

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
NOVEMBER 30, 2004

ISSUED JANUARY 18, 2005

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 fifth quarterly report of the Independent Monitor.

During the fifth quarter, which ended on November 30, 2004, the Monitor examined 63 paragraphs or subparagraphs of the UOF CJ and 32 paragraphs or subparagraphs of the COC CJ. Of these, the City and the DPD complied with 4 and failed to achieve compliance with 87; the Monitor withheld its determination of the DPD's compliance with the remaining 4 paragraphs.⁴

The Monitor recognizes the progress that the City and DPD have made in the following areas, among others:⁵

- Numerous DPD policies and training directives were approved by the Chief of Police and the Board of Police Commissioners during the fifth quarter.⁶ The following policies were submitted or resubmitted to the Monitor and the DOJ during this quarter: Directive 102.6,

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 For each of these paragraphs, the Monitor's review and findings to date are included in this report.

⁵ Although the Monitor has made an effort to mention progress with paragraphs that are not scheduled to be evaluated this quarter (e.g., policy submissions), there may be some efforts toward compliance that the DPD or the City has made that are not included in this report. As explained in the Introduction section to this report, the Monitor is scheduled to review certain paragraphs during certain quarters. Throughout the report, the schedule for the Monitor's review is outlined. However, the Monitor's assessment schedule does not affect the DPD's and City's due dates as required by the Consent Judgments.

⁶ The Monitor understands that these policies and training directives have not yet been disseminated to DPD personnel. Throughout this report, the Monitor will refer to various submissions by the DPD to DOJ and the Monitor by the date of the cover letter. It is noted that there is often a difference between the cover letter date and the postmark date, ranging usually from several days to a week. The cover letter date is not meant to indicate when the DOJ or the Monitor actually received the submissions.

*Citizen Complaints Policy;*⁷ Directive 305.4, *Holding Cell Areas Policy*; Directive 303.4, *Foot Pursuit*; Directive 403.2, *Infectious Disease Control Policy*; Directive 305.1, *Detainee Intake Assessment*; Directive 305.4, *Detainee Health Care*; Directive 305.7, *Detainee Transportation*; Directive 305.2, *Detainee Registration*; Directive 304.3, *Chemical Spray*; Directive 304.1, *Firearms*; Directive 304.2, *Use of Force*; Training Bulletin 04-3, *Use of Force Continuum*; Directive 202.2, *Search and Seizure*; and Directive 203.9, *Custodial Questioning*.⁸

- The DPD received approval from the DOJ on its' citizen contact form, which it developed pursuant to paragraph U63.
- The Monitor advised the DPD that the following policies met the requirements of the relevant paragraph(s) of the Consent Judgments: Directive 303.4, *Foot Pursuit*;⁹ and, Directive 305.4, *Holding Cell Areas Policy*.
- The DPD submitted the components of the Comprehensive Risk Management Plan, including the Data Input Plan, Report Protocol, Review Protocol, Request for Proposals (collectively referred to as the Management Awareness System), and an Interim Management Awareness System to the DOJ for review and approval on October 25, 2004. The development of the database is an important risk management function for the DPD.
- During this quarter, Proposal S¹⁰ was approved by City voters. According to the City and the DPD, this will allow for the construction of a central detention facility, which will take approximately 24 months to complete. According to the City, this central detention facility will comply with all of the physical requirements contained within the COC CJ.¹¹

Major areas of concern identified during the quarter ending November 30, 2004 include the following, among others:

⁷ The Monitor provided the DPD will comments on this directive on November 16, 2004. The DPD resubmitted the policy on November 30, 2004. The Monitor's assessment is included herein under paragraph U61.

⁸ The DPD also submitted Training Directive 04-4, *Garrity Protocol* to the DOJ on October 25, 2004 (required by paragraph U31). The Monitor received the protocol after the end of the quarter on December 21, 2004.

⁹ The DPD's Fifth Quarter Status Report indicates that the DOJ approved this policy. However, this policy is not subject to DOJ review and approval; the DOJ did provide technical assistance to the DPD at the DPD's request. The Monitor also provided the DPD with comments and indicated that the revised policy met the requirements of the Consent Judgment. As of the end of the quarter, none of the policies have been disseminated. The DPD's report indicates that numerous policies were "submitted to DOJ" and several were submitted to "DOJ and the Monitor." The Monitor notes that all policies, training directives, SOPs, and other documents developed under the Consent Judgments should be submitted to the Monitor with a copy to DOJ. The specific policies that are for DOJ review and approval should be submitted to DOJ with a copy to the Monitor.

¹⁰ According to the City, Proposal S authorizes the issuance of bonds for the purpose of constructing, renovating and rehabilitating public safety projects.

¹¹ Nevertheless, according to the Consent Judgments, the City and the DPD must bring all existing holding cell facilities into compliance according to the internal deadlines that are contained in those Judgments.

- The DPD submitted its initial three audit reports on October 21, 2004, in the following areas: custodial detention practices, emergency preparedness and food service. The Monitor commends the DPD for completing its first audits under the Consent Judgments, but notes that these audits were submitted several months after they were due. In addition, there are another 14 audit topics for which an audit is overdue.
- The Monitor is concerned that the DPD is taking too long to complete its internal review of the audits that are currently in progress. As a result, the results are stale by the time the commanders and the Monitor have access to them. The Monitor's concerns are further elaborated in the Focus Issues section of the Introduction.
- By establishing the Curriculum Research and Development function to develop training curricula, the DPD is moving in the right direction in its training efforts; however, the DPD has yet to finalize lesson plans or otherwise develop training that complies with any of the training requirements of the Consent Judgments.

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SECTION ONE: INTRODUCTION

I. BACKGROUND

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.,¹² as the Independent Monitor in this matter. This is the fifth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor¹³ outlined the history of the DOJ investigation, the Technical Assistance (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.¹⁴ 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,¹⁵ the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments.¹⁶ The paragraphs that were scheduled for review during the fifth quarter, which ended on November 30, 2004, are assessed in this report.¹⁷

¹² The primary members of the Monitoring Team are Joseph Buczek, Ronald Davis, Hazel de Burgh, Ronald Filak, Thomas Frazier, Denise Lewis, Jeffrey Schlanger, David Schoenfeld, and Sherry Woods.

¹³ The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

¹⁷ The Monitor makes every effort to report on significant matters that have taken place after the end of the current quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.

II. MONITOR'S ROLE

The Monitor's role requires us to conduct compliance assessments, make recommendations, provide TA 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 by remedying the unconstitutional conduct alleged by the DOJ in its complaint filed against the City and the DPD.

III. EFFORTS TOWARD COMPLIANCE

Currently, the DPD is non-compliant with the majority of the provisions in the Consent Judgments. The Monitor notes that the DPD continues to make progress in various areas, as described throughout this report. Furthermore, police departments in other jurisdictions under similar court-ordered judgments have been challenged by steep learning curves in the early stages, which are a delaying factor in the departments' efforts to achieve substantial compliance. Nevertheless, the City and the DPD must continue to make every effort to achieve compliance with both Consent Judgments according to the deadlines articulated therein.

As mentioned in our previous reports, one of the most prevalent challenges facing the Department is policy development and revision, which must take place in an effective manner before many of the other reforms can be achieved. After the policy revisions are completed, the DPD must then comply with the applicable implementation, training and auditing components of compliance. It was noted that during the last two quarters the DPD developed or revised a significant number of policies and submitted various policies to the Monitor for compliance assessment or to DOJ for review and approval. In fact, during this quarter the DPD received a positive assessment from the Monitor on the development or revision of several policies and approval from the DOJ on its citizen contact form. The DPD must now, prior to the policy implementation phase, implement a method of disseminating the policies that can be audited by the DPD's Audit Team and by the Monitor.

The one-year anniversary date of the Consent Judgments occurred during the fourth quarter, on July 18, 2004. The COC CJ could have terminated two years after its effective date¹⁸ if the City and the DPD had achieved substantial compliance with each of the provisions of the COC CJ by the one year anniversary date.¹⁹ Then the City and the DPD would have had to maintain substantial compliance for at least one year. Instead, the City and the DPD acknowledged, via their Motion to Extend the COC CJ, filed on July 19, 2004, that they had not attained compliance

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

¹⁹ Paragraph C106.

under the COC CJ by the one-year anniversary date of the execution of the agreement.²⁰ Judge Cook held a hearing on the motion to extend on August 25, 2004. The City then filed a Supplemental Motion to Extend the COC CJ on September 10, 2004.²¹ On October 7, 2004, the Court ordered that the City provide additional detailed information regarding its plan to comply with the COC CJ. On October 29, 2004, the City filed a supplemental brief which provided additional information regarding a timeline and funds needed. The City has also informally provided additional information in response to questions from the Monitor regarding its motion. As of the end of this quarter, the Court's decision was still pending.²²

IV. METHODOLOGIES

The "Methodologies to Aid in Determination of Compliance with the Consent Judgments" (the Methodologies) 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 Monitor submitted the Methodologies for the UOF CJ to the parties on July 30, 2004. The DOJ and the City and the DPD responded with written comments. . The City and the DPD have the Monitor's draft Methodologies for the majority of the paragraphs in the COC CJ.

During the current quarter, the Monitor and the parties held several conference calls to discuss the draft Methodologies. During the sixth quarter, the Monitor will resubmit the UOF CJ Methodologies based on these discussions. Then, the Monitor will also resubmit the COC CJ Methodologies. In the meantime, the Monitor has offered to discuss its Methodologies for any given paragraph at any time. Furthermore, the Monitor is currently operating under the Methodologies and provides monthly updates on our monitoring activities during monthly meetings with the parties.

In the course of conducting compliance assessments, among various other activities, 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 interviews.

²⁰ In accordance with the schedule established by the Court, the DOJ submitted questions regarding the City's motion on July 27, 2004. The City responded to these questions on August 4, 2004, and the DOJ filed its response to the City's motion on August 10, 2004.

²¹ The DOJ filed a response to the supplemental motion on September 24, 2004.

²² On December 27, 2004, after the end of the quarter, the Court issued an order granting the DPD's motion for a two-year extension of the COC CJ; however, the Court did not extend the internal deadlines required under the COC CJ.

V. REPORT CARD

As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a “Report Card,” which provides a “snapshot” of the DPD’s compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to evaluate the DPD’s progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph²³ of the Consent Judgments for each of the five quarters in which compliance has been assessed.²⁴ The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. This is an estimate based on available information at the date of issuance of this Monitor’s report and Report Card. These estimates are subject to change as information develops and circumstances change.

VI. FOCUS ISSUES

A. AUDIT TIMELINESS

On October 21, 2004, the DPD submitted three audit reports on the DPD’s custodial detention practices and its emergency preparedness and food service program in the DPD’s buildings that contain holding cells. These audit reports are required by the Consent Judgments and were the first three submitted by the DPD in response to such requirements. In addition to these audits, there are another 14 audit topics for which an audit is overdue, 6 of which have been conducted by the AT but have remained under Departmental review for more than 6 months.

Although the Monitor recognizes the many challenges of establishing a new audit team, and realizes that first-time audits generally take time to finalize, the first three audits took approximately 5 months from the date the reports were first submitted for internal review to the date the reports were actually distributed. This caused all three audits to be stale, and reduced their effectiveness. In addition, the audits contained numerous flaws related to audit scope, sampling issues and report writing.

Although the Monitor has been providing ongoing TA to the DPD’s Audit Team relating to audit standards and planning²⁵ since September 2003, during the Monitor’s review of the three audits

²³ 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.

²⁴ The Monitor emphasizes that the Report Card provides summary information and should be read in conjunction with this report so that the reader may obtain a thorough understanding of the level and nature of the DPD’s compliance with the provisions of the Consent Judgments.

²⁵ The Monitor has provided TA relating to the audits standards and planning as specifically articulated in the DPD’s Audit Protocol and the Monitor’s Methodologies.

submitted, it was apparent that the Audit Team would benefit from additional TA in the areas of sampling, objectives analysis and reporting.²⁶

The Monitor has also recommended that in addition to the TA provided by the Monitor, the DPD's audit personnel obtain training from an outside source such as the Los Angeles Police Department's *Police Performance Auditing* training.²⁷

B. CONDITION OF THE HOLDING CELLS

The COC CJ primarily deals with the conditions of the holding cells,²⁸ including fire safety, emergency preparedness, medical and mental health, prisoner safety, environmental health and safety, persons with disabilities, food service, personal hygiene, and use of force and restraints.

For the past 16 months, the DPD, via its Holding Cell Compliance Committee (HCCC), has attempted to adhere to the requirements of the COC CJ by working closely with the DFD, the DOJ, the Monitor, and various other City entities to develop the necessary policies, procedures, and programs to achieve compliance. The Monitor acknowledges the hard work the DPD has demonstrated; however, a considerable amount of both financial and personnel resources are still required, as the DPD has been unable to comply with the majority of the requirements thus far.²⁹

Given that the DPD did not achieve and maintain substantial compliance with the COC CJ within the 12 month period prior to the scheduled expiration date of July 18, 2005, the City filed a Motion to Amend the COC CJ to extend the agreement for two additional years.³⁰ This motion, discussed in Section III above, was filed on July 19, 2004.

The City has indicated that Proposal S, which was recently approved by City voters, will allow for the construction of a central detention facility, which will take approximately 24 months to complete. According to the City, this central detention facility will comply with all of the physical requirements contained within the COC CJ.

The Monitor continues to be concerned that the physical conditions in many of the buildings that contain holding cells remain non-compliant with the requirements of the COC CJ. As noted in the Monitor's first report, the 3rd and 4th precincts were in poor condition, as both facilities were

²⁶ This TA took place on December 6 and 7, 2004, in the form of classroom-style interactive training and exercises.

²⁷ Such training took place in early January 2005.

²⁸ 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)

²⁹ To date, the DPD has achieved substantial compliance in 5 of the 112 provisions, which include enforcing its no smoking policy (C20), the removal of cane fiber ceiling tiles (C22), the cleanliness of cells (C39), the repair of equipment in holding cells (C43), and the removal of the air purification system (C46).

³⁰ The Motion requested an extension of the term of expiration from July 18, 2005 to July 18, 2007.

constructed in the early 1920's and, while they had undergone some modernization, little investment had been made in their physical plants. The City decided to close both precincts. The DPD took an important step by officially closing the Fourth Precinct on July 7, 2004. Nevertheless, the holding cells in a number of other precincts will need major retrofitting in order to meet the requirements of the COC CJ.

If the Court grants the City's Motion to Extend the COC CJ, the City and the DPD will be expected to adhere to the deadlines promised in order to achieve substantial compliance with the COC CJ.³¹ Nevertheless, the Monitor looks forward to hearing additional information regarding the DPD's plan for compliance with the COC CJ.

VII. MONITOR'S PLEDGE

The Monitor continues to be dedicated to making this process a transparent one, and 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.

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending November 30, 2004. The Monitor has also made numerous recommendations and provided TA to the DPD as part of its ongoing efforts to assist the DPD in achieving compliance with the Consent Judgments. Furthermore, a draft copy of this report was made available to the parties at least 10 days prior to final publication in order to provide the parties with an opportunity to identify any factual errors,³² and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

³¹ On December 27, 2004, after the end of the quarter, the Court issued an order granting the DPD's motion for a two-year extension of the COC CJ; however, the Court did not extend the internal deadlines required under the COC CJ.

³² 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 November 30, 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, 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 last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004. The Monitor found the DPD in non-compliance with each due to the fact that the policies required by the paragraphs were not formally submitted to the DOJ for review and approval as of the end of the quarter.³³

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U14-19 during the quarter ending May 31, 2005.

B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that as of the end of the quarter the DPD was revising proposed Directive 304.1, *Firearms*, which is meant to address the paragraphs' requirements.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U20-23 during the quarter ending August 31, 2005.

³³ Throughout this report, for those paragraphs not assessed during the current reporting period ("current quarter"), the Monitor will include a brief description of the basis for its previous compliance assessments.

C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it was in the process of revising its UOF policies, including Directive 304.2, *Use of Force*, and Training Directive 04.3, *Use of Force Continuum*, both of which are meant to address, among other things, the requirements of paragraph U24. In addition, the Monitor noted its understanding that a roll-out plan for the intermediate force device was being developed which, according to the DPD, will include information concerning the UOF continuum, procurement, training and integration.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U24 during the quarter ending August 31, 2005.

D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that as of the end of the quarter it was revising proposed Directive 304.3, *Chemical Spray*, which is meant to address the requirements of the paragraphs.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U25-26 during the quarter ending August 31, 2005.

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 statements³⁴ 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. The DPD's Internal Controls Division (ICD) must investigate a variety of incidents, pursuant to the requirements of the UOF CJ, including all serious UOF (which includes all critical firearm discharges), UOF that cause serious bodily injury, and all in-custody deaths. 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 last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004; finding the DPD in non-compliance with each due to the fact that as of the end of the quarter it was revising Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, which are meant to address the paragraphs' requirements. In addition, the protocol for paragraph U31 that specifies the conditions under which statements should and should not be compelled pursuant to Garrity v. New Jersey, 385 U.S. 493 was under review by the DPD as of the end of the fourth quarter.³⁵

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U27-33 during the quarter ending February 28, 2005.

B. UOF AND PRISONER INJURY INVESTIGATIONS

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-

³⁴ 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).

³⁵ As mentioned above, the DPD submitted the Garrity Protocol to the DOJ on October 25, 2004 and to the Monitor on December 21, 2004 (after the end of the current quarter).

compliance with each.³⁶ The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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 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

³⁶ Throughout this report, for those paragraphs assessed and reported on during the current quarter, information regarding the Monitor's previous compliance assessments, and the basis for those assessments, can be found in the "Background" sections of the respective paragraphs.

- 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 May 31, 2004, 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 Directive 304.2, *Use of Force*, was still under review as of the end of the quarter. The DPD indicated that the policy was expected to be completed during the quarter ending August 31, 2004. In addition, 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. During this time, DPD used an interim U34 auditable form that would be revised, as necessary, based on the final policy.

