

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, 2006

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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 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 Wood, with the assistance of Kroll, Inc., as the Independent Monitor in this matter. This is the thirteenth quarterly report of the Independent Monitor.⁴

The two Consent Judgments contain a total of 177 substantive paragraphs with which the City and the DPD must substantially comply. The City and the DPD have achieved compliance with the policy components of numerous paragraphs in both Consent Judgments, a significant accomplishment.⁵ These paragraphs are identified in the comments column of the Report Card attached as Appendix B to this report. There are a number of paragraphs that are "policy only" paragraphs with which the City and the DPD will remain in compliance (unless a revision is made that does not meet the terms of the Consent Judgments).⁶ These 13 compliant "policy only" paragraphs are: U14-17 and U19, U20, U42, U44, U46-47, U52, U54, and U56. There are also several paragraphs that require the City and the DPD to take a specific action and, once compliant, these paragraphs will generally remain in compliance; the DPD has complied with 8 such paragraphs: U82-84, U88a, b and d, C22 and C34.

Each quarter, the Monitor examines a certain number of substantive paragraphs. During the thirteenth quarter, which ended on November 30, 2006, the Monitor examined a total of 81 paragraphs or subparagraphs (59 paragraphs or subparagraphs of the UOF CJ and 22 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD complied with 14 and failed to achieve compliance with 58; the Monitor has not yet completed its evaluation of 6 paragraphs

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

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

³ The "effective date" of the Consent Judgments.

⁴ The Monitor's quarterly reports may be found on the Internet at www.kroll.com/detroit.

⁵ Pursuant to paragraphs U133 and C88 and various other paragraphs, these paragraphs also require implementation, which must also be in compliance for the DPD to achieve overall substantial compliance.

⁶ For these "policy only" paragraphs, implementation is separately evaluated under another substantive paragraph.

or subparagraphs⁷ and withheld its determination of the DPD's compliance with 3 paragraphs.⁸ In addition to these, there are 7 paragraphs or subparagraphs for which the Monitor's previous findings of compliance carried forward to the current quarter.

Overall, the City and the DPD are in compliance with 40 paragraphs out of 177 to date.

As described fully in this report, the City and the DPD continued to make progress in the following areas during the quarter:

- For the second time, the review of arrests in the assessment of paragraph U43 revealed that the DPD had sufficient probable cause to effect all of the arrests in the Monitor's sample. A further accomplishment is that supervisory reviews of these arrests occurred and were documented in a timely manner for 90.5% of the time. The DPD is to be commended for these accomplishments.
- In connection with paragraph U73, a review of a sample of time and attendance records showed an improvement in the overall compliance rate for the ratio of officers per supervisor.
- After the end of the quarter, in December 2006, the City and the DPD announced an agreement with the Wayne County Community College under which, beginning in January 2007, the WCCC will become responsible for DPD Recruit Training. This will reduce some of the burden on the DPD's Training Academy and allow the DPD to focus on in-service training.

Major areas of concern identified during the quarter ending November 30, 2006 include the following:

- Although most of the DPD's audit reports submitted to date have not been well-written,⁹ the reports have identified a number of problem areas within the DPD and have made recommendations for improvement. The majority of the recommendations, including those dealing with record keeping, have not been acted upon. In order to comply with the

⁷ The paragraphs for which the Monitor has not yet completed its evaluation are generally "implementation" paragraphs, for which the DPD has now complied with the related policy requirements. In these instances, the Monitor's testing of implementation is currently taking place and has not yet been completed. There are varying reasons why the assessments have not yet been completed, including the dates documents were requested and/or submitted and the availability of information relevant to making the assessment.

⁸ For each of these paragraphs, the Monitor's review and findings as of the end of the quarter are included in this report. The Monitor is mindful that this report is issued some 45 days after the end of the quarter. Therefore, for paragraphs assessed during the current quarter, the Monitor will make every effort to mention significant developments that occurred after the end of the quarter in footnotes throughout the report. For those paragraphs that were not assessed during the current quarter, developments that occurred during the current quarter or after the quarter's end will generally be fully reported on in the next quarter in which the applicable paragraph is under review.

⁹ Their report writing skills are improving, and are expected to further improve as a result of the Report Writing TA provided by the Monitor in late November 2006.

requirements of the Consent Judgments, the Monitor recommends that the DPD develop a suitable process to deal effectively with its audit recommendations.¹⁰

- A review of critical firearm incidents revealed that the Joint Investigative Shooting Team is not investigating all critical firearm discharges as required by the UOF CJ. The review also revealed that similarly the DPD's Board of Review is not evaluating all critical firearm discharges.¹¹
- The Monitor is concerned with the low number of documented frisks in comparison to the much higher number of documented stops.¹²

¹⁰ The Monitor notes that the DPD's Audit Protocol (paragraph U92) also requires that the DPD develop a system to evaluate, track and follow-up on all audit recommendations.

¹¹ Refer to the *Current Assessments of Compliance* for paragraphs U37-40.

¹² Refer to the *Current Assessments of Compliance* for paragraph U45 and subparagraph U95b.

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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 Wood, with the assistance of Kroll, Inc.,¹³ as the Independent Monitor in this matter. This is the thirteenth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor¹⁴ outlined the history of the DOJ investigation, the 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.¹⁵ The Monitor's duties and reporting requirements were also described.

As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,¹⁶ the Monitor will review the paragraphs on a periodic schedule over

¹³ The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Hazel de Burgh, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Terry Penney, and Sherry Woods.

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

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

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

the life of the Consent Judgments.¹⁷ The paragraphs that were scheduled for review during the thirteenth quarter, which ended on November 30, 2006, are assessed in this report.¹⁸

II. MONITOR'S ROLE

The Monitor's role is to conduct compliance assessments,¹⁹ make recommendations, provide TA and report on the DPD's progress toward substantial compliance with the Consent Judgments on a quarterly basis. 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, which are orders of the Court, 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. The Consent Judgments can only be modified by court order.

III. EFFORTS TOWARD COMPLIANCE

During the thirteenth quarter, the Monitor continued to test the DPD's implementation of the policies that it has successfully disseminated. Under the UOF CJ, the DPD's compliance rates are improving in many areas. For example, in the review of arrests under paragraph U43 supervisors are now documenting their reviews over 90% of the time, whereas in a previous quarter these reviews were not documented. The DPD also continues to make significant improvements in its implementation of paragraph U73 (field deployment of supervisors),²⁰ among other requirements. However, the DPD still faces challenges in the implementation of various areas, including the investigation and evaluation of critical firearm discharges²¹ and the documentation of stops and frisks.²²

¹⁷ The initial duration of the COC CJ was eight quarters. As previously reported, on December 27, 2004, the Court issued an order granting the City'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. The Monitor has developed a review schedule for the COC CJ paragraphs under the two-year extension; the schedule is incorporated into the Report Card accompanying this report. The minimum duration of the UOF CJ is twenty quarters. The Monitor's review schedule does not affect the due dates mandated by the Consent Judgments for the City and the DPD.

¹⁸ As previously mentioned, for the paragraphs under review for this quarter, the Monitor makes every effort to report on significant matters that have taken place after the end of the quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.

¹⁹ Paragraphs U138 and C93 require that the Monitor regularly conduct compliance reviews to ensure that the City and the DPD implement and continue to implement all measures required by the Consent Judgments. The Monitor shall, where appropriate, employ sampling techniques to measure compliance.

²⁰ See *Current Assessment of Compliance* for paragraph U73.

²¹ See *Current Assessments of Compliance* for paragraphs U37-41.

²² See *Current Assessment of Compliance* for paragraph U45.

Under the COC CJ, the DPD is working toward the implementation of the DOJ-approved Fire Safety Plan (FSP) and Emergency Preparedness Plan (EPP). The City and the DPD are working on retrofitting the holding cells in the districts on a rolling basis. Furthermore, the City and DPD have begun transferring some female detainees to the Wayne County Sheriff's Department (WCSD) with the intention of expanding to the program to male detainees.²³ One of the challenges faced by the DPD is finalizing and/or fully implementing the various forms and logs required by the policies.

During the current quarter, the parties met regarding the development of the DPD's Management Awareness System (MAS) and the Monitor worked closely with the DPD by providing TA on audit report writing and providing information and engaging in various discussions regarding training.

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 has submitted final copies of the *Methodologies* for both Consent Judgments to the parties. Any future modifications to the methodologies will generally be made on a paragraph-by-paragraph basis.

Under the *Methodologies*, the DPD will generally be assessed as compliant when either a reliable audit has been submitted that concludes compliance or at least 94% compliance is achieved for a statistically valid random sample²⁴ of incidents from as recent a period as is practicable.

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 and document reviews.

Under certain circumstances, the Monitor may elect to rely on audits submitted by the DPD in assessing compliance with substantive paragraphs of the Consent Judgments. In doing so, the Monitor evaluates an audit to determine if it is compliant with the applicable audit requirements

²³ On December 1, 2006, it was reported that the Wayne County Commission approved \$2.1 million for a feasibility study for the proposed regional criminal justice complex. According to information provided by the DPD, a decision on whether to pursue the project will be made by Wayne County by May 2007. The Monitor has been informed that the City of Detroit has not made a final decision as to whether it will attempt to locate jail facilities at this proposed facility.

²⁴ If the total population of incidents is so small that the process of selecting a statistically valid random sample would take longer to perform than to evaluate 100% of the incidents in the population, 100% testing will be performed.

of the Consent Judgments. If the Monitor determines that the audit is compliant, the Monitor may rely on the audit and adopt all of the audit's findings.

If the Monitor determines that an audit is not compliant with the applicable audit requirements of the Consent Judgments, the Monitor may still rely on some or all of the audit's findings if it is determined that the specific findings are reliable.²⁵ In addition, the Monitor reserves the right to adopt audit findings of non-compliance in instances in which the Monitor has not determined whether the audit's findings are reliable; however, the Monitor will supplement the audit's assessment with additional testing where possible.²⁶

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 summarize the DPD's progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph²⁷ of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.²⁸ 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. The next evaluation is estimated based on available information at the date of issuance of this Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

²⁵ In these instances, the overall non-compliance finding of the audit would necessarily be based on deficiencies unrelated to the specific findings that the Monitor elects to rely upon. As an example, if the audit report and fieldwork were considered adequate related to the substantive paragraphs under review but the audit was considered non-compliant because it failed to address a specific issue unrelated to the substantive paragraph or was submitted late, the Monitor may use all of the audits findings regarding the substantive provisions of the paragraph(s) even though the audit was considered non-compliant.

²⁶ Where an audit concludes that the DPD was in non-compliance, the likelihood that the DPD would incorrectly find itself in non-compliance is relatively low. Consequently, the Monitor may adopt those findings even though they have not been completely substantiated.

²⁷ 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.

²⁸ 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.

VI. 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, 2006. During this quarter, the Monitor has also made numerous recommendations and provided TA to the DPD in the areas of lesson plan development and audit report writing as part of its ongoing efforts to assist the DPD in achieving compliance with the Consent Judgments. The Monitor continues to be available to offer to provide or to respond to requests for TA from the DPD.

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,²⁹ and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

²⁹ 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, 2006.

I. USE OF FORCE POLICY

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

A. GENERAL USE OF FORCE POLICIES

This section comprises paragraphs U14-19. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2006. The Monitor is scheduled to again assess compliance with paragraphs U14-19 during the quarter ending May 31, 2007.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U21-23 during the quarter ending August 31, 2007.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraph U24 during the quarter ending August 31, 2007.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U25-26 during the quarter ending August 31, 2007.

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 compelled statements and develop an auditable form³⁰ 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 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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U27-33 during the quarter ending February 28, 2007.

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, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter.³¹ The results of our current assessments follow.

³⁰ The UOF CJ defines an auditable form as a discrete record of the relevant information maintained separate and independent of blotters or other forms maintained by the DPD.

³¹ Throughout this report, for those paragraphs assessed and reported on during the current reporting period ("current quarter"), information regarding the Monitor's most recent compliance assessments, and the basis for those assessments, can be found in the "Background" sections of the respective paragraphs.

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

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

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

- a. officers to notify their supervisors following any UOF or prisoner injury;
- b. that upon such notice, a supervisor must respond to the scene of all UOF that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor must respond to all other UOF on a priority basis. Upon arrival at the scene, the supervisor must interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention;
- c. the supervisor responding to the scene to notify the Internal Affairs Division (IAD)³² of all serious UOF, UOF that result in visible injury, UOF that a reasonable officer should have known were likely to result in injury, UOF where there is evidence of possible criminal misconduct by an officer or prisoner injury; and
- d. IAD to respond to the scene of, and investigate, all incidents where there is evidence of possible criminal misconduct by an officer, a prisoner dies, suffers serious bodily injury or requires hospital admission, or involves a serious UOF, and to permit IAD to delegate all other UOF or prisoner injury investigations to the supervisor for a command investigation.

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

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

³² The DPD refers to this entity as the Internal Affairs Section (IAS).

Background

The Monitor last assessed the DPD's compliance with paragraphs U34-36 during the quarter ending May 31, 2006, finding the DPD in compliance with the policy requirements of the paragraphs. The Monitor had not yet assessed the DPD's compliance with the implementation requirements of paragraphs U34-36. As a result, the Monitor did not yet evaluate the DPD's overall compliance with paragraphs U34-36.

Current Assessment of Compliance

Paragraph U34

In order to assess the DPD's compliance with the implementation requirements of paragraph U34 during the current quarter, the Monitor selected a sample of 43 arrests³³ that involved a UOF and reviewed them to determine whether auditable forms (UOF-002) and Supervisor's Investigation Reports (SIRs) were completed appropriately for these incidents. Of the 43 incidents, five UOF-002 forms and four SIRs were not submitted in response to the Monitor's request.³⁴ In addition, 7 of the 43 incidents had no documentation at all, and 1 incident had an incorrect investigation number. As a result, the level of compliance, based solely on whether the forms were submitted, and not their content, was 70% for the UOF-002 forms and 72% for SIRs.

Paragraphs U35-36

It was the Monitor's intention to use the DPD's audit to assess compliance with the requirements of this paragraph during the current quarter. However, the DPD did not submit a *Use of Force Audit* pursuant to paragraph U94a.³⁵ The Monitor will evaluate implementation of paragraphs U35-36 during the quarter ending February 28, 2007, in conjunction with its assessment of related paragraphs.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs U34-36; the Monitor also finds the DPD in non-compliance with the implementation requirements of paragraph U34, but has not yet assessed the DPD's compliance with the implementation requirements of paragraphs U35-36. As a result, the Monitor finds the DPD in overall non-compliance with paragraph U34, but has not yet evaluated the DPD's overall compliance with paragraphs U35-36.

³³ As required, a random, statistical sample of 43 arrests was selected out of a population of 110 arrests that involved a UOF from May 20, 2006 through June 20, 2006.

³⁴ The Monitor notes that other documentation for these incidents was submitted; however, these documents were missing.

³⁵ The DPD submitted a *Holding Cells Use of Force Investigations Audit* on July 31, 2006 pursuant to C65a. See the Monitor's Report for the Quarter Ending August 31, 2006 for the assessment of compliance.

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, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U37-41 – Creation of Shooting Team; Protocol for Investigations of Critical Firearms Discharges; Command Level Force Review Team; Time Limits for Command Level Force Review Team; Aggregate Review

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.

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.

Paragraph U39 mandates that the DPD require a Command Level Force Review Team (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 U37-41 during the quarter ending May 31, 2006. The Monitor previously found the DPD in compliance with the policy requirements of these paragraphs. However, given that the policy had only recently been made effective, the Monitor did not test the implementation of the policy to allow sufficient time for the DPD's investigative and internal review process to be fully implemented. As a result, the Monitor did not evaluate the DPD's overall compliance with paragraphs U37-40. With regard to paragraph U41, the Monitor found the DPD in overall non-compliance. The Monitor requested additional information regarding the majority of the investigations listed in the Force Investigation Section (FIS) 2004 Annual Critical Incident Report on November 22, 2005; information provided by the DPD pursuant to this request did not adequately detail the current status of those investigations.³⁶ In addition, the Monitor requested a copy of the paragraph U41 annual report for 2005 but had not received a response to this request as of the end of that quarter.³⁷

Current Assessment of Compliance

The DPD submitted the Joint Incident Shooting Team (JIST) Standard Operating Procedures (SOP) on July 26, 2006 to comply with the requirements of paragraphs U37-38. During this quarter, the Monitor reviewed the JIST SOP and submitted questions regarding the protocol to the DPD. The Monitor's primary question concerned whether Internal Affairs (IA) is a separate entity from Force Investigation (FI). The Monitor learned that IA and FI were recently reorganized and each investigative entity reports directly to the Chief of Police. The Monitor is concerned because the JIST SOP states that the shooting team will consist of the Homicide Section and FI; whereas paragraph U37 states that the shooting team should be composed of officers from Homicide and IA.³⁸ The Monitor has advised the parties that they need to discuss whether the composition of the shooting team meets the requirements of the consent judgment.

