

Las Cruces Police Department

Fifth Semi-Annual Audit Report

March 2024

OIR

GROUP

Michael Gennaco
Stephen Connolly
Teresa Magula

OIR
GROUP

323-821-0586

6510 Spring Street #613 | Long Beach, CA 90815

OIRGroup.com

Table of Contents

Introduction	1
Internal Affairs Case Review	4
Internal Investigations	7
External Complaints	11
Additional Complaint Demographics	17
Race	17
Location	17
Review of Closed Litigation	19
Review, Findings & Recommendations	21
Internal Affairs: Process, Investigation, & Findings	23
Reviewing Uses of Force: Critical Incidents	23
The Intersection of the Use of Force Cadre and Internal Affairs.....	25
Interviews with Subject Officers.....	26
Alternative Complaint Resolution Program.....	27
Policy, Management and Training.....	29
Responding to Mental Health Crisis Calls	29
Directed or Refresher Training	31
Personal Interest and Use of Authority	32
Next Steps	34
Appendix A: OIR Group Case Memos	35

Introduction

OIR Group¹ is into its third year as the City of Las Cruces' Independent Police Auditor.² In our role as the IPA, OIR Group reviews investigations completed by the Las Cruces Police Department ("LCPD") into allegations of officer misconduct that are initiated by members of the public or the Department itself. Our goal is to determine whether LCPD's handling of each case was complete, objective, and thorough, and that actions taken in response to the investigations were appropriate.

We also review closed litigation against the City of Las Cruces that involved members of the LCPD. In doing so, we review performance issues that create potential liability for the City and Department with the intention of reducing risk in the future.

Our scope of work with the City also incorporates elements of transparency and, most recently, community engagement. We produce public reports on a semi-annual basis to share information about our work -- and about LCPD's

¹ OIR Group has been working in the field of independent oversight of law enforcement for two decades. It is led by Michael Gennaco, a former federal prosecutor and a nationally recognized leader in the oversight field, as well as three expert associates. We specialize in evaluating and seeking to strengthen law enforcement policies, practices, and accountability measures. You can learn more at our website, www.OIRGroup.com. You may contact us at Info@OIRGroup.com

² An Independent Police Auditor, or IPA, is one form of civilian oversight of law enforcement that is increasingly being considered by jurisdictions throughout the country. While leaving investigative and decision-making authority with the law enforcement agency itself, this model allows for outside scrutiny that helps ensure the legitimacy of an agency's internal accountability systems.

accountability measures – with City leadership, stakeholders, and the community; this is our fifth such report. And our newly added public outreach component will ensure that we are available and responsive to the Las Cruces community: we plan on hosting up to four community meetings open to all members of the public in the coming months and will connect with community groups and stakeholders. We welcome the opportunity to engage with your community directly.

In this audit Report, we discuss our review of 19 Internal Affairs cases that were completed and closed by LCPD and reviewed by our team between June 1 and December 31, 2023.³ We share the recommendations derived from those reviews and provide a limited statistical analysis. We also reviewed four closed civil litigation cases from this time frame and provide our findings here.

Notably, among the cases reviewed this period was our first critical incident: a 2020 officer-involved shooting that triggered the Department’s internal review process, including an internal investigation of the incident by Internal Affairs. Our assessment prompted several recommendations regarding the review of such incidents, all of which the Department has already adopted or is in the process of implementing. While these are detailed in the accompanying memo provided in Appendix A, we provide a brief overview of the process and our findings here. Our expanding window into the Department’s handling of critical incidents and other uses of force has been a positive development in an area of repeated concern, and we are pleased to offer insights and recommendations on this important topic.

We are also pleased to acknowledge that the Department continues to be extremely cooperative, timely, and collaborative in providing us with the information we need to perform our role. And, importantly, the agency’s leadership has been consistently receptive in considering and responding to our ideas for change.

This period saw a transition in leadership with the selection of Deputy Chief Jeremy Story as Chief of Police. Chief Story’s commitment to accountability is apparent in his frequent communication and insightful feedback on our work. LCPD also transitioned leadership of the Internal Affairs unit and expanded

³ Some of the underlying incidents occurred prior to this window of time.

staffing to include a third IA investigator. We look forward to working with this new team, and express our gratitude for the collaboration, candor, and responsiveness of the unit's previous leadership.

Finally, we express our condolences to LCPD and the people of Las Cruces for the recent loss of Officer Jonah Hernandez. Our role often involves the critique of law enforcement and a focus on accountability. At the same time, we operate from a position of sincere respect for the important role of the police and the dangers that the profession carries with it. We wish the Department and City well during this period of mourning.

Internal Affairs Case Review

Our scope of work requires that we review completed and closed investigation files from formal citizen complaints, internal investigations, and complaints with allegations against LCPD that are reported to the City of Las Cruces Ethics Hotline. Our scope consists of two types of complaints: Internal Investigations, or “II,” which are complaints generated from within the Department when leadership becomes aware of allegations related to potential misconduct of employees on or off-duty; and Category 1 - External Investigations, or “EIC1,” which are complaints reported by the Las Cruces public with allegations that may rise to the level of formal misconduct.⁴

In this period, we reviewed our first LCPD critical incident: an officer-involved shooting that occurred in 2020 (see 2020II-005). While the Department regularly opens an internal investigation into each of these incidents, we had not yet received this type of case because the investigation and review of these incidents is often lengthy and requires the involvement of several entities; the Internal Investigation may not be closed until months (or even years) after the incident date.

⁴ External Investigations fall into one of three categories based on the perceived seriousness of the allegations: Category 1, which we review because they may involve formal misconduct, and Categories 2 and 3. Category 2 is an “informal” complaint that involves allegations of a “non-serious” nature where the reporting complainant chooses not to pursue a formal investigation; and Category 3 involves allegations of a “non-serious” nature where the complainant is not able to articulate a complaint, or where there is an apparent lack of General Order violations.

In this period, we received and reviewed 19 complaint cases, nearly double the count in our 4th Semi-Annual and the highest case count to date.⁵ This is noteworthy, but in our view not problematic: the increase appears to be more attributable to heightened efficiencies than a spike in misconduct or public grievances. First, IA finalized several 2022 cases that were pending completion. Second, IA is completing new cases more quickly; in this period, we received some cases that were completed, thoroughly and fairly, within six weeks of being opened. In the last quarter of 2023, we regularly received a newly completed case or two each week. We anticipate that this trend will continue with a third investigator now assigned to IA, and a new emphasis from the Department's top leadership.

Third, and most promising, the Department is continuing to open its own formal investigations of matters that might previously have been resolved through less formal means (such as supervisor counseling) when the actions at issue potentially constitute misconduct. We are now seeing more Internal Investigations than in previous reporting periods.

In addition to being timely, the investigations were also thorough. LCPD framed and investigated 98 separate formal allegations against 27 LCPD employees across several rank levels.⁶ Of these, 44 allegations were

⁵ Our previous case counts are as follow:

Report 1, January 2022: 12

Report 2, June 2022: 16

Report 3, January 2023: 16

Report 4, June 2023: 10

⁶ At the time of the respective investigations, one was a lieutenant, two were detectives, three were sergeants, 18 were officers, and three were non-sworn employees. Some employees were the subject in more than one investigation.

sustained, 37 were exonerated, ten were unfounded, and seven were not sustained.⁷

Here again, this increase appears to be more a function of shifts in investigative protocol than a rise in problematic conduct. We noted that, as IA investigators became more skilled and experienced, and accepted our recommendations related to framing all relevant allegations, they were more often including nuanced allegations that reflected each potential policy section violation. For example, where they previously may have framed one allegation for a violation of the “Code of Conduct” policy generally, they are now framing two, three, or more allegations to reflect specific Code of Conduct policy subsections, such as “Unbecoming Conduct” *and* “Unsatisfactory Performance,” *and* “Compliance with Rules,” *and* “Truthfulness.”

In short, the same (mis)conduct is now potentially assessed through multiple policy lenses rather than a single “catch-all” allegation. This approach allows for more tailored and targeted disciplinary outcomes.

Also contributing to the higher allegation count is the fact that IA investigators are more frequently identifying and framing issues that were identified during the investigation but were not the subject of the initial complaint. LCPD refers to these as “ancillary issues.” These are mainly procedural issues, such as an officer failing to turn on his body-worn camera or making errors on a police report. We have recommended that LCPD commit to addressing these issues rather than restricting itself to the boundaries of the complaint and are pleased to see that IA is doing so regularly.

The main takeaway is that, in our opinion, LCPD is now more effective in identifying, addressing, and, where appropriate, remediating misconduct at all levels. As we reported to the City Council in our last report, we expected to

⁷ “Exonerated” means that the alleged conduct occurred but was found to be within Department policies and procedures, “unfounded” means that the allegation did not occur in the manner in which it was alleged, and “sustained” means that the allegation did occur and was a violation of Department policy and procedure. “Not sustained” means that there was insufficient evidence to prove or disprove that an allegation occurred.

see an increase in case counts as the Department's systems and processes improved, which has proven accurate over this most recent reporting period.

For those sustained allegations, the discipline ranged from a verbal reprimand to suspension days or termination. All discipline except termination was accompanied by some form of directed training. In one case, the employee was terminated for another matter and no discipline was therefore imposed.

Our detailed memos for each case, with a full case summary, recommendations, and LCPD's Management Response, are attached (see Appendix A). Here, we provide brief summaries of each case, list the allegations and ranks of the involved employees, and provide the Department's findings for the seven Internal Investigations and twelve external complaints.

Internal Investigations

We reviewed seven Internal Investigations. One of these, as noted above, was the Department's administrative investigation of an officer-involved shooting that occurred in 2020, and another was an administrative investigation that the Department's Use of Force Cadre had found to be unreasonable; the allegations in these two cases related to the uses of force specifically.

One case was the Department's review of a vehicle pursuit that it deemed to be out of compliance with its vehicle pursuit policy.

The remaining four cases involved mostly procedural issues, including report writing, use of body-worn camera ("Recording Devices") and proper execution of arrest protocols. Some involved "code of conduct" allegations, which are allegations related to officers' failure(s) to follow the Department's Code of Conduct, General Order 103. This General Order sets out the Department's expectations of its officers, including that they be effective, respectful of the chain of command and the public, and ethical in their behavior. As detailed in the tables below, some cases included allegations of unsatisfactory performance, untruthfulness, and unbecoming conduct.

The tables beneath each case summary exemplify how, as noted above, the Department has taken a more nuanced approach to the framing of allegations.

2020II-005

Department-initiated administrative investigation of a critical incident: an officer-involved shooting that occurred in 2020.

Lieutenant	Use of Force - Levels of Force	Exonerated
Sergeant	Use of Force - Levels of Force	Exonerated
Detective	Use of Force - Levels of Force	Exonerated

2022II-016

Department-initiated administrative investigation of a call for service resulting in a use of force that the Use of Force Review Cadre found to be unreasonable, which triggered an Internal Affairs investigation.

Officer	Code of Conduct - Truthfulness	Not Sustained
Officer	Code of Conduct - Conduct Toward Public	Sustained
Officer	Police Reports - Accuracy	Sustained
Officer	Physical Arrests - Post Arrest	Sustained
Officer	Physical Arrests - Criminal Citations	Not Sustained
Officer	Use of Force - Applying Force	Sustained
Officer	Use of Force - De-escalation	Sustained

2023II-001

Department-initiated administrative review of a vehicle pursuit that resulted from an attempted traffic stop. During the course of the investigation, the Department also framed allegations regarding ancillary issues of concern.

Officer 1	Vehicle Pursuits - Pursuit Procedures	Sustained
Officer 2	Vehicle Pursuits - Pursuit Procedures	Sustained
Officer 1	Vehicle Pursuits - Termination of Pursuit	Sustained
Officer 2	Vehicle Pursuits - Termination of Pursuit	Sustained
Officer 1	Vehicle Pursuits - Following Vehicles	Sustained
Officer 2	Vehicle Pursuits - Following Vehicles	Not Sustained
Officer 1	Recording Devices	Sustained

Officer 2	Recording Devices	Sustained
Officer 1	Code of Conduct - Truthfulness	Not Sustained
Officer 2	Code of Conduct - Truthfulness	Exonerated
Officer 1	Ballistic Vest	Sustained

2023II-003

Department-initiated investigation related to an employee's conduct in the workplace.

Non-sworn	Code of Conduct - Unsatisfactory Performance	Sustained
Non-sworn	Code of conduct - General Standards	Sustained
Non-sworn	Code of Conduct - Truthfulness	Sustained
Non-sworn	CLC Personnel Manual - Threats of Violence	Not Sustained
Non-sworn	CLC Personnel Manual - Discrimination	Sustained
Non-sworn	CLC Personnel Manual - Work Rules	Unfounded

2023II-005

Department-initiated investigation of employees' failure to adhere to the Department's reporting procedures.

Officer 1	Police Reports - Required Reports	Sustained
Officer 2	Police Reports - Required Reports	Sustained
Officer 1	Investigations	Sustained
Officer 2	Investigations	Sustained
Officer 1	Juveniles - Investigation of Abused Children	Sustained
Officer 2	Juveniles - Investigation of Abused Children	Sustained

2023II-008

Department-initiated investigation resulting from a non-sworn employee's request to a colleague to fabricate a traffic collision report to avoid military training.

Non-sworn	Code of Conduct - General Standards	Sustained
-----------	-------------------------------------	-----------

Non-sworn	Code of Conduct - Truthfulness	Sustained
-----------	--------------------------------	-----------

2023II-012

Department-initiated investigation resulting from an employee's failure to properly investigate a traffic crash and, later, inappropriately use his position as a peace officer to request and obtain personal information about one of the parties in the traffic crash for his personal use.

Officer	Code of Conduct - Unbecoming Conduct	Sustained
Officer	Code of Conduct - Unsatisfactory Performance	Sustained
Officer	Code of Conduct - Compliance with Rules	Sustained
Officer	Code of Conduct - General Standards	Sustained
Officer	Code of Conduct - Truthfulness	Sustained
Officer	Recording Devices	Sustained
Officer	Private Property Crashes	Sustained

External Complaints

We reviewed twelve Category 1 External Complaints, which are complaints made by members of the Las Cruces public that might rise to the level of formal misconduct.

One of these resulted from a traffic stop, one from a concerned civilian who lived out of state, and two from an investigation. The remaining complaints resulted from calls for service. As we discuss later in this Report, four of these involved civil or domestic disturbances, a call category that we have noted as prominently represented since the start of our engagement.

These complaints are inherently reflective of some measure of public dissatisfaction with specific encounters. But it is useful to set this in perspective: in this period, LCPD responded to 85,908 calls for service.⁸

The complaints generated 49 unique allegations, some of which were reported by the public complainants, but others that were identified by the Department during the investigation.

Of those reported by the public, the majority involved code of conduct concerns. These complaints most often had to do with officers falling short of the public's expectations: officer demeanor or perceptions of discourteous or disrespectful treatment (which we call "Conduct Toward Public"), or failures to perform duties completely (for example, failure to capture complete information in a police report). The majority of these were either exonerated or unfounded by the Department.

In this period, we received four cases with allegations related to improper release or personal use of confidential information (20222EIC1-031, 2023EIC1-010, 2023EIC1-011, and 2023EIC1-015); these occurred in the context of complicated interpersonal disputes between employees and their civilian families. While most allegations were unfounded, several were sustained. In light of their seriousness, it was important to see that they were

⁸ This data was provided by Mesilla Valley Regional Dispatch Authority (MVRDA) via LCPD.

fully investigated, and we found that LCPD issued appropriate individual corrective action in addition to establishing stricter information-sharing protocols to help prevent this from occurring.

Two cases related to applications of force that the complainants believed to be unwarranted or excessive. We take this opportunity to note that, except for critical incidents, a formal review of LCPD's other uses of force remains outside of our scope of work. However, when such incidents prompt a complaint or Department concern that policy has been violated, we have been able to review LCPD's new more rigorous approach to use of force review.

In one case, the use of force allegations were exonerated, which means that, although it occurred, the force applied was within Department policy and procedures; we agreed with the Department's findings after reviewing all available evidence.

In the other, the Department found the allegations related to uses of force to be sustained, which means that the force applied was not aligned with Department policy and procedure.

2022EIC1-031

Public-initiated complaint alleging that non-sworn employees inappropriately used and shared confidential information for personal matters.

Non-sworn	Code of Conduct - Compliance with Rules	Sustained
Non-sworn	Code of Conduct - Truthfulness	Sustained
Officer	Release of Information	Sustained
Officer	Release of Information	Exonerated

2022EIC1-028

Public complaint resulting from a domestic dispute call for service. The complainants alleged that the responding employees were discourteous, failed to act, and engaged in improper conduct.

Officer 1	Code of Conduct - Unsatisfactory Performance	Exonerated
Officer 2	Code of Conduct - Unsatisfactory Performance	Exonerated
Officer 3	Code of Conduct - Unsatisfactory Performance	Exonerated

Sergeant	Code of Conduct - Conduct Toward Public	Not Sustained
Officer 4	Code of Conduct - Conduct Toward Public	Exonerated
Officer 2	Code of Conduct - Conduct Toward Public	Exonerated
Officer 3	Code of Conduct - Conduct Toward Public	Exonerated
Officer 2	Police Reports	Sustained
Officer 3	Police Reports	Sustained

2022EIC1-033

Public complaint resulting from a call for service for a possible domestic dispute. The complainant alleged that the responding employee used excessive force, which triggered his PTSD.

Officer	Domestic Family Disturbance	Sustained
Officer	People With Disabilities	Unfounded
Officer	Physical Arrest - Investigative Detention	Sustained
Officer	Physical Arrest - Arrest without Warrant	Sustained
Officer	Use of Force - Applying Force	Sustained
Officer	Use of Force - De-escalation	Sustained

2023EIC1-001

Public complaint resulting from a call for service related to an on-going and complicated civil dispute between several parties, one of which was an LCPD officer.

Officer	Court Attendance	Not Sustained
Officer	Recording Devices	Sustained
Officer	Code of Conduct - Conduct Toward Public	Unfounded
Officer	Police Reports	Exonerated
Officer	Physical Arrests	Exonerated
Officer	Search and Seizure	Unfounded

2023EIC1-003

Public complaint alleging that officers used unnecessary force when detaining a subject.

Officer 1	Use of Force	Exonerated
Officer 2	Use of Force	Exonerated
Officer 3	Use of Force	Exonerated

2023EIC1-005

Public complaint alleging that an officer failed to fully investigate an assault case and was discourteous.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Police Reports	Exonerated
Officer	Investigations	Exonerated

2023EIC1-007

Public complaint alleging that officers did not perform their duties as peace officers when they did not take enforcement action and did not take a police report during two separate calls for service at a local business.

Officer 1	Code of Conduct - Unsatisfactory Performance	Exonerated
Officer 2	Code of Conduct - Unsatisfactory Performance	Exonerated
Officer 1	Police Reports	Exonerated
Officer 2	Police Reports	Exonerated
Officer 1	Investigations	Exonerated
Officer 2	Investigations	Exonerated
Officer 1	Physical Arrests	Exonerated
Officer 2	Physical Arrests	Exonerated

2023EIC1-010

Public complaint alleging that a detective handling his case was biased against him and had improperly shared information about him with third parties.