Current Assessment of Compliance

According to the DPD, the policies required by paragraphs U34-36 have been included in Directive 304.2, *Use of Force*. The DPD received TA from the DOJ on the directive on July 13, 2004. The policy was revised based on DOJ's recommendations. The DPD submitted the directive to the DOJ for review and approval on October 11, 2004. The DOJ was in the process of reviewing this directive as of the end of this quarter.³⁷

The DPD received TA from the Monitor on the UOF Auditable Form UF-0002 on June 25, 2004. Revisions to Form UF-0002 are currently being made and the guidelines providing instructions for the completion of the auditable form are being developed. The DPD is currently utilizing an interim U34 auditable form that is expected to be revised, as necessary, based on the final policy.

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 last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, 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.

³⁷ After the end of the quarter, on December 17, 2004, the DOJ submitted a letter to the City and the DPD outlining the DOJ's continuing concerns regarding Directive 304.2, *Use of Force*; Directive 304.3, *Chemical Spray*; Directive 304.1, *Firearms*; Directive 201.4, *Canine Operations*; PR-24 Training Directive, Use of Force Continuum Training Directive, and Positional Asphyxia Training Directive.

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 May 31, 2004, finding the DPD in non-compliance. Although the Shooting Team had been created and implemented to respond to the scene and investigate all critical firearms discharges and in-custody deaths as required by paragraph U37, the protocol for conducting the investigations that the team is charged with had not yet been developed.

Current Assessment of Compliance

According to the DPD, the requirements of paragraphs U37-38 are incorporated in the Force Review Team's (FRT) Standard Operating Procedures (SOP) which the Monitor received on October 18, 2004. The Monitor reviewed the FRT's SOP and found that it provides that the Force Investigation Units (FIU)³⁸ (I or II) will respond to the scene and investigate all critical firearm discharges and in-custody deaths. The Monitor then referred to FIU's SOP to determine the composition of the teams. That SOP outlines the general criteria for selection to the teams. The SOP provides that the Homicide Section should liaise and provide full cooperation with the FIUs. It also provides, in the On-Scene Management Section, that the FIU Lieutenant is responsible for determining whether a Homicide Investigator is needed for the case and, if so, he or she should confer with the Watch Commander to assign one to the case. However, except as indicated in the draft Board of Review Policy,³⁹ it does not appear that the FIU I, which is also referred to as the Deadly Force Unit and is responsible for investigating critical firearm discharges and in-custody deaths, is composed of Homicide Section and IAD⁴⁰ officers as required by the paragraph.⁴¹

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

³⁸ The DPD has upgraded FIU to a section; the FIU is also referred to as the Force Investigation Section (FIS) in this report.

³⁹ The DPD's draft Directive 304.4, *Board of Review*, states that FIS is jointly responsible for the investigation of all police shootings by DPD members and in-custody deaths along with the Homicide Section of the Criminal Investigations Bureau. However, "joint" responsibility is not clear from the FIU SOP. The policy had not yet been approved by the BOPC as of the end of the current quarter.

⁴⁰ Although IAD (Internal Affairs Division) is mentioned in the UOF CJ, the DPD calls this division the Internal Controls Division (ICD).

⁴¹ During this quarter, the Monitor reviewed the procedural requirements of the paragraph, as opposed to the implementation thereof. Throughout this report, the Monitor generally attempts to evaluate the procedural/policy requirements of a given paragraph before testing implementation.

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 May 31, 2004, finding the DPD in non-compliance due to the fact that the protocol for conducting investigations of critical firearms discharges was still under development.

Current Assessment of Compliance

According to the DPD, the protocol for conducting investigations of critical firearms discharges required by paragraph U38 is incorporated in the FRT's SOP, which was received by the Monitor on October 18, 2004. The FRT SOP incorporates FIU's policies and procedures, which are intended to address the requirements of this paragraph. However, FRT's SOP does not include or incorporate all of the requirements of paragraphs U27-36, as required by this paragraph.

The FIU SOP also fails to incorporate all of the requirements of paragraphs 27-36. For example, the FIU SOP states that investigators "will digitally-record or videotape interviews of involved officer's subjects who received force [complainants], and specific material witnesses" whenever and wherever possible. This is contrary to the requirements of paragraph U29c, which requires that all ICD, Office of the Chief Inspector (OCI) and Critical Firearm Discharge investigations include an in-person video or audio tape-recorded interview of all complainants, witnesses, and involved DPD officers. The FIU SOP also fails to mention that if the recording is refused, a signed refusal statement must be obtained from the complainant/witness. If these SOPs are purported to include the critical firearm discharge protocol then the requirements of paragraphs U38 and U27-36 must be included or at minimum, cross-referenced, in each document. Neither document should contradict or fall short of the requirements of the Consent Judgments.

The DPD has also developed the Training Directive 04-7, *Use of Force Reporting/Investigating*. The DPD has indicated that this training directive incorporates the provisions of paragraphs U27-36. However, this training directive is neither referenced in nor incorporated into the SOPs.

Paragraph U38 calls for the development of a specific protocol for conducting investigations of critical firearm discharges. Currently, the three or four documents that purport to make up the “protocol” do not all cross-reference the others for the purpose of developing a “protocol.” The FRT SOP references the FIU SOP but neither document includes all of the requirements.⁴² The Monitor recommends that these documents be consolidated into one comprehensive “protocol” document (see below).

In addition to the above, the DOJ has identified various portions of Directive 304.2, *Use of Force*, that do not comport with the UOF investigations section of the UOF CJ, specifically paragraphs U28 and U35.⁴³

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

Recommendations

Currently, there are multiple documents that contain partial components of the protocol for conducting investigations of critical firearm discharges. The Monitor recommends that a separate document be developed to include the protocol. This will eliminate confusion and provide one source document that investigators can use as a guide for conducting these crucial investigations.

The Monitor also recommends that the SOPs be updated annually and that this requirement be included in the SOP for future reference. Although investigators will receive updated information on a regular basis, an SOP update will ensure that the investigators are relying on the most up-to-date information. The updated SOP could be disseminated during annual in-service training.

Finally, the Monitor recommends that the DPD update all of the relevant directives and SOPs to include the correct name of the relevant command within the agency.⁴⁴ Each document should incorporate and/or cross-reference the other documents as necessary. Also, since the SOPs for these paragraphs are interrelated, the Monitor suggests that they be in a similar format and that each one include a table of contents for quick reference.

⁴² The Monitor refers to both the FRT SOP and the FIU SOP because FIU is the section that actually conducts the investigations of critical firearm discharges; the FRT is supposed to review the investigations. Therefore, it is imperative that the FIU SOP contain all of the information that is required for this investigative protocol.

⁴³ DOJ letter to DPD, dated December 17, 2004.

⁴⁴ For example, the Force Investigative Unit is often still referred to as a Section in various documents. The Force Review Team is also known as the Board of Review. The Force Review Team and the Board of Review appear to take on the responsibilities of the CLFRT created by paragraph U39. The Internal Controls Division is also referred to as the Office of Internal Affairs or the Internal Affairs Division.

Paragraphs U39-41 – Command Level Force Review Team; Time Limits for Command Level Force Review Team Aggregate Review

Paragraph U39 mandates that the DPD 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.

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.

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 paragraphs U39-41 during the quarter ending May 31, 2004, finding the DPD in non-compliance. The CLFRT, referred to by the DPD as the Command Level Board of Review (CLBR), was not operational as of the end of the quarter. The Monitor noted its understanding that the criteria for selecting other team members had been developed; however, they had not been submitted to the Monitor. In addition, Directive 304.4, *Board of Review Policy*, which includes the CLBR's role as required by paragraph U40, had been revised and was under review by the DPD. Finally, the Deputy Chief of the Professional Accountability Bureau (PAB), who will serve as Chair of the CLBR, had prepared a report on the analysis of the circumstances surrounding fatal and non-fatal officer-involved shootings; however, this report was still under review by the DPD.

Current Assessment of Compliance

According to the DPD, Directive 304.4, *Board of Review*,⁴⁵, which contains the requirements of paragraphs U39-41, was posted on the DPD's website on October 26, 2004 for review and comment from the public. The directive is currently under review by the Board of Police Commissioners (BOPC).

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U39-41.

⁴⁵ The Board of Review is what the Monitor has previously referred to as the CLFRT and/or CLBR. It is also referred to by the DPD as the Force Review Team.

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, investigatory 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. 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 last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, 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 U42 requires the DPD to revise its arrest policies to define arrest and probable cause as those terms are defined in the Consent Judgment and prohibit the arrest of an individual with less than probable cause.

Background

The Monitor last assessed the DPD's compliance with paragraph U42 during the quarter ending May 31, 2004, at which time the DPD was found in non-compliance, as its proposed revised arrest policies failed to address the definition of probable cause as defined by the Consent Judgment.⁴⁶

⁴⁶ The DPD provided the Monitor and the DOJ with a revised Directive 202.1, *Arrests*, on April 28, 2004.

Current Assessment of Compliance

During the current quarter the DPD made additional revisions to Directive 202.1, *Arrests*, based upon feedback provided by the Monitor. However, in its Fifth Quarterly Status Report, dated November 30, 2004, the DPD indicated that it plans on challenging the probable cause definition in court. The DPD had not yet filed its challenge as of the end of the quarter. At the DOJ's request, the DPD submitted a letter to the DOJ, dated November 23, 2004, outlining the issue regarding the definition of probable cause. The Monitor is encouraged that there now is movement on this issue and looks forward to a final resolution.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U42.⁴⁷

Paragraph U43 – Review of All Arrests

Paragraph 43 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 last assessed the DPD's compliance with paragraph U43 during the quarter ending May 31, 2004, at which time the DPD was found in non-compliance because its revised policy did not adequately address the paragraph's requirements.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed DPD Directive 202.1, *Arrests*, noting that it adequately addresses the requirements of paragraph U43 except for the definition of probable cause.⁴⁸ In addition, as of the end of the quarter, the DPD had yet to finalize and disseminate an auditable form that addressed the requirements of the paragraph.

⁴⁷ The Monitor withholds a determination of compliance for this paragraph based on the discussions between the parties regarding the probable cause definition for this quarter only. If this issue has not been resolved by the next evaluation quarter, unless there is active court litigation, the Monitor will hold the DPD in non-compliance due to the length of time that this issue has been pending.

⁴⁸ Refer to the Monitor's discussion of compliance at paragraph U42.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U43.⁴⁹

B. INVESTIGATORY STOP POLICIES

This section comprises paragraphs U44-45. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, 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 Consent Judgment. The policy must specify that a frisk is authorized only when the 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 last assessed the DPD's compliance with paragraph U44 during the quarter ending May 31, 2004, at which time the Monitor found the DPD in non-compliance. Although the DPD submitted revised policy to the BOPC for review, the BOPC had not reviewed and approved it as of the end of the quarter.

Current Assessment of Compliance

The DPD submitted Directive 202.2, *Search and Seizure*, which is intended to address the specific requirements of paragraphs U44 and U45, to the DOJ and the Monitor with correspondence dated August 16, 2004. The Monitor reviewed the directive and provided comments to the DPD; the DPD subsequently provided additional revisions on October 25, 2004. The Monitor reviewed the additional revisions and determined that the directive now generally meets the requirements of the Consent Judgment, pending the outcome of the discussions of the definition of probable cause.⁵⁰ The policy had not been disseminated to the field as of the end of the quarter.

⁴⁹ The explanation provided for the Monitor's decision to withhold its determination of the DPD's compliance with paragraph U42, as described in the Current Assessment of Compliance for paragraph U42, also applies to paragraph U43.

⁵⁰ The Monitor notes that Directive 202.2 contains the same definition of probable cause as in Directive 202.1, *Arrests*. This definition is the subject of ongoing discussions between the parties.

Based upon the Monitor's recommendation, the DPD drafted Directive 404.4, *Definitions*, to address the many definition requirements of the UOF CJ. The Monitor determined that the directive adequately defines an investigatory stop and frisk. However, it had not been approved by the BOPC or disseminated to the field as of the end of the quarter.

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

Paragraph U45 – Documentation Requirement

Paragraph U45 mandates that the DPD must require written documentation of 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 last assessed the DPD's compliance with paragraph U45 during the quarter ending May 31, 2004, finding the DPD in non-compliance. Although the DPD submitted revised policy to the BOPC for review, the BOPC had not reviewed and approved it as of the end of the quarter. In addition, the Monitor determined that further revisions were required to the revised auditable form used to document stops and frisks not supported by reasonable suspicion.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U44, above, during the current quarter, the DPD provided the Monitor and the DOJ with Directive 202.2, *Search and Seizure*, which is intended to address the specific requirements of paragraphs U44 and U45. The Monitor reviewed the directive and determined that it adequately addresses the requirements of paragraph U45 with the exception of the creation of an auditable form. The Monitor understands that the DPD is currently revising Form UF-003 based on the Monitor's comments. In addition, Directive 202.2 has yet to be disseminated to the field.

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

C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, 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.

Paragraphs U46-48 – Revision of Policies; Submission to DOJ within 3 Months; Documentation of Interviews and Interrogations

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.

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.

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 last assessed the DPD's compliance with paragraphs U46-48 during the quarter ending May 31, 2004, at which time the DPD was found in non-compliance. The DPD's revised Witness Identification policies⁵¹ were in the process of being reviewed by DPD management prior to submission to the DOJ.

Current Assessment of Compliance

In July 2004, the DPD submitted proposed policy intended to address the requirements of these paragraphs to the DOJ for review and consideration. In August 2004, the DOJ and the DPD participated in a discussion during which the DOJ made available two subject matter experts to field DPD questions and concerns. The discussions resulted in additional revisions, which were subsequently resubmitted by the DPD in October 2004. As of the end of this quarter, the DOJ was still reviewing the directive.⁵²

⁵¹ Directive 203.9, *Custodial Questioning*, and Directive 203.1, *The Crime Scene Investigation*, are intended to specifically address the requirements of paragraphs U46-48.

⁵² After the end of the quarter, on December 10, 2004, the DOJ forwarded to the DPD a letter in which the DOJ outlined specific components of the proposed policy that did not adequately address the requirements of paragraphs U46 and U48, including specific issues identified during the August discussion that were not yet adequately addressed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U46-48.⁵³

D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, at which time the Monitor withheld a compliance determination for paragraph U50⁵⁴ and found the DPD in non-compliance with paragraphs U49 and U51. Although Directive 202.1, *Arrests*, which was approved by the BOPC on March 18, 2004 and signed by the Chief of Police on April 5, 2004, addressed many of the requirements of paragraph U49, it did not delineate or references any other systematic process to ensure that most, if not all, arrestees will be arraigned within 48 hours. In addition, auditable form UF-004, relating to prompt judicial review and warrant request requirements, had not been implemented as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U49-51 during the quarter ending February 28, 2005.

Paragraph U50 – Requirement of Warrant Request

For each arrestee, paragraph U50 requires the DPD to submit to the prosecutor's office, within 24 hours of the arrest, a warrant request for arraignment on the charges underlying the arrest.

Background

The Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending August 31, 2004. During that quarter, the DPD issued Directive 202.1, *Arrests*.⁵⁵ The Monitor reviewed the directive and determined that Section 202.1 – 8 specifically and adequately addresses this policy requirement of paragraph U50. However in accordance with the proposed Methodologies, the Monitor withheld a compliance determination pending an assessment of the dissemination of Directive 202.1.

⁵³ The DPD has complied with paragraph U47's requirement to submit revised policy for review and approval of the DOJ; however, until the revised policy has been reviewed and approved by the DOJ, and implemented, the DPD will be unable to achieve compliance with the paragraph.

⁵⁴ The Monitor continued its evaluation of the DPD's compliance with paragraph U50 during the current quarter and is reporting its assessment in the current report, immediately below.

⁵⁵ The DPD issued Directive 202.1 on July 30, 2004 with the intention of addressing a number of UOF CJ requirements.

Current Assessment of Compliance

During the current quarter, the Monitor randomly selected 94 DPD sworn personnel and requested the production of documentation supporting their receipt of Directive 202.1. The DPD responded in a letter dated October 14, 2004, stating the following: “Currently the Detroit Police Department has no policy requiring members to sign for the distribution of new policies. However changes are being implemented that would change the current procedure and require personnel to sign for written directives.”⁵⁶

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U50.

Recommendation

The Monitor recommends that the DPD expeditiously devise and implement a procedure for the dissemination of all finalized policies, including Directive 202.1, to include an audit trail of receipt by necessary personnel.

E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor last assessed the DPD’s compliance with these paragraphs during the quarter ending August 31, 2004, at which time the Monitor found the DPD in non-compliance. Although the DPD drafted a revised Directive 305.2, *Detainee Registration*, the directive was in draft form and within the DPD’s review process as of the end of the quarter. In addition, the Monitor reviewed supporting documentation for 27 holds; identifying a number problems with the documentation the most notable of which was that for all but four holds, the Monitor was unable to determine whether the detainee was presented within 24 hours, as dates and/or times were frequently omitted.

The Monitor is scheduled to again assess the DPD’s compliance with paragraphs U52-53 during the quarter ending February 28, 2005.

F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor last assessed the DPD’s compliance with these paragraphs during the quarter ending August 31, 2004, at which time the Monitor found the DPD in non-compliance with each. Although Directive 305.4, *Holding Cell Areas*, generally addressed the requirements of paragraphs U54-55, it was being revised and, therefore,

⁵⁶ As noted in the Current Assessment of Compliance under paragraph U42, the Arrests Directive has not yet been disseminated to the field. However, the Monitor has concluded that the DPD is in non-compliance with paragraph U50, since the requirements of this paragraph are not dependent on the parties’ discussion regarding the definition of probable cause. The Monitor evaluated the sample as indicated to determine how the DPD is documenting the dissemination of policy, which will become more relevant as policies are finalized and approved.

had not been disseminated to the field as of the end of the quarter. In addition, the DPD had yet to issue Form UF-008, which is designed to address the documentation of restrictions and reportable violations of policy.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U54-55 during the quarter ending February 28, 2005.

G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, at which time the Monitor withheld a compliance determination for paragraph U56⁵⁷ and found the DPD in non-compliance with paragraph U57. Non-compliance with paragraph U57 was due primarily to the fact that DPD Directive 202.1 and Training Directive 04-1 had not been implemented during the current quarter; in addition, documentation related to the only individual identified by the DPD as a material witness during the period selected for review contained neither a court order nor an appropriate auditable form.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U56-57 during the quarter ending February 28, 2005.

Paragraph U56 – Revision of Material Witness Policies

Paragraph U56 requires the DPD to revise existing material witness policies to define a material witness as a witness subpoenaed to testify in a criminal case.⁵⁸ Furthermore, the DPD must remove the term "police witness" from all DPD policy and procedure.

Background

The Monitor last assessed the DPD's compliance with paragraph U56 during the quarter ending August 31, 2004. During this quarter the DPD issued Directive 202.1, *Arrests*,⁵⁹ and related Training Directive 04-1. The Monitor reviewed the directives and determined that they accurately define a material witness and contain verbiage that clearly instructs that "No material witness shall be taken into DPD custody without a member first obtaining a court order." However in accordance with the Methodologies, the Monitor withheld a compliance

⁵⁷ The Monitor continued its evaluation of the DPD's compliance with paragraph U56 during the current quarter and is reporting its assessment in the current report, immediately below.

⁵⁸ Paragraph 1aa of the Use of Force Consent Judgment defines a material witness.

⁵⁹ The DPD issued Directive 202.1 on July 30, 2004 with the intention of addressing a number of UOF CJ requirements.

determination pending an assessment of the dissemination of Directive 202.1 and Training Directive 04-1.

Current Assessment of Compliance

During the current quarter, the Monitor randomly selected 94 DPD sworn personnel and requested the production of documentation supporting their receipt of Directive 202.1 and Training Directive 04-1.

For the reasons outlined in the Current Assessment of Compliance for paragraph U50, the Monitor finds the DPD in non-compliance with paragraph U56.⁶⁰

H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises only paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2004, 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 (A&D) 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

⁶⁰ As reported in our Report for the Quarter Ending August 31, 2004, the DPD has indicated that the term "police witness" has been removed from all pertinent DPD policy and procedure directives. Because the DPD has not yet complied with the other requirement of paragraph U56, the Monitor elected to defer reviewing and reporting on the DPD's compliance with this requirement. This review is scheduled for the quarter ending February 29, 2004.

Background

The Monitor last assessed the DPD's compliance with paragraph U58 during the quarter ending May 31, 2004 at which time the DPD was found in non-compliance because its forms failed to capture much of the information required by the paragraph.

Current Assessment of Compliance

The DPD is in the process of formulating its CRISNET Records Management System to capture all information required by paragraph U58. In the interim, the DPD issued teletypes 04-06054 through 04-06057 that mandate the recording of dates and times. However, the teletypes do not meet all of the requirements of this paragraph.

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

I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending August 31, 2004, finding the DPD in non-compliance. Although the DPD had made some progress in addressing the policy requirements of the paragraph through Directive 202.1, *Arrests*, the Monitor determined that the directive did not meet all of the requirements of the paragraph. The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending February 28, 2005.

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2004. The Monitor again assessed the DPD's compliance with this paragraph 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 must be completed within 7 days of receiving the document reporting the event, and must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

Background

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2004, at which time the DPD was found in non-compliance consistent with its preliminary findings from its Stop and Frisk audit.

Current Assessment of Compliance

In response to paragraph U47, in October 2004 the DPD resubmitted to the DOJ revised policy to address witness identification and questioning policy requirements.⁶¹ As of the end of this quarter, the DOJ was still reviewing the policy. Furthermore, as of the end of the quarter, the DPD had yet to disseminate Directive 202.2, *Search and Seizure*, and any related auditable forms required to be reviewed by DPD Commanders.

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

⁶¹ As noted in the Current Assessment of Compliance for paragraphs U46-48, in a letter dated December 10, 2004 the DOJ notified the DPD that the re-submitted policy did not adequately address the requirements of paragraphs U46 and U48.

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.⁶²

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, 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 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.

Background

The Monitor last assessed the DPD's compliance with paragraph U61 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that external complaint policy required by paragraph U61, included in Directive 102.6, *Citizen Complaints*, was being revised. The DPD indicated that this revised policy would be completed during the quarter ending August 31, 2004.

Current Assessment of Compliance

The Citizen Complaints Policy was revised and submitted to the DOJ and the Monitor on September 9, 2004, and then again on October 15, 2004. The Monitor reviewed the policy and made recommendations to the DPD on November 16, 2004. The Monitor noted that, among other things, the policy: failed to adequately outline a plan for each agency's responsibility for conducting community outreach and education regarding complaints; did not specifically state the requirement that officers are prohibited from discouraging any person from making a

⁶² The OCI reports to the BOPC and is responsible for conducting all external complaint investigations.

complaint or refusing to take a complaint; and included information that may be construed to allow intake officers to include opinions regarding a complainant's mental capacity, which is prohibited.

The DPD resubmitted the policy on November 30, 2004, incorporating many of the Monitor's recommendations into the revised version. However, the policy still fails to include adequate information concerning a plan for each agency's responsibility for conducting community outreach and education regarding citizen complaints, as required by paragraph U61. The policy only mentions the informational brochure and contact form which is given to citizens by officers when they would like to make a complaint. There is no mention of the informational campaign, BOPC meetings,⁶³ precinct community meetings, or any other means of outreach and education. Furthermore, as of the end of the quarter, the policy had not yet been disseminated to OCI and DPD personnel.

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 May 31, 2004, finding the DPD in non-compliance with paragraph U62⁶⁴ due to the fact that the DPD had not satisfied all of the requirements of subparagraphs b through d.

⁶³ BOPC meetings are mentioned in the policy but not as a tool for community outreach for complaints.

⁶⁴ 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 in this report.

Current Assessment of Compliance

U62a 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.

U62b Distribution of complaint forms, fact sheets and informational posters

During the current quarter, the Monitor evaluated part of the DPD's external complaint informational campaign. On October 28, 29, and November 3, 2004, the Monitor, along with an OCI Investigator, conducted site visits to all Neighborhood City Halls, city libraries (with the exception of one - Douglass Branch) and precincts to determine whether they had complaint forms, facts sheets and informational posters to distribute. The Monitor determined that all twelve precincts had complaint forms, which were kept in a location accessible to supervisors only. Informational Posters were prominently displayed in the Front Desk areas of all precincts. Five of the twelve precincts had Fact Sheets.

Five of the twenty-five libraries (20%) had all of the required material; the Fact Sheets and Informational Posters were posted in conspicuous locations in the lobby areas. Four of the twenty-five libraries had no informational campaign material.

Two of the ten City Halls (20%) had all the required material and had the posters and fact sheets posted in conspicuous locations. All ten of the Neighborhood City Halls had the Informational Poster posted; however, the availability of the Fact Sheet and Complaint Forms varied.

It is apparent to the Monitor that the DPD and the City have put forth a good faith effort in an attempt to address the requirements of this paragraph; however, the OCI must conduct follow-up to establish and maintain compliance once it is confirmed that all locations are in receipt of the required information. For example, although it appears that the OCI distributed all of the relevant materials to all locations, some of the locations had run out of material, and did not know who to contact for additional materials. Furthermore, staff at some of the locations had no idea what material was being referred to. Since the libraries and City Halls are places that are frequently visited by the public, personnel at these locations must be aware of the Informational Campaign.

The informational campaign required by this subparagraph must be ongoing. Therefore, an initial distribution of materials is not enough to achieve compliance if those materials are not maintained at those locations on a continuing basis.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U62b.

U62c Complaint Process Broadcasts

The Monitor evaluated the public service announcement (PSA) revised by OCI that describes the complaint process,⁶⁵ as required by paragraph 62c, and determined that the revised announcement still did not include the modifications previously recommended by the Monitor.⁶⁶

The Monitor recommended that the PSA specifically inform citizens that complaint 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 at the OCI. Currently, the PSA states that citizens have the right to file a complaint by mailing a letter or contact form, or in person at OCI, and that forms are available at OCI, City Halls, libraries and all DPD precincts. However, it fails to mention that additional information, such as fact sheets and informational posters, may also be found at such locations.

The Monitor also previously reported that the PSA should also make citizens aware that all officers in patrol cars have informational brochures and contact forms available while on duty; this requirement is still not included in the PSA.⁶⁷ In addition, the Monitor recommended 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 them upon receiving the form. Although the PSA does inform citizens that contact forms can be mailed to OCI and are available at City Halls, libraries, and all DPD precincts, it does not inform the citizens of the contact forms' purpose. The Monitor recommends that once citizen contact forms are implemented as required by paragraph U63, the PSA inform citizens that the forms can be submitted to OCI so that OCI will contact the citizen upon receiving the form to take a complaint.

The PSA is an integral part of the City and the DPD's requirement to inform persons that they may file complaints as required by paragraphs U62a and U63. Therefore the entire complaint process, including all of the various ways that a citizen can obtain information in order to file a complaint, should be described. Nevertheless, the DPD has met the minimum requirements of describing the complaint process. Once the contact forms are implemented, the Monitor will review the PSA tape again to determine whether it includes information informing citizens about the contact forms and their purpose.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U62c.

U62d Informational Campaign Placards

⁶⁵ The Monitor evaluated a videotape copy of the PSA that was received by the Monitor on November 5, 2004.

⁶⁶ These recommendations were included in the Monitor's Report for the Quarter Ending May 31, 2004.

⁶⁷ If the City and the DPD plan to inform citizens about the contact forms in some other manner, then this information should be submitted to the Monitor. Otherwise, once the contact forms are implemented, the Monitor is uncertain how citizens will know that officers have contact forms in their vehicles unless this information becomes part of the informational campaign.

During the site visits described in subparagraph U62b, above, the Monitor determined that all twelve precincts have a placard permanently posted in their lobby areas. The placards describe the complaint process, including relevant telephone numbers.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U62d.

Recommendations

Paragraph 62b

Paragraph U111 requires that the City and the DPD explain the Consent Judgments to all relevant City employees and provide initial training on the UOF CJ to all City (and DPD) employees whose job responsibilities are affected by this Agreement within 120 days of each provisions implementation. The Monitor recommends that the City and the DPD provide paragraph U111 training as it pertains to this paragraph to the relevant city employees at the neighborhood city halls. The Monitor also recommends that the City, DPD and OCI develop a systematic procedure under which these locations will regularly receive materials and provide information to the City employees who work there about the informational campaign and who to contact for additional materials. Similarly, although the city library employees are primarily employees of the Detroit Public School system, the City and the DPD must develop a process to educate relevant employees about the informational campaign and the process for obtaining replacement materials. As necessary, the City and the DPD must develop their own method of ensuring that all locations have the materials required by the Consent Judgments.

Paragraph 62c

The Monitor recommends that the PSA include a statement informing citizens that fact sheets and informational posters are available at OCI, City Halls, libraries and all DPD precincts. Once the contact form is implemented, the Monitor recommends that the PSA inform citizens that officers have the contact forms in their patrol cars and describe the purpose of the forms.

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 May 31, 2004, finding the DPD in non-compliance. 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; however, the DOJ review of the submission⁶⁸ was not complete as of the end of the quarter.

Current Assessment of Compliance

The DPD resubmitted the informational brochure and contact form to the DOJ for review and approval with a letter dated October 15, 2004. The informational brochure and contact form were approved by the DOJ on November 9, 2004. According to the DPD, the form has been forwarded to the BOPC for production and will be distributed once production is complete. Then officers will be required to carry the brochure and form in their vehicles at all times while on-duty. This contact form must be implemented by January 9, 2005 (within 60 days of the review and approval of DOJ).

The second part of this paragraph requires that the DPD require all officers to inform an individual of his or her right to make a complaint and that the DPD prohibit officers from discouraging any person from making a complaint or refusing to take a complaint. These requirements have been included in Directive 102.6, *Citizen Complaints*. As described above, this policy has not yet been disseminated within the Department.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U63 pending the DPD's implementation of the contact form that was approved by the DOJ during the current quarter; implementation is required by January 9, 2005.

A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-compliance with paragraphs U64 and U65, and in compliance with paragraph U66. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments 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.

⁶⁸ On June 23, 2004 (after the end of the quarter), the DOJ provided the DPD with comments and recommendations for revisions to these materials.

Background

The Monitor last assessed the DPD's compliance with paragraph U64 during the quarter ending May 31, 2004 finding the DPD in non-compliance due to the fact that Directive 102.6, *Citizen Complaint Policy*, was being revised. The DPD indicated that the revised policy would not be completed until the quarter ending August 31, 2004.

Current Assessment of Compliance

On November 16, 2004, the Monitor provided the DPD with recommendations for revisions to Directive 102.6, *Citizen Complaint Policy*. Currently, it is not the DPD's policy to have all officers accept and document all complaints as required by this paragraph. Instead, the DPD requires officers to refer the acceptance of in-person complaints to a supervisor. All other complaints filed by mail, facsimile or electronic mail are taken by or referred to OCI.

The DPD's revised Citizen Complaint Policy was resubmitted on November 30 2004 (at the end of the quarter). The Monitor will further evaluate whether the DPD's complaint intake procedures meet the requirements of this paragraph. In any event, the DPD has not yet disseminated the revised policy.

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 May 31, 2004, finding the DPD in non-compliance. The Monitor determined that although intake officers were following the paragraph's requirements, the DPD had not provided written policy or procedure to its intake officers regarding the requirement.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the OCI's SOP and determined that it includes the requirements of paragraph U65. However, since intake officers may be DPD personnel, in addition to OCI personnel, it is necessary that this information be made available to the DPD.⁶⁹ The Monitor informed the DPD that Directive 102.6, *Citizen Complaints*, included information

⁶⁹ The OCI SOP applies to OCI only.

that may be construed to allow intake officers to include opinions regarding a complainant's mental capacity, which is prohibited. The DPD resubmitted a revised directive on November 30, 2004. The revised directive now adequately includes the requirements of paragraph U65; however, this policy has not yet been disseminated to the field.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph U66 during the quarter ending May 31, 2004 finding the DPD in compliance.

Current Assessment of Compliance

The Monitor's review of complaint forms and the OCI's computer-based complaint tracking system indicates that the OCI and DPD are continuing to assign a unique complaint number and provide a description of the basis for all complaints.

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 last assessed the DPD's compliance with paragraphs U67 and U68 during the quarter ending May 31, 2004,⁷⁰ 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 U67 – Revision of External Complaint Investigations Policy

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

⁷⁰ The Monitor commenced its assessment of paragraph C69 during the same quarter. Although the Monitor determined that completed OCI investigations were resolved by using one of the four dispositions required by paragraph U69, the Monitor had not yet evaluated whether the dispositions were appropriate in light of the facts of each investigation that was reviewed.

- 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 May 31, 2004, finding the DPD in non-compliance based on the Monitor's review of a sample of 56 investigations and the fact that the Citizens Complaint directive had not yet been completed. The Monitor evaluated subparagraphs b, g and h and determined that only 4 of the 56 investigations were completed within 60 days of receiving the complaint; for the 56 investigations, the average time for completion was 181 days. The Monitor's review also concluded that the DPD had not yet implemented a system by which complainants will be informed of disciplinary actions.

Current Assessment of Compliance

For the reasons outlined in the Current Assessment of Compliance for paragraph U61, the Monitor finds the DPD in non-compliance with paragraph U67. Furthermore, the DPD has indicated that subparagraphs e. and f. of paragraph U67 are included in the OCI and ICD SOPs. The Monitor reviewed the OCI's SOP and determined that it does not adequately address the requirements of either subparagraph.⁷¹

Section 5 of the OCI SOP, entitled "Personnel Policies," outlines the selection of OCI personnel in section 5.1 but the information falls short of developing written criteria for OCI investigator applicants as required by the subparagraph. The SOP mentions that applicants must meet the requirements of the specific job specifications and other criteria; however, it does not elaborate

⁷¹ The Monitor has limited its assessment to the OCI SOP since parties and the Monitor will discuss whether ICD investigators also conduct investigations of external complaints as alluded to in subparagraphs U67e and f.

on what type of investigative experience is necessary, or what is expected in the oral interview or from the writing exercise. In other words, a complete written criterion for investigator applicants has not been developed in the SOP.

Regarding subparagraph f., which requires the implementation of mandatory pre-service and in-service training for all OCI investigators, the SOP does require pre-service and in-service training. The SOP states that the pre-service training is conducted for all new OCI personnel. The in-service training, which will be conducted for at least 32 hours annually, does not specifically mention the required attendees although it is assumed that at minimum all OCI investigators must attend. The Monitor has not been provided with a lesson plan for the pre-service or in-service training.

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

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 May 31, 2004, finding the DPD in non-compliance. The Monitor reviewed a random sample of all OCI investigations completed in April 2004 and determined that the OCI complied with paragraph U68a in 51 out of 56 instances and with paragraph U68b in 41 of the 56 instances. Although OCI indicated that the Chief of Police is conducting a review as required by paragraph U68c, it was not possible to determine from the OCI's investigative files whether the review is taking place within seven days of the BOPC's review.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the OCI's SOP and determined that it includes the requirements of paragraph U68. However, since this paragraph affects both the DPD and OCI, it is necessary that the process be included in a policy or procedure, in addition to the OCI SOP. According to the DPD, the requirements for paragraph U68 are included in Directive

102.6, *Citizen Complaints*. The Monitor has found that the requirements of U68 are stated in the directive; however, the policy has not yet been disseminated to the field.

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

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

The Monitor last reviewed the DPD’s compliance with paragraph U69 during the quarter ending May 31, 2004. The Monitor reviewed a sample of 56 OCI investigations and determined that all of the investigations were resolved by using one of the four dispositions required by paragraph U69. However, the Monitor could not complete its assessment of compliance with paragraph U69 to include an evaluation of whether the dispositions were appropriate in light of the facts of each investigation that was reviewed.⁷² The evaluation did not take place because the Monitor was waiting until the DPD promulgated the investigative policies and finalized the investigative procedures required by various paragraphs in the UOF CJ.

Current Assessment of Compliance

During the current quarter, the DPD indicated that the requirements of paragraph U69 are addressed by Directive 102.6, *Citizen Complaints*. The Monitor assessed the directive and determined that it includes the paragraph’s requirements. However, it has not yet been disseminated to the field.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U69.

⁷² As part of the required compliance reviews, under paragraph U139, the DPD is required to reopen for further investigation any investigation that the Monitor determines to be incomplete.

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 last assessed the DPD's compliance with paragraphs U72 and U74-77 during the quarter ending February 29, 2004:

- The Monitor found the DPD in non-compliance with paragraph U72 due to the fact that Directive 102.3, *Code of Conduct*, which was approved by the DPD and the BOPC, had not been disseminated to the field as of the end of the current quarter.
- The Monitor found the DPD in non-compliance with paragraph U74 due to the fact that Directive 304.1; *Firearms*; was under revision and Directive 102.3, *Code of Conduct*, had yet to be issued to the field. In addition, Directive 102.3 did not describe how the DPD will enforce its current policies that require officers to report such conduct and that allow for discipline for violating these policies.
- The Monitor withheld a determination of compliance with paragraph U75 pending an evaluation of the dissemination and implementation of Directive 202.1, which the Monitor determined adequately addresses the paragraph's requirements.
- The Monitor found the DPD in non-compliance with paragraph U76 due to the fact that Directive 305.4, *Holding Cell Areas*, did not adequately address the requirement that officers summons emergency medical services to transport prisoners when the restraints employed indicate the need for medical monitoring.
- The Monitor found the DPD in non-compliance with paragraph U77 due to the fact that Directive 303.4, *Foot Pursuit Policy*, which was approved by the Chief of Police on March 17, 2004 and by the BOPC on April 28, 2004, did not fully address the requirements of the paragraph.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U72 and U74-77 during the quarter ending February 28, 2005.

The Monitor last assessed the DPD's compliance with paragraphs U70, U71 and U73 during the quarter ending May 31, 2004, 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 U70 – General Policies

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

Background

The Monitor last assessed the DPD's compliance with paragraph U70 during the quarter ending May 31, 2004, at which time the DPD was found in non-compliance as it had yet to substantially finalize revised policy for the UOF CJ.

Current Assessment of Compliance

During the current quarter, the Monitor inquired with the DPD regarding the status of the revision and/or creation of policy and procedure to address the requirements of the UOF Judgment. The Monitor determined that although the DPD has progressed in formulating and revising policy and procedure, as of the end of the quarter, it had not yet finalized and disseminated most policy and procedure required under the UOF CJ.

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

Paragraph U71 – Proposed Policy for Community Review and Comment

Paragraph U71 requires that the DPD 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 last assessed the DPD's compliance with paragraph U71 during the quarter ending May 31, 2004, at which time the Monitor found the DPD in overall non-compliance. Although the DPD had what appeared to be an adequate approach to identifying, addressing and responding to citizen comment, it was not memorialized in writing, resulting in non-compliance with the policy and training requirements associated with this paragraph.

Current Assessment of Compliance

During the current quarter the DPD provided the Monitor with a detailed explanation of its internal procedures for the posting of proposed policy to the DPD website and dissemination of

proposed policy at weekly BOPC meetings. The Monitor reviewed these procedures and determined that the DPD has established an adequate system to identify, forward, post and remove proposed policy from its Website. Indeed, the Monitor queried the DPD website throughout the quarter, noting that, at times, proposed policy was posted.

However, the OCI's protocol for reviewing and responding to citizen comments either has yet to be memorialized in writing or has not been provided to the Monitor as requested.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U71.

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 last assessed the DPD's compliance with paragraph U73 during the quarter ending May 31, 2004. At that time, the Monitor received supporting documentation from the DPD relative to its decision to staff one supervisor for every five officers. The Monitor also requested and received daily attendance records for all precincts and specialized units for all shifts for the month of March 2004. Upon review of these documents, the Monitor was unable to confirm that each platoon was adequately staffed with at least one supervisor. As a result, the Monitor found the DPD was found to be in non-compliance.

Current Assessment of Compliance

During the current reporting period, the Monitor requested and received daily attendance records for all precincts and specialized units for all platoons for the period September 1 through September 10, 2004. The Monitor reviewed daily attendance records for precincts 2 and 3 for two platoons and precincts 6, 8 and 12 for one platoon.

For precinct 3 for one platoon the Monitor noted that the ratio of supervisors to officers totaled 5.33. For all other precincts and platoons reviewed the ratio was equal to or less than five officers to one supervisor.

For the same time period the Monitor reviewed daily attendance records for seven specialized units. For six of the seven specialized units reviewed for one day the Monitor noted that the number of officers to supervisors was equal to or less than 5. For one specialized unit reviewed, for two platoons over a one-day period the ratio of officers to supervisors was 5.5 and 9, respectively.

These findings represent a significant improvement from the Monitor's last assessed compliance with this paragraph, largely due to an overall improvement in the documentation of attendance

by officers and supervisors. Despite these findings, the Monitor cannot conclude on compliance given the limited population reviewed. As a result, the Monitor elects to withhold a determination of compliance pending expansion of its population to include a review of all precincts and platoons.

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 last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI., during the quarter ending May 31, 2004, 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 U78 – Development of Risk Management Plan

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

- a. a Risk Management Database (discussed in paragraphs 79-90);
- b. a performance evaluation system (discussed in paragraph 91);
- c. an auditing protocol (discussed in paragraphs 92-99);
- 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 August 31, 2004, finding the DPD in non-compliance due primarily to the fact it had not met the requirements and deadlines included in the UOF CJ paragraphs related to subparagraphs a-c, above.

Current Assessment of Compliance

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 related to each of the respective subparagraphs, a. through c., as described above. Because the DPD is in non-compliance with the majority of these paragraphs, it is also currently in non-compliance with subparagraphs U78 a.-c..⁷³

Furthermore, with regard to subparagraphs d. and e., the DPD must develop a mechanism for conducting regular and periodic reviews of all DPD policies and must conduct regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.⁷⁴ The DPD did not specifically address these subparagraphs in its quarterly report and the Monitor has not been provided with any information that these reviews are being conducted and that the information is being shared and evaluated by DPD management.

Based on the foregoing, the Monitor finds the DPD 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 last assessed the DPD's compliance with paragraphs U78-79, U84-85, U88d. and e., and U89 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that the DPD was revising the Review Protocol, Data Input Plan, Report Protocol, Request for Proposal (RFP) and the interim risk management system, all of which are meant to address various requirements of these paragraphs, based upon comments and recommendations from the DOJ. In addition, the DPD had neither issued an RFP nor selected a contractor to create the Risk Management Database.

⁷³ The Risk Management Database is discussed under paragraph U79 below; and the auditing protocol is discussed under paragraph U92. On December 8, 2004, the DPD submitted Directive 401.1, *Performance Evaluation Ratings*, which purports to satisfy the requirements of paragraph U91.

⁷⁴ The requirements of paragraph 78e differ from the requirements of paragraph U110, which refers to meetings that the DPD should hold with the City Law Department specifically concerning the conclusion of civil lawsuits alleging officer misconduct. Certainly, information from the U110 meetings can be used in the U78e meetings; however, the U78e meetings are among DPD management and evaluate patterns of conduct that could increase the DPD's liability in any area (not just officer misconduct).

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 28, 2005.⁷⁵

The Monitor last assessed the DPD's compliance with paragraphs U80-83, U86-87, and U88a-c during the quarter ending May 31, 2004, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs, as well as paragraphs U78 and U79, during the current quarter. 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 May 31, 2004, finding the DPD in non-compliance due to the fact that the DPD did not meet the requirements and adhere to the deadlines included in the UOF CJ paragraphs that are pertinent to the risk management database.⁷⁶ Because the DPD was non-compliant with many of these paragraphs, most of which were reviewed during Q3, it was also in non-compliance with paragraph U79.

Current Assessment of Compliance

The DPD submitted the components of the Comprehensive Risk Management Plan, including the Data Input Plan, Report Protocol, Review Protocol, RFP (collectively referred to as the Management Awareness System or MAS), and an Interim Management Awareness System

⁷⁵ The Monitor is not scheduled to assess compliance with paragraphs U88f and g until the quarters ending August 31, 2005 and February 28, 2006, respectively, 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.

⁷⁶ Paragraphs U80-88.

(IMAS) to the DOJ for review and approval on October 25, 2004.⁷⁷ The DOJ is currently reviewing the Comprehensive Risk Management Plan.⁷⁸

Based on the foregoing, the Monitor finds the DPD 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;

⁷⁷ The DOJ does not have formal review and approval over the IMAS (paragraph U89); however, the Monitor and the parties determined that since the DOJ has review and approval over the MAS it should logically include the IMAS as well.

⁷⁸ After the end of the current quarter, the DOJ submitted a letter to the DPD, dated December 10, 2004, which included a list of technical and logistical questions regarding the proposed IMAS and MAS.

- 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 May 31, 2004, finding the DPD in non-compliance with each. 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 understood that it was being developed by the DPD.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U79, the DPD submitted the components of the MAS and IMAS to the DOJ for review and approval on October 25, 2004. The DOJ is currently reviewing the MAS and IMAS.

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 last assessed the DPD's compliance with paragraph U91 during the quarter ending August 31, 2004, finding the DPD in non-compliance as it was in the process of revising the Performance Evaluation Forms to address the paragraph's requirements.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U91 during the quarter ending August 31, 2005.

C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual⁷⁹ audits of all precincts and specialized units on eight aspects of policing,⁸⁰ to perform periodic random reviews of scout car camera videotapes and video recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to examine a number 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.

The Monitor last assessed the DPD's compliance with paragraphs U92-98 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. The Monitor last assessed the DPD's compliance with paragraphs U99 during the quarter ending May 31, 2004, finding the DPD in compliance.

⁷⁹ On October 4, 2004, the Court amended the audit schedules in the UOF CJ and COC CJ by requiring the DPD's UOF CJ audits to be completed annually by August 31, 2004, and every year thereafter and requiring the COC CJ audits to be completed semi-annually, with the second audits due by August 31, 2004 and subsequent audits due by January 17, 2005 and every six months thereafter. References to the UOF CJ and COC CJ in this report are to the CJs, as amended on October 4, 2004.

⁸⁰ Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U92-97 and U99.⁸¹ The Monitor also provided TA to members of the DPD's Audit Team (AT) as requested by the DPD relating to the following auditing subjects:

- Planning for the DPD's Witness Identification and Questioning, Emergency Preparedness and Medical and Mental Health audits;
- Revision to the auditable forms and logs required by the COC CJ;
- Audit sampling approaches; and,
- Objectives analysis and audit report writing.

The Monitor has also recommended that in addition to the TA provided by the Monitor, the DPD's audit personnel obtain training from an outside source such as the Los Angeles Police Department's *Police Performance Auditing* training. The Monitor understands that such training is expected to take place in early January 2005.

The results of our current assessments follow.

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 CJ⁸² to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

Background

The DPD's first Audit Protocol was submitted on February 16, 2004. The Monitor withheld a determination of compliance with paragraph U92 for the quarters ending February 29, 2004 and May 31, 2004 due to ongoing discussions between the parties regarding the frequency of the audits.⁸³ In addition, neither the Audit Protocol nor the DPD's quarterly status reports to August 31, 2004 adequately addressed the need for the DPD to provide periodic audit status reports to the Chief of Police.⁸⁴

⁸¹ The Monitor is scheduled to again assess the DPD's compliance with paragraph U98 during the quarter ending February 28, 2005.

⁸² This Audit Protocol must also address the audits required by the COC CJ (Paragraphs C65-72).

⁸³ The schedule contained in the Audit Protocol was inconsistent with the requirements specified in the original Consent Judgments.

⁸⁴ The Monitor's Methodologies require a periodic audit status reports to be issued 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.

As reported in the Monitor's Report for the Quarter Ending August 31, 2004, the Court granted the parties' "Joint Motion to Amend the Consent Judgments" and amended⁸⁵ the frequency of the audits in the UOF CJ and the COC CJ on October 4, 2004.⁸⁶

Although the audit timetable set out in the Audit Protocol dated February 16, 2004 met the requirements of the UOF CJ, as amended, it did not meet the requirements of the COC CJ, as amended. In addition, the DPD's Fourth Quarter Status Report, dated August 31, 2004, included information summarizing the status of the DPD's progress on each of the audits required, but did not identify that such audits were overdue, nor did it provide any reasons for the delay in issuance of such audits. Accordingly, the Monitor found the DPD in non-compliance with paragraph U92.

Current Assessment of Compliance

The Audit Protocol submitted by the DPD pursuant to paragraph U92 requires that it be "*updated and submitted to the Chief of Police for review and approval on an annual basis before the commencement of each fiscal year.*"⁸⁷ During this quarter, the DPD acknowledged the need to update the Audit Protocol to include: an audit schedule that meets the requirements of the UOF and COC CJs; and the requirement to issue a periodic status report to the Chief of Police.⁸⁸ The DPD fiscal year ended June 30, 2004; as of November 30, 2004, the DPD had not yet submitted an updated Audit Protocol.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U92.

Paragraph U93 – Audit Reporting Requirements

Paragraph U93 requires the DPD to issue a written report on the results of each audit⁸⁹ to the Chief of Police and to all precincts or specialized unit commanders. The UOF CJ requires such audit reports to be completed by August 31, 2004, and annually thereafter. These reports must include an examination of consistency throughout the DPD. The commander of each precinct and specialized unit must review all audit reports regarding employees under his or her command and, if appropriate, take disciplinary or non-disciplinary corrective action.

⁸⁵ As previously mentioned, all of the audit paragraphs in the UOF CJ and COC CJ were amended to require an annual audit timetable for the UOF CJ audits, and a semi-annual audit timetable for the COC CJ audits.

⁸⁶ Prior to the issuance of the Monitor's final report for the quarter ending August 31, 2004.

⁸⁷ *Audit Protocol, February 13, 2004, Page 2.*

⁸⁸ The DPD's Fifth Quarter Status Report includes information summarizing the status of the DPD's progress on each of the audits required, but does not identify that such audits are overdue, nor does it provide any reasons for the delay in issuance of such audits.

⁸⁹ Annual audits are required to be completed as required by paragraphs U94-97 of the current UOF CJ.

Background

The Monitor last assessed the DPD's compliance with paragraph U93 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that no audit reports were submitted to the Chief of Police as of the end of that quarter.

Current Assessment of Compliance

The DPD submitted to the Chief of Police one of the 8 audits required by the UOF CJ.⁹⁰ This audit did not include an examination of consistency throughout the DPD.

The Monitor has requested documentation to support the distribution to, and subsequent actions of, the Precinct and/or Specialized Unit Commanders in relation to the audit submitted. As of the date of this report, the Monitor has not received such documentation.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U93.

Paragraph U94-95 and U97 – Audits of UOF, Prisoner Injuries and Misconduct Investigations; Probable Cause, Stops and Frisks and Witness Identification and Questioning Documentation; and OCI Audit of External Complaints and Investigations

Paragraphs U94-95 of the UOF CJ require the DPD to conduct regularly scheduled annual audits of UOF; prisoner injuries; allegations of misconduct; arrests; stops and frisks; and, witness identification and questioning documentation. Such audits must cover all precincts and specialized units.

Paragraph U97 of the UOF CJ requires the Chief Investigator (CI) of the OCI to designate an individual or entity to conduct annual audits that examine external complaints and complaint investigations, and to review all audit reports regarding officers under OCI command and take appropriate disciplinary or non-disciplinary corrective action.

These audits were due by August 31, 2004, and annually thereafter.

Background

The Monitor last assessed the DPD's compliance with paragraphs U94-95 and U97 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that no audits required by these paragraphs were submitted as of the end of that quarter.

⁹⁰ The audit submitted was in response to paragraph U96, Custodial Detention Practices. See the Current Assessment of Compliance section for the Monitor's evaluation of this audit.

Current Assessment of Compliance

As of the end of the current quarter, the DPD had not submitted any of the audits required by these paragraphs. According to the DPD's AT, the audits of stops and frisks and of arrests were submitted to the Chief of Police and are in various stages of review. The remaining audits are either in the planning stages, or formal planning has not yet begun. During this quarter the Monitor continued to provide the DPD AT with TA relating to the planning of the Witness Identification and Questioning Audit (paragraph U95c).

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U94-95 and U97.⁹¹

Paragraph U96 – Audit of Custodial Detention Practices

Paragraph U96 of the UOF CJ requires the DPD to conduct regularly scheduled annual audits of the DPD's custodial detention practices, including evaluating the length of detention between the time of arrest and the time of arraignment and the time to adjudicate holds. Such audits must cover all precincts and specialized units.

Background

The Monitor assessed the DPD's compliance with paragraph U96 during the quarters ending November 30, 2003, February 29, 2004, and August 31, 2004, finding the DPD in non-compliance each time because the DPD had not submitted any audits relating to Custodial Detention Practices.

During the quarter ending February 29, 2004, the AT advised the Monitor that the scope of the paragraph U96 Custodial Detention Practices Audit would be included within the scope of the DPD's paragraph U95 Arrest Audit. The Monitor provided TA relating to these audits, as requested by the DPD. During the planning process for these audits, the DPD realized that combining these two audits would be overly complex. Accordingly, the DPD concluded that a separate Custodial Detention Practices Audit would be submitted by May 2004 as delineated in the DPD's 2003/2004 Audit Protocol.