³⁶ Information received from the DPD pursuant to a document request indicated that the DPD was not completing investigations of critical firearm discharges within the time periods outlined in paragraph U38.

³⁷ On May 5, 2006, the Monitor requested a copy of the DPD's paragraph U41 Annual Report for 2005.

³⁸ On October 19, 2006, the Monitor submitted a document request asking for the names and badge number of the DPD members assigned to the JIST. As of the end of the quarter, the Monitor had not received this information.

In order to assess compliance with the implementation requirements of paragraphs U37-40, the Monitor requested a listing of all critical firearm discharges (CFDs) for incidents occurring between January 1, 2006 and March 31, 2006.³⁹ The DPD submission identified twelve CFDs that occurred during the time period requested. The CFDs were grouped into the following categories:

| Type of Incident | Number of Incidents | Incidents Investigated by JIST | Incidents Evaluated by Board of Review ⁴⁰ |
|-------------------------|---------------------|--------------------------------|--|
| Unintentional Discharge | 1 | 0 | 0 |
| Shots Fired/No Effect | 7 | 0 | 0 |
| Shots Fired/Non-Fatal | 2 | 2 | 0 |
| Fatal Shooting | 2 | 2 | 2 |

Upon review, the Monitor determined that the JIST is not investigating all CFDs as required by paragraph U37. The JIST only investigated instances classified as “shots fired/non-fatal” and “fatal shootings.”⁴¹ The Monitor also determined that a BOR was only being conducted for incidents classified as “fatal shootings.”⁴²

The Monitor also reviewed the timing of the investigations:

| Type of Incident | Date of Incident | Date JIST Started | Date JIST Closed | Date BOR Started | Date BOR Closed |
|-----------------------|------------------|-------------------|------------------|------------------|-----------------|
| Shots Fired/Non-Fatal | 01.08.06 | 01.10.06 | 06.13.06 | N/A | N/A |
| Shots Fired/Non-Fatal | 02.27.06 | 02.28.06 | PENDING | N/A | N/A |
| Fatal Shooting | 02.15.06 | 02.21.06 | 04.06.06 | 02.16.06 | PENDING |
| Fatal Shooting | 03.30.06 | 04.03.06 | PENDING | 03.31.06 | PENDING |

Of the four investigations conducted by the JIST, none were completed within thirty days required by paragraph U38, the BOR Policy and the DPD’s JIST Protocol. It should also be noted that according to information provided by the DPD, of the investigations that were conducted, none of them were initiated on the date of the incident. Paragraph U37 requires the DPD’s Shooting Team to respond to the scene in order to begin investigating all CFDs.

³⁹ The Monitor used this period of time in order to give the DPD time to complete the JIST investigation and Board of Review (BOR) even if there was a criminal investigation.

⁴⁰ The BOR is the CLFRT required by paragraphs U39-40.

⁴¹ Out of twelve shootings, only four were investigated by JIST.

⁴² Out of twelve shootings, only two were evaluated by the BOR.

Paragraph U39 requires that the BOR evaluate all critical firearm discharges. As noted above, the BOR did not evaluate all of the CFDs during this time period. Both of the BOR evaluations that were started are still pending. As a result, they were not completed within the time periods required by paragraph U40 and Directive 304.5, *Board of Review*.

With regard to paragraph U41, as previously reported, the Monitor requested the 2005 Force Investigation Section Annual Critical Incident Report on May 5, 2006. As of the end of the quarter, the Monitor has not received this information.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs U37-41.⁴³ However, and the Monitor finds the DPD in non-compliance with the implementation requirements of the paragraphs. As a result, the Monitor finds the DPD in overall non-compliance with paragraphs U37-41.

⁴³ The Monitor finds the DPD in compliance with the policy component despite the potential issue with the JIST SOP, as other policy/procedure documents contain the required information.

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, 2006. The Monitor found the DPD in compliance with paragraph U42, which is a "policy only" paragraph.⁴⁴ The Monitor again assessed the DPD's compliance with paragraph U43 during the current quarter. The results of our current assessments follow.

Paragraph U43 – Review of Arrests

Paragraph U43 requires the DPD to review the merits of each arrest and opine as to whether or not adequate probable cause existed to support the arrest. The supervisory 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.

⁴⁴ The DPD will remain in compliance with paragraph U42 until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U43.

Background

The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending May 31, 2006, at which time the Monitor found the DPD in non-compliance. The Monitor reviewed 56 randomly selected arrests and determined that probable cause was present for all 56 arrests. However, supervisory review of arrests was not adequately documented, preventing the Monitor from assessing compliance with supervisory review requirements. Also, for certain arrests in which a warrant was not sought, the DPD did not generate the required auditable form.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U43 during the current quarter, the Monitor selected a sample⁴⁵ of 94 arrests and requested that the DPD provide the Monitor with access to the arrest documentation (Preliminary Complaint Reports, or PCRs, and any related auditable forms). The Monitor reviewed documentation for all 94 arrests, noting the following:

- For all 94 arrests reviewed, sufficient probable cause existed to effect all of the arrests. The DPD also achieved this commendable result during the last period that the Monitor assessed this paragraph.
- An arrest warrant was not sought for 14 of the 94 arrests reviewed which triggered the requirement for an auditable form to be generated within 12 hours of the event.
 - For eight arrests for which a warrant was not sought, although an auditable form documenting the circumstances was generated, it was not generated within the mandated 12-hour period.⁴⁶
 - For four arrests for which a warrant was not sought, although an auditable form documenting the circumstances was generated, it was not complete. The time and date of release and/or the time and date of supervisor review were not documented, preventing an assessment of completion within the mandated 12-hour period.⁴⁷
- For 85 of 94 (90.5%) arrests reviewed, supervisory review occurred and was documented as having occurred within the mandated 12-hour period. The DPD is to be commended for this

⁴⁵ As required, a random, statistical sample of 94 arrests was selected out of a population of approximately 4,154 arrests that occurred during the period August 1, 2006 through August 31, 2006, utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

⁴⁶ The completion times for the forms ranged from 24 hours to 66 days. The Eastern District was responsible for four of the eight instances of non-compliance. The Northeast District was responsible for two instances of non-compliance. The Western and Southwest Districts were each responsible for one instance of non-compliance.

⁴⁷ Again, the completion times for the forms ranged from 24 hours to 66 days. The Southwest District was responsible for two instances of non-compliance. The Northwest and Central Districts each were responsible for one instance of non-compliance.

improvement since during the last assessment the supervisory reviews were not being adequately documented.

- For two of the arrests, the Monitor was unable to determine whether the supervisory review was documented within the mandated 12-hour period.⁴⁸
- For seven of the arrests, although supervisory review occurred, it was documented in excess of 12 hours from the documented arrest time.⁴⁹

Although not determinative of compliance, the Monitor took the additional step of interviewing three supervisors assigned to the Eastern District. During the course of the interviews it was apparent that one supervisor was not familiar with the requirements of paragraph U43. Through discussion with Office of Civil Rights (OCR) personnel, the Monitor also determined that the Eastern District's Compliance Liaison Officer (CLO) had yet to attend monthly meetings wherein OCR personnel provide training on the requirements of the Consent Judgments.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U43.

B. INVESTIGATORY STOP POLICIES

This section comprises paragraphs U44-45. As described in the Report for the Quarter Ending May 31, 2006, the DPD has been in compliance with paragraph U44, which is a "policy only" paragraph, since the quarter ending May 31, 2005.⁵⁰ The Monitor last assessed the DPD's compliance with paragraph U45 during the quarter ending February 28, 2006. The Monitor again assessed the DPD's compliance with paragraph U45 during the current quarter. The results of our current assessment follow.

Paragraph U45 – Stop and Frisk Documentation Requirements

Paragraph U45 mandates 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.

⁴⁸ One arrest was effected by the Eastern District and one by the Narcotics Section.

⁴⁹ Three arrests were effected by the Northwestern District, two by the Southwestern District and one each by the Northeast District and the Narcotics Section.

⁵⁰ The DPD will remain in compliance with the paragraph until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U45.

Background

The Monitor last assessed the DPD's compliance with paragraphs U45 during the quarter ending May 31, 2006 finding the DPD in non-compliance. In order to assess compliance with the implementation requirements of the paragraphs, the Monitor reviewed a sampling of officers' daily activity logs and determined that the officers did not adequately articulate reasonable suspicion for stops and/or frisks conducted.

Current Assessment of Compliance

The DPD's Audit Team (AT) submitted the *Investigatory Stop and Frisk Practices Audit* required by subparagraph U95b by the required due date of August 31, 2006. The audit concluded that the DPD was in non-compliance with the requirements of paragraph U45. In order to assess the DPD's compliance with paragraph U45 during the current quarter, the Monitor reviewed the audit report, work plan, and related audit working papers. Although the Monitor identified qualitative deficiencies within the audit and found the audit in non-compliance with the applicable Consent Judgment requirement (subparagraph U95b),⁵¹ the Monitor determined that it was able to rely upon the audit's findings with respect to paragraph U45.⁵²

The AT's audit sampled stops and frisks during the period February 19, 2006 through February 25, 2006. The audit noted the following:

- There were no auditable forms generated for the period selected for review. The DPD expanded the audit period, noting that for the period January 1, 2006 through July 31, 2006 only 2 auditable forms were generated by the Department.
- The AT requested documentation of all stops and frisks documented in Activity Logs and Daily Reports over a one-week period, February 19-25, 2006. The logs and reports indicated that 3,015 stops and 68 frisks were documented during this time period. The low number of frisks reported indicates an average of approximately 1.6 frisks in each District per 24-hour period. This potential issue should have been identified by the AT for DPD management to determine whether there are any risk management issues concerning officer safety, training, a lack of knowledge of the requirements related to reporting frisks, and/or a failure by officers to document frisks that are in fact being conducted.

⁵¹ Please refer the Current Assessment of Compliance for subparagraph U95b for further details regarding the Monitor's assessment of this audit.

⁵² As described in section IV. Methodologies in the Introduction section of this report, if the Monitor determines that an audit is not compliant with the applicable audit requirements of the Consent Judgments, the Monitor may still rely on some or all of the audit's findings if it is determined that the specific findings are reliable.

- The time of supervisory review was not documented for 80 of the 111 stops and 21 of the 68 stops and frisks randomly selected for review. The AT was unable to assess whether supervisory review occurred within the mandated 24 hour period for those stops and frisks that lacked documentation of the time of supervisory review.⁵³
- For 10 of the 111 stops selected for review, supervisors failed to identify that the stops lacked articulation of reasonable suspicion.
- For the 68 stops also involving a frisk, 9 lacked articulation of reasonable suspicion for the stop and 35 lacked articulation of reasonable suspicion for the frisk.

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, 2006. The Monitor found the DPD in compliance with paragraphs U46 and U47, which are "policy-only" paragraphs.⁵⁴ The Monitor again assessed the DPD's compliance with paragraph U48 during the current quarter. The results of our current assessment follow.

Paragraph U48 – Documentation of Interviews and Interrogations

Paragraph U48 requires the DPD to memorialize the content and circumstances of all interviews, interrogations and conveyances during the shift in which the police action occurred. The DPD is also required to review all interviews, interrogations and conveyances and 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 paragraph U48 during the quarter ending May 31, 2006, finding the DPD in non-compliance. The Monitor was unable to review the minimum sample size of officers to determine compliance with paragraph U48, as the roster

⁵³ The AT reached a similar conclusion during its prior audit submitted to the Monitor on February 18, 2005. The Monitor, in its quarterly report ending February 28, 2006 identified this same issue. Per Teletypes 04-06054, 04-06055, 04-06056 and 04-06057 issued October 14, 2004, supervisors were instructed to "indicate the date and time that the activity log, investigator's activity log, and /or sergeant's daily report, is received by documenting the date and time along with the receiving supervisor's signature at the end of the report."

⁵⁴ The DPD will remain in compliance with paragraphs U46 and U47 until the policy directly responsive to these paragraphs is revised. Revisions to policy will trigger additional compliance assessments by the Monitor.

submitted by the DPD and used by the Monitor for random testing was outdated, did not accurately reflect officer employment status and thus did not permit an appropriate sample.⁵⁵

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U48 during the current quarter, the Monitor requested and received photocopies of officer daily activity logs for the period August 24 – 31, 2006. The Monitor selected certain entries indicative of an interview, interrogation and/or conveyance and on November 20, 2006 requested that the DPD provide the relevant supporting documentation, including any completed auditable forms.⁵⁶ As of the end of the quarter, the Monitor had not received the requested information.⁵⁷

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

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U49-51 during the quarter ending February 28, 2007.

E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraph U53 during the quarter ending February 28, 2007.⁵⁸

⁵⁵ As described in the Monitor's Report for the Quarter Ending November 30, 2005, under the Current Assessment of Compliance for paragraphs U46 and U48, the Monitor will continue to conclude non-compliance until such information is provided to the Monitor and testing can be accomplished.

⁵⁶ The Monitor's selection was accumulated after reviewing daily activity logs for the Homicide, Sex Crimes and Domestic Violence specialized units.

⁵⁷ During early December 2006, the Monitor received an email communication from the DPD after having queried the status of the request. The email communication indicated that upon an internal review of the supporting documentation requested, the DPD acknowledged it was not in compliance with the implementation requirements of paragraph U48.

⁵⁸ The Monitor found the DPD in compliance with paragraph U52, which is a "policy only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with paragraph U52 until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U53.

F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor last assessed the DPD's compliance with paragraph U55 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraph U55 during the quarter ending February 28, 2007.⁵⁹

G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraph U57 during the quarter ending February 28, 2007.⁶⁰

H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2006. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U58 – Arrest and Detention Documentation

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;

⁵⁹ The Monitor found the DPD in compliance with paragraph U54, which is a "policy only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with paragraph U54 until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

⁶⁰ The Monitor found the DPD in compliance with paragraph U56, which is a "policy only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with paragraph U56 until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U57.

- f. Date and time of arraignment;
- g. Date and time each warrant was lodged and cleared, if applicable; and,
- h. Custodial status e.g. new arrest, material witness or extradition

Background

The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2006, at which time the Monitor found the DPD in non-compliance. Although the DPD decided to incorporate paragraph U58's requirements into the new version of Live Scan, the Live Scan system had not yet been modified to include all elements required by the paragraph.

Current Assessment of Compliance

During the current quarter, the Monitor again discussed with DPD personnel the progress of the Live Scan system and the incorporation of the information required by paragraph U58. The DPD indicated that the required modifications to the Live Scan system are slated for December 2006. As a result, the DPD had not completely addressed the requirements of paragraphs U58 as of the end of the current quarter.⁶¹

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending February 28, 2007.

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2006. 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,

⁶¹ This information is inconsistent with the City and the DPD's Thirteenth Quarter Status Report, which states, "Currently, all relative information required within this paragraph is being captured within the Live Scan system, in which all of is retrievable for the Monitor's implementation testing." The status report does not comport with statements that have been made to the Monitor.

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, 2006, finding the DPD in non-compliance. The Monitor noted that for two of four arrests in which a warrant was not sought, although the auditable form was completed, the reviewing Commander did not document the date and time of review. As a result, the Monitor was unable to determine whether the review occurred within the mandated seven-day period. Also, auditable forms were not provided for stops and frisks or witness interviews.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U59 during the current quarter, the Monitor reviewed the arrest documentation and related auditable forms utilized in connection with the testing of compliance with paragraph U43. The Monitor noted the following:

- The CO review section was not completed on eight of the 14 auditable forms completed for arrests in which a warrant was not sought.
- The CO's evaluation was documented on the auditable form in excess of the mandated seven-day period on one of the 14 auditable forms completed for arrests in which a warrant was not sought.⁶²

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

⁶² The evaluation was documented 86 days after receipt of the form.