Detective	Code of Conduct - Compliance with Rules	Exonerated
Detective	Release of Information	Unfounded

2023EIC1-011

Public complaint resulting from a custodial dispute involving a Department employee. The complainant alleged that the employee used his position to access confidential information.

Sergeant	Release of Information	Exonerated
Sergeant	Code of Conduct - Security and Confidentiality	Sustained
Sergeant	City of Las Cruces - Work Rules - Confidentiality	Unfounded

2023EIC1-015

Public complaint that a Department employee was inappropriately accessing and sharing confidential information about her past relationships.

Sergeant	Code of Conduct - Security and Confidentiality	Unfounded
Sergeant	Release of Information	Unfounded
Sergeant	City of Las Cruces - Work Rules - Confidentiality	Unfounded

2023EIC1-016

Public complaint resulting from a landlord – tenant dispute that a Department employee illegally searched the complainant’s person, falsely arrested him, and failed to secure his personal property. The complainant also alleged that the employee was rude or discourteous during the call.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Court Attendance	Exonerated
Officer	Physical Arrests - Authority	Exonerated
Officer	Physical Arrests - Post Arrest	Exonerated
Officer	Physical Arrests - Search	Unfounded

2023EIC1-023

Public complaint resulting from a possible DWI traffic stop. The complainant alleged that the employee was discourteous, used excessive force, and mishandled his personal property.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Physical Arrest - Safety Procedures	Exonerated

Officer	Damage to Private Property	Exonerated
Officer	Prisoner Transport	Exonerated

Additional Complaint Demographics

Our scope of work requests that we provide additional demographics related to complaint cases to identify any trends that might indicate racial bias or discriminatory policing based on geographic location. To date, the demographic data from this small sample size does not suggest any patterns of disparate policing, as we detail below.

Race

Most cases involved at least some interaction with a member of the public. Seven of these cases involved interaction with a Hispanic person, three a white person, one a Black person, and two with persons of an unidentified race. The remaining case was initiated internally (e.g., did not involve a member of the public).

We also track the race of Department employees. According to the Department, sixteen of the subject employees are Hispanic, eight are white, two are Black, and one is of an unidentified race.

As we have written in our prior four reports, largely because of the small sample size, we did not find any notable trends related to officer race or race of the complainant relative to the officer(s).

Location

Our scope of work also requires that we report on zip code to identify any trends by area or location; for example, are complaints more likely to come from a certain area, perhaps indicating that officers are policing those areas differently than others?

Since the start of our engagement, we have noted that most cases involved incidents within or the residents of two zip codes 88001 and 88012. Zip code 88001 is the zip code in which Department headquarters is located, and “case address” sometimes is listed as the Department’s address (for example, when the Department has initiated an internal complaint). In discussion with LCPD

leadership and our case reviews, we did not identify any specific factors that may contribute to a higher complaint rate from zip code 88012.

Review of Closed Litigation

OIR Group also received four cases from the Las Cruces City Attorney that were closed during our review period.

The litigation matters involved a total of four claimants and eight named LCPD employees. Of these, one case involved a pedestrian being struck by a vehicle when he was directed to cross the street by an LCPD crossing guard. One involved unsubstantiated allegations of misconduct during the execution of an arrest warrant. Two cases resulted from calls involving persons experiencing mental health crises; we discuss this topic in greater detail below.

We evaluated each case and then prepared a memorandum; these are included in Appendix A.

The outcome of these cases was as follows:

- Two cases were settled.
- In one, the court issued a summary judgement in favor of the Department.
- One was dismissed because it fell outside the statute of limitations.

Our scope of work requested that we summarize demographics related to the cases. As with complaints and due to an even smaller sample size, the demographic data does not suggest any patterns or trends.

- Of the eight named employees, three are white and five are Hispanic.
- According to LCPD, four of the eight officers are still employees of LCPD, and four are no longer with LCPD.
- On the claimant side, three claimants are white and one is Hispanic.
- Two cases occurred in the zip code 88001. One case occurred in the zip code 88011. One case occurred in two zip codes: 88011 and 88012 (the plaintiff was transported from his home to a medical facility).

As we have discussed in prior reports, litigation can serve as a valuable feedback loop for Departments to mitigate risk and to address performance issues that may not have otherwise been identified. LCPD has accepted this

concept and reported that it is committed to initiating an investigative review of the underlying incidents when newly aware of any such matters, and pursuing those corrective actions that seem warranted after such scrutiny.

Unfortunately, in this period we learned that LCPD has not regularly and systematically received notice of claims filed from the City Attorney's Office. It was therefore not aware of them until our memo regarding closed litigation. As such, despite its intention to embrace our recommendation, LCPD could not systematically initiate an investigation because they were often not aware that allegations had arisen.

When advised of these issues, LCPD leadership met with the City Attorney, and together created a system by which LCPD will routinely and promptly be notified of claims as they are received. LCPD reported that when it receives a tort claim notice that is not already accompanied by a citizen complaint, an Internal Investigation will immediately be generated by the Internal Affairs (IA) lieutenant, and that the internal investigation will be assigned and completed as soon as reasonably possible.

While the establishment of this protocol came too late to be applicable in these cases, we are optimistic that it will pay dividends in the form of ensuring that LCPD recognize that a claim should be treated like a civilian complaint and ensure that such allegations be assessed for potential individual accountability and systemic reform.

Review, Findings & Recommendations

OIR Group has reviewed nearly 80 of LCPD's complaint cases and 11 closed civil claims in the past two and a half years. For each, we reviewed all evidence provided by LCPD and consulted with LCPD when necessary for clarification or research into potential recommendations.⁹ At the conclusion of our review, OIR Group submitted a memo for each case and LCPD provided a Management Response.

In our last Report, we presented and discussed the 91 recommendations we made to the Department since the start of our engagement. As we reported, we were appreciative of the Department's receptivity to our recommendations, and its progress in implementing each of them.

In this period, we made 15 recommendations. Some of these were "repeat" recommendations: one was related to initiating an internal investigation for all civil claims, which we described above; five related to interviews of subject officers; and two related to use of profanity.¹⁰ It is important to note that repeated recommendations do not necessarily mean that the Department has

⁹ When LCPD closed an Internal Affairs investigation within the scope of our work, it provided OIR Group with all documentary and digital evidence related to the case file. This often included, but was not limited to, the investigative memo, internal case correspondence, disposition/findings memo, limited personnel files, disciplinary recommendations, body-worn camera video, radio / dispatch audio recordings, and recordings of interviews with personnel, complainants, and witnesses.

¹⁰ We discussed officer professionalism, the use of profanity, and its impact on perceptions of officers, in detail in our Second Semi-Annual Report (June 2022). The Chief has repeatedly expressed how important officer professionalism is to him, and has committed to addressing these on-going concerns through training and, when appropriate, the disciplinary system.

not accepted our suggestions.¹¹ In fact, our latest set of cases shows that, over time, the Department has made many of our recommended improvements, especially those related to its internal review mechanisms. In this case review cycle, we saw LCPD identify and investigate more ancillary issues than ever before, more thoroughly and accurately frame complaints, and complete cases more quickly than in the past, thereby assuaging our previous concerns in these areas.

The Department also established its Alternative Complaint Resolution (ACR) program with our input. While we have not yet reviewed a case that has gone through this process, we discuss the developing program, and LCPD's plans for it, below.

In this cycle, we reviewed our first critical incident and two cases that involved less-significant uses of force. While each case memo provides greater detail, here we discuss the process generally and provide recommendations for future reviews. We also comment on the Department's Use of Force Review Cadre, a relatively new review team that has produced a thoughtful, rigorous work product.

Finally, we discuss policy and training changes related to the cases that we reviewed that the Department made in this period. Sometimes, the policy was updated as a result of our recommendation, but, more often the Department had already identified the need for policy clarification, updates, or training, and completed these changes prior to our review.

¹¹ First, because our evaluation occurs within 30 days of a case being officially completed, and investigations are ongoing, it is possible that the Department has completed additional cases prior to seeing and considering our recommendations. This "lag time" – as opposed to disregard by LCPD management – accounts for several instances in which our suggestions for change recur before implementation. Second, while they are "repeated," some of improvement recommendations are now quite distinct and nuanced and ask the Department to perform at the highest industry standards.

Internal Affairs: Process, Investigation, & Findings

The Department continues to make notable improvements to the Internal Affairs complaint process, its internal investigations, and its ultimate findings.

Reviewing Uses of Force: Critical Incidents

In this period, we received the Department's internal investigation of a critical incident (see 2020II-005). This is OIR Group's first review of an LCPD critical incident -- an officer-involved shooting that occurred in 2020 -- and our first opportunity to provide feedback on the Department's internal review process.

This case involved the Department's response to an armed subject who was experiencing a mental health crisis. After several hours of unsuccessful negotiation, during which time the subject fired rounds toward officers, officers attempted to approach to apprehend the subject. The subject fired at officers, prompting officers to respond with deadly force. We provide a detailed account of the case in our related memo, found in Appendix A, and discuss the response to mental health crisis calls in a later section, below. Here, we describe the critical incident review process generally.

When a critical incident occurs involving a Las Cruces police officer, the "Officer Involved Incident Task Force" (OITF), which is made up of law enforcement employees and subject matter experts from various local agencies, including LCPD, responds to the scene.¹² The OITF conducts a criminal investigation, which investigates the incident for any criminal culpability. That investigation is then submitted to the District Attorney's Office for review.

¹² The OITF protocols are directed by an agreement between these agencies in recognition of the complexity and sensitivity that are inherent in these matters.

LCPD also sends its on-call Internal Affairs detective to the scene. The investigator initiates an administrative investigation, which evaluates officers' compliance with Department policies and procedures. The administrative investigation is then essentially "paused" while the OITC and DA complete their criminal investigation. This process is typically lengthy, but we found it to be excessively long in this case: the DA did not issue a finding until August 2023. While a protracted timeline for this process is unfortunately too common in our experience, we advised that the OITC and DA should work to reduce the investigative timeline. LCPD agreed but reported that the timeliness of the decision is ultimately at the discretion of the District Attorney.

We suggested that, in the interest of prompt issue-spotting and remediation, the Department use the interim to debrief and review the incident for areas that are not directly related to individual officer performance (which might be subject to discipline). Here again, the Department agreed. In more recent incidents, the Department did (or will) convene a group of subject matter experts to identify and remediate any immediate training or equipment needs within weeks of the incident.¹³ The Department reported that it did informally debrief the incident internally shortly after it occurred and that this is a formal process currently and going forward.

Once the DA provides its opinion (in this case, that the officers acted lawfully), the Department can resume its administrative investigation, as it did here. We found here that the scope of the investigation was too limited to the use of deadly force itself and advised that the Department take a more holistic approach: the investigation of critical incidents should also evaluate the entire incident, with an eye toward both appropriate individual accountability and any necessary systemic remediations such as policy changes, training, or bulletins. LCPD agreed; in current and future cases, the Use of Force Cadre will inform the IA, ensuring that IA's investigation includes all components of the incident beyond the actual use of force, including tactical decision-making that occurred prior to and after the use of force, efforts at de-escalation, supervision (if applicable), the rendering of medical aid, crime scene maintenance and any other ancillary issues that are identified in the course of investigation.

¹³ To keep this tactical review separate from the *formal* use of force review, this team of subject matter experts is distinct from the Use of Force Review Cadre.

We look forward to advising on these critical incidents when the investigations close and to ensuring that the Department's internal review processes adhere to best practices.

The Intersection of the Use of Force Cadre and Internal Affairs

One of the key developments from this review period was our first look at investigations that had been influenced by the new and aforementioned "Use of Force Cadre" – the new LCPD panel of subject matter experts that provides a heightened level of scrutiny and analysis to force incidents that meet certain criteria. The concept itself is a significant step forward.

In the first two years of our tenure in Las Cruces, our limited exposure to incidents involving the use of physical force left us with questions about the rigor of the standard supervisory evaluation. The emergence of the Use of Force Cadre model assuages many of those concerns. It provides supervisors with a resource when a particular event prompts questions or concerns that transcend the normal approval process. And just as importantly, the quality of the panel's work (as evidenced by the thoughtful, detailed memos it produces) appears to be quite high. Their approach is methodical, objective, and insightful in ways that lead to persuasive results and constructive action items.

It has also led to accountability when officer performance fails to comply with policy or otherwise meet expectations. 2022II-016 offered a direct example of this dynamic in action. The Internal Affairs investigator made effective use of the Force Cadre's findings as a foundation for further inquiry and, ultimately, accountability for the involved officer. That trend has continued with cases in the new year and pending review cycle.

We did note one "growing pain" in 2022EIC1-033, in which the Department's effective issue-spotting and corrective action regarding a particular use of force did not initially translate into formal administrative accountability. It was only after the emergence of an external complaint from the involved member of the public that LCPD opened an internal investigation into the policy

violations that the complainant alleged and that the force review had correctly identified.

The Department concurred with our recommendation that the force review process should, when warranted, form the basis for a referral to Internal Affairs and a potential disciplinary response. Our sense is that LCPD is continuing to refine its systems to maximize their effectiveness. Recent results have been positive.

Interviews with Subject Officers

One of the areas that we traditionally attend to in our reviews of the administrative discipline process is the quality of the interview that is done with an employee who is the focus of misconduct allegations. This step is an obvious test of the thoroughness and objectivity with which a law enforcement agency "investigates its own." Even well-intentioned interviews undermine the legitimacy of results if they are handled with insufficient rigor. When an investigator skirts around or skips key issues, or accepts unlikely explanations too readily, or asks leading questions as if to provide the subject with every advantage – any of these flaws play into public skepticism about a department's commitment to accountability.

While it is true that body-worn camera recordings have had a profound evidentiary effect on the discipline process, and can sometimes definitively establish that a given allegation of misconduct did not occur, interviews remain important in a large percentage of cases. And the topic generated recommendations from us for a few different reasons during this review period.

One concern is when the Department decides that an interview is not needed at all. We acknowledge that sometimes the refutation of a particular claim really is as simple as comparing the video to the assertions of the complainant. But when a recording or other evidence is not definitive, our preference would be for LCPD to perform its due diligence and question the involved employee. In 2023 EIC1-010, for example, a strong case would have been further enhanced by clarification of a few remaining ambiguities – a step the Department chose not to take in the interest of efficiency. We hope LCPD will find that the ongoing reduction in backlogged cases will minimize the need

to conduct such a cost/benefit analysis, and will help make subject interviews more of a default setting.

A second dynamic that made an impression was the interview of a supervisor by a lesser-ranking investigator. As we said in our comments on case 2022EIC1-028, the interview was professional, and the case outcome seemed reasonable. But the gruff demeanor of the supervisor was noticeable to an extent that made us wonder about whether a peer or higher-ranking person might have "levelled the playing field" in a worthwhile way. LCPD concurred.

Finally, in case 2023 EIC1-015, the investigator was tasked with questioning an officer over matters that were certainly personal and sensitive in nature. We found, though, that the attempts to navigate that awkwardness were at times overly apologetic and occasionally dismissive of the complainant in ways that did not reflect well. Again, we were pleased to note LCPD's endorsement of our resultant recommendation about objectivity in tone.

These instances of performance shortcomings were noteworthy, and a good reminder of the importance of vigilance and reinforcement of sound techniques. They were not, however, representative. The overall quality of the Internal Affairs work in this arena was solid and often impressive, and the Department's responsiveness to our concerns makes us hopeful that the trend will continue.

Alternative Complaint Resolution Program

An effective complaint process can be beneficial in multiple ways. Most fundamentally, these include ensuring appropriate accountability for officers and addressing the performance issues or systemic improvements that investigations sometimes reveal. Ideally, though, the process can also strengthen trust and understanding among community members who feel aggrieved by an encounter with the police.

This happens most straightforwardly when allegations are validated by the Department's review; people generally appreciate "being right" and knowing that some form of remediation is occurring. Sometimes, though, the process

works by bridging gaps in sincere but divergent perception of events, or clarifying misunderstanding, or simply allowing participants to know that they have been heard and taken seriously.

The traditional confidentiality of administrative investigations – as well as the adversarial dynamics that sometimes exist – can be a barrier to these outcomes. But there is often room for police agencies, right or wrong in a given situation, to engage more fully and otherwise offer complainants a more meaningful experience.

We appreciate that LCPD has been receptive to our recurring recommendations in this regard. These have focused in part on enhancing the required notification letters with more explanation (and even apology when warranted). But we have also been advocates for developing an "Alternate Complaint Resolution" (ACR) of some kind, that would forego the normal investigative process (and potential disciplinary consequences) in favor of a mediated exchange between the complainant and the involved officer. And we are pleased to note here that the Department has taken significant steps toward developing an ACR policy for potential implementation this year.

Not every kind of allegation (or personality profile) lends itself to this model. But we have seen examples in every review period (such as 2023EIC1-015 in this Report) where a more flexible, communicative approach might have paid dividends.

We had the recent opportunity to review and offer suggestions regarding a draft of the Department's proposed policy. There was much to commend, and we will continue to monitor LCPD's progress in this worthwhile arena.

Policy, Management and Training

While our emphasis is largely on the internal complaint investigation process, we also often note areas where LCPD might consider additional training and/or policy updates.

Responding to Mental Health Crisis Calls

In this period, we reviewed three cases that involved officer response to calls involving individuals experiencing mental health crises of varying degrees: an armed, homicidal subject who expressed suicidal thoughts (see 2020II-005), a young man off his medications, and a subject whose doctor determined needed to be evaluated (see case memos related to civil matters). We discussed each of these cases, and the Department's response, at length with Department leadership.

LCPD expressly conveyed that it recognizes the advisability of – and works to utilize – the lowest level of intervention when dealing with such calls. This includes responding with Crisis Intervention-Trained (CIT) officers and the immediate dispatch of additional City resources, such as Project LIGHT¹⁴ and Mobile Integrated Health (MIH) Program¹⁵, when necessary. Officers are trained to use verbal de-escalation to gain voluntary compliance and use calming language/communication. If a person is compliant and willing to be transported, LCPD reported that officers will transport that individual

¹⁴ The City of Las Cruces' Project LIGHT is a crisis intervention team designed to help respond to mental health calls that go to 911 operators. Project LIGHT stands for "Lessen the Incidence of Grief, Harm and Trauma." The Las Cruces Fire Department has two crisis response teams under project LIGHT. Each team consists of a master-licensed social worker and a fire paramedic.

¹⁵ MIH is a City program established to assist Las Cruces residents who call 911 frequently due to lack of other options to receive care. The MIH program consists of sending paramedics and social workers out into the field to visit with these individuals proactively.

unrestrained. LCPD also reported that officers attempt to take patients to Las Cruces' Crisis Triage facilities, rather than to hospitals, and do not take these patients to jail (unless a related crime has occurred).¹⁶

Finally, LCPD reported that it encourages officers to consider if law enforcement intervention is even necessary. It advises officers to take a tactical pause or consider disengagement in cases where the person in crisis is only a harm to him/herself, will not communicate with officers, and does not present any other danger. Officers are advised to connect these individuals with the City's resources (like MIH) for follow-up care.

This was largely reflected in the cases that we reviewed.

But, unfortunately, as LCPD leadership emphasized in our discussions and we have observed nationwide, law enforcement is often called in more extreme or complicated cases where the subject is not compliant, may not respond to de-escalation, and, most significantly, may present a danger to others. These circumstances may call for security precautions more commonly associated with enforcement activity, ranging from handcuffing a non-compliant subject (as we observed in one of the litigation matters) to activation of a SWAT team.

These enforcement actions are not taken lightly and must be critically evaluated. As we detailed in our review of case 2020II-005, we recommend that the Department critically evaluate cases where enforcement tactics are used in response to mental health crisis calls; LCPD agreed and responded that the Use of Force Cadre will conduct holistic evaluations of all force options used in cases involving mental health crisis.

The preference for a "lighter touch" that balances officer, subject, and community safety – and reflects the distinctive sensitivity of the situation – is evident in the Department's new policy, **General Order 245: Assisting the Mentally III**, which it implemented in late 2023. LCPD also trained the new policy through their online learning management system (LMS) and in-person briefing presentations.

¹⁶ As of January 2024, these facilities have been closed; LCPD must now take individuals to the emergency room. The LIGHT team works to find services and placements for these individuals.

LCPD also frequently focuses on responding to these calls in its bi-annual training cycles and reported that it provides training in crisis intervention and communication that is substantially higher than what is required by state law. We are encouraged by these important signs that the Department is cognizant of mental health as key and evolving area for effective law enforcement responses.

Directed or Refresher Training

In previous periods we recommended, and LCPD provided, individual debriefs to employees whose conduct did not rise to the level of formal misconduct, but for whom counseling or “course correction” for future performance was seemingly warranted. In this cycle, we noted that LCPD continued the practice regularly: every case was accompanied by directed training or debrief when needed. For example, in case 2023EIC1-023, the officers were reminded to adhere to the Department’s Prisoner Transport policy’s requirement to use seatbelts when transporting subjects. In 2022EIC1-028, officers were provided training designed to improve their report-writing.

And, in late 2023 the Department contracted with a Police Legal Advisor to deliver even more frequent and targeted training. This Advisor – a licensed attorney contracted by the Department with a legal and law enforcement policy background – was retained to ensure that the Department trained more frequently, implemented legal updates, and was able to appropriately respond to and implement our policy and training recommendations.

The Advisor conducts training in daily Briefings and to individual officers as needed, and regularly publishes Department-wide Training Bulletins. And, the Advisor has created and implemented “Bathroom Briefings,” a series of “quick guide” style training posters that are placed in the Department’s locker rooms and bathrooms; these creative training bulletins provide reminders on important topics such as “What is Reasonable Suspicion?” and “When May I Deploy My Taser?” in simple bullets on a single page.

These newer developments are in addition to the Department's already robust training cycles.

Personal Interest and Use of Authority

A few of the cases in this review cycle involved allegations that the line between involved officers' personal lives and their professional conduct had in some way become blurred. 2023EIC1-011 and EIC1-015, for example, both related to complaints that an officer had used his professional access to gain confidential information in order to support his court filings in a personal dispute over child custody. The complainant 2023EIC1-010 asserted that past personal interactions were improperly influencing an officer's investigative zeal in matters that involved him. And in 2023II-012, an officer was found to have abused his police status in order to gain information about a woman whom he had met at a (mishandled) call for service and then wished to contact privately. Though the individual situations were quite distinct, the common denominator among them was a matter of concern shared by all law enforcement agencies: that the power, access, and influence possessed by officers can potentially be misused in the service of personal agendas.

To LCPD's credit, it took two concrete steps during this cycle to address these concerns. First, the Department identified that the data-sharing process as outlined in **General Order 149: Release of Information** lacked sufficient guardrails and documentation. LCPD now requires any employee seeking any data from any of the Department's databases to provide a related case number to identify their "need to know." The case number and details of the request are logged. LCPD reported that employees conducting these searches have been trained in the updated procedures.

Second, and of related concern: the creation of new policy to prevent "fraternization" of employees who are involved in personal relationships with each other in ways that can create workplace conflicts of interest or undermine operations in other ways. We had the opportunity in the fall to review a new policy regarding such relationships that LCPD leadership plans to implement in the coming months. While recognizing the rights of employees to engage in consensual personal relationships with co-workers, the policy includes a notification obligation and establishes operational guidelines to minimize

operational impacts. (This would be particularly sensitive in a supervisor-subordinate context, for example.)

For the most part, we have found LCPD to be appropriately vigilant with regard to these issues, and this policy concretizes that vigilance in important ways. We were also satisfied with the outcomes in the cases referenced here. At the same time, the prominence of this dynamic within the review period's sampling of cases is a reminder that ongoing attention to the relevant policies – along with periodic reminders to staff – is a worthwhile endeavor.

Next Steps

We will continue to review cases as they are completed by Internal Affairs. As we noted throughout this report, the Department has displayed a willingness to implement our recommendations either directly or indirectly, through training or other employee development.

In the coming months, and with the collaboration of City and Department personnel, we will convene community outreach meetings intended to hear from the Las Cruces community.

We thank LCPD personnel who contributed data for this report. We remain grateful to both LCPD and City personnel for their collaboration and guidance as we continue our work in Las Cruces.

Appendix A: OIR Group Case Memos



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: January 3, 2024
RE: Review of Administrative Investigation – #2020II-005

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate.

This is OIR Group's first review of an LCPD critical incident: an officer-involved shooting that occurred on June 8, 2020. Per protocol (see **General Order 225: Use of Force**), this incident was investigated by the "Officer Involved Incident Task Force" (OITF), which is made up of law enforcement employees and subject matter experts from various local agencies, including LCPD. The OITF protocols are directed by an agreement between these agencies in recognition of the complexity and sensitivity that are inherent in these matters. The case was then submitted to the District Attorney's Office for a criminal review.

The District Attorney's review was completed in August of 2023¹ with a finding that the officers' use of deadly force did not violate criminal statutes. At that point, and as part of its updated administrative review process, LCPD initiated an Internal Affairs internal

¹ The protracted timeline for this process is unfortunately too common in our experience, but this specific timeline seems excessive, as we discuss in our Review section below.

investigation of this critical incident. OIR Group received the completed IA case file on December 1, 2023.²

Case Summary

This case began when a reporting party called LCPD to report that his friend and neighbor – the subject – was suicidal and had access to a loaded firearm. An LCPD officer responded and met with the reporting party, who reiterated what he had told 9-1-1, and that the subject had stated that he wanted officers to shoot him. The reporting party also shared that the subject had difficulty walking because of a partial disability, but that he could likely walk the distance to the parked patrol vehicle. The officer asked about any history of mental illness; the reporting party stated that the man was not mentally ill but was experiencing a crisis and provided details about what had caused the crisis.

As they talked, the officer asked for the subject's phone number and relayed this to dispatch, who attempted, unsuccessfully, to connect with him.

The officer called for additional units and established a perimeter. Officers requested Fire and EMT to stand by. One officer made announcements over his patrol vehicle's Public Address system and commanded the subject to exit his home unarmed.

Approximately 10 minutes into the incident, officers heard shots fired from the inside of the residence. Several minutes later, the subject then fired an additional round, this time striking a vehicle's tire near where the officer was standing.

Officers pulled back. A supervisor arrived and assumed command of the incident. This supervisor requested the deployment of an armored vehicle and activation of LCPD's Special Weapons and Tactics (SWAT) team. Officers evacuated adjacent apartments, expanded their perimeter and advised other residents to remain inside their homes. Officers set up a staging area away from the apartment complex. SWAT responded with an armored vehicle, which they positioned perpendicular to the apartment's front door and windows.

² Because LCPD initiated an internal investigation of this incident, review of this critical incident falls under our scope of work, whereas prior officer-involved shooting incidents did not since there were no formal internal investigations for those matters. We credit LCPD for recognizing that all critical incidents should be subject to a formal internal investigation and review apart from the DA review. Because LCPD has now committed to an automatic internal investigation and review process as part of its standard protocols, we will review all critical incidents going forward.

Over the next hour, officers attempted to connect with the subject via cell phone and the PA, but the subject did not respond. The subject then fired another round. The original responding officer, who was also assigned to SWAT, moved into the armored vehicle and watched the subject through his rifle's scope. He observed the subject seated inside his apartment and broadcast his observations to the other officers on scene. The officer assigned to communicate with the subject instructed the subject via the PA to call 9-1-1 so that they could speak with him. The subject did not.

SWAT officers asked for additional resources and for a Crisis Intervention Trained (CIT) or Hostage Negotiation Team (HNT) officer to approach. They were told that these specially trained officers were not yet on scene. Different officers attempted to communicate via the PA. Sometime later, a Crisis Intervention Coordinator and HNT officer arrived at the staging area. These employees set up a "negotiation throw phone" for communication with the subject and the HNT officer tried to reach the subject via cell phone. The subject was not responsive to attempts to communicate.

During this time, the subject fired at the officers two additional times, striking the driver's side front window of the armored vehicle.

Officers discussed the fact that the subject's gunfire was placing the officers and residents in danger, and that the subject seemed to fire after they broadcast commands. In light of these concerns, SWAT developed a tactical plan to apprehend the subject, which included introducing a noise and light diversion device and less-lethal chemical agents to divert the subject's attention. SWAT officers prepared their surveillance robot, sent up a drone to gather visual intelligence, and requested mutual aid from the New Mexico State Police: a "rook" armored vehicle that had the capacity to breach the residence.

The subject approached the doorway unarmed, then retreated. The team prepared its tactical plan but decided to continue to engage in communication in the hope of resolving the incident peacefully.

The subject came to the door again, this time with a firearm held at his side in his right hand. SWAT continued to instruct the subject to exit unarmed and chirped the armored vehicle's sirens.

The subject approached the doorway a third time with his firearm; an officer broadcast this information. The subject raised the firearm up, holding it in a two-handed grip pointed at the armored vehicle. One LCPD supervisor³ and one officer fired at the subject from the armored vehicle, causing the subject to fall to the ground. The subject

³ As we note in our Review section, the role of supervisors should have been carefully evaluated by LCPD. As a general best practice, supervisors should *direct* the use of force.

continued to move. One officer deployed a chemical agent, and another a diversion device. As the subject continued to move, an officer used a 40mm launcher to deploy additional chemical agents. For a moment, the subject seemed to lay still.

Another LCPD supervisor, who was positioned at a lower vantage point, observed the subject fall. Moments later, and after deployment of the chemical agents, this supervisor observed the subject gesture with his hand and attempt to roll over. The supervisor did not see a firearm but believed that the subject, who had been armed, would fire at officers again. He fired additional rounds. Various officers then announced that there was no movement.

Officers formed an arrest team and approached the residence to render aid. Upon reaching the doorway, the officers clearly observed that the subject was deceased.

The OITF protocol was initiated. The involved officers were separated and monitored.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

As we noted in our introduction, the initial criminal investigation of this incident was conducted by the OITF. That investigation was submitted to the DA, who, after a lengthy review period, found that the officers' use of force did not violate criminal statutes.

LCPD command staff then directed Internal Affairs to conduct a formal internal investigation of the critical incident. The Department framed three allegations, one each against the three employees who used deadly force on the subject, using **General Order 255**, the Department's Use of Force policy.

The investigation found the three employees' use of deadly force to be in policy, stating that the subject, who had previously fired at officers, posed an immediate threat of serious physical harm to the officers when he came to the doorway with his firearm raised in the direction of the officers stationed at the armored vehicle. The subject presented a renewed threat of serious physical harm when he continued to move as if he were attempting to roll over.

The Department exonerated the three officers.

Outcome: Discipline or Other Action

Because the employees were exonerated, no discipline was imposed. As a result of this incident, LCPD began to issue officers additional body armor (LEVEL III ballistic armor) to better protect them in future incidents involving deadly weaponry.

OIR Group Review

LCPD provided OIR Group its Internal Affairs investigative memo and all relevant evidence, including Incident Reports, all body-worn camera footage, recorded interviews of subject officers, witness officers, and civilian witnesses, photos and drone footage.

LCPD's review of this incident began in August of 2023 upon completion of the OITF and DA's reviews. At the time of the incident itself, the Department had not yet established any clear administrative review process for such matters. And its protocols for an Internal Affairs review of officer compliance with policy were relatively limited in their scope.

While we found the Department's conclusions regarding each officer's use of deadly force to be consistent with the available evidence, we found significant room within the LCPD protocols for a more timely, comprehensive, and robust reckoning when inherently significant events occur.

Since the summer of 2020, the Department has evolved in many of its internal policies, practices, and review mechanisms. Some of these changes would certainly be applicable were a comparable critical incident to happen today, and we are happy to acknowledge that here – while also offering suggestions for the further enhancement of the current LCPD model as we understand it.

The Internal Review Process for Critical Incidents

LCPD's former approach to critical incidents was extremely limited in scope. A thorough and multi-faceted internal administrative review of major events is essential for both accountability (ensuring the alignment of officer performance with Department policy and expectations) and systemic reform (identifying and addressing potential needs or operational enhancements).

LCPD has taken important steps in this direction since this incident in 2020. First, within a week of a critical incident, LCPD now assembles a team to conduct a “Training and Equipment Debrief” with subject matter experts; this debrief is intended to identify areas that must be addressed immediately, through individual counseling, Department-wide training and Training Bulletins, policy updates, and/or by updating or repairing equipment. The team submits a memo with their findings to the Chief, who forwards the recommendations to the appropriate unit to implement the changes immediately. For example, in evaluating a more a recent officer-involved shooting, this team identified challenges with on-scene command and control and the role of supervisors and sent a Training Bulletin on the topic to all supervisors.

This preliminary evaluation of the available evidence⁴ and identification of any non-disciplinary "action items" is a commendable start. We also recommend that the Department add assigned IA investigators to this initial review. Doing so would allow for IA investigators assigned to the administrative side to respond to the scene and initiate their review process in a timely way. This would be a useful first phase of the formal administrative process that unfolds more slowly – but *without* necessarily waiting for the final resolution of the criminal review and any attendant litigation.⁵

RECOMMENDATION 1

LCPD should include assigned IA investigators to its post-incident review process as the first phase of its larger, formal administrative review process.

All critical incidents are now also being investigated and reviewed by the new Use of Force Review Cadre, which we have discussed at length in our Semi-Annual Reports. This team of subject matter experts provides a holistic review of the incident. The Cadre then forwards their findings to the Chief and IA; the Chief directs IA to complete an internal investigation, which focuses on identifying any potential violations of policy or procedure and recommends formal findings. Using both the Cadre and IA

⁴ This includes, for example, body-worn camera recordings, dispatch and radio transmissions, crime scene photographs and reports, and background information about the subject and involved officers.

⁵ While many agencies do routinely "stand down" in deference to parallel criminal and civil processes, so as not to interfere with (or complicate) the fact-finding and resolution of those matters, they are not required to. And, in our view, the automatic and extended delay is detrimental to maximizing the operational benefits of a timelier evaluation.

investigations/reviews, the Chief will issue findings and any necessary corrective action(s), including training, counseling, or formal discipline.

As we noted in our introduction, this case took over three years to investigate. While a protracted timeline for this process is unfortunately too common in our experience, this case's three-year timeline seems excessively long. We urge the various involved stakeholders to examine ways to compress the investigative and review process.

RECOMMENDATION 2

The stakeholders involved in the investigative process -- LCPD, the other members of the OITF, and the DA's Office -- should examine ways to compress the investigative and review process to produce a timelier resolution to these matters.

Finally, we recommend that these future reviews – in all phases but especially in the formal administrative IA investigation -- include a holistic review of the incident. We found that the scope of this IA investigation – which only framed allegations regarding the use of deadly force -- was far too limited. For example, based on the range of circumstances and stages within *this* encounter, several different and review-worthy components were present, including but not limited to the Department's response to a mental health crisis call, use of and effectiveness of de-escalation tactics, the role of supervisors on scene, use of less lethal force (such as chemical agents), and arrest team tactics.

RECOMMENDATION 3

Internal Affairs' investigation of critical incidents should also evaluate the entire incident, with an eye toward both appropriate individual accountability and any necessary Department-wide remediations such as policy changes, training, or bulletins.

LCPD assured us that future administrative reviews conducted by the "Training and Equipment Debrief" Team and Use of Force Review Cadre will include this type of holistic review, and that any issues identified will be framed and investigated by Internal Affairs. This new procedure is promising, and we look forward to reviewing cases that follow it.

Response to Mental Health Crisis

Of particular importance, and notably missing, was a review of the Department's response to mental health crisis calls. Even though the force was ultimately found to be in policy, we nonetheless found that it would have been worthwhile for LCPD to integrate consideration of the relevant mental health issues into its assessment of the different tactical options that were exercised.

First, as we noted in our summary, this call started predominantly as a mental health crisis call: the subject told the reporting party that he was suicidal and wanted officers to shoot him, which the reporting party shared with the responding officer.⁶ LCPD reported that, had the call remained a suicidal subject, their response would have been different, and its new policy and process reflects this.

We previously reported on these process and policy updates (see Closed Litigation, August and October 2023) and found them to be in line with best practices. As we reported, LCPD has expressed its commitment to applying the "lightest touch" when responding to calls for service involving those experiencing mental health crises. Its newly published related policy, **General Order 245: Assisting the Mentally Ill**, encourages officers to immediately contact additional resources (CIT, LIGHT, and MIH), de-escalate and use calming language/communication. Finally, the new policy advises officers to consider if law enforcement intervention is even necessary. It advises officers to take a tactical pause or consider disengagement in cases where the person in crisis is only a harm to him/herself, will not communicate with officers, and does not present any other danger.

Now that this new policy is in place, we recommend that LCPD continue training the new policy, with a special focus on its training of officers in how to communicate with people in crisis while observing sound tactics and principles of officer safety.

⁶ Situations like these are often referred to as "suicide by cop" in the popular lexicon. We were pleased that LCPD did not use this term because we find it to be problematic. In our view, the term "suicide by cop" suggests there was nothing the police could do to avoid the use of deadly force or otherwise prevent the individual's death through their own tactics and decision-making. This can have the effect of truncating the analysis of the officers' performance by framing the outcome as inevitable.

RECOMMENDATION 4

LCPD should train to their new **Assisting the Mentally Ill** policy, with a special focus on its training of officers in how to communicate with people in crisis while observing sound tactics and principles of officer safety.

Clearly and understandably, the tenor of the call changed when the subject began firing at officers. LCPD explained to us that this shifted their focus to the resolution of a criminal barricade in which the subject had given strong indication of becoming homicidal and a danger to others.

We recognize the very real issues of public and officer safety that were implicated by the subject's status as an armed person who repeatedly fired at staged personnel. Even so, we maintain that this incident offered significant grist for a productive review of tactics, decision-making, and potential alternatives with regard to the crisis intervention efforts that LCPD attempted.

For example, the choice of where to place certain equipment is one that might vary in situations involving known mental health issues. LCPD acknowledged to us that its preference would have been to stage out of the line of sight of the subject, to keep from visually exacerbating the tension and urgency that he was experiencing, and thereby helping to better promote a safe surrender environment. In our view, though, LCPD's rejection of this idea – as being superseded by the circumstance of shots fired at officers – was still worthy of further consideration in the incident's aftermath.

Similarly, LCPD should have evaluated its communication tactics for “lessons-learned.” As we noted above, CIT and HNT officers were not brought forward for their safety (the subject was firing rounds at officers), and SWAT did not have an “opening” to throw in the negotiation cell phone.⁷ In our view, though, even if the specialists did not stage in a forward position, they could have informed and provided input into the tactical plan and communication; we noted that the commands issued by SWAT were repetitive and ineffective. A more effective approach may have been for the CIT and HNT officers to at least advise on communication strategies from their position at the staging area. For example, these skilled negotiators might have provided different statements for SWAT

⁷ LCPD noted that it attempted communication, but the subject seemed unwilling to communicate. Had the subject been willing to communicate, LCPD reported that it might have been able to establish rapport or gain the subject's trust because they had collected information about the subject and what precipitated his crisis (a financial situation).

to use over the loudspeaker to induce cooperation, interrupt his actions, or establish rapport.⁸

While their ultimate decision-making was reasonable given the circumstances, a robust tactical debrief on the response to crisis calls might have identified alternative strategies that could have been beneficial and could productively shape the course of future incidents.

We discussed this topic at length with LCPD command staff. LCPD reported that they have made two significant changes since this 2020 incident: updates to their policy and the establishment of more robust and comprehensive review processes (which we described above). We think both steps are constructive ones, and would be likely to have influenced the limitations we cite here. Importantly, they also reflect the Department's larger trend toward reconsideration of calls with a mental health component.

LCPD Management Response

RECOMMENDATION 1

LCPD should include assigned IA investigators to its post-incident review process as the first phase of its larger, formal administrative review process.

The on-call IA detective responds to the scene of all incidents that involve the activation of the Officer-Involved Incident Task Force. This practice has occurred for at least the past fifteen years.

RECOMMENDATION 2

The stakeholders involved in the investigative process -- LCPD, the other members of the OITF, and the DA's Office -- should examine ways to compress the investigative and review process to produce a timelier resolution to these matters.

This process has already been improved; however, the timeliness of the decision is ultimately at the discretion of the District Attorney.

⁸ Skilled negotiators may have used directed language to “disrupt” the subject’s suicidal thoughts through their communication, a tactic used successfully by other agencies wherein officers talk about, for example, positive outcomes.

RECOMMENDATION 3

Internal Affairs' investigation of critical incidents should also evaluate the entire incident, with an eye toward both appropriate individual accountability and any necessary Department-wide remediations such as policy changes, training, or bulletins.

We agree with a holistic approach. Due to the time delay in this case, any secondary issues had already been addressed and would have created significant contractual issues.

RECOMMENDATION 4

LCPD should train to their new Assisting the Mentally Ill policy, with a special focus on its training of officers in how to communicate with people in crisis while observing sound tactics and principles of officer safety.

This training has been and is occurring on an ongoing basis. The LCPD provides training in crisis intervention and communication that is substantially higher than what is required by state law and provided by most departments.

Specifically for the updated policy, *Police Response to Mental Health Crisis*, officers were trained through both the online learning management system (LMS) and in-person briefing presentations.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: December 18, 2023
RE: Review of Administrative Investigation – #2022 II-016

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case, which began with concerns about the necessity of an officer's use of force on a handcuffed individual, was generated by Department management as a function of its internal force review process. The case was investigated by Internal Affairs.

OIR Group received the case file on November 21, 2023.

Case Summary

This incident related to the detention and ultimate arrest of an adult male in his fifties who had been prompting calls for service from different businesses throughout the day. The man's behavior at various locations prompted concerns about his stability and potential for aggression or self-harm.

An LCPD officer responded and encountered the man on the sidewalk outside a strip mall. His possessions were in a cart. The man was initially compliant, to the point of kneeling on the ground with his hands on his head without even being asked. But his answers to the officer's questions were odd and disconnected at times, and he was initially unwilling to follow the officer's firm instructions to leave the area. Becoming frustrated, the officer handcuffed the man and detained him in the back of his patrol

vehicle for a few moments while he filled out trespassing cards to provide employees at two different businesses that had called about the man's behavior. The officer warned the man that he would be going to jail if there were further complaints, and then released him.

Less than two hours later, the man generated another call for service. He was allegedly brandishing a razor blade and making statements about wanting to be "euthanized." The same officer was first to locate him, walking along the sidewalk. The officer quickly put the man in handcuffs again, which prompted him to ask repeatedly what the charges were as the officer ushered him toward the back of his radio car.

Near the car door, the officer reacted strongly to a backward motion from the man, who was continuing to question the "charges" against him. The officer ended up striking him two times in the upper back/head area, and then took him to the ground. Other LCPD personnel responded to the scene, and the officer explained to his supervisor that the man had grabbed at the equipment on his vest (including a Taser), which had led to the force.

This case passed through several levels of review, as we detail below, ending with an administrative discipline investigation that was conducted by Internal Affairs. Further scrutiny of the force case – as well as the officer's handling of the earlier call for service involving the same subject – raised several additional questions about the officer's conduct in engaging with this individual.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The investigative memo framed eight different allegations. Ultimately six were sustained as a result of the investigative findings, and two were not sustained due to the inconclusive nature of the evidence. The eight relevant policies were the following:

General Order 103.01 (A)(5) – Conduct Unbecoming – Conduct Toward the Public.

This specific policy section requires officers to be respectful, tactful, patient, and professional in their communications with the public. The officer was found to have violated this policy in the context of both of his encounters with the subject, based on the exasperation, profanity, and condescension that were evident in the recordings of the incidents.

General Order 103.3 – Compliance with Laws, Rules, and Regulations. This section establishes the expectations and obligations which are considered applicable to

employees whenever they act "under color of authority" – even when off-duty. By relying on his identity as a police officer to obtain information he would not otherwise have been entitled to, the focused employee here was found to have violated this policy.

General Order 141.02 – (A) Police Reports – Accuracy and Thoroughness. This section delineates the expectations for report writing. The investigation found that the officer's single page report for this incident was inadequate in its level of detail, and included significant inaccuracies. The allegation was sustained.

General Order 103.17 (C) Code of Conduct – Truthfulness. This policy obligates employees to "completely, honestly and accurately report all facts and information pertaining to any criminal or administrative investigation..." Here, while noting several inaccuracies and discrepancies within the officer's on-scene briefing of his sergeant, his police report, and his Internal Affairs interviews, the investigation found that the officer's denial of intentional misrepresentation was not conclusively disproven. The allegation was "not sustained."

General Order 231.02(A) Physical Arrests – Investigative Detention. This section describes the legal standards for a justified detention and then arrest, as well as stating the expectation that officers will clearly include the foundational facts in their reports. Here, the violation was sustained. The Department found that the officer had not articulated a sufficient basis for either the detention or the subsequent arrest in conjunction with second encounter – which also had the effect of undermining the justification for the force that ensued.

General Order 231.01(C) Physical Arrest – Post Arrest. As established by this policy, officer have an obligation to "inform the arrestee of all charges and/or reason for custody." The officer was found not to have done this – in spite of being asked several times by the subject. Accordingly, the allegation was sustained.

General Order 231.15(D) Physical Arrest – Criminal Citations. This policy obligates officers to ensure that citations are forwarded to the appropriate location for processing prior to the end of the shift in which they occurred. In this case, no citation was every processed for the misdemeanor charge against the subject. But the investigation was unable to dispositively establish negligence on the part of the officer as being the reason for this omission. This was, therefore, "not sustained."

General Order 255.02(A)(1) Use of Force – Procedures – Applying Force. This section expresses the fundamental prerequisites for the legitimacy of a use of force: that it be "objectively reasonable" in its nature and that its purpose be grounded in "lawful objectives." LCPD determined that the officer's strikes and takedown were both

unwarranted by the subject's observable resistance *and* premised upon a physical detention that itself lacked a solid legal basis. The allegation was sustained.

General Order 255.03(A)(c) Use of Force – De-escalation. This section articulates the requirement that officers "attempt to de-escalate and slow down" encounters unless precluded from doing so by the immediate potential for harm to themselves or others. The Department noted that – during both of his encounters with the subject that day – the officer had not complied with this expectation. The allegation was sustained.

Outcome: Discipline or Other Action

The Department's findings led to a two-pronged intervention: a significant discipline, and assignment to a specific training class meant to address the particular shortcomings identified in this incident. The consequence was partly shaped by a consideration of the officer's disciplinary history; he had one prior "sustained" allegation in conjunction with a 2020 force deployment, and had received a low-level discipline.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. This included the two different interviews of the focused officer, and the documentation of the force review process that ultimately led to the full administrative investigation. Also included were the body-worn camera recordings of the two different calls for service that involved the officer and the subject on the day in question.

The Department's efforts here were impressive in several respects. This began with the supervisory force review process, the rigor and effectiveness of which we have questioned in the past. It has been refined over time in ways that produced a thoughtful inquiry into this incident – and a recognition that further accountability mechanisms were warranted.

In this case, the incident was forwarded by the officer's chain of command to the Use of Force Review Cadre, a formal force review panel made up of Department subject matter experts. This panel produced a detailed memorandum that identified several actual or potential problems with the force deployment in the context of the stop and the actions of the subject. The panel requested that Internal Affairs conduct an interview of the officer to clarify his actions, which the Chief approved. When this interview of the officer failed to assuage the identified concerns, the panel made a determination that the use of force had been unreasonable. This finding then became the foundation of

the subsequent Internal Affairs administrative investigation that established several policy violations and led to formal discipline.

The Department's willingness to scrutinize officer performance in this way – even in the absence of a complaint from the involved party – is encouraging. In particular, the robust, thoughtful, and persuasive assessment of force constituted a significant improvement over past examples of the LCPD process that we had happened upon and discussed in earlier phases of our auditing role with the City.

In turn, the IA investigation was effective in translating the Use of Force Review Cadre's findings into a comprehensive investigation into the officer's two encounters with the subject. The range of policy violations established by the evidence showed the importance of holistic review, and the interplay between force and other misguided elements of the officer's approach. Lastly, the accountability piece of the process also seemed to be well-considered, with its combination of a disciplinary component and some tailored training that would ideally help ensure future improvement.

Our one caveat here related to the pace of the process, particularly at the outset. It took several months for the incident to initially make its way to the new Cadre, and then several more months for the Internal Affairs investigation to be initiated. As we have observed before in several prior cases, timeliness matters to the effectiveness of the discipline process.

This is true for multiple reasons, not the least of which is the importance to operations of identifying and fixing performance problems sooner rather than later. And delay can compromise investigative effectiveness as well, since the quality of evidence (including witness availability and recollection) rarely improves with time. Here, for example, the officer cited some difficulty in recalling particular elements of the incident when he was interviewed as a subject. This was both frustrating and hard to refute; conceivably, a statement closer in time to the original incident would have mitigated this issue.

In recently discussing the force review process with Department leadership, we learned that this process is evolving, and that the intention is to enhance the seamlessness with which individual incidents are evaluated and resolved.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. We agree with the importance of timeliness. Certain changes and mechanisms have been implemented to help with the speed of investigations.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: December 28, 2023
RE: Review of Administrative Investigation – #2023 II-001

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case, which evaluated two officers' actions during a vehicle pursuit, was generated by Department management after an initial internal assessment of the pursuit. The case was investigated by Internal Affairs.

OIR Group received the case file on November 27, 2023.

Case Summary

This case stemmed from the Department's internal review of a vehicle pursuit that unfolded in different phases over the course of several minutes and involved several officers, eventually leading to the apprehension of the suspect in a stolen vehicle case. As part of its normal protocols, the Department reviewed available evidence to establish the specific timeline of what occurred, and the role of the different involved officers and patrol vehicles. It was during that process that questions arose as to whether the final two involved officers (who were driving separately from each other) had acted in a manner consistent with policy in terms of both their driving behavior and the accuracy of their subsequent reporting.

The underlying incident began with morning call for service regarding a car that had been stolen from the victims while it was warming up outside their home. Soon after the report came in, an LCPD patrol officer spotted the vehicle in a different location; it was parked and empty. Different resources were staged in an effort to observe and apprehend the suspect if and when he came back to the car.

Before long, the suspect did return, but he began driving away – and failed to yield when the initial officer attempted to pull him over. That officer was communicating over the radio, and made the decision *not* to initiate a formal pursuit because the incident did not meet Department policy to engage in a vehicle pursuit.¹

Within moments, though, another officer who had been nearby spotted the vehicle and observed it colliding with another car before continuing on. Two LCPD cars were following at that point, and requested permission to attempt a "PIT" driving maneuver in an effort to incapacitate the stolen vehicle and arrest the suspect.² Their reasoning was that the reckless driving reflected in the hit and run crash created a safety concern that warranted the higher level of intervention.

The supervisor who was remotely monitoring the incident allowed the officers to re-engage while requesting information about the traffic conditions. However, within a minute he instructed them to "break off" and stop the pursuit. After a brief period of radio silence, one of the officers announced that the suspect had "rammed" another officer's vehicle in an effort to avoid apprehension. The pursuit continued until the officer whose car had been struck performed a PIT.. A supervisor who had just arrived on scene also intentionally struck the suspect vehicle in response to his recognition that the suspect had not given up. That supervisor then held the suspect at gunpoint and the arrest occurred without further incident. The whole event took less than five minutes.

The suspect driver, who turned out to be familiar to the officers from past encounters, was charged with several felonies.

A formal review of the vehicle pursuit was initiated by the Department, in keeping with its normal practice. A supervisor compiled available sources of evidence to assess the event and the performance of all involved personnel; this included reports, radio traffic,

¹ Like many law enforcement agencies, LCPD has established a threshold of factors that go beyond mere failure to comply and that must be met in order to authorize a formal vehicle pursuit. This is an effort to balance the inherent risks of "car chases" against the relative severity of the underlying threat to public safety represented by the subject.

² Law enforcement officers are trained in the "Precision Immobilization Technique" (or PIT), which involves an intentional glancing collision that is meant to abruptly spin the target car and cause its engine to stall.

body-worn camera recordings, and – significantly – private surveillance videos³ that depicted key portions of the incident that were otherwise not captured. In part because of seeming discrepancies between video evidence and the accounts of the two officers who were most engaged in the relevant activity, the pursuit review process concluded that an administrative investigation into possible policy violations was warranted.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The investigative memo named two officers as subjects of the allegations. There were five policies that applied to both of them, and an additional one that related to one of the officer's deviation from an equipment requirement.

General Order 208.03 – Vehicle Pursuit – Pursuit Procedure. This policy sets forth the required features of involvement in a pursuit, including the use of lights and sirens, the expectation for ongoing communication with dispatch, and other steps. Both officers were found to have fallen short of expectations in this regard, and the allegation was sustained.

General Order 208.03 – Vehicle Pursuit – Termination of Pursuit. This section imposes obligations on officers regarding communication when ending a pursuit. These include acknowledgment of the termination itself, as well as the last known location information for the suspect vehicle. The Department found that neither officer had complied fully with the requisite steps and the allegation was sustained.

General Order 208.01 – Vehicle Pursuit – Following Vehicles. This policy sets out the expectation that officers will stop engaging (to the point of turning in an opposite direction) rather than following without lights and sirens once a pursuit's authorization has been removed. The investigation found that one of the officers had violated this policy at two different points during the encounter with the suspect.

The other officer (who was further back) claimed not to have known that the suspect remained ahead of her. This was deemed plausible but not definitively convincing under the circumstances, and the resultant finding was that the allegation was "not sustained."

General Order 151.01– Recording Devices – Procedure. The investigation cited both officers for having failed to properly activate body-worn camera recordings during their

³ These came from the cell phone of a bystander and the residential property cameras of a neighborhood resident.

involvement in this event. One officer had failed to re-engage her camera at a key point in the pursuit, though did capture a significant amount of relevant activity. The other was not wearing his camera until after the end of the encounter. This missing evidence was particularly significant, given the prominence of his role in the apprehension of the suspect driver.

The allegation was sustained.

General Order 103.17 – Code of Conduct – Truthfulness. This section articulates the need for officers to be honest and to avoid false statements in the context of conducting Department business (including administrative investigations). The Department exonerated one officer of this charge.

For the second officer, statements made over the radio during the pursuit were confirmed to have been inaccurate. He also provided incorrect information at the scene to a responding supervisor, and later that morning to the detective who had primary responsibility for handling the criminal case against the driver of the stolen car. Specifically, the second officer ended up being wrong about his proximity to the suspect vehicle at the time of the driver's first traffic collision. He also wrongly characterized the status of his own vehicle's lights and sirens at different points in unfolding event.

However, the evidence did not establish that these mistakes were intentional and meant to mislead (rather than being a product of the officer's faulty perceptions in an adrenalized situation). Accordingly, the finding for the second officer was "not sustained."

General Order 110.04 – Ballistic Vest. This allegation, which was sustained, applied to only one of the officers. Because he had begun the day in a training context, he was not wearing his safety vest as required by policy, and neglected to put it on during the encounter in spite of having early opportunities to do so.

Outcome: Discipline or Other Action

The respective disciplinary history of both officers helped to shape the decision-making as Department leadership chose a consequence for each. Both had prior sustained violations for low-level misconduct issues, including driving-related incidents.

The Department disciplined both officers. The more senior officer, who was the closer driver to the stolen vehicle and who was found to have violated two more policies than his colleague, received a more significant discipline. The Department also directed both officers to attend training relevant to the pursuit issues implicated by this case.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. The memorandum in this case was nearly 100 pages in length – a reflection of the complexity of the underlying events and the thoroughness with which the investigator sorted through them. Particularly noteworthy and impressive was the detailed summary of body-worn camera recordings and private citizen surveillance video. The investigator was painstaking in summarizing, comparing, and gleaning key information from the respective vantage points captured in the numerous different recordings, and this evidence was central to the ultimate conclusions.

It should also be noted that the initial supervisory review of the pursuit provided an important foundation for the administrative investigation that followed. The fact that the Department has a standardized – and careful – process for evaluating vehicle pursuits reflects a recognition of the risks that vehicle pursuits entail and is a commendable emphasis on safety and compliance with LCPD's detailed policies.

We also found the accountability measures imposed by the Department for the involved officers to be both appropriate (in terms of the disciplinary consequence) and constructive (in terms of the emphasis on tailored training regarding emergency driving).

One issue that did not appear to be addressed in the LCPD review was the extensive profanity from involved personnel that was captured on body-worn camera recordings at the scene of the arrest. We addressed this in several previous memos and need not belabor the point here (see, most recently, case 2023EIC1-016, and our Second-Semi Annual Report). We note only that, while the intensity of the situation certainly accounts for the strong emotions underlying the language, a reminder about the importance of professionalism would have been worthwhile.

The case also raised interesting issues with regard to the repeated misstatements of one subject officer in the immediate aftermath of the pursuit. This gave rise to the allegations that the LCPD "Truthfulness" policy had been violated. In his administrative interview, he freely acknowledged that he had significantly mischaracterized different aspects of his involvement.⁴ But he insisted that these inaccuracies were the product of his perception and recollection being compromised by the adrenaline of the situation –

⁴ To his own credit, the criminal investigator handling the case against the suspect driver managed to construct an accurate statement of facts, in spite of the incorrect information he initially received from the subject officer.

and not by a calculated effort to mislead about his own potential culpability for deviations from the pursuit policy. In fact, his experience of watching relevant video recordings during his Internal Affairs interview seemed to surprise him at times.

This led to a discussion in the interview about the reality of participants experiencing altered perception and limited perspective during a critical incident. The officer stated that he wished he had taken the opportunity to review the videos more contemporaneously, and prior to any official statements or reports.⁵

While noting that the question of appropriate timing for video review in law enforcement is a nationally prominent one, we concur with the investigator's finding in the context of this case: that an intentional lack of truthfulness in the officer's original statements had not been conclusively established.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. We agree with the perspective of the OIR Group concerning profanity. The use of profanity, even during emotionally charged situations, is being addressed in multiple trainings and during supervisor reviews and counseling. The use of profanity was addressed in this case at the supervisor level immediately after the incident.

In this case, the detective did an excellent job of sorting through a complex and nuanced investigation.

⁵ In this case, that process would have been complicated by the fact that (as cited above) the officer had not been wearing his own body-worn camera during the pursuit.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: July 17, 2023
RE: Review of Administrative Investigation – #2023II-003

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an Internal Investigation (II) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on June 20, 2023.

Case Summary

An LCPD supervisor reported to the Internal Affairs unit that a non-sworn employee's performance was unsatisfactory in several ways. First, he had failed to provide advance notice of time off as required by a directive issued by the supervisor and was frequently late for work. This non-sworn employee also engaged in conversations with fellow employees that distracted from work and, at times, "bad mouthed" other employees. Further, a trainee employee alleged that the non-sworn employee made threats of physical violence during training. Finally, the supervisor reported that the employee had made discriminatory statements, including in reference to a transgender victim, about civilians who violated restraining orders and about working with "hormonal" females, that made others uncomfortable.

During his administrative interview, the non-sworn employee made what the investigator believed to be false statements about his conduct. Eventually, and after probing, the employee admitted to engaging in much of the alleged conduct.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted an investigation of the incident and framed allegations against the non-sworn employee as follow:

- 1. General Order 103.01 – Unsatisfactory Performance.** The supervisor alleged that the non-sworn employee violated this general order when he engaged in conversations that were not work related, distracting, and counterproductive to a professional workplace. LCPD sustained this allegation based on information obtained during interviews with other employees and the non-sworn employee's own admission.
- 2. General Order 103.04 – Conduct Unbecoming.** The supervisor alleged that the non-sworn employee violated this general order when he bad-mouthed other employees, which reflected poorly on the Department. LCPD sustained this allegation based on information obtained during interviews with other employees and the non-sworn employee's own admission.
- 3. General Order 103.17 – Truthfulness.** The investigator alleged that the non-sworn employee made false statements during his administrative interview. LCPD sustained this allegation because, after a series of probing questions from the investigator, the non-sworn employee admitted to engaging in some of the alleged conduct (after first denying it).
- 4. City of Las Cruces Personnel Manual – Threat of Violence in the Workplace.** The supervisor alleged that the non-sworn employee violated this personnel manual section when he told a trainee employee that he would "F* [him] up" if the trainee failed again. LCPD found this to be Not Sustained: the trainee stated that the employee had made the statement, but the non-sworn employee adamantly refused having said it. No other employee heard the statement (though several acknowledged being told about the incident).

5. City of Las Cruces Personnel Manual – Discrimination and Harassment.

The supervisor alleged that the non-sworn employee violated this personnel manual section when he made derogatory comments related to the transgender community, women, and subjects of restraining orders. LCPD sustained this allegation based on statements from various employees who directly witnessed or were the target of these comments.

6. City of Las Cruces Personnel Manual – Employee Work Rules and

Procedures. The supervisor alleged that the non-sworn employee violated this personnel manual section when he did not seek approval for time off in a timely fashion as the supervisor had directed in a unit email. LCPD unfounded this allegation, noting that the supervisor had approved each instance of missed work and that the directive in question was sent via email one week *after* the non-sworn employee had requested the time off.

Outcome: Discipline or Other Action

The non-sworn employee was terminated for another matter prior to completion of this investigation. As such, LCPD determined that a discipline determination for this matter was not necessary.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents in the case file. We found this investigation to be extremely complete and that the detailed analysis provided supported the findings. We especially commend the investigator for his thorough analysis, for identifying and interviewing all relevant witnesses, and for completing this investigation through the findings phase despite LCPD terminating the non-sworn employee for another matter.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough analysis of this case. We do not have any additional questions or comments.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: November 27, 2023
RE: Review of Administrative Investigation – #2023II-005

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was generated by Department management in response to possible misconduct that a supervisor brought to the attention of Internal Affairs. It was accordingly classified as an "Internal Investigation" and handled by Internal Affairs.

OIR Group received the case file on November 1, 2023.

Case Summary

This investigation began when an LCPD supervisor was following up on a report of child abuse/neglect submitted by a local hospital to the New Mexico Child, Youth and Families Department (CYFD). In his follow-up, the supervisor discovered that two LCPD officers had responded to the call for service related to the incident but had not filed an incident report, reported to the CYFD, or otherwise documented their response.¹

¹ The call for service in question was for a female who had just given birth and was wandering, naked and covered in blood, through a hotel parking lot holding what appeared to be a deceased infant. The

Officers were immediately directed to complete an incident report, which they did, and the Department formally initiated this investigation into failures to report.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs framed allegations against the two officers as follows:

1. **General Order 141 - Police Reports.** This general order details when and how officers must document their actions in an incident report. LCPD sustained this allegation stating that this call for service, which involved potential child neglect, clearly necessitated submitting an incident report in a timely manner per policy.
2. **General Order 215.01 – Investigations.** This section details the investigative actions officers must take on scene. LCPD sustained this allegation, stating the officers should have identified that the case involved potential child abuse/neglect charges and should have completed both an LCPD incident report and a report to the CYFD.
3. **General Order 243.09 – Juveniles - Investigating Abuse/Neglect.** This section requires that, when they identify potential child abuse or neglect, officers must prepare an incident report and report the incident to CYFD. LCPD sustained this allegation because officers failed to complete these required actions.

Outcome: Discipline or Other Action

During their administrative interviews, the officers each acknowledged that they did not submit timely reports as required.

After reviewing the investigation and both officers' disciplinary records, LCPD disciplined each officer. LCPD also directed that the officers receive training from their

officers, who had encountered this female before, assisted Fire Department personnel in physically supporting the female and safely taking the infant from her. The officers were compassionate and caring with the female, who was possibly experiencing a mental health crisis and/or under the influence. The female and the infant, who was resuscitated on scene, were transported to the hospital by medical personnel. The infant was later transported to another facility for more intensive treatment. Ultimately, no child abuse/neglect charges were filed against the female.

respective supervisors on the General Orders cited above to ensure that the officers understood the Department's report-writing requirements.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence, which included body-worn camera video, interviews, and reports. We found the investigation to be appropriately thorough and concurred with the Department's findings and the result.

In our Second Semi-Annual Report (August of 2022), we discussed concerns with thorough, accurate and timely report writing. In that report, we acknowledged the Department for taking a proactive approach to report-writing issues by identifying them as "ancillary issues" in complaint investigations, framing and sustaining allegations, and directing corrective action and training when appropriate. This proactive approach is again demonstrated here, as LCPD appropriately addressed these officers' reporting failures through a formal internal investigation.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: November 1, 2023
RE: Review of Administrative Investigation – #2023 II-008

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was generated by Department management in response to possible misconduct that another employee brought to the attention of LCPD management. It was accordingly classified as an "Internal Investigation" and handled by Internal Affairs.

OIR Group received the case file on October 3, 2023.

Case Summary

This investigation began after a civilian employee came forward to a supervisor with concerns about a colleague (also a civilian). The reporting party alleged that the colleague had contacted her by text message and asked her to create a false traffic collision report that could provide him with a justification for avoiding a scheduled block of military training. She did not comply with the request, and no such report was apparently utilized or created. Nonetheless, the alleged conduct became the subject of a formal review.

The evidence (including the subject employee's own text messages) was consistent in showing the seeming sincerity of his engagement with the colleague about the idea of a false traffic report. However, he asserted during his administrative interview that his outreach had been in jest – a contention that was found not to be credible and that became an additional basis for a disciplinary response.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's framed two allegations against the employee as follows:¹

1. **General Order 103.04 (A) – Code of Conduct.** This section broadly captures the Department's expectations that people not engage in behavior that is "unbecoming or detrimental" – either on- or off-duty. The alleged violation was sustained based on the employee's attempted involvement of a co-worker in the deceptive act of creating a false traffic report.
2. **General Order 103.17 (A) (C) – Code of Conduct – Truthfulness.** This section prohibits false statements in the context of a Department investigation or official act. This was also sustained; the Department found that both the employee's efforts to pursue the false traffic report and his contradictory, non-credible testimony to Internal Affairs in his administrative interview were in violation of this section.

Outcome: Discipline or Other Action

The subject employee was dismissed from employment as a result of the investigation and findings.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence, which included text messages, interview testimony from employee witnesses, and the subject interview of the civilian employee who was discharged. We found the investigation to be appropriately thorough and concurred with the Department's findings and the result.

¹ The Department also considered a third policy provision – this one relating to "Work Rules" that prohibit falsifying records – but decided that the central conduct in question was better addressed through the other listed orders. They accordingly "Unfounded" that allegation as a technical matter.

We also take this opportunity to note the cooperation of witness employees – including the person who first brought the issue to the attention of LCPD management. A willingness to come forward in the face of potential wrongdoing certainly contributes to agency integrity in a positive way.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate. It highlights the willingness of employees to bring potential misconduct to the attention of supervision.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: November 28, 2023
RE: Review of Administrative Investigation – #2023 II-012

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was generated by Department management after an involved party brought potential officer misconduct to the attention of other officers, who then contacted supervision. The case was investigated by Internal Affairs.

OIR Group received the case file on October 30, 2023.

Case Summary

This case began when a young adult woman working at a restaurant approached a small group of LCPD officers who were having a meal there. She made inquiries to them about the propriety of some contacts she had recently gotten from another officer – who had apparently accessed her contact information by reaching out to the management at her workplace.

It turned out that the woman had been the passenger in a minor traffic collision investigation that the focused officer in this case had handled. When the officer

responded to the scene (a parking lot at a gas station/convenience store), he eventually encountered a young adult male and two young women.

Through questioning (and then a review of surveillance camera recordings from the gas station), he determined that the two women had been involved in a low-speed collision with another vehicle that was now gone from the scene. (The male had arrived afterwards to assist, since the women's car had a flat tire.) They claimed that there had been no damage to the other car, and that they had exchanged information with the other party prior to the officer's arrival. Nonetheless, he requested (and got) information regarding the license and registration of the female driver (who was a friend of the woman who eventually raised concerns).

Though he said at the scene that he suspected the driver was under the influence, the officer had refrained from doing any sobriety testing or identity check. Instead, he allowed them to leave with the idea that there was seemingly no "victim" in the incident. They were appreciative, and the passenger female, who was dressed in a restaurant uniform, was especially friendly; she went so far as to ask the officer whether he had a particular social media account. The officer turned off his body-worn camera and returned to his vehicle, and then provided her with his personal phone number.

Soon thereafter, someone began to contact the officer on a social media platform and attempted to extort a small amount of money from him in exchange for not releasing what were supposedly damaging photographs. The officer believed that the person in the profile picture for the account was the woman from the collision investigation, but the name was different – and it was a male who answered when the officer attempted to communicate using the app's calling function.

The officer wondered if someone had hacked into his personal phone to get photographs of him that they were threatening to distribute in an effort to compromise him and perhaps cost him his job. He also wondered whether the woman he had met at the collision investigation was somehow involved. But he did not have direct contact information for her, and the account that had initially contacted him eventually blocked him.

Accordingly, he decided to pursue the matter by using information he knew from seeing her in uniform during the collision investigation; namely, that she worked at a particular restaurant. He reached out to the restaurant's management by phone, identified himself as a member of LCPD, explained that he had met an employee at a traffic collision, and said he needed to be in touch with her. He also sent a photograph of the woman—a still picture from the officer's original body-worn camera recording – to aid in the investigation.

A relatively inexperienced assistant manager had (in contravention of company policy) identified the woman and provided a number, which the officer then used to be in touch with the woman via text message. It was this outreach that eventually prompted the woman to make inquiries (and show the texts) to LCPD officers who were dining together at her workplace. One of them brought the situation to the attention of his sergeant, and the Department ultimately ordered an investigation into possible misconduct by the officer.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The investigative memo framed seven different allegations. Some concerned potential misconduct during the original call for service, and others related to his subsequent off-duty efforts to pursue information about the woman after experiencing an online blackmail attempt. The applicable policies – all of which were found to have been violated – included the following:

General Order 103.28 Code of Conduct – Conduct Unbecoming. This section imposes a general obligation for employees to refrain from behavior – either on- or off-duty – that would "bring discredit" on themselves or the agency. The investigation determined that the officer violated this by making improper use of his identity as an officer to access contact information for the woman he had met at the traffic collision.

General Order 103.01 (A)(4) – Conduct Unbecoming – Unsatisfactory Performance. One example within this category is "Engaging in personal conduct which interferes with the proper performance of any employee's duties." The investigation determined that the officer had engaged in such conduct when ending the call for service by exchanging personal contact information with an involved party, and by turning off his body-worn camera recording prior to that part of the encounter.

General Order 103.3 – Compliance with Laws, Rules, and Regulations. This section establishes the expectations and obligations which are considered applicable to employees whenever they act "under color of authority" – even when off-duty. By relying on his identity as a police officer to obtain information he would not otherwise have been entitled to, the focused employee here was found to have violated this policy.

General Order 103.04 – (A) General Standards of Conduct. This section also establishes a broad expectation for propriety of employees in their personal as well as professional capacities. It was cited as "sustained" in the investigation to cover the

impact of the officer's behavior on the involved woman, who described the concerns that were prompted by his "unprofessional" efforts to locate and be in touch with her.

General Order 151.01(G) – Recording Devices and Equipment. Among other things, this policy sets the standard for proper activation and duration of body camera recordings in the context of a police contact. The investigation found that, by turning off his camera prior to admittedly engaging in additional conversation with the woman at the accident scene, the officer had violated this policy.

General Order 103.17 (C) Code of Conduct – Truthfulness. This policy obligates employees to "completely, honestly and accurately report all facts and information pertaining to any criminal *or administrative* investigation..." (Emphasis added.) Here, the investigation determined that the officer had violated this policy by denying in his interview that he had framed his need to contact the woman as an official police matter – a claim that clashed with the assistant manager's recollection of events.

General Order 274.11 – Private Property Crashes. This section delineates the expectations for proper enforcement action in the context of a traffic collision on private property. A possible "driving under the influence" element is an exception to the general rule that a formal report need not be taken. The Department found that the officer's failure to investigate the possible intoxication of the driver (a suspicion he specifically articulated) was in violation of this policy.

Outcome: Discipline or Other Action

The misconduct here was significant and wide-ranging. However, because the employee was terminated for other causes prior to the conclusion of the case, no additional consequences arose (or were needed) from these allegations.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. This included an interview of the focused officer and several witness interviews. The body-worn camera recording of the original call for service was also significant.

Like another case we recently reviewed, this investigation began when line-level LCPD employees (in this case the officers who were approached at the restaurant by the woman who worked there) became aware of potential misconduct by a peer and brought it to the attention of supervision. Such actions are, of course, appropriate and expected – but also deserving of positive reinforcement.

This investigation also reflected another positive trend; namely, completion of investigative work in a fashion that is not only thorough and effective but also timely. Here, the investigator took less than two months to finalize a detailed, persuasive memorandum.

As for the outcome itself, we shared the Department's sense that the evidence of misconduct supported the numerous sustained findings. As bothersome to the officer as the crude extortion attempts on social media may have been, they did not justify the misuse of his police authority for personal reasons.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: August 18, 2023
RE: Review of Administrative Investigation – #2022EIC1-028

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was investigated by Internal Affairs after the Department received a public complaint; LCPD also identified separate policy issues that it pursued within its review.

OIR Group received the above-referenced case file on July 18, 2023.

Case Summary

The complainants in this case were a husband and wife who were dissatisfied with different aspects of LCPD performance in the context of two separate adversarial encounters with another family. (Their adult son was in a relationship with the adult daughter of the other involved parties.) The Department reviewed both of the contacts. Although it determined that the specific issues raised by the complainants had not constituted policy violations, the investigation did reveal separate shortcomings in two involved officers' performance. Both related to inadequacies in documentation: one incident report had factual inaccuracies about the relationship between the parties, and

another was lacking in the appropriate level of detail regarding the alleged conduct that had prompted the police involvement.

Factual Overview

This complaint arose in the context of a multi-generational conflict between two families, whose respective adult children were in a dating relationship that had deteriorated. The couple's difficulties created tensions among the parents as well. The relevant police encounters occurred at two of the involved residences and were three weeks apart from each other.

The first call for service was generated by the complainants, who sought an LCPD response after being visited at their residence by the mother and adult daughter of the other family. The latter two were upset at the female complainant's son over conflicts with the daughter, and apparently believed that the complainants were somehow aware of and responsible for the son's actions (though he and the woman had been living elsewhere). The complainants called the police to report aggressive actions by the mother and daughter, who eventually did leave on their own.

LCPD failed to respond that evening. Though the female complainant called back two different times in the course of the next ninety minutes, she was told that officers were too busy to come take a report from her. She persevered the next morning, and a supervisor eventually directed an officer to go to her home to take a report. The woman asserted that the mother and daughter had committed a trespassing violation by visiting her home the night before, since the residence was clearly marked as private property. Per the one-page police report, she was hoping to create a record in case the women returned at some point.

Three weeks later, LCPD officers responded to a second incident with the same principals, this time at the home the younger couple had shared at some point, and where the daughter and her parents were present. Through separate discussions with the participants, all of whom were still on scene, the police developed an understanding of the confrontations that had occurred.

The couple had gone to the house to get information about the son, who had been involved in a domestic conflict with his former partner that day and had ended up arrested. The visit had devolved into a physical clash between the parties, and they were making mutual allegations. A supervisor also eventually responded at the request of the male complainant. Ultimately, the officers decided to resolve the evening's events without arresting or charging any of the parties, though they did issue admonitions about staying apart and the possibility of mutual trespassing charges.

In the aftermath of this second encounter, the complainants submitted a lengthy document (apparently in the form of a "speech to text" written narrative) that summarized both of the incidents involving an LCPD response and raised a number of concerns. Specifically, there was frustration over conduct (both specific and more general) that was characterized as rude and dismissive, and over the Department's alleged failure to resolve the situation in the field in an appropriate manner.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

Though two incidents were cited in the written submission by the complainants, the LCPD investigation determined that the misconduct claims were limited to different aspects of the second encounter. A supervisor and three officers were ultimately named as subjects of the investigation, though the actions of other involved personnel were also considered.

The allegations raised by the complainants were framed in relation to two different General Orders. The first was 103.05, which concerns **"Conduct Toward the Public"** and requires officers to be respectful of and responsive to the members of the public whom they encounter. The second was 103.01 (A), which speaks to **"Unsatisfactory Performance"** in the context of awareness and correct application of relevant laws involving criminal conduct.

The Department determined that the officers' actions had not violated either policy.

In the course of the complaint investigation, report-writing issues (that had not been flagged by the complainants themselves) came to the attention of LCPD management. Two different officers who had been at the scene were investigated pursuant to **General Order 141.02 "Accuracy & Thoroughness."** Due to the problems with their respective reports (which did not have an impact on the outcome of the underlying incident), both allegations were sustained.

Outcome: Discipline or Other Action

Both officers, who were each relatively inexperienced at the time of the incident, received a low-level consequence for their sustained policy violation. Because one of the officers had a prior issue of the same nature, he received a more significant intervention.

OIR Group Review

LCPD provided OIR Group the case file in keeping with our standard protocol. OIR Group reviewed the documents and digital evidence in the file, which included interviews of three of the involved Department members.

We found the investigation to be appropriately thorough and concurred with the ultimate findings. Although we understood the perspective of the complainants, the overall handling of the calls for service had been reasonable and professional, and none of the specific behaviors or demeanor issues raised in the complaint rose to the level of a policy violation.¹

The Department's willingness to "go beyond" the complaint and address performance issues that emerge from the investigation is something we have noted and commended in the past and are happy to reinforce here. As we have identified in previous case memos, report writing is a critical skill. It is one that the relatively new involved officers here were still in the process of developing, and LCPD's attention to detail in identifying and addressing the respective reports deficiencies was worthwhile in our view.²

As for the consequences received by the officers, two aspects stood out for us in a positive way. The first was the Department's willingness to "bump up" the level of remedial action for one of the officers, due to the exacerbating factor that it was a second offense. It makes sense that if a lesser intervention does not seem to have effectively sent the message, a more severe one is justified when the conduct recurs.

We also make note of the fact that both officers were formally assigned to relevant training as a component of the remedial response. This concept reinforces one of the ultimate purposes of the accountability process. Effective interventions in this context are those that correct issues with performance for the sake of future improvement. Imposing a tailored training response seems to be a constructive means of accomplishing this.

¹ We also note that, later on the night of the primary incident in the case, a different supervisor went to the home of the complainants at their request and provided an hour's worth of patient explanation and additional attention to their concerns. This was a creditable example of the respectful "customer service" that had been somewhat less on display in the field.

² See our 3rd Annual Semi-Annual Report and memos related to 2022EIC1-009, 2022EIC1-001, and 2021EIC1-026.

Though the formal allegations against the supervisor in this case were not sustained, his presence in the investigation proved interesting in a couple of ways. One was substantive: as the investigative memo correctly notes, the supervisor was indeed somewhat dismissive of the complainants in his tone and his steady focus on their own perceived culpability for the encounter. Though far from egregious, the supervisor's demeanor did little to assuage the concerns that had prompted one of the complainants to seek a supervisor on scene in the first place. And it was in marked contrast to the more objective, constructive approach that the couple experienced later that same night when a different supervisor responded to their home.

The involved supervisor himself clearly saw it differently, and his (brief) interview as a subject of the investigation was characterized by an ongoing focus on the complainants' blameworthiness and a lack of regard for the validity of any criticism. Though some of his points seemed legitimate to us, some introspection would also have been welcome. We hope the Department at least discussed alternative approaches with him in an informal setting; if not, it may want to revisit the encounter with him.

Our second point is procedural, and relates to the interview mentioned above. The investigator for Internal Affairs was a detective who was put in the position of interviewing an officer to whom he was subordinate by rank. Though the interview itself was handled professionally and addressed the relevant issues with sufficiency, the dynamic is inherently awkward. In our experience, other agencies circumvent this by ensuring that investigative interviews involve participants who are at least equal (and ideally greater than) the subject officers in rank and authority. We encourage LCPD to explore making this practice a regular feature of its own model.

RECOMMENDATION 1

When a supervisor is interviewed as the subject of a misconduct allegation, LCPD should consider utilizing a Department member of equal or greater rank in conducting the interview, so as to lessen any rank-based impediments to effectiveness in questioning.

LCPD Management Response

1: When a supervisor is interviewed as the subject of a misconduct allegation, LCPD should consider utilizing a Department member of equal or greater rank in conducting the interview, so as to lessen any rank-based impediments to effectiveness in questioning.

The Las Cruces Police Department appreciates the review completed by the OIR Group. We agree with this recommendation and will strive to have an investigator who is of equal or greater rank conduct the interview.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: August 11, 2023
RE: Review of Administrative Investigation – #2022EIC1-031

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on July 13, 2023.

Case Summary

This complaint was submitted by the ex-spouse of a non-sworn LCPD employee.

The ex-spouse had a Temporary Order of Protection against the non-sworn LCPD employee;¹ this order required that the custodial exchange of their child occur between

¹ Upon first review, we were concerned that a Department employee had an Order of Protection filed against him, a potential violation of **General Order 103.04: General Standards of Conduct**. LCPD responded that they were aware of the Order, that the Order was temporary in nature, and that it was dismissed.

the child's grandfather and the mother (the ex-spouse) and that the ex-spouse and non-sworn employee were to remain physically apart.

On the day in question, the non-sworn employee requested that the ex-spouse pick up their child from a hospital where the child was being treated. When the ex-spouse refused, responding that it would violate the order, the non-sworn employee continued to insist. When the ex-spouse stated that she had requested and was waiting for an LCPD officer to arrive to conduct a civil stand-by, the non-sworn employee stated that the custodial exchange would have to happen at a different, more distant location.

An LCPD officer contacted the ex-spouse telephonically in response to her call for a civil stand-by. While they were on the phone, the complainant stated that the grandfather had arrived and that the custodial exchange could occur without further issues. The call for service was terminated.

The officer then telephonically contacted the non-sworn employee, who confirmed that the situation had been resolved. Upon learning that the incident involved an LCPD employee, this officer contacted his supervisor, who directed the officer to visit the ex-spouse's residence to read the order. The officer did so the next day, reviewed and saved text messages between the parties, and determined that no violation of the order had occurred as the ex-spouse had been adamant about not entering the hospital.

The following day, the ex-spouse submitted this complaint: she alleged that the ex-spouse had abused his privileges as an LCPD employee and had knowingly violated the restraining order. The ex-spouse also alleged that, on a different occasion, the non-sworn employee had asked another LCPD non-sworn employee to run the license plate of a person visiting her home.

During his administrative interview, the non-sworn employee repeatedly denied having requested that other LCPD personnel obtain confidential information for his personal use. Eventually, he admitted that he actually had done so.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incident and framed three allegations against the first non-sworn employee as follows:

1. **General Order 103.03 – Compliance with Laws, Rules and Regulations.** The complainant alleged that the non-sworn employee had violated the Order of Protection.

LCPD sustained this allegation after reading a text exchange between the two parties in which the non-sworn employee repeatedly requested that the ex-spouse violate the order by entering the hospital and being in close physical proximity to him. While he did not expressly violate the order (the parties never were in physical proximity to one another), LCPD stated that the non-sworn employee *intended* to violate the order to make the custodial exchange.

Further, because of his specific role in LCPD, LCPD found that this non-sworn employee should have known that his requests were a violation of the court order.

2. **General Order 103.17 – Truthfulness.** The Department alleged that the non-sworn employee had not been truthful during his administrative investigation.

LCPD sustained this allegation based on the available evidence and the non-sworn employee's own admission.

3. **General Order 149.03 – Release of Departmental Information.** The complainant alleged that the non-sworn employee had used his position as an LCPD employee to access information about a person who was visiting her home.

LCPD sustained this allegation based on their interview with the employee who provided the information and the non-sworn employee's own admission.

The Department also framed one allegation against a second non-sworn employee who had provided information to the non-sworn employee.

4. **General Order 149.03 – Release of Departmental Information.** The Department alleged that the non-sworn employee had searched for and provided information to the first non-sworn employee.

The Department exonerated this allegation. As part of her job, this non-sworn employee regularly conducted database checks, including running license plates, for officers and non-sworn employees as part of investigations or other law enforcement matters. The Department determined that she had no reason to believe that the non-sworn employee had requested the data for personal use.

Outcome: Discipline or Other Action

LCPD determined that the first non-sworn employee committed numerous violations of a serious nature. The first non-sworn employee was terminated.²

The allegation against the second non-sworn employee was exonerated and, as a result, no discipline was required.

As a result of this case, LCPD identified that the data-sharing process as outlined in **General Order 149: Release of Information** lacked sufficient guardrails and documentation; specifically, in her administrative interview, the second non-sworn employee reported that she had no record or log of the first non-sworn employee's data request, and that documentation of these requests was not a standard practice.

LCPD now requires any employee seeking any data from any of the Department's databases to provide a related case number to identify their "need to know." The case number and details of the request are logged. LCPD reported that employees conducting these searches have been trained in the updated procedures.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found that the evidence supported the findings, and that the investigation was thorough.

We commend the investigator for seeking all possible evidence, including footage from hospital security and surveillance cameras (which he learned were not retained and unavailable) and all court orders related to the non-sworn employee's case. We also acknowledge the investigator's skilled interview of the first non-sworn employee, during which he asked probing questions that resulting in the first employee's admission of guilt regarding asking for confidential information for personal reasons.

² This non-sworn employee was also the subject of another case we recently reviewed; see our review of 2023II-003. The employee was terminated prior to completion of that investigation (because of *this* case), but LCPD completed that investigation nonetheless.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: November 2, 2023
RE: Review of Administrative Investigation – #2022EIC1-033

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on October 2, 2023.

Case Summary

This complaint stemmed from a call for service for possible domestic violence made by a concerned neighbor. When an LCPD officer responded, he met with the involved female, who stated that the complainant, her husband, had yelled at her. She stepped outside to give him space and assured the officer that no physical abuse had occurred.

Moments later, the officer contacted the complainant, who was standing inside the threshold of his apartment. The complainant stated that he was not breaking any laws, but the officer asserted that he was disturbing the peace. The complainant explained his behavior by stating that any commotion was the result of his PTSD but that he was now fine. Nonetheless, the officer commanded the complainant to come outside,

stating that he would pull the complainant out if he did not comply, and this approach escalated the encounter. The complainant turned away and attempted to close his apartment door. The officer then took the subject's arm and, using a control hold, forcibly removed the complainant from the apartment. The complainant became agitated. The officer used a pain compliance technique on the complainant's wrist, and then attempted to place him in handcuffs.

The subject began to yell that this was police brutality. The officer asserted that he was at the location for a lawful reason and that the subject might now be charged with resisting arrest. His wife encouraged the complainant to calm down and said that the complainant was not on his medication. The officer handcuffed the complainant.

Meanwhile, another officer and supervisor responded to the scene. The officer stated that the complainant was not complying with his commands and instructed him to sit on the curb. The complainant stated that he could not sit on the curb because of a back injury, and officers allowed him to stand by the police vehicle. The complainant stated that the incident was aggravating his PTSD and that he had experienced a manic episode.

The officer then returned to the wife and accused her of changing her story. She stated that she had separated herself from the incident after the complainant yelled at her. The officer stated that he had a "verbal domestic."

The officer then spoke to his supervisor, whose assessment of the situation differed. The supervisor stated that there was no need to charge the complainant and directed his release.

The supervisor then spoke to the complainant and asked if the complainant had any questions or any injuries. The complainant said the officer had hyperextended his arm. The supervisor called for medical, but the complainant eventually refused medical treatment.

The supervisor also informed the complainant about the complaint process. The supervisor took the complainant's email address and emailed him the complaint form. The officers completed a use of force investigation on scene.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a formal investigation of the complaint and framed five allegations against the officer as follow:

1. **General Order 203 – Domestic Family Disturbance.** The Department alleged that the officer failed to conduct a proper investigation of a domestic family disturbance and that his failure to do so resulted in the use of force.

LCPD sustained this allegation after reviewing body-worn camera footage of the officer's interactions on scene and reviewing the officer's Incident Report.

2. **General Order 231.02 – Physical Arrest, Investigative Detention.** The complainant alleged that he was unlawfully detained by the officer.

LCPD sustained this allegation after viewing the officer's body-worn camera footage, reading the related Incident Report, and interviewing the officer. LCPD determined that the officer had not established any reasonable suspicion or probable cause that a crime had occurred. Therefore, the detention was a violation of policy.

3. **General Order 231.05 – Physical Arrest – Arrest without a Warrant.** The complainant alleged that he was unlawfully removed from his residence and detained by the officer.

LCPD sustained this allegation after viewing the officer's body-worn camera footage, reading the related Incident Report, and interviewing the officer. LCPD determined that the officer had not established reasonable suspicion or probable cause to step into the apartment and detain the complainant. Therefore, the detention was a violation of policy.

4. **General Order 255.02 – Use of Force.** The complainant alleged that the officer used unreasonable force.

LCPD sustained this allegation after viewing the officer's body-worn camera footage, reading the related Incident Report, and interviewing the officer. LCPD determined that any force used, however minor, was unreasonable because the officer did not have cause to detain or arrest the subject.

5. **General Order 255.03 – Use of Force – De-escalation.** The complainant alleged that the officer used unreasonable force during the encounter.

LCPD sustained this allegation after viewing the officer's body-worn camera footage, reading the related Incident Report, and interviewing the officer. LCPD determined that the officer did not attempt any de-escalation tactics during this incident despite having time and opportunity to de-escalate the situation.

LCPD also initially framed an allegation for violating General Order 207: Persons with Disabilities. However, LCPD determined that the General Order was not applicable to this incident as the policy relates to persons who are hard of hearing or have speech impediments, neither of which applied to the complainant.

Outcome: Discipline or Other Action

During the use of force review process for this incident, which occurred prior to the complaint, an uninvolved supervisor identified issues with the officer's actions on scene. LCPD directed the officer to training, which the officer completed.

In determining the appropriate discipline for the sustained IA allegations, LCPD considered the already-completed directed training, the officer's disciplinary history, and his recent assignments.¹ LCPD issued appropriate discipline.

OIR Group Review

LCPD provided OIR Group the complete case file. OIR Group reviewed all documents and digital evidence in the case file.

We found the Internal Affairs investigation of the complaint to be thorough, complete, and fair, and we concurred with the findings and discipline as to the above-referenced violations of policy. We also noted that the close-out letter in this case included an apology to the complainant; we commend this simple, yet important, acknowledgement on LCPD's part. We also commend the responding supervisor for his decision-making and de-escalation skills, and for facilitating the complaint intake process.²

At the same time, the opportunity to review *all* the materials associated with this case – including the separate "force review" investigation that the Department undertook – allowed us to identify discrepancies in the outcomes of each investigation.

¹ We learned that the subject officer had been assigned to a special Task Force until shortly before the incident; he had not worked in a Patrol capacity for several years but had been re-assigned to Patrol due to staffing shortages.

² We have previously recommended that LCPD provide more training to supervisors on complaint intake. That this supervisor both advised the complainant about and facilitated the intake process exemplifies that the Department is committed to complaint intake.

Because this complainant alleged excessive use of force, we were also able to evaluate the Department's use of force investigation, something that is typically outside of our scope of work. The use of force review was done apart from and prior to the misconduct investigation triggered by the subject's eventual complaint about the incident.

In this case, the complainant alleged injury (a hyperextended elbow) on scene. The complaint of injury triggered the standard force review protocol, which included taking photos on scene, interviewing the complainant, and reporting on a "BlueTeam," the internal database form used by LCPD to document a use of force. This on-scene process was completed thoroughly.

The force was then reviewed by the officer's chain of command. Supervisors noted that, while the low-level force used was minimal and reasonable, the officer's actions, including his initial response and detention of the subject, warranted remedial measures. Accordingly, the supervisor authored a "Deficiencies Noted" memo, in which he wrote that the subject officer, and all officers who responded to the scene, required remedial training.³ This memo triggered a "Supervisory Matter," a supervisory-level internal review mechanism by which to track these noted deficiencies and any remedial actions taken by the Department. LCPD issued a Training Referral, a non-disciplinary "educational tool." As we noted above, the officer completed the training.

These were certainly positive, constructive steps. Our concern, though, was that the force review alone had not prompted its own referral to Internal Affairs in order to address the policy – and potential disciplinary – implications of the performance issues that were identified. If not for the complainant's own outreach to the Department, the formal discipline process would seemingly not have been utilized. Instead, the Deficiencies Noted memo and Training Referral that arose from the force review process would have constituted the whole of the LCPD response.

As much as we value those non-disciplinary interventions, we also recognize the importance of formally acknowledging relevant performance issues as misconduct. This

³ As we detailed in our fourth Semi-Annual Report, if a use of force review identifies any "ancillary issues" that require further action, the Department now uses a "Deficiencies Noted" memorandum to document the issue(s) and the action taken (e.g., debrief, policy review, or direction to formal training or Internal Affairs). This change in protocol is a commendable one. It ensures that the "feedback loop" produced within the review process is appropriately closed and formally documented – steps that help translate effective issue-spotting into concrete results.

helps reinforce standards and contributes to long-range accountability for involved personnel and the agency as a whole. Here, the officer's mishandling of this call for service did, in our view, rise to a level at which a formal response was warranted.

It is important to note that, on the whole, LCPD "got to the right place" in this matter as a function of the different processes that occurred. And the *substantive* analysis of officer shortcomings seems to have been consistent and thoughtful. To reiterate, though, the happenstance of the complainant's decision to submit his allegations should not have been a necessary component of the *procedural* move toward an Internal Affairs investigation and attendant discipline.

We recommend that the Department use this case as a vehicle for reinforcing expectations as to the various review processes that may be prompted by a given incident, and for ensuring that identified misconduct is referred to the Internal Affairs unit where appropriate.

RECOMMENDATION 1

LCPD should ensure that those identified performance issues that rise to the level of formal misconduct should be referred to Internal Affairs for additional investigation and remediation, even in the absence of an external complaint.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The use of force review for this case was conducted very early in the new process of identifying and addressing discrepancies. Although not executed perfectly, it is encouraging that issues were discovered and addressed even before an external complaint was filed. We will continue to strengthen this process in accordance with the above recommendation.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: July 3, 2023
RE: Review of Administrative Investigation – #2023EIC1-001

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an Internal Investigation (II) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on June 2, 2023.

Case Summary

This case arose from a contentious relationship between a woman and her ex-husband's current wife. Some of the issues were connected to custody and visitation of the former couple's two young children. Ongoing disputes about limits to the current wife's access to her stepchildren had led to mutual restraining orders and a number of other court filings.

The complaint in this case was submitted by the stepmother, in the aftermath of her arrest on a criminal warrant for harassment. The charges in that case had been made by the former wife and investigated by an LCPD officer. The complainant alleged that the officer had been biased in his handling of the dispute, that an improper personal relationship with the other woman had been his motivation, and that his outside

employment at Walmart (providing uniformed security) had provided him with information about the woman that he had used against her.

Factual Overview

This case emerged from a longstanding and complex series of conflicts between a mother of two young children and the new wife of her former husband. The aftermath of the divorce had proven to be marked by multiple disagreements and returns to court.

The LCPD officer who ultimately became the subject in this case was called by the former wife in the aftermath of the stepmother's appearance at the school of one of the children. The former wife asserted that this was in violation of a court-ordered prohibition against this sort of contact. The officer ended up speaking to both parties about the incident, as well as the principal at the school, and documented his findings in a police report.

Over the course of the next several days, the officer became aware of past and current allegations of harassing behavior that the former wife was claiming were being perpetrated by the current wife. Several of these involved making repeated phone calls from a blocked number and then hanging up. The former wife not only created a log of these incidents, but acquired a special app that allowed her to "unmask" the party who was connected to that phone. It turned out to be the current wife, as corroborated by further research undertaken by the officer.

Based on this information and the establishing of a pattern of behavior, the officer petitioned for an arrest warrant in conjunction with this telephone activity. It was signed by a judge. Very shortly thereafter, the current wife was stopped for a traffic violation by a Sheriff's Department officer, who noted the warrant and took her into custody. (Per the file, that matter was eventually dismissed without prejudice due to a failure to appear by a prosecutor, and was re-submitted several weeks later.)

In a complaint that was submitted a few weeks later, the woman took exception to her arrest and to the officer's overall handling of the dispute. She made a number of claims that revolved around her perception that the officer's failure to contact her after the initial incident in the school, and his apparent reliance on one-sided and inaccurate information from the former wife, were reflective of bias and constituted misconduct. She was also aware of the officer's security work at Walmart, having seen him there on different occasions, and she claimed that he was providing information to the former wife based on his sightings of her.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs framed several allegations against the subject officer, based on the contents of the written complaint and the subsequent investigation:

1. **General Order 103.01 (A)(4) – Code of Conduct – Unsatisfactory Performance.** Among the prohibitions in this section is "Engaging in personal conduct which interferes with the proper performance of any employee's duties."

LCPD found that there was no evidence to support the complainant's allegations of an improper relationship with her husband's former wife, and the involved officer expressly denied such a relationship when interviewed for the case. This was determined to be "Unfounded."

2. **General Order 141.02 (A) Police Reports – Accuracy and Thoroughness.** This section obligates officers to make sure their reports include all relevant information and present it with clarity and objectivity.

The complainant made several assertions in this regard. One related to a failure to include information she herself had provided, another included a claim that the harassment report that led to her arrest was based on mistaken information, and a third was that her own counter-allegations against the other woman had not been handled appropriately.

In reviewing the relevant reports and chronology of the case, LCPD found that these different allegations were not substantiated and exonerated the officer accordingly.

3. **General Order 231.07 (A)(3) Physical Arrests – Misdemeanor Arrests.** This section addressed the question of whether the warrant that the officer had generated, and that had provided the basis for the complainant's arrest, was grounded in an appropriate assessment of the facts and of probable cause.

The Department found that that it had been and exonerated the officer.

4. **General Order 292 Search and Seizure.** This policy obligates officers to act in accordance with 4th Amendment principles that restrict officers from engaging in unreasonable search or seizure. While this concept comprised a checked box on the complaint form submitted in this case, the Department was unsure of its

relevance to the facts. It speculated on possible bases for this claim, but found none of them to be supported by evidence and said the violation was "Unfounded."

The final two allegations within the investigation were generated by LCPD as a result of information learned during the evidence-gathering process in the complaint case:

- 5. General Order 151.01 (E) Recording Devices – Procedures.** This provision reads as follows: "Employees shall activate their BWC whenever responding to a call for service or at the initiation of any law enforcement encounter with a member of the public. To ensure proper recording, employees shall activate their BWC upon dispatch to a call for service."

The Department generated this aspect of the investigation after gathering available evidence and finding that several of the officer's relevant contacts had been audio-recorded but lacked a video component. This deviated from expectations and resulted in a "sustained" finding with a minor disciplinary consequence.

- 6. General Order 142.01 Court Attendance.** This policy section obligates officers to appear in response to subpoenas, or to otherwise address scheduling conflicts with the proper authorities.

In reviewing this matter, the Department determined that the officer had in fact missed a court date in conjunction with the case. However, the officer provided documentation to support his claim that he had never received a subpoena. The charge was resolved as "not sustained."

Outcome: Discipline or Other Action

The officer received minor discipline for violation of the body-worn camera policy; it was his first offense.

OIR Group Review

LCPD provided OIR Group the case file in keeping with our standard protocol. OIR Group reviewed the documents and digital evidence in the file, including the interview

with the subject officer and copies of numerous reports and court orders in conjunction with the larger dispute between the two women.

In many respects, the investigation did an effective job of sorting through a complex fact set in an effort to evaluate the challenged aspects of the officer's performance. Clearly, the court proceedings between the parties have been both a source and a reflection of considerable strife, dating back for some time before the subject officer even became involved. A review of the voluminous series of claims and counterclaims provides useful context in this regard. In a supplemental conversation with an LCPD supervisor, we learned that there were also personal connections between the Department and the husband of the complainant – a dynamic that may have influenced the proceedings at issue here.

As for the particulars in this case, the officer offered insight into his handling of the initial incident at the school, as well as his subsequent efforts to coordinate with other officers and to make a good faith effort at remaining objective in responding to the former wife's evolving allegations. His decision to seek and obtain an arrest warrant was apparently a legitimate response to the available evidence, and he claimed that he made it clear to the current wife (who ultimately filed the complaint) that he was neutral and that he welcomed any relevant information she wished to share. (Once she had been arrested, the complainant began to contact a different LCPD officer to raise any issues relating to her dispute with the former wife.)

He acknowledged that, after his initial dealings with the complainant, he did see her on a few occasions while working at Walmart, and would have been receptive to any outreach she wished to make in that context – including any information she wished to share about the conflict with the other woman. However, he claimed that the complainant would simply glare at him on those occasions and steer clear of any encounter with him. He also denied making any use of these sightings to undermine her or to somehow assist the other party in bothering her.

The subject officer denied having a personal relationship with the former wife, or being biased in her favor for any reason.¹ In fact, he added that the former wife had also become frustrated with him over a lack of progress in the criminal case that he had initiated because of her allegations.

The Department reached reasonable conclusions as to the core issue – namely, the legitimacy of the officer's enforcement actions with regard to the arrest warrant and the

¹ He did acknowledge that he was "friends" with that person on a personal social media account – a revelation that the investigator did not expand upon.

development of a misdemeanor harassment case against the complainant. It was also creditable for the Department to identify and pursue two additional concerns of its own about officer performance that emerged during the investigation itself: the violation of recording policy that was sustained, and the failure to appear in court that – based on insufficient evidence – was not.

At the same time, there were some elements of the ultimate findings that were less convincing, in large part because neither the complainant nor the former wife was interviewed by the investigator. This was problematic in a couple of ways.

First, although the written complaint that was submitted to initiate the case did contain an extensive amount of information, there were aspects of the allegations that certainly would have benefited from additional explanation and clarification. For example, the complaint form included a "checked box" for a supposed search and seizure violation. The investigation ultimately discounted this claim – but did so on the basis of *speculation* as to what prompted the notation by the complainant, rather than the articulated specifics that a follow-up interview might have produced. And offering a chance to engage more fully is obviously consistent with due diligence and complainant confidence, even in matters less complex and contentious than this one.

Second, an interview with the former wife could presumably have buttressed the conclusions that no personal bias had compromised the officer's approach, and that the officer had not improperly conveyed information gleaned from a Walmart assignment to be used against the complainant. While it is true that, as the case report notes, the complainant did not provide supporting evidence beyond her written allegations, the officer's mere denial is a counterbalance that the other woman could presumably have reinforced (or not).²

In speaking with the Department about this case, we were told that the investigator had in fact made several outreach efforts with the complainant, but that these were unavailing. We have no reason to dispute this (though there were multiple subsequent LCPD contacts with the woman regarding her conflicts with the former wife). At the same time, though, any such efforts would ideally be documented in order to show that the gap was not a matter of investigative choice. That did not occur in the memo for this case.³

² We do note, however, that the body-worn camera recordings of conversations between the officer and the former wife in conjunction with this matter did not appear to be reflective of a biased approach on his part.

³ Similarly, there was no notation regarding any efforts to contact the former wife.

RECOMMENDATION 1

LCPD should standardize a practice of attempting to interview complainants and key witnesses in administrative investigations, and should document any efforts by investigators to have accomplished this if such evidence turns out to be unavailable.⁴

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. To prevent this recommendation from having to be made again, the Las Cruces Police Department will implement a procedure where an internal affairs supervisor will contact all citizen complainants to confirm or clarify all allegations in the complaint. In the event a complainant cannot be reached, all attempts to contact the complainant will be documented and included in the case file. This process will be used going forward.

⁴ We have made the same or similar recommendation regarding interviewing complainants and/or witnesses in four prior cases: 2020EIC1-006, 2021EIC1-007, 2021EIC1-026, and 2022EIC1-002.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: August 17, 2023
RE: Review of Administrative Investigation – #2023EIC1-003

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation (II) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on July 18, 2023.

Case Summary

The complainant in this case was a woman whose nephew was briefly taken into custody at her home one evening at approximately midnight. Unbeknownst to her, her husband had called LCPD to arrest the nephew – a young adult with a history of past police encounters and mental health concerns – for trespassing. When she became aware of what was happening, she verbally confronted the officers as to the legitimacy of the arrest, and asked for a supervisor. The woman then began to retrieve her nephew's property from the sidewalk and walked towards him, which prompted one officer to briefly take her arm to stop her. She subsequently filed a written complaint protesting the officer's actions, with a particular emphasis on the officer's physical contact with her.

Factual Overview

This complaint stemmed from police encounter outside the complainant's residence, where she lived with her husband. LCPD received a call for service from the husband regarding an adult male who was alleging trespassing on his property. Police arrived and located the male, whose aunt also lived at the location (and who would become the complainant).

The complainant and her husband apparently had different views about her nephew, who said he was returning to the residence to gather personal property and claimed that he had authorization to do so from his aunt. Meanwhile, the husband believed that the nephew's visits were problematic and that he had engaged in vandalism at the home. It was for this reason that he had contacted LCPD when he realized the young man was present; he did this without his wife's knowledge, even though she was home at the time.

Officers conferred with the husband, who made it clear that he wished the young man to be charged with vandalism. Accordingly, the officers went to take him into custody, which prompted a vociferous protest from him. He struggled against their attempts to handcuff him and take him to the back of a radio car, and the commotion attracted the attention of his aunt.

She came out and sought to intervene immediately, based on her contention that a trespassing charge was invalid in light of her status as a person who was empowered to consent to his presence – which she did. She engaged in an animated dialogue with one of the officers to explain her understanding of the situation, based in part on prior similar encounters.

Then, after asking for a supervisor to respond, the complainant gathered some of the possessions that her nephew had left on the sidewalk when taken into custody. This action prompted a response from one of the officers, who first told her she couldn't take control of the property without the nephew's permission, and who then told her that she should not walk toward the radio car where her nephew was being held. When she did not immediately comply, he reached for her arm to hold her back. She reacted strongly but then acquiesced to the officer's requests.

Eventually, a supervisor arrived on scene. He spoke with the officers and the involved parties, and the detainee was eventually released at the scene in light of the stated willingness of his aunt to have him at her property.

Approximately one week later, the woman submitted a written complaint that detailed her different concerns.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

Although the complainant's primary focus was on the officer who had grabbed her arm, LCPD Internal Affairs also extended the allegation of improper force to the other two involved officers at the scene, who had taken physical control of the complainant's nephew against his protestations.

The policy violation at issue was framed as **General Order 255.02 (A)(1) – Use of Force**.

The actions of the officers were reviewed and found to be consistent with policy and training. The brief contact between the officer and the complainant was characterized as a "come-along grip" that did not rise to the level of reportable force. While the other two officers did use holds and "escort techniques" to overcome the nephew's resistance to being handcuffed and detained, the investigator found this to be not only appropriate to the circumstances but also below the threshold of a formal force application.

Accordingly, the allegations were exonerated for all three officers.

Outcome: Discipline or Other Action

In the absence of any sustained allegations, there was no disciplinary consequence connected to this case.

OIR Group Review

LCPD provided OIR Group the case file in keeping with our standard protocol. OIR Group reviewed the documents and digital evidence in the file, which included body-worn camera recordings of the relevant encounters.

We agreed that the physical contact between the officer and the complainant was minimal and warranted by her lack of responsiveness to the officer's directives. We also concurred with the finding that the other officers had been justified in their efforts to physically control the nephew as they handcuffed him and walked him to a radio car as he struggled against them.

One aspect of the incident that made an impression on us was the apparent familiarity between the officers and the involved family members. The nephew had his own history of police contacts, but the same concern – as to whether he was legally authorized to be at his aunt's residence – had seemingly recurred at the same location.

The disagreement between the complainant and her husband (who had called the police and had previously obtained trespass notices against the nephew) put the officers in a difficult position, and the correct resolution was ultimately reached. Interestingly, though, the complainant asserted that she had covered her preferences in past encounters with the police, and had been assured that the nephew had standing as long as she consented (and in spite of her husband's preferences).

Here, the nephew was calm and cooperative upon initially being detained, and there was time for officers to gather information, put this call into the context of past incidents, and ensure that the trespassing arrest was viable. (The nephew himself made repeated allusions to the aunt and her permission.) Had they been better situated in terms of background, some of the difficulties which ultimately arose could presumably have been avoided.

RECOMMENDATION 1

LCPD should equip its officers with the best possible information when calls for service recur at the same location and involve similar circumstances.

Our understanding from a recent communication with the Department is that a supervisor did in fact make an effort to flag the situation in the relevant database in the aftermath of a previous related call. Unfortunately, though, the information was not initially entered – a circumstance that we understand has since been rectified. This is good to know at the "micro" level in terms of this specific case, and we are also encouraged to learn that LCPD recognizes – and seeks to take advantage of – the broader value of the concept.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. We agree with this recommendation. There are multiple mechanisms to inform officers of prior issues at an address, but we will look for ways to improve the timeliness and accuracy of those notifications.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: August 31, 2023
RE: Review of Administrative Investigation – #2023EIC1-005

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on July 31, 2023.

Case Summary

This complaint stemmed from an incident that occurred at a dog training facility between the complainant and the dog trainer. The complainant first called LCPD dispatch to report animal abuse at the dog training facility. Later that same day, she called dispatch again to make a separate report that the dog trainer had assaulted her during the training session: she claimed that the dog trainer had forcefully grabbed and yanked her arm, resulting in bruising.

First, a non-sworn Department employee initiated an investigation of the alleged animal abuse. The non-sworn employee contacted the complainant, who showed the non-sworn employee video footage of the training class; according to the non-sworn

employee, the video footage did not show animal abuse. He then interviewed the dog trainer and a participant in the same training class. After this limited investigation, the non-sworn employee determined that there was insufficient evidence of animal abuse, informed the complainant of his findings, and documented this in an Incident Report. The complainant directed the non-sworn employee to Google Reviews of the dog training program that indicated animal abuse. The non-sworn employee responded that Google Reviews were not “proof of a crime” and closed the matter.

Later that day, an officer spoke telephonically to the complainant about the alleged assault. The complainant stated that the dog trainer had grabbed her by her arm and yanked her up, which left a bruise on her arm. Upon hearing the complainant’s brief account, the officer stated that the incident did not meet the criteria for “assault.” When she persisted, the officer stated that he would write a report, but that there was not enough evidence to press charges. He did not ask if there was any video or photographic evidence of the assault, nor did he request that the complainant take and submit photographs of her bruised arm.

The officer then visited the dog training facility. There, he interviewed the dog trainer, who advised the officer that the complainant had video footage of the class. He then interviewed two employees: one alone, and the other while the dog trainer was present. The dog trainer offered to provide the names and phone numbers of the fourteen other class members. The officer stated that these would not be necessary because the dog trainer and her two employees all denied the assault, and he would therefore not need to go any further with the investigation. He documented this in an Incident Report and closed the matter.

The following month, the complainant submitted a complaint form stating that the officer initially refused to take her report, failed to properly investigate the matter, and included inaccurate information in his police report. The complainant also provided the name of an additional witness who made similar allegations of abuse on Google Reviews.

Upon receipt of this newly named witness to possible animal abuse, a different non-sworn employee conducted additional investigation of the dog training facility’s tactics. In that investigation, the non-sworn employee interviewed the additional identified witness and others who had attended the same class as the complainant. While the investigation centered on animal abuse and did not ask witnesses about the alleged assault, some witnesses stated that the training was abusive and the dog trainer too aggressive toward the animals and the owners; this new information was never communicated to the officer who had investigated the original assault case.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incident and framed three allegations against the officer as follows:

1. **General Order 103 – Code of Conduct.** The complainant alleged that officer was dismissive and discourteous during her interaction with him.

LCPD exonerated this allegation after reviewing body-worn camera footage of the officer's interaction with the complainant. LCPD described the officer's demeanor as "patient."

2. **General Order 141.02 – Police Reports.** The complainant alleged that the officer did not complete a complete and accurate police report on the incident she reported.

LCPD exonerated this allegation after viewing the officer's body-worn camera footage, reading the related Incident Report, and reviewing the complaint form. LCPD determined that the report was accurate and evidence-based.

3. **General Order 215 – Investigations.** The complainant alleged that the officer did not conduct a thorough investigation of her alleged assault.

LCPD exonerated this allegation after reviewing the officer's body-worn camera and reviewing his Incident Report. LCPD found that the officer's investigation, which included witness interviews, was sufficient and that his decision not to pursue other investigative avenues, such as collecting video evidence, photographs, or other witness statements, was reasonable.

Outcome: Discipline or Other Action

There was no related discipline as the allegations were exonerated.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file.

We found that the evidence and LCPD's analysis supported the findings for the Code of Conduct allegation (allegation 1). However, with regard to allegations 2 and 3, which related to the Incident Report and the adequacy of the investigation, we question the analysis that led to the Department's findings. Put simply, our analysis of the evidence suggested that these allegations may have resulted in sustained findings, which indicated that this case should not have been closed out at the Preliminary Inquiry level.

Every complaint investigation begins with a Preliminary Inquiry. This initial evidence review assesses if the action(s) of the employee complied with policy or law, or if the actions might rise to the level of misconduct (e.g., are out of policy or law). If the preliminary inquiry determines that the allegations, even if true, are definitively within policy, the case can be closed without further formal investigation. This is appropriate in many cases, and a process that we support because it allows departments to triage complaints, saving investigative resources for those cases that may rise to the level of misconduct and result in discipline.

However, if a Preliminary Inquiry determines that an allegation, if true, *would* constitute violation of policy and/or procedure, LCPD policy requires that a formal administrative investigation be initiated.

In this specific case, the first allegation was definitively Unfounded based on the preliminary review of evidence: the body-worn camera recording of the interaction showed that the officer was patient with the complainant. But the evidence for allegations two and three was less definitive; the evidence collected in the Preliminary Inquiry suggested that the officer's investigation and police report were incomplete, as the complainant alleged.

As noted in our case summary, the officer agreed to take a police report only after the complainant persisted. While this was a positive step, the ensuing inquiry seemed limited to us in ways that undermined its sufficiency as a basis for closing the case. For example, the officer interviewed the dog trainer and her two employees, but because both witnesses corroborated the dog trainer's story, he closed the case without follow-up. He did not request photographs of the bruises or video evidence from the complainant (even after learning of its existence from the dog trainer), and he did not seek to interview additional witnesses when that opportunity was offered.

Further, LCPD's administrative analysis of the complaint case seemed an attempt to justify this after the fact. In its rationale for closing the case at the Preliminary Inquiry level, LCPD noted that these investigative decisions were "reasonable" and that the complainant's choice to report the following day (instead of the evening the alleged assault occurred), "caused [the officer's] investigation to be diminished" because, it stated, there was no way to connect the bruise to the alleged assault.

In our view, even if a delay in the complainant's report created complications or obstacles, the officer's own investigative choices were as or more influential in weakening the overall case. For example, the weight of the testimony by the dog trainer's employees was given great significance – but seemingly lent itself to obvious challenge in terms of their objectivity. (This seemed especially true of the employee interviewed in the presence of her boss). And other obvious avenues for evidence gathering – including viewing available video footage, seeing and documenting the bruising, and seeking additional witnesses – were discounted without convincing justification. Indeed, the subsequent animal abuse investigation months later suggested that at least some class participants viewed the dog trainer as overly aggressive and even combative with both animals and their owners.

Because these investigative actions were not taken, the related Incident Report did not contain "all pertinent information" as required by policy. Even in the course of discounting the complaint as a whole, LCPD's own administrative analysis acknowledged that a "more complete case file" would have resulted from including the photograph of alleged injury. Given that the evidence collected suggested potential misconduct, LCPD should have initiated a formal internal investigation of the matter. A formal investigation, including an interview of the subject officer to determine why he made those investigative decisions, would have provided additional evidence to support a more accurate finding.

We discussed these findings with the Department. First, the Department stated that they found the officer's investigation and police report to be sufficient for purposes of this incident; there was insufficient probable cause to charge assault. Second, both the officer's *and* the investigator's choices (to close out the assault case and to close a complaint at preliminary inquiry) were reasonable from a cost-benefit perspective: given limited resources in both the field and in Internal Affairs, further investigation would not yield a substantially different outcome, but come at a high cost and at the expense of other, potentially more significant work.

We understand this point of view and can appreciate the difficult decisions made when competing priorities and limited resources are at play. Where we differ from the Department is whether coming closer to completeness was not just a redundant ideal for the officer's investigation, but instead was needed for real adequacy to have been achieved.

RECOMMENDATION 1

When a preliminary inquiry suggests potential misconduct, LCPD should follow its formal investigation protocols, including interviews, to ensure that the investigation is thorough, fair, complete and accurate.¹

We also noted that the officer interviewed a witness in the presence of the potential subject. While LCPD noted that this was “not best interview practice,” it stopped short of recommending any corrective action. We recommend that, at a minimum, LCPD provide a debrief on investigative protocol; specifically, a review of interview best practices. LCPD has provided retroactive debriefs based on our past recommendations. We recommend this again here.

RECOMMENDATION 2

LCPD should provide a debrief on investigative protocol and specifically provide a review of interview best practices.

LCPD Management Response

1: When a preliminary inquiry suggests potential misconduct, LCPD should follow its formal investigation protocols, including interviews, to ensure that the investigation is thorough, fair, complete and accurate.^[1]

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group.

¹ We recommended this once previously; see 2021EIC1-011.

^[1] We recommended this once previously; see 2021EIC1-011.

2: LCPD should provide a debrief on investigative protocol and specifically provide a review of interview best practices.

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. Refreshing interview skills and best practices is always beneficial and was recently conducted during in-service training.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: August 31, 2023
RE: Review of Administrative Investigation – #2023EIC1-007

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an External Investigation/Category 1 (EIC1) – a complaint from a member of the public that received a formal review – and was investigated by Internal Affairs.

OIR Group received the above-referenced case file on July 31, 2023.

Case Summary

The complainant in this case was a local business owner who was dissatisfied with LCPD action (or inaction) in responding to two separate calls for service at her shop. She explained this in the context of a lengthy email that she addressed to LCPD leadership as well as City officials.

The different calls in question were both prompted by the actions of seemingly transient individuals who were an unwelcome presence at and around her place of business – particularly in the context of her apparent familiarity with acts of vandalism and dangerous behavior that had become prevalent in the area.

The first call was in the early morning hours and came after she became worried about the activities of a man who was, she reported, rummaging and banging on structures in the area near her business. LCPD officers responded and contacted two individuals who were nearby, but they were allowed to leave. The woman spoke more generally with one officer about the larger safety concerns that she and others were experiencing and got his contact information after requesting it. No report was generated.

The second call was approximately one month later. It came in the mid-morning, when the complainant reported that a transient individual had been banging on her windows and persisting in trying to open the door of her establishment after she had locked it to keep him out. A responding officer located the man and spoke to him; he explained that he had simply wanted to go inside during posted business hours and did not understand why or how she could prevent him from coming in. Officers spoke with the woman for several minutes and evaluated her property for possible damage. Finding none, they nonetheless took down pertinent information and pulled a case number for her reference. They also spoke with her more generally about her perceptions of an ongoing crime problem in the area. The primary officer drafted a brief report about what had occurred.

In the aftermath of the second incident, the woman contacted several City officials and articulated several specific bases for dissatisfaction with the LCPD response to both calls. While she raised specific issues of officer judgment and effectiveness, these were accompanied by a larger critique of the City's response to problems of disruptive behavior in the downtown area.

The Department initiated an Internal Affairs review of the complaint.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a preliminary inquiry of the incidents and framed identical allegations against the two different officers who had primary handling responsibilities for the two calls. Each related to the validity of those officers' respective assessments and the adequacy of their respective interventions. Relevant policy sections included the following:

- 1. General Order 103.01 – Code of Conduct – Unsatisfactory Performance:**

This encompassed the overall response, including the officers' knowledge of applicable laws and the possibility that they had failed to take appropriate action.

2. **General Order 141.02 – Police Reports**

This policy section frames the circumstances in which reports are "generally required."

3. **General Order 215.01 – Investigations.** This section addresses the expectations for officers in responding to a call for service that may involve a crime.

4. **General Order 231.03 – Authority to Arrest.** This section covers the criteria under which a potential suspect can lawfully be taken into custody.

Based on the body-worn camera recordings and accompanying documentation (including the police report completed by the officer in the second case), LCPD found that the officers in both calls for service had acted appropriately in relation to each of the above-listed policy sections.

Outcome: Discipline or Other Action

There was no related discipline as the allegations were exonerated.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed the documents and digital evidence in the case file.

We concurred with the overall assessment that the officers had handled the two calls for service in a reasonable and appropriate manner. The alleged behavior that had prompted the calls, while understandably worrisome to the complainant, did not rise to the level of criminal violations – even under her own description of events. And the officers showed due diligence in both situations. This included investigative work at the scene, contacting persons of interest, and attempting to provide options and reassurance to the woman.

Our impression from the video recordings of both encounters was that the woman was primarily frustrated with the increase in local crime.¹ She made repeated references to

¹For example, the complainant made repeated references to windows that had recently been broken at a nearby business – a circumstance that was of course relevant in the broader sense but separate from the fact set that shaped the officers' immediate ability to take action.

the larger quality of life concerns that she believed were stemming from the prevalence of a transient, aggressive, unstable population in the downtown district. And she acknowledged that the officers themselves were "stuck in the middle" of a dynamic that she seemed to think was a matter of misguided or ineffective public policy.

The specific incidents that formed the basis for the complaint were perhaps best understood as personal examples of an enforcement approach that in her view was overly passive and tolerant. That said, the actions of the involved LCPD personnel did not seem dismissive, smug, or otherwise inappropriate to the circumstances that they were presented with at either call for service. And some of the complainant's contentions about officer behavior were not supported by the recordings.²

While we agreed that no misconduct had occurred, we did note minor technical issues with the complaint investigation's framing of issues. This seemed like a consequence of treating both events as separate examples of the same basic allegation – an assessment that was largely true in a "bottom line" way, but that lent itself to imprecision.

For example, although the actions of a second officer in the second incident had been specifically mentioned as problematic (insofar as he cited the store's posted hours of operation in explaining the male's persistence in trying to enter), that officer was treated as a "witness" within the administrative review.³ And there were particular (if less significant) features of the woman's complaint email that were not addressed. These included the inaccurate date on the reference card provided by the second officer, and concerns about whether a report had actually been entered into the system.

To be clear, the memo was thoughtful and detailed in many respects. But, ideally, each concern raised within a complaint will receive consideration and a documented response.

² For example, she asserted that the officer on the first call had told her that reports were futile since the subjects would just be released right away; the body-worn camera footage we reviewed showed no evidence of the officer making such a representation.

³In our view, this officer (like the others), had engaged with the woman in an appropriate and professional manner.

RECOMMENDATION 1

LCPD should ensure that the investigation process addresses all relevant concerns raised by the complainant, even if they do not correspond to specific policy sections.⁴

We also noted that the notification to the complainant contained some inaccuracies of its own – which was perhaps a function of reliance on "boilerplate" language. These included limiting the response to the second incident (instead of both), and making reference to interviews of involved officers and witnesses as a basis for the findings. Interviews were not necessary in this case, in our view, but the mention of them was misleading.

We again encourage LCPD to give this kind of "closeout" correspondence – an important part of public confidence in the complaint process – its careful attention.

RECOMMENDATION 2

LCPD should ensure that complaint notification letters provide accurate and complete information to the concerned member of the public.⁵

⁴ We have made similar recommendations regarding framing allegations and issue-spotting in six prior memos. We also discuss the Department's progress on this topic, and areas for additional improvement, in our 4th Semi-Annual Report.

⁵ We have made similar recommendations regarding the content of close-out letters in six prior memos.

LCPD Management Response

1: LCPD should ensure that the investigation process addresses all relevant concerns raised by the complainant, even if they do not correspond to specific policy sections.

The Las Cruces Police Department appreciates the review completed by the OIR Group.

2: LCPD should ensure that complaint notification letters provide accurate and complete information to the concerned member of the public.

The Las Cruces Police Department appreciates the review completed by the OIR Group. We will work to continue improving the content and thoroughness of our complaint notification letters.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: July 28, 2023
RE: Review of Administrative Investigation – #2023EIC1-010

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was classified as an Internal Investigation (II) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on June 30, 2023.

Case Summary

The complaint in this case was written out and submitted by an individual who had been arrested for aggravated stalking and harassment. He maintained that the handling detective from LCPD – whose prior assignment as a school resource officer had overlapped with the complainant in a few ways – was biased against him and had improperly shared information about him with third parties.

Factual Overview

This complaint was filed after several months' worth of incidents that revolved in part around a family dispute. The complainant, an adult man, had been in a domestic relationship with a woman who had recently passed away, leaving two young sons. The complainant remained in the home where the family had lived, which became a source of contention for the members of a different family who believed they had claim to the estate. Meanwhile, the complainant apparently also assumed some caretaking responsibilities for his deceased partner's sons.

The older of the boys was a student whose high school was also the assignment for the LCPD officer who became the subject of the complaint. The first in a series of relevant issues developed at the school, where the young man had been found in possession of a vape pen that had allegedly come from the complainant. As a result of that incident, the student's grandfather confiscated his phone and other possessions; the grandfather spoke with the LCPD officer a few days later and said the complainant was repeatedly calling the number in a way that concerned him.

Meanwhile, other clashes were occurring between the complainant and the family members who were challenging his claims to his deceased partner's property. Some of these involved police contacts, including an alleged harassment incident at a high school football game and different confrontations near the family's home.

The LCPD officer, newly promoted to detective, eventually packaged together some of the different incidents into a warrant for the complainant's arrest, based on allegations of "aggravated stalking" that included the family's young children as victims. A judge signed the warrant and charges were filed. These were later dismissed without prejudice, apparently based on the prosecutor's desire to re-present the allegations in a grand jury proceeding.

In the aftermath of that initial dismissal, the complainant filed his allegations of misconduct against the officer. He raised a few different concerns. He claimed that the initial "vape pen" encounter at the school had been mishandled by the officer, that he had been "set up" by the officer in the development of the stalking case, that he and the officer had a prior history of contention that was partly rooted in shared family connections, that disparaging comments by a third-party school official were a sign that the officer had maligned him to others, and that the officer had recently had an off-duty clash with him at a restaurant that showed the officer's improper animosity.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs framed two allegations against the subject officer, based on the contents of the written complaint:

- 1. General Order 103.03 (A)– Code of Conduct – Compliance with Rules, Laws and Regulations.** LCPD used this section to encompass different elements of the complaint. First was the claim that the issuance of the warrant had lacked a legitimate legal basis. The Department determined that the officer had, in fact, proceeded in a valid fashion as justified by available evidence, and noted both that a judge had signed the warrant and that the dismissal of the case – which the complainant cited as significant – was apparently only temporary.¹ Moreover, the family connection that the complainant cited as evidence of bias was a tenuous one that had ended well before the incidents at issue, and no specific support for this idea of a problematic influence was provided.

Next was the allegation that the officer had improperly confronted the complainant at a restaurant in the midst of the recent proceedings. LCPD determined that the alleged conflict had occurred off-duty, and that nothing about the complainant's specific allegations – even if true – constituted a policy violation.

Finally, the investigation refuted the assertion that the officer had wrongly searched for and taken possession of the student's property during the contraband incident at the high school. It turned out that the student's grandfather acknowledged having the items, which the complainant did not realize.

Accordingly, LCPD exonerated the officer.

- 2. General Order 149 (A)(1)(3)(4) Release of Confidential Information.** The applicability of this policy section arose from the complainant's assumption that disparaging remarks about him by a school official had been based on statements and details improperly shared by the officer. Pointing to the lack of any corroborating evidence and the likelihood that the school official would have

¹ Further proceedings in the criminal court were still pending at the time the administrative investigation was finalized.

his own bases for familiarity with the complainant, the investigator determined that this allegation should be "Unfounded."

Outcome: Discipline or Other Action

In the absence of any sustained allegations, there was no disciplinary consequence connected to this case.

OIR Group Review

LCPD provided OIR Group the case file in keeping with our standard protocol. OIR Group reviewed the documents and digital evidence in the file, which included a recorded follow-up interview with the complainant at the police station.²

The investigation was largely effective in sorting through a convoluted fact pattern that extended over a long period of time. We found the findings and conclusions to be a reasonable response to available evidence. At the same time, our review produced a couple of points for further attention.

The first was that the investigation would presumably have been strengthened by an interview of the subject officer, which did not occur. While there are circumstances in which other available evidence (such as body-worn camera recordings) suffices to reach a definitive conclusion for a given complaint investigation, we advocate the step of a formal interview whenever "loose ends" do exist. Here, there were different aspects of the complaint for which the perspective of the officer would have been useful.

For example, the investigator was left to speculate about what transpired at the restaurant when the off-duty officer and the complainant allegedly clashed. Similarly, the investigator relied on assumptions about the lack of influence that any tenuous personal family connections might have had on the officer's decision-making, and about the school official's independent knowledge of the complainant. An interview with the involved officer would have addressed these issues more definitively.

In discussion with LCPD about this case, we learned that the Department's position on such a step is that it is best understood as a matter of balancing competing values:

² This was encouraging, insofar as we have noted in five prior reviews the importance of conducting such interviews in the interest of investigative thoroughness.

namely, completeness vs. practicality and efficiency. In the current context of high caseloads and limited resources within Internal Affairs, LCPD explained that the benefits of streamlining the process are magnified in ways that bear on decision-making. As applied to interviewing and the formalities it adds, the standard seems to be whether doing so is *necessary* in terms of reaching a justified conclusion, as opposed to simply being preferable in an ideal world.

The Department asserts that, in this specific case, the other evidence was sufficient to establish the key findings in the investigation – particularly insofar as the complainant failed to corroborate many of his own claims with supporting details (in spite of suggesting that he could and would do so). Accordingly, the interview was dispensed with.

We appreciate the candor of LCPD management. And we always hope our critiques are fair, and that the recommendations that emerge from them are attainable in the "real world" environment that the agency must navigate. We also respect the underlying point that a given set of facts and available evidence can render a formal interview superfluous.

At the same time, we stand by our sense that, in *this* case, the scales tipped in favor of getting more information from the officer himself. And we encourage the Department to lean toward doing so when similar levels of uncertainty exist in future cases.

RECOMMENDATION 1

In the absence of definitive evidence that otherwise resolves questions of fact and decision-making, LCPD should conduct formal administrative interviews of subject employees in complaint investigations.³

Our second observation was that the web of connections between these parties seemed to complicate matters in ways that were potentially avoidable. However remote the familial relationships may have been, it seemed clear that the two had some personal history that colored the complainant's perceptions of fairness.

Obviously, officers can't always control whom they encounter in an enforcement context. But in this case, the development of the stalking charges and the detective

³ While we have previously recommended that LCPD conduct thorough interviews of complainant and witnesses, this is the first recommendation related to interviews of subject employees.

work that extended over the course of weeks could presumably have been passed off to another member of the Department to avoid even the semblance of partiality.

RECOMMENDATION 2

LCPD should encourage officers to consult with their supervisors regarding the potential for conflict and potential reassignment of ongoing criminal matters when personal relationships have the potential to create conflicts or avoidable complications.

LCPD Management Response

Recommendation 1:

The Las Cruces Police Department appreciates the review completed by the OIR Group. Although the outcome would likely not have changed with the additional interview, we agree that an interview should be conducted if there are details that need to be clarified and would substantively affect the investigation.

Recommendation 2:

The Las Cruces Police Department appreciates the review completed by the OIR Group. We agree with this recommendation and will ensure that this is discussed with officers.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: December 28, 2023
RE: Review of Administrative Investigation – #2023 EIC1-011

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was generated by Department management in response to a written complaint submitted by a member of the public, and was investigated by Internal Affairs.

OIR Group received the case file on November 29, 2023.

Case Summary

The complainant in this case was a woman who was in an ongoing child custody dispute with an LCPD employee with whom she had had a brief relationship several years earlier. Both had gone on to marry other people.

The LCPD member had ongoing concerns about the child's well-being, with a particular focus on the complainant's current husband and the possible exposure of his own son

to inappropriate influences. While these disputes were still an issue, the complainant's husband died suddenly, under circumstances that had involved an LCPD response.¹

In a court filing subsequent to the death of the complainant's husband, the LCPD employee had attached as an exhibit a copy of an official police report in that case. The complainant asserted to the Department that the employee had misused his professional access to the internal LCPD case file and had shared material that should have been confidential.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

This investigation was the companion to another complaint against the same employee regarding alleged misuse of professional access and the improper dissemination of official and confidential records. We addressed those claims (which dealt with overlapping subject matter but came from a separate complainant and involved different specific records) in an earlier memo. (See LCPD # 2023EIC1-015.)

The allegations were all connected to policies imposing confidentiality requirements on Department employees with regard to certain categories of information. They included the following:

General Order 103.19 Code of Conduct – