues raised by the scenarios.

Background

The Monitor assessed the DPD's compliance with paragraph U109 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the In-Service Training Protocols had not been reviewed and approved, nor were subsequent lesson plans and training methodologies developed and approved, as of the end of the quarter.

Current Assessment of Compliance

As of the end of this quarter, the DPD had neither developed nor approved the lesson plans required by various paragraphs in this section of the UOF CJ. Once the DPD develops approved lesson plans, the Monitor will evaluate its training courses to determine whether instructors are teaching mandated objectives and engaging students in meaningful dialogue as required by this paragraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U109.

Paragraph U110 – Civil Lawsuits

Paragraph U110 requires the DPD to meet with the City Law Department on a quarterly basis concerning the conclusion of civil lawsuits alleging officer misconduct. Information gleaned from this process must be distributed to DPD risk management and training staff.

Background

This is the first time the Monitor assessed the DPD's compliance with paragraph U110.⁷⁸

⁷⁸ The Monitor was scheduled to assess the DPD's compliance with paragraph U110 during the quarter ending November 30, 2003 but deferred its assessment pending additional review. The DPD indicated that it completed Directive 101.4-1, which discusses the responsibility of the RMB to liaise with the City Law Department on behalf of the DPD regarding civil lawsuits and that these meetings have been taking place. The Monitor was not provided with additional detail, including meeting dates, attendees or reports. It was unclear whether any information gleaned from this process was distributed to the DPD Risk Management and Training Bureaus and whether action was taken as a result.

Current Assessment of Compliance

According to the DPD, monthly meetings between the DPD and the City Law Department were held on November 3, 2003, January 14, 2004, February 11, 2004, March 30, 2004 and April 20, 2004. The DPD provided informal notes for the meeting that was held November 3, 2003 and memoranda listing the attendees and including meeting notes for the remainder of the meetings. An email agenda was also provided for the March 30, 2004 meeting.

The Monitor reviewed the meeting notes from the two meetings that took place during the current quarter and determined that the DPD and the City Law Department discussed concluded civil lawsuits in which officer misconduct was alleged, as required by this paragraph. The Monitor commends the DPD and the City Law Department for their efforts. However, this paragraph also requires that the information gleaned from these meetings be distributed to DPD risk management and training staff. The Monitor has not been provided with documentation indicating that this has taken place, and notes that even if there were certain members of the RMB or Training Bureau present at the meetings, the information must still be distributed to the RMB and Training staffs.⁷⁹

The Monitor plans to attend the next scheduled meeting to further evaluate compliance.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U110.

Recommendations

The Monitor recommends that attendance sign-in sheets be utilized at all meetings.

The Monitor recommends that the DPD distribute information from these meetings to staff of the Risk Management and Training Bureaus, as required by this paragraph.

Paragraph U111 – Distribution and Explanation of the UOF CJ

Paragraph U111 requires the City and the DPD to distribute and explain the UOF CJ to all DPD and all relevant City employees. The City and the DPD must provide initial training on the UOF CJ to all City and DPD employees whose job responsibilities are affected by it within 120 days of each provision's implementation. Thereafter, the DPD must provide training on the policies contained in the UOF CJ during in-service training.

⁷⁹ The Monitor commends the DPD and the City Law Department for their efforts at discussions concerning the conclusion of civil lawsuits alleging officer misconduct as required by this paragraph based on a preliminary look at the minutes from these meetings.

Background

This is the first time the Monitor assessed the DPD's compliance with paragraph U111.⁸⁰

Current Assessment of Compliance

CRIB and DPD Training Bureau personnel have attended roll calls in all precincts, training officers on, and providing copies of, both Consent Judgments. According to the DPD,⁸¹ it has trained 3,364 sworn officers and 385 civilians on both Consent Judgments.

The Monitor reviewed training curricula and sign-in sheets from the training that was conducted. Of 3,810 DPD sworn employees,⁸² 3,237 or approximately 85% attended training pursuant to paragraph U111.⁸³ The Monitor identified 202 DPD civilian attendees from the sign-in sheets.

The Monitor also reviewed the curricula for the training conducted pursuant to this paragraph. The lesson plan indicated that the DPD would be taking numerous steps to implement an informational campaign regarding the Consent Judgments. The Monitor has requested the following documents/information based on the DPD's lesson plan:

- Minutes/Notes from all ComStat meetings documenting fulfillment of the agreement to continue the CJ educational campaign through the use of ComStat and dates of any upcoming ComStat meetings where CJ educational materials will be presented;
- Documentation of CJ presentations at Precinct Stations (dates and any minutes/notes);
- Lesson plans, attendance forms, and dates of "CO training";
- Copy of the "DOJ Training Video" and previous and future viewing dates and locations;
- Copies of all conversations on the DPD intranet, monitored by the internal coordinator, of internal officer discussion of DOJ issues;
- Copies of all administrative messages to officers (teletypes) related to U111;
- Copies of all Precinct newsletters, departmental newsletters, and other educational materials/information that contain "DOJ educational materials/information";
- Copies of all "pamphlets, brochures, and other informational material developed on the city's internet page";

⁸⁰ The Monitor was scheduled to assess the DPD's compliance with paragraph U111 during the quarter ending November 30, 2003 but deferred its assessment pending review of the training curricula and sign-in sheets from the UOF CJ training, which were received at the end of the quarter.

⁸¹ Third Status Report to the Independent Monitor, for Quarter Ending May 31, 2004.

⁸² The Monitor obtained the total number of sworn DPD employees from a CD submitted by the DPD.

⁸³ These numbers include 123 students in the Academy, 44 of whom attended training.

- Copy of the "Informational brochure to be carried in scout cars";
- Videotape of the "Bullet points on Comcast channels 6 and 10 and referral number for further information" that was included in the educational campaign;
- Records of any calls received for "referral";
- List of "city-wide community relations council meetings" where CJ materials were presented including the dates of prior meetings;
- Schedule of upcoming community relations council meetings where CJ materials will be presented;
- Dates and attendance records of prior presentations to "all new police recruit academy classes";
- Schedule of upcoming presentations to recruit academy classes;
- Attendance records of prior presentations "to department Lieutenants and Sergeants in promotional courses"; and
- Schedule of upcoming presentations to department Lieutenants and Sergeants promotional courses.

It is unclear from the DPD's submission of attendance logs as to whether training was provided to relevant non-DPD City employees.⁸⁴ Additionally, training on the policies contained in the UOF CJ has not taken place during in-service training, as the majority of the policies have not been developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U111.

B. USE OF FORCE TRAINING

This section comprises paragraph U112 only. The Monitor assessed the DPD's compliance with this paragraph for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

The Monitor again assessed the DPD's compliance with paragraph U112 during the current quarter. The results of our current assessment follow.

⁸⁴ Paragraph U111 requires the City and the DPD to distribute and explain the UOF CJ to all DPD and *all relevant City employees* and to provide initial training on the UOF CJ to *all City and DPD employees whose job responsibilities are affected by it.*

Paragraph U112 – Annual UOF Training

Paragraph U112 requires the DPD to provide all DPD recruits, officers, and supervisors with annual UOF training. Such training must include and address the following topics:

- a. the DPD's UOF continuum; proper UOF; decision making; and the DPD's UOF reporting requirements;
- b. the Fourth Amendment and other constitutional requirements, including recent legal developments;
- c. examples of scenarios faced by DPD officers and interactive exercises that illustrate proper UOF decision making, including the use of deadly force;
- d. the circumstances in which officers may draw, display, or point a firearm, emphasizing: officers should not draw their firearms unless they reasonably believe there is a threat of serious bodily harm to the officer or another person; the danger of engaging or pursuing a subject with a firearm drawn; and that officers are generally not justified in drawing their firearms when pursuing a subject suspected of committing only a misdemeanor;
- e. the proper use of all intermediate force weapons;
- f. threat assessment, alternative and de-escalation techniques that allow officers to effect arrests without using force and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units or even letting a subject temporarily evade arrest may be the appropriate response to a situation, even when the UOF would be legally justified;
- g. interacting with people with mental illnesses, including instruction by mental health practitioners and an emphasis on de-escalation strategies;
- h. factors to consider in initiating or continuing a pursuit;
- i. the proper duration of a burst of chemical spray, the distance from which it should be applied, and emphasize that officers must aim chemical spray only at the target's face and upper torso; and
- j. consideration of the safety of civilians in the vicinity before engaging in police action.