Current Assessment of Compliance

The DPD submitted the Custodial Detention Practices Audit to the Monitor on October 21, 2004. In order to assess compliance with paragraph U96, the Monitor reviewed the audit report submitted by the DPD and selected AT working papers including workplans, crib sheets, matrices and other related documents. The Monitor did not review working papers related to the

⁹¹ The Monitor will continue to find the DPD in non-compliance for each audit until such time as the required audits have been submitted. When such audits are submitted, their quality will be evaluated.

fieldwork from this audit as such documents were not provided within a sufficient time to allow the Monitor to review them and include its findings in this report.

The Monitor's findings, which have been discussed with the DPD AT, are highlighted below:

Timeliness

The Custodial Detention Practices audit was not completed on a timely basis. The report does not identify the date of the audit report, nor does it identify when it was reviewed and approved by the Chief of Police. According to DPD personnel and the DPD's Third Status report, dated May 31, 2004, the Custodial Detention audit report was completed and submitted to the Chief prior to the initial May 31, 2004 deadline as set out in the DPD's Audit Protocol; however, the audit report was not finalized and distributed internally until October 8, 2004, more than five months after the report was apparently completed.

Additionally, the AT drew its audit sample from a total population of 4,927 arrest reports relating to arrests conducted from January 19, 2004 – February 15, 2004. As the audit report was completed on October 8, 2004, almost eight months after the arrests evaluated in this audit, the data for this audit is stale, and the findings and conclusions from this audit may be incorrect or irrelevant.⁹²

Sampling Issues

The AT did not properly stratify the arrest reports selected for the audit.⁹³ This resulted in an insufficient number of arrests to be tested for each precinct/specialized unit. In the First Precinct the resulting population was a total of one arrest report, which is insufficient to draw conclusions of either good or poor performance. A minimum sample size of, say, five arrests would have been more acceptable.⁹⁴

⁹² For example, one of the audit's findings states that the DPD is not documenting certain information. Due to the delay between the audit fieldwork and reported findings, it is unknown if this has been remedied or if the audit information is still valid.

⁹³ The AT calculated its sample size within each strata to achieve a total sample of 94 using error rate of +/-4%, rather than considering 94 arrests as the minimum sample size, ensuring that the sample sizes within each strata were proportionate to the total population, and by rounding up where necessary to do so. Additionally, when sampling using an error rate of +/-4%, the AT should have reviewed a minimum sample of arrest reports within each stratum, rather than one, as was the case for the First Precinct.

⁹⁴ Overall, the AT selected and tested more arrests than necessary by utilizing an error rate of +/-4% to calculate a sample size of 94 arrests from a total population of 4,927 arrests. For an audit where the Department is likely non-compliant with the objectives being tested in the audit, a sample size based on an error rate of +/-10% would have been sufficient, and would have resulted in a minimum sample size of 16 arrests. If such a sample size had been used, this would have reduced the level of work required by the DPD on this audit.

Scope of Review

Along with the examination of DPD's custodial detention practices, paragraph U96 contains two specific qualitative factors that must be assessed in this audit: the length of detention between the time of arrest and the time of arraignment and the time to adjudicate holds. Additionally, paragraph U96 requires the DPD to evaluate the practices of the DPD in relation to custodial detentions. The primary custodial detention practices mandated by the UOF CJ are listed below:

- Prompt Judicial Review Policies – Paragraphs U49-51;
- Hold Policies – Paragraphs U52-53;
- Restriction Policies – Paragraphs U54-55;
- Documentation of Custodial Detentions – Paragraph U58; and
- Daily Commander Review of Violations – Paragraph U60.

As discussed in the *Audit Reporting* section below, although it is difficult to ascertain whether this audit evaluated all of the objectives required, the Monitor identified the following concerns regarding the scope of this audit:

- When evaluating whether arraignments were held within 48 hours, the DPD's AT inappropriately excluded 56 of the 94 arrests that did not result in an arraignment.⁹⁵ Instead, the DPD's AT should have evaluated whether all arrestees within the sample were either appropriately arraigned or released within 48 hours.
- Although the audit evaluated whether a prompt judicial review policy was created, and it evaluated whether the arraignment was held within 48 hours, the audit did not evaluate whether the request for an arraignment occurred within 24 hours.⁹⁶
- The audit appropriately examined whether or not the precinct commanding officers conducted a review of auditable forms; however, the audit did not adequately address the fact that only one auditable form was completed. The audit identified many instances when an auditable form should have been completed and was not, but the audit did not elaborate or examine the causes for those forms not being completed other than to attribute the failure to complete the forms to the inability of DPD supervisors to know when to complete them because of a lack of information. The AT did, however, include suitable recommendations to revise the auditable forms and provide training to DPD supervisors on how and when to complete the forms.
- No tests were conducted to determine if the one auditable form contained all of the information required to be documented.⁹⁷

⁹⁵ The DPD's AT excluded arrests in which the complainant refused to prosecute, or the investigative operations unit dropped the case after the arrest took place.

⁹⁶ As required by paragraph U50.

Audit Reporting – Compliance-Related

The following are the Monitor’s compliance findings relative to deficiencies identified within the audit report:

- The *Summary of Findings* section is not expressed in quantitative terms, so it will be difficult to compare the findings from this audit to the next audit, which is a critical step in achieving compliance. In addition, there is no summary of how each precinct performed relative to the objectives tested. Although the UOF CJ does not specifically mandate how the findings from the audits are to be presented, paragraph U93 requires a report to be submitted to the Chief of Police that includes an examination of consistency throughout the DPD. This involves providing the information in a manner to allow the findings from the precincts to be compared. The Monitor suggests that tables be used in future audit reports to communicate such information and to present a summary of the performance of DPD’s precincts Department-wide.
- The overall conclusion does not match the requirements or the findings of the audit; the findings are not clearly linked to the objectives; the recommendations are not clearly linked to the findings; and the methodology section does not explain how the audit was conducted.
- The audit inappropriately concluded that the First Precinct attained compliance with most of the audit objectives based on a sample size of only one arrest. This sample size was inadequate.
- The audit report inappropriately attempted to justify the DPD’s deficiencies and the audit’s inability to substantiate adherence to the UOF CJ and DPD policy by declaring that compliance was achieved because the UOF CJ does not specifically state “where” information should be documented.⁹⁸
- The audit contains conclusions that are contradictory.⁹⁹

⁹⁷ As required by paragraph U51.

⁹⁸ Paragraph U58 requires the DPD to revise its arrest documentation to include accurate and auditable documentation for all arrests. The UOF CJ specifically defines auditable forms and logs as discrete records other than the blotter; however, the audit concluded that the First Precinct was in compliance with auditable documentation even though the documentation of the date and time of release of the arrestee was documented in the desk blotter and not on the arrest ticket. The audit report concluded, “The perfect rate of compliance (100%) regarding DPD members documenting the time and date of the arrestee’s arrest and release is likely due to past practice. The time and date of release was not memorialized on the Arrest Ticket. This is likely due to the Arrest Ticket not having a designated field to record the time and date of release. However, the time and date of release was captured in the Desk Blotter...Although, the time and date of release was not recorded on the Arrest Ticket, the Audit Team concluded that the First Precinct met the mandatory 94% level of compliance regarding the fourth requirement of this objective, because the UF-CJ did not state where this information should be documented.”

⁹⁹ Further to the point in the preceding footnote, the audit concluded that compliance *was achieved* due to the past practice of documenting information in the desk blotter, even though there is no specific field to document the information on the arrest ticket. The audit report then presents a contradictory conclusion on the same page: that

Audit Reporting – Style-Related

In addition to the compliance findings that are expressed above, the Monitor makes the following style-related observations. While stylistic deficiencies do not impact compliance with the UOF CJ, these observations are being presented in an attempt to formally advise the DPD on how to improve the understandability and effectiveness of future DPD audit reports.

- The report was lengthy¹⁰⁰, complicated and difficult to understand, while also being incomplete.
- The *Report of Individual Precincts* section contains repeated verbiage for each precinct which contributed to the length of the report. It would be better to write this section assuming the precinct commanders will read the main audit report, with specific findings applicable to his/her precinct in the individual precincts section.
- The audit report uses vague wording such as “some,” “most,” “several” and “a number of.” This type of language is imprecise, inconclusive and subject to misinterpretation.

Based on the foregoing, the Monitor finds this audit in non-compliance with the requirements of paragraph U96.

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 assessed the DPD’s compliance with paragraph U99 during the quarter ending May 31, 2004, finding the DPD in compliance. The Monitor’s review of documents and discussions with participants indicated that the DPD and local prosecutor’s office discussed issues identified in officer, shift and unit performance as required by paragraph U99.

Current Assessment of Compliance

The bi-monthly meetings between the DPD and the prosecutor’s office have been continuing as scheduled. On October 7, 2004, 11:00 a.m., a member of the Monitor’s team attended the regular scheduled quarterly meeting of the local Prosecutor’s Office and the DPD pursuant to paragraph U99. The meeting was held at the Wayne County Prosecutor’s Office. There were several Assistant Prosecuting Attorneys present and several members of the DPD. DPD

compliance was not achieved because there is no specific location to document the required information and no information could be found.

¹⁰⁰ The report was 198 pages long, and included 156 pages of individual precinct reports.

management was provided with documentation and first-hand knowledge of some of the issues related to officer, shift and unit performance that had occurred during the quarter. Specifically, DPD management was apprised of the following issues: 1. dismissal of cases due to officers not showing up at the 36th District Court and 2. incomplete police reports.

The DPD requested historical documentation for police officers failing to appear to determine whether there is a pattern. The DPD indicated that appropriate action would be taken, where warranted. The DPD also indicated that it would follow up on the issue of incomplete police reports by taking whatever action necessary to ensure complete and accurate reports. The Prosecutor's Office also provided DPD with a list of *Police Misconduct Criminal Warrants* dating from 2003 – 04. There were 27 names on the list.

The Monitor found that substantive information was exchanged and the meeting was productive for the participants. The next meeting is scheduled for January 20, 2005.

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

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. The Monitor determined that the DPD had no uniform written procedures or protocols in place for the process of repairing or replacing non-functioning video cameras. According to the DPD, it was in the process of implementing the new digital video capture system, *Insight Digital Video System*, throughout every precinct, which will change the process for repair or replacement of video cameras. In addition, it was developing uniform written policies and procedures regarding this new digital video system, which will likely address the requirements of these paragraphs. The Monitor noted that until these procedures are implemented and officers are receiving adequate training on its provisions, the DPD cannot meet the overall requirements of the paragraphs.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U100-102 during the quarter ending February 28, 2005.

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 last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. As of the end of the quarter, policy incorporating the requirements paragraph U103 was under internal review, the DPD has not issued any guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process and the Disciplinary Matrix was undergoing final revisions.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U103-105 during the quarter ending February 28, 2005.

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.

As described in our Report for the Quarter ending August 31, 2004, on August 22, 2004, the DPD established the Curriculum Research and Development (CRD) function to develop a competency-based curriculum that includes specific learning objectives, measurable outcomes and scenario-based lesson plans. The CRD process is commanded by a police Inspector, who holds a PhD in Education. He has identified a group of in-house subject matter experts to develop curriculum under his guidance.

A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106-111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, 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 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 last assessed the DPD's compliance with paragraph U106 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had not yet finalized UOF policies as of the end of the quarter. The Monitor noted that UOF and A&D training curricula cannot be effectively and fully developed, revised or reviewed until the UOF and A&D policies are finalized.

Current Assessment of Compliance

As of the end of the quarter, the DPD had not finalized the majority of the UOF and A&D policies and, consequently, has not developed the UOF and A&D training required by the UOF CJ. For example, Directive 304.2, *Use of Force*, has not yet been approved by the DOJ. Another example, Directive 202.1, *Arrests*, has not been disseminated to the field.

Therefore any reviews issued by the DPD cannot be based on UOF and A&D training on policies revised under the UOF CJ since most of the policies have not been finalized and those that have been finalized have not been disseminated.

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 last assessed the DPD's compliance with paragraph U107 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had not yet finalized 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 a. through f.

Current Assessment of Compliance

As of the end of the quarter, the DPD had yet to finalize all required UOF 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 last assessed the DPD's compliance with paragraph U108 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact it provided no indication that it had updated the Michigan Commission on Law Enforcement Standards' (MCOLES) Information and Tracking Network (MITN) with individual officer training records documenting all pre-service and in-service training completed on or after July 18, 2003.

Current Assessment of Compliance

In its Fifth Quarterly Status Report, the DPD indicated that MITN system is operational as of April 5, 2004 and that all current training information is being entered into the MITN system. At the end of this quarter, the system does not contain all of the information required by this paragraph.

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 last assessed the DPD's compliance with paragraph U109 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had neither developed nor approved the lesson plans required by various paragraphs in this section of the UOF CJ.

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

The Monitor last assessed the DPD's compliance with paragraph U110 during the quarter ending May 31, 2004, finding the DPD in non-compliance. The Monitor determined that the DPD and the City Law Department discussed concluded civil lawsuits in which officer misconduct was alleged, as required by this paragraph. However, the Monitor was not provided with documentation indicating that information gleaned from these meetings was distributed to DPD risk management and training staff.

Current Assessment of Compliance

The DPD and the City's Law Department hold quarterly meetings to discuss the conclusion of civil lawsuits alleging officer misconduct. A member of the Monitor's team attended the meeting held on September 21, 2004. There were several DPD senior managers in attendance as well as several Law Department supervisors.

The two items that were listed on the agenda were discussed by the participants, namely: 1). Format for Law Department meetings with Police senior management regarding Lawsuit cases and 2). Format for quarterly payout reports.

The participants decided that periodic meetings between DPD senior management and the Law Department will be held to discuss lawsuit causes, and any other pertinent information they deem beneficial in terms of Risk Management. These meetings will be scheduled going forward on a regular basis. The DPD was advised that the majority of the lawsuits stem from Disorderly Conduct and Interfering. The Law Department mentioned that DPD supervisory personnel are doing a better job in terms of reviewing the circumstances of the case, and taking the appropriate action. It was noted that some of the cases have been dismissed as a result of the supervisory review mandated by the Consent Decree; thereby mitigating the City's damage.

The participants discussed several other substantive issues including training. The meeting was productive. The Monitor will continue to assess the substance of these meetings to determine whether specific concluded civil lawsuits alleging officer misconduct are discussed.

The Monitor previously recommended that the DPD begin to distribute information from these meetings to staff of the Risk Management and Training Bureaus, as required by this paragraph. In the DPD's Fifth Status Report, it states that this information is only distributed "if adverse behavioral patterns are discovered;" however, that does not meet the requirements of the paragraph. The DPD must begin distributing this information to risk management and training staff after each meeting. The Monitor will request documentation of this distribution process.

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

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.

Background

The Monitor last assessed the DPD's compliance with paragraph U111 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the majority of policies contained in the UOF CF had not been developed. Therefore, training on these policies had not taken place. According to reviewed training curricula and sign-in sheets from the training sessions, approximately 85% of sworn employees had attended training. The Monitor also requested documents/information for review based on the DPD's lesson plan.

Current Assessment of Compliance

In its Fifth Quarterly Status Report, the DPD indicated that its Civil Rights Integrity Bureau (CRIB) distributed copies of, and provided initial training on, the Consent Judgments as required by paragraph U111. According to the DPD, to date, 3,333 sworn DPD employees and 180 civilian DPD employees had been trained.¹⁰¹

The Monitor has discussed with the DPD that the attendance logs received by the Monitor did not indicate that non-DPD City employees, whose job responsibilities are affected by the UOF CJ, received initial training on the UOF CJ.

Additionally, as noted in the third quarter, 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.

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;

¹⁰¹ During the quarter ending May 31, 2004, the Monitor reviewed training curricula and sign-in sheets from the training that was conducted. Of 3,810 DPD sworn employees, 3,237 or approximately 85% attended training pursuant to paragraph U111. The Monitor identified 202 DPD civilian attendees from the sign-in sheets.

- 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 last assessed the DPD's compliance with paragraph U112 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the DPD's revised Directive 304.2, *Use of Force*, was not finalized as of the end of the quarter.

Current Assessment of Compliance

In its Fifth Quarterly Status Report, the DPD indicated that lesson plans are being modified to reflect the revised Directive 304.2. The Monitor notes that this directive is currently under review by the DOJ. Therefore, additional modifications may be necessary based upon the DOJ's comments.¹⁰²

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

¹⁰² As described previously in this report, on December 17, 2004, the DOJ submitted a letter to the City and the DPD outlining the DOJ's continuing concerns regarding Directive 304.2, *Use of Force*, among others,

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 last assessed the DPD's compliance with paragraph U113 during the quarter ending May 31, 2004, finding the DPD in non-compliance primarily due to the fact that the Firearms Training Protocol was being revised as of the end of the quarter. In addition, the Monitor noted that the DPD lacked an appropriate facility at which to conduct night firearms training required by subparagraph U113b.

Current Assessment of Compliance

Despite the fact that the DPD indicates that it has been conducting firearms training, the Monitor has not received a copy of the Firearms Training Protocol that is required by this paragraph. Furthermore, the firearms training under the UOF CJ should be based on the revised firearms policy, which has not yet received DOJ approval as required by paragraphs U20-23.

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 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 last assessed the DPD's compliance with paragraph U114 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had not developed the training curricula pursuant to paragraph U114. 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

In its Fifth Quarterly Status report, the DPD indicated that the Mechanics of Arrest and Search Training Course is scheduled to begin January 24, 2005. However, the Monitor understands that the lesson plan for this course was still under revision as of the end of the quarter. The Monitor also notes that the policies upon which the training will be based -- Arrest, Investigatory Stop

and Frisk and Witness Identification and Questioning -- have not yet been disseminated to the field or implemented by DPD officers¹⁰³ and the auditable forms relating to these policies have not yet been finalized. Therefore any training provided by the DPD under this paragraph at this time will be based on policies that are likely to be revised.

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 August 31, 2004, finding the DPD in non-compliance with each due to the fact that it had yet to finalize policy that met the requirements of these paragraphs, preventing it from developing the related training.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U115-117 during the quarter ending February 28, 2005.

F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, finding the DPD in non-compliance with each as it had yet to develop the necessary curriculum, or required additional lesson plans, to comply with the requirements of the paragraphs.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U118-120 during the quarter ending February 28, 2005.

G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, finding the DPD in non-compliance with each, as the investigative training curriculum that will address the paragraphs' requirements was still under development 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 February 28, 2005.

¹⁰³ The Witness Identification and Questioning policy is subject to DOJ approval, which has not yet been obtained.

H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2004, finding the DPD in non-compliance. As of the end of the quarter, the DPD was revising the protocol to enhance its FTO program based upon analysis and recommendations provided by the DOJ and had not resubmitted the revised protocol to the DOJ for approval.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U123 during the quarter ending February 28, 2005.

VIII. MONITORING, REPORTING, AND IMPLEMENTATION

Paragraph U139 is the only paragraph in this section of the UOF CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. As reported in its Report for the Quarter Ending May 31, 2004, the Monitor had not yet reviewed investigations under paragraph U139 since the DPD had not yet revised the majority of the policies and investigatory procedures under the UOF CJ. The Monitor still has not yet reviewed DPD investigations, as the DPD has not yet implemented the majority of the policies and investigatory procedures under the UOF CJ.

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

This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending November 30, 2004.

It is important to note that the organization of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ (e.g. paragraph C39 – Cleaning of holding cells; C40 – Cleaning policy requirement); while others do not (e.g.. paragraph C45 - Reasonable access to toilets and water). These varying formats impact the way in which the Monitor assesses compliance with each paragraph. Specifically, the Monitor's compliance assessments of paragraphs that do not have a separate policy-related paragraph include a review for a written guidance or instruction. This review for a written guidance or instruction is included to ensure that the required procedures are mandated by the DPD and appropriate DPD personnel have received the necessary direction to carry out the requirements of the COC CJ.

I. FIRE SAFETY POLICIES

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

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 all facilities that maintain holding cells comply with the Life Safety Code.¹⁰⁴

The Monitor last assessed the DPD's compliance with paragraphs C15-C16 and C18-22 during the quarter ending February 29, 2004. The Monitor concluded that, with the exception of paragraph C20, the DPD was in non-compliance with each, primarily because as of the end of the quarter, it had not completed a comprehensive remediation and implementation 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.

¹⁰⁴ In January 2004, the Monitor raised an issue regarding the use of a holding cell, as defined by the COC CJ, in the First Precinct. The parties disagree as to whether the room within the First Precinct is a holding cell, and are engaged in ongoing discussions concerning this issue. In the interim, the Monitor is conducting a focused review of the DPD's use of the First Precinct. The parties are awaiting the Monitor's completion of the review.

During the current quarter, the Monitor assessed the DPD's compliance with paragraphs C14-C19.¹⁰⁵ The results of our current assessments follow.

Paragraph C14 – Life Safety Code Compliance

Paragraph C14 requires the DPD to ensure that all holding cells, and buildings that contain them, meet and maintain compliance with the current Life Safety Code within one year of the effective date of the COC CJ. As part of this effort, the City of Detroit shall ensure that the DFD conducts regular and periodic inspections to evaluate whether the conditions in DPD holding cells, and buildings that contain them, are in compliance with the Life Safety Code.

Background

The Monitor last reviewed the DPD's and City's efforts to comply with paragraph C14 during the quarter ending February 29, 2004. The Monitor noted that although the DFD had conducted inspections to evaluate the conditions in the DPD holding cells relative to compliance with the Life Safety Code, the inspections by both the DFD and the Monitor indicated that all precincts had numerous Life Safety Code violations. However, the Monitor did not assess the DPD's compliance with paragraph C14 at that time because the DPD was not required to comply with the paragraph prior to July 18, 2004.

Current Assessment of Compliance

During the current quarter, in order to review the DPD's efforts to achieve compliance with the Life Safety Code in all buildings containing holding cells, the Monitor requested and received copies of the most recent DFD inspections of the DPD buildings containing holding cells. The documentation indicated that the inspections were conducted between February 18, 2004 and March 4, 2004. The conduct of the DFD inspections is an important aspect of this paragraph; however, the inspections by both the DFD and the Monitor revealed numerous Life Safety Code violations (sprinklers, fire alarms, fire doors, egress routes, fire separators, etc.). As described above, the Monitor acknowledges that the City intends to construct a new facility that will comply with all of the Life Safety Code requirements; however until such time that all buildings that contain holding cells either meet the requirements of the Life Safety Code or are no longer used to confine prisoners, the DPD will be unable to achieve compliance with paragraph C14.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C14.

¹⁰⁵ The Monitor is scheduled to again assess the DPD's compliance with paragraphs C20-22 during the quarter ending August 31, 2005.

Paragraphs C15-17 – Detection, Suppression and Evacuation Programs; Fire Safety Program Development; Fire Safety Program Implementation

Paragraph C15 requires the DPD to develop and implement a comprehensive fire detection, suppression and evacuation program¹⁰⁶ for all holding cells, and the buildings that contain them, in accordance with the requirements of the Life Safety Code and in consultation with the DFD.

Paragraph C16 requires the DPD to develop the fire safety program in consultation with, and receive written approval by, the DFD. As part of the overall program, the DFD must evaluate the need for, and if necessary, the DPD must install fire rated separations, smoke detection systems, smoke control systems, sprinkler systems and/or emergency exits for holding cells and buildings that contain them. The approved plan must be submitted for review and approval of the DOJ within three months of the effective date of the COC CJ.

Paragraph C17 requires the DPD to implement the fire safety program within one year of the effective date of the UOF CJ (July 18, 2004). The approved program must be reviewed and approved in writing by the DFD, at a minimum of once per year and prior to any revisions.

Background

The Monitor last reviewed the DPD's efforts to comply with paragraphs C15-17 during the quarter ending February 29, 2004, finding the DPD in non-compliance with paragraphs C15-16 because it had neither finalized nor submitted to the DOJ a comprehensive fire detection, suppression and evacuation program for all holding cells, and the buildings that contain them. The Monitor did not assess the DPD's compliance with paragraph C17 at that time because the DPD was not required to comply with the paragraph prior to July 18, 2004.

Current Assessment of Compliance

As of the end of the current quarter, the DPD had not yet submitted a comprehensive fire detection, suppression and evacuation program for all buildings that maintain holding cells. The Monitor discussed the DPD's progress relative to the completion of the fire safety program with the DPD's HCCC, and was told that although some progress has been made with the draft fire safety program, the HCCC will be requesting that the Monitor provide additional TA for the finalization of the program. Once the DPD has completed its final fire safety program it must be approved by the DFD and submitted to the DOJ for review and approval.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C15-17.

¹⁰⁶ Within the COC CJ and this report, the Comprehensive Fire Detection, Suppression and Evacuation Program is also referred to as the "Fire Safety Program" (C16).

Paragraph C18 – Fire Safety Interim Measures

Paragraph C18 requires the DPD to take immediate interim fire safety measures for all buildings that maintain holding cells including ensuring proper alarm activation, emergency reporting by prisoners, and automated back-up systems for life safety equipment (i.e. emergency lighting, signage, fire alarms and smoke detection systems). In addition, the interim measures must reduce the spread of smoke and fire via the stairs, garages, hazardous rooms and exposed pipes.

Background

The Monitor assessed the DPD's compliance with paragraph C18 during the quarters ending November 30, 2003, and February 29, 2004, finding the DPD in non-compliance each time due to the fact that none of the interim fire safety measures had been implemented with the exception of the posting of at least one detention officer inside the cell blocks at all times to allow emergency reporting by prisoners.

Current Assessment of Compliance

The DPD has not yet taken interim fire safety measures for all buildings that maintain holding cells. The DPD has provided the following additional information regarding paragraph C18. The Monitor has confirmed the information that was provided through interviews, document review and site inspections conducted during previous quarterly assessments:¹⁰⁷

- Only two of the twelve precincts have smoke alarms that are audible throughout the building.
- Detention officers are posted in cell block areas at all times to allow prisoners to report emergencies.
- The DPD's Fifth Quarter Status Report, for the quarter ending November 30, 2004, references Teletype No. 04-00227-8, dated January 15, 2004, which mandates that all fire doors and garage doors remain closed and free of obstructions in buildings that contain holding cells. However, the inspections by the DFD Fire Marshal indicate that violations of that mandate have been noted.

Until such time that all of the requirements contained in paragraph C18 have been implemented, the DPD will be unable to achieve compliance.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C18.

¹⁰⁷ The DPD's Fifth Quarter Status Report also contains additional information regarding actions that have been taken regarding prisoner safety. However, not all of the actions taken by the DPD are required by paragraph C18, nor have they been confirmed by the Monitor. The Monitor's current assessment contains only that information which is required by paragraph C18 and has been verified by the Monitor during previous on-site inspections and a review of the relevant documentation.

Paragraph C19 – Testing of Fire Safety Equipment

Paragraph C19 requires the DPD to ensure that fire safety equipment is routinely tested, inspected and maintained in all precincts that maintain holding cells. This equipment includes such items as sprinkler systems, fire alarm systems, manual fire extinguishers, emergency lighting and exit signs, and self-contained breathing apparatus.

Background

The Monitor last assessed the DPD's compliance with paragraph C19 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had yet to develop a consistent method for ensuring that all fire safety equipment contained within these facilities was routinely inspected, tested and maintained.

Current Assessment of Compliance

The HCCC has informed the Monitor that the requirements of this paragraph will be contained within the Fire Safety Program required by paragraph C16, and will include related inspection, testing and maintenance logs that will document the performance of these tasks. However as of the end of the current quarter, the Fire Safety Program and related logs have not yet been finalized or submitted to the DOJ for review and approval as required by paragraph C16.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C19.

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. These procedures and policies are to 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 C23-25 during the quarters ending February 29, 2004, and May 31, 2004, finding the DPD in non-compliance with each. The Monitor again assessed compliance with paragraphs C23-25 during the current quarter. The results of our current assessments follow.

Paragraph C23 – Establishing of Safety Levels

Paragraph C23 requires the DPD to ensure a reasonable level of safety and security of all staff and prisoners in the event of a fire and/or other emergency.

Background

Compliance with paragraph C23 cannot occur until the DPD attains compliance with paragraphs C24-25.

The Monitor last assessed the DPD's compliance with paragraph C23 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that the DPD was in non-compliance with paragraphs C24-25.

Current Assessment of Compliance

As described below, the DPD is currently in non-compliance with paragraphs C24-25. As a result, the Monitor finds the DPD in non-compliance with paragraph C23.

Paragraph C24 – Emergency Preparedness Program Development

Paragraph C24 requires the DPD to develop a comprehensive emergency preparedness program, and requires 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 and implemented within three months of DOJ's approval. The program must include an emergency response plan for each building that contains holding cells in the event of a fire-related emergency, and which 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 last assessed the DPD's compliance with paragraph C24 during the quarter ending May 31, 2004, finding the DPD in non-compliance. Although the precincts appeared to be conducting and documenting fire drills on a monthly basis for each precinct and each shift, the DPD had not finalized or implemented an auditable log to record the information. As a result, the information being captured was not consistent throughout the precincts and, in most cases, did not include all of the information required by the COC CJ. Furthermore, a comprehensive emergency preparedness program had not yet been developed.

Current Assessment of Compliance

Between November 16, 2004 and December 1, 2004, the DPD submitted to the DOJ for review and approval documentation titled "*Fire Safety and Evacuation Procedures*," along with evacuation route maps for all buildings containing holding cells, with the exception of the First Precinct and the DRH. The DPD indicated that this documentation comprises the Comprehensive Emergency Preparedness Program and is being submitted in response to this paragraph.

The DOJ is currently reviewing the submission. Until such time that the Comprehensive Emergency Preparedness Program has been approved by the DOJ and implemented; the DPD will be unable to achieve compliance with paragraph C24.

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

Paragraph C25 – Key Control Policies

Paragraph C25 requires the DPD to develop and implement key control policies and procedures that will ensure that all staff members are able to manually unlock all holding cell doors in the event of a fire or other emergency. At a minimum, these policies and procedures shall ensure that keys can be identified by touch in an emergency and that the DPD conduct regular and routine inventory, testing and maintenance of all holding cell keys and locks.

Background

The Monitor last assessed the DPD's compliance with paragraph C25 during the quarter ending May 31, 2004, finding the DPD in non-compliance. The Monitor determined that the DPD had implemented a system whereby one key operates all of the cell door locks within each building that contained holding cells. However, the DPD had not developed a policy for conducting and documenting regular and routine inventory, testing and maintenance of all keys and locks within the holding cell areas as required by this paragraph.

Current Assessment of Compliance

On June 21, 2004 the DPD submitted its first draft of Directive 305.4, *Holding Cells Areas*, which was meant to contain the requirements of several paragraphs including C25. After a preliminary review of the policy, the Monitor requested various forms, logs and reports that were referenced within the policy¹⁰⁸ and contacted the HCCC for further information and clarification. The Monitor subsequently met with the HCCC and discussed the Monitor's review of the policy, identified deficiencies noted, and suggested possible revisions to achieve compliance with the policy requirements of paragraph C25. Additionally, at the request of the HCCC, the Monitor provided TA to help in the development of these forms and logs.

On October 18, 2004, the DPD submitted its final proposed Directive 305.4, *Holding Cells Areas*, which included the Monitor's suggested revisions. Although the Monitor has determined that the above-described policy meets the requirements of paragraph C25, as of the end of the quarter, this policy had been neither disseminated nor implemented. In addition, the log referenced in the policy that will document the conduct of regular and routine inventory, testing and maintenance of all holding cell keys and locks, had not yet been finalized.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C25.

¹⁰⁸ The logs, forms and reports had not yet been developed at the time of the Monitor's request.

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 DPD must develop these programs with the assistance of a qualified medical and mental health care expert and the policies and procedures must be approved by the DOJ prior to being implemented.

The Monitor last assessed DPD's compliance with paragraphs C26-34 during the quarter ending May 31, 2004 finding the DPD in non-compliance with each. During the current quarter, the Monitor again assessed the DPD's compliance with these paragraphs. 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. The DPD's compliance with paragraph C26 is dependent on the development of a comprehensive medical and mental health screening program (CMMHSP) required by paragraphs C27-29. This screening program, including the Detainee Intake Form, must be submitted to the DOJ for review and approval.

Background

Compliance with paragraph C26 is dependent on the development of the CMMHSP required by paragraphs C27-29.

The Monitor last assessed the DPD's compliance with paragraph C26 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the DPD was in non-compliance with paragraphs C27-29.

Current Assessment of Compliance

As described below, the DPD is currently in non-compliance with paragraphs C27-29. As a result, the Monitor finds the DPD in non-compliance with paragraph C26.

Paragraph C27 – Screening Program Development

Paragraph C27 requires the DPD to develop and implement a CMMHSP that must be approved in writing by a qualified medical¹⁰⁹ and mental health¹¹⁰ professional. Upon their review and approval, the screening program (as part of the CMMHSP) 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 last assessed the DPD's compliance with paragraph C27 during the quarter ending May 31, 2004, finding the DPD in non-compliance as it had not yet finalized the CMMHSP. The DPD was expecting the policy to be submitted to DOJ for review and approval during the quarter ending August 31, 2004.

Current Assessment of Compliance

During the current quarter, the DPD submitted numerous policies and documents relating to Medical and Mental Health Care. In response, the Monitor requested that the DPD identify the specific policies and documents that it has submitted in response to paragraph C27. The DPD identified the following seven items as the CMMHSP:

1. Directive 305.1, *Detainee Intake and Assessment*
2. Directive 305.5, *Detainee Health Care*
3. Directive 403.2, *Infectious Disease Control Policy*
4. Directive 305.7, *Transportation of Detainees*
5. DPD 651, *Detainee Intake Form – revised*
6. Placard (flowchart) with Guidelines for Prisoner Screening
7. Training Directive 04.05, *Detainee Suicide Prevention – Managing the Risk*

With the exception of the revised Detainee Intake Form (DPD 651), all of the above policies were submitted to the DOJ for review and approval between October 5, 2004 and October 27, 2004. Although the DPD submitted all of the above policies to DOJ as part of the CMMHSP, not all of them are subject to DOJ review and approval. As of the end of this quarter, the DOJ

¹⁰⁹ 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.

¹¹⁰ 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.

had not yet completed its review of the policies which require DOJ review and approval.¹¹¹ The DPD has indicated that they are again revising the Detainee Intake Form and will submit it to DOJ (and the Monitor) upon completion.

The DPD will be unable to achieve compliance with this paragraph until the entire program is approved by the DOJ 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 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 last assessed the DPD's compliance with paragraph C28 during the quarter ending May 31, 2004, finding the DPD in non-compliance as it had yet to develop the final version of the Detainee Intake Form that would meet the requirements of paragraphs C27-29. 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. The form was considered an 'interim' response because it did not satisfy the requirements of paragraphs C27-29. The DPD was working with both a medical and mental health care professional and the DOJ to develop the final version of the form.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph C27, above, as of the end of the current quarter, the DPD had not yet submitted the finalized Detainee Intake form to DOJ for review and approval.

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

¹¹¹ After the end of the quarter, on December 15, 2004, the DOJ issued correspondence to DPD indicating the necessity for further revisions, clarifications and submission of the forms and logs referenced within the policies.

Paragraph C29 – Minimum Standards for Medical Protocols

Paragraph C29 provides the minimum standards for the medical protocols required under the CMMHSP. The protocols must identify the specific actions the DPD must take in response to the medical information acquired during the 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 last assessed the DPD's compliance with paragraph C29 during the quarter ending May 31, 2004, finding the DPD in non-compliance as it 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. In addition, although the DPD was actively developing the Detainee Health Care policy, the policy had not been implemented as of the end of the quarter.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph C27, above, as of the end of the current quarter, the DPD had not yet submitted the finalized Detainee Intake form to DOJ for review and approval. The DPD has indicated that the Directive 305.5, *Detainee Health Care*, which was submitted to DOJ for review and approval on October 5, 2004, is intended to address the requirements of paragraph C29. At the end of the quarter, the DOJ was reviewing this directive.¹¹²

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

¹¹² After the end of the quarter, on December 15, 2004, the DOJ submitted a letter to the DPD regarding the Detainee Health Care Policy, 305.4; the Transportation of Detainees Policy, 305.7; the Infectious Disease Control Plan, 403.2; and Guidelines for Detainee Screening. The DOJ indicated that it had not received all of the relevant forms and logs for these policies and plans, including the Detainee Intake Form. The DOJ also outlined a number of issues and comments for the DPD's consideration. The DOJ has not yet approved these documents.

Background

The Monitor last assessed the DPD's compliance with paragraph C30 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had not finalized its Infectious Disease Control Policy. The DPD withdrew the policy from evaluation, indicating to the Monitor that it had not been approved by the Chief of Police.

Current Assessment of Compliance

The DPD re-submitted the Infectious Disease Control Policy during the current quarter, on September 22, 2004, and identified this policy as a component of the CMMHSP required by paragraph C27. The CMMHSP is subject to DOJ review and approval; however, the Monitor reviews those portions of the policy that are not subject to DOJ review and approval, such as the Infectious Disease Policy. The Monitor has not yet completed its evaluation of the policy to determine if it complies with the requirements of this paragraph. The Monitor will complete this evaluation during the quarter ending February 28, 2005 and will include its assessment of the DPD's compliance with paragraph C30 in the quarterly report covering that period.

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 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 last assessed the DPD's compliance with paragraph C31 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had not developed a policy that required a documented review of the detainee's medical or mental health information by DPD members. DPD personnel indicated that prisoners' health information is recorded on the Interim Detainee Intake Form at the time of intake and updates that occur during the shift are recorded on the same form. However, 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.

Current Assessment of Compliance

The DPD indicated that on October 27, 2004 it submitted to DOJ for review and approval Directive 305.7, *Transportation of Detainees*. The DPD further indicated that this directive is intended to address the requirements of paragraph C31 and is a component of the CMMHSP required by paragraph C27.¹¹³ As of the end of this quarter, the DOJ was reviewing this policy as it related to the CMMHSP.¹¹⁴

Until such time that the requirements of paragraph C31 have been approved, incorporated into DPD policy, and disseminated and implemented, the DPD will be unable to achieve compliance with paragraph C31.

Based on the foregoing, the Monitor finds the DPD 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 medical and mental health professionals and submitted to the DOJ for review and approval within three months of the effective date of the COC 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 last assessed the DPD's compliance with paragraph C32 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had not finalized a Prescription Medication Policy.¹¹⁵ During its onsite inspections, the Monitor discovered that in one case an incorrect dosage of medication had been given to a prisoner.¹¹⁶ As an additional matter, the Monitor noted that the DPD had not developed a standardized format for the Prescription Medication Logbooks in the buildings that contain holding cells.

¹¹³ The CMMHSP is subject to DOJ review and approval; however, the Monitor reviews those portions of the policy that are not subject to DOJ review and approval.

¹¹⁴ After the end of the quarter, on December 15, 2004, the DOJ issued correspondence to the DPD indicating the necessity for further revisions to and clarifications of the policies submitted as components of the CMMHSP. The DOJ did not specifically address Directive 305.7.

¹¹⁵ Although the DPD completed the development of a Prescription Medication Policy with the assistance of a qualified medical and mental health expert, initial feedback indicated that further revisions were required.

¹¹⁶ The DPD indicated that an internal investigation had been initiated.

Current Assessment of Compliance

The DPD indicated that on October 27, 2004 it submitted to DOJ for review and approval Directive 305.5, *Detainee Health Care*, which is intended to address the requirements of paragraph C32. As of the end of this quarter, the DOJ was reviewing this policy.¹¹⁷ The DPD will be unable to achieve compliance with paragraph C32 until the policy has been approved by the DOJ, disseminated and implemented.

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 last assessed the DPD's compliance with paragraph C33 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had not issued a training bulletin, protocol directive or procedural guide with regard to suicide clothing. However, the Monitor noted that the DPD developed a policy that required a documented review of the detainee's medical or mental health information, detention officers were able to articulate the procedures, and the clothing was in adequate supply.

Current Assessment of Compliance

In its Fifth Quarter Status Report, dated November 30, 2004, the DPD indicated that DPD Teletype No. 04-06456 had been issued on October 30, 2004 to all commands and included direction to detention officers regarding procedures for providing suicidal detainees with appropriate suicide clothing. It is currently the DPD practice to require DPD supervisors to read teletypes during roll-call for 21 consecutive days. However, documentation of this practice is currently not retained by the DPD¹¹⁸, preventing the Monitor from conducting an evaluation.

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.

¹¹⁷ After the end of the quarter, on December 15, 2004, the DOJ issued correspondence to the DPD indicating the necessity for further revisions to and clarifications of this policy.

¹¹⁸ The DPD also does not utilize attendance sheets at roll call.

Background

The Monitor last assessed the DPD's compliance with paragraph C34 during the quarter ending May 31, 2004, 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 buildings that contain holding cells. The Monitor noted that the HCCC was working with the DPD and City leadership to obtain funding authorization for the remediation effort to address the suicide hazards that exist throughout the buildings containing holding cells, such as exposed pipes, radiators and overhead bars. In addition, the DPD was considering closing down the holding cell facilities in the 3rd and 4th precincts due to the resources required to upgrade structures that are nearing the end of their operational usefulness.

Current Assessment of Compliance

On July 7, 2004, the DPD closed the Fourth Precinct. However the remaining precincts still have existing suicide hazards, such as exposed pipes, radiators and overhead bars, within the holding cells. According to the DPD, the holding cells have not yet been retro-fitted to remove the hazards due to the significant costs involved.¹¹⁹

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 the safety and well-being of prisoners.

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. The DPD indicated that its new Cell Block Policy, which was under development, would address many of the requirements of the paragraphs in this section.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C35-38 during the quarter ending February 28, 2005.

¹¹⁹ As mentioned previously, the City has indicated that Proposal S, which was recently approved by City voters, will allow for the construction of a central detention facility, which will take approximately 24 months to complete. According to the City, this central detention facility will comply with all of the physical requirements contained within the COC CJ.

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 last assessed the DPD's compliance with paragraphs C39-46 during the quarter ending August 31, 2004. The Monitor determined that the DPD had made progress in this area, most notably by complying with requirements to clean and make repairs in holding cells (paragraph C43) and to ensure that the air purification system was removed because it did not meet applicable standards (paragraph C46). However, further progress was necessary to achieve compliance with the remaining paragraphs in this section.

The Monitor is scheduled to again assess compliance with paragraphs C39-46 during the quarter ending February 28, 2005.

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 last assessed the DPD's compliance with paragraph C47-48 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that the DPD was still in the process of developing new policies and documentation of the handling and detention of persons with disabilities.

The Monitor is scheduled to again assess compliance with paragraphs C47-48 during the quarter ending February 29, 2005.

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 last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending May 31, 2004, 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 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 last assessed the DPD's compliance with paragraph C49 during the quarter ending May 31, 2004, finding the DPD in non-compliance because the Food Service Policy submitted by DPD was inadequate and did not meet all of the requirements of the paragraph.

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 required by paragraph C50, as well as compliance with state and local health codes. The Monitor has determined that the Food Service Policy is inadequate and must be revised.¹²⁰

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

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

¹²⁰ Please refer to the Monitor's Current Assessment of Compliance for paragraph C50, below.

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 last assessed the DPD's compliance with paragraph C50 during the quarter ending May 31, 2004, finding the DPD in non-compliance. Although the DPD had developed and submitted the Food Service Policy, the Monitor determined the policy to be inadequate as it did not meet the requirements of paragraph C50. The Food Service Plan was developed by a qualified sanitarian and the Meal Plan contained therein had both been approved in writing by a qualified dietician. However, the Monitor identified a number of shortcomings, which were detailed in the Monitor's report, along with related recommendations.

Current Assessment of Compliance

The DPD did not submit a revised Food Service Policy during the current quarter.¹²¹ On November 22, 2004, the DPD submitted a revised version of Directive 305.4, *Holding Cell Areas*, which contains additional direction regarding Food Service and the related Meal Plan. However, the DPD did not submit documentation indicating that the Food Service portion of the Holding Cell Areas Policy was developed in consultation with a qualified sanitarian or if the Meal Plan contained therein has been approved by a qualified dietician.¹²²

Until such time as the Food Service Policy has been revised to comply with the requirements of paragraph C50, disseminated and implemented, the DPD will be unable to achieve compliance with this paragraph.

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

¹²¹ On December 21, 2004, the DPD submitted additional documentation related to the Food Service Policy, including the Food Service Protocol, Revised Food Service log and Training Sign-in Rosters. The Monitor has not yet evaluated these documents in relation to paragraph C50, as they were submitted after the end of the quarter. The Monitor is scheduled to report on its review of these documents during its next compliance assessment for paragraph C50 during the quarter ending May 31, 2005. However, in order to facilitate the expeditious implementation of the Food Service Program, the Monitor will review these documents and discuss them with the DPD HCCC prior to the scheduled assessment.

¹²² The Monitor will request such documentation during its evaluation of the additional documentation submitted by the DPD related to the Food Service Policy, including the Food Service Protocol, Revised Food Service log and Training Sign-in Rosters.

VIII. PERSONAL HYGIENE POLICIES

This section of the COC CJ comprises paragraph C51 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2004, 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 last assessed the DPD's compliance with paragraph C51 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that it had not completed the drafting of a teletype that would be sent to all precincts providing instructions on how the kits are to be utilized. However, the Monitor inspected the precincts and determined that these kits are provided to each prisoner prior to the distribution of food.

Current Assessment of Compliance

On June 21, 2004 the DPD submitted its first draft of Directive 305.4, *Holding Cells Areas*, which contained the DPD's response to this paragraph. After a preliminary review of the policy, the Monitor requested various forms, logs and reports that were referenced within the policy¹²³ and contacted the HCCC for further information and clarification. One of the logs referenced in the policy will be used to document the distribution of the personal hygiene items required by this paragraph to prisoners in DPD custody.

On October 18, 2004, the DPD submitted its final proposed Directive 305.4, *Holding Cells Areas*. The Monitor has determined that the policy addresses the requirements of paragraph C51. However, as of the end of the quarter, this policy had been neither disseminated nor implemented, and the log referenced in the policy had not yet been finalized.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C51.

¹²³ The logs, forms and reports had not yet been developed at the time of the Monitor's request. At the request of the HCCC, the Monitor provided TA to assist in the development of these forms and logs.

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 last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each because Directive 305.4, *Holding Cell Areas*, which was approved by the BOPC on July 22, 2004, was not disseminated as of the end of the quarter. In addition, as of the end of the quarter, the DPD was revising Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, which address the related use of force policies and procedures.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2005.

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 last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending August 31, 2004, finding the DPD in non-compliance because Directive 305.4, *Holding Cell Areas*, was not disseminated as of the end of the quarter. In addition, as of the end of the quarter, the DPD was revising Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, which address the related use of force policies and procedures.

The Monitor is scheduled to again assess compliance with paragraphs C55-57 during the quarter ending February 28, 2005.

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 last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each because Directive 305.4, *Holding Cell Areas*, was not disseminated as of the end of the quarter. In addition, as of the end of the quarter, the DPD was revising Directive 102.6, *Citizen Complaints*, which is meant to address the related external complaint policies, investigations and review required by these paragraphs.

The Monitor is scheduled to again assess compliance with paragraphs C58-59 during the quarter ending February 28, 2005.

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 last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending May 31, 2004, 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, in developing, revising and augmenting policies, to ensure all terms contained within the COC Judgment are clearly defined.

Background

The Monitor last assessed the DPD's compliance with paragraph C60 during the quarter ending May 31, 2004, at which time the DPD was found in non-compliance, as it had yet to substantially finalize revised policy for the COC CJ.

Current Assessment of Compliance

During the current quarter, the Monitor inquired with 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 as of the end of the quarter, the DPD had not yet finalized and disseminated most policy and procedure required under the COC CJ.

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

Paragraph C61 – Proposed Policy for Community Review and Comment

Paragraph C61 requires that the DPD 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 last assessed the DPD's compliance with paragraph C61 during the quarter ending May 31, 2004, at which time the Monitor found the DPD in overall non-compliance. Although the DPD had what appeared to be an adequate approach to identifying, addressing and responding to citizen comment, it was not memorialized in writing, resulting in non-compliance with the policy and training requirements associated with this paragraph.

Current Assessment of Compliance

During the current quarter the DPD provided the Monitor with a detailed explanation of its internal procedures for the posting of proposed policy to the DPD website and dissemination of proposed policy at weekly BOPC meetings. The Monitor reviewed these procedures and determined that the DPD has established an adequate system to identify, forward, post and remove proposed policy from its Website. Indeed, the Monitor queried the DPD website throughout the quarter, noting that, at times, proposed policy was posted.

However, the OCI's protocol for reviewing and responding to citizen comments either has yet to be memorialized in writing or has not been provided to the Monitor as requested.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C61.

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 semi-annual¹²⁴ audits that assess and report on issues affecting the safety and well-being of DPD personnel and of the prisoners in the DPD's holding cells.¹²⁵

The Monitor last assessed the DPD's compliance with paragraphs C65-72 during the quarter ending August 31, 2004 finding the DPD in non-compliance with each due to the non-submission of any audits required by these paragraphs. During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs C65-C72.¹²⁶ The Monitor also provided TA to the members of the HCCC regarding the auditable forms and logs required by various paragraphs of the COC CJ, as well as audit sampling, objectives analysis and audit report writing. The results of our current assessments follow.

Paragraphs C65 and C68-70 – Audits of Holding Cell UOF, Injuries and Misconduct Investigations; HCCC Audits of Medical/Mental Health, Detainee Safety Programs and Policies, Environmental Health and Safety Programs

Paragraph C65 requires the DPD to conduct regularly scheduled semi-annual audits covering all DPD units and commands (including a sample of command, IAD and Homicide Section investigations) that investigate uses of force, prisoner injuries, and allegations of misconduct in holding cells.

Paragraphs C68-70 require the HCCC to conduct regularly scheduled semi-annual audits of medical/mental health, detainee safety programs and policies, and environmental health and safety programs. Such audits must cover all DPD buildings that contain holding cells.

¹²⁴ As previously mentioned, on October 4, 2004, the Court amended the audit schedule in the COC CJ by requiring the DPD's COC CJ audits to be completed semi-annually with the second audits due by August 31, 2004, the subsequent audits due by January 17, 2005 and every six months thereafter. Because the due date for the first set of audits required by the COC CJ has since expired, the due date for the "second" audits was included in the amended COC CJ.

¹²⁵ The topics covered by these audits include: 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.

¹²⁶ The Monitor is scheduled to again assess the DPD's compliance with paragraphs C62-64 during the quarter ending February 28, 2005.

Background

The Monitor last assessed the DPD's compliance with paragraphs C65 and C68-70 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that no audits required by these paragraphs were submitted as of the end of that quarter.

Current Assessment of Compliance

As of the date of this report, the DPD had not yet submitted any of the audits required by paragraphs C65 or C68-70. Accordingly, the DPD has now missed both the January 31, 2004 and August 31, 2004 due dates for each of these audits.

The DPD's AT has indicated that the planning for the Holding Cell Misconduct Investigations Audit has only recently commenced, and no planning has begun for the Holding Cell UOF or Prisoner Injuries Audits.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C65 and C68-70.¹²⁷

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 semi-annual audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed 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 described by the Monitor in its Report for the Quarter Ending August 31, 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 made significant progress relevant to the development of policies required by the COC CJ and completed the fieldwork and draft report for the Fire Detection, Suppression and Evacuation Audit, the final audit report had not been

¹²⁷ The Monitor will continue to find the DPD in non-compliance for each audit in each quarter until such time as the required audits have been submitted. When such audits are submitted, their quality will be evaluated.

submitted and the policies had not been implemented as of the end of the quarter. 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 this quarter, the HCCC created and submitted numerous policies relating to and required by the COC CJ. Although the HCCC has made progress in complying with the requirements of the COC CJ, the holding cells policies have not yet been implemented and the HCCC has not yet submitted all of the audits required by the current COC CJ.

C66b - HCCC Fire Detection, Suppression & Evacuation Audit

As of the end of the current quarter, the DPD had not submitted the Fire Detection, Suppression and Evacuation Audits required by this paragraph that were due to be completed by January 31, 2004 and August 31, 2004. According to the DPD's AT, the first of these audits is still in the final stage of the review process.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C66.

Paragraph C67 – Audit of Emergency Preparedness Program

Paragraph C67 of the COC CJ requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells to evaluate emergency preparedness. The scope of such audits must include evaluating the DPD's key and fire equipment records and evaluating the emergency preparedness of selected detention officers. The DPD must issue a written report regarding the audits' findings.

Background

For each of the quarters ending November 30, 2003 through August 31, 2004, the Monitor found the DPD in non-compliance with paragraph C67 because the DPD had not submitted any audits relating to Emergency Preparedness.

Current Assessment of Compliance

The DPD submitted the Emergency Preparedness Audit to the Monitor on October 21, 2004. In order to assess compliance with paragraph C67, the Monitor reviewed the audit report and selected AT working papers including workplans, crib sheets, matrices and other related documents. The Monitor did not review working papers related to the fieldwork from this audit as such documents were not provided within a sufficient time to allow the Monitor to review them and include its findings in this report.

The Monitor's findings, which have been discussed with the HCCC AT, are highlighted below:

Timeliness

The Emergency Preparedness audit was not completed on a timely basis. The report does not identify the date of the audit report, nor does it identify when it was reviewed and approved by the Chief of Police. According to the audit report and the DPD's Third and Fourth Status reports, the Emergency Preparedness audit was completed and submitted to the Chief prior to the initial May 15, 2004 deadline as set out in the DPD's Audit Protocol; however, the audit report was not finalized and distributed internally until October 8, 2004, more than five months after the report was apparently completed and almost seven months after the fieldwork was completed.¹²⁸ Accordingly, the information contained in this audit is now stale, and the findings and conclusions from this audit may be incorrect or irrelevant.¹²⁹

Sampling and Scope Issues

Pursuant to paragraph C67, the HCCC is required to evaluate emergency preparedness in all buildings that contain holding cells, and specifically requires a review of a sample of key and fire equipment records and the conduct of interviews of detention officers regarding their participation in fire drills and responsibilities, and testing their ability to identify holding cell keys. This audit tested several objectives, many of which involved the status of the CEPP and the presence of documentation,¹³⁰ but the audit did not test the performance of fire drills,¹³¹ nor did it test the performance of key and lock maintenance inventory.¹³²

The audit report appropriately discussed the determination of the population for review (all buildings that contain holding cells); however, there is no discussion regarding the rationale for the sampling within the population. The audit report simply stated that "*the Audit Team determined that a review of one randomly selected work shift at each precinct and DRH was an effective unit of analysis.*" Furthermore, the rationale for choosing one randomly selected detention officer per shift is not discussed.

The audit report contains no discussion of the population, sample, or stratification of fire equipment maintenance and inventory records. In order to determine the minimum sample size, the HCCC would have had to determine the number of items in the population. The audit report contained no discussion of the total population of key and fire equipment maintenance and inventory records, if all records were reviewed, or if a sampling process was used.

¹²⁸ The onsite inspections for this audit were conducted during March 22-29, 2004.

¹²⁹ For example, much of the text in the audit report relates to the status of, and recommendations for, the DPD's draft CEPP as required by paragraph C27. These plans were finalized shortly after issuance of the audit report and were then submitted to DOJ for review and approval. According to the AT, it is unlikely that the recommendations from this audit were included in the final CEPP.

¹³⁰ As required by paragraph C24.

¹³¹ This is also required by paragraph C24.

¹³² This is required by paragraph C25.

The audit report did not articulate how the documents were reviewed regarding each of the stated objectives, nor is there any discussion of how many documents were reviewed in the process.

The audit inappropriately excluded the First Precinct from the audit population. Although the Monitor acknowledges that the parties are involved in on-going discussion regarding the First Precinct and whether or not it contains a holding cell, the Monitor is also aware that the First Precinct does in fact conduct and document fire drills.

Audit Reporting – Compliance-Related

The following are the Monitor's compliance findings relative to deficiencies identified within the audit report:

- The audit report inappropriately concluded compliance for certain precincts regarding key inventory maintenance documentation without providing the basis for concluding such compliance. In addition, the conclusions were contradictory at times.¹³³
- The *Summary of Findings* section is not expressed in quantitative terms, so it will be difficult to compare the findings from this audit to the next audit, which is a critical step in achieving compliance. In addition, there is no summary of how each precinct performed relative to the objectives tested. Although the COC CJ does not specifically mandate how the findings from the audits are to be presented, paragraph C72 requires a report to be submitted to the Chief of Police that includes an examination of consistency throughout the DPD. This involves providing the information in a manner to allow the findings from the precincts to be compared. The Monitor suggests that tables be used in future audit reports to communicate such information and to present a summary of the performance of DPD's precincts Department-wide.
- The overall conclusion does not match the requirements or the findings of the audit; the findings are not clearly linked to the objectives; the recommendations are not clearly linked to the findings; and the methodology section does not explain how the audit was conducted.

Audit Reporting – Style-Related

In addition to the compliance findings that are expressed above, the Monitor makes the following style-related observations. While stylistic deficiencies do not impact compliance with the COC CJ, these observations are being presented in an attempt to formally advise the DPD on how to improve the understandability and effectiveness of future DPD audit reports:

¹³³ For example, in the Summary of Findings Section, the audit concludes that none of the precincts are performing key and maintenance inventories. Six pages later, the audit report identifies that three of the precincts and the DRH have implemented Key Control procedures.

- The report was lengthy,¹³⁴ complicated and difficult to understand, while also being incomplete.
- The *Report of Individual Precincts* section contains repeated verbiage for each precinct, which contributed to the length of the report. It would be better to write this section assuming the precinct commanders will read the main audit report, with specific findings applicable to his/her precinct in the individual precincts sections.
- The audit report uses vague wording such as “some,” “most,” “several” and “a number of.” This type of language is imprecise, inconclusive and subject to misinterpretation.

Based on the foregoing, the Monitor finds this audit in non-compliance with the requirements of paragraph C67.

Paragraph C71 – Food Service Program Audit

Paragraph C71 of the COC CJ requires the HCCC to conduct regularly scheduled semi-annual audits covering all buildings containing holding cells, to evaluate the food service program. The scope of such audits must include evaluating whether prisoners held over 6 hours receive regular and adequate meals, and whether their food is handled in a sanitary manner. The DPD must issue a written report regarding the audits’ findings.

Background

The Monitor previously assessed the DPD’s compliance with paragraph C71 during the quarters ending February 29, 2004, May 31, 2004 and August 31, 2004, finding the DPD in non-compliance each time due to the fact that no audits required by this paragraph had been submitted.

Current Assessment of Compliance

The DPD submitted the Food Service Program Audit to the Monitor on October 21, 2004. In order to assess compliance with paragraph C71, the Monitor reviewed the audit report dated May 31, 2004 and selected AT working papers including workplans, crib sheets, matrices and other related documents. The Monitor did not review working papers related to the fieldwork from this audit as such documents were not provided within a sufficient time to allow the Monitor to review them and include its findings in this report.

The Monitor’s findings, which have been discussed with the DPD AT, are highlighted below:

¹³⁴ The report was 91 pages long, and included 69 pages of individual precinct reports.

Timeliness

The Food Service Program audit was not completed on a timely basis. The audit report was dated May 31, 2004, but was not submitted until October 2004, and contained findings related to on-site observational inspections conducted on April 12, 2004 (pre report date) and June 14-15, 2004 (post report date). This suggests that the initial scope of fieldwork was not sufficient to adequately assess the objectives being tested. The report also did not identify when it was reviewed and approved by the Chief of Police.

Paragraph C71 requires that the HCCC conduct audits of all buildings containing holding cells. Pursuant to that requirement, the HCCC conducted its on-site inspections on three separate dates in April and June of 2004 to allow sufficient time for audit evaluation and preparation for the audit report. However, since the audit report was not completed until October 2004, 4-6 months after the on-site inspections, the data for this audit is stale and the findings and conclusions from this audit may be incorrect or irrelevant.¹³⁵

Sampling Issues

Pursuant to paragraph C71(a), the HCCC is required to review a sample of food service documentation to evaluate whether prisoners who are held over six hours receive regular and adequate meals. Neither the audit report nor the working papers contained a clear discussion of how the HCCC determined its sample size for this purpose, only that the sample should include a variation of detainees and the time of detainment. In addition, the rationale for choosing to review food service documentation over a seven-day period was not discussed, nor was the rationale for choosing three separate days to observe the feeding process for all holding cells. The audit workplan was also silent on each of these issues. During the discussion of these issues with the AT personnel, they indicated that the inspections conducted were unannounced. This type of information is an important aspect that should have been included in the audit report.

The Monitor also notes that neither the report nor the audit working papers identify how the sample size was determined or the error rate on which it was based. The audit report and working papers also contained no discussion of the total population of detainees or food service documentation used to select the sample, or whether a total population determination was even attempted. In addition, there was no articulation of how the sample was selected relative to each holding cell, nor was there any discussion of how many documents were reviewed in the process.

¹³⁵ For example, one of the audit's findings states that proper documentation is not being consistently maintained regarding the distribution of personal hygiene kits or food delivered by vendors. Due to the delay between the audit fieldwork and reported findings, it is unknown if situations such as these have been remedied or if the audit information is still valid.

Scope of Review

As described above, paragraph C71 requires the DPD to assess whether prisoners who are held over six hours receive regular and adequate meals and whether the food is handled in a sanitary manner. While there was sufficient articulation regarding the methods employed to evaluate whether food was handled in a sanitary manner for certain objectives tested¹³⁶, the audit did not evaluate the food service area cleaning logs, and did not evaluate the refrigerator cleaning logs and temperature logs. In addition, there was no testing to determine whether food service was provided to prisoners held over six hours. In addition, as discussed under *Sampling Issues*, the population reviewed was not specifically defined¹³⁷ and no rationale was provided for the timeframe selected for review.¹³⁸

The audit report identified eight different objectives to determine whether the DPD Food Service Program complied with related COC CJ mandates and DPD policies. However, as discussed in the *Audit Reporting* section below, because the audit report does not effectively articulate the extent or the degree to which each objective was tested, it was difficult to ascertain whether the audit evaluated all of the objectives required. In addition, a number of the objectives could not be effectively evaluated for the DRH because the food service policy for the DRH Holding Cell was not obtained by the AT for review.

Finally, there were no details provided with respect to the specific actions undertaken by the auditors or which documents were reviewed.¹³⁹

Audit Reporting – Compliance-Related

The following are the Monitor’s compliance findings relative to deficiencies identified within the audit report:

- The audit contained conclusions that at times appear to have no basis¹⁴⁰ and other times are contradictory.¹⁴¹

¹³⁶ The audit tested whether food and utensil packages were sealed and intact, and whether food was distributed by persons who had sanitized their hands.

¹³⁷ For example, “The sample should include a variation of detainees and the time of detainment, ...”

¹³⁸ For example, “...a seven-day period of food service documentation will be utilized to evaluate Objectives Two through Seven, and three separate days were selected to observe the feeding process for all holding cells.”

¹³⁹ The report includes the following text: “*The Audit Team members observed the food service process and made copies of the relevant documents needed to perform the Food Service Audit*”.

¹⁴⁰ For example, stand alone statements, such as “As a result, Precinct Three was in 100% compliance with objective five,” which were not preceded by any detailed commentary, appeared often throughout the findings.

¹⁴¹ For example, the audit often concludes compliance on the basis that a specific objective was achieved, but overlooks whether the performance relative to the objective was adequate or consistent.

- The *Overall Conclusion* section contained no reference to the DPD's compliance with C71a-b, nor the inability to adequately test the audit objectives.
- The *Summary of Findings* section is not expressed in quantitative terms, so it will be difficult to compare the findings from this audit to the next audit, which is a critical step in achieving compliance. In addition, there is no summary of how each precinct performed relative to the objectives tested. Although the UOF CJ does not specifically mandate how the findings from the audits are to be presented, paragraph C72 requires a report to be submitted to the Chief of Police that includes an examination of consistency throughout the DPD. This involves providing the information in a manner to allow the findings from the precincts to be compared. The Monitor suggests that tables be used in future audit reports to communicate such information and to present a summary of the performance of DPD's precincts Department-wide.

Audit Reporting – Style-Related

In addition to the compliance findings that are expressed above, the Monitor makes the following style-related observations. While stylistic deficiencies do not impact compliance with the COC CJ, these observations are being presented in an attempt to formally advise the DPD on how to improve the understandability and effectiveness of future DPD audit reports:

- There was no specific connection between the points outlined in the *Overall Conclusion* section and the stated objectives evaluated in the audit.
- The report was lengthy,¹⁴² complicated and difficult to understand, while also being incomplete.
- The *Report of Individual Precincts* section contains repeated verbiage for each precinct, which contributed to the length of the report. It would be better to write this section assuming the precinct commanders will read the main audit report, with specific findings applicable to his/her precinct in the individual precincts section.
- The *Summary of Findings* and *Summary of Recommendations* were neither numbered nor consistently organized by objective or topic (auditable forms, policies, training, records retention, etc.) making it unclear if all negative findings had been adequately addressed with a corresponding recommendation. Additionally, there were findings and recommendations located throughout the report, making the report unnecessarily complicated.
- The audit report uses vague wording such as “some,” “most,” “several,” and “a number of.” This type of language is imprecise, inconclusive and subject to misinterpretation.

¹⁴² The report was 113 pages long, and included 69 pages of individual precinct reports.

- There was no specific connection between the points outlined in the *Overall Conclusion* section and the stated objectives evaluated in the audit.
- In one instance, the *Overall Conclusion* section made specific reference to inadequacies at two particular precincts rather than a general comment about the overall state of the DPD Food Service Program. The *Overall Conclusion* section should have contained statements relative to the inability to adequately test each of the eight objectives.
- Two *Methodology* sections appeared in the report, rather than a single section. The first section did not adequately explain how the audit was conducted but, instead, provided vague information relative to making copies of relevant documents. The second *Methodology* section was also vague, containing non-specific commentary about the description and nature of the tests and procedures undertaken.¹⁴³ Neither section described the specific documents reviewed or the specific processes followed in reviewing such documents.

Based on the foregoing, the Monitor finds the DPD in non-compliance with the requirements of paragraph C71.

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. The amended COC CJ requires such audits to be completed by January 31, 2004 and August 31, 2004 and every six months thereafter. Paragraph C74 also requires commanders to take disciplinary or non-disciplinary corrective action, when appropriate, regarding employees under their command.

Background

The Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that no audit reports on the conditions in the DPD's holding cells were submitted by the DPD / HCCC to the Chief of Police as of the end of that quarter.

Current Assessment of Compliance

Although the DPD submitted two of the eight audits required by the COC CJ to the Chief of Police, these audit reports did not include an examination of consistency throughout the DPD. In addition, although the Monitor requested documentation to support the distribution to, and

¹⁴³ For example, "... the audit was influenced by the general standards for government auditing and the fieldwork and reporting standards for performance audits, as specified in Government Auditing Standards, issued by the Comptroller General of the United States" and "The audit included detailed tests of police records and other auditing procedures as we considered necessary in the circumstances."

subsequent actions of, the Precinct and/or Specialized Unit Commanders in relation to the two audits submitted, as of the end of this quarter, the Monitor has not received such documentation.

Based on the foregoing, 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.¹⁴⁴

As noted previously in this report, on August 22, 2004, the DPD established the CRD function to develop a competency-based curriculum that includes specific learning objectives, measurable outcomes and scenario-based lesson plans. The CRD process is commanded by a Police Inspector, who holds a PhD in Education. He has identified a group of in-house subject matter experts to develop curriculum under his guidance.

The Monitor last assessed the DPD's compliance with paragraphs C73-78 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. The DPD had not developed comprehensive pre-service and in-service training as of the end of the quarter, and the majority of policies and programs required under the COC CJ had not yet been fully developed,¹⁴⁵ or implemented, preventing the DPD from developing related training.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C73-78 during quarter ending August 31, 2005.

¹⁴⁴ Please refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

¹⁴⁵ This included the DPD's emergency preparedness, medical/mental health screening, prisoner safety, environmental health and safety and hygiene programs and policies.

XV. MONITORING AND REPORTING

Paragraph C94 is the only paragraph in this section of the COC CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. As reported in its Report for the Quarter Ending May 31, 2004, the Monitor had not yet reviewed investigations under paragraph C94 since the DPD had not yet revised the majority of the policies and investigatory procedures under the COC CJ. The Monitor still has not yet reviewed DPD investigations, as the DPD has not yet implemented the majority of the policies and investigatory procedures under the COC CJ.

CONCLUSION

The City and the DPD have made significant progress in the area of policy development and revision this quarter. Once again, the Monitor is encouraged by this demonstration of progress. The DPD has received TA and recommendations from both the Monitor and DOJ and must make additional efforts to incorporate the changes into the relevant policies and procedures based on these recommendations. Furthermore, the DPD's challenge now, prior to implementation, is to implement a method of disseminating the policies that is auditable by the Monitor and the DPD AT.

Significantly, the City and the DPD also appear to have made a decision regarding how physical remediation of the holding cells will be accomplished. The City has indicated that Proposal S, which was passed by City residents during the November election, will enable the City to build a central detention facility, which will take approximately 24 months to complete. According to the City, this central detention facility will comply with all of the physical requirements contained within the COC CJ. In any event, the City and the DPD are aware that they must bring all existing holding cell facilities into compliance according to the internal deadlines that are contained in the Consent Judgments. Although many of these deadlines have already passed, the Monitor looks forward to hearing additional information about the City's plans for the future.

Furthermore, this quarter, the City and the DPD submitted their first three audits. In this report, the Monitor identified numerous deficiencies in the audits. At the same time, the Monitor commends the DPD for completing these first audits.

Although these efforts by the City and the DPD do not yet equal substantial compliance with a majority of the Consent Judgments' paragraphs, they certainly demonstrate forward movement.

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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
CSU	Communications Systems Unit
DAS	Disciplinary Administration Section
DDOH	Detroit Department of Health



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DFD	Detroit Fire Department
DHWP	Detroit Health and Wellness Promotion
DOJ	Department of Justice
DPD	Detroit Police Department
DRH	Detroit Receiving Hospital
ECD	Emergency Communications Division
FIS	Force Investigation Section
FIU	Force Investigation Unit
FRT	Force Review Team
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IAD	Internal Affairs Division
ICD	Internal Controls Division
IMAS	Interim Management Awareness System
MAS	Management Awareness System
MCOLES	Michigan Commission on Law Enforcement Standards
MIOSHA	Michigan Occupational Safety and Health Administration
MITN	Michigan Information and Tracking System
OCI	Office of the Chief Investigator
OIC	Officer in Charge
PAB	Professional Accountability Bureau



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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
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