

REPORT OF
THE INDEPENDENT MONITOR
FOR THE
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING
NOVEMBER 30, 2007
ISSUED JANUARY 15, 2008

Sheryl Robinson Wood
Independent Monitor of the
Detroit Police Department

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

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 seventeenth quarterly report of the Independent Monitor.⁴

The two Consent Judgments contain a total of 205 substantive paragraphs and subparagraphs with which the City and the DPD must substantially comply, 131 from the UOF CJ and 74 from the COC CJ.⁵ The City and the DPD have achieved compliance with the policy components of the applicable paragraphs in both Consent Judgments, a significant accomplishment.⁶ 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.⁷ These 13 compliant "policy only" paragraphs are: U14-17, 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 11 such paragraphs or subparagraphs: U82-84; U88a, b

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 There were originally 177 numbered paragraphs from the UOF CJ and COC CJ that were considered to be subject to monitoring. After adjusting for those paragraphs that are no longer being monitored on a regularly scheduled basis (for example, the monitoring of paragraphs U139 and C94) and paragraphs that the Monitor has separated out into subparagraphs for ease of analysis and/or reporting (paragraphs U62 and U67, for example), the total number of paragraphs and subparagraphs being monitored currently stands at 205. These paragraphs and subparagraphs are identified in the Report Card attached as Appendix B to this report.

⁶ These paragraphs are identified in the comments column of the attached Report Card. Pursuant to paragraphs U133 and C88 and various other paragraphs, these paragraphs also require implementation, which must also be accomplished for the DPD to achieve overall substantial compliance.

⁷ For these "policy only" paragraphs, implementation is separately evaluated under another substantive paragraph.

d, and e; C22; C34; C44; and C46. Significantly, the DPD has been in overall compliance for two consecutive quarters with 30 paragraphs or subparagraphs of the Consent Judgments.⁸

Each quarter, the Monitor examines a certain number of substantive paragraphs and subparagraphs. During the seventeenth quarter, which ended on November 30, 2007, the Monitor examined a total of 83 paragraphs or subparagraphs (62 paragraphs or subparagraphs of the UOF CJ and 21 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD are in compliance with 24 and are not yet in compliance with 54; the Monitor did not complete its evaluation⁹ of two paragraphs or subparagraphs, and has withheld a determination of compliance with three paragraphs or subparagraphs.¹⁰ The Monitor commends the DPD for the marked increase in the amount of work being submitted.

As described above, overall, the Monitor is assessing the City and DPD's compliance with 205 paragraphs and subparagraphs, 131 from the UOF CJ and 74 from the COC CJ. The City and the DPD are currently in compliance with 67 of these paragraphs and subparagraphs, 45 from the UOF CJ and 22 from the COC CJ. In addition, the City and the DPD are in partial compliance with one paragraph from the UOF CJ.

Use of Force Paragraphs

The Monitor assessed the Department's compliance with UOF CJ requirements regarding the conduct of general, use of force and prisoner injury investigations. The DPD's Audit Team and the Monitor agreed that the Department has complied with one of the paragraphs in this area, the Garrity protocol (paragraph U31). Although the remaining investigative paragraphs are not yet in compliance, the Monitor has identified that investigations conducted by one of the investigative entities, Force Investigation, are of high quality.

⁸ These are substantive paragraphs and subparagraphs that are on a regular and periodic review schedule; this list does not include "policy only" paragraphs and other paragraphs and subparagraphs with which the DPD will generally remain in compliance once compliance is achieved. Of these 30 paragraphs and subparagraphs, the Monitor found six in compliance for two consecutive review quarters for the first time during the current review period (U31, U37, U92, C21, C66-FSP Audit, and C67).

⁹ 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. In addition, the Monitor generally times its reviews of certain topics to coincide with its review of DPD audits that cover those topics; the Monitor will generally defer its assessment of compliance if its review of the related audit has not been completed.

¹⁰ 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.

In regards to critical firearm discharges and in-custody deaths, the Monitor assessed the DPD's compliance with the UOF CJ requirements regarding the conduct of investigations by the DPD's Joint Investigative Shooting Team and reviews by the Command Level Force Review Team (CLFRT - DPD's Board of Review). As we found in our previous assessment (during the quarter ending May 31, 2007), the Department continues to struggle with carrying out the timing requirements in the critical firearm discharge investigative protocol, with the CLFRT requirements and with the submission of the annual reports on critical firearm discharges.¹¹ The Monitor found that the Department did not convene a CLFRT (Board of Review), as required by the UOF CJ, for any of the 17 critical firearm discharges selected for review; the DPD Audit Team had similar findings. Furthermore, the DPD made little progress in closing Joint Investigative Shooting Team investigations identified as open during the quarter ending May 31, 2007, and no progress in closing CLFRT reviews that had been identified as open during that quarter.

Arrest and Detention Paragraphs

The Monitor assessed the Department's compliance with the UOF CJ requirements regarding review of arrests and documentation of stops and frisks, interviews and interrogations, and arrests. The Department is not in compliance with requirements related to the review of arrests for probable cause, primarily due to its failure to consistently document supervisory review within 12 hours of an incident. The DPD has not effectively implemented the documentation requirements related to the review of all stops and frisks and interviews and interrogations, nor has it implemented requirements regarding the creation of auditable documentation of each custodial detention. Furthermore, as was found during the quarter ending May 31, 2007, the Commanding Officers' reviews of all violations of DPD policies regarding arrests and stops and frisks are essentially not taking place at all.

External Complaints Paragraphs

The Monitor assessed the DPD's compliance with most Consent Judgment requirements relative to the DPD's intake, tracking, investigation and review of external complaints. The Monitor determined that the DPD is in compliance with the requirements to receive, record, investigate and track complaints. The DPD is also in compliance with the specific requirements regarding the development and implementation of an informational campaign about external complaints, and the requirement that DPD officers carry informational brochures and contact forms in their vehicles at all times while on-duty.

The Monitor also found the DPD in compliance with the complaint intake and tracking requirements of the UOF CJ.

¹¹ The parties are having discussions about the definition of critical firearms discharges and interpretation of the requirement for CLFRTs within the Consent Judgments.

The Monitor found the DPD in compliance with the policy requirements regarding external complaint investigations, and in compliance with the implementation of the provision allowing informal resolution of certain complaints. The Monitor withheld a determination of compliance or did not complete an evaluation of compliance with the implementation requirements of several provisions in this area, and found that the DPD was not yet in compliance with the implementation requirements of the remaining provisions. Among the issues identified were: although complaints were being forwarded to OCI, the majority of them were not forwarded within five days of receipt; lack of documentation in investigative files that prevented a determination of whether complainants were periodically notified of the status of the investigations; mandatory pre-service and in-service training for IA and OCI investigators has not been conducted; the OCI not completing complaint investigations within 60 days; and, inadequate documentation of reviews conducted by Chief of Police or designee, which is preventing the Monitor and the DPD's Audit Team from being able to determine whether the timeline requirements related to the review of external complaints are being met.

Risk Management Paragraphs

The Monitor has previously concluded that the DPD is in compliance with several paragraphs in this area, as the DOJ approved the Data Input Plan, Review Protocol and Report Protocol. On November 9, 2007, the Court approved a stipulation of the parties requiring the City to have a beta version of the new Risk Management Database (Management Awareness System - MAS) ready for testing by January 28, 2008. The MAS must be operational and fully implemented by July 24, 2008. The Court further ordered the parties and the Monitor to meet on a monthly basis to discuss what actions have been taken during the previous month toward development of the MAS, and the City must present to the DOJ and the Monitor, on a monthly basis, evidence of satisfactory progress sufficient to justify a conclusion that completion of the MAS by July 24, 2008 remains feasible. During the current quarter, the Monitor attended monthly meetings regarding the MAS with the parties and the DPD, and the DPD submitted documentation on the continuing progress made on the MAS Project Plan to-date.

Audit Paragraphs

During this quarter, the Monitor completed its review of six of the seven audits submitted by the DPD's Audit Team on July 31, 2007 and August 31, 2007, and completed its assessment of the DPD's compliance with Consent Judgment requirements related to the Audit Protocol.

In its evaluation of the three audits submitted on July 31, 2007, the *Combined Allegations of Misconduct Investigations Audit*, the *Fire Safety Programs Audit*, and the *Emergency Preparedness Programs and Policies Audit*, the Monitor found that all three audits were in compliance and had sufficient involvement by the members of the DPD's Holding Cell Compliance Committee (HCCC) when required.

In its evaluation of the three audits submitted on August 31, 2007, the Monitor found improvements in the *Investigatory Stop and Frisks Practices Audit* compared to the previous audit of this topic but concluded that the audit was not in compliance primarily because the audit

population was incomplete. The Monitor found the *Use of Force Investigations Audit* and the *External Complaints and Complaint Investigations Audit (the Complaints Audit)* in non-compliance because these audits did not identify and review an adequate number of investigations conducted by Force Investigations, among other reasons. Additionally, *the Use of Force Investigations Audit* did not adequately test the investigators' conclusions, and *the Complaints Audit* did not identify concerns related to the intake, assignment, tracking and investigation of complaints alleging force.

For one remaining audit submitted on August 31, 2007, *the Witness Identification and Questioning Audit*, the Monitor withheld its determination of the DPD's compliance with the applicable requirements pending the conclusion of a meeting early next quarter with the DPD regarding the Monitor's findings.

In these seven audits, the DPD's Audit Team found that the Department was not yet in compliance with 38 of the 44 paragraphs tested; although the Monitor's findings differed from the Audit Team's in a few areas, these findings were generally consistent with the Monitor's findings for these paragraphs.

The DPD submitted the remaining documentation related to the 2007/2008 Audit Protocol, which the Monitor found sufficiently addressed dissemination and training. With regard to the COC CJ requirement that the HCCC assure compliance with the COC CJ, the Monitor is withholding its determination of compliance, pending the Monitor's receipt and review of documentation needed to evaluate the content of the HCCC's regularly scheduled meetings. Lastly, the DPD is not yet in compliance with the requirement to follow-up on officer-specific audit findings, but has recently committed to developing and implementing a process to ensure that non-disciplinary and disciplinary corrective action is taken when appropriate. The Monitor has offered to assist the DPD with the development of this process.

Training Paragraphs

During the current quarter, the Monitor determined that three lesson plans submitted by the DPD, the *Supervisory Leadership and Accountability Lesson Plan*, the *Use of Force Lesson Plan*, and the *Law of Arrest, Search and Seizure Lesson Plan*, met the requirements of the underlying paragraphs. The DPD is developing a schedule to deliver the training in connection with these lesson plans.

In regards to other training requirements assessed this quarter, the Monitor found that most officer training records dating back to the effective date of the Consent Judgments have yet to be entered. Also, the DPD has not yet fully implemented the requirements related to the development, review, and approval processes of all Consent Judgment-related lesson plans, nor has it provided documentation of its coordination and review of training.

COC CJ Holding Cell Paragraphs

During the current quarter, the Monitor assessed the DPD's compliance with COC CJ requirements regarding fire safety policies and Life Safety Code (LSC) requirements, as well as

requirements regarding emergency preparedness plans for all facilities that maintain holding cells.

In assessing compliance with requirements related to the fire safety and LSC requirements, the Monitor relied upon the DPD's *Fire Safety Practices and Policies Audit* submitted on July 31, 2007, supplemented by its own onsite inspections of all DPD buildings containing holding cells. The Monitor and the DPD's Audit Team concluded that the DPD was in compliance with requirements regarding the enforcement of the no-smoking policy within holding cells and the storage of flammable liquids. The Monitor and the Audit Team found that the DPD was not yet in compliance with the remaining fire safety paragraphs, which include the requirements of the LSC, the implementation of the Comprehensive Fire Safety Program, and the associated training of DPD members. However, the Monitor and the Audit Team found that the DPD has achieved compliance with some of the subparagraphs in this area, such as the requirement for the Detroit Fire Department Fire Marshal to conduct its regular and periodic (annual) LSC inspections of all DPD buildings containing holding cells and for the DPD to ensure that adequate means are available for detainees to immediately report emergencies.

In assessing compliance with requirements regarding emergency preparedness plans for all facilities that maintain holding cells, the Monitor relied upon the DPD's *Emergency Preparedness Program Audit* submitted on July 31, 2007, supplemented by its own onsite inspections of all DPD buildings containing holding cells. The Monitor found that the DPD is not yet in compliance with the requirements of this section. The Monitor and the Audit Team found that, with the exception of the Detroit Receiving Hospital, the DPD performed and maintained documentation of fire drills for all buildings containing holding cells, on all shifts, every six months as required. However, the documentation did not include sufficient details as required by the COC CJ and the LSC. Although each building had an Emergency Response Plan placed in a clearly marked red binder at each operations front desk, the audit found that more than half of the detention officers who were interviewed could not demonstrate knowledge of all of their responsibilities under the emergency preparedness plans.

Miscellaneous Paragraphs

The DPD continued to effectively hold meetings with prosecutors and with the City Law Department concerning the issues identified in the UOF CJ.

The Monitor found the DPD in compliance with UOF CJ and COC CJ requirements to ensure all terms contained within the Consent Judgments are clearly defined in Departmental policies and to make available to the community proposed policy revisions.

REPORT CONTENTS:

SECTION ONE: INTRODUCTION.....1

- I. BACKGROUND1**
- II. MONITOR’S ROLE.....2**
- III. EFFORTS TOWARD COMPLIANCE2**
- IV. METHODOLOGIES3**
- V. REPORT CARD4**
- VI. MONITOR’S PLEDGE.....5**

**SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND
ARREST AND WITNESS DETENTION CONSENT JUDGMENT6**

- I. USE OF FORCE POLICY.....6**
 - A. General Use of Force Policies.....6
 - B. Use of Firearms Policy.....6
 - C. Intermediate Force Device Policy.....6
 - D. Chemical Spray Policy.....7
- II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW7**
 - A. General Investigations of Police Action7
 - B. UOF and Prisoner Injury Investigations12
 - C. Review of Critical Firearms Discharges and In-Custody Deaths15
- III. ARREST AND DETENTION POLICIES AND PRACTICES.....20**
 - A. Arrest Policies.....20
 - B. Investigatory Stop Policies22
 - C. Witness Identification and Questioning Policies23
 - D. Prompt Judicial Review Policies24
 - E. Hold Policies.....25
 - F. Restriction Policies25
 - G. Material Witness Policies25

H. Documentation of Custodial Detention.....	25
I. Command Notification	27
IV. EXTERNAL COMPLAINTS	29
A. Intake and Tracking	33
B. External Complaint Investigations.....	34
V. GENERAL POLICIES.....	40
VI. MANAGEMENT AND SUPERVISION	42
A. RISK MANAGEMENT DATABASE	42
B. Performance Evaluation System.....	46
C. Oversight.....	46
D. Use of Video Cameras	59
E. Discipline	60
VII. TRAINING	60
A. Oversight and Development.....	60
B. Use of Force Training	66
C. Firearms Training.....	67
D. Arrest and Police-Citizen Interaction Training.....	68
E. Custodial Detention Training.....	70
F. Supervisory Training	70
G. Investigator Training.....	70
H. Field Training.....	70
VIII. MONITORING, REPORTING, AND IMPLEMENTATION.....	71

SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT72

I. FIRE SAFETY POLICIES72

II. EMERGENCY PREPAREDNESS POLICIES80

III. MEDICAL AND MENTAL HEALTH CARE POLICIES84

IV. PRISONER SAFETY POLICIES84

V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES84

VI. POLICIES CONCERNING PERSONS WITH DISABILITIES.....85

VII. FOOD SERVICE POLICIES85

VIII. PERSONAL HYGIENE POLICIES.....85

IX. USE OF FORCE AND RESTRAINTS POLICIES86

X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW.....86

XI. EXTERNAL COMPLAINTS86

XII. GENERAL POLICIES.....88

XIII. MANAGEMENT AND SUPERVISION89

XIV. TRAINING96

XV. MONITORING AND REPORTING97

CONCLUSION.....98

APPENDICES:

- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor
- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending November 30, 2007

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

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor¹³ outlined the history of the DOJ investigation, the Technical Assistance (TA) letters and the DPD's reform efforts. The Monitor also summarized the complaint filed against the City and the DPD and the overall content of the Consent Judgments.¹⁴ The Monitor's duties and reporting requirements were also described.

As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,¹⁵ the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments. The paragraphs that were scheduled for review during the seventeenth quarter, which ended on November 30, 2007, are assessed in this report.¹⁶

¹² The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Charles Curlett, Hazel de Burgh, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Jane McFarlane, Terry Penney, and Sherry Woods.

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

¹⁴ Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at http://www.usdoj.gov/crt/split/documents/dpd/detroit_cover_2.html.

¹⁵ Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

¹⁶ 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.

II. MONITOR'S ROLE

The Monitor's role is to conduct compliance assessments,¹⁷ 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 seventeenth quarter, the Monitor continued to test the DPD's implementation of the policies, to review training lesson plans and to review audits conducted by the DPD's Audit Team (AT). The Monitor commends the DPD for the marked increase in the amount of work being submitted. Of the 83 paragraphs or subparagraphs that the Monitor assessed during the current quarter, the Monitor found that the DPD achieved compliance with 24 paragraphs and subparagraphs. In addition, the Monitor concluded that the DPD made notable progress towards achieving compliance with one paragraph that the Monitor concluded was not yet in compliance.

Overall, the DPD is currently in compliance with 67 of the 205 paragraphs and subparagraphs that are assessed in the combined Consent Judgments (45 of 131 paragraphs and subparagraphs from the UOF CJ and 22 of 74 paragraphs and subparagraphs from the COC CJ). In addition, the City and the DPD are in partial compliance with one paragraph from the UOF CJ.

Lastly, the DPD has been in overall compliance for two quarters with 30 paragraphs or subparagraphs of both Consent Judgments.¹⁸ Of these 30 paragraphs and subparagraphs, the Monitor found six in compliance for two consecutive review quarters for the first time during the current review period.¹⁹

As previously reported, the court granted the motion to extend both Consent Judgments until July 2011. A written order was issued on October 26, 2007, which also mandated that meetings be held by the parties to discuss issues related to compliance. On December 6, 2007, the Court

¹⁷ 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.

¹⁸ These are substantive paragraphs and subparagraphs that are on a regular and periodic review schedule; these do not include "policy only" paragraphs and other paragraphs and subparagraphs with which the DPD will generally remain in compliance once compliance is achieved.

¹⁹ Paragraphs U31, U37, U92, C21, C66-FSP Audit, and C67.

ordered that the City and the DPD must retrofit its holding cells within the Districts by midnight on the last day of December 2008. The City is also continuing with its plans to build a new holding cell facility. The Monitor will provide more information on the proposed facility as it becomes publicly available.