Background

The Monitor assessed the DPD's compliance with paragraph U112 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance. Although the UOF training lesson plan, including the course outline and objectives, was submitted to CRIB by the DPD Training Bureau on October 16, 2003 it was not submitted to the Monitor until after the end of the quarter. Again, the Monitor noted its concern that UOF training was developed prior to the completion of the UOF policy revisions called for in the UOF CJ.

Current Assessment of Compliance

The DPD's revised general UOF Policy, Directive 304.2, was not finalized as of the end of the quarter.⁸⁵ As stated in this report and in our previous reports, training curricula cannot be effectively and fully developed until the applicable policies are finalized.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U112.

C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor assessed the DPD's compliance with this paragraph for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

The Monitor again assessed the DPD's compliance with paragraph U113 during the current quarter. The results of our current assessment follow.

Paragraph U113 – Firearms Training Protocol

Paragraph U113 requires the DPD to develop a protocol regarding firearms training that:

- a. ensures that all officers and supervisors complete the bi-annual firearms training and qualification;
- b. incorporates professional night training, stress training (i.e., training in using a firearm after undergoing physical exertion) and proper UOF decision making training in the bi-annual in-service training program, with the goal of adequately preparing officers for real life situations;
- c. ensures that firearms instructors critically observe students and provide corrective instruction regarding deficient firearms techniques and failure to utilize safe gun handling procedures at all times; and
- d. incorporates evaluation criteria to determine satisfactory completion of recruit and in-service firearms training, including: maintains finger off trigger unless justified and ready to fire; maintains proper hold of firearm and proper stance; and uses proper UOF decision making.

Background

The Monitor assessed the DPD's compliance with paragraph U113 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance primarily due to the fact that the firearms protocol was not received until after the end of the quarter and it was developed

⁸⁵ The DPD promulgated its revised Chemical Spray and Firearms policies during the third quarter. These policies were submitted to the DOJ and the Monitor with a cover letter dated May 26, 2004. The DOJ or the Monitor will review these policies for compliance with the relevant paragraphs of the UOF CJ.

prior to the DPD's completion of its use of firearms policy revisions required by paragraphs U20-23. In the Report for the Quarter Ending November 30, 2003, the Monitor noted that although the bi-annual qualification requirement was implemented Department-wide prior to the effective date of the UOF CJ, the DPD lacked an appropriate facility at which to conduct night firearms training required by subparagraph U113b. In addition, training records that will record whether all officers and supervisors complete the bi-annual firearms training and qualification will be contained in the MITN system, which was not yet implemented.

Current Assessment of Compliance

According to the DPD,⁸⁶ the Firearms Training Unit trained 3,573 members on the Firearms Combat Training Course during the months of July through December 2003. As mentioned above, in connection with our assessment of compliance with paragraph U18, the DPD promulgated its Firearms Policy pursuant to paragraphs U20-23 on May 26, 2004. The Firearms Training Protocol is currently being revised.

In addition, as described above, the DPD still lacks an appropriate facility at which to conduct night firearms training required by subparagraph U113b.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U113.

D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

This section comprises paragraph U114 only. The Monitor assessed the DPD's compliance with this paragraph for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

The Monitor again assessed the DPD's compliance with paragraph U114 during the current quarter. The results of our current assessment follow.

Paragraph U114 – Annual Arrest and Police-Citizen Interaction Training

Paragraph U114 requires the DPD to provide all DPD recruits, officers and supervisors with annual training on arrests and other police-citizen interactions. Such training must include and address the following topics:

- a. the DPD arrest, investigatory stop and frisk and witness identification and questioning policies;
- b. the Fourth Amendment and other constitutional requirements, including: advising officers that the "possibility" that an individual committed a crime does not rise to the level of probable cause; advising officers that the duration and scope of the police-citizen interaction determines whether an arrest occurred, not the officer's subjective, intent or belief that he or

⁸⁶ Third Status Report to the Independent Monitor, for Quarter Ending May 31, 2004.

she affected an arrest; and advising officers that every detention is a seizure, every seizure requires reasonable suspicion or probable cause and there is no legally authorized seizure apart from a “Terry stop” and an arrest; and

- c. examples of scenarios faced by DPD officers and interactive exercises that illustrate proper police-community interactions, including scenarios which distinguish an investigatory stop from an arrest by the scope and duration of the police interaction; between probable cause, reasonable suspicion and mere speculation; and voluntary consent from mere acquiescence to police authority.

Background

The Monitor assessed the DPD’s compliance with paragraph U114 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the objectives and lesson plan for the training were not finalized as of the end of the quarter. Again, the Monitor noted that training development could not be completed until the relevant policies are revised pursuant to paragraphs U42-48.

Current Assessment of Compliance

The DPD has not developed the training curricula pursuant to paragraph U114. The training development cannot be completed until the relevant policies are revised pursuant to paragraphs U42-48.⁸⁷

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U114.

E. CUSTODIAL DETENTION TRAINING

This section comprises paragraphs U115-117. The Monitor last assessed the DPD’s compliance with these paragraphs during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance due to the fact that the training required under the paragraphs was based on departmental policy that was still under revision. The Monitor noted that the training could not be effectively implemented until the related policies are completed, approved and implemented.

The Monitor is scheduled to again assess the DPD’s compliance with paragraphs U115-117 during the quarter ending August 31, 2004.

⁸⁷ The DPD recently promulgated the Arrest Policy, which was submitted to the Monitor and the DOJ with a cover letter dated April 28, 2004.

F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with paragraphs U118 and U120 during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance due to the fact that the DPD had yet to develop the curriculum for supervisor training and training on the risk management database.

Although the DPD conducted training classes pursuant to paragraph U119, the Monitor was not provided with the lesson plans and was unable to review their content during the quarter ending February 29, 2004.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U118-120 during the quarter ending August 31, 2004.

G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance due to the fact the relevant training curricula address these paragraph's requirements was not finalized as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U121-122 during the quarter ending August 31, 2004.

H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 29, 2004. During that quarter, the Monitor learned that the DPD completed a protocol to enhance its FTO program and submitted it to the DOJ for approval. According to the DOJ, the submission was received on February 12, 2004 and comments were provided to the DPD on April 20, 2004. Accordingly, the Monitor withheld a determination of compliance with paragraph U123 pending the DOJ's review.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U123 during the quarter ending August 31, 2004.

VIII. MONITORING, REPORTING, AND IMPLEMENTATION

Paragraph U139 – Reopening of Investigations Deemed Incomplete

Paragraph U139 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete provided that the Monitor provides written instructions for completing the investigation and the directive to open the investigation is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this authority concerning any investigation the disposition of which has been officially communicated to the officer who is the subject of the investigation.

Background

This is the first time the Monitor assessed the DPD's compliance with paragraph U139.

Current Assessment of Compliance

This paragraph allows the Monitor to review investigations that have been closed but where the disposition has not been communicated to the officer. It will allow the Monitor to report on whether the DPD is implementing the revised policies, protocols and procedures required by the UOF CJ. The Monitor has not yet reviewed investigations under paragraph U139 since the DPD has not yet revised the majority of the policies and investigatory procedures under the UOF CJ. Once the revised policies and procedures are developed, implemented and the DPD personnel receive training, the Monitor will review investigative files.

Based on the foregoing, the Monitor has not yet assessed the DPD's compliance with paragraph U139.

SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT

This section contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending May 31, 2004. Throughout this section, although the DPD has not submitted policies and procedures for the majority of the paragraphs, due to the importance of evaluating prisoner safety-related issues, the Monitor conducted partial assessments to evaluate the DPD's progress thus far. As the policies, procedures and protocols are developed and finalized, the Monitor will begin to conduct full compliance assessments.

I. FIRE SAFETY POLICIES

This section of the COC CJ comprises paragraphs C14-22. It requires the DPD to develop, implement, and provide training on specific fire safety policies and procedures and develop and implement a comprehensive fire safety program in all DPD facilities that maintain holding cells.⁸⁸

Each of these provisions requires the DPD to examine a variety of issues, but a common theme among them all is the requirement to ensure that adequate fire safety precautions are being undertaken at all facilities that maintain holding cells and that these facilities comply with the Life Safety Code.