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 Office of the Chief Investigator (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.⁶³

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, 2006. 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, 2006, finding the DPD in compliance with the policy requirements of the paragraph. The Monitor had not yet evaluated the DPD's compliance with the implementation requirement of the paragraph. The DPD was scheduled to submit an audit of external complaint investigations, which was to include the requirements of these paragraphs, by August 31, 2006.

Current Assessment of Compliance

The DPD's AT timely submitted its *External Complaint and Complaint Investigations Audit* required by paragraph U97 by the required due date of August 31, 2006. This audit covered the requirements of paragraph U61, among others. The Monitor reviewed the audit report, work

⁶³ The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

plan, and related audit working papers. Although the Monitor identified qualitative deficiencies within the audit and found the audit in non-compliance with the applicable Consent Judgment requirement (subparagraph U97),⁶⁴ the Monitor determined that it was able to rely upon the audit's findings with respect to paragraph U61.⁶⁵

In its audit, the AT found 39 citizen complaints that were documented in a blotter at a DPD section were not referred to OCI as required by this paragraph, the DPD's *Citizen Complaints Policy* and subparagraph U67a. As a result, the audit found the DPD non-compliant with the requirements of paragraph U61 for informally resolved complaints. Additionally the AT found the Department out of compliance for formally resolved complaints as they were not referred to the appropriate agency within 5 business days.

During the current quarter, on November 8-9, the Monitor conducted inspections of DPD districts. During these inspections, the Monitor conducted a review of the Citizen Complaint Reports (CCRs) in each district to determine whether the complaints were being received and tracked in accordance with the requirements of this paragraph. The Monitor found that in three of the six districts all CCR numbers were being recorded in a log book in accordance with the *Citizen Complaints Policy* and were in sequential order. The Monitor identified the following in one or more of the remaining three districts:

- CCR forms not kept in sequential order;
- Missing CCR forms within the sequence of numbered forms issued to the district;
- Two CCR form logbooks being used in one district without the knowledge of supervisory staff;
- Incomplete information and lack of coordination between the DPD and OCI regarding a complaint referral (due to its criminal nature);
- A voided CCR form inserted in logbook and not forwarded to OCI; and
- No mechanism for tracking of CCR forms by districts or OCI.

The Monitor brought these issues to the attention of supervisors in each district and to the OCI. The DPD and OCI agreed to take immediate action to correct these deficiencies.⁶⁶

⁶⁴ Please refer the Current Assessment of Compliance for subparagraph U97 for further details regarding the Monitor's assessment of this audit.

⁶⁵ As described in section IV. Methodologies in the Introduction section of this report, where an audit concludes that the DPD was in non-compliance, the likelihood that the DPD would incorrectly find itself in non-compliance is relatively low. Consequently, the Monitor may adopt those findings even though they have not been completely substantiated.

⁶⁶ Five months prior to the Monitor's review, the OCR conducted an inspection of the requirements of paragraph U64 and found similar problems to those described here.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraph U61. The Monitor finds the DPD in non-compliance with the implementation requirements of this paragraph. As a result, the DPD is in overall non-compliance with paragraph U61.

Recommendations

The Monitor recommends that the DPD put a mechanism in place at the districts to track CCR forms that have been issued to the DPD by OCI. The Monitor recommends that one logbook be kept for each district and that the CCR numbers for forms issued to each district be listed in the logbook in sequential order at the time of issuance. Then as each complaint form is used, the information next to the CCR number should be filled in. With this method, it will be simple to ascertain whether any CCR forms are unaccounted for within a district.

Furthermore, OCI should institute a tracking procedure so that each CCR form that has been issued to an entity is accounted for. OCI should periodically investigate the status of CCR forms that were issued but have not been turned back into the OCI.⁶⁷

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 (PSA) 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, 2006, finding the DPD in compliance with subparagraphs U62c and d. However, the Monitor found the DPD in non-compliance with subparagraph U62b, regarding distribution of complaint forms, fact sheets and informational posters. Inspections revealed that several

⁶⁷ The OCR made similar recommendations after inspections of the requirements of paragraph U64 conducted in June 2006.

libraries and neighborhood city halls did not have all the materials required by the subparagraph. Although OCR did replenish the materials for some of the libraries and Neighborhood City Halls, many of the relevant personnel were unaware of the system that is supposed to be in place for reordering or refilling depleted stock of the materials.

Current Assessment of Compliance

Subparagraph 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.

Subparagraph U62b Distribution of complaint forms, fact sheets and informational posters

As described in the Current Assessment of Compliance for paragraph U61, the Monitor conducted inspections of DPD districts on November 8-9, 2006. These inspections revealed that all of the district stations had all the materials required by paragraph U62b.

OCR conducted inspections of libraries and Neighborhood City Halls during the period of November 15-30, 2006. Of the 24 libraries inspected, 21 had all the required materials. OCR replenished the materials as needed and also supplied other libraries with extra materials per their request.

OCR conducted inspections at six Neighborhood City Hall locations. All six locations had all of the required materials. OCR supplied the Neighborhood City Hall's with extra materials per their request.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph U62b.

Subparagraph U62c Complaint Process Broadcasts

The DPD submitted a copy of the PSA that is broadcast on Comcast Cable. According to the DPD, the broadcast is aired continuously in a daily loop. As previously reported, the PSA meets the minimum requirements of describing the complaint process.

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

Subparagraph U62d Informational Campaign Placards

As described in the Current Assessment of Compliance for paragraph U61, on November 8-9, 2006, the Monitor conducted inspections of all districts. During these inspections, the Monitor found that the DPD continues to have permanent placards posted in the lobby of each of district.

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

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, 2006, finding the DPD in compliance. The Monitor determined that Directive 102.6, *Citizen Complaints*, had been adequately disseminated by the end of the quarter. The Monitor assessed the DPD's compliance with the implementation requirements of the paragraph by conducting spot checks and found that officers were carrying their Citizen Complaint Brochure/Contact Forms in their vehicles. The OCR also conducted inspections, finding that officers were carrying the required materials in their vehicles.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U61, on November 8-9, 2006, the Monitor conducted inspections of all districts. During these inspections, the Monitor conducted random spot checks of officers to determine if officers were carrying their Citizen Complaint Brochures/Contact Forms while on duty. The spot checks revealed that all officers who were questioned were carrying the required materials on their person or in their patrol cars.⁶⁸

OCR conducted inspections of the DPD Districts during the period of November 15, 2006 through December 1, 2006 to determine if officers were carrying their Citizen Complaint Brochures/Contact Forms. OCR randomly checked units from each district and determined that all officers interviewed did have the required materials in their vehicles.

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

⁶⁸ There was no one available at the Southwestern District of the Monitor to determine if the officers were carrying the required materials.

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, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U64-66 – Policies Regarding Intake and Tracking; Factual Account by Intake Officer; Unique Identifier

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.

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.

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 paragraphs U64-65 during the quarter ending May 31, 2006, at which time the Monitor reported the DPD in compliance with the policy requirements of the paragraphs. However, because the AT was scheduled to submit an audit of external complaint investigations, which was to include the requirements of these paragraphs, by August 31, 2006, the Monitor deferred its assessment of the DPD's compliance with the implementation requirements of paragraphs U64-66 so that it could be conducted in conjunction with the Monitor's evaluation of the audit.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U61, above, during the current quarter, the Monitor reviewed the AT's *External Complaints and Complaint Investigations Audit*, which covered the requirements of paragraphs U64-66, among others. Although the Monitor identified qualitative deficiencies within the audit and found the audit in

non-compliance with the applicable Consent Judgment requirement (subparagraph U97),⁶⁹ the Monitor determined that it was able to rely upon the audit's findings with respect to paragraphs U64 and U66.⁷⁰ It was also the Monitor's intention to use the DPD's audit to assess compliance with the requirements of paragraph U65. However, the audit's finding in connection with paragraph U65 could not be substantiated.

With regard to paragraph U64, the AT identified 39 citizen complaints that were documented in a blotter at a DPD section that were not referred to OCI. Accordingly, the DPD is not properly accepting and documenting all complaints as required by this paragraph. The Monitor also identified issues regarding the documentation of complaints during its review of district logbooks.⁷¹

Regarding paragraph U65, the *External Complaints and Complaint Investigations Audit* concluded that the requirements are being met for formally resolved complaints and for informally resolved complaints. In order to supplement the audit's findings, the Monitor selected a random sample of 50 complaint investigations from the 102 investigations that were closed by OCI during the month of June 2006.⁷² The Monitor conducted an initial review of 14 of the 50; these first 14 investigations met the requirements of this paragraph for formally resolved complaints. However, in order for a statistically valid conclusion to be drawn, the Monitor is required to continue reviewing additional investigations from the sample of 50. The Monitor will continue this review and report a final compliance assessment for paragraph U65 during the quarter ending February 28, 2007.

For paragraph U66, the AT found that formally resolved complaints are assigned a unique identifier (CCR number) but informally resolved complaints are not.⁷³ The Monitor also determined that the DPD is meeting the requirements of this paragraph for formally resolved complaints. While all of the formally resolved complaints in the population of 102 investigations had unique identifiers (CCR numbers), the Monitor did not review if all informal

⁶⁹ Please refer the Current Assessment of Compliance for subparagraph U97 for further details regarding the Monitor's assessment of this audit.

⁷⁰ As described in section IV. Methodologies in the Introduction section of this report, where an audit concludes that the DPD was in non-compliance, the likelihood that the DPD would incorrectly find itself in non-compliance is relatively low. Consequently, the Monitor may adopt those findings even though they have not been completely substantiated.

⁷¹ Refer to Current Assessment of Compliance for paragraph U61.

⁷² The Monitor's sample size of 50 investigations was determined using a one tailed test with an error rate of +/- 4% and a 95% confidence interval.

⁷³ In the audit's population, there were only 7 of 46 non-holding cell complaints that were resolved informally between October 1, 2005 and March 31, 2006 that received a unique identifier. The Monitor recommends that the City and the DPD develop a mechanism for meeting the requirements of paragraph U66 with regard to informally resolved complaints.

complaints received unique identifiers. The Monitor will continue this review and report a final compliance assessment for paragraph U65 during the quarter ending February 28, 2007.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraphs U64-66. The Monitor finds the DPD in non-compliance with the implementation requirements of paragraph U64 but has not yet completed its evaluation of compliance with the implementation requirements of paragraphs U65 and U66. As a result, the DPD is in overall non-compliance with paragraph U64 and the Monitor has not yet completed its evaluation of the DPD's overall compliance with paragraph U65 and U66.

B. EXTERNAL COMPLAINT INVESTIGATIONS

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2006. 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:

- 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, 2006, at which time the Monitor reported that the DPD was in compliance with the

policy requirements of the paragraph. However, because the AT was scheduled to conduct an audit of external complaint investigations, which was to include the requirements of paragraphs U67a-e, g-h by August 31, 2006, the Monitor deferred its assessments of the DPD's compliance with the implementation requirements of these subparagraphs so that the assessments could be conducted in conjunction with the Monitor's evaluation of the audit. The Monitor found the DPD in non-compliance with subparagraph U67f, as the mandatory pre-service and in-service training for all IAD and OCI investigators had not occurred as of the end of that quarter.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U61, above, during the current quarter, the Monitor reviewed the AT's *External Complaints and Complaint Investigations Audit*, which covered the requirements of paragraph U67, among others. Although the Monitor identified qualitative deficiencies within the audit and found the audit in non-compliance with the applicable Consent Judgment requirement (subparagraph U97),⁷⁴ the Monitor determined that it was able to rely upon the audit's findings with respect to paragraph U67.⁷⁵

Subparagraphs U67a-c

In the *External Complaints and Complaint Investigations Audit*, the AT identified 39 citizen complaints that were documented in a blotter at a DPD section and were not referred to OCI or another agency as required by subparagraphs U67a and c. Furthermore, all of these complaints were informally resolved even though only 20 of them alleged inadequate service or complainant's innocence of a charge.⁷⁶ The AT also concluded the Department was not in compliance with U67c for formally resolved complaints as they were not referred to the appropriate agency within 5 business days. As described in the *Current Assessment of Compliance* for paragraph U61, the Monitor conducted a review of the CCRs in each district. Similar to the AT's findings, the Monitor identified complaints that were not properly referred and CCRs that were missing.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of subparagraphs U67a-c but in non-compliance with the implementation requirements of the subparagraphs. As a result, the DPD is in overall non-compliance with subparagraphs U67a-c.

⁷⁴ Please refer the *Current Assessment of Compliance* for subparagraph U97 for further details regarding the Monitor's assessment of this audit.

⁷⁵ As described in section IV. Methodologies in the Introduction section of this report, where an audit concludes that the DPD was in non-compliance, the likelihood that the DPD would incorrectly find itself in non-compliance is relatively low. Consequently, the Monitor may adopt those findings even though they have not been completely substantiated.

⁷⁶ Informal resolution is only permitted for complaints involving inadequate service and innocence of charge, pursuant to subparagraph U67b.

Subparagraph U67d

Both the AT, in its *External Complaints and Complaint Investigations Audit*, and the Monitor, in its review of investigative files, found that the OCI is not keeping complainants periodically informed of the status of the complaint investigation while pending.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of subparagraph U67d but in non-compliance with the implementation requirements of the subparagraph. As a result, the DPD is in overall non-compliance with subparagraph U67d.

Subparagraph U67e

In order to test implementation of subparagraph U67e, on October 31, 2006, the Monitor requested any applications submitted by individuals seeking to become IAD or OCI investigators from January 1, 2006 to the date of the request to determine whether the applicant criteria are being utilized. As of the end of the quarter, the DPD had not responded to this request.⁷⁷

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of subparagraph U67e but in non-compliance with the implementation requirements of the subparagraph. As a result, the DPD is in overall non-compliance with subparagraph U67e.

Subparagraph U67f

In order to test implementation of subparagraph U67f, on October 31, 2006, the Monitor requested a listing of the most recent dates of and lesson plans for any pre-service and in-service training for IA and OCI investigators. As of the end of the quarter, the DPD had not responded to this request.⁷⁸

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U67f.

Subparagraph U67g

Based on the data included in the AT's *External Complaints and Complaint Investigations Audit* working papers, the Monitor determined that external complaints were taking an average of 240 days to close, well beyond the 60 day deadline required by this subparagraph.⁷⁹ In its review of a

⁷⁷ After the end of the quarter, on December 11, 2006, the DPD responded stating that neither IA nor OCI received any applications to become investigators between January 1, 2006 and October 31, 2006. The Monitor will make additional attempts to determine whether the OCI and the DPD are screening applicants or transfers using the criteria developed under this paragraph.

⁷⁸ On December 11, 2006, after the end of the quarter, the DPD responded, providing the Monitor with a list of training classes that took place for OCI and IA investigators. Although the DPD did provide the names and dates of the training courses, the lesson plans that were used for these courses were not provided, as requested.

⁷⁹ Eleven of 64 complaints selected for review by the AT took in excess of 400 days to resolve.

more recent sample of complaint investigations,⁸⁰ the Monitor similarly found that none of the investigations were completed with a 60-day time period.⁸¹

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of subparagraph U67g but in non-compliance with the implementation requirements of the subparagraph. As a result, the DPD is in overall non-compliance with subparagraph U67g.

Subparagraph U67h

The DPD's *External Complaints* Policy requires that within 15 days of completion of the investigation, the appropriate investigating entity (IA or OCI) notify the complainant of the disposition of their complaint. According to the policy, this notification must include an appropriate statement regarding whether any disciplinary or non-disciplinary corrective action was taken. In its *External Complaints and Complaint Investigations Audit*, AT determined that the City and the DPD were notifying complainants within 15 days. However, AT did not fully test compliance with this requirement, as it reviewed only 15 investigations in connection with the requirement; the Monitor identified one instance in which more than a month lapsed before complainants were informed.

During its review of more recent external complaint investigations,⁸² the Monitor determined that although the OCI is notifying all complainants, in the vast majority of cases it is not doing so within 15 days. The Monitor also determined that the OCI is not meeting the requirement of providing an appropriate statement regarding whether corrective action or discipline was imposed. This is consistent with what the AT found during its review of 15 investigations. However, IA and the OCI cannot provide such information within 15 days of the completion of the investigation, since the action will not have taken place at that point and it is not known at that time what action will be taken. The Monitor recommends that the parties discuss this requirement.⁸³

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of subparagraph U67h but in non-compliance with the implementation requirements of the subparagraph. As a result, the DPD is in overall non-compliance with subparagraph U67h.

⁸⁰ Refer to the *Current Assessment of Compliance* for paragraphs U64-66, (paragraph U65, specifically) for information regarding this review.

⁸¹ The Monitor reviewed 14 of 50 investigations selected and then discontinued its review of the remaining investigations due to an early determination of non-compliance.

⁸² Refer to the *Current Assessment of Compliance* for paragraphs U64-66, (paragraph U65, specifically) for information regarding this review. Again, the Monitor discontinued its review after reviewing 14 of the 50 investigations due to an early determination of non-compliance.

⁸³ In the meantime, the OCI has notified the Monitor that it is including a statement that non-disciplinary corrective action or disciplinary action *will be* taken (once the BOPC has reviewed and approved the investigation and it has been sent to the Chief of Police for review and action).

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, 2006, at which time the Monitor reported that the DPD was in compliance with the policy requirements of the paragraph. However, because the AT was scheduled to conduct an audit of external complaint investigations, which was to include the requirements of paragraph U68, by August 31, 2006, the Monitor deferred its assessment of the DPD’s compliance with the implementation requirements of the paragraph so that the assessment could be conducted in conjunction with the Monitor’s evaluation of the audit.

Current Assessment of Compliance

The AT’s *External Complaints and Complaint Investigations Audit* did not include an evaluation of paragraph U68. The audit report referred to, but did not include an evaluation of the OCR’s inspection of the requirements of this paragraph.

In order to assess the DPD’s compliance with paragraph U68, the Monitor reviewed the most recently received OCR inspection of the requirements of this paragraph. According to the inspection memorandum, the OCR reviewed 12 external complaint investigations that were closed at the end of January or beginning of February 2006.⁸⁴ The memorandum does not indicate which dates the inspection took place.⁸⁵ The memorandum also does not articulate how the twelve investigations were selected for review except to say that this was a “random surprise” inspection at the OCI. The inspection found that the BOPC and OCI do not always

⁸⁴ The investigations reviewed during the inspection were closed 6 months or more before the submission of this inspection to the Monitor on August 31 2006. It is unclear why the inspectors did not select a more recent sample, so as to provided management with more current information.

⁸⁵ The second page of the document has the date of July 13, 2006 at the top. This may refer to the date the memorandum was written as opposed to the dates of the inspection.

immediately forward investigations to the Chief of Police so that her review could be completed within seven days of the BOPC's review. With regard to the requirements of subparagraphs a and b, the inspection found that these reviews were being conducted in a timely manner.

As described in the *Current Assessment of Compliance* for paragraph U65, the Monitor conducted its own review of more recent OCI investigations. In the initial review, the Monitor found that the Chief Investigator's reviews were completed in a timely manner for 11 of 14 investigations. The Monitor determined that the BOPC's review was completed in a timely manner for all 14 investigations.

The Monitor was unable to determine how long the Chief of Police's review took, since the OCI investigative files indicate the date the file was sent to the Chief of Police but do not indicate when this review was completed.⁸⁶

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraph U68 but finds the DPD in non-compliance with the implementation requirements of the paragraph. As a result, the Monitor finds the DPD in overall 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 assessed the DPD's compliance with paragraph U69 during the quarter ending May 31, 2006, at which time the Monitor reported that the DPD was in compliance with the policy requirements of the paragraph. However, because the AT was scheduled to conduct an audit of external complaint investigations, which was to include the requirements of paragraph

⁸⁶ The Monitor has asked OCR how they made this determination.

U69, by August 31, 2006, the Monitor deferred its assessment of the DPD's compliance with the implementation requirements of the paragraph so that the assessment could be conducted in conjunction with the Monitor's evaluation of the audit.

Current Assessment of Compliance

As described in the *Current Assessment of Compliance* for paragraph U61, above, during the current quarter, the Monitor reviewed the AT's *External Complaints and Complaint Investigations Audit*, which covered the requirements of paragraph U69, among others. The Monitor identified qualitative deficiencies within the audit and found the audit in non-compliance with the applicable Consent Judgment requirement (subparagraph U97).⁸⁷ It was the Monitor's intention to use the DPD's audit to assess compliance with the requirements of paragraph U69. However, the audit's finding of compliance could not be substantiated.

In the *External Complaints and Complaint Investigations Audit*, the AT found that the external complaint investigations reviewed reached one of the required dispositions and that the disposition was warranted. As described in the *Current Assessment of Compliance* for paragraph U65, the Monitor conducted its own review of more recent OCI investigations. In its review of more recent OCI investigations, the Monitor reached the same conclusion as the AT for the 14 investigations reviewed. However, in order for a statistically valid conclusion to be drawn, the Monitor is required to continue reviewing additional investigations from the sample of 50. The Monitor will continue this review and report a final compliance assessment for paragraph U69 during the quarter ending February 28, 2007.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraph U69 but has not yet completed its evaluation of the DPD's compliance with the implementation requirements of the paragraph. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraph U69.

⁸⁷ Please refer the *Current Assessment of Compliance* for subparagraph U97 for further details regarding the Monitor's assessment of this audit.

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 U72-77 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 28, 2007.

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending May 31, 2006. The Monitor again assessed the DPD's compliance with these paragraphs, and completed its assessment of paragraph U73, 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 CJ are clearly defined.

Background

The Monitor last assessed the DPD's compliance with paragraph U70 during the quarter ending May 31, 2006, at which time the Monitor found the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraph. In order to comply with the implementation requirement of paragraph U70, the DPD must establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. Although the DPD established a Policy Focus Committee whose responsibilities include reviewing newly established policy or policy revisions to ensure that all required terms are clearly and consistently defined, the protocol to be used by the committee was not finalized as of the end of that quarter.

Current Assessment of Compliance

As previously reported, in order to comply with the implementation requirement of paragraph U70, the DPD must establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. As of the end of the quarter, the DPD had not submitted information that such a procedure had been established.⁸⁸ Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph U70. As a result, the Monitor finds the DPD in overall 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, 2006, finding the DPD in non-compliance. The Monitor requested additional information from the DPD concerning its protocol for making available proposed policy revisions to the community for review, comment and education. Neither the protocol nor the requested information was submitted by the DPD as of the end of that quarter. On June 12, 2006, after the end of that quarter, the DPD provided the additional information requested.

Current Assessment of Compliance

During the current quarter, the Monitor requested and received a revised *Protocol for Proposed Policy Revisions*. The Monitor reviewed the protocol and determined that it adequately addresses the following:

- Procedures on posting proposed policies to and removing proposed policies from the DPD's website.
- Procedures for providing proposed policies at the BOPC regularly scheduled public meetings.

⁸⁸ After the end of the quarter, on December 4, 2006, the DPD submitted a draft protocol to be utilized by its previously established Policy Focus Committee. The DPD indicated that a schedule delineating the month and year that each policy will be reviewed will also be submitted. The Monitor will review and assess the final version of these documents once they are submitted.

- Procedures for providing proposed policies at each of the DPD's six districts.
- Procedures for reviewing comments on proposed policies posted to the DPD website.

The Monitor also conducted unannounced visits at all six districts in an attempt to identify whether designated CLOs were familiar with their responsibilities for making available proposed policy to the public upon request. Five of the six district CLOs demonstrated sufficient knowledge and the same five districts prominently displayed the procedures for requesting and commenting on proposed policy.⁸⁹

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph 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 supervisors⁹⁰ of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

Background

The Monitor assessed the DPD's compliance with paragraph U73 during the quarter ending February 28, 2006, finding the DPD in non-compliance. The Monitor reviewed daily attendance records for a limited production of District station and specialized unit platoons for the period December 28- 30, 2005 and calculated an overall compliance rate of 73.2%.

During the quarter ending August 31, 2006, the Monitor again reviewed daily attendance records for District station and specialized unit platoons for the period June 13 – 15, 2006 and calculated an initial compliance rate of approximately 90%. However, the Monitor noted that it required additional information, and elected to withhold a determination of compliance pending additional review.

Current Assessment of Compliance

During the current quarter the Monitor requested and received from the DPD additional information required to complete its assessment of compliance with paragraph U73. In total, the Monitor reviewed 125 district and specialized unit daily attendance records, and determined that for 16 platoons and one specialized unit, the ratio of officers to a supervisor exceeded eight to

⁸⁹ The Monitor determined that the Eastern District could not demonstrate an understanding of the procedure and that no information was posted informing the public on the procedures for requesting and commenting on proposed policy.

⁹⁰ Paragraph "pp" of the UOF CJ defines a supervisor as a sworn DPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for DPD employees.

one.⁹¹ The Monitor could not assess compliance with the incomplete information provided for one district for one platoon. Lastly, for three specialized units, although officers were assigned, their respective supervisors were available on an “on-call” basis only. As a result, the DPD’s overall compliance rate was 83.2% (104 of 125).

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

⁹¹ The DPD staffs sworn employees in its districts over three platoons for the periods 12am to 8am, 8am to 4pm and 4pm to 12am, respectively. The DPD also staffs sworn employees at intervals ranging over multiple platoons. The Monitor noted that in some instances the ratio of officers to supervisors exceeded eight to one for a portion of the platoon. In other instances the ratio was exceeded for the entire platoon.

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 audit 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 August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraph U78 during the quarter ending February 28, 2007, in conjunction with its assessment of paragraph C63, which is the corresponding paragraph of the COC CJ.

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.

During the quarter ending November 30, 2005 the Monitor concluded that the DPD was in compliance with paragraph U84 and subparagraph U88d, as the DOJ had approved the Review Protocol, and in compliance with paragraph U83 and subparagraph U88b, as the DOJ had approved the Report Protocol.⁹²

The Monitor last assessed the DPD's compliance with paragraph U85, subparagraphs U88e, f and g, and paragraph U89 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs and subparagraph during the quarter ending February 28, 2007.

The Monitor last assessed the DPD's compliance with paragraphs U79-82 and U86-87 and subparagraphs U88a and c. during the quarter ending May 31, 2006. The Monitor again assessed

⁹² The DPD will remain in compliance with these provisions until the respective documents are revised. Revisions to the documents will require additional review and approval by the DOJ and trigger additional compliance assessments by the Monitor.

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

Paragraph U79-82, U86-87 – Expansion of Risk Management Database; Risk Management Database Information Requirements; Identifying Information for Officers and Civilians; Data Input Plan; Common Control Number; Information Maintained in 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.

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;

- 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 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.

Background

The Monitor last assessed the DPD's compliance with paragraphs U79-82 and U86-87 during the quarter ending May 31, 2006, finding the DPD in non-compliance with each. The MAS was neither fully developed nor operational.

Current Assessment of Compliance

As reported in the Monitor's Report for the Quarter Ending May 31, 2006, the DOJ provided the DPD with a letter, dated February 17, 2006, outlining the DOJ's concerns with the Data Input Plan. As reported in the Monitor's Report for the Quarter Ending August 31, 2006, the DOJ provided the DPD with verbal conditional approval of the Data Input Plan. During the current quarter, the DOJ submitted a letter on October 18, 2006 stating that although the Data Input Plan does include source documents and case examples of the processes that will be used, it does not provide specifications of the final MAS database. The letter further states that the DOJ views the Data Input Plan as a starting point in the development, but not a solution. Nevertheless, as previously reported, the Data Input Plan has been conditionally approved by the DOJ.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U82 and in non-compliance with paragraphs U79-81 and U86-87.

Subparagraphs U88a and c - Schedule for Database Development

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;
- c. by October 31, 2003, the DPD must issue the Request for Proposals.

Background

The Monitor last assessed the DPD's compliance with subparagraphs U88a and c during the quarter ending May 31, 2006, finding the DPD in non-compliance with both subparagraphs. The

DOJ had expressed concerns about the Data Input Plan (subparagraph U88a), which were not resolved by the end of that quarter. The DPD and the DOJ were also participating in ongoing discussions regarding whether the DPD will issue an RFP or whether the DPD will use their internal resources to develop the MAS. Therefore, the DPD was found in non-compliance with U88c.

Current Assessment of Compliance

In regards to subparagraph U88a, as described above, the DOJ provided the DPD with a letter, dated February 17, 2006, outlining the DOJ's concerns with the Data Input Plan. As reported in the Monitor's Report for the Quarter Ending August 31, 2006, the DOJ provided the DPD with verbal conditional approval of the Data Input Plan.

In regards to subparagraph U88c, the parties participated in conversations regarding the DPD's proposal to use personnel from the City of Detroit's Information Technology Services (ITS) Department to convert the IMAS to the MAS. On October 18, 2006, the DOJ submitted a letter to the DPD outlining the parties' agreement that the DPD will use the City's ITS Department to develop the MAS. According to the letter, the DPD is to comply with paragraph U88f⁹³ by November 18, 2007 and U88g by April 18, 2008.⁹⁴ The letter also identified several remaining concerns that the DOJ has about the conversion. In order to monitor the progress, the Parties and the Monitor will meet on a monthly basis to discuss the development. As of the end of the quarter, the City and the DPD have not yet signed the letter from the DOJ.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph U88a and is withholding a determination of compliance with subparagraph U88c pending the parties' ongoing discussions.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraph U91 during the quarter ending August 31, 2007.

⁹³ Subparagraph U88f requires the DPD to have a beta version of the MAS ready for testing by June 30, 2005. The DOJ's letter allows the DPD until November 18, 2007 to have the beta version ready.

⁹⁴ Subparagraph U88g requires the DPD to have the MAS operational and fully implemented by December 31, 2005. This agreement moves this date to April 18, 2008.

C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual⁹⁵ audits of all precincts and specialized units on eight areas of policing,⁹⁶ 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 paragraph U93 during the quarter ending November 30, 2005; with paragraphs U92 and U94-98 during the quarter ending August 31, 2006; and with paragraph U99 during the quarter ending May 31, 2006. The Monitor is scheduled to again assess compliance with paragraph U96 during the quarter ending November 30, 2007 and with paragraph U98 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with paragraphs U92-95, U97 and U99 during the current quarter. 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 CJ⁹⁷ to ensure the audits occur with sufficient frequency and cover all DPD units and Commands.

Background

The Monitor last assessed the DPD's compliance with paragraph U92 during the quarter ending August 31, 2006. The Monitor completed its review of the 2006/2007 Audit Protocol submitted by the DPD on July 29, 2006 and found its content sufficiently covered all requisite topics;⁹⁸ however, the Monitor did not receive documentation supporting the dissemination and

⁹⁵ On October 4, 2004, in response to a Joint Motion from the parties, the Court amended the audit schedule in the UOF CJ by requiring the DPD's UOF CJ audits to be completed annually by August 31, 2004, and every year thereafter.

⁹⁶ Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

⁹⁷ This Audit Protocol must also address the audits required by the COC CJ (paragraphs C65-72).

⁹⁸ The Audit Protocol should at a minimum address the audit schedule, the standards for conducting and reviewing such audits, sufficient instruction on the content and review process for the DPD's audit reports, and adequate articulation of the competencies and training requirements for the DPD's auditors.

implementation of the 2006/07 Audit Protocol as of the end of that quarter. As a result, the Monitor withheld a determination of the DPD's compliance with the paragraph.

Current Assessment of Compliance

During the current quarter, in response to the Monitor's request, the DPD submitted documentation supporting the dissemination and implementation of the 2006/07 Audit Protocol, including the current listing of all DPD personnel who are currently involved in conducting DPD audits; documentation supporting the receipt and signatures of Annual Confidentiality Declarations for all listed personnel; and, documentation supporting the attendance at internal training in connection with the 2006/07 Audit Protocol. The Monitor reviewed this documentation and determined that it adequately addresses the requirements of this paragraph.

Based on the foregoing, as well as the Monitor's findings expressed last quarter, the Monitor finds the DPD in compliance with paragraph U92.

Paragraph U93 – Audit Reporting Requirements

Paragraph U93 requires the DPD to issue a written report on the results of each UOF CJ audit 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.

Background

The Monitor last assessed the DPD's compliance with paragraph U93 during the quarter ending November 30, 2005, at which time the Monitor found the DPD in non-compliance. The Monitor had not received documentation evidencing the transmittal of audit reports to the Chief of Police and appropriate COs, or any documentation evidencing any corrective action taken in connection with the audits.