Also, as reported in a Focus Issue in the Monitor's Report for the Quarter Ending May 31, 2007, the City filed a brief with the Court on May 16, 2007, arguing that 39 paragraphs in the UOF CJ and COC CJ are "policy only" and do not require implementation. The DOJ filed a response to the City's brief on June 27, 2007. The matter was scheduled for a hearing before Magistrate Judge Scheer; after rescheduling, a hearing was supposed to occur on September 17, 2007. On September 14, 2007, the City withdrew its brief from consideration by the Court after the Monitor developed a new finding of "partial compliance" and new terms of "notable progress" and "significant progress," and agreed to implement them. The Monitor implemented the new finding and terms for quantitative paragraphs in the Report for the Quarter Ending August 31, 2007.²⁰ The Monitor agreed to develop a methodology for applying the finding and terms to qualitative paragraphs. The methodology has been developed and a draft copy was submitted to the parties on December 31, 2007. The Monitor intends to implement the methodology for qualitative paragraphs during the quarter ending February 29, 2008.

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 greater than 94% compliance is achieved for a statistically valid random sample²¹ of incidents from as recent a period as is practicable. As mentioned above, the Monitor is now in the process of implementing a finding of partial

²⁰ For quantitative paragraphs, the Monitor will generally find that the DPD has achieved partial compliance where the overall compliance rate is greater than 80% to 94%. For quantitative paragraphs that are not yet in compliance, the Monitor now reports when the DPD has made significant progress by achieving an overall compliance rate greater than 66 to 80% for the implementation component of a paragraph or notable progress by achieving an overall compliance rate greater than 50 to 66% for the implementation component of a paragraph. Although the new finding of partial compliance and the new progress terms were in effect for this reporting period, none of the quantitative paragraphs assessed were found to have met the criteria described herein.

²¹ 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.

compliance under certain circumstances where the overall compliance rate of the implementation component of a paragraph is greater than 80%.

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 the audit to determine if it is compliant with the applicable audit paragraph requirements 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.

Even if the Monitor determines that an audit is not compliant with the applicable audit paragraph 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.²² In addition, the Monitor reserves the right to adopt certain audit findings of non-compliance even in instances in which the Monitor has not determined whether the audit's findings are reliable, as long as the audit's assessment has been supplemented with additional testing by the Monitor.

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 subparagraph²³ of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.²⁴ The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. The next evaluation is estimated based on available information at the date of issuance of this

²² As an example, if the audit report and fieldwork were considered reliable 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 audit's findings regarding the substantive provisions of the paragraph(s) even though the audit was considered non-compliant.

²³ Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.

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

Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

The findings on the report card are: compliant, partial compliance, not yet evaluated, determination withheld or non-compliant. Also in the comments section of the report card, the Monitor will add a notation for each paragraph where the DPD has made notable or significant progress under the circumstances described above.

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, 2007. A draft copy of this report was made available to the parties at least ten days prior to final publication in order to provide the parties with an opportunity to identify any factual errors,²⁵ and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

²⁵ 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, 2007.

I. USE OF FORCE POLICY

A. GENERAL USE OF FORCE POLICIES

This section comprises paragraphs U14-19. The Monitor has found the DPD in compliance with paragraphs U14-17 and U19, which are "policy only" paragraphs. The DPD will remain in compliance with these paragraphs until such time as the policies directly responsive to the paragraphs are revised.²⁶ The Monitor last assessed the DPD's compliance with paragraph U18 during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2008.

B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor found the DPD in compliance with paragraph U20, which is a "policy-only" paragraph, during the quarter ending August 31, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.²⁷ The Monitor last assessed the DPD's compliance with paragraphs U21-23 during the quarter ending August 31, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2008.

²⁶ As with all "policy-only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph U18.

²⁷ Revisions to policy will trigger an additional assessment by the Monitor. The implementation and training requirements associated with the paragraph will be assessed separately under paragraphs U111 and U113.

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, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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 (CFDs) 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 form²⁸ 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 CFDs and in-custody deaths, and the DPD must develop a protocol for conducting investigations of CFDs. 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 CFDs), 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 CFDs 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 February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U27-33 – Revision of General Investigation Policies; Investigation Procedures; Investigatory Interview Procedures; Prohibitions of Investigatory Interviews; Protocol for Garrity Statements; Investigatory Reports and Evaluations; Review of Investigations

Paragraph U27 requires the DPD and the City to revise their policies regarding the conduct of all investigations to ensure full, thorough and complete investigations. All investigations must, to the extent reasonably possible, determine whether the officer's conduct was justified, and the DPD and the City must prohibit the closing of an investigation being conducted by the DPD

²⁸ 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.

and/or the City simply because a subject or complainant is unavailable, unwilling or unable to cooperate, including a refusal to provide medical records or proof of injury.

Paragraph U28 requires the DPD and the City to ensure that investigations are conducted by a supervisor who did not authorize, witness or participate in the incident and that all investigations contain the criteria listed in this paragraph.

Paragraph U29 requires the DPD and the City to revise their procedures for all investigatory interviews to require the criteria listed in this paragraph.

Paragraph U30 requires the DPD and the City to prohibit the use of leading questions that improperly suggest legal justifications for the officer's(s') actions when such questions are contrary to appropriate law enforcement techniques; and to prohibit the use of interviews via written questions when it is contrary to appropriate law enforcement techniques.

Paragraph U31 requires the DPD and the City to develop a protocol for when statements should (and should not) be compelled pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967).

Paragraph U32 requires the DPD to revise its policies regarding all investigatory reports and evaluations to require the criteria listed in this paragraph.

Paragraph U33 requires the DPD to revise its policies regarding the review of all investigations to require those criteria listed in this paragraph.

Background

The Monitor last assessed the DPD's compliance with paragraphs U27-33 during the quarter ending May 31, 2007. The Monitor found the DPD in compliance with paragraph U31 and also found the DPD in compliance with the policy requirements of paragraphs U27-30 and U32-33; however, the Monitor found that the DPD was not yet in compliance with the implementation requirements of paragraphs U27-30 and U32-33. The findings were based on the findings from the DPD's *Use of Force in Holding Cells (UOFHC) Investigations Audit*, *Prisoner Injury in Holding Cell (PIHC) Audit*, *Prisoner Injury (PI) Audit*, and *Allegations of Misconduct in Holding Cells (AOMHC) Audit*, all of which were submitted on January 31, 2007, as well as the Monitor's review of a selected a sample of 49 UOF investigations from incidents that took place during time period of November 12, 2006 to December 12, 2006.

Current Assessment of Compliance

In order to assess the DPD's compliance with the General Investigation requirements during the current quarter, the Monitor reviewed the following audits submitted by the DPD: the *Combined*

Allegations of Misconduct (AOM) Audit Report,²⁹ the *UOFHC Investigations*³⁰ *Audit Report*, the *UOF Investigations*³¹ *Audit Report* and the *External Complaints and Complaint Investigations (EC&CI) Audit Report*,³² all of which evaluated the DPD's compliance with paragraphs U27-33, among others.³³ A total of 141 investigations were reviewed in these four audits; of these, 63 were conducted at the Command level, 12 were conducted by Internal Affairs (IA), four were conducted by Force Investigation (FI) (which included one CFD conducted by the Joint Investigative Shooting Team, or JIST), and 62 were conducted by the Office of the Chief Investigator (OCI).³⁴ Based on the low number of FI investigations identified and reviewed within the above audits, the Monitor supplemented the AT's evaluations by selecting and reviewing seven additional FI investigations that had closed in September 2007.

Overall, the audits found that the DPD was not yet in compliance with the implementation requirements of paragraphs U27-30 and U32-33, and in compliance with paragraph U31. Based on its review of FI investigations, the Monitor determined that, in general, FI investigations are of a higher quality than the other entities tested and FI has generally implemented Consent Judgment requirements other than those related to the timing of completing investigations.³⁵ With few exceptions the AT's findings in the current audits are similar to the findings from the previous audits reviewed during the quarter ending May 31, 2007.³⁶

There are numerous requirements contained in general investigation paragraphs U27-33 and their corresponding subparagraphs. The findings are summarized below:³⁷

²⁹ The *Combined AOM Audit*, which was submitted on July 31, 2007, is separately evaluated under subparagraphs U95c and C65c of this report.

³⁰ The *UOFHC Investigations Audit*, which was submitted on July 31, 2007, is separately evaluated under subparagraph C65a and was previously reported on in the Monitor's Report for the Quarter Ending August 31, 2007.

³¹ The *UOF Investigations Audit*, which was submitted on August 31, 2007, is separately evaluated under subparagraph U95a of this report.

³² The *EC&CI Audit*, which was submitted on August 31, 2007, is separately evaluated under paragraph U97 of this report.

³³ The *UOF Audit* is the first audit required by paragraph U94a to be submitted by the DPD.

³⁴ Twenty-three investigations were reviewed in the *UOF Audit*, 42 investigations were reviewed in the *Combined AOM Audit*, 68 investigations were reviewed in the *EC&CI Audit*, and eight investigations were reviewed in the *UOFHC Investigations Audit*.

³⁵ Although the Monitor's findings regarding the quality of the FI investigations did not affect the DPD's overall non-compliance finding, the Monitor conducted this supplemental testing in order to evaluate and report on the quality of FI's work product.

³⁶ Refer to the Monitor's Report for the Quarter ending May 31, 2007.

³⁷ As the DPD moves closer to compliance with these requirements, the AT and the Monitor will provide more detail on the specific level of compliance achieved for each primary paragraph and its subparagraphs. However due to the continued lack of consistency in the implementation of these requirements, the current findings are summarized.

- In evaluating compliance with the requirements of paragraph U27, the audits consistently found that the Command, OCI, and IA investigations were not thorough and complete, and the audits identified extensive non-compliance with numerous General Investigative requirements. Notably, two of the four audits³⁸ found that investigators correctly determined that officers' conduct was justified and three of the four audits³⁹ found that investigations were not closed due to the status or unavailability of the subject or complainant, both of which are requirements of paragraph U27.
- All four audits concluded that the DPD was not yet in overall compliance with the requirements of paragraph U28 based on compliance problems identified in their respective subparagraphs. Examples of problems identified include interviews of witnesses that were either not complete or not thorough; investigations that did not include photographs of injuries or alleged injuries; the lack of documented canvass of the scene for witnesses; and, the lack of inclusion of all names and badge numbers of officers on the scene. Similar to previous audit findings, the audits found that most of the investigative files included the appropriate medical documentation, where applicable.
- Although the audits found that the DPD met the paragraph U29 requirement to prohibit group interviews, they found that the DPD was not yet in overall compliance with paragraph U29. This finding was based on the lack of timely statements from involved officers in the Command investigations and the lack of documentation that civilian witnesses were interviewed at times and places that were convenient to the witness in all investigations. Although most applicable investigations video- or audio-taped interviews when required, several of the investigations conducted by IA and OCI investigations did not include a signed refusal from the complainant when an interview was not video- or audio-taped.
- The audits found that the IA, FI and OCI interviews were appropriate and conducted in accordance with paragraph U30. Conversely, the audits found that the Command investigations generally did not include written questions, tape-recordings, or any other form of documentation of the content of interviews. Consequently, no determination could be made with regard to the appropriateness of the questioning in Command investigations. As a result, the audits found that DPD is not yet in compliance with paragraph U30.
- The audits found that all applicable investigations complied with the Garrity Protocol as required by paragraph U31.
- The findings from the audits and the Monitor's review of FI investigations specific to each subparagraph of paragraph U32 follow:⁴⁰

³⁸ The *Combined AOM* and the *EC&CI Audits*.

³⁹ The *Combined AOM*, the *EC&CI*, and the *UOFHC Investigations Audits*.

⁴⁰ Because paragraph U32 includes a large number of subparagraphs and components of investigative requirements, the Monitor has summarized the findings specific to each subparagraph.

- Subparagraph U32a: For the most part, the investigations contained a precise account of the facts and circumstances of the incident. In a few investigations, the investigator did not include an evaluation of the initial stop or seizure.
- Subparagraph U32b: With the exception of FI, many of the investigations did not consider all evidence because of missing witness interviews.
- Subparagraph U32c: The investigations were not discontinued nor was the guilt of the subject considered when determining if misconduct by the involved officer(s) had occurred.
- Subparagraph U32d: The investigators made reasonable credibility determinations regarding witness and officer statements.
- Subparagraph U32e: Most investigations included an evaluation of whether or not the officer(s) complied with DPD policy.
- Subparagraph U32f: With the exception of FI, most of the investigations did not evaluate each instance of the officer's force, tactics, and/or misconduct uncovered during the investigation.
- Subparagraph U32g: With the exception of FI, most of the investigations did not evaluate the incident based on the preponderance of evidence standard only. The failure to utilize the preponderance of the evidence standard was due only to the lack of all of the evidence being present, and not the result of any underlying lack of objectivity.
- Subparagraph U32h: For those investigations that were not completed within the required time, no justification for the lack of timeliness was included, as the investigations did not contain documentation stating that the completion deadline had been extended.⁴¹ If reassigned, the documentation did not indicate the reasoning.
- Subparagraph U32g: When a recommendation of disciplinary or non-disciplinary corrective action was documented, it was done in writing.
- Paragraph U33 mainly describes requirements related to the review process of the investigations. Although it appears that all the investigations are being reviewed by the chain of command above the investigator, the reviewing supervisors are not identifying many of the qualitative errors in the investigations such as those described above. When corrections are identified and returned to the investigator, no documentation is available to demonstrate that those deficiencies were corrected within seven days, as required by subparagraph U33b. Additionally with the exception of FI, the documentation does not demonstrate that any corrective action (non-disciplinary and/or disciplinary) was taken when an investigator failed

⁴¹ Of the 31 applicable investigations, only two were completed within the time limits described in paragraphs U36a-c and U38c.

to conduct or reviewing supervisor failed to evaluate an investigation appropriately, as required by subparagraph U33d.

In summary, based on the results of the four audits submitted by the DPD and reviewed by the Monitor and on the Monitor's review of FI investigations, the Monitor finds that the quality of the DPD's Command and OCI investigations are the chief causes of the DPD's non-compliance with the general investigation requirements of the UOF CJ. The OCI has agreed with the audit findings and is currently taking measures to correct the deficiencies noted above. Furthermore, DPD Command investigations will likely improve once the corresponding training has commenced.

In addition to the above-described problems associated with the quality of investigations, the applicable audits continue to identify systemic deficiencies in the identification and tracking of Command investigations. These systemic issues have created significant difficulties for the AT and the Monitor when trying to identify a complete population during any given time period. The OCI, IA and FI tracking systems, however, have improved and are, for the most part, adequately tracking their respective investigations.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with paragraph U31 and in compliance with the policy requirements of paragraphs U27-30 and U32-33. However, the Monitor finds that the DPD is not yet in compliance with the implementation requirements of paragraphs U27-30 and U32-33.

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, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U34-36 – Documentation of UOF and Prisoner Injury; 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 IA⁴² 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. IA 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 IA 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. IA investigations to be completed within 60 days of the incident; and
- c. copies of all reports and Command investigations to be sent to IA within 7 days of completion of the investigation.

Background

The Monitor last assessed the DPD's compliance with paragraphs U34-36 during the quarter ending May 31, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraphs. The findings were based on the findings from the DPD's *UOFHC Investigations, PI, and PIHC Audits*, all of which were submitted on January 31, 2007. Each of these audits found the DPD non-compliant with paragraphs U34-36. Despite the overall determination of non-compliance, the audits concluded that many of the requirements of paragraph U35 are being met. The Monitor also reviewed a selected a sample of UOF investigations to test the implementation of paragraphs U34-36.

⁴² The DPD formerly referred to this entity as the Internal Affairs Section.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs U34-36 during the current quarter, the Monitor reviewed the *UOFHC Investigations* and the *UOF Investigations Audits*, which are described in the *Current Assessment of Compliance* for paragraphs U27-33 above.⁴³ The audits included an evaluation of 30 force investigations conducted at the Command level and four conducted by FI (including one JIST). Based on the low number of FI investigations included in the audits, the Monitor conducted supplemental testing by selecting and reviewing seven additional FI investigations that had closed in September 2007.

Both of these audits correctly found that the DPD is not yet compliant with paragraphs U34-36. Following is a summary of the audit findings in connection with these paragraphs:

- Both audits concluded that the DPD is not complying with the requirements of paragraph U34 to document UOF incidents on an auditable form.⁴⁴ In the case of the investigations conducted by FI (including JIST) no auditable form had been completed, while in the Command investigations the form often did not contain sufficient detail regarding the incident (by officers) or the investigation (by supervisors).
- Regarding subparagraph U35a, the audit found that in a few Command level force incidents, officers did not notify a supervisor following the incident as required.
- Similar to previous audit findings, the audits again concluded that the requirements of subparagraph U35b are being met, with the exception of the requirement for supervisors interviewing subjects upon arrival at a scene.
- The DPD is generally meeting the requirements of subparagraph U35c, which requires the supervisor responding to the scene to notify Internal Affairs (IA); however, in two incidents involving serious uses of force, the DPD did not comply with these requirements, as neither IA nor FI was notified as required.
- Similar to the above finding, when FI is notified they appropriately respond to the scene to investigate all incidents where there is evidence of possible criminal misconduct by an officer, a prisoner dies or suffers serious bodily injury, or a serious UOF has occurred, as required by subparagraph U35d. However if not notified, clearly FI cannot respond as required.
- Paragraph U36 describes requirements related to the content of the investigations, the timing of completion, as well as the review process of the investigations. Although the Command investigations include a synopsis of the incident they do not consistently include photographs of injuries, all witnesses statements, documentation demonstrating a canvass of the scene

⁴³ The DPD did not submit the audit of Prisoner Injuries in Holding Cells which was required to be submitted by July 31, 2007.

⁴⁴ The UF-002 and SIR.

occurred, a profile of the officer's UOF and disciplinary history, nor a first-line supervisory evaluation. Additionally, the investigations completed by FI are not being completed within 60 days as required and the Command reports are not being forwarded to FI within seven days of completion. More often than not, Command preliminary investigations are completed within ten days of the incident as required.

Based on its testing of the audits, the Monitor concurs with the audits' overall determination of non-compliance; however, based on the Monitor's supplemental testing, it is apparent that the FI investigations are superior in quality to Command investigations. Aside from the 60-day completion requirement of subparagraph U36b and the lack of completion of the UOF auditable forms required by paragraph U34, the seven FI investigations reviewed by the Monitor met the requirements of paragraphs U27-36. Conversely, the Command investigations tested during the audit did not meet most of the requirements of paragraphs U34-36.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraphs U34-36.

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

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2007. 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 IA, to respond to the scene and investigate all CFDs and in-custody deaths.

Paragraph U38 requires the DPD to develop a protocol for conducting investigations of CFDs 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 CFDs and in-custody deaths. The team must be chaired by the Deputy Chief who directly supervises IA. 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 CFDs that result in injury and in-custody deaths within 90 days of the resolution of any criminal review and/or proceedings and all other CFDs 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 CFDs 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 CFD 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, 2007, finding the DPD in compliance with the policy requirements, and in compliance with the implementation requirements of paragraph U37, but not yet in compliance with the implementation requirements of paragraphs U38-41.

To assess compliance with the implementation requirements of paragraphs U37-40 during the quarter ending May 31, 2007, the Monitor requested a listing of all CFD incidents occurring between October 30, 2006 and December 30, 2006. The DPD's submission identified 17 CFDs that occurred between the dates of October 30, 2006 and December 30, 2006.

The Monitor determined that a Board of Review (BOR)⁴⁵ was only being conducted for incidents classified as “fatal shootings,” as opposed to conducting BORs for all CFDs, as required by paragraph U39.

All of the BOR evaluations that were started were still pending (as were the underlying investigations). As a result, they were not completed within the time periods required by paragraph U40 and Directive 304.5, *Board of Review*. The DPD did not provide any information regarding the implementation of paragraphs U37-40 or the status of the annual report required by paragraph U41 in its Fifteenth Quarter Status Report.

Current Assessment of Compliance

In order to assess compliance with the implementation requirements of paragraphs U37-40, the Monitor reviewed a listing of CFD incidents provided by the DPD and, as described in the *Current Assessments of Compliance* for paragraphs U27-33 and U34-36 above, the Monitor reviewed various DPD audits in connection with its assessment of investigations. The Monitor also conducted supplemental testing of CFD incidents during its review of the audits.

Monitor’s Evaluation of CFD Incidents

The Monitor requested a listing of all CFD incidents occurring between March 1, 2007 and May 31, 2007. The DPD identified 15 CFDs that occurred between the dates of March 7, 2007 and May 28, 2007, as follows:

⁴⁵ According to the DPD’s Directive 305.4, Board of Review, the BOR is the CLFRT called for under paragraph U38.

Type of Incident	Date of Incident	Date Case Assigned	Date Case Closed	Date BOR Started	Date BOR Closed
Non-Fatal	3/7/07	3/8/07	10/29/07	BOR Not Conducted	
Intentional	3/10/07	3/15/07	11/06/07	BOR Not Conducted	
Intentional	3/13/07	3/15/07	11/05/07	BOR Not Conducted	
Intentional	3/13/07	3/14/07	11/05/07	BOR Not Conducted	
Non-Fatal	3/24/07	3/29/07	11/06/07	BOR Not Conducted	
Intentional	3/28/07	4/2/07	Open	BOR Not Conducted	
Intentional	4/1/07	4/3/07	6/8/07	BOR Not Conducted	
Intentional	4/13/07	4/18/07	6/22/07	BOR Not Conducted	
Non-Fatal	4/14/07	4/18/07	Open	BOR Not Conducted	
Intentional	4/15/07	4/18/07	10/5/07	BOR Not Conducted	
Intentional	4/27/07	4/30/07	11/06/07	BOR Not Conducted	
Fatal	4/29/07	4/30/07	Open	BOR Not Conducted	
Non-Fatal	5/1/07	5/3/07	10/5/07	BOR Not Conducted	
Intentional	5/18/07	5/21/07	6/25/07	BOR Not Conducted	
Intentional	5/28/07	6/1/07	Open	BOR Not Conducted	

With regard to paragraph U37, the information provided by the DPD indicates that a member of JIST responded to the scene of each incident that occurred during the period reviewed. Subsequently, the investigation was assigned, usually to another JIST member, within a few days to a week after the incident. Of the 15 investigations, four remained open as of the end of the current quarter. None of the investigations were completed within 30 days of the incident or, where applicable, within 30 days of the criminal declination or prosecution, as required by subparagraph 38c, BOR policy and the JIST protocol.

Paragraph U39 requires that the CLFRT (DPD's BOR) evaluate all CFDs. Contrary to that requirement, DPD failed to convene a BOR for any of the 15 CFDs identified during the time period reviewed.⁴⁶

With respect to the CFD information previously provided during the quarter ending May 31, 2007, in an attempt to identify closed BORs for review and to determine the status of the nine JIST investigations previously identified as open, the Monitor requested updated information including: 1) the current status of the investigations, including information as to whether the investigation is still open or, if closed, the date of closure, and 2) in those investigations where a BOR was conducted, whether the BOR is still open or, if closed, the date of closure. The DPD responded that of the nine JIST investigations previously identified as open at the end of the quarter ending May 31, 2007, only two have been closed as of the end of this quarter. The DPD indicated that none of the five BORs that had been identified as open have been closed.

⁴⁶ The parties are involved in on-going discussions concerning the correct interpretation of the requirements of paragraphs U39 and 40. The Monitor has participated in one of the parties' discussions. The parties are next scheduled to discuss this issue in January 2008.

The City reported in its Seventeenth Quarter Status Report – as it has since the fifteenth quarter – that the policy requirement of paragraph U41 is incorporated in Directive 304.5, *Board of Review*. Paragraph U41, however, requires the annual report on CFDs to be completed and submitted to the Chief of Police no later than 30 days after the end of the calendar year. On October 12, 2007, the Monitor again requested a copy of the 2006 Critical and Fatal Firearm Discharges Annual Report prepared for the Chief of Police, to include documentation indicating the date that the report was submitted to the Chief. Despite this request, the DPD has again failed to provide the report.⁴⁷

Audit Findings and Monitor's Supplemental Testing

As described in the *Current Assessments of Compliance* for paragraphs U27-33 and U34-36 above, the Monitor reviewed various DPD audits in connection with its assessment of investigations. In regards to paragraphs U37-41, the *UOF Investigations Audit* included one CFD that the audit used to assess compliance. Due to the low population, the Monitor conducted supplemental testing of CFD incidents by selecting and reviewing five additional CFDs that had closed in September 2007, for a total of six CFD investigations reviewed.

The audit, as well as the Monitor's testing of all six investigations, found that the DPD was in compliance with paragraph U37, but not yet in compliance with paragraph U38 due to a lack of timely completion required by subparagraph c. The audit and the Monitor's review also found that the DPD did not carry out the requirements of paragraphs U39-40, since a CLFRT or BOR was not convened or conducted for these incidents in the manner required by these paragraphs. In an effort to find a closed BOR to review, the Monitor requested a listing of all BORs convened since Directive 304.5 became effective on January 25, 2006.⁴⁸

Lastly, for paragraph U41, the audit concluded that the DPD did not meet the requirements of the paragraph, as the AT did not receive a copy of the annual report required by paragraph U41; the AT was informed by OCR staff that a report was currently under review within the Office of the Chief of Police.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with paragraph U37 and in compliance with the policy requirements of paragraphs U38-41. However, the Monitor finds that the DPD is not yet in compliance with the implementation requirements of paragraphs U38-41.

⁴⁷ This 2006 report was previously requested on April 12, 2007. In addition, on May 5, 2006 the Monitor requested the 2005 Critical and Fatal Firearm Discharges Annual Report. This request, too, has not been fulfilled.

⁴⁸ In a further effort to locate a closed BOR for review, on December 11, 2007 the Monitor requested information on the total number of BORs that have been convened since the BOR policy went into effect (since January 2006), including the number that have been closed and, for those closed, all pertinent underlying information. Contrary to the requirement in paragraph U40, the DPD only conducts BORs for fatal CFDs. Therefore the DPD responded on December 14, 2007, indicating that from January 25, 2006 through December 14, 2007, 14 fatal critical firearm discharges had occurred. Although several BORs have "approved extensions," only one was closed.

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 has found the DPD in compliance with paragraph U42, which is a "policy only" paragraph. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.⁴⁹ The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending May 31, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment 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.

⁴⁹ As with all "policy-only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph U43.

Background

The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending May 31, 2007, at which time the Monitor found that the DPD was not yet in compliance. The Monitor determined that probable cause was present for 91 of 92 randomly selected arrests reviewed. The supervisory review, once it occurred, was adequately documented within 12 hours of arrests for 85 of the 92 arrests. For the 13 arrests requiring the generation of an auditable form, the DPD generated ten forms within the mandated 12-hour period, two forms subsequent to the mandated 12-hour period and one form was not generated.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U43 during the current quarter, the Monitor selected a sample⁵⁰ of 89 arrests and requested that the DPD provide the Monitor with access to the arrest documentation, including Case Reports and related auditable forms. The Monitor reviewed documentation for all 89 arrests and noted the following:

- Sufficient probable cause existed to effect each of the 89 arrests reviewed.
- For nine of the 89 arrests reviewed, an arrest warrant was not sought, triggering the requirement for an auditable form to be generated within 12 hours of the event. For all nine of these arrests, an auditable form documenting the circumstances was generated; only one form was not generated within the mandated 12-hour period.
- For one arrest, the required documentation needed in order to make a determination of whether an arrest warrant was sought was not provided.
- For one arrest, the arrestee was documented as bonded out prior to the arrestee's time of arrest.
- For 69 of the 89 arrests reviewed, supervisory review occurred and was documented as having occurred within the mandated 12-hour period. For 18 of the 89 arrests, although supervisory review occurred, it was documented in excess of 12 hours from the documented arrest time, and for two arrests, the Monitor was unable to determine whether the supervisory review was documented within the mandated 12-hour period.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U43.⁵¹

⁵⁰ As required, a random, statistical sample of 89 arrests was selected out of a population of approximately 817 arrests that occurred during the period October 9, 2007 through October 18, 2007, utilizing a confidence level of 95% with an acceptable error rate of +/- 4.

⁵¹ Although the DPD's compliance rates for the components of this paragraph fall within the "significant progress" range of greater than 66 to 80%, the compliance rate of 77.5% (69 of 89 arrests) for the completion of supervisory review declined from the rate of 90.4% (85 of 94) as calculated in our previous review. As described in our Report

B. INVESTIGATORY STOP POLICIES

This section comprises paragraphs U44-45. The Monitor has found the DPD in compliance with paragraph U44, which is a “policy only” paragraph. The DPD will remain in compliance with the paragraph until such time as the policy directly responsive to the paragraph is revised.⁵² The Monitor last assessed the DPD’s compliance with paragraph U45 during the quarter ending May 31, 2007. 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.

Background

The Monitor last assessed the DPD’s compliance with paragraphs U45 during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance. The Monitor reviewed daily logs from all Districts and specialized units for February 28, 2007, noting that only five entries clearly articulated whether the officers stopped and frisked an individual. For three of the five entries, there was no documented supervisory review and for three entries involving a frisk there was no documented safety concern.

Current Assessment of Compliance

In order to assess the DPD’s compliance with paragraph U45 during the current quarter, the Monitor reviewed and placed reliance on the DPD AT’s *Investigatory Stop and Frisk Practices Audit*, dated August 31, 2007.⁵³ The AT reviewed a total of 1,882 daily activity logs for March 15, 2007; April 7, 2007; and April 9, 2007 and identified the following:

- The AT determined that the stop was recorded by the end of the shift in which it occurred for seven of 16 stops reviewed.

for the Quarter Ending August 31, 2007, the progress terms are not applicable if the DPD’s compliance rate remains the same as or decreases from the rate determined during the previous assessment.

⁵² Implementation of the policy is tested under paragraph U45.

⁵³ Although the Monitor identified qualitative deficiencies within the AT’s audit, the Monitor was able to rely on its substantive findings. Refer to the *Current Assessment of Compliance* for subparagraph U95b, below, for information regarding the Monitor’s review of this audit.

- The AT determined that the frisk was recorded by the end of the shift in which it occurred for three of 14 frisks reviewed.
- The AT determined that a supervisory review for articulation of reasonable suspicion occurred within 24 hours of receipt in ten of 16 stops reviewed.
- The AT determined that a supervisory review for articulation of reasonable suspicion occurred within 24 hours of receipt for five of 14 frisks reviewed.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U45.

C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor has found the DPD in compliance with paragraphs U46 and U47, which are “policy-only” paragraphs. The DPD will remain in compliance with paragraphs U46 and U47 until such time as the policy directly responsive to these paragraphs is revised. The Monitor last assessed the DPD’s compliance with paragraph U48 during the quarter ending May 31, 2007. The Monitor again assessed the DPD’s compliance with this paragraph 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, 2007, finding that the DPD was not yet in compliance. The Monitor randomly selected and reviewed 42 daily activity log entries indicative of an interview, interrogation and/or conveyance. For the majority of conveyances, interrogations and interviews reviewed, the Monitor was unable to ascertain whether the supervisor’s reviewed occurred within the mandated time period. Either the date and/or time of review was not documented or, if documented, was not legible. The Monitor also identified instances of exchanges with detainees classified as interviews that were clearly an interrogation.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U48 during the current quarter, the Monitor reviewed and placed reliance on the DPD AT's *Witness Identification and Questioning Audit*, dated August 31, 2007.⁵⁴ The AT reviewed, among other documentation, a sample of crime reports for the period March 1, 2007 through March 8, 2007, interview documentation and Administrative Investigations.⁵⁵ The AT noted the following:

- The DPD appropriately memorialized the interview during the shift in which the police action occurred in 69 of 83 criminal investigation interviews reviewed, and in 13 of 23 interrogations reviewed.
- The DPD did not adequately memorialize any of the 15 non-arrest related conveyances selected for review.
- The DPD did not adequately memorialize any of the 15 arrest related conveyances selected for review.
- The DPD documented on an auditable form all violations of DPD policy within the mandated 12-hour period for 68 of the 83 criminal investigation interviews reviewed, and eight of the 15 interrogations reviewed. The DPD did not document on an auditable form all violations of DPD policy within the mandated 12-hour period for any of the 30 conveyances reviewed.⁵⁶

Based on the foregoing, the Monitor finds that the DPD is not yet in 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, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

⁵⁴ Although the Monitor identified qualitative deficiencies within the AT's audit, the Monitor was able to rely on its substantive findings. Refer to the *Current Assessment of Compliance* for subparagraph U95c, below, for information regarding the Monitor's review of this audit.

⁵⁵ The AT requested homicide interview documentation, which is required to assess compliance with this paragraph; however, that documentation was not provided to the AT.

⁵⁶ The violations that were identified by the audit related to the failure to record the end time for the conducted interview, interrogation, or conveyance and/or no written record of the interview conducted.

E. HOLD POLICIES

This section comprises paragraphs U52-53. 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 this paragraph until such time as the policy directly responsive to the paragraph is revised.⁵⁷ The Monitor last assessed the DPD’s compliance with paragraph U53 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD’s compliance with this paragraph during the quarter ending February 29, 2008.

F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. 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 this paragraph until such time as the policy directly responsive to the paragraph is revised.⁵⁸ The Monitor last assessed the DPD’s compliance with paragraph U55 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD’s compliance with this paragraph during the quarter ending February 29, 2008.

G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. 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 this paragraph until such time as the policy directly responsive to the paragraph is revised.⁵⁹ The Monitor last assessed the DPD’s compliance with paragraph U57 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD’s compliance with this paragraph during the quarter ending February 29, 2008.

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, 2007. The Monitor again assessed the DPD’s compliance with this paragraph during the current quarter. The results of our current assessment follow.

⁵⁷ Implementation of the policy is tested under paragraph U53.

⁵⁸ Implementation of the policy is tested under paragraph U55.

⁵⁹ Implementation of the policy is tested under paragraph U57.

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:

- The individual’s personal information;
- Crime(s) charged;
- Date and time of arrest and release;
- Date and time the arraignment warrant was submitted;
- Name and badge number of the officer who submitted the arraignment warrant;
- Date and time of arraignment;
- Date and time each warrant was lodged and cleared, if applicable; and,
- 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, 2007, at which time the Monitor found that the DPD was not yet in compliance. In its Fifteenth Quarter Status Report, the City and DPD indicated that “Currently, all information required within this paragraph is capable of being captured within the *Live Scan* system;” the report also concluded that the DPD is in compliance with paragraph U58, yet indicated that certain required information from the Warrant Verification Log is not yet being transferred to *Live Scan* “pending upgrades” to the system. The Monitor’s findings from its testing confirmed that, system capabilities notwithstanding, the required information is not, in fact, being captured in the system.

Current Assessment of Compliance

In order to assess the DPD’s compliance with paragraph U58 during the current quarter, the Monitor again tested the data entered into the Live Scan system. In order to accomplish this testing, the Monitor provided the DPD with a sample of 23 arrests that occurred during October 2007. The DPD provided the Monitor with Live Scan documentation for all 23 arrests. The Monitor found the following during its testing:

- Personal information was entered into the Live Scan for all 23 arrests. For one arrest, there was a discrepancy in the arrestee’s name as entered into Live Scan versus information entered into Crisnet. In addition, Live Scan remains unable to capture nicknames, aliases or physical characteristics, as there are no data fields for this information. For other personal

information, such as social security number, age and telephone number, little information was captured. For example, for six entries, the detainees' ages were recorded as zero.

- The detainees' crimes were captured for all 23 arrests.
- The date and time of the detainees' arrests were captured for all 23; however, for 11 of the 23 arrests, the detainee's date and time of release were not documented.
- The system failed to capture any remaining information as required by subsections d through h of paragraph U58.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U58.

Recommendation

Although not a requirement of paragraph U58, the Monitor noted that for three of the arrests reviewed, the arrestees were entered into the Live Scan system prior to the supervisors' probable cause determinations. The Monitor recommends that arrestee information is entered into Live Scan only after a determination of appropriate probable cause.

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, 2007. The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending February 29, 2008. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U59 – Commanding Officer Review

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

Background

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance. The Monitor noted that for one of four stops and frisks requiring the completion of an auditable form, the Commanding Officer

(CO) review section of the auditable form was not completed. Similarly for five of 13 arrests reviewed requiring the completion of an auditable form, the CO review section was not completed, and for five other arrests, the review either occurred in excess of the seven-day mandated period or the time of the review could not be determined.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U59 during the current quarter, the Monitor placed reliance on the DPD AT's *Investigatory Stop and Frisk Practices Audit* and *Witness Identification and Questioning Audit*, both dated August 31, 2007.⁶⁰ The audits included the following relevant findings in connection with paragraph U59 requirements:

- Since DPD-generated stop and frisk auditable forms were not completed for any of the 18 investigatory stops or the three stops with a frisk that were unsupported by reasonable suspicion, the CO reviews were not conducted.
- Since DPD-generated auditable forms were not completed in connection with the policy violations associated with any of the 15 criminal investigation interviews, 15 interrogations or 30 conveyances reviewed, the CO reviews were not conducted.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U59.

⁶⁰ As described in the *Current Assessments of Compliance* for paragraphs U45 and U48, although the Monitor identified qualitative deficiencies within the AT's audits, the Monitor was able to rely on their substantive findings.

IV. EXTERNAL COMPLAINTS

This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the OCI and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.⁶¹

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, 2007. 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, 2007. Although the Monitor found the DPD in compliance with the policy requirements of the paragraph, the Monitor did not evaluate compliance with its implementation requirements. The AT's *AOMHC Audit*, submitted on January 31, 2007 found the DPD in compliance with paragraph U61; however, that audit tested only three investigations, and the AT was scheduled to submit its *EC&CI Audit* required by paragraph U97 on August 31, 2007. Since paragraph U61 specifically concerns external complaints, the Monitor deferred its assessment of the DPD's compliance with the implementation requirements of this paragraph so that the review could be conducted in conjunction with its review of the *EC&CI Audit*.

During the quarter ending November 30, 2006, the Monitor found the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of

⁶¹ The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

paragraph U61. The DPD AT's *External Complaint and Complaint Investigations Audit* found the DPD non-compliant with paragraph U61 for informally resolved complaints, as a number of citizen complaints that were documented in the blotters at a DPD District but were not forwarded to OCI. The audit also found the Department non-compliant with requirements relative to formally resolved complaints; as such complaints were not referred to the appropriate agency within five business days. During inspections, the Monitor determined that three of the six Districts were not tracking and reviewing complaints in accordance with the requirements of this paragraph.

Current Assessment of Compliance

As mentioned in the *Current Assessment of Compliance* for paragraphs U27-33, the DPD's AT submitted the *EC&CI Audit Report* on August 31, 2007. The audit evaluated the DPD's compliance with paragraph U61, among others. As described in the *Current Assessment of Compliance* for paragraph U97, the audit incorrectly concluded that the DPD was in non-compliance with paragraph U61. The Monitor conducted its own testing of a sample of investigations included in that audit and determined that the DPD is in compliance with the paragraph 61 requirements to receive, record, investigate and track complaints.

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

Paragraph U62 – Informational Campaign

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

- a. informing persons they may file complaints regarding the performance of any DPD employee;
- b. distributing complaint forms, fact sheets and informational posters at City Hall, OCI, all DPD precincts, libraries, on the internet and, upon request, to community groups and community centers;
- c. broadcasting public service announcements (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.

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

On October 12, 2007, the Monitor requested the DPD's most recent inspections in connection with paragraph U62. On November 8, 2007, the DPD submitted two reports of inspections conducted by the OCR and the Board of Police Commissioners (BOPC) that evaluated the requirements of subparagraph U62b. OCR staff inspected half of the libraries, neighborhood city halls and District stations from October 24 – November 5, 2007, while BOPC staff inspected the other half from October 2 – 25, 2007.

In total, 23 libraries were visited, most of which had all the required materials, as well as posters and fact sheets posted on the wall. The only exceptions noted were one library that was missing fact sheets, two libraries that were missing informational brochures, and two libraries that were missing Civilian Complaint Reports (CCRs). OCR and BOPC staff replenished the materials as needed and supplied other libraries with extra materials.

The OCR and BOPC also conducted inspections at seven Neighborhood City Hall locations. Again, most locations had all of the required materials, as well as posters and fact sheets posted on the walls. The only exception noted was one location that did not have CCRs available. OCR and BOPC staff supplied the Neighborhood City Halls with extra materials per their request.

Lastly, the OCR and BOPC conducted inspections of all six District stations. All six Districts had all of the required materials, posters and fact sheets posted on the walls, and CCRs and the Informational Brochures available at the desks.

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 Monday – Friday at 8:00 a.m. and 9:00 a.m.; Monday, Wednesday and Friday at 2:30 p.m. and 3:30 p.m.; and Saturday and Sunday at 12:00 a.m., 2:00 a.m., 8:00 a.m., and 9:00 a.m. 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 above in connection with subparagraph U62b, the OCR and BOPC conducted inspections from October 24 – November 5, 2007 and October 2 – 25, 2007, respectively. All six District stations were inspected and continue to have permanent placards posted in their lobbies.

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

Recommendation

The OCR and BOPC should look into the reasons why certain libraries did not have the materials that were missing and why they did not contact the OCI to obtain them, as instructed in training that has previously been conducted.

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, 2007, finding the DPD in compliance. During inspections conducted that quarter, OCR staff interviewed on-duty officers in each DPD District and determined that they were carrying the required materials or had them in their vehicles.

Current Assessment of Compliance

During the OCR inspections of the DPD Districts conducted during the period of October 24 – November 5, 2007, described in the *Current Assessment of Compliance* for paragraph U62, OCR staff also observed DPD officers to determine if they were carrying their Citizen Complaint Brochures/Contact Forms as required by the paragraph. A total of 21 on-duty officers from six Commands were interviewed, each of whom was able to produce the Citizen Complaint Brochures/Contact Forms.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U63.⁶²

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, 2007. 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 U64-66 during the quarter ending May 31, 2007. Although the Monitor found the DPD in compliance with the policy requirements of the paragraphs, the Monitor did not evaluate compliance with their implementation requirements. The AT's *AOMHC Audit*, submitted on January 31, 2007 found the DPD in compliance with paragraph U65 and in non-compliance with paragraph U66; however, the audit only tested three investigations, and the AT was scheduled to submit its *EC&CI Audit* required by paragraph U97 on August 31, 2007. Since paragraphs U64-66 specifically concern external complaints, the Monitor deferred its assessment of the DPD's compliance with the implementation requirements of these paragraphs so that the review could be conducted in conjunction with its review of the *EC&CI Audit*.

⁶² During the next quarter that this paragraph is subject to review, the Monitor will conduct testing to determine whether there are any sustained complaints where an officer has violated the prohibition against discouraging any person from making a complaint or against refusing to take a complaint.

During the quarter ending November 30, 2006, the Monitor reported the DPD in compliance with the policy requirements of the paragraphs, found that the DPD was not yet in compliance with the implementation requirements of paragraph U64, and did not evaluate compliance with the implementation requirements of paragraphs U65-66.

Current Assessment of Compliance

As described in the *Current Assessment of Compliance* for paragraph U61, above, the DPD's AT submitted the *EC&CI Audit Report* on August 31, 2007. The audit included a review of 59 formally resolved external complaint investigations, three informally resolved external complaints, and six investigations of external complaints alleging force which were conducted at the Command level (herein referred to as Allegations of Force, or AOF).⁶³

The audit did not specifically evaluate the DPD's compliance with paragraph U64, and the AT was unable to provide the Monitor with documentation that addressed the requirements of paragraph U64. However, the Monitor noted that of the 59 formally resolved complaints included in the audit sample, some were written, others were received verbally in person, and other were received telephonically, as required by paragraph U64.

Regarding paragraph U65 the AT reviewed all 68 external complaints and correctly determined that that the complaints included factual accounts and/or descriptions of the complainants' demeanor and physical condition, but not opinions regarding the complainants' mental competency or veracity, in accordance with the paragraph's requirements.

As described in the *Current Assessment of Compliance* for paragraph U97, the audit correctly concluded that the 59 formal and three informal external complaints were all assigned a unique identifier on a CCR, which was provided to the complainant (when possible), and included a description of the basis for the complaint.⁶⁴

Based on the foregoing, the Monitor finds the DPD in compliance with paragraphs U64-66.

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, 2007. The Monitor again assessed the

⁶³ Refer to the *Current Assessment of Compliance* for paragraph U97 for detailed information regarding the audit and the Monitor's evaluation of it.

⁶⁴ There is currently an open issue concerning how AOF complaints are investigated and the applicability of paragraphs U66, U67a and other CJ requirements. The parties and the Monitor will attempt to resolve these issues as soon as possible and the Monitor will report on the outcome in a future report.

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

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

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 IA;
- 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 IA and OCI investigator applicants;
- f. implement mandatory pre-service and in-service training for all IA and OCI investigators;
- g. require IA 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.

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

- a. the Chief Investigator (CI) 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.

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 paragraphs U67-69 during the quarter ending May 31, 2007. Although the Monitor found the DPD in compliance with the policy requirements of the paragraphs, the Monitor did not evaluate compliance with their implementation requirements. The AT’s *AOMHC Audit*, submitted on January 31, 2007 found the DPD in non-compliance with paragraph U67 and in compliance with paragraph U69; however, the audit only tested three investigations, and the AT was scheduled to submit its *EC&CI Audit* required by paragraph U97 on August 31, 2007. Since paragraphs U67-69 specifically concern external complaints, the Monitor deferred its assessment of the DPD’s compliance with the implementation requirements of these paragraphs so that the review could be conducted in conjunction with its review of the *EC&CI Audit*.

During the quarter ending November 30, 2006, the Monitor reported that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of subparagraphs U67a-e and g-h, and not yet in compliance with subparagraph U67f. The Monitor also found the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraph U68. Lastly, the Monitor found the DPD in compliance with the policy requirements but had not yet completed its evaluation of compliance with the implementation requirements of paragraph U69.

Current Assessment of Compliance

As described above, the DPD’s AT submitted the *EC&CI Audit Report* on August 31, 2007. The audit evaluated the DPD’s compliance with certain subparagraphs of U67, U68 and U69.⁶⁵ As described in the *Current Assessment of Compliance* for paragraph U97, although the Monitor identified deficiencies in the audit report leading to a determination of non-compliance, none of the documented deficiencies prevented the Monitor from being able to rely upon some of the

⁶⁵ The *EC&CI Audit* is not required to nor did it include an evaluation of subparagraphs U67e and f.

audit's findings, and the Monitor conducted follow-up reviews, where necessary.⁶⁶ The AT's and Monitor's findings pertinent to paragraphs U67-69 are as follows:

Subparagraph U67a Referral for of Complaints for Investigation

The AT correctly concluded that all 59 formally resolved external complaints selected for review were forwarded to the OCI as required; however, the AT incorrectly reported that subparagraph U67a was not applicable to external complaints alleging that a force occurred (AOF). After the identification of this problem within the audit, the Monitor conducted a subsequent review of the processes involving AOF and found that, generally, when an external complaint alleging a force is received by the Command, the respective Command will sometimes notify the OCI, but in most cases will notify FI. If received by the OCI, the OCI will then forward it to FI based on the possibility of a related UOF.⁶⁷ If the FI receives the complaint, FI staff make a determination as to whether or not the possible force is of a serious nature (as defined by the UOF CJ). If it is not possibly serious, the FI will return it to the subject officer's Command for investigation.⁶⁸

The process, however, appears to be in conflict with the requirements of subparagraph C67a and the DPD's *Citizen Complaints Policy*, Directive 102.6, in that all external complaints must be referred to either OCI, or IA if potentially criminal or serious use of force, for investigation and resolution. Even if one argues that all uses of force are potentially criminal, neither subparagraph U67a nor the *Citizen Complaints Policy* direct the Commands to investigate AOFs or any other external complaint, other than those permitted to be resolved informally.⁶⁹ As mentioned in the *Current Assessment of Compliance* for paragraph U66, the Monitor has raised this issue and has offered to discuss it further with the parties.

Subparagraph U67b Complaints Permitted to be Resolved Informally

The audit correctly found that the three informally resolved complaints reviewed in the audit were the type of complaint permitted to be resolved informally. The audit therefore found the DPD in compliance with the requirements of subparagraph U67b.

⁶⁶ Refer to the *Current Assessment of Compliance* for paragraph U97 for information regarding the Monitor's assessment of the audit, including the specific reasons for the Monitor's conclusion that the audit was non-compliant with the requirements of paragraph U97.

⁶⁷ The Monitor understands that the OCI does not have staff with adequate expertise in a force investigation and does not have the ability to file criminal charges if it were to become necessary as a result of the AOF investigation.

⁶⁸ This process is consistent with Training Directive 4.7.

⁶⁹ See subparagraph U67b.

Subparagraph U67c Complaints Referred within 5 Days of Receipt

The audit correctly found that the DPD was not yet in compliance with the requirements of subparagraph U67c. Although forwarded to the OCI, the majority of the complaints were not forwarded within 5 days of receipt.

Subparagraph U67d Periodic Notification of the Status of the Investigation

The audit correctly found that the DPD was not yet in compliance with the requirements of subparagraph U67d as they were unable to determine, based on a lack of documentation in the investigative files, whether or not the complainants were periodically notified of the status of the investigations.

Subparagraph U67e Written Criteria for IA and OCI Investigator Applicants

The DPD and OCI have developed written criteria for investigator applicants and are in compliance with the policy component of this subparagraph. The Monitor has not yet been able to determine whether the criteria have been implemented in the consideration of applicants. The Monitor will submit another document request to make this determination regarding any recent applicants.

Subparagraph U67f Mandatory Pre-Service and In-Service Training

The DPD and OCI have not yet implemented mandatory pre-service and in-service training for IA and OCI investigators. A lesson plan for this training has not yet been submitted to the Monitor.

Subparagraph U67g Investigations Completed within 60-Days of Receipt

The audit correctly found that the DPD was not yet in compliance with the requirements of subparagraph U67g because the OCI did not complete the complaint investigations within 60 days. Based on the audit working papers, the Monitor determined that external complaints were taking an average of 304 days to close, which is longer than the average of 240 days based on the last audit findings. This far exceeds the 60 day deadline required by this subparagraph.⁷⁰

Subparagraph U67h Notification of Outcome of Investigation

The audit appropriately found that the DPD was not yet in compliance with the requirements of subparagraph U67h. Although the OCI sends a letter that includes the outcome to the complainant at the close the investigation, subparagraph U67h also requires that if the outcome was sustained, the notification must include an appropriate statement regarding whether any non-

⁷⁰ The number of days range from 33 to 783. Three complaints selected for review by the AT took in excess of 700 days, 6 took in excess of 600 days, 8 took in excess of 500 days, and 6 took in excess of 400 days to resolve.

disciplinary corrective action or disciplinary action was taken. The OCI is unable to meet this requirement, as the action taken is not known at the time the investigation is closed. This issue was identified in the first 18 months after the effective date of the Consent Judgments. It is the Monitor's understanding that the OCI and the DPD are currently in discussions to resolve this issue.

Paragraph U68 External Complaint Review Process

The audit appropriately found that the DPD was not yet in compliance with the timeline requirements related to the review of external complaints. Although the audit found that the BOPC is generally completing its review within the 45-day requirement, and the OCI is generally reviewing the investigations within seven days of the supervisory review, the review required to be conducted by Chief of Police (or designee) is not being documented. As a result, and similar to previous findings by both the AT and the Monitor, the audit was unable to determine if the paragraph U68 requisite review has occurred.⁷¹

Paragraph U69 Disposition of External Complaint Investigations

As described in the *Current Assessment of Compliance* for paragraph U97, below, during the current quarter, the Monitor reviewed the AT's *EC&CI Audit*, which covered the requirements of paragraph U69, among others.⁷² The audit reported that all 59 of the formal external complaint investigations reviewed reached one of the required dispositions, and that the resolution was appropriate in all cases. However, the audit working papers did not demonstrate that the AT assessed the appropriateness of the resolution and, therefore, did not support the AT's finding of compliance for this paragraph.

Since it was the Monitor's intention to use the DPD's audit to assess compliance with the requirements of paragraph U69, the Monitor did not conduct its own review of OCI investigations during this quarter. The Monitor will select and review a sample of investigations during the next quarter during which this paragraph is scheduled for review and report its findings in the report for that quarter.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements of paragraphs U67-69. The Monitor finds the DPD in compliance with the implementation requirements of subparagraph U67b and not yet in compliance with the implementation requirements of subparagraphs U67c-d, U67f-h, and paragraph U68. The Monitor withholds a determination of the DPD's compliance with subparagraph U67a and has not yet evaluated the DPD's compliance with the implementation requirements of subparagraph U67e and paragraph 69.

⁷¹ It was first reported that this was an issue in the Monitor's Report for the Quarter Ending May 31, 2005.

⁷² 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, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending May 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U70 – General Policies

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

Background

The Monitor last assessed the DPD's compliance with paragraph U70 during the quarter ending May 31, 2007, at which time the Monitor found the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. In order to comply with the implementation requirement of paragraph U70, the DPD must formally 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, the committee had not finalized the processes.

Current Assessment of Compliance

During the current quarter, the DPD produced a finalized document defining the Policy Focus Committee. The purpose of the Policy Focus Committee is "to provide oversight of the established policy and procedure for management of the Detroit Police Department's (DPD)

written directive system...” This document continues to identify and define each stakeholder’s responsibilities. The Policy Focus Committee must meet, at a minimum, twice annually with meetings occurring during the first and last six months of the calendar year. Additional meetings may be scheduled as warranted by the Chair.

Based on the foregoing, the Monitor finds the DPD in 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, 2007, finding the DPD in compliance. The Monitor requested, received and reviewed the DPD’s *Protocol for Proposed Policy Revisions*, noting that it addressed the requirements of paragraph U71.

Current Assessment of Compliance

During the current quarter, the Monitor periodically accessed the DPD’s website, noting in each instance that no new additional policy was posted for review and comment. Additionally, there were no revisions to the DPD’s *Protocol for Proposed Policy Revisions*.

Based on the foregoing, the Monitor finds the DPD in continued compliance with paragraph U71.

VI. MANAGEMENT AND SUPERVISION

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

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI, during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2008.

A. RISK MANAGEMENT DATABASE

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

The Monitor has previously concluded that the DPD is in compliance with paragraphs U82-84 and subparagraphs U88a, b d, and e, as the DOJ provided the DPD with verbal conditional approval of the Data Input Plan and approved the Review Protocol and the Report Protocol. The DPD will remain in compliance with these provisions unless these documents are revised. In addition, the Monitor has discontinued monitoring compliance with subparagraph U88c, which requires the issuance of a Request for Proposal (RFP), as a result of the DOJ's agreement to allow the DPD to convert the Interim Management Awareness System (IMAS) into the Management Awareness System (MAS) without the use of an outside vendor, thereby obviating the need for a RFP.

The Monitor last assessed the DPD's compliance with paragraph U85, subparagraphs U88f and g, and paragraph U89 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess compliance with these paragraphs during the quarter ending February 29, 2008.

The Monitor last assessed the DPD's compliance with paragraphs U79-81 and U86-87 during the quarter ending May 31, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U79-81, 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 counseling 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 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 U79-82⁷³ and U86-87 during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance with the paragraphs, as the MAS was not yet fully developed or operational.

Current Assessment of Compliance

On November 9, 2007, the Court approved a stipulation of the parties requiring the City to have a beta version of the new Risk Management Database ready for testing by January 28, 2008. The Risk Management Database must be operational and fully implemented by July 24, 2008. The Court further ordered 1) the parties and the Monitor to meet on a monthly basis to discuss what actions have been taken during the previous month toward development of the new Risk Management Database, and 2) the City to present to the DOJ and the Monitor, on a monthly basis, evidence of satisfactory progress sufficient to justify a conclusion that completion of the new Risk Management Database by July 24, 2008 remains feasible.

In addition, if at any time the DOJ concludes that successful completion of the project within the time frames described above is unlikely, DOJ must notify the Court and the City. Within sixty days after receipt of notice, the City must issue an RFP to develop or complete development of the new Risk Management Database as was required by subparagraph U88c before it was amended. In that event, the requirements of subparagraphs U88d - U88g before they were amended shall be enforced, with dates adjusted as follows: the Review Protocol (subparagraphs U88d) shall be issued within five months after issuance of the RFP; the defendant shall select the contractor (subparagraph U88e) within seven months after issuance of the RFP; the beta version of the Risk Management Database (subparagraph U88f) shall be ready for testing within fifteen months after issuance of the RFP; and the Risk Management Database shall be operational (subparagraph U88g) within twenty-six months after issuance of the RFP.

During the current quarter, the Monitor attended monthly meetings regarding the MAS with the parties and the DPD. In addition, the DPD submitted documentation on the continuing progress made to date on the MAS Project Plan. Noted DPD accomplishments include:

- The Security Communications Alert Network (SCAN) team is continuing technical development of the Performance Evaluation and Enhancement Review Session (PEERS) process, report development, and the conversion of IMAS to MAS data.
- The Project Team met with representatives of DPD Training to provide an overview of the MAS process and to develop training approaches based on the implementation schedule.

⁷³ As described above, the DPD will remain in compliance with paragraphs 82, among other paragraphs, until such time as the DPD's Data Input Plan is revised.

- The SCAN and Information Technology Services (ITS) technical teams finalized the hardware/software tools and environment required for testing, training and production phases of MAS.
- The Project team completed the functional specifications for the Forms Input process.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraphs U79-81 and U86-87.

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, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2008.

C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual audits of all precincts and specialized units on eight areas of policing,⁷⁴ 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, subparagraph U94b and paragraph U99 during the quarter ending May 31, 2007, and with paragraph U92, subparagraphs U94a and c, and paragraphs U95-U98 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess compliance with subparagraphs U94b and U95a and paragraph U96 during the quarter ending May 31, 2008 and with paragraph U98 during the quarter ending February 29, 2008. The Monitor again assessed the DPD's compliance with paragraph U92, subparagraphs U94a, U94b, U95b and U95c, and paragraphs U97 and U99 during the current quarter. The results of our current assessments follow.

⁷⁴ Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

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 both the UOF CJ and COC CJ to ensure the audits occur with sufficient frequency and cover all DPD units and Commands.

Background

On August 27, 2007, the DPD submitted its 2007/08 Audit Protocol (AP). The Monitor conducted a review of the content of the AP and determined that the UOF and COC CJ audits were scheduled with sufficient frequency therein, and that the AP contained adequate standards for conducting and reviewing such audits in accordance with *Generally Accepted Government Auditing Standards*. However as of the end of that quarter, the DPD had not yet submitted all documentation demonstrating the dissemination of and training on the AP. The Monitor withheld a determination of compliance with paragraph U92, pending the receipt of such documentation.

Current Assessment of Compliance

During the current quarter, the DPD submitted documentation evidencing the dissemination of, and training related to, the 2007/2008 Audit Protocol. Additionally, the DPD maintained signed annual confidentiality declarations from all personnel who conduct DPD audits.

Based on the foregoing, 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 May 31, 2007, at which time the Monitor found that the DPD was not yet in 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

Since January 1, 2007, the DPD AT has distributed audits on all eight topics as required by the UOF CJ to the Chief of Police and COs. All but one of these audit reports included information that addressed the paragraph U93 requirement to include an examination of consistency throughout the DPD.⁷⁵ In mid-2007, OCR staff also began preparing *Audit Synopses* of Command-related deficiencies identified in audit reports and documenting that this information was forwarded to the Commands for action. These synopses are not necessary for compliance; however, the DPD believes they are useful to the COs as they provide an “at-a-glance” document for review.

On August 6, 2007, the DPD also began submitting numerous documents entitled *Response to Recommendations*. These *Response to Recommendations* appropriately document the DPD’s consideration of the audit recommendations in relation to systemic issues identified within the audit report and are a valuable step in furthering the DPD towards compliance with the substantive paragraphs. However, the *Response to Recommendations* do not address the requirements of paragraph U93 because the officer-specific audit findings that require corrective action, where appropriate, are not addressed in that documentation.

On November 20, 2007, the DPD submitted a document titled *Audit Follow-Up Protocol*.⁷⁶ The Monitor has completed its review of this document and determined that while it contains a process for taking action related to both Department-wide systemic deficiencies and deficiencies within each Command, it does not include a system that ensures COs take action in response to audit findings related to specific officers under their respective Commands that may require disciplinary or non-disciplinary corrective action.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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.

⁷⁵ The *Witness Identification and Questioning Audit* submitted in response to subparagraph U95c did not report its findings by District but rather by type of activity.

⁷⁶ According to the OCR staff, the *Audit Follow-Up Protocol* is intended to replace the “Corrective Action Needed” (CAN) system, which had previously been submitted by the DPD as the proposed method to achieve compliance with the requirements of U93; the CAN system was never implemented.

Background

The DPD submitted its first *UOF Investigations Audit* on August 31, 2007. As this was the last day of the previous quarter, the Monitor was unable to complete its review and evaluation of the DPD's compliance with subparagraph U94a during that quarter. During the quarter ending May 31, 2007, the Monitor found the DPD in non-compliance, as the audit required by this subparagraph was not submitted as of the end of that quarter, nor had it been submitted since the inception of the UOF CJ in July 2003.

The Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance, as there were substantial qualitative deficiencies in the *Prisoner Injury Investigations Audit* report submitted by the DPD's AT on January 31, 2007.

The DPD submitted the *Combined UOF and COC AOM Audit* in a timely manner on July 31, 2007.⁷⁷ Near the end of the previous quarter, on August 28, 2007 and September 4, 2007, the Monitor received working papers that were essential to the Monitor's review of the audit.⁷⁸ As a result, the Monitor was unable to complete its review and evaluation of the DPD's compliance with subparagraph U94c during the previous quarter. The prior audit of this topic, submitted by the DPD on August 31, 2006, was found to be in non-compliance, as it did not address all of the requirements of subparagraph U94c and contained a number of qualitative deficiencies.

Current Assessment of Compliance

Subparagraph U94a – Use of Force Investigations Audit

In order to assess the DPD's compliance with subparagraph U94a, the Monitor reviewed the *Use of Force Investigations Audit Report* submitted by the DPD's AT on August 31, 2007. The Monitor reviewed a sample of the investigations related to this audit and conducted an assessment of the audit work plan and working papers.⁷⁹ This was the first audit submitted by the AT of uses of force that did not occur in a holding cell.

⁷⁷ The UOF CJ *AOM Audit*, required by subparagraph U94c, is due every August 31st. The COC CJ *AOM Audit*, required by subparagraph C65c, is a semi-annual audit due January 31st and July 31st. In this audit, the DPD appropriately combined the two audits due August and July. Refer to the *Current Assessments of Compliance* for subparagraph U94c and C65c for further information on this combined audit.

⁷⁸ The Monitor has an ongoing document request for all audit working papers to be submitted either along with or soon after an audit report is submitted. These documents are critical to the Monitor's review of audits. On August 6, 2007, the Monitor sent a "reminder" to the DPD regarding this ongoing document request.

⁷⁹ The Monitor originally selected a sample of UOF investigations using a confidence interval of 95%, an error rate of +/-4%, and an expected proportion of success rate of 94%. However due to an early determination of non-compliance the Monitor stopped its testing. Additionally, because the AT did not test any FI investigations (see below), the Monitor conducted supplemental testing by selecting and reviewing a population of FI investigations.

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

- The AT's selected time period of April and May did not cover FI investigations, other than one JIST investigation (a CFD). Since FI is the main DPD entity that investigates serious UOF, the AT should have extended its time period in order to evaluate additional FI investigations. The AT did, however, adequately cover 22 Command investigations that closed in the month of April 2007.
- The AT's process for identifying the population of all investigations closed in the selected time period was flawed by inadequate completeness tests, a miscommunication between the AT and the FI regarding the number of investigations in the audit time period⁸⁰, and a lack of follow up with FI in relation to the lack of an audit population. As a result of the Monitor's inquiry into these issues, the Monitor identified at least four additional JIST investigations and one FI investigation that were closed within the AT's selected time period that were overlooked for this audit.
- The AT did not adequately evaluate the appropriateness of the investigators' conclusions, as required by paragraph U94; instead, the AT only assessed whether or not the investigators evaluated the use of force (as required by subparagraph U32f).⁸¹
- The Monitor identified a number of substantive errors in the AT's detailed working papers. For example, the AT's audit matrices indicated that investigations were continued when the complainant/subject either pled or was found guilty, when there was no information regarding the status of the case in the files examined by the AT. The more appropriate determinations would have been either "Unable to Determine" or "Not Applicable." The Monitor also noted several instances in which the AT determined that an extension request was appropriate despite the fact that no extension approvals were present.
- The Monitor noted a number of mathematical errors and other inconsistencies between the findings reported in the Executive Summary and the detailed section of the audit report.

Notwithstanding the above deficiencies, through its review of the investigations, the Monitor confirmed that the AT correctly concluded that the DPD is in compliance with paragraph U31 and not yet in compliance with paragraphs U27-30 and U32-41.

The results of this supplemental testing did not result in any changes to the Monitor's concurrence with the audit's findings of non-compliance with the paragraphs tested.

⁸⁰ The AT requested from FI a listing of all investigations that opened and closed within a one-month audit time period. Since the FI had no investigations that were both opened and closed within one-month, the FI responded that there were no investigations for the audit. However, the AT was actually requesting to review all investigations that had opened in that time period and all investigations that had closed in that time period.

⁸¹ The Monitor notes that the two previously submitted *UOFHC Audits* properly performed this assessment by independently evaluating the reasonableness of the officers' articulated actions regarding the level of force used (as required by paragraphs U14-22) and the DPD's UOF policies, and compared to the AT's evaluations.

Based on the above findings, the Monitor finds this audit non-compliant with the requirements of sub-paragraph U94a. In arriving at this conclusion, the Monitor determined that the number and nature of substantial performance-related deficiencies and the number and nature of administrative deficiencies had a significant impact on the quality of the audit. Due to the early determination of non-compliance the Monitor did not seek to fully evaluate the quantifiable items tested in this audit.

Subparagraph U94b – Prisoner Injuries Investigations Audits

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph U94b during the quarter ending May 31, 2008.

Subparagraph U94c – Allegations of Misconduct Investigations Audits

In order to assess the DPD's compliance with subparagraphs U94c and C65c, the Monitor reviewed the *Combined Allegations of Misconduct Audit*⁸² submitted by the DPD on July 31, 2007. The Monitor also reviewed a sample of the Command and IA investigations related to this audit and conducted an assessment of the audit work plan and working papers.⁸³

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

- The audit report was submitted on a timely basis and improved compared to prior *AOM Audit* reports. The audit was concise, made good use of tables and had few grammatical and spelling errors.
- The AT did not apply sampling procedures to the populations, but rather evaluated 100% of the 42 investigations identified that had closed within the selected time periods as follows:⁸⁴
 - 30 Command AOM Investigations (Non-Holding cell) closed in February 2007.
 - 10 IA AOM Investigations (Non-Holding cell) closed in February 2007.
 - 2 IA AOM Investigations in Holding cell that closed in January and February 2007.⁸⁵

⁸² The AT appropriately conducted the audits required for these two paragraphs simultaneously and submitted one combined audit report.

⁸³ The Monitor obtained and reviewed a sample 28 Command and IA AOM investigations that did not occur in a holding cell using a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%. In regards to the incidents that occurred in a holding cell, the Monitor reviewed the two investigations identified and reviewed by the AT.

⁸⁴ The AT did not identify any command level investigations of AOM that occurred in a holding cell since audit time period reviewed in the prior audit.

⁸⁵ The AT expanded the audit period to include January 2007, providing a more accurate and complete reporting of the IA AOM Investigations conducted.

Although paragraph U94 requires that the audit review a statistically valid sample of investigations, the AT appropriately opted to review 100% of a more recent population due to lack of compliance levels evident in the prior *AOM Audit*.

- The audit properly evaluated all of the substantive paragraphs related to this topic and determined that, overall, the DPD did not meet the requirements of paragraphs U27-30, U32-33, U66 and U67. The Monitor agrees with the AT's findings.
- The audit reported that all 59 of the formal external complaint investigations reviewed reached one of the dispositions required by paragraph U69, and that the resolution was appropriate in all cases. However, the audit working papers did not demonstrate that the AT assessed the appropriateness of the resolution and, therefore, did not support the AT's finding of compliance for paragraph U69.
- The AT properly addressed the inconsistency between the Consent Judgments and DPD policies related to the length of time required to complete AOM Command and Holding Cell investigations.
- The AT's matrix questions and other working papers were well-formatted and organized. Although the Monitor noted a few inconsistencies between the audit report and the audit matrices, these errors were not material to the overall quality of the audit.
- As noted by the AT, the DPD's inability to track misconduct investigations within the Commands continues to cause the audit populations to be incomplete. The Monitor endorses the AT's recommendation that the DPD develop and implement a Department-wide tracking system in this area.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U94c. In arriving at this conclusion, the Monitor determined that the audit contained no substantial performance-related deficiencies and the quantifiable items tested achieved a compliance rate of greater than 94%.

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.

Background

The Monitor last assessed the DPD's compliance with subparagraph U95a during the quarter ending August 31, 2007 finding that the DPD was not yet in compliance because the *Arrests Audit* submitted on April 14, 2007 contained substantive qualitative deficiencies.

The DPD submitted the *Stop and Frisk Audit* required by subparagraph U95b on August 31, 2007, the last day of the quarter. As such the Monitor was not able to conclude its assessment of this audit during the same period. The Monitor last assessed the DPD's compliance with subparagraph U94b in connection with its evaluation of the *Stop and Frisk Audit* submitted August 31, 2006, finding that the DPD was not yet in compliance, as the audit failed to identify and report a number of significant issues.

The DPD submitted the *Witness Identification and Questioning Audit* required by subparagraph U95c on August 31, 2007, the last day of the quarter. As such, the Monitor was not able to conclude its assessment of this audit during the same period. The Monitor last assessed the DPD's compliance with subparagraph U94c during the quarter ending November 30, 2006, finding that the DPD was not yet in compliance as a *Witness Identification and Questioning Audit* was not submitted since April 2005.

Current Assessments of Compliance

Subparagraph U95a – Arrest Audit

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph U95a during the quarter ending May 31, 2008.

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, 2007 and the associated audit workplan, working papers and fieldwork documents.⁸⁶ The Monitor's findings, which have been discussed with the DPD's AT, are as follows:

- The audit report was submitted on a timely basis by the required due date of August 31, 2007, and within six months of the stops and frisks evaluated in the audit. The scope of the audit adequately addressed all relevant sections of the UOF CJ and appropriately reported the

⁸⁶ The Monitor reviewed 100% of the sample reviewed by the AT except in relation to the officer's articulation of reasonable suspicion for which the Monitor selected a sample using a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%.

low number of stops and frisks reported by officers.⁸⁷ This was a significant unreported issue in the 2006 audit.

- The AT selected a three-day audit time period,⁸⁸ identified and reviewed activity logs, then randomly select stops and frisks from within those logs for review. The AT employed appropriate sampling techniques to select 121 stops and 66 stop and frisks⁸⁹ out of the total population. With the exception of one objective (the officer's articulation of reasonable suspicion), the AT stopped testing once they achieved a sample size based on a +/-10% error rate due to their early determination of non-compliance. The articulation of reasonable suspicion objective was tested utilizing the full sample, and was also non-compliant at an error rate of +/-4%. Based on its review of the DPD's audit work, the Monitor concurs with the AT's findings that the DPD did not achieve greater than 94% compliance with all of the requirements regarding investigatory stop and frisks: paragraphs U44-45.
- The Monitor reviewed the activity logs selected by the AT during the audit time period and determined that a significant number of stops and frisks had either not been identified or were incorrectly identified by the AT. Although the full impact cannot be quantified without significant further review by the Monitor, the effect was to compromise the AT's population of stops and frisks being tested for compliance.
- For three of the 16 officer activity logs included in the AT's testing, the Monitor disagreed with AT's findings that the activity logs had been submitted, as required under paragraph U45, by the end of the officers' shifts. As discussed with the AT, the pending introduction of revised activity logs that include a section requiring supervisors to sign, with a date and time, to evidence the receipt of a log should simplify the AT's testing and make this issue less open to interpretation.
- For 53 out of a sample of 54 activity logs reviewed by the Monitor, the AT correctly concluded as to whether or not the officer articulated reasonable suspicion for a stop and frisk. However, for two of the 53, the AT came to this conclusion when no reason for the stop and frisk was actually documented. These are difficult assessments for the AT to make, as the circumstances for each stop are unique and the information provided for these two frisks was not sufficient to make such an assessment. The Monitor recommends that in such instances the AT conclude that they are unable to make a determination rather than making a conclusion with insufficient information.
- With the exception of minor administrative issues, the Monitor found that the AT's work was well-organized and the audit trail flowed well through to the audit matrices and the report.

⁸⁷ The estimated number of stops reported averaged 80.7 per district per 24-hour period (compared to 71.8 per district per 24-hour period in 2006). The estimated number of stops reported with a related frisk averaged 6.6 per district per 24-hour period (compared to 1.6 per district per 24-hour period in 2006).

⁸⁸ March 15, 2007, April 7 and April 9, 2007.

⁸⁹ The AT separated the populations of stops from stops that also included a frisk.

The Monitor notes, however, that some of the issues described above could have been prevented if more cross-checks and quality control reviews had been performed.

- Although the overall quality of the audit report improved in comparison to the 2006 audit report, there were places where it lacked clarity, particularly in the Executive Summary. For example, the AT correctly identified that the population of daily detail sheets was complete and that the population of activity logs was missing 90 logs. However, the Executive Summary did not include this significant finding and instead indicated that the population of daily detail sheets was incomplete (although it was not) and text in the body of the report focused on the discrepancies between expected and actual population sources.

Based on the above findings, the Monitor finds that the DPD is not yet in compliance with the requirements of subparagraph U95b.

Subparagraph U95c – Witness Identification and Questioning Audit

During the current quarter, the Monitor completed its review of the *Witness Identification and Questioning Audit Report*, submitted by the DPD's AT on August 31, 2007 and the associated audit workplan, working papers and fieldwork documents.⁹⁰ The Monitor commenced a meeting with the DPD's AT to discuss the Monitor's findings, but this meeting was not concluded. The matters which were discussed and concluded with the DPD's AT are as follows:

- The audit report was submitted on a timely basis by the required due date of August 31, 2007; however, the Monitor notes that this is only the second audit conducted by the AT of this topic. The previous audit on this topic was submitted on April 1, 2005, and the audits due on August 31, 2005 and 2006 were skipped.
- Although the scope of the audit included all relevant sections of the UOF CJ, the objectives as formulated resulted in duplication of audit testing and some inconsistencies in the reported findings.⁹¹
- The audit included a number of different population sources due to the different policing activities under review, which required separate testing, analysis and reporting. Although the audit report was systematic in its layout, it contained more detailed information than was necessary, which detracted from the audit's main findings.
- The AT used creative methods to identify a population of material witnesses; the Monitor commends the AT for its efforts.
- For the AT's testing of criminal investigation interviews, the AT could have terminated its testing at 40 items, rather than 83, as the testing results became non-compliant at the +/- 6% error rate level.

⁹⁰ The Monitor selected for review 100% of the sample reviewed by the AT.

⁹¹ The Monitor is still assessing the impact of these issues on the overall determination of the audit's compliance.

- There were delays in providing the Monitor with all of the audit working papers for this audit, and the audit trail from the fieldwork documents to the matrices to the report was incomplete.
- The overall compliance rates reported in the Executive Summary and body of the audit report did not identify the extent of testing performed.
- Based on the Monitor's testing of the sample selected by the AT for criminal investigative interviews, interrogations, conveyances and material witness detentions, the Monitor concurs with the AT's findings that the DPD did not achieve greater than 94% compliance with all of the requirements for witness identification and questioning: paragraphs U46, U48, U57, U59, and U60.

Although the Monitor has completed its review of the AT's audit documents, the Monitor is currently evaluating its assessment of this audit. The Monitor intends to continue its meeting with the AT to finalize its assessment in early 2008. Consequently, the Monitor has elected to withhold a determination of the DPD's compliance with subparagraph U95c, pending the conclusion of a meeting early next quarter with the DPD's AT regarding the Monitor's findings.

Monitor's Recommendations

The Monitor recommends that the AT implement a quality review process at the population identification stage of its audits to prevent the population-related problems that occurred in the *Investigatory Stop and Frisk Practices Audit* from occurring in future audits of this topic, and other audits where a manual identification process is in place.

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 DPD submitted the *External Complaint and Complaint Investigation Audit* required by subparagraph U97 on August 31, 2007, the last day of the quarter. As such the Monitor was not able to include its assessment in the its report for the same period. The Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending November 30, 2006, finding that the DPD was not in compliance with the *External Complaint and Complaint Investigation Audit* submitted on August 31, 2006 due to specific qualitative deficiencies in the AT's assessment and reporting.

Current Assessment of Compliance

During the current quarter, the Monitor completed its review of the *External Complaint and Complaint Investigation Audit Report* submitted by the DPD's AT on August 31, 2007. The Monitor reviewed the associated audit workplan, working papers and selected investigations related to the audit fieldwork.⁹² The Monitor's findings, which have been discussed with the DPD's AT, are as follows:

- The AT appropriately chose to include external complaints that alleged force (allegation of force, or AOF) in addition to formally resolved external complaint investigations and informally resolved external complaints, rather than including this subpopulation in the UOF audit. However, the one-month time period selected for external AOF conducted by FI did not adequately cover the population, as no investigations were identified or reviewed. The AT should have extended the time period for FI AOF in order to identify a population for review. Conversely, the AT adequately covered AOF conducted by the Commands by selecting a six-month time period and identifying six investigations for review.
- As with the UOF audit submitted in connection with subparagraph U94a,⁹³ the AT did not adequately communicate with FI regarding the population of FI AOF investigations. This lack of communication was apparent based on the absence of information on this topic in the audit report, workplan or working papers. In order to gain an understanding of the lack of FI AOF population, the Monitor conducted an independent review of the processes associated with the DPD's handling of external complaints alleging force. Based on this review, the Monitor identified a systemic problem and a potential compliance issue with the way in which the DPD is handling the assignment and investigation of external complaints alleging non-serious force.⁹⁴
- The AT appropriately identified a population of formal external complaint investigations conducted by the OCI, and correctly applied sampling techniques and reviewed 59 formal investigations.
- The AT inappropriately tested informal complaints for compliance with the general investigative requirements contained in paragraphs U27-33 and with subparagraphs U69a-d and inappropriately concluded that the DPD's informal complaints were non-compliant with these requirements. Instead, the DPD's AT should have recognized that subparagraph U67b "permit[s] the informal resolution of complaints alleging only inadequate service or the

⁹² The Monitor's sample size was originally selected using the Monitor's methodologies; however, after evaluating the AT's population and identifying substantial errors in that area, the Monitor discontinued its review due to an early determination of non-compliance.

⁹³ Refer to *Current Assessment of Compliance* for subparagraph U94a.

⁹⁴ Serious AOFs are appropriately investigated by FI. Please see further information on this topic under the *Current Assessment of Compliance* for paragraph U67a.

complainants' innocence of a charge", and should have reported that the general investigative requirements paragraphs were not applicable to informal complaints.

- The AT conducted limited and insufficient completeness testing of informal investigations. The results from the prior audit's completeness testing revealed that 30 informal complaints were identified in the Command blotters that had not been reported on a CCR or forwarded to OCI. The AT should have conducted thorough completeness testing in the current audit to ensure that all informal complaints were identified and determine whether previously identified problems had been addressed.
- The audit stopped testing the requirements of paragraph U61 at +/-10% error rate due to an early determination of non-compliance; however, the Monitor determined that the AT should have continued its testing, as the DPD was in compliance at that error rate. The Monitor continued testing the audit sample of investigations and determined that the DPD was in compliance with the paragraph U61 requirement to receive, record, investigate and track external complaints.
- The audit correctly concluded that all of the 59 formal and 3 informal external complaints were assigned a unique identifier on a CCR, and the complaint description was provided to the complainant (when possible), as required by paragraph U66.⁹⁵
- The Monitor identified a number of other additional concerns with the AT's analysis of the investigations such as the use of N/A and UTD where it may have been more appropriate to use Yes or No. These issues were discussed with the AT.
- Notwithstanding the deficiencies described above, through its review of the AT's work and/or by conducting independent reviews, the Monitor verified the AT's findings in relation to the quality of the OCI and Command investigations and its findings that the DPD is not yet in compliance with paragraphs U27-33, U67c-d and U67g-h, U68, and C58-59 and the DPD is in compliance with paragraphs U61, U65, U67b and U69.

Based on the above findings, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph U97. In arriving at this conclusion, the Monitor determined that the number and nature of substantial performance-related errors had a significant impact on the quality of the audit. Due to the early determination of non-compliance, the Monitor did not seek to fully measure the quantifiable items tested.

⁹⁵ There is currently an open issue concerning how AOF complaints are investigated and the applicability of paragraphs U66, U67a and other Consent Judgment requirements. The parties and the Monitor will attempt to resolve these issues as soon as possible; the Monitor will report on the outcome in a future report.

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, 2007, 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 16, 2007. The Monitor has received minutes of that meeting and relies on them to make its findings for this quarter. The Monitor requests, however, that the DPD provide adequate notice in the event a meeting is cancelled and rescheduled (as was the case this quarter) so that the Monitor can attend as usual.

According to the minutes of the meeting, 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, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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, 2007. 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, 2007, finding that the DPD was not yet in compliance. 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. The Monitor did not receive any additional semi-annual reviews from the DPD as of the end of that quarter.

Current Assessment of Compliance

During the current quarter, the Monitor determined that three lesson plans submitted by the DPD, the *Supervisory Leadership and Accountability Lesson Plan*, the *Use of Force Lesson Plan*, and the *Law of Arrest, Search and Seizure Lesson Plan* met the requirements of the underlying paragraphs. The Monitor recognizes the good work of the Training Division and the OCR, and notes that all three resubmitted lesson plans incorporated compliance requirements and recommendations offered by the Monitor.

The DPD has not conducted the review of the training required by paragraphs U106 and has not submitted the required report of the review to the Monitor and DOJ. The DPD indicated in its Seventeenth Quarter Status Report that it has determined that it will be more advantageous to begin a review process of the entire UOF and A&D training curriculum at the time all related lesson plans have been implemented.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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 Detention 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, 2007, finding that the DPD was not yet in compliance. In its Thirteenth Quarter Status Report, the DPD stated that the requirements of this paragraph are being met by the DPD's

response to paragraph U106. The Monitor indicated that it does not believe that the DPD's response under paragraph U106 thus far adequately demonstrates its compliance with the type of management approach that is required by paragraph U107. In addition, the Monitor determined that a limited number of DPD instructors had completed the Michigan Department of State Police's Instructor Development training program.

Current Assessment of Compliance

In its Seventeenth Quarter Status Report, the DPD indicated that an organizational matrix previously recommended by the Monitor during TA is being utilized to track the development, review, and approval processes of all Consent Judgment-related lesson plans. The DPD also reports that it is in the process of developing the matrix in an attempt to meet a broad array of Consent Judgment training requirements.

On November 20, 2007, the Monitor submitted a document request to obtain additional information on the DPD's implementation of paragraph U107 and the DPD's recently implemented standardized roll call training program.⁹⁶ The DPD responded to questions about the roll call training program on November 23, 2007. The DPD confirmed that the roll call training is not intended to fulfill or partially fulfill Consent Judgment requirements; however, "it is a supplement to training and reinforces the DPD's policies and procedures to its members for the purpose of ensuring compliance with the Consent Judgment requirements, as well as any other training, legal or other high risk issues that exist." The Monitor commends the DPD for the development and implementation of this program.

The DPD has not yet fully implemented any of the subparagraphs in U107.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U107.

⁹⁶ The DPD provided the majority of the information requested by the document request after the end of the quarter on December 19, 2007. For subparagraphs U107a and d, the DPD has indicated that the 2008 training schedule is still being developed. In regards to subparagraphs U107 b and d, as reported under paragraph U106 herein, during this quarter the DPD effectively developed curricula for the *Supervisory Leadership and Accountability*, the *Use of Force*, and the *Law of Arrest, Search and Seizure Lesson Plans*. For subparagraph U107c, the DPD indicated that four *UOF Lesson Plan* and three *Law of Arrest, Search and Seizure Lesson Plan* instructors have been selected and qualified. The qualification packets for these individuals were also requested but have not yet been provided. The DPD also indicated that three DPD members (who are different from the seven instructors just mentioned) completed the MCOLES Instructor Development Training Course. In regards to subparagraphs U107e and f, the DPD indicated that the pre- and post-tests are used to evaluate training and conduct needs assessments.

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, 2007, finding that the DPD was not yet in compliance. The DPD indicated that it was continuing to enter training records into the MCOLES Information Tracking Network (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. Furthermore, although the DPD plans to use its MAS in order to maintain training records, the DPD had not fully implemented the MAS as an operational component for tracking and documenting all individual training records for all officers.

Current Assessment of Compliance

According to the DPD, they have continued to enter training records into MITN to track DPD sworn personnel training. However, the vast majority of the training records that meet the requirements of this paragraph have not been entered into MITN. As previously reported, according to the DPD, the Department ultimately plans to use its MAS in order to maintain training records. However, the DPD has not yet fully developed or implemented the MAS. According to the new deadlines agreed upon by the parties and ordered by the court, the MAS system is required to be fully operable by July 24, 2008.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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, 2007, finding that the DPD was not yet in compliance. The Monitor indicated that until all lesson plans are approved and delivered by instructors who are selected pursuant to paragraph U107, the Monitor will be unable to assess the requirements of this paragraph.

Current Assessment of Compliance

As reported above, the Monitor has approved the *Use of Force, Supervisory Leadership and Accountability*, and *Law of Arrest, Search and Seizure* lesson plans submitted by the DPD. However, until approved lesson plans are delivered by instructors who are selected pursuant to paragraph U107, and the scenario-based portions of the training are observed during classroom instruction, the Monitor will be unable to assess the requirements of this paragraph.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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, 2007, finding the DPD in compliance. The DPD held its quarterly meeting with the City Law Department, which the Monitor attended. On May 28, 2007, the DPD issued its Risk Management Newsletter which contained information discussed at the meeting. The DPD also made the newsletter available on the Department's Intranet.

Current Assessment of Compliance

On November 19, 2007, the DPD held its quarterly meeting with the City Law Department. A member of the Monitor's team attended this meeting, the entirety of which was devoted to lawsuit payouts. This was the first meeting that included representatives from the Wayne County Sheriff's Office, Wayne County Corporation Counsel and the 36th District Court. This is the first of many anticipated meetings to address this topic.

On November 20, 2007, 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 November 30, 2006, finding that the DPD was not yet in 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. As reported in previous quarterly reports, the Monitor still had not been provided with documentation indicating that non-DPD City employees other than managers from Neighborhood City Halls had received copies and an explanation of the UOF CJ. In addition, although numerous policies have been in effect in excess of 120 days, for the vast majority of the policies the DPD has not yet implemented these requirements. Lastly, 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, which was under development. Although the DPD stated that an update on the progress of this online learning tool would be provided during the Fourteenth Quarter, no such update was provided and the DPD did not discuss the E-Learning training platform in its Fifteenth Quarter Status Report.

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.⁹⁷ The rosters or other information submitted must identify which City agency the employee is from.⁹⁸

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 vast majority of the policies the DPD has not yet implemented these requirements. For example, the Monitor requested training records⁹⁹ on December 12, 2006 in order to assess the implementation requirements of paragraph U111; on January 16, 2007, the DPD indicated that no training to date had occurred. The DPD's Seventeenth Quarter Status Report indicates that the DPD is proceeding with its plans to train the entire Department on all approved Consent Judgment related policies and Consent Judgment paragraphs, once all lesson plans have been

⁹⁷ As reported in the Quarters Ending November 30, 2005, May 31, 2006, November 30, 2006 and May 31, 2007.

⁹⁸ The DPD's Thirteenth Quarter Status Report indicated that training was provided for non-DPD City employees at the end of that quarter, on November 28 and 29, 2006. The Monitor was not provided with documentation regarding what this training consisted of or who was present.

⁹⁹ This DR requested training records for U74-77.

approved by the Monitor. As reported elsewhere in this section, the Monitor has approved three lesson plans and submitted a memorandum on a fourth after the end of the current quarter. Nevertheless, the requirements of paragraph U111 have not yet been met.

The DPD has previously 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. Although the DPD stated that an update on the progress of this online learning tool would be provided during the Fourteenth Quarter, an update was not provided. The Monitor has not received any updated information on the E-Learning training platform.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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, 2007. 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;
- 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, 2007, finding that the DPD was not yet in compliance. Although the *Use of Force Lesson Plan* submitted by the DPD did not fully address the requirements of paragraph U112, the Monitor was encouraged by the effort demonstrated in developing the lesson plan.

Current Assessment of Compliance

As report above, the Monitor approved the *Use of Force Lesson Plan* during the current quarter, and commends the DPD for its good work in developing this complex document. The DPD is currently developing and has not yet provided the Monitor with a copy of its 2008 Training Schedule to include delivery of this lesson plan.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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.

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, 2007, finding that the DPD was not yet in compliance. According to the DPD, the *Firearms Tactical Training and Qualification Lesson Plan* previously submitted by the DPD and reviewed by the Monitor was being revised and would be submitted to the Monitor during the next quarter.

Current Assessment of Compliance

The Monitor received the DPD's revised *In-Service Bi-Annual Firearms Qualification Lesson Plan* on November 13, 2007.¹⁰⁰ The Monitor recognizes that the DPD incorporated many of the suggestions and recommendations contained in the Monitor's previous memorandum, dated November 8, 2006, which resulted in significant improvements in the content and the structure of the revised lesson plan. However, the Monitor concluded that there continue to be several important areas of the lesson plan that require additional modification in order to meet the requirements of the Consent Judgment.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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, 2007. The Monitor again assessed the

¹⁰⁰ The Monitor's review process was not completed as of the close of the reporting period; the Monitor completed its review and provided the Monitor provided feedback to on the lesson plan through a written memorandum dated December 16, 2007.

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, 2007, finding that the DPD was not yet in compliance. The DPD indicated that it intends to incorporate the provisions of this paragraph into the *Witness Identification and Questioning Lesson Plan*. However, the DPD has not submitted this lesson plan.

Current Assessment of Compliance

As report above, the Monitor approved the resubmitted *Law of Arrest, Search and Seizure Lesson Plan* during the current quarter. The Monitor recognizes the good work of the DPD in refining this document. The DPD is currently developing and has not yet provided the Monitor with a copy of its 2008 Training Schedule to include delivery of this lesson plan.

Based on the foregoing, the Monitor finds that the DPD is not yet in 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, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2008.

VIII. MONITORING, REPORTING, AND IMPLEMENTATION

Paragraph U139 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. The paragraph requires that any directive to reopen an investigation by the Monitor be given within a reasonable period following the investigation's conclusion and be given prior to the time when the disposition is officially communicated to the subject officer. Although the Monitor has requested various investigative files for review, as the DPD pointed out in its Fifteenth Quarter Status Report, the files reviewed usually closed several months prior to the review. The Monitor did not take into account whether it was a reasonable period since closing and did not have knowledge as to whether the disposition had been communicated to the subject officer. The Monitor has not yet requested that a mechanism be developed for meeting the restrictions of this paragraph regarding when an investigation can be reopened. However, a mechanism for taking these matters into account must be developed before the requirements of this paragraph can be carried out properly.

As reported herein, the DPD submitted its first *UOF Investigations Audit* on August 31, 2007, which the Monitor concluded was non-compliant with the requirements of subparagraph U94a. Although this was a non-compliant audit, the Monitor confirmed that the AT correctly concluded that the DPD is in compliance with paragraph U31 but not yet in compliance with paragraphs U27-30 and U32-41. Once again, the requirements of paragraph U139 will become more pertinent when the DPD begins to achieve compliance with these investigative requirements.

As reported previously, the Monitor will no longer make a compliance finding with regard to this paragraph but, rather, will report instances in which the Monitor directs the DPD to reopen an investigation and the results thereafter.

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, 2007.

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,¹⁰¹ while others do not.¹⁰² 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 instruction¹⁰³ 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 (FSP) 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.¹⁰⁴ The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending November 30, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

¹⁰¹ See, for example, paragraph C39 – Cleanliness of Cells and paragraph C40 – Cleaning Policy.

¹⁰² See, for example, paragraph C45 - Access to Toilets and Potable Water.

¹⁰³ As described in the Introduction to the Methodologies, this is the Policy Component of compliance.

¹⁰⁴ 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-C21 – 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 LSC.

Paragraph C15 requires the DPD to develop and implement a comprehensive fire detection, suppression and evacuation program¹⁰⁵ for all holding cells, and the buildings that contain them, in accordance with the requirements of the LSC 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.

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.¹⁰⁶

¹⁰⁵ 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).

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 paragraphs C14-C21 during the quarter ending November 30, 2006, finding the DPD in compliance with paragraphs C20-21 and not yet in compliance with paragraphs C14-19. 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 LSC since the Monitor's previous assessment. The City has committed to both moving forward with their plans to construct a new Central Holding Facility to house detainees in the future and retrofitting the existing facilities containing holding cells in an effort to achieve compliance with the Consent Judgment paragraphs. Additionally, the DPD developed, but had not fully implemented nor disseminated a comprehensive FSP for all buildings that maintain holding cells, had not fully complied with all of the LSC in each building nor had they developed a consistent method for ensuring that all fire safety equipment contained within these facilities was routinely inspected, tested and maintained.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs C14-21, the Monitor reviewed the *Fire Safety Practices and Policies Audit* submitted by the DPD on July 31, 2007, which was required by paragraph C66. The Monitor also conducted supplemental onsite inspections of all DPD buildings containing holding cells.¹⁰⁷

The *Fire Safety Practices and Policies Audit* included compliance assessments of the specified requirements included within paragraphs C14-21 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C66 and the Monitor was able to rely upon the audit's findings.¹⁰⁸

The HCCC/AT, along with the DFD Fire Marshal, conducted inspections of all buildings containing holding cells during their annual (regular and periodic) LSC inspections, required by

¹⁰⁶ 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.

¹⁰⁷ The Monitor conducted on-site inspections of DPD buildings containing holding cells (Northwestern, Schaefer Station / Southwestern Annex, Western, Northeastern and Eastern) on November 7, 2007, November 13, 2007, November 21, 2007, and November 28, 2007.

¹⁰⁸ Refer to the *Current Assessment of Compliance* for paragraph C66 for information regarding the Monitor's assessment of the audit.

paragraph C14. The HCCC/AT confirmed that not all DPD fire safety practices and policies ensure compliance with the applicable COC CJ paragraphs, and provisions of the LSC, and determined that staff is not adhering to all of the fire safety practices and policies. Following are the Monitor's and the AT's specific findings:

Paragraph C14 – LSC Compliance

The DPD's audit and Monitor's supplemental on-site inspections determined that the DFD Fire Marshal conducted its regular and periodic (annual) LSC inspections of all DPD buildings containing holding cells, as required. However, each of the DPD buildings containing holding cells failed to comply with all LSC requirements.

Paragraph C15 – Comprehensive Fire Detection, Suppression and Evacuation Program

The DPD's audit and Monitor's supplemental on-site inspections determined that the DPD met some but not all of the requirements of paragraph C15. The DPD developed a Comprehensive Fire Detection, Suppression and Evacuation Program (FSP and related policies) and the program has been reviewed and approved in writing by the DFD. There have been no reported revisions to the program since the initial review and approval. However, the DPD has not yet fully implemented the FSP, as evidenced by the DPD's lack of compliance with paragraphs C16-19 (see immediately below).

Paragraph C16 – Development of the Fire Safety Program

The DPD's audit and Monitor's supplemental on-site inspections determined that the DPD did not meet several requirements of paragraph C16:

- The DPD did not meet the requirement to install fire-rated separations in all buildings containing holding cells.⁸
- The DPD did not meet the requirement to install smoke detection systems in all District buildings maintaining holding cells.¹⁰⁹
- The DPD and DOJ continue to discuss the requirements for sprinkler systems in the holding cells area of Schaefer Station / Southwestern Annex District building.

⁸ The Schaefer Station / Southwestern Annex, Eastern and Northwestern District facilities did not have the required number of two-hour fire separation doors installed.

¹⁰⁹ The Eastern district has a partial fire alarm system, which is in violation of National Fire Protection Association (NFPA) Section 72, *National Fire Alarm Code*®, 2002 Edition.

Paragraph C17 – Implementation of the Fire Safety Program

The DPD's audit and Monitor's supplemental on-site inspections determined that the DPD met some but not all of the requirements of paragraph C17.

- The DOJ indicated its initial approval of the FSP on May 23, 2006. The DFD conducted its annual review and approved the FSP on July 30, 2007.¹¹⁰
- Although the DPD has disseminated the FSP by posting it on the DPD's Intranet and placing a copy in each District located in a clearly marked red binder at each operations desk, based on the lack of full implementation of the FSP as described below, District staff do not currently have a clear understanding of their responsibilities under the FSP. Although the Monitor does not expect that each member receive an individual copy of the FSP, relevant DPD personnel must receive the associated training in order for the information contained therein to be effectively implemented.
- The Monitor determined that the following components of the FSP have not been implemented:
 - No documented process for providing detainees with a Fire Safety Orientation for Detainees (including posted signage) was available at any District building maintaining holding cells.
 - No documentation of the establishment of a District Fire Safety Committee that meets at least once per quarter was available at any District building maintaining holding cells.
 - Although evacuation route diagrams are posted throughout buildings, they are paper documents inserted into plastic sleeves that are not permanently affixed to the wall and can therefore be easily tampered with, moved or destroyed.

Paragraph C18 – Interim Fire Safety Measures

The DPD's audit and Monitor's supplemental on-site inspections determined that the DPD met some but not all of the requirements of paragraph C18:

- During testing of the smoke alarm system, three¹¹¹ of six (50%) Districts did not meet the requirement to ensure enunciation of a positive alarm sound throughout the building.¹¹²

¹¹⁰ The DFD initially approved the FSP on April 26, 2007.

¹¹¹ The Northeastern, Eastern, and Western Districts.

¹¹² The DFD has indicated that DPD buildings maintaining holding cells should only have one fully operable smoke detector system. They have recommended that the DPD remove all wireless smoke detectors in buildings that have both a hard wired system and wireless detectors.

- The DPD met the requirement that all District buildings maintaining holding cells ensure that adequate means are available for detainees to immediately report emergencies to staff by ensuring that a minimum of two Police Detention Officers (PDOs) / Detention Facility Officers (DFOs) are assigned and stationed in the holding cell area.
- The DPD met the COC CJ requirement to have automatic back-up power systems installed at each District building maintaining holding cells. Documentation exists at each location detailing the testing and maintenance of the systems. Although each generator was within an enclosed and locked fenced area, the DPD failed to meet the LSC requirement that all automatic back-up power systems have adequate safeguards from vandalism and sabotage, as several of the canisters (doors allowing entry into the mechanical area of the generator) were left unlocked. Additionally, the Monitor determined that no tests of the automatic back-up power systems have been conducted to determine if they 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 District buildings maintaining holding cells as required by the LSC and the COC CJ. Additionally, several identified two-hour rated fire doors were propped in the open position at several Districts.¹¹³
- Two District buildings maintaining holding cells had two-hour rated fire separation doors that did not have working self-closers and/or positive latching hardware.¹¹⁴
- Three District buildings maintaining holding cells had means of egress that were compromised by the presence of storage and other impediments.¹¹⁵
- Five District buildings maintaining holding cells did not have all required exits fully marked and all means of egress sufficiently illuminated.¹¹⁶

Paragraph C19 – Testing of Fire Safety Equipment

The DPD's audit and Monitor's supplemental on-site inspections determined that the DPD met some but not all of the requirements of paragraph C19:

¹¹³ During on-site inspections, the Monitor observed that two-hour rated fire doors propped open in the Schaefer Station / Southwestern Annex, Northwestern and Northeastern Districts.

¹¹⁴ Eastern and Northwestern Districts.

¹¹⁵ Eastern, Northwestern, and Northeastern Districts.

¹¹⁶ Western, Schaefer Station / Southwestern Annex, Eastern, Northwestern and Northeastern.

Sprinkler Systems

- The DPD met the requirement to test and inspect the sprinkler systems. The DPD retained documentation regarding testing and inspecting being conducted by an Independent Qualified Source (IQS) with a certificate of fitness.
- The DPD met the requirement to maintain the sprinkler system.
- The DPD did not have documentation and retention of records verifying maintenance of sprinkler systems by an IQS.

Fire Alarm Systems

- Two District buildings maintaining holding cells did not have operable fire alarm systems.¹¹⁷
- The DPD met the requirement to test and inspect the fire alarm systems; an IQS with a certificate of fitness conducted the tests.
- The DPD did not meet the requirement to conduct periodic maintenance of the fire alarm systems.
- The DPD did not have documentation and retention of records verifying maintenance, testing and inspection of the fire equipment.

Manual Fire Extinguishers

- The DPD met the requirement to have the manual fire extinguishers inspected, tested, and maintained. The company manufacturer or and IQS with a certificate of fitness performed the task.
- The DPD adequately documented the testing, inspection and maintenance activities.

Exit Signs and Emergency Lighting

- Two District buildings maintaining holding cells did not have functional exit lights.¹¹⁸
- The DPD did not meet the requirement to have the emergency signs and lighting inspected and tested.
- The Northwestern and Southwest annex did not have all exit signs continuously illuminated.

Paragraph C20 – Smoking Policy

¹¹⁷ Western and Eastern Districts.

¹¹⁸ Northwestern District and Schaefer Station / Southwestern Annex.

Neither the Monitor nor the DPD's audit found evidence of smoking in holding cells of DPD buildings containing holding cells. Evidence of smoking was found in several District buildings maintaining holding cells.¹¹⁹ However, smoking in the buildings but not in the holding cells, themselves, would be a violation of DPD Policy and the Michigan Clean Indoor Act, but would not be a violation of the COC CJ.

Paragraph C21 – Storage of Flammable Liquids

Both the Monitor's and the DPD's audit found that all District buildings maintaining holding cells met the requirements to properly store flammable and combustible liquids.

Based on the foregoing, the Monitor finds that the DPD is in compliance with paragraphs C20-21; the Monitor finds that the DPD is in compliance with the policy requirements of paragraphs C14-19,¹²⁰ but has not fully implemented the requirements of these paragraphs.

Recommendations

The Monitor recommends that once the DPD has implemented the various components of the FSP that it uses those components to achieve compliance with specific requirements in the COC CJ. For example, once the DPD creates a Fire Safety Committee for each District as required by the FSP, the committee could utilize its quarterly meetings to begin to fully track the processes associated with fire safety (fire safety equipment inspection, maintenance, and testing; two-hour rated doors maintained in proper working order and properly equipped) to comply with COC CJ paragraphs.

Additionally, the DPD should evaluate the FSP and integrate the staff-specific information contained in the FSP into the Police Detention Officer Training Lesson Plan.

¹¹⁹ Cigarette butts were observed on the garage floor and directly outside the perimeter of the Eastern, Northwestern and Northeastern Districts.

¹²⁰ The DPD's compliance with policy requirements has been achieved through the development of the FSP, its approval by both DFD and DOJ, and its availability to staff via the Intranet. However, refer to Monitor's related recommendation herein.

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 November 30, 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 November 30, 2006, finding that the DPD was not yet in 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 not yet in compliance with these paragraphs.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C23.

Paragraph C24 – Emergency Preparedness Program Development

Paragraph C24 requires the DPD to develop a comprehensive emergency preparedness program (CEPP or EPP), 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 approved program must be reviewed and approved in writing by the DFD, at a minimum of once per year and prior to any revisions. 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 November 30, 2006, at which time the Monitor found that the DPD was not yet in compliance with the requirements of this paragraph. Although the Emergency Response Plans (ERPs) had been posted on the Department's Intranet and placed in clearly marked red binders at each District's operation desk, this method of dissemination, without more, seemed to be ineffective given the lack of implementation of the associated procedures.

Current Assessment of Compliance

The *Emergency Preparedness Program Audit* included compliance assessments of the specified requirements included within paragraphs C23-25 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C67 and the Monitor was able to rely upon the audit's findings.¹²¹

The following reflects the Monitor's and AT's findings:

- The *Emergency Preparedness Program Audit* revealed significant operational inconsistencies in the ERPs for each District building containing holding cells. In addition, the ERPs varied in terms of formatting and terminology and did not reflect actual practices.¹²² The AT is currently collaborating with other DPD staff and the Monitor and rewriting the ERPs for each District.¹²³
- The DPD met the requirement of having the EPP annually reviewed and approved by the DFD.¹²⁴
- During the HCCC/AT audit 21 of 36 (or 58%) of the PDOs who were interviewed could not demonstrate knowledge of all of their responsibilities under the EPP.¹²⁵

¹²¹ Refer to the *Current Assessment of Compliance* for paragraph C67 for information regarding the Monitor's assessment of the audit.

¹²² Cellblock supervisors are expected to perform certain duties in emergency situations, but the job class is not identified in any of the District ERPs.

¹²³ See recommendation below regarding the dissemination of the revised ERPs.

¹²⁴ Notification of the DFD review and approval of the EPP occurred on July 31, 2007.

¹²⁵ Emergency Preparedness Program Audit Report submitted on July, 31, 2007

- The Monitor and the Audit Team found that with the exception of the Detroit Receiving Hospital (DRH), the DPD performed and maintained documentation of fire drills for all buildings containing holding cells, on all shifts, every six months as required. However, the documentation did not include sufficient details as required by the COC CJ and the LSC.²⁹
- The DPD failed to meet the requirement to document the start and stop times, staff members who participated, a summary of the drills and an evaluation of the success of the drills for each fire drill that was conducted.

Similar to the DPD's dissemination of the FSP describe above, the DPD has disseminated the ERPs via the DPD's Intranet and placed a copy in each District located in a clearly marked red binder at each operations desk. However considering the high percentage of members who could not demonstrate their responsibilities under the ERP, the Monitor similarly finds that the associated training must be delivered to relevant DPD personnel in order to effectively implement the information contained in the ERPs.¹²⁶

Based on the foregoing, the Monitor finds that the DPD is not yet in 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 November 30, 2006, at which time the Monitor found that the DPD was not yet in compliance with the requirements of this paragraph. Holding cell staff at each District demonstrated an ability to identify security keys by touch. 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 required.

²⁹ DPD and DRH security officers have agreed to begin a new process whereby DPD staff will be included in future DRH fire drills and DPD staff will be on-site to perform the required evaluation and documentation.

¹²⁶ Similar to the FSP, the Monitor would not expect that each member receive an individual copy of the ERP especially considering that certain aspects of the ERPs are unique to each District such as the floor plans and evacuation routes.

Current Assessment of Compliance

The *Emergency Preparedness Program Audit* included compliance assessments of the specified requirements included within paragraphs C23-25 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C67 and the Monitor was able to rely upon the audit's findings.¹²⁷

The following reflects the Monitor's and AT's findings:

- During testing the DPD holding cell staff demonstrated an ability to identify cellblock keys by touch.
- The DPD has not met the requirement to ensure routine inventory, testing and maintenance of keys and locks.
- The DPD has developed but not fully implemented a procedure requiring the documentation of key and lock testing and inventory on an auditable form, "Fire Drill Documentation Log" (DPD 703). This procedure is performed too infrequently, and does not address the "routine testing and inventory: requirement of paragraph C25."¹²⁸ Some Districts are testing the keys and locks at the beginning of their respective shifts and documenting circumstances when a key or lock is inoperable in the Districts maintenance log book.
- Some District buildings maintaining holding cells are documenting key and lock inventory in the desk blotter, which is a non-auditable format.
- The DPD has not implemented a uniformed procedure for performing and documenting key and lock maintenance.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C25.

¹²⁷ Refer to the *Current Assessment of Compliance* for paragraph C67 for information regarding the Monitor's assessment of the audit.

¹²⁸ Routine testing, inventory and maintenance of keys and locks should be conducted frequently, as they are critical to maintaining a safe and secure environment and ensuring that staff can respond appropriately in the event of an emergency.

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 detainees. 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 May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2008.

IV. PRISONER SAFETY POLICIES

This section of the COC CJ comprises paragraphs C35-38. It requires the DPD to develop and implement prisoner safety policies for all facilities that maintain holding cells. 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 August 31, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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 concluded that the DPD is in compliance with paragraphs C44 and C46, which respectively require the DPD to ensure that lighting in all cell block areas is sufficient to reach 20 foot-candles of illumination at desk level and in personal grooming areas and that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.¹²⁹

¹²⁹ The Monitor will not assess compliance with paragraph C44 again unless alterations are made to the lighting fixtures or other conditions arise that affect the sufficiency of the lighting in the cell block areas. The Monitor will

The Monitor last assessed the DPD's compliance with paragraphs C39-45 during the quarter ending August 31, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

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 detainees 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 May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2008.

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 August 31, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2008.

VIII. PERSONAL HYGIENE POLICIES

This section of the COC CJ comprises paragraph C51 only. The Monitor last assessed the DPD's compliance with paragraph C51 during the quarter ending August 31, 2007, and is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2008.

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

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, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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, 2007, and is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending February 29, 2008.

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 May 31, 2007. 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 May 31, 2007. Although the Monitor found the DPD in compliance with the policy requirements of the paragraphs, the Monitor did not evaluate compliance with their implementation requirements. The AT's *AOMHC Audit*, submitted on January 31, 2007 found the DPD in non-compliance with both paragraphs; however, the audit only tested three investigations, and the AT was scheduled to submit its *EC&CI Audit* required by paragraph U97 on August 31, 2007. Since paragraphs C58-59 specifically concern external complaints, the Monitor deferred its assessment of the DPD's compliance with the implementation requirements of these paragraphs so that the review could be conducted in conjunction with its review of the *EC&CI Audit*.

During the quarter ending November 30, 2006, the Monitor found the DPD in compliance with the policy requirements of paragraphs C58-59 but did not assess compliance with the implementation requirements of the paragraphs. The Monitor had intended on relying upon the *External Complaint and Compliant Investigations Audit*, which was submitted by the DPD's AT on August 31, 2006; however, the findings regarding paragraph C58 could not be substantiated and paragraph C59 was not evaluated in the audit.

Current Assessment of Compliance

As described above in the *Current Assessment of Compliance* for paragraph U61, the DPD's AT submitted the *EC&CI Audit Report* on August 31, 2007. The audit evaluated the DPD's compliance with paragraphs C58-59, among others, finding the DPD in non-compliance with both. The audit included two external complaints regarding incidents that occurred in a holding cell, one formally resolved and investigated by the OCI and one AOF that was conducted at the Command level. The AT did not separate the findings regarding these two investigations within the audit report but, rather, inappropriately combined the findings with the non-holding cell incidents. As a result, the Monitor conducted an independent review of the two holding cell incidents and noted the following:

Regarding paragraph C58, both incidents alleged that a force had occurred. One investigation that involved a possible force and was potentially criminal was inappropriately conducted by the OCI. It should have been referred to and conducted by the IA/FI. The other incident also alleged force and was inappropriately conducted by the Command where the incident was alleged to have occurred. Under the consent judgment, the Command should have referred the investigation to OCI and/or to the IA/FI.

Regarding paragraph C59, both investigations had numerous deficiencies with regard to the conduct and review of external complaints required by DPD policies, such as a failure to interview all involved officers, a lack of documented supervisory review, and failure to timely complete the investigation.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraphs C58-59.

XII. GENERAL POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending May 31, 2007. 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, 2007, at which time the Monitor found that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. In order to comply with the implementation requirement of paragraph C60, the DPD must formally 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, the committee had not finalized the processes.

Current Assessment of Compliance

During the current quarter, the DPD produced a finalized document defining the Policy Focus Committee. The purpose of the Policy Focus Committee is "to provide oversight of the established policy and procedure for management of the Detroit Police Department's (DPD) written directive system..." This document continues to identify and define each stakeholder's responsibilities. The Policy Focus Committee must meet, at a minimum, twice annually with

meetings occurring during the first and last six months of the calendar year. Additional meetings may be scheduled as warranted by the Chair.

Based on the foregoing, the Monitor finds the DPD in 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, 2007, finding the DPD in compliance. The Monitor requested, received and reviewed the DPD's *Protocol for Proposed Policy Revisions*, noting that it addressed the requirements of paragraph C61.

Current Assessment of Compliance

During the current quarter, the Monitor periodically accessed the DPD's website, noting in each instance that no new additional policy was posted for review and comment. Additionally, there were no revisions to the DPD's *Protocol for Proposed Policy Revisions*.

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

XIII. MANAGEMENT AND SUPERVISION

This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the 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-annual¹³⁰ audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.¹³¹

¹³⁰ On October 4, 2004, at the request of the parties, the Court amended the audit schedule in the COC CJ by requiring the DPD's COC CJ audits to be completed semi-annually with the first and second audits due by January 31 and August 31, 2004, and subsequent audits due by January 31, 2005 and every six months thereafter.

¹³¹ 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.

The Monitor last assessed the DPD's compliance with paragraphs C62-71 during the quarter ending August 31, 2007 and paragraph C72 during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C62-71 during the quarter ending February 29, 2008 and with paragraph C72 during the quarter ending May 31, 2008. The Monitor again assessed the DPD's compliance with subparagraphs C65b and c and paragraphs C66-67 and C72 during the current quarter. The results of our current assessments follow.

Paragraph C65 – Audits of UOF, Prisoner Injuries and Misconduct Investigations in Holding Cells

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

Background

The Monitor last assessed the DPD's compliance with paragraph C65 during the quarter ending August 31, 2007. The Monitor found that the *UOFHC Investigations Audit* submitted on July 31, 2007 was in compliance with the requirements of subparagraph C65a. As of the end of that quarter, the DPD had not submitted a *PIHC Audit* as required by subparagraph C65b; as a result, the Monitor found that the DPD was not yet in compliance with this subparagraph. On July 31, 2007, the DPD submitted its *AOMHC Audit* as required by subparagraph C65c; however, the Monitor had not completed its evaluation of this audit by the end of the previous quarter. The Monitor concluded that the previous *AOMHC Audit*, submitted on January 31, 2007, was compliant with the requirements of subparagraph C65c.

Current Assessment of Compliance

Subparagraph C65a – Holding Cells Use of Force Investigations Audit

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph C65a during the quarter ending February 28, 2008.

Subparagraph C65b – Prisoner Injuries in Holding Cells Audit

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph C65b during the quarter ending February 28, 2008.

Subparagraph C65c – Allegations of Misconduct in Holding Cells Audit

As described above in the *Current Assessment of Compliance* for subparagraph U94c, the Monitor reviewed the *Combined Allegations of Misconduct Audit*¹³² submitted by the DPD on July 31, 2007, which was also conducted in response to subparagraph C65c. Due to the combination of the audits, the Monitor’s evaluation of this audit and the DPD’s compliance with the requirements of subparagraph C65c is contained in the *Current Assessment of Compliance* for subparagraph U94c.

Based on the detailed information in the *Current Assessment of Compliance* for subparagraph U94c, the Monitor finds the DPD in compliance with subparagraph C65c.

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 (the “HCCC requirement”). This paragraph also requires the HCCC to conduct regularly scheduled semi-annual audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed in the COC CJ (the “FSP Audit requirement”).¹³³

Background

The Monitor last assessed the DPD’s compliance with the HCCC requirement of paragraph C66 during the quarter ending August 31, 2007, finding that the DPD was not yet in compliance. Five of six audits required to be conducted by the HCCC were submitted by the DPD. Although the Monitor had not completed its evaluation of all five audits submitted, of the three audits evaluated, one was determined to be non-compliant due to qualitative deficiencies. However, the Monitor has determined that the HCCC was adequately involved in the three evaluated audits.

The DPD submitted the *Fire Safety Practices and Policies Audit Report* to the Monitor on the due date of July 31, 2007. The Monitor had not yet completed its evaluation of this audit or the DPD’s compliance with the FSP Audit requirement of paragraph C66 as of the end of the quarter ending August 31, 2007. The prior audit submitted by the DPD on the required due date of January 31, 2007, was found to be appropriately conducted by the HCCC and was a quality and thorough audit.

¹³² The AT appropriately conducted the audits required for these two paragraphs simultaneously and submitted one combined audit report.

¹³³ 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.

Current Assessment of Compliance

HCCC Requirement of Paragraph C66

In this quarter, the Monitor revised its methodologies for this paragraph to assess only the member's roles within the HCCC as well as the frequency, subject and content of the HCCC meetings rather than requiring the HCCC to assure compliance for all COC CJ policies, paragraphs and the conduct of the required audits. The Monitor chose to make these revisions as the aforementioned aspects are also assessed within other paragraphs of the COC CJ.

Based on these revisions, after the end of the current quarter, the Monitor requested from the DPD a current listing of all members assigned to the HCCC including their names, departments, assignments, and roles within the HCCC; a listing of the dates and attendance rosters of all HCCC meetings held from September 1, 2007 through November 30, 2007; and, a copy of the Agenda and minutes taken (if any) describing the subject matter and content of the meeting. On December 13, 2007, the DPD submitted documentation in response to this request.

The Monitor reviewed the documentation submitted by the DPD and found that the HCCC has met on a regularly scheduled basis, normally twice per month, has maintained a roster of its members, and includes members who have appropriate expertise. The agendas submitted identify compliance items to be discussed and include appropriate HCCC members in attendance with expertise related to the particular topics.

In order to evaluate the content of these meetings, the Monitor requested the HCCC minutes, however, the DPD indicated in mid December 2007 that the HCCC does not take minutes for these meetings, but instead uses a tape-recording as the method of memorializing the content of its meetings. The Monitor therefore needs to listen to such tape-recordings in order to evaluate the content and determine if the subject matter discussed is consistent with the items on the agendas and is primarily related to topic areas where the DPD is not yet in compliance. Until this has been completed, the Monitor will withhold a determination of the DPD's compliance with the HCCC requirement of paragraph C66.

FSP Audit Requirement of Paragraph C66

During the current quarter, the Monitor completed its evaluation of the *Fire Safety Audit Report* submitted by the DPD on July 31, 2007. The Monitor also reviewed the working papers, including the audit work plan, completed audit matrices, crib sheets, and other related documents. The Monitor's findings, which were discussed with the DPD's HCCC/AT, are highlighted below:

- The DPD submitted this audit report in a timely manner, and the audit was appropriately conducted by members of the HCCC, which included members of the DFD and members of the DPD's AT. The audit report continues to improve with each audit submitted and incorporates feedback previously provided by the Monitor.

- The AT conducted on-site inspections of each building containing holding cells during the audit period April 9 through April 20, 2007 and reviewed documentation, when present, for the same time period. The AT also reviewed documentation for back-up power systems during the month of June 2007. With regards to the training on requirements of subparagraph 75b, due to the similarity of requirements and in order to prevent a duplication of testing, the AT appropriately chose to include this testing within the Emergency Preparedness Audit submitted in connection with paragraph C67.
- The Monitor previously recommended that the AT consider testing the implementation of any portions of the Fire Safety Program (FSP) that had been instituted at the time of the audit to provide information to District COs and assist with the furtherance of the DPD's compliance with the Fire Safety requirements. Although this was not feasible at the time of the current audit due to the known lack of training and lack of compliance in numerous areas, the AT included an Appendix to the audit that describes methodologies for future testing of the implementation of the FSP once the requisite training has commenced. The Monitor commends the AT for providing this information, which should assist the DPD in understanding the requirements of the FSP.
- As in the previous audit of this topic, the AT appropriately contracted a licensed, independent examiner to conduct the requisite testing of fire equipment.
- Similar to the prior audit of this topic, the AT correctly assessed the DPD's compliance with all related paragraphs, finding the DPD in compliance with subparagraphs C18b-c and paragraphs C20-21,¹³⁴ and in non-compliance with the remaining requirements contained in paragraphs C14-22 and subparagraph C75b. These non-compliant paragraphs include the implementation of the FSP¹³⁵ and the associated training of DPD members.
- The AT's working papers were well-organized and demonstrated sufficient testing of the elements necessary to reach a conclusion on each objective. The audit working papers also included reliable and relevant documentation supporting the audits findings and included valid recommendations that will assist the DPD in moving towards compliance.

Based on the foregoing, the Monitor finds the DPD in compliance with the FSP Audit requirement of paragraph C66. In arriving at this conclusion, the Monitor determined that the audit contained no substantial performance-related errors and the quantifiable items tested achieved a compliance rate of greater than 94%.

¹³⁴ These paragraphs' requirements include back-up power systems; ability for detainee's to communicate emergencies to DPD staff; enforcement of the no-smoking policy, and proper storage of flammable liquids.

¹³⁵ The HCCC/AT did not test the implementation of all aspects of the Fire Safety Program due to the early determination of non-compliance.

Paragraph C67- Audit of Emergency Preparedness Program

Paragraph C67 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's EPPs for all DPD buildings that contain holding cells.

Background

The DPD submitted the *Emergency Preparedness Program Audit Report* to the Monitor on the due date of July 31, 2007. The Monitor had not completed its evaluation of the audit or the DPD's compliance with subparagraph C67 as of the end of the previous quarter (the quarter ending August 31, 2007). The Monitor determined that the previous *Emergency Preparedness Program Audit*, submitted by the DPD on January 31, 2007, was appropriately conducted by the HCCC and was a quality and thorough audit.

Current Assessment of Compliance

During the current quarter, the Monitor completed its review of the *Emergency Preparedness Program Audit Report* submitted by the DPD on July 31, 2007, along with the audit working papers, including the audit work plan, completed audit matrices, crib sheets, and other related documents. The Monitor's findings, which were discussed with the DPD's AT, are highlighted below:

- The audit report was submitted in a timely manner and was appropriately conducted by members of the HCCC with expertise in Emergency Management, as required by the COC CJ, with assistance from the DPD's AT. The audit report continues to improve with each audit conducted.
- As required by paragraph C67, the AT appropriately evaluated the DPD's implementation of the current ERPs. As part of the evaluation, the AT reviewed fire drill documentation during the period from July 1, 2006 through December 31, 2006. From April 5, 2007 through July 12, 2007, the AT conducted on-site staff interviews and table-top exercises using emergency scenarios involving a civil disturbance, tornado, utility emergency, terrorist attack, hazardous material, and several fire emergencies. In addition, the AT reviewed key control policies and procedures and attempted to evaluate a sample of key and lock testing, inventory and maintenance, and fire equipment inventory records; however, these records have not yet been developed and are not maintained. The AT also inquired as to the status of the EPP training required by paragraph C75.
- The AT appropriately interviewed detention area personnel to assess their knowledge of their respective responsibilities as described in the EPP and their participation in fire drills. The AT incorporated the Monitor's recommendations from previous audits into the interviews and exercises; however, given recent feedback from the OCR staff and additional TA from

the Monitor, the interview questions regarding fire drill participation included in the next audit will be revised.¹³⁶

- The audit covered all of the EPP requirements, including testing of all of the substantive paragraphs related to this topic (C23-25) and the annual training requirements of paragraph C75. The AT found the DPD in non-compliance with all objectives tested.
- The Monitor found the supporting work papers to be well-formatted and well-organized. The Monitor agrees with the AT's finding that the DPD is not yet in compliance with paragraphs U23-25.
- Similar to the most recent audits of this topic, the AT again included a number of valid recommendations, including the proposed specific revisions to the ERPs. Commendably, the AT is currently working with both external and internal experts in emergency preparedness, including members of the HCCC and DFD to make the necessary revisions to the ERPs. The AT has also requested related TA from the Monitor, which the Monitor has provided.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C67. In arriving at this conclusion, the Monitor determined that the audit contained no substantial performance-related errors and the quantifiable items tested achieved a compliance rate of greater than 94%.

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, 2007, finding that the DPD was not yet in compliance. The HCCC had submitted audits required by the COC CJ in January 2007 and the Monitor had requested the associated documentation in response to this paragraph. However, as of the end of that quarter the Monitor had not received any 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.

¹³⁶ The DPD intends to revise the interview questioning to ensure that the requirements surrounding fire drills are being addressed, rather than testing the memory of detention area staff. The AT has not, however, misreported the DPD's lack of compliance in any paragraph based on the current line of interview questioning.

Current Assessment of Compliance

Since July 31, 2007, the DPD AT has submitted a total of 7 COC CJ required audits. As described above in the *Current Assessment of Compliance* for paragraph U93, the DPD met one of the requirements of paragraph C72 by distributing the audit reports electronically via the DPD's email system to the Chief of Police and COs.

In mid-2007, OCR staff also began preparing *Audit Synopses* of Command-related deficiencies identified in audit reports and documenting that this information was forwarded to the Commands for action. These synopses are not consistent in format, in a few instances are duplications of the Executive Summaries from the audit reports, and are not necessary for compliance. However, they are sometimes reformatted to provide an "at-a-glance" document for review, which may be useful to the COs.

The DPD also began submitting numerous documents on August 6, 2007, titled *Response to Recommendations*. The Monitor found that while the *Response to Recommendations* appropriately document the DPD's consideration of the audit recommendations for systemic issues and are a valuable step in furthering the DPD towards compliance with the substantive paragraphs evaluated in such audits, this type of documentation is not specifically required by paragraph C72.

On November 20, 2007, the DPD submitted a document titled *Audit Follow-Up Protocol*.¹³⁷ The Monitor has completed its review of this document and determined that while it contains a process for taking action related to both Department-wide systemic deficiencies and deficiencies within each Command, it does not include a system that ensures COs take action in response to audit findings related to specific officers under their respective Commands that may require disciplinary or non-disciplinary corrective action.

Based on the foregoing, the Monitor finds the DPD is not yet in 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.¹³⁸

¹³⁷ According to the OCR staff, the *Audit Follow-Up Protocol* is intended to replace the "Corrective Action Needed" (CAN) system, which had previously been submitted by the DPD as the proposed method to achieve compliance with the requirements of U93; the CAN system was never implemented.

¹³⁸ Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

The Monitor last assessed the DPD's compliance with paragraphs C73, 75-78 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2008.

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending May 31, 2007. The Monitor again assessed the DPD's compliance with the paragraph during the current quarter. The results of our current assessments follow.

Paragraph C74 – Individual Training Records

Paragraph C74 requires the DPD to create and maintain individual training records for all detention 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, 2007, finding that the DPD was not yet in compliance. The DPD indicated that it was continuing 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. Furthermore, although the DPD plans to use its MAS in order to maintain training records, the DPD had not fully implemented the MAS as an operational component for tracking and documenting individual training records for all officers.

Current Assessment of Compliance

Paragraph U108 is the corresponding paragraph of the UOF CJ to paragraph C74. As indicated in the *Current Assessment of Compliance* for paragraph U108, the DPD is not yet in compliance with paragraph U108. For the same reasons, the Monitor finds that the DPD is not yet in compliance with paragraph C74.

XV. MONITORING AND REPORTING

Paragraph C94 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. See paragraph U139, which is the corresponding paragraph in the UOF CJ, for information regarding the requirements of this paragraph.

CONCLUSION

Two significant rulings were issued by the Court during this quarter. First, the court issued an order extending both Consent Judgments until July 2011. This Court order also mandated that the meetings being held by the parties, at least twice a month, discuss issues related to compliance. Second, with regard to the COC CJ, the court ordered that the “deadline by which all law enforcement facilities must be brought into compliance with the terms and the spirit of the Life Safety Code is midnight on the last day of December 2008.”

The Monitor commends the DPD for the marked increase in the amount of work being submitted. The assessments this quarter, both by the Monitor and the DPD’s AT, reveal that the City and the DPD have not yet effectively implemented the vast majority of the investigative policies and procedures or the fire safety and emergency preparedness requirements. Nevertheless, significantly, the DPD has successfully completed several lesson plans related to the training paragraphs. The implementation of the training paragraphs are a key element towards achieving compliance in other areas.

Sheryl Robinson Wood
Independent Monitor

January 15, 2008

Principal Contributors

Joseph Buczek
Jerry Clayton
Penny Cookson
Charles Curlett
Hazel de Burgh
Ronald Filak
Thomas Frazier
Marshall Johnson
Denise Lewis
Terry Penney
Sherry Woods

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
CDDT	Curriculum Design and Development Team
CEPP	Comprehensive Emergency Preparedness Program
CFD	Critical Firearm Discharge
CI	Chief Investigator
City	City of Detroit
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
DA	Disciplinary Administration
DAS	Disciplinary Administration Section
DCCL	Detention Cell Check Log
DDHWP	Detroit Department of Health and Wellness Promotion
DDOH	Detroit Department of Health
DFD	Detroit Fire Department
DFE	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
PEERS	Performance Evaluation and Enhancement Review Session
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau
RMG	Risk Management Group
SCAN	Security Communications Alert Network, Inc.
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
WCSO	Wayne County Sheriff's Office
WIQD	Witness Identification and Questioning Documentation