During the quarter ending February 29, 2004, the Monitor assessed the DPD's compliance with paragraphs C15-16, and C18-22, finding the DPD in non-compliance with each, except for paragraph C20, which was determined to be in compliance.⁸⁹ The DPD was reviewing the Life Safety inspection reports provided to them by the Detroit Fire Marshall, with the intention of developing a comprehensive remediation and implementation plan; however, as of the end of the quarter, the DPD had not yet completed the plan, nor had it developed a consistent method for ensuring that all fire safety equipment contained within these facilities was routinely inspected, tested and maintained. Additionally, the Interim Fire Safety Measures required by paragraph C18 had not been implemented. The Monitor determined that the DPD was enforcing its No Smoking Policy as required by paragraph C20.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C15, C16, C18 and C19, and assess compliance with paragraphs C14 and C17 for the first time, during the

⁸⁸ The term "holding cell" is defined in the Definitions section of the COC CJ (Section I, Paragraph k) to include any room or area in which individuals in DPD custody are confined, including cells at the DPD precinct stations, specialized units, and the Detroit Receiving Hospital (DRH).

⁸⁹ Paragraphs C14 and C17 have not yet been assessed, as their deadlines for compliance are "within one year of the effective date" of the COC CJ. The Monitor is scheduled to assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2004.



Office of the Independent Monitor
of the Detroit Police Department

REPORT OF THE INDEPENDENT MONITOR
FOR THE QUARTER ENDING May 31, 2004
Issued July 15, 2004

quarter ending November 30, 2004. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C20-22 during the quarter ending August 31, 2005.

II. EMERGENCY PREPAREDNESS POLICIES

This section of the COC CJ comprises paragraphs C23-25. It requires the DPD to develop and implement emergency preparedness plans for all facilities that maintain holding cells. The COC CJ requires that the plan be designed to ensure that each precinct and the entire department have a clear understanding of what actions are required in the event of an emergency.

The Monitor assessed the DPD's compliance with paragraphs C23 and C25 for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. While the DPD had made progress in developing emergency preparedness policies for the facilities that maintain holding cells, it had neither developed, trained nor implemented the new policies and procedures required.

The Monitor assessed the DPD's compliance with paragraph C24 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance. The Monitor again assessed compliance with this paragraph during the current quarter. The results of our current assessment follow.

The Monitor is scheduled to again assess compliance with paragraphs C23-25 during the quarter ending November 30, 2004

Paragraph C24 – Emergency Preparedness Program Development

Paragraph C24 requires the DPD to develop a comprehensive emergency preparedness program, which receives the written approval of the DFD, for all DPD buildings that contain holding cells. The program must be submitted for the review and approval of the DOJ within three months of the effective date of the COC CJ. The program must include an emergency response plan for each building that contains holding cells in the event of a fire-related emergency, that identifies staff responsibilities and key control procedures. The program must also require that fire drills be performed and documented for each building that contains holding cells on all shifts once every six months.

Background

The Monitor assessed the DPD's compliance with paragraph C24 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance. The DPD was documenting the conduct of fire drills and working with each precinct to develop individual precinct fire safety/emergency response plans under the direction of the DFD. The DPD planned to integrate the individual plans into an overall Department-wide emergency preparedness program. However, a comprehensive program for all DPD detention facilities had not been developed as of the end of the quarter.

Current Assessment of Compliance

In its Third Status Report, the DPD indicated that all precincts have completed emergency response plan templates. These documents are based upon a template that was provided to the DPD by the Monitor in January 2004 as technical assistance.⁹⁰ The Monitor understands that the HCCC is currently working with the DFD to develop a Department-wide Emergency Response Plan. The DPD intends to submit the plan to the DOJ for review and approval, as required by this paragraph, during the quarter ending August 30, 2004.

During the current quarter, the Monitor reviewed the DPD's progress in complying with the requirements of paragraph C24 by again conducting on-site visual inspections and interviewing DPD members regarding the DPD's current documentation process and the frequency of occurrence of fire drills.⁹¹ The documentation inspected indicated that the conduct of fire drills is being documented on various forms designed by the individual precincts. Because the DPD has not implemented a standard auditable log to record the performance of fire drills, the information being captured by the precincts inspected is inconsistent and, with the exception of the Third Precinct,⁹² does not include all of the information required by the COC CJ.

According to interviews of DPD supervisors, fire drills are reportedly being conducted on a monthly basis for each shift in all precincts inspected, which exceeds the six-month requirement of paragraph C24.⁹³

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C24.

Recommendation

It is recommended that the DPD finalize and submit the Emergency Response Program to the DOJ for review and approval and adopt a form similar to the one being utilized by the Third Precinct to document all fire drills on a Department-wide basis.

⁹⁰ The Monitor has not received copies of the templates completed by the precincts. Instead, the DPD submitted the *Draft Emergency Response Plan Template* that was provided by the Monitor as an appendix to its Third Status Report.

⁹¹ The Monitor inspected DPD Precincts 1-8 and 13 in connection with paragraph C24.

⁹² The form developed and utilized by the Third Precinct to document their evacuation drills contains all of the information required to be documented by paragraph C24.

⁹³ In all cases, the Monitor spoke with either a lieutenant or the commanding officer of the precinct.

III. MEDICAL AND MENTAL HEALTH CARE POLICIES

This section of the COC CJ comprises paragraphs C26-34. It requires the DPD to develop and implement a medical and mental health care program, which includes a series of policies, procedures and protocols. These policies and procedures must be designed and developed to ensure that the DPD is adequately identifying and responding to the medical and mental health care conditions and needs of its prisoners. The policies and procedures must be approved by a qualified medical and mental health professional. The comprehensive medical and mental health screening program required by paragraph C27 must include specific intake screening procedures and medical protocols (paragraphs C28-29) and must be reviewed and approved by the DOJ prior to implementation.

During the quarter ending November 30, 2003, the Monitor assessed the DPD's compliance with paragraphs C27-34, finding the DPD in non-compliance with each. The Monitor determined that the DPD had responded to the requirements of these paragraphs by working closely with the DHWP and the DRH to develop the required policies, procedures and protocols. However, although the DPD had worked diligently on the issues involved, significant additional effort was required to achieve compliance with the paragraphs included in this section.

During the current quarter, the Monitor assessed the DPD's compliance with paragraph C26 for the first time and again assessed compliance with paragraphs C27-32. The results of our current assessments follow.

Paragraph C26 – Identification and Response for Special Needs

Paragraph C26 requires the DPD to ensure the appropriate identification of and response to prisoners' medical and/or mental health conditions.

Background

The Monitor has not previously assessed the DPD's compliance with the requirements of paragraph C26.

Current Assessment of Compliance

The DPD's compliance with paragraph C26 is dependent on the development of a comprehensive medical and mental health screening program required by paragraphs U27-29. Because the DPD is in non-compliance with paragraphs C27-29, as described below, it is also in non-compliance with paragraph C26.

Paragraph C27 – Screening Program Development

Paragraph C27 requires the DPD to develop and implement a comprehensive medical and mental health screening program that must be approved in writing by a qualified medical⁹⁴ and mental health⁹⁵ professional. Upon their review and approval, the screening program (as part of the comprehensive medical and mental health screening program) must be submitted to the DOJ for review and approval prior to being implemented. Thereafter, the program must be reviewed and approved in writing by a qualified medical and mental health care professional at least once every year, and prior to any revisions to the program.

Background

The Monitor assessed the DPD's compliance with paragraph C27 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not finalized the medical and mental health screening policy as of the end of the quarter. Although the DPD had drafted a new policy with the full cooperation and approval of both a qualified medical professional and a mental health professional, both of whom signed off on the policy, the updated policy was submitted to the Monitor on November 16, 2003 and subsequently withdrawn on November 25, 2003 for further revisions.

Current Assessment of Compliance

The DPD has indicated that it is continuing its efforts to develop a finalized, comprehensive Medical and Mental Health Care Policy that will include the requirements of paragraph C27, and expects this policy to be submitted to DOJ for review and approval during the quarter ending August 31, 2004.

The DPD will be unable to achieve compliance with this paragraph until the entire program is finalized, submitted to DOJ for approval, and implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C27.

Paragraph C28 – Minimum Standards for Screening Program

Paragraph C28 stipulates the minimum required standards that must be implemented in the new DPD detainee screening program. The program must provide a mechanism to enable DPD officers to identify individuals with medical or mental health conditions or who are at risk of committing suicide, have been designated as a suicide risk during prior incarcerations and persons who have contraindications to chemical spray. Furthermore, the process must require

⁹⁴ The term 'qualified medical professional' is defined in the COC CJ as an individual who is currently licensed by the State of Michigan to deliver the health care services they have undertaken to provide.

⁹⁵ The term 'qualified mental health professional' is defined in the COC CJ as an individual who is currently licensed by the State of Michigan to deliver the mental health services they have undertaken to provide.

that the DPD follow a standard intake procedure for each individual entering into DPD custody and require that intake screening be conducted within two hours of intake and through a verbal exchange between the DPD and prisoner. Finally the process must incorporate all health information pertaining to a prisoner acquired by the arresting or transporting officer.

Background

The Monitor assessed the DPD's compliance with paragraph C28 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not finalized a Detainee Intake Form that meets the requirements of paragraphs C27-29. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD was utilizing the interim Detainee Intake Form (form DPD 651 rev 10-03), which mandates that new prisoners be processed within two hours of their intake.⁹⁶ The form was considered an 'interim' response because it did not satisfy the requirements of paragraphs C27-29.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the DPD's progress in complying with the requirements of paragraph C28 by conducting on-site inspections and interviewing detention officers regarding their use of the Interim Detainee Intake Form. The interviews revealed that the interim form is required to be completed within two hours of a prisoner's intake via verbal exchange with the prisoner and provides specific information and questions that prisoners can answer to assist DPD officers in identifying the medical or mental health care needs of their prisoners. Although the interim form adequately addresses some of the requirements for the detainee intake process, the Monitor determined that it does not identify or provide for questioning of the prisoner to address suicide risk from prior incarcerations, nor does it provide for information to be obtained from the prisoner regarding any adverse medical reactions to chemical spray.⁹⁷

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C28.

Paragraph C29 – Minimum Standards for Medical Protocols

Paragraph C29 provides the minimum standards for the medical protocols required under the comprehensive medical and mental health screening program. The protocols must identify the specific actions the DPD must take in response to the medical information acquired during the

⁹⁶ On October 7, 2003, the DPD disseminated teletype 03-06050 which instructs the precincts to utilize DPD 651 (rev10-03).

⁹⁷ The DPD submitted a document entitled Detainee Intake Form (form D.P.D. 651 rev. 4/04) as an appendix to its Third Status Report; this document was received by the Monitor subsequent to the end of the current quarter. Although the Monitor has not yet evaluated the content or implementation of the newly designed form, the DPD remains in non-compliance with paragraph C28 due to the fact that the Interim Detainee Intake form (DPD 651 (rev10-03)), which was found to be deficient, continued to be used by the DPD as of the end of the current quarter.

prisoner screening or detention. They must also require prior supervisory review and written approval, absent exigent circumstances, of all decisions made in response to acquired medical information.

Background

The Monitor assessed the DPD's compliance with paragraph C29 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had neither developed nor implemented a process to track and audit new forms to ensure that all proper information has been acquired and that appropriate actions were taken by Department personnel. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD was utilizing the Interim Detainee Intake Form (form DPD 651 rev 10-03), which did not include instructions to detention officers regarding the appropriate responses to medical information acquired during the initial prisoner screening process.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the DPD's progress in complying with the requirements of paragraph C29 by conducting on-site inspections and interviewing detention officers regarding their responses to medical and mental health information obtained during the intake of prisoners.⁹⁸ The Monitor queried at least one detention officer from each precinct inspected.⁹⁹ In all cases, the detention officers were able to articulate the current DPD practice of requiring the detention officer to notify a supervisor whenever a prisoner either indicates that they have a medical condition or shows signs of a medical or mental health condition. The detention officers also were aware of the current requirement to obtain written supervisory approval prior to taking action in response to prisoner's medical and mental health needs. The Monitor notes that the current DPD practice is to transport all prisoners who have medical or mental health conditions to DRH.

Although the detention officers interviewed were knowledgeable regarding the current procedures, there remain no written instructions or information for DPD detention officers regarding the appropriate responses to medical information acquired during the initial prisoner screening process. Based on the foregoing, the Monitor finds the DPD in non-compliance with the requirements of paragraph C29.

Paragraph C30 – Infectious Disease Policy

Paragraph C30 requires the DPD to develop and implement a policy on infectious disease control, in consultation with qualified medical health professionals. The policy must establish appropriate housing of prisoners believed to have infectious diseases and mandate measures to

⁹⁸ Please refer to the Monitor's assessment of paragraph C28 for additional information regarding the interim and finalized intake form.

⁹⁹ Precincts 1-8 and 13.

prevent the spread of infectious diseases, such as proper handling of bio-hazardous materials. Once implemented, the policy must be reviewed and approved, in writing, by qualified medical health professionals on an annual basis and prior to any changes or alterations to the plan.

Background

The Monitor assessed the DPD's compliance with paragraph C30 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not submitted policy that met the requirements of the paragraph as of the end of the quarter. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD was working through a number of issues regarding the technological and physical requirements involved in developing and implementing the policy required by paragraph C30.

Current Assessment of Compliance

During the current quarter, the Monitor completed a formal document request for the final Infectious Disease Policy in response to paragraph C30. The DPD forwarded a 38-page document entitled "Infectious Disease Control Policy," dated April 1, 2004. Following a cursory review of the policy and on-site inspections of precincts 1-8 and 13, the Monitor discussed the policy with the HCCC. The HCCC indicated that the policy had not been promulgated.¹⁰⁰ As such, compliance with this paragraph could not be achieved.

The on-site precinct inspections revealed that seven of the precincts that were inspected utilize the appropriate containers for disposal, such as needle containers and orange plastic bags labeled as bio-hazard material. However, in one precinct the detention officer said that they did not have needle containers or the orange plastic bags and were told to put bio-hazard material in a paper bag or call a family member of the prisoner to come pick it up. In another precinct, a detention officer could not articulate what to do with tainted clothing.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C30.

Paragraph C31 – Prisoner Health Information Protocol

Paragraph C31 requires the DPD to develop and implement procedures for updating and exchanging prisoner health information. These procedures must ensure that prisoner health information is properly recorded at intake, and that it is readily available to all relevant medical and transporting personnel in a manner consistent with relevant federal and state confidentiality statutes. The procedures must also ensure that prisoners' health information is continually updated to include any additional relevant information acquired during their detention. Furthermore, these procedures must ensure that the information is documented and

¹⁰⁰ During the on-site inspection, the Monitor conducted interviews of detention officers and DPD supervisors regarding their knowledge of the policy. None of the DPD personnel interviewed had received a copy of the Infectious Disease Policy.

communicated between consecutive shifts. Finally, they must ensure that prisoners' health information travels with them when they are transferred to another facility.

Background

The Monitor assessed the DPD's compliance with paragraph C31 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not finalized policy that met the requirements of the paragraph as of the end of the quarter. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD was investigating the use of an 'envelope' or 'packet' system that would allow DPD detention and police officers to note all pertinent medical, safety and security information. This type of system is currently being employed by a number of major urban police departments, and is considered to be an effective means of ensuring that critical information is maintained with a prisoner.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the DPD's progress in complying with the requirements of paragraph C31 by conducting on-site inspections and interviewing detention officers regarding their procedures for updating and exchanging prisoner health information. The detention officers in each precinct that was inspected,¹⁰¹ indicated that the prisoner's health information is recorded on the Interim Detainee Intake Form¹⁰² at the time of intake, any updates that occur during the shift are recorded on the same form, and the exchange of prisoner's health information occurs verbally to oncoming shift detention officers and when an interested DPD member (investigator, transporting officer, supervisor, etc.) opts to read the Detainee Intake Form.¹⁰³

Each detention officers that was interviewed consistently explained that either the original or a copy of the Detainee Intake Form travels with the prisoner when transported. Although the detention officers within the precincts inspected were able to articulate the current procedures, until such time as the DPD develops the relevant procedures, ensures all appropriate DPD personnel receive appropriate training, and demonstrates implementation of the procedures, the DPD will remain in non-compliance with paragraph C31.

Paragraph C32 – Prescription Medication Policy

Paragraph C32 requires the DPD to develop a Prisoner Prescription Medication Policy in consultation with qualified medical and mental health professionals that ensures prisoners are provided with prescription medications as directed. The policy must be approved in writing by

¹⁰¹ Precincts 1-8 and 13.

¹⁰² Please refer to the Monitor's assessment of paragraph C28 for additional information regarding the interim and finalized intake forms.

¹⁰³ There is currently no policy or procedure that requires an exchange of the detainee's medical or mental health information by DPD personnel.

medical and mental health professionals and submitted to the DOJ for review and approval within three months of the effective date of the UOF CJ. The DPD must implement the policy within three months of the DOJ's approval. Thereafter, the policy must be reviewed and approved, in writing, by qualified medical and mental health professionals on an annual basis and prior to any revisions to the policy.

Background

The Monitor assessed the DPD's compliance with paragraph C32 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that further revisions were required in its Prescription Medication Policy. The Monitor noted that the DPD had not developed a standardized format for the Prescription Medication Logbooks. As such, the individual precincts were determining what information to capture in the logbook. The Monitor was concerned that this could lead to situations in which some precincts did not capture critical information and/or some prisoners would be provided with incorrect medications or dosages.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the DPD's progress in complying with the requirements of paragraph C32 by conducting on-site inspections to compare medication logbook entries to the medications contained in the storage cabinets at the time of the inspections.¹⁰⁴ The results of the visual inspections revealed that in all but one precinct inspected, logbook entries indicated that prisoners were provided with prescription medications as directed on the prescription container.

In one precinct, the Monitor discovered that a prisoner had been given an incorrect dosage of medication. While reviewing the prescription bottles in the medication storage cabinet and comparing them to the prescription medication log, the Monitor noted that the prisoner, who had been placed in an observation cell, had been given a whole pill of the prescribed medication, instead of the one half pill as directed on the prescription bottle. The Monitor immediately notified the detention officer and desk supervisor about the error, and both confirmed that an incorrect dosage had been given to the prisoner.¹⁰⁵ A subsequent review of additional entries in the Prescription log indicated that the correct dosage had been given to the prisoner in succeeding administrations of the prescription. The Monitor also conducted a subsequent review of the desk blotter for that date and determined that the incident had not been recorded. It is unknown whether this information had been passed on to other shifts, DPD members, or the Commanding Officer of the precinct to ensure that appropriate preventative action was taken. As stated in our previous evaluation of this paragraph, it is critical that the DPD finalize the policy,

¹⁰⁴ Precincts 1-8 and 13.

¹⁰⁵ The Monitor also shared this information verbally with CRIB personnel.

standardize procedures and conduct training for its detention officers relating to prescription medications as it will help to prevent future occurrences of this nature.¹⁰⁶

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C32.

Paragraph C33 – Suicide Precaution Clothing

Paragraph C33 requires the DPD to provide appropriate clothing to all individuals placed under suicide watch while in detention.

Background

The Monitor assessed the DPD's compliance with paragraph C33 for the first time during the quarter ending November 30, 2003, finding the DPD in overall non-compliance. The Monitor found that while the DPD had, in fact, provided the appropriate clothing to individuals under suicide watch, it had provided neither a policy nor training for the distribution of the clothing.¹⁰⁷ As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the Monitor determined that the DPD sends all individuals who have been identified as being potential suicide risks to one of four precincts, which are equipped with appropriate observation cells and which had suicide clothing available for high-risk prisoners.¹⁰⁸ However, a review of the DPD policy on Cellblocks did not reference suicide cells or suicide garments for high-risk prisoners.¹⁰⁹ Furthermore, the existing training did not address this issue.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed then DPD's progress in complying with the requirements of paragraph C33 by conducting on-site inspections and interviewing DPD officers to determine if they were familiar with the current procedures regarding suicide clothing. The Monitor also conducted inspections to confirm that the clothing identified for use with prisoners who may be suicidal was in adequate supply. The inspections and interviews revealed that the precincts had an adequate supply of suicide clothing, and in all cases the detention officers

¹⁰⁶ The DPD has indicated that the Prescription Medication Policy will be included in the medical and mental health screening program.

¹⁰⁷ In this instance "policy and training" refers to a written policy, procedure, protocol, training bulletin or other method that the DPD should develop to ensure the sustained adherence to the requirements of this paragraph.

¹⁰⁸ There are two precincts identified as primary precincts (one in the east sector and one in the west sector) and two identified as secondary precincts. Precincts are directed to send all of their suicide watch prisoners to the primary precincts, or to the secondary precincts in the event the suicide watch cells within the primary precincts are unavailable.

¹⁰⁹ According to the DPD, a policy revision that addresses this issue was being drafted and was expected to be available by December 18, 2003; however the Monitor is not aware of any policy revisions submitted in response to this paragraph.

articulated that the clothing is distributed to high-risk prisoners.¹¹⁰ However, until such time that the DPD issues a training bulletin, protocol, directive or procedural guide to ensure that all detention officers are aware of and trained in the procedures, the DPD will be unable to achieve compliance with the paragraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C33.

Paragraph C34 – Suicide Hazard Removal

Paragraph C34 requires the DPD to remove or make inaccessible all suicide hazards in holding cells, including exposed pipes, radiators and overhead bars.

Background

The Monitor assessed the DPD's compliance with paragraph C34 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that no affirmative action had been taken in regard to removing suicide hazards in any of the building that contain holding cells. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the Monitor determined that that the DPD had undertaken an assessment of all precincts that maintain holding cells in order to determine what suicide hazards exists within the cellblocks. The DPD drafted an extensive report detailing all of the physical remediation efforts that were required to ensure compliance with paragraph C34, which explained that there are over 114 items that need to be addressed in the various cellblocks, as they may be considered suicide hazards and a significant number of these hazards (approximately 50) were contained within the 3rd and 4th precincts.¹¹¹ In addition, the DPD was considering closing down the holding cell facilities in the 3rd and 4th precincts now, as opposed to waiting until 2005, due to the resources required to upgrade structures that are nearing the end of their operational usefulness.

Current Assessment of Compliance

The HCCC is working with the DPD and City leadership to obtain funding authorization for the remediation effort. As of the end of this quarter, the 3rd and 4th precincts remained open. Although it is apparent that significant funds must be made available to the DPD to physically remediate the holding cells facilities, the Monitor continues to be concerned about the DPD's failure to address the suicide hazards that exist throughout the holding cells, Department-wide, such as exposed pipes, radiators and overhead bars.

¹¹⁰ The Monitor inspected precincts 1-8 and 13 and interviewed at least one detention officer at each precinct.

¹¹¹ Both the 3rd and 4th Precincts are scheduled to be closed in early 2005, when a new larger precinct will be constructed and the two precincts merged. The new facility will have responsibility for both the 3rd and 4th precincts; however, it will not maintain any holding cells. In the meantime, it has been reported that the 4th precinct will close and be merged with the 3rd precinct no later than July 2004. The Monitor has not received any confirmation of the fact or the timing of this merger from the City or the DPD.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C34.

IV. PRISONER SAFETY POLICIES

This section of the COC CJ comprises paragraphs C35-38. It requires the DPD to develop and implement prisoner safety policies for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure that each precinct, and the entire department, have clear and concise policies and procedures that will ensure that safety and well-being of prisoners.

The Monitor assessed the DPD's compliance with paragraphs C35-38 for the first time during the quarter ending February 29, 2003, finding the DPD in non-compliance with each. The DPD indicated that its new Cell Block Policy, which was under development as of the end of the quarter, would address many of the requirements of the paragraphs in this section.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.

V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

This section of the COC CJ comprises paragraphs C39-46. It requires the DPD to develop and implement environmental health and safety policies for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the cleanliness and maintenance of the cell block areas to ensure the safety of DPD prisoners.

The Monitor assessed the DPD's compliance with paragraphs C39-46 for the first time during the quarter ending February 29, 2003. The Monitor determined that the DPD had made progress in this area, most notably in its efforts to clean and make repairs in cells and to ensure that air purification systems meet applicable standards, and had achieved compliance with several paragraphs (C39, C43 and C46). However, further progress was necessary to achieve full compliance with the remaining paragraphs in this section.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004. In addition, although not originally scheduled for the current quarter, the Monitor continued its review, begun during the previous quarter, of the DPD's compliance efforts in connection with paragraph C42. The results of this ongoing review are reported immediately below.

Paragraph C42 – Heating and Ventilation

Paragraph C42 requires the DPD to provide adequate heating and ventilation for all buildings containing holding cells.

Background

The Monitor commenced its first assessment of the DPD's compliance with paragraph C42 during the quarter ending November 30, 2003. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the Monitor determined that in order to meet the requirements of this paragraph, the DPD must ensure that each facility that maintains holding cells achieves a minimum of six (6) air exchanges per hour and ensure that the temperature in the cell blocks does not drop below 64 degrees Fahrenheit.¹¹² In mid-February 2004, the DPD provided the Monitor with a report issued by Great Lakes Heating and Cooling, dated October 23, 2003, which indicated that following the remediation efforts undertaken by Great Lakes Heating and Cooling, the DPD had established a minimum of six air exchanges per hour in each of the facilities that maintain holding cells. The report provided details on all remediation efforts undertaken by the DPD to establish the mandated six air exchanges per hour; it also provided measurements for each cell block facility, the amount of air necessary to affect six air exchanges

¹¹² The Monitor consulted with the DHWP, the Michigan Occupational Safety and Health Administration (MiOSHA), and the Monitor's own independent expert in attempting to identify the appropriate standards. Six air exchanges is the standard most often cited when discussing appropriate ventilation.

per hour for each cell block, and the total air handling capacity of precincts air handling equipment.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the report issued by Great Lakes Heating and Cooling, dated October 23, 2003. The Monitor has corresponded with DPD and requested additional information necessary for determining compliance with this paragraph.

Based on the foregoing, the Monitor is withholding a determination of the DPD's compliance with paragraph C42, until such time that the information requested by the Monitor has been received and addressed.

VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

This section of the COC CJ comprises paragraphs C47 and C48. It requires the DPD to develop and implement appropriate policies concerning persons with disabilities for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the prisoners with disabilities are provided with appropriate facilities and care.

The Monitor assessed the DPD's compliance with paragraph C48 for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance. This conclusion was based on the fact that the DPD was still in the process of developing new policies regarding the handling and detention of persons with disabilities as of February 29, 2004.

The Monitor is scheduled to assess the DPD's compliance with paragraph C47 for the first time, and again assess compliance with paragraph C48, during the quarter ending August 31, 2004.

VII. FOOD SERVICE POLICIES

This section of the COC CJ comprises paragraphs C49-50. It requires the DPD to develop and implement a comprehensive new food service policy with the assistance and approval of a qualified dietician and sanitarian. The new program must ensure that food is prepared and served in a sanitary manner, and that prisoners are fed on a regular basis. In addition, the program must ensure that all prisoners are provided with an alternative meal if they are unable to eat the standard meal for religious or dietary reasons.

The Monitor assessed the DPD's compliance with paragraphs C49-50 during the quarter ending November 30, 2003, finding the DPD in overall non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C49 – Food Storage and Service

Paragraph C49 requires the DPD to ensure that food is stored and served in a sanitary manner and in compliance with state and local health codes.

Background

The Monitor assessed the DPD's compliance with paragraph C49 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not finalized the policies that meet the requirements of the paragraph as of the end of the quarter. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, overall, the Monitor found that the DPD had made progress in this area and had demonstrated a considerable level of implementation compliance in this section. The DPD was working on developing the associated policies that correspond to the new procedures that had been implemented.

Current Assessment of Compliance

The DPD's efforts to ensure that food is stored and served in a sanitary manner are dependent on its development and implementation of a comprehensive food service policy as required by paragraph C50 as well as compliance with state and local health codes. As indicated below, the Monitor has determined that the Food Service Policy is inadequate and must be revised.¹¹³

Based on the foregoing, the Monitor finds the DPD in non-compliance with the requirements of paragraph C49.¹¹⁴

Paragraph C50 – Development of Food Service Policies

Paragraph C50 requires the DPD to develop and implement a comprehensive food service policy, which must be reviewed and approved, in writing, by a qualified sanitarian. Under this policy, the meal plan must be initially reviewed and approved, in writing, by a qualified dietician. It must also be reviewed and approved, in writing, by a qualified dietician at least once a year, and prior to implementing any revisions to the program. In addition, all food must be stored and handled in a sanitary manner, all prisoners must be provided with an alternative meal selection and food must be provided to all detainees who are held over six hours.

Background

The Monitor assessed the DPD's compliance with paragraph C50 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance. Although the DPD had

¹¹³ Please see C50 for information related to the Food Service Policy.

¹¹⁴ The training requirements associated with paragraph C49 are included under paragraph C78.

developed and implemented a new food service program, policies were still being developed by the DPD and DHWP as of the end of the quarter.

Current Assessment of Compliance

During the current quarter, the DPD submitted the Food Service Policy in response to a document request by the Monitor. The Policy was reviewed and approved by both a DHWP sanitarian and a registered dietician.¹¹⁵ The effective date on the front of the document indicates it is to be determined (TBD). The Monitor reviewed the Food Service Policy as submitted by the DPD and identified a number of shortcomings, which are detailed below, along with related recommendations.

1. With regard to prisoners who are detained shortly after the 10:00PM meal. If an individual is transported to the precinct at 10:15 PM, 10:30PM or 11:00PM, said arrestee will not be provided with a meal until 6:00AM. The time frame would exceed the six (6) hour proviso. It is recommended that the DPD adjust the schedule to address the possibility of non-compliance concerning this issue.
2. The DHWP has provided a detailed suggested meal plan consistent with the governmental Recommended Daily Allowance for adult servings. However, when referring to Therapeutic and Special Diets, the DHWP makes a general reference to the need for a nutritionally adequate and appealing meal. It would be appropriate to add specificity and content consistency, as submitted in the general suggested meal plan. The DPD should evaluate the current Therapeutic / Special Meal plan and determine if it is acceptable or if adjustments must be made. Upon making a final determination, the detailed Therapeutic and Special Diets menu should be disclosed within the framework of the a final Directive.
3. The directions contained in the policy regarding physical structure (floors, walls, and ceiling) cleaning, controlling pests, and maintaining premises of unnecessary items and litter are analogous to subject matters within Environmental Health and Safety issues in the COC CJ (paragraphs 39-46) and, as such, would more suitably be addressed in the Cleaning and Maintenance Directives.
4. Although the statement “*Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants*” is proper, the Monitor suggests that the DPD’s directive include guidelines and procedures to follow when it is discovered that a package’s integrity is compromised.
5. The Training Section statement, “*The person in charge shall ensure that employees are trained in food safety as it relates to their assigned duties*” is too ambiguous and should be defined. It is important to ensure accountability and assign responsibility. This sentence may refer to any number of DPD members, (the Chief of Police, the Commanding Officer of the precinct, or the Commanding Officer of the Training Academy). Additionally, it is

¹¹⁵ The Monitor has received copies of the approval letters from both the DHWP sanitarian and the registered dietician.

unclear if the intent of the language “*trained in food safety*”, is meant to encompass Training Bureau or precinct level training. Food Service Training should be specifically articulated in a Training Bulletin; however, the general subject matter that will be covered should be referenced in the Food Service Directive.

6. The following additional points should be included and articulated in detail in a revised Food Service Policy:
 - specific requirements relative to the proper storage of food items;
 - the food dispensing process to which DPD members should adhere;
 - although the DPD currently maintains an alternate program for food provisions during emergency or unforeseen situations, this procedure should be incorporated into the content presentation of this Directive;
 - steps that are to be taken in instances when the refrigeration system is incapacitated; and,
 - reference to and standardization of an “official” food service log, that will ensure compliance with the COC CJ (as required to be audited in paragraph C71).

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C50.

VIII. PERSONAL HYGIENE POLICIES

This section of the COC CJ comprises paragraph C51 only. The Monitor assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2003, finding the DPD in non-compliance. The Monitor again assessed compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph C51 – Availability of Personal Hygiene Items

Paragraph C51 requires the DPD to provide all prisoners with access to personal hygiene items such as soap, toothbrushes, toilet paper, comb, deodorant and feminine hygiene products. The DPD must implement this provision within one month of the effective date of the COC CJ.

Background

The Monitor assessed the DPD's compliance with paragraph C51 for the first time during the quarter ending November 30, 2003, finding the DPD in compliance with the implementation requirements, but in non-compliance with the policy requirements of the paragraph. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the Monitor determined that the DPD had purchased 100,000 hygiene kits, which include soap, deodorant, toothpaste, a disposable toothbrush, three moist towelettes and hand lotion. The Monitor inspected the precincts and determined that these kits are provided to each prisoner prior to the distribution of food. The Monitor determined that sanitary napkins are available for female prisoners by request. However, as of the end of the quarter, the DPD was drafting the language for a teletype that would be sent to all precincts providing instructions on how the kits are to be utilized.

Current Assessment of Compliance

The DPD submitted its Holding Cells Area Policy to the Monitor and the DOJ after the end of the Third Quarter with a cover letter dated June 15, 2004.¹¹⁶ The policy contains reference to Prisoner Personal Hygiene Kits. However, given the timing of the submission, the Monitor did not have an opportunity to review the policy for the current reporting period.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with the policy requirements of paragraph C51.

¹¹⁶ The policy was approved before the end of the quarter, by the Chief of Police on May 5, 2004 and by the BOPC on May 27, 2004.

IX. USE OF FORCE AND RESTRAINTS POLICIES

This section of the COC CJ (paragraphs C52-54) requires the DPD to revise its policies regarding prisoners and comply with the DPD's UOF policies and procedures for any UOF on prisoners in holding cells. In addition, the DPD must not handcuff prisoners to benches for longer periods of time than are necessary. The DPD is required to provide its revised UOF policies to the DOJ for review and approval.

The Monitor assessed the DPD's compliance with paragraphs C52-54 for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The Monitor was informed that the requirements of these paragraphs would be included in the Holding Cells Policy (Directive 305.4), which was not submitted as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2004.

X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

This section of the COC CJ (paragraphs C55-57) requires the DPD to comply with its general incident investigation policies, UOF investigation policies and prisoner injury investigation policies in connection with all UOF, injuries and in-custody deaths occurring to prisoners in holding cells. The DPD is required to provide its revised UOF policies to the DOJ for review and approval.

The Monitor assessed the DPD's compliance with paragraphs C55-57 for the first time during the quarter ending February 29, 2004. The Monitor was informed that the requirements of these paragraphs would be included in the Holding Cells Policy (Directive 305.4), which was not submitted as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2004.

XI. EXTERNAL COMPLAINTS

This section of the COC CJ (paragraphs C58-59) requires the DPD to comply with its external complaint and investigation policies when responding to all external complaints and incidents occurring in holding cells.

The Monitor assessed the DPD's compliance with paragraphs C58-59 for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The findings of non-compliance were based on the fact that Directive 102.6 Citizen Complaints Policy, which will include the requirements of the paragraphs, was still under review by the DPD as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2004.

XII. GENERAL POLICIES

This section of the COC CJ (paragraphs C60-61) requires the DPD to ensure that all terms are clearly defined in all policies that are developed, revised, and augmented, and to make proposed policy revisions available to the community.

The Monitor assessed the DPD's compliance with paragraphs C60-61 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C60 – General Policies

Paragraph C60 requires the DPD to ensure that all terms contained within the COC CJ are clearly defined when developing, revising and augmenting policies.

Background

The Monitor assessed the DPD's compliance with paragraph C60 for the first time during the quarter ending November 30, 2003. The Monitor concluded that the DPD was in non-compliance with the paragraph based on the fact DPD policy revisions, and resulting definitions, were incomplete.

Current Assessment of Compliance

During the current quarter, the Monitor queried the DPD regarding the status of the revision and/or creation of policy and procedure to address the requirements of the COC CJ. The Monitor determined that most policy and procedure had yet to be finalized as of the end of the quarter.

Based on the foregoing, the Monitor finds that the DPD remains in non-compliance with paragraph C60.

Paragraph C61 – Proposed Policy for Community Review and Comment

Paragraph C61 requires the DPD to continue to make available proposed policy revisions to the community for review, comment and education. The DPD must also publish proposed policy on its website to allow for comment directly to the DPD.

Background

The Monitor evaluated the DPD's compliance with paragraph C61 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

During the previous quarter the Monitor noted that the DPD posted proposed policy to its website that was not yet approved by either the BOPC, or where appropriate, the DOJ. The DPD removed the proposed policy after it retracted policy revisions submitted to the DOJ on November 25, 2003.

Current Assessment of Compliance

The requirements of paragraph C61 mirror those of paragraph U71 of the UOF CJ. As such, the compliance assessment for paragraph U71 applies equally to paragraph C61. Although the DPD has implemented the requirements of this paragraph, it is in non-compliance with its policy and training requirements.¹¹⁷ As a result, the Monitor finds the DPD in non-compliance with paragraph U61.

¹¹⁷ In this instance "policy and training" refers to a written policy, procedure, protocol, training bulleting or other method that the DPD must develop to ensure the sustained adherence to the requirements of this paragraph.

XIII. MANAGEMENT AND SUPERVISION

This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the cells to minimize the risks to its staff and prisoners. The DPD must evaluate such operations through the use of video cameras and via regularly scheduled quarterly audits.

This section also requires either the DPD or the HCCC to evaluate compliance with the COC CJ by performing regularly scheduled quarterly audits of all buildings containing holding cells for the following topics: UOF, injuries to prisoners and allegations of misconduct in holding cells, fire detection, suppression and evacuation, emergency preparedness, medical/mental health, detainee safety, environmental health and safety, and food service.

Each of these provisions requires the DPD/HCCC to audit a variety of issues, but a common theme among them all is the requirement to assess and report on issues affecting the safety and well-being of DPD personnel and of the prisoners in the DPD's holding cells.

The UOF CJ Audit Protocol articulates the frequency of audits required by the COC CJ; specifically, the HCCC must conduct six (6) quarterly audits to address the requirements of paragraphs C66-71. As discussed above, in connection with the paragraph U92, the parties have been engaged in ongoing discussions regarding modifying the audit frequency requirements, which would impact the Monitor's compliance evaluations.

The Monitor last assessed the DPD's compliance with the audit-related paragraphs of this section (paragraphs C65-72), as well as paragraph C63, during the quarter ending February 29, 2004.¹¹⁸ The Monitor concluded that the DPD was in non-compliance with each of these paragraphs as a result of its failure to submit timely quarterly audits or otherwise failing to meet all of the requirements of these paragraphs.

During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs C66-C72. The results of our current assessments follow.

Paragraph C66 – Holding Cell Compliance Committee Responsibilities

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct regularly scheduled quarterly audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed

¹¹⁸ The Monitor has not assessed the DPD's compliance with paragraphs C62 and C64. During the quarter ending February 29, 2004, the Monitor deferred its assessment of paragraph C62 to the quarter ending August 31, 2004 pending the development of additional information. The Monitor also deferred its assessment of paragraph C64 to the quarter ending August 31, 2004, based upon the timeline for compliance indicated in the paragraph.

in the COC CJ. The scope of such audits must include an evaluation of the smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment.

For ease of reporting, the Monitor has split paragraph C66 into the following two components:

- C66a - HCCC to Assure Compliance with the COC CJ
- C66b - HCCC Fire Detection, Suppression & Evacuation Audits.

Background

As reported in the Monitor's Report for the Quarter Ending February 29, 2004, the DPD formed a HCCC in the fall of 2003 with responsibility for assuring compliance with the relevant provisions of the COC CJ. Although the HCCC had made progress relative to the development of holding cell policies and conducting informal inspections, such policies were not implemented and the HCCC's inspections did not constitute an audit as of February 29, 2004. Accordingly, the Monitor found the DPD in non-compliance with paragraph C66a-b.

Current Assessment of Compliance

C66a - HCCC to Assure Compliance with the COC CJ

During the current quarter, the HCCC made significant progress towards the development of policies required by the COC CJ. According to the DPD Third Status Report, at least two of the policies required by the COC CJ were submitted and approved by the BOPC. However, all of the holding cells policies necessary for compliance have not yet been developed and implemented and the HCCC has not yet completed any audits.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C66a.

C66b - HCCC Fire Detection, Suppression & Evacuation Audits

As of May 31, 2004, the audit fieldwork was complete and a draft report for the Fire Detection, Suppression and Evacuation Audit had been completed; however the final audit report had not yet been submitted to the Chief of Police. Regardless of the outcome of the discussions between the parties regarding modifying the audit frequency requirements, the audit required by paragraph C66b would have been due before May 31, 2004.

Since the audit was not completed as of May 31, 2004, the Monitor finds the DPD in non-compliance with paragraph C66b.

Paragraph C67-71 HCCC Audits of Emergency Preparedness, Medical/Mental Health, Detainee Safety Programs and Policies, Environmental Health and Safety Programs, and the Food Service Program

Paragraphs C67-71 requires the HCCC to conduct regularly scheduled quarterly audits of Emergency Preparedness, Medical/Mental Health, Detainee Safety Programs and Policies, Environmental Health and Safety Programs, and the Food Service Program. Such audits must cover all DPD buildings that contain holding cells.

Background

As reported in the Monitor's Report for the Quarter Ending February 29, 2004, the HCCC made progress in the planning and certain fieldwork relating to the audits required under paragraphs C67-71. However, no audits were submitted as of February 29, 2004.

Accordingly, the Monitor found the DPD in non-compliance with paragraphs C67-71.

Current Assessment of Compliance

During the current quarter, the HCCC completed the planning, fieldwork and draft reports for the audits required under paragraph C67-71. The audits were submitted for approval as outlined in the Audit Protocol. However, as of May 31, 2004 the Chief of Police had not completed her review of such audits and the audit reports had not yet been submitted to the BOPC, the Precinct Commanding Officers or the Monitor. Regardless of the outcome of the discussions between the parties regarding modifying the audit frequency requirements, the audits required by paragraph C67-71 would have been due before May 31, 2004.

Since the audits were not completed as of May 31, 2004, the Monitor finds the DPD in non-compliance with paragraphs C67-71.

Paragraph C72 – Audit Reporting Requirements

Paragraph C72 requires the results of each of the HCCC audits to be submitted via a written report to the Chief of Police and all precinct and specialized division commanders. This paragraph also requires commanders to take disciplinary or non-disciplinary corrective action, when appropriate, regarding employees under their command.

Background

As reported in the Monitor's Report for the Quarter Ending February 29, 2004, no audit reports were submitted to the Chief of Police as of February 29, 2004 by the DPD / HCCC on the conditions in the DPD's holding cells. As a result, the Monitor found the DPD in non-compliance with paragraph C72.

Current Assessment of Compliance

The Audit Protocol submitted by the DPD pursuant to paragraph U92 directs that each audit report be submitted to the Chief of Police for review and comment and to all precinct or specialized unit commanders for appropriate action. The Monitor expected that draft audit reports would be submitted to and approved by the Chief of Police prior to May 31, 2004. The DPD's Third Status Report indicates that as of May 31, 2004, the reports on the results of the COC CJ audits were being prepared for review and comment from responsible officials, including the Chief of Police.

Regardless of the outcome of the discussions between the parties regarding modifying the audit frequency requirements, the audit required by paragraph C72 would have been due before May 31, 2004.

Since the audits were not completed as of May 31, 2004, the Monitor finds the DPD in non-compliance with paragraph C72.

XIV. TRAINING

This section of the COC CJ (paragraphs C73-78) requires the DPD to provide all detention officers with comprehensive training, maintain individual training records, provide training in key areas such as emergency response, intake and medical protocols, safety programs, maintenance protocols, and food preparation and delivery protocols.¹¹⁹

The Monitor assessed the DPD's compliance with paragraphs C73-78 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance with each, noting that a substantial portion of the training required under the COC CJ is based on Departmental policy, which was under revision as of the end of the quarter. The Monitor also noted that lesson plans based on these policies cannot be completed until final policy approval is given. The Monitor also noted concern regarding insufficient amount of training hours for Police Detention Office (PDO) staff.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.

XV. MONITORING AND REPORTING

Paragraph C94 – Reopening of Investigations Deemed Incomplete

Paragraph C94 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete provided that the Monitor provides written instructions for completing the investigation and the directive to open the investigation is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this authority concerning any investigation the disposition of which has been officially communicated to the officer who is the subject of the investigation.

Background

This is the first time the Monitor assessed the DPD's compliance with paragraph C94.

Current Assessment of Compliance

This paragraph allows the Monitor to review investigations that have been closed but where the disposition has not been communicated to the officer. It will allow the Monitor to report on whether the DPD is implementing the revised policies, protocols and procedures required by the

¹¹⁹ Please refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.



Office of the Independent Monitor
of the Detroit Police Department

REPORT OF THE INDEPENDENT MONITOR
FOR THE QUARTER ENDING May 31, 2004
Issued July 15, 2004

COC CJ. The Monitor has not yet reviewed investigations under paragraph C94 since the DPD has not yet revised the majority of the policies and investigatory procedures under the COC CJ. Once the revised policies and procedures are developed, implemented and the DPD personnel receive training, the Monitor will review investigative files.

Based on the foregoing, the Monitor has not yet assessed the DPD's compliance with paragraph C94.

CONCLUSION

This quarter marks the most significant progress that the City and the DPD have made thus far in the area of policy development. The Monitor is encouraged by the fact that the City and DPD promulgated several policies under the UOF CJ and one policy under the COC CJ. This demonstrates that the City and the DPD are working toward complying with the requirements of the Consent Judgments. Nevertheless, the DPD faces serious challenges, with the one-year anniversary date of the Consent Judgments looming, to engage in effective policy development, implementation, and training. The DPD also must develop systematic department-wide procedures and endeavor to meet the various deadlines in the Consent Judgments. The Monitor has provided technical assistance to the DPD and is prepared to provide additional technical assistance and recommendations to assist the department.

The Monitor conducted an initial review of investigative files (OCI) for the first time this quarter and found several areas where significant progress is being made. Nevertheless, improving the timeliness of the completion and correcting the lack of necessary documentation in the investigative files are areas of concern. The Monitor will revisit these issues and assess the City and the DPD's progress in these areas in the upcoming quarters.

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July 15, 2004

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APPENDIX A:

Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the DPD

Following is a listing of acronyms utilized in the Independent Monitor's Quarterly Reports.

ACRONYM	DEFINITION
A&D	Arrest and Detention
AG	Audit Group
AT	Audit Team
BOPC	Board of Police Commissioners
CALEA	Commission on Accreditation for Law Enforcement Agencies
CCR	Citizen Complaint Report
CI	Chief Investigator
CLBR	Command Level Board of Review
CLFRT	Command Level Force Review Team
CLO	Compliance Liaison Officer
CMMHSP	Comprehensive Medical and Mental Health Screening Program
COC CJ	Conditions of Confinement Consent Judgment
CRIB	Civil Rights Integrity Bureau
DAS	Discipline Administration Section
DDOH	Detroit Department of Health

DFD	Detroit Fire Department
DHWP	Detroit Health and Wellness Promotion
DOJ	Department of Justice
DPD	Detroit Police Department
DRH	Detroit Receiving Hospital
FIS	Force Investigation Section
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IAD	Internal Affairs Division
MCOLES	Michigan Commission on Law Enforcement Standards
MITN	Michigan Information and Tracking System
OCI	Office of the Chief Investigator
OIC	Officer in Charge
PAB	Professional Accountability Bureau
PCR	Preliminary Complaint Report
PDO	Police Detention Officer
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau
RMG	Risk Management Group
SMT	Senior Management Team



Office of the Independent Monitor
of the Detroit Police Department

REPORT OF THE INDEPENDENT MONITOR
FOR THE QUARTER ENDING May 31, 2004
Issued July 15, 2004

SOP	Standard Operating Procedures
USAO	United States Attorney's Office
UOF	Use of Force <i>or</i> Uses of Force
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment
WIQD	Witness Identification and Questioning Documentation