Current Assessment of Compliance

On August 31, 2006, the DPD submitted to the Monitor two audit reports required by the UOF CJ: the *Allegations of Misconduct Investigations Audit*, required by subparagraph U94c, and the *OCI Audit of External Complaints*, required by paragraph U97. Upon receiving these audit reports, the Monitor requested documentation to support their transmittal to the appropriate COs,

and any related corrective actions taken.⁹⁹ The Monitor has not received any documentation evidencing such transmittal or describing any related corrective actions taken during the current quarter. As mentioned in previous quarterly reports, the DPD has indicated that it intends to implement the Corrective Action Needed (CAN) reporting system to document and track all pertinent information relative to the corrective actions taken by each CO in connection with DPD audit findings; however, this system was not implemented as of the end of the current quarter, and no alternative process was established to document and track actions taken in connection with the audits.

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

Paragraph U94 – Audits of UOF, Prisoner Injuries and Misconduct Investigations

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits of a) UOF investigations, b) prisoner injury investigations, and c) investigations into allegations of misconduct. Such audits must cover all precincts and specialized units. These audits were due by August 31, 2004, and annually thereafter.

Background

The Monitor last assessed the DPD's compliance with subparagraphs U94a and b during the quarter ending August 31, 2006, finding the DPD in non-compliance with each. The audits required by these subparagraphs have not been submitted since the inception of the UOF CJ.

The Monitor last assessed the DPD's compliance with subparagraph U94c during the quarter ending November 30, 2005, finding the DPD in non-compliance due to qualitative deficiencies in its *Allegations of Misconduct Investigations Audit* submitted on August 31, 2005. On August 31, 2006, the DPD submitted its next *Allegations of Misconduct Investigations Audit*.

Current Assessment of Compliance

U94a and b – UOF and Prisoner Injuries Investigations Audits

As of the end of the current quarter, the DPD had not submitted a *Use of Force Investigations Audit* (required by subparagraph U94a) or a *Prisoner Injury Investigations Audit* (required by subparagraph U94b).

⁹⁹ The Monitor also has a standing document request for all documentation related to the audits, including transmittal and follow-up correspondence.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraphs U94a-b.¹⁰⁰

U94c – Allegations of Misconduct Investigations Audit

During the current quarter, the Monitor completed its review of the *Allegations of Misconduct Audit* report submitted by the DPD's AT on August 31, 2006, and the AT's audit work plan and audit fieldwork documents, including audit matrices, supporting documents and a randomly selected sample of 14 underlying investigations.¹⁰¹

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

- The audit report was submitted by the required due date of August 31, 2006.
- This audit report was one of the AT's better written reports to date – it was more comprehensible than previous reports issued. However, certain issues were not appropriately addressed as discussed in further detail below, and further improvements could be made based on the "Report Writing TA" provided by the Monitor in late November 2006.
- The audit reviewed a sample of closed investigations from September 1, 2005 through February 28, 2006, which was 7-12 months prior to the submission of the audit report.¹⁰² This caused the audit report to be stale, and not all of the factors preventing the AT from reviewing a more recent sample were addressed in the audit report. The Monitor understands that some of the factors preventing the AT from reviewing a more recent sample are not within the AT's control; however, these factors must be addressed by the DPD so that future audits can assess a more recent sample of misconduct investigations.¹⁰³
- The audit report appropriately addressed the DPD's inability to track misconduct investigations within the Commands, thereby causing the audit population to be incomplete. Although similar problems existed regarding the tracking of IA investigations, the DPD's AT failed to make similar conclusions regarding the completeness of IA's population of misconduct investigations.

¹⁰⁰ The Monitor will continue to find the DPD in non-compliance with the requirement to conduct these audits until such time as the required audits have been submitted. When these audits are submitted, the Monitor will evaluate their quality.

¹⁰¹ The Monitor's sample size was 54 investigations, which was determined using a one tailed test with an error rate of +/- 4% and a 95% confidence interval. After reviewing 14 investigations, the Monitor discontinued its review due to an early determination of non-compliance.

¹⁰² An appropriate sample would have comprised incidents that closed within approximately 6 months of audit submission date (i.e. incidents closed after February 28, 2006 for the audit submitted on August 31, 2006).

¹⁰³ It is the Monitor's understanding that the factors beyond the AT's control include the DPD's failure to implement prior audit recommendations regarding the tracking of investigations (e.g., creation of an electronic database); poor record keeping; and untimely responses to data requests made by the AT.

- This audit did not evaluate the timeliness of any open complaint investigations.¹⁰⁴
- This audit did not evaluate whether or not the investigation had captured the officer's and subject's actions correctly; instead, it only tested whether or not the investigation had evaluated the officer's and subject's actions.
- Paragraph U33 requires that reviewing supervisors "identify" deficiencies and take corrective action when an investigator fails to conduct or review investigations appropriately. The AT incorrectly concluded N/A (for "Not Applicable") when there was no documentation confirming that deficiencies were identified or corrective action was taken, even though deficiencies were present within the investigation or corrective action should have been documented. Instead, the AT should have concluded that the DPD was non-compliant with the requirements of paragraph U33.
- The AT incorrectly concluded N/A when there was no documentation justifying the extension of the investigations beyond 60 days as required by paragraph U32h, even though only one IA investigation was closed within 60 days.¹⁰⁵ Instead, the AT should have concluded that extension documentation was required but not present.
- Although the audit report contained valid recommendations, in many cases the recommendations did not adequately address the "heart of the issue." For example, no recommendations were made to address inadequate supervisory oversight and corrective action relating to deficient investigations.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U94c.

Paragraph U95 – Audits of Probable Cause, Stops and Frisks and Witness Identification and Questioning Documentation

Paragraph U95 requires the DPD to conduct regularly scheduled annual audits of a) arrest practices, b) stops and frisks, and c) witness identification and questioning documentation. Such audits must cover all precincts and specialized units and must include an evaluation of the scope, duration, content, and voluntariness, if appropriate, of the police interaction. The arrest practices audit must also include a comparison of the number of arrests to requests for warrants and number of arrests for which warrants were sought to judicial findings of probable cause. These audits were due by August 31, 2004, and annually thereafter.

¹⁰⁴ The Monitor agrees that open complaint investigations do not need to be reviewed for quality.

¹⁰⁵ The AT appropriately concluded that the investigations did not comply with the requirement to close within 60 days.

Background

The Monitor last assessed the DPD's compliance with subparagraphs U95a and U95c during the quarter ending November 30, 2005, finding the DPD in non-compliance with each, since neither of these audits were submitted as of the end of that quarter. The Monitor is scheduled to again assess the DPD's compliance with subparagraphs U95a and U95c during the quarter ending November 30, 2007.

The Monitor last assessed the DPD's compliance with subparagraph U95b during the quarter ending May 31, 2005, finding the DPD in non-compliance due to deficiencies related to timeliness, sampling, scope, and reporting in its *Investigatory Stop and Frisk Audit* submitted on February 18, 2005. On August 31, 2006, the DPD submitted its next audit of this topic.

Current Assessment of Compliance

Subparagraph U95b – Investigatory Stop and Frisk Practices Audit

During the current quarter, the Monitor completed its review of the *Investigatory Stop and Frisk Practices Audit* report submitted by the DPD's AT on August 31, 2006, and the AT's audit work plan and audit fieldwork documents, including audit matrices, supporting documents and a randomly selected sample of 52 stops and 40 frisks.¹⁰⁶

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

- The audit report was submitted on a timely basis by the date it was due, and within six months of the stops and frisks evaluated in this audit.
- The samples for this audit were appropriately selected from all stops and frisks documented in Activity Logs and Daily Reports over a one-week period, February 19-25, 2006, and comprised a random sample of 111¹⁰⁷ stops and the entire population of 68 frisks.
- The scope of the audit adequately addressed all relevant sections of the UOF CJ, however the audit report failed to address the low number of frisks reported during the period reviewed.¹⁰⁸ This is cause for concern and suggests potential problems with officer safety, training, a lack of knowledge of the requirements related to reporting frisks, and/or a failure by officers to document frisks that are in fact being conducted. The AT should have reported on this significant issue and highlighted it for follow-up by DPD management.

¹⁰⁶ The Monitor's sample size was determined using a one-tailed test with an error rate of +/- 4% and a 95% confidence interval. The Monitor reviewed the entire sample of both stops and frisks.

¹⁰⁷ The AT tested a minimum number of two stops for each stratum.

¹⁰⁸ The number of frisks reported averages approximately 1.6 frisks in each District per 24-hour period.

- Although the Monitor identified minor errors within the AT's matrix responses, these errors did not impact the compliance rates reported by the DPD's AT. With the exception of paragraph U44, the Monitor concurs with the AT's conclusions that the DPD was less than 95% compliant with all relevant UOF CJ sections regarding investigatory stops and frisks.¹⁰⁹ The Monitor also concurs with the recommendations contained in the audit report.
- Although better written than prior reports, future reports of this nature should be simplified and better organized based on the "Report Writing TA" recently provided by the Monitor.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U95b.

Paragraph U97 – Audits of OCI Audits of External Complaints and Investigations

Paragraph U97 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.

Background

The Monitor last assessed the DPD's compliance with paragraph U97 during the quarter ending November 30, 2005, finding the DPD in non-compliance as a result of deficiencies in the AT's *External Complaint and Complaint Investigation Audit* related to the reporting of its sampling processes, testing, and compliance calculations, as well as its interpretation of the related results.

On August 31, 2006, the DPD submitted its *External Complaint and Complaint Investigation Audit* as required by paragraph U97.

Current Assessment of Compliance

During the current quarter, the Monitor completed its review of the *External Complaint and Complaint Investigation Audit* report submitted to the Monitor on August 31, 2006, and the AT's audit work plan and audit fieldwork documents, including audit matrices, supporting documents and a randomly selected sample of 12 underlying investigations.¹¹⁰

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

¹⁰⁹ The AT found the DPD in non-compliance with paragraph U44. The Monitor considers paragraph U44 to be a policy-only paragraph, with implementation covered under paragraph U45. As a result, the Monitor has determined that the DPD is in compliance with paragraph U44.

¹¹⁰ The Monitor's sample size was 14 external complaint investigations, which was determined using a one-tailed test with an error rate of +/- 10% and a 95% confidence interval. After reviewing 12 of investigations, the Monitor discontinued its review due to an early determination of non-compliance.

- The Monitor was not able to assess the completeness of the population as the DPD did not provide the requested documentation necessary to validate whether all complaints were tracked as required by paragraph U61. Notwithstanding this, the Monitor commends the AT for identifying 39 complaints that were not forwarded to the OCI and investigated.
- This audit did not evaluate the timeliness of any open complaint investigations.¹¹¹
- In its audit work plan, the AT indicated that it would evaluate the DPD inspection team's reports required by paragraphs U62, U63, U64, U67e and f and U68. While the AT reported that it evaluated the inspections, it failed to report the results of the evaluation and whether the inspections were quality inspections that met the requirements of the UOF CJ, and failed to make recommendations for those inspections that did not.
- The AT reviewed all complaints from the period October 1, 2005 to March 31, 2006 to determine if they related to incidents in holding cells. While the Monitor understands the AT did this to demonstrate the DPD's compliance with paragraphs C58 and C59, it is not a UOF CJ requirement to audit all holding cell complaints. The time required for this review, along with other concerns,¹¹² caused this audit to be stale.
- Paragraph U33 requires that reviewing supervisors "identify" deficiencies and take corrective action when an investigator fails to conduct or review investigations appropriately. In its evaluation of this requirement, the AT incorrectly concluded N/A when there was no documentation confirming that deficiencies were identified, even though deficiencies were present within the investigation.¹¹³ Instead, the AT should have concluded that the DPD was non-compliant with paragraph U33, as the AT identified deficiencies that the investigators/supervisors failed to identify.
- The AT failed to correctly report if there was documentation to justify a valid extension as required by paragraph U32; instead, the AT focused on whether a valid reason was provided for the extension rather than first assessing if there was a documented reason for the extension. As a result, for 60 of 64 investigations that took over 45 days to complete,¹¹⁴ the AT recorded "N/A" rather than "No" when no extension documentation was available.¹¹⁵

¹¹¹ The Monitor agrees that open complaint investigations do not need to be reviewed for quality.

¹¹² These concerns include time required for manual review of information that could be maintained in a database, untimely responses to the AT's data requests, AT starting with a six month rather than a three month sample period, and the length of the audit report, which required substantial review time.

¹¹³ The AT identified 11 of 15 investigations with no taped interviews of officers, and 3 investigations in which officers' statements were not taken on a timely basis. The AT also identified 14 of 15 investigations in which the complainant was not notified of the status of the investigation, and 14 of 15 investigations that were not completed within 60 days. Corrective action should have been taken in connection with these deficiencies.

¹¹⁴ The AT appropriately identified an inconsistency between paragraph U67, which requires investigations to be completed within 60 days, and the DPD's Citizen Complaints Policy (Directive 102.6-2), which requires investigations to be completed within 45 days. Notwithstanding this inconsistency, the AT appropriately used 45 days as the basis for its evaluations relating to paragraph U32. The Monitor understands that the City of Detroit's

- The AT failed to appropriately evaluate the evidence for 4 of the 12 complaint investigations tested by the Monitor, finding the investigations in compliance or reporting “N/A” for certain of the objectives tested; instead, the AT should have found such investigations in non-compliance, or at least concluded “UTD” (unable to determine).¹¹⁶
- OCI personnel confirmed that they ultimately received a copy of the August 2005¹¹⁷ audit report as required by paragraph U97, however the DPD’s AT did not evaluate whether the OCI took non-disciplinary corrective action or disciplinary action against officers under the OCI’s command in connection with instances of non-compliance identified in that audit.
- For four objectives, the AT appropriately limited its sample size due to the extent of non-compliance noted. However, in the detailed findings for some areas tested, the AT incorrectly reported “(100%) performance achieved”¹¹⁸ without addressing the impact of the sample size limitation.
- AT staff indicated that they analyzed their findings to determine if there were any patterns between officers, supervisors, divisions, or units that are not meeting the UOF CJ requirements, as required by paragraph U97. However, the AT did not provide any information in its report regarding the results of such analyses.
- Although the audit report presented the audit findings for each objective, based on the “Report Writing TA” recently provided by the Monitor, future reports of this nature should present the findings in a manner that would enable the DPD and OCI to assess key problems and take action as needed.

Based on the foregoing, the Monitor finds this audit in non-compliance with paragraph U97.

Charter requires that OCI investigations be completed in 45 days (although the UOF CJ requires completion in 60 days).

¹¹⁵ While the AT’s conclusion was N/A, the AT appropriately recommended that written extension requests should be made when an investigation takes more than 45 days.

¹¹⁶ For one investigation, the AT reported N/A regarding a canvas of the scene (subparagraph U28a), even though the investigator did not document why a canvas of the scene was not performed. For another investigation, the AT concluded the site and time of the interview was convenient to the complainant (paragraph U29), even though this question was not asked by the investigator during the taped interview and the interview was interrupted by the complainant’s colleagues at work. For two investigations, the AT concluded there were no leading questions and no group interviews (subparagraphs U29c and U30a), even though no video or audio tapes of the interviews were taken.

¹¹⁷ The OCI also confirmed receipt of the August 2006 audit report.

¹¹⁸ The limited sample sizes were insufficient to enable the AT to conclude 100% compliance, as the sample sizes did not meet the requirement of a +/- 4% error rate with a 95% confidence interval.

Recommendations

- The Monitor recommends that the AT use simple, direct questions as often as possible in its audit matrices, rather than questions containing a negative or questions that have multiple parts.
- The Monitor recommends that for future audits the AT initially select its sample from at most a three-month period. If the AT determines that the sample selected is not large enough, it could then extend the sample.

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, 2006, finding the DPD in compliance. The DPD and the Wayne County Prosecutor's Office (WCPO) continued to meet quarterly to identify and discuss issues relevant to the requirements of this paragraph.

Current Assessment of Compliance

The DPD and the WCPO continue to meet quarterly to identify issues in officer, shift or unit performance. During this quarter, the meeting was held on November 15, 2006. The Monitor attended the meeting and observed that the WCPO and DPD discussed pertinent issues and there was an active exchange of information and agreement to follow up on the issues that were identified.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U100-102 during the quarter ending February 28, 2007.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U103-105 during the quarter ending February 28, 2007.

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.

A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106 -114. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2006. 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, 2006, finding the DPD in non-compliance. The DPD described various processes, including the establishment of a Training Committee, that, once operational, will assist the DPD in effectively implementing the requirements of this paragraph. However, the Monitor did not receive any reports of reviews required by this paragraph, and lesson plans that had been previously submitted by the DPD did not include any documentation evidencing the review and approval required by the paragraph.

Current Assessment of Compliance

With regard to the paragraph's initial requirement regarding the coordination and review of all UOF and A&D training, the DPD submitted three lesson plans on August 31, 2006. The

Monitor has not received any documentation that these lesson plans were reviewed consistent with the requirements of this paragraph.

The DPD previously submitted documents identified as semi-annual reviews and refers to that submission in their Thirteenth Quarter Status Report. However, as previously reported in the Quarter ending May 31, 2006, the semi-annual review documents previously submitted by the DPD consisted of a listing of lesson plan objectives and did not contain the reviews required by this paragraph. As of the end of the current quarter, the Monitor has not received any additional semi-annual reviews of lesson plans from the DPD.

According to the DPD's Thirteenth Quarter Status Report, the Training Committee, met in June 2006 and will meet again during the quarter ending February 28, 2007. The Monitor has not received any additional information regarding actions or recommendations by this committee.

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 Arrest and Detention training;
- b. develop UOF and Arrest and Detection 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 Arrest and Detention 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, 2006, finding the DPD in non-compliance. The DPD indicated that the review and approval process designed to address paragraph U106 requirement is sufficient to address the requirements of this paragraph. However, the DPD's response did not adequately document or demonstrate its compliance with the type of management approach that is required by paragraph U107.

Current Assessment of Compliance

In its Thirteenth Quarter Report, the DPD again has stated that the requirements of this paragraph are being met by the DPD's response to paragraph U106. Although the Training Committee formed under paragraph U106 may carry out some of the requirements of this paragraph, the Monitor does not believe that the DPD's response under U106 thus far adequately demonstrates its compliance with the type of management approach that is required by paragraph U107.

The Monitor requested and received from the Michigan Department of State Police (MSP) a list of DPD officers who have completed an Instructor Development training program. This program is one of several such training courses that are recognized for its instructional content and methods. According to MSP records, only three members of the DPD have completed this program since October 3, 2003. According to the DPD, an effort is currently being made to survey departmental members to identify all personnel who have been trained in curriculum design, lesson plan development, and instructional delivery.

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, 2006, finding the DPD in non-compliance. Although some recording of current training had been entered into the Michigan Commission on Law Enforcement Standards (MCOLES) Information Tracking Network (MITN), the DPD plans to use the MAS to address the requirements of this paragraph.¹¹⁹ Because the MAS was not yet fully developed or operational, the DPD was not yet maintaining individual training records for all officers, documenting the date and topic of all pre-service and in-service training.

Current Assessment of Compliance

According to the DPD, they have continued to enter training records into MITN as an interim method for tracking DPD training records for sworn personnel. However, all of the training records required by this paragraph have not been entered into MITN. The DPD plans to use its

¹¹⁹ Paragraphs U79-U88, and U90 pertain to the MAS. These paragraphs are evaluated under the Management and Supervision section of this report.

MAS in order to maintain training records. However, as reported in previous quarters, the DPD has not fully implemented the MAS as an operational component for tracking and documenting individual training records for all officers.

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, 2006, finding the DPD in non-compliance. The Monitor provided TA to the DPD related to adequate lesson plan development during that quarter. However, the DPD had neither submitted revised lesson plans nor had it notified the Monitor of specific training dates that would enable the Monitor to further assess compliance with the requirements of the paragraph.

Current Assessment of Compliance

On August 31, 2006, the Monitor received from the DPD three lesson plans: *Use of Force, Supervisory Leadership & Accountability*, and *Firearms Tactical Training and Qualification*. On November 8, 2006, the Monitor submitted memorandum outlining concerns about the *Supervisory Leadership & Accountability*, and *Firearms Tactical Training and Qualification* lesson plans. The Monitor is encouraged by the DPD's efforts to follow recommendations that were offered in TA previously provided.¹²⁰

In order to facilitate the process of obtaining approval for lesson plans, the Monitor met with OCR on November 22, 2006 in an effort to further assist the DPD curriculum developers in lesson plan content, structure, and general curriculum design. The Monitor and the OCR also specifically discussed the Monitor's comments on the *Supervisory, Leadership and Accountability* lesson plan. The Monitor will continue to assist the DPD in resolving these issues and reiterates the importance of following best practices regarding a standardized format, structure, subject matter content, and additional requirements of the UOF CJ.

¹²⁰ Based on the consistent deficiencies noted during the Monitor's review of many of the lesson plans submitted by the DPD, and the shortfalls observed by the Monitor in actual training delivered, the Monitor provided TA to the DPD related to adequate lesson plan development on May 4, 2006.

Until the lesson plans are approved and then delivered by instructors (who are selected pursuant to U107), the Monitor will not be able to assess the requirements of this paragraph. During the current quarter, the Monitor submitted a document request asking for the dates of all upcoming CJ-related training.

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, 2006, finding the DPD in compliance. The DPD held the quarterly meeting with the City Law Department, which the Monitor attended. On May 29, 2006, the DPD issued its Risk Management Newsletter which contains information discussed at the meeting. The DPD also made the newsletter available on the Department's Intranet.

Current Assessment of Compliance

On November 21, 2006, the DPD held its quarterly meeting with the City Law Department. The Monitor attended this meeting and observed that information regarding police shootings and trends in lawsuit payouts was discussed. On November 30, 2006, the DPD issued its Risk Management Newsletter, which contains the information discussed at the meeting, to risk management, training and other DPD staff.

Based on the foregoing, the Monitor finds the DPD in 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, 2006, finding the DPD in non-compliance. The DPD had not provided the Monitor

with information indicating that non-DPD City employees other than managers from the Neighborhood City Halls had received copies and an explanation of the UOF CJ.

Current Assessment of Compliance

The Monitor still has not been provided with documentation indicating that non-DPD City employees other than managers from Neighborhood City Halls have received copies and an explanation of the UOF CJ. In addition to the name of the employee and other information, the documentation must identify which City agency the employee is from.¹²¹

The paragraph also requires that initial training be conducted within 120 days of the implementation of each provision and, thereafter, in-service training be given on the policies contained in the UOF CJ. Although numerous policies have been in effect in excess of 120 days, for the majority of the policies the DPD has not yet implemented these requirements.

The DPD has indicated that there are plans to train the entire department on all UOF CJ related policies by use of an E-Learning training platform. According to the DPD, the E-Learning platform is in development. The DPD indicates in its Thirteenth Quarterly Status Report that it anticipates having an update on the progress of this online learning tool during the next quarter.¹²² 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 last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2006. The Monitor again assessed the DPD's compliance with this paragraph 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;

¹²¹ The DPD's Thirteenth Quarterly Status Report indicated that training was provided for non-DPD City employees at the end of the quarter, on November 28 and 29, 2006. The Monitor does not have any additional information about what this training consisted of or who was present.

¹²² The DPD's Thirteenth Quarterly Status Report states that the DPD is working with Michigan State University to provide online learning to DPD employees.

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

Background

The Monitor last assessed the DPD's compliance with paragraph U112 during the quarter ending May 31, 2006, finding the DPD in non-compliance. The Monitor reviewed various lesson plans submitted by the DPD in response to this paragraph and submitted memoranda detailing various deficiencies identified during its review of certain lesson plans.¹²³ The lesson plans contained various qualitative shortfalls, which were described in the memoranda, and the majority of the lesson plans did not address all of the requirements of the paragraphs for which they were submitted.

¹²³ The memoranda covered the following lesson plans: *Chemical Spray, Confinement of Material Witness, Firearms Marksmanship Training and Qualification, Firearms Tactical Training and Qualification Supervisor Report Writing, and Prisoner Detention Officer Training, and Foot Pursuit.*

Current Assessment of Compliance

On August 31, 2006, the Monitor received the *Use of Force* lesson plan from the DPD in response to this paragraph. The Monitor suspended its review of the lesson plan in order to evaluate the RedMan training course. It was also the Monitor's understanding that the current *Use of Force* lesson plan would be revised. Upon further inquiry the Monitor learned that the DPD requested an assessment of the *Use of Force* lesson plan that had been submitted (even though it will be revised). The Monitor has reviewed the lesson plan and some of the key points of the assessment are as follows: the lesson plan did not fully address the relevant issues contained in the various U112 subparagraphs listed therein; and in many cases, the lesson plan merely recited Consent Judgment language without any further explanation or context. This lesson plan showed considerable improvement from others that have been submitted; however, it seemed disjointed at times and lacking sufficient depth in the content specific to uses of force. Nevertheless, the Monitor is encouraged with the effort set forth in developing this specific lesson plan. From all indications, the curriculum developer is attempting to apply many of the techniques that have been discussed. The Monitor will provide its written assessment to the DPD during the quarter ending February 28, 2007.

On November 13, 2006, the Monitor attended *Intermediate Use of Force Train-the-Trainer* session offered by NorthCentral Technical College. The training was designed primarily around the use of "Redman" training gear, employing defensive tactics, chemical aerosol, and PR-24 baton. The training session was attended by over thirty participants from various DPD Districts, units and sections for the sole purpose of training them as trainers in intermediate UOF techniques. No standardized lesson plan was provided as requested, though the manual used during the training session could serve as the basic foundation for developing appropriate materials needed in a lesson plan.¹²⁴

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

C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2006. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

¹²⁴ Due to the lack of documentation pertaining to the DPD's instructor selection process, the Monitor cannot verify whether those in attendance are qualified as instructors. The Monitor remains concerned about the DPD protocols for selecting and evaluating instructors.

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, 2006, finding the DPD in non-compliance. The Monitor reviewed lesson plans entitled *Marksmanship Training and Qualification* and *Tactical Training and Qualification* and attended firearms training and qualification process. The Monitor identified a number of deficiencies that were communicated to the DPD via a formal memorandum.

Current Assessment of Compliance

As described in the Current Assessments of Compliance for paragraphs U109 and U112, on August 31, 2006, the Monitor received the *Firearms Tactical Training and Qualification* lesson plan from the DPD. On November 8, 2006, the Monitor provided feedback on the lesson plan with a written memorandum. The lesson plan had structural deficiencies and did not fully address key areas of paragraph U113. For example, although the lesson plan calls for bi-annual qualifications for DPD staff, including patrol officers and supervisors as required by paragraph U113, the lesson plan itself fails to identify the process for remediation in the event a member fails to qualify.

Additionally, the lesson plan did not provide adequate information on and/or address certain issues including the establishment of evaluation criteria for professional night training, stress training, and proper UOF decision-making relating to firearms use. The lesson plan also does not provide specific criteria that allow instructors to evaluate and provide corrective instruction regarding the safe handling of firearms and proper fundamentals of firearms operation by each participant as required by subsection c of this paragraph.

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 last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2006. The Monitor again assessed the DPD's compliance with this paragraph 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 effected 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, 2006, finding the DPD in non-compliance. The DPD had not re-submitted revised lesson plans in response to this paragraph as of the end of that quarter.

Current Assessment of Compliance

The DPD has indicated that it intends to incorporate the provisions of this paragraph into the *Witness Identification and Questioning* lesson plan. As of the end of the current quarter, the DPD had not yet submitted a lesson plan in response to this paragraph.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U115-117 during the quarter ending February 28, 2007.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U118-120 during the quarter ending February 28, 2007.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U121-122 during the quarter ending February 28, 2007.

H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor was scheduled to assess the DPD's compliance with this paragraph during the quarter ending August 31, 2006, but did not complete its evaluation as of the end of that quarter. The Monitor will evaluate the DPD's implementation of the Protocol and assess the DPD's compliance with paragraph U123 during the quarter ending February 28, 2007.

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. The Monitor had elected to defer assessing this paragraph until the DPD had additional time to implement its investigative policies;¹²⁵ however, after consideration of comments from the City and DPD, the Monitor will begin to assess this paragraph during the quarter ending February 28, 2007. This process will begin by the submission of a protocol that will set up a mechanism for the Monitor to review investigations at a stage where they could be subject to reopening,¹²⁶ which has not previously occurred.

¹²⁵ For an example of issues concerning implementation, see *Current Assessments of Compliance* for paragraphs U37-38 herein, where the DPD is not yet investigating all critical firearm discharges as required by this Consent Judgment.

¹²⁶ See paragraph U139 for the specific requirements for reopening an investigation.

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, 2006.

As described in previous quarterly reports, the organization of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ,¹²⁷ while others do not.¹²⁸ 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 reviews for written guidance or instruction¹²⁹ in order 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 provide training on specific fire safety policies and procedures and develop and implement a comprehensive fire safety program in all DPD facilities that maintain holding cells.

The Monitor found the DPD in compliance with paragraph C22 during the quarter ending August 31, 2005, as the Monitor confirmed that all Kane Fiber Ceiling Tiles had been removed from DPD buildings containing holding cells.¹³⁰ The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending February 28 2006, finding the DPD in compliance with paragraph C20 and in non-compliance with paragraphs C14-19 and C21 of this section.

The Monitor again assessed the DPD's compliance with paragraphs C14-21 during the current quarter. The results of our current assessments follow.

¹²⁷ See, for example, paragraph C39 – Cleanliness of Cells and paragraph C40 – Cleaning Policy.

¹²⁸ See, for example, paragraph C45 - Access to Toilets and Potable Water.

¹²⁹ As described in the Introduction to the Methodologies, this is the Policy Component of compliance.

¹³⁰ The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

Paragraphs C14-C19 – Life Safety Code Compliance; Detection, Suppression and Evacuation Programs; Fire Safety Program Development; Fire Safety Program Implementation; Interim Fire Safety Measures; and Testing of Fire Safety Equipment

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 (LSC) within one year of the effective date of the COC CJ. As part of this effort, the City of Detroit shall ensure that the Detroit Fire Department (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.

Paragraph C15 requires the DPD to develop and implement a comprehensive fire detection, suppression and evacuation program¹³¹ 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.

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.

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.

¹³¹ Within the COC CJ and in the Monitor's report, the Comprehensive Fire Detection, Suppression and Evacuation Program is also referred to as the "Fire Safety Program" (paragraph C16).

Background

The Monitor last assessed the DPD's and City's compliance with paragraphs C14-C19 during the quarter ending February 28, 2006, finding the DPD in non-compliance with each. The DPD had indicated to the Monitor that no changes had been made to DPD buildings or the status of the DPD's compliance with the Life Safety Code since the Monitor's previous assessment. The City was considering whether to retrofit the existing buildings, wait until the construction of a new regional detention facility, or and/utilize the Wayne County Sheriff's jail facilities to house felony detainees. Additionally, the DPD had not yet submitted a comprehensive FSP for all buildings that maintain holding cells, and 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.

On March 15, 2006, the DPD resubmitted a FSP to the DOJ for review and approval. On May 23, 2006, the DOJ granted approval of the DPD's FSP.

Current Assessment of Compliance

The DPD's Holding Cell Compliance Committee (HCCC) and AT submitted the *Fire Safety Programs Audit* required by subparagraph C66b by the required due date of July 31, 2006. This audit covered the requirements of paragraphs C14-18 and the DPD's FSP. The Monitor reviewed the audit report, work plan, and audit working papers. Although the Monitor identified qualitative deficiencies within the audit and found the audit in non-compliance with the applicable Consent Judgment requirement (subparagraph C66b),¹³² the Monitor determined that it was able to rely upon most of the audit's findings with respect to paragraphs C14-19.¹³³

The audit included compliance assessments of the specified requirements included within paragraphs C14-19 and the related DPD policies.¹³⁴ The HCCC/AT, along with the DFD Fire Marshal, conducted inspections of all buildings containing holding cells during their annual (regular and periodic) Life Safety Code inspections, required by paragraph C14. The HCCC/AT confirmed that the DPD has not yet made all of the required Life Safety Code alterations to the existing buildings with holding cells.

¹³² Please refer the Current Assessment of Compliance for subparagraph C66b for further details regarding the Monitor's assessment of this audit.

¹³³ As described in section IV. Methodologies in the Introduction section of this report, if the Monitor determines that an audit is not compliant with the applicable audit requirements of the Consent Judgments, the Monitor may still rely on some or all of the audit's findings if it is determined that the specific findings are reliable.

¹³⁴ The audit did not include a sampling of smoke detectors and/or sprinklers as no qualified (certified) experts were available to assist the AT during the conduct of the audit, nor did it include a review of a sampling of fire safety equipment testing and maintenance records as no records have yet been developed.

Paragraph C14 – Life Safety Code Compliance

The DPD's audit determined that the DPD did not meet all of the requirements of paragraph C14. The following information is summarized from the audit's findings:

- The DFD Fire Marshal conducted its regular and periodic (annual) Life Safety Code inspections of all DPD buildings containing holding cells, as required.
- None of the DPD buildings containing holding cells comply with all of the Life Safety Code requirements.
- In accordance with the Life Safety Code and confirmed by the DFD Fire Marshal, the Southwestern District is the only DPD building containing holding cells that must have sprinklers.

Paragraph C15 – Comprehensive Fire Detection, Suppression and Evacuation Program

The DPD's audit determined that the DPD did not meet all of the requirements of paragraph C15. The following information is summarized from the audit's findings:

- The DPD has developed but has not yet fully implemented the Comprehensive Fire Detection, Suppression and Evacuation Program (Fire Safety Program), as evidenced by the DPD's non-compliance with paragraphs C16-19 below.

Paragraph C16 – Development of the Fire Safety Program

- On May 23, 2006, the DOJ forwarded a letter to DPD indicating its approval of the FSP, which was submitted by the DPD on March 15, 2006. However, the DPD has not yet provided the Monitor with documentation evidencing the dissemination of the FSP to relevant DPD personnel.¹³⁵

Paragraph C17 – Implementation of the Fire Safety Program

The DPD's audit determined that the DPD did not meet all of the requirements of paragraph C17. The following information is summarized from the audit's findings:

- The FSP was developed in consultation with the DFD, as required; however, the DPD has not yet installed the fire-rated separations and smoke detection and control systems. As a result, not all aspects of the FSP have been implemented.

Paragraph C18 – Interim Fire Safety Measures

¹³⁵ In its Thirteenth Quarter Status Report, the DPD indicated that the FSP has been posted on the DPD Intranet and disseminated to each District and is located in a clearly marked red binder at each operations desk. However, the DPD should disseminate the FSP to all relevant personnel, especially since several of the specific requirements in the FSP apply to all members. Documentation evidencing dissemination should be provided to the Monitor.

The DPD's audit determined that the DPD did not meet all of the requirements of paragraph C18. The following information is summarized from the audit's findings:

- As previously stated, the HCCC/AT did not test individual smoke alarms to ensure that the alarm sounded throughout the building. The HCCC indicated that none of the alarms had been altered since the prior DFD inspection, which found that the alarms did not sound throughout the building.
- Although the DPD has implemented a procedure of assigning at least three detention area personnel to be present in the holding cell area to ensure detainees have an adequate means of reporting emergency situations, one District inspected did not have adequate personnel assigned.¹³⁶
- The DPD has installed automatic back-up power systems which are maintained and tested by Detroit Energy (DTE). However, no documentation evidencing the maintenance or testing was available to the HCCC/AT. Additionally, the Monitor notes that the audit did not confirm that the back-up power systems are capable of providing immediate power for emergency lighting, exit signs, fire alarm and smoke detections systems in the event of an electrical power failure.
- The DPD has not yet installed fire separator doors in all of its Districts as required by the Life Safety Code. Additionally, the audit identified fire doors wedged into the open position at several Districts.

Paragraph C19 – Testing of Fire Safety Equipment

The DPD's audit determined that the DPD did not meet all of the requirements of paragraph C19. The following information is summarized from the audit's findings:

- As described above, the HCCC/AT audit did not include a review of a sampling of fire safety equipment testing and maintenance records, as no records (e.g., forms/logs) have yet been developed and/or implemented by the DPD.
- The Monitor notes that according to the HCCC, the DPD has not yet implemented a process for testing or maintaining its fire equipment. The HCCC has further indicated its intention to contract these services in conjunction with the installation of the required fire safety equipment.

Based on the foregoing, the Monitor finds the DPD has developed the FSP received approval from both DFD and DOJ, but has not provided documentation indicating that the FSP has been distributed to all appropriate DPD staff. As a result, the DPD is in non-compliance with the policy requirements of paragraphs C14-19. The DPD also has not fully implemented the

¹³⁶ Northeastern District.

requirements of these paragraphs. As a result, the Monitor finds the DPD in overall non-compliance with paragraphs C14-19.

Monitor's Recommendations

Based on the various types of fire safety equipment (i.e. fire alarm systems, sprinkler systems, fire extinguishers, exit signs, and emergency lighting) that all require different frequencies of testing, inspections and maintenance and are subject to various regulations regarding the persons who conduct these events; the Monitor recommends that the DPD develop more than one log to record the testing, maintenance and inspection of the different types of fire safety equipment. For example sprinklers, smoke detector and fire alarm systems can only be tested and inspected by manufacturers or licensed third parties; they should be tested and inspected on an annual basis. Fire extinguishers must be evaluated by the manufacturer at specified intervals and should also be evaluated by the DPD on a monthly basis.

Paragraph C20 – Smoking Policy

Paragraph C20 requires the DPD to immediately enforce its no-smoking policy in all holding cells or provide ashtrays and ensure that the holding cells are constructed and supplied with fire rated materials.¹³⁷

Background

The Monitor last assessed the DPD's compliance with paragraph C20 during the quarter ending February 28, 2006, finding the DPD in compliance based on unannounced inspections and visual observations of holding cells.

Current Assessment of Compliance

During the current quarter, the Monitor conducted random unannounced onsite inspections of DPD buildings containing holding cells.¹³⁸ The Monitor observed no evidence of smoking in holding cells or other areas of DPD buildings containing holding cells.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C20.

¹³⁷ The Monitor notes that although paragraph C20 specifies that the DPD's no smoking policy be enforced within "holding cells," the DPD policy, which is in accordance with the Michigan Clean Indoor Air Act, P.A. 198 of 1986 and P.A. 296 of 1988, prohibits smoking throughout Department facilities.

¹³⁸ The inspections were conducted in November 2006.

Paragraph C21 – Storage of Flammable Liquids

Paragraph C21 requires the DPD to immediately ensure the proper storage of all flammable and combustible liquids in all detention cell areas, buildings that house detention cells, and connected structures, including garages.

Background

The Monitor last assessed the DPD's compliance with paragraph C21 during the quarter ending February 28, 2006, finding the DPD in non-compliance. The Monitor conducted random unannounced onsite inspections of DPD buildings containing holding cells to ascertain the practices and procedures within the DPD Districts related to the storage of flammable liquids. The Monitor ascertained that storage lockers are being utilized to store flammable liquids; however, in several Districts, the Desk Officer-in-Charge (OIC) was unable to locate the key to the storage cabinets. In addition, the DPD had not yet submitted a policy or protocol containing the requirements regarding and/or procedures for the proper storage of flammable liquids or combustible materials. Additionally, no training or instruction has been provided giving appropriate DPD employees guidance related to the proper storage of combustible materials.

Current Assessment of Compliance

During the current quarter, the Monitor conducted random unannounced onsite inspections of DPD buildings containing holding cells to ascertain the practices and procedures within the DPD Districts related to the storage of flammable liquids.¹³⁹ The Monitor found all flammable liquids were identified and stored in the proper manner.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C21.

¹³⁹ The Monitor conducted these inspections in November 2006.

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 last assessed the DPD's compliance with paragraphs C23-25 during the quarter ending February 28, 2006. The Monitor again assessed compliance with these paragraphs 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

The Monitor last assessed the DPD's compliance with paragraph C23 during the quarter ending February 28, 2006, finding the DPD in non-compliance. As noted by the Monitor, compliance with paragraph C23 cannot occur until the DPD attains compliance with paragraphs C24-25, and the DPD had not achieved compliance with these paragraphs as of the end of that quarter.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraphs C24-25, below, the DPD is currently in non-compliance with these paragraphs.

Based on the foregoing, 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 (CEPP), with 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 the 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, 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 February 28, 2006, at which time the Monitor withheld a determination of compliance with the paragraph. The DPD submitted its revised EPP to the DOJ in November 2005 and was awaiting DOJ approval as of the end of the quarter ending February 28, 2006.

Current Assessment of Compliance

As described in the Monitor's Reports for the Quarters Ending May 31, 2006 and August 31, 2006, on May 23, 2006, the DOJ granted approval of the DPD's EPP. The EPP has been approved by the DFD and, according to DPD, has been posted in the Intranet and placed in clearly marked red binders at each district's operations desk. The Monitor has not received any documentation evidencing dissemination of the EPP.¹⁴⁰

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 February 28, 2006, at which time the Monitor withheld a determination of the DPD's compliance with the paragraph. The HCCC advised the Monitor that the policies and procedures required by this paragraph are included within the EPP and once the EPP is approved by the DOJ, they will be implemented within the buildings containing holding cells.

Current Assessment of Compliance

As previously reported, the DOJ approved the EPP on May 23, 2006, which contains the policy requirements for this paragraph.¹⁴¹ During the current quarter, the Monitor conducted random

¹⁴⁰ Refer to the footnote in the Current Assessment of Compliance for paragraph C16 for the Monitor's comments regarding required dissemination.

¹⁴¹ Refer to the footnote in the Current Assessment of Compliance for paragraph C16 for the Monitor's comments regarding required dissemination.

unannounced onsite inspections of DPD buildings containing holding cells.¹⁴² During these inspections, holding cell staff at each District demonstrated an ability to identify security keys by touch, as required by paragraph C25. However, the DPD was unable to produce a form, nor demonstrate a formal process, for documenting and conducting the inventory, testing and maintenance of keys and locks as also required by the paragraph.

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

III. MEDICAL AND MENTAL HEALTH CARE POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C26-34 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C26-34 during the quarter ending August 31, 2007.

¹⁴² The Monitor conducted these inspections in November 2006.

V. 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. Each precinct, and the entire Department, must have clear and concise policies, procedures and forms 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 February 28, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C35-38 – Ensure Safety Level; Security Screening of Prisoners; Cell Check Policies; and, Observation Cell Policy

Paragraph C35 requires the DPD to ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures.

Paragraph C36 requires the DPD to develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, this program must establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells; and require that security screening information is documented and communicated between consecutive shifts.

Paragraph C37 requires the DPD to develop and implement procedures for the performance, documentation and review of routine cell checks in all holding cells to ensure safe housing. At a minimum, these procedures will require that cell checks on the general population are performed at least twice per hour and that cell checks on prisoners in observation cells and Detroit Receiving Hospital (DRH) holding cells are performed every 15 minutes, unless constant supervision is required, and that detention officers document relevant information regarding the performance of cell checks in an auditable log.

Paragraph C38 requires the DPD to record in a written policy and implement a procedure that requires detention officers to provide continual direct or onsite remote observation of all observation cells while they are occupied.

Background

The Monitor last assessed the DPD's compliance with paragraph C35-38 during the quarter ending February 28, 2006, finding the DPD in compliance with the policy requirements of paragraphs C36-38, as it had adequately disseminated Directive 305.1, *Detainee Intake/Assessment*, but in overall non-compliance with paragraphs C35-38. The Monitor began

testing the implementation of Directive 305.1 and DPD Form 651, the Detainee Intake Form (DIF), and identified deficiencies in the prisoner screening process. In addition, the Monitor determined that while the required cell checks may be occurring, the documentation of these cell checks was not sufficient. Finally, while the DPD appeared to be complying with most requirements regarding observation cells, it was not conducting continual direct or onsite remote observation of all “observation cells” while they were occupied because there were times when they were only conducting 15 minute cell checks.

Current Assessment of Compliance

The DPD submitted the *Detainee Safety Programs Audit* required by subparagraph C69 by the required due date of July 31, 2006. This audit covered the requirements of paragraphs C35-38 and the DPD’s Detainee Safety Program. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. Although the Monitor identified qualitative deficiencies within the audit and found the audit in non-compliance with the applicable Consent Judgment requirement (paragraph C69),¹⁴³ the Monitor determined that it was able to rely upon most of the audit’s findings with respect to paragraphs C35-38.¹⁴⁴

Paragraph C35 – Ensure Level of Safety

The DPD’s audit determined that the DPD did not meet all of the requirements of paragraph C35. The following information is summarized from the audit’s findings:

- As described in the associated prisoner safety paragraph requirements below, the DPD’s policies are outdated and need to be updated to match the DPD’s newly developed forms. Additionally, the audit identified deficiencies with documented supervisory reviews of the security screening process.

Paragraph C36 – Security Screening of Prisoners

- The DPD audit identified that the form being used at the time of the audit (*Detainee Intake Form*) to medically and mentally screen prisoners, was inadequate in that it did not contain objective-based criteria. Additionally, detention area members did not document the communication of security information between consecutive shifts.

¹⁴³ Please refer the Current Assessment of Compliance for paragraph C69 in the Monitor’s Report for the Quarter Ending August 31, 2006 for further details regarding the Monitor’s assessment of this audit.

¹⁴⁴ As described in section IV. Methodologies in the Introduction section of this report, where an audit concludes that the DPD was in non-compliance, the likelihood that the DPD would incorrectly find itself in non-compliance is relatively low. Consequently, the Monitor may adopt those findings even though they have not been completely substantiated.

- The Monitor is withholding a determination of compliance with paragraph C36 pending the anticipated meeting between the DPD, DOJ and the Monitor to discuss the criteria and protocols for objective behavior-based housing of detainees.

Paragraph C37 – Cell Check Policies

- The DPD audit identified that cell checks were not adequately documented, and cell checks were not being performed with sufficient frequency.
- The Monitor's on-site inspections (spot checks) of cell check forms at each District found that holding cell staff were documenting cell checks with acceptable frequency (at least twice an hour). However, the documentation of relevant information on the forms was inadequate, as holding cell staff failed to document the number of detainees and their general condition on the forms.

Paragraph C38 – Observation Cell Policy

- The DPD audit identified that the DPD did not document continual direct or on-site remote observation of all observation cells while they were occupied.
- During on-site inspection at each District, the Monitor found that the DPD uses observation cells to house detainees when the other cells are full; therefore these detainees do not need continual direct or on-site remote observation. However, the DPD could not demonstrate a notification procedure and communication process that assures that holding cell staff know when constant observation is required for detainees in observation holding cell versus when other detainees are being held in observation cells due to capacity issues. .

Based on the foregoing, the Monitor is withholding a determination of compliance with paragraph C36 and finds the DPD in non-compliance with paragraphs C35, C37 and C38.

V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

This section of the COC CJ (paragraphs C39-46) 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 has previously concluded that the DPD is in compliance with paragraph C46, which requires the DPD to ensure that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.¹⁴⁵ The Monitor last assessed the DPD's compliance with paragraphs C39-45 during the quarter ending May 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C39-45 during the quarter ending February 28, 2007.

VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

This section of the COC CJ (paragraphs C47-48) 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 paragraphs C47-48 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C47-48 during the quarter ending May 31, 2007.

¹⁴⁵ The Monitor will not assess compliance with paragraph C46 again unless Hepa-Aire purifiers are re-installed in buildings containing holding cells.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C49-50 during the quarter ending February 28, 2007.

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, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraph C51 during the quarter ending February 28, 2007.

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 submit its revised UOF policies to the DOJ for review and obtain DOJ's approval.

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2007.

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 to obtain DOJ's approval.

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending August 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C55-57 during the quarter ending February 28, 2007.

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, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C58-59 – Acceptance of External Complaints–Holding Cells; Investigation of External Complaints–Holding Cells

Paragraph C58 requires the DPD to ensure that it accepts and processes all external complaints regarding incidents occurring in holding cells consistent with the DPD's external complaint policies.

Paragraph C59 requires the DPD to ensure that all external complaints it receives regarding incidents occurring in holding cells are investigated and reviewed consistent with the DPD's policies concerning external complaints investigations and review.

Background

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending August 31, 2005, finding the DPD in non-compliance with each. As of the end of that quarter, the DPD had not adequately disseminated Directive 102.2, *Citizen Complaints*, or Directive 305.4, *Holding Cell Areas*.

As described in the Report for the Quarter Ending November 30, 2005, the Monitor determined that the directives had been adequately disseminated based upon information provided by the DPD after the end of that quarter.

Current Assessment of Compliance

The DPD's AT submitted its *External Complaint and Complaint Investigations Audit* required by paragraph U97 by the required due date of August 31, 2006. This audit covered the requirements of paragraphs C58-59, among others. In the audit, the AT identified 5 formally resolved closed complaints in holding cells between October 1, 2005 and March 31, 2006.

The Monitor reviewed the audit report, work plan, and related audit working papers. The Monitor identified qualitative deficiencies within the audit and found the audit in non-compliance with the applicable Consent Judgment requirement (paragraph U97).¹⁴⁶ It was the Monitor's intention to use the DPD's audit to assess compliance with the requirements of paragraphs C58-59. However, the audit's findings of compliance with paragraph C58 could not be substantiated, and the audit did not evaluate compliance with paragraph C59.¹⁴⁷

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraphs C58-59 but has not yet evaluated the DPD's compliance with the implementation requirements of these paragraphs. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraphs C58-59.

¹⁴⁶ Please refer the Current Assessment of Compliance for paragraph U97 for further details regarding the Monitor's assessment of this audit.

¹⁴⁷ Refer to the *Current Assessments of Compliance* for paragraphs U61 and U64-65 and subparagraphs U67a-c for further information regarding the AT's assessment of external complaints not in holding cells.

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 November 30, 2005. 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 CJ are clearly defined.

Background

The Monitor last assessed the DPD's compliance with paragraph C60 during the quarter ending May 31, 2006, at which time the Monitor found the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of the paragraph. In order to comply with the implementation requirement of paragraph C60, the DPD must establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. Although the DPD established a Policy Focus Committee whose responsibilities include reviewing newly established policy or policy revisions to ensure that all required terms are clearly and consistently defined, the protocol to be used by the committee was not finalized as of the end of that quarter.

Current Assessment of Compliance

As previously reported, in order to comply with the implementation requirement of paragraph C60, the DPD must establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. As of the end of the quarter, the DPD had not submitted information that such a procedure had been established.¹⁴⁸

¹⁴⁸ After the end of the quarter, on December 4, 2006, the DPD submitted a draft protocol to be utilized by its previously established Policy Focus Committee. The DPD indicated that a schedule delineating the month and year that each policy will be reviewed will also be submitted. The Monitor will review and assess the final version of these documents once they are submitted.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph C60. As a result, the Monitor finds the DPD in overall 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, 2006, finding the DPD in non-compliance. The Monitor requested additional information from the DPD concerning the protocol that had not been submitted by the DPD as of the end of the current quarter.

Current Assessment of Compliance

During the current quarter the Monitor requested and received a revised *Protocol for Proposed Policy Revisions*. A review of the protocol determined that it adequately addresses the following:

- Procedures on posting proposed policies to and removing proposed policies from the DPD's website
- Procedures for providing proposed policies at BOPC regularly scheduled public meetings
- Procedures for providing proposed policies at each of the DPD's six districts
- Procedures for reviewing comments on proposed policies posted to the DPD website

The Monitor also conducted unannounced visits at all six districts in an attempt to identify whether designated Compliance Liaison Officers (CLO) were familiar with their responsibilities for making available proposed policy to the public upon request. Five of the six district CLOs demonstrated sufficient knowledge and the same five districts prominently displayed the procedures for requesting and commenting on proposed policy.¹⁴⁹

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C61.

¹⁴⁹ The Monitor determined that the Eastern District could not demonstrate an understanding of the procedure and that no information was posted informing the public on the procedures for requesting and commenting on proposed policy.

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 holding 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-annual audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.¹⁵⁰

The Monitor last assessed the DPD's compliance with paragraphs C62-71 during the quarter ending August 31, 2006; the Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending May 31, 2006. The Monitor is scheduled to again assess compliance with paragraphs C62-71 during the quarter ending February 28, 2007; the Monitor again assessed the DPD's compliance with subparagraph C66b and C72 during the current quarter. The results of our current assessments follow.

Paragraph C66 – Holding Cell Compliance Committee Responsibilities

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct regularly scheduled 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.¹⁵¹

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

C66a - HCCC to Assure Compliance with the COC CJ

C66b - HCCC Fire Safety Audits

Background

The Monitor last assessed the DPD's compliance with subparagraph C66a during the quarter ending August 31, 2006, finding the DPD in non-compliance. Although the HCCC continued to make progress, it had not yet assured compliance with the COC CJ through the implementation of all relevant policies, procedures and forms, as well as the timely completion of the audits

¹⁵⁰ 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.

¹⁵¹ 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.

required by the COC CJ. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C66a during the quarter ending February 28, 2007.

During the quarter ending August 31, 2006, the DPD OCR and HCCC AT submitted the *Fire Safety Audit Report* required under subparagraph C66b on the required due date of July 31, 2006. Due to the number of audits submitted in the previous quarter, the Monitor did not complete its evaluation of this audit as of the end of that quarter.

Current Assessment of Compliance

C66b - HCCC Fire Safety Audit

During the current quarter, the Monitor completed its evaluation of the *Fire Safety Audit Report* submitted by the DPD on July 31, 2006. The Monitor also reviewed selected AT working papers, including the audit work plan, completed audit matrices, crib sheet, DFD violation reports and other related documents.

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

- The DPD submitted this audit report in a timely manner, as it was submitted on the required due date of July 31, 2006 and related to inspections conducted 4 months prior to the date of the audit report, in March 2006.
- Although this audit report was an improvement over previously submitted reports, and included a useful list of definitions, it was lengthy and repetitious and in some cases contained contradictory language. These deficiencies made certain of the report's findings difficult to comprehend.
- Subparagraph C66b requires the audit to evaluate a sampling of smoke detectors and sprinklers for compliance with paragraph C18a, which requires that the activation of any single smoke alarm sounds an alarm throughout the building. This audit did not include the inspection and testing of a sample of the Smoke Alarm Systems, Fire Alarm Systems, and Sprinkler Systems. This was an essential audit requirement that was not performed.¹⁵²
- The Monitor agreed with the findings in the DPD's audit report, with two exceptions: the Monitor concluded that the DPD met the requirements of subparagraph C18c to test and maintain the automatic back-up generators, whereas the DPD's AT concluded otherwise; and the Monitor disagreed with the AT's finding that the DPD was non-compliant with paragraph

¹⁵² The audit report (and the AT staff) indicated that these tests were not performed because no qualified/certified experts were available to assist the AT during the conduct of the audit.

C19 related to the testing and maintenance of self-contained breathing apparatuses (SCBA).¹⁵³

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C66b.

Recommendations

The Monitor recommends that the requirements related to the removal of cane fiber ceiling tiles and SCBAs be removed from future audit testing; however, the background information should remain in the audit working papers.

The Monitor recommends that the AT consider combining the Fire Safety Program and Emergency Preparedness Program audits to reduce redundancy in testing and reporting, given the close nature and common subject areas covered in these audits.

Paragraph C72 – Audit Reporting Requirements

Paragraph C72 requires the results of each of the COC CJ audits to be submitted via a written report to the Chief of Police and all precinct and specialized division commanders. Paragraph C72 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 May 31, 2006, finding the DPD in non-compliance. The HCCC had submitted audits required by the COC CJ in January 2006 and had submitted documentation demonstrating the distribution of the findings of the audits as required by this paragraph. However, the documentation submitted did not demonstrate that any corrective action (disciplinary or non-disciplinary) was taken by the COs regarding employees under their command, even though the audit results clearly indicated that corrective action was required in many cases.

Current Assessment of Compliance

On July 31, 2006, the DPD OCR and HCCC AT submitted to the Monitor five audit reports required by the COC CJ.¹⁵⁴ Upon receiving these audit reports, the Monitor requested documentation to support the transmittal to and actions of the Chief of Police and/or appropriate

¹⁵³ In conjunction with the DFD, the DPD determined that SCBAs are not required fire safety equipment for the districts. Despite this, the AT concluded that the DPD was non-compliant with the requirement to conduct testing of SCBAs. The DPD should have referred to the DFD's determination that SCBAs are not required.

¹⁵⁴ The five audits submitted are: the *UOF in Holding Cells Audit*; *Misconduct in Holding Cells Audit*; *Detainee Safety Audit*; *Food Service Audit*; and *Fire Safety Audit*.

COs.¹⁵⁵ As of the end of the current quarter, the Monitor had not received the requested documentation.¹⁵⁶

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.¹⁵⁷

The Monitor last assessed the DPD's compliance with paragraphs C73-78 during the quarter ending May 31, 2006. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C73 and C75-78 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with paragraph C74 during the current quarter. The results of our current assessment follow.

Paragraph C74 – Individual Training Records

Paragraph C74 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 COC CJ.

Background

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending May 31, 2006, finding the DPD in non-compliance. Although some recording of current training had been entered into MITN, the DPD plans to use the MAS to address the requirements of this

¹⁵⁵ On October 11, 2006, the Monitor sent a reminder regarding its standing document request for audit-related materials; this reminder specifically included documentation evidencing the submission of the audits to the Chief of Police or the precinct and specialized division commanders.

¹⁵⁶ Refer to the Current Assessment of Compliance for paragraph U93 for additional information regarding the DPD's intended use of the CAN reporting system to track CO actions in connection with audit findings.

¹⁵⁷ Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

paragraph.¹⁵⁸ Because the MAS was not yet fully developed or operational, the DPD was not yet maintaining individual training records for all officers, documenting the date and topic of all pre-service and in-service training.

Current Assessment of Compliance

According to the DPD, they have continued to enter training records into MITN as an interim method for tracking DPD training records for sworn personnel. However, all of the training records required by this paragraph have not been entered into MITN. The DPD plans to use MAS in order to maintain training records. However, as reported in previous quarters, the DPD has not fully implemented the MAS as an operational component for tracking and documenting individual training records for all officers.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C74.

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. The Monitor had elected to defer assessing this paragraph until the DPD had additional time to implement its investigative policies;¹⁵⁹ however, after consideration of comments from the City and DPD, the Monitor will begin to assess this paragraph during the quarter ending February 28, 2007. This process will begin by the submission of a protocol that will set up a mechanism for the Monitor to review investigations at a stage where they could be subject to reopening,¹⁶⁰ which has not previously occurred.

¹⁵⁸ Paragraphs U79-U88, and U90 pertain to the MAS. These paragraphs are evaluated under the Management and Supervision section of this report.

¹⁵⁹ For an example of issues concerning implementation, see Current Assessment of Compliance for paragraphs U37-38 herein, where the DPD is not yet investigating all critical firearm discharges as required by this Consent Judgment.

¹⁶⁰ See paragraph U139 for the specific requirements for reopening an investigation.

CORRECTIONS TO PRIOR QUARTERLY REPORTS

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

Background

As reported in the Monitor’s Report for the Quarter Ending February 28, 2006, although compliance assessments of paragraphs U14-19 were not scheduled for that quarter, the Monitor tested the DPD’s dissemination of Directive 304.2, *Use of Force*. The DPD provided documentation evidencing the receipt of the directive for 92, or 97.9%, of the 94 officers selected for testing. As a result, the Monitor reported that the DPD is now in compliance with the policy requirements of paragraphs U14-19.

In its Report for the Quarter Ending May 31, 2006, the Monitor again reported that the DPD is in compliance with the policy requirements of paragraphs U14-19, but also indicated that it had not yet evaluated the DPD’s compliance with the implementation requirements of paragraphs U14-19. As a result, the Monitor reported that it had not yet evaluated the DPD’s overall compliance with these paragraphs.

After further review of the requirements of paragraphs U14-19, the Monitor has determined that paragraphs U14-17 and U19 are “policy-only” paragraphs.¹⁶¹ As a result, because the Monitor determined that the DPD had adequately disseminated policy that addressed the requirements of the paragraphs, the DPD should have been found in compliance with the paragraphs for the quarter ending May 31, 2006. In addition, because these are “policy-only” paragraphs, the DPD will remain in compliance with the paragraphs until the policy directly responsive to them is revised. Revisions to policy will trigger an additional assessment by the Monitor. These compliance findings should also have carried forward to subsequent quarters, including the current one.

Corrections to be Applied

The conclusions for paragraphs U14-17 and U19 contained in the Monitor’s Report for the Quarter Ending May 31, 2006, and accompanying Report Card, should have indicated that the DPD was *compliant* with each paragraph, rather than indicating that the Monitor had not yet evaluated the DPD’s compliance with the paragraphs. The Report Card attached as Appendix B to this report has been corrected to reflect the above changes.

¹⁶¹ The related implementation requirements are included in paragraph U18.

CONCLUSION

The City and the DPD continue to make progress in the implementation of policies and procedures. Although there are numerous challenges to achieving compliance, several recent developments may assist the City and the DPD in achieving compliance in the future. These developments include the agreement announced in December 2006 that the Wayne County Community College will become responsible for DPD Recruit Training; the planned expansion of the Wayne County Sheriff's Department's acceptance of detainees; and the possibility of the City's involvement in a new regional criminal justice complex.

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January 16, 2007

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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 |
| AT | Audit Team |
| BOPC | Board of Police Commissioners |
| BOR | Board of Review |
| BRT | Board Review Team |
| CALEA | Commission on Accreditation for Law Enforcement Agencies |
| CAN report | Corrective Action Needed report |
| CCR | Citizen Complaint Report |
| CEPP | Comprehensive Emergency Preparedness Program |
| CFD | Critical Firearm Discharge |
| CI | Chief Investigator |
| City | City of Detroit |
| CJ | Consent Judgment |
| CLBR | Command Level Board of Review |
| CLFRT | Command Level Force Review Team |

| | |
|--------|---|
| CLO | Compliance Liaison Officer |
| CME | Confidential Medical Envelopes |
| CMMHSP | Comprehensive Medical and Mental Health Screening Program |
| CO | Commanding Officer |
| COC CJ | Conditions of Confinement Consent Judgment |
| CRD | Civil Rights Division |
| CRIB | Civil Rights Integrity Bureau |
| CSU | Communications Systems Unit |
| DAS | Disciplinary Administration Section |
| DDOH | Detroit Department of Health |
| DFD | Detroit Fire Department |
| DFF | Detainee File Folders |
| DFO | Detention Facility Officer |
| DHWP | Detroit Health and Wellness Promotion |
| DIF | Detainee Intake Form |
| DOJ | Department of Justice |
| DPD | Detroit Police Department |
| DPR | Daily Prisoner Report |
| DRH | Detroit Receiving Hospital |
| ECD | Emergency Communications Division |

| | |
|--------|--|
| EPP | Emergency Preparedness Program |
| FI | Force Investigation |
| FIS | Force Investigation Section |
| FIU | Force Investigation Unit |
| FRT | Force Review Team |
| FSP | Fire Safety Program |
| GAS | Government Auditing Standards |
| HCCC | Holding Cell Compliance Committee |
| IACP | International Association of Chiefs of Police |
| IA | Internal Affairs |
| IAD | Internal Affairs Division |
| IAS | Internal Affairs Section |
| ICD | Internal Controls Division |
| IM | Independent Monitor |
| IMAS | Interim Management Awareness System |
| ITS | Information Technology Services |
| JIST | Joint Incident Shooting Team |
| LP | Lesson Plan |
| MAS | Management Awareness System |
| MCOLES | Michigan Commission on Law Enforcement Standards |

| | |
|--------|--|
| MIF | Medical Intake Form |
| MIOSHA | Michigan Occupational Safety and Health Administration |
| MITN | MCOLES Information and Tracking System |
| MSP | Michigan State Police |
| OCI | Office of the Chief Investigator |
| OIC | Officer in Charge |
| OCR | Office of Civil Rights |
| PAB | Professional Accountability Bureau |
| PAIR | Police Action Incident Report |
| PCR | Preliminary Complaint Report |
| PDO | Police Detention Officer |
| PSA | Public Service Announcement |
| RFP | Request for Proposals |
| RMB | Risk Management Bureau |
| RMG | Risk Management Group |
| SCBA | Self-Contained Breathing Apparatus |
| SIR | Supervisor's Investigation Report |
| SME | Subject Matter Expert |
| SMT | Senior Management Team |
| SOP | Standard Operating Procedure(s) |
| TA | Technical Assistance |

| | |
|--------|---|
| USAO | United States Attorney's Office |
| UOF | Use(s) of Force |
| UOF CJ | Use of Force and Arrest and Witness Detention Consent Judgment |
| WCPO | Wayne County Prosecutor's Office |
| WCSD | Wayne County Sheriff's Department |
| WIQD | Witness Identification and Questioning Documentation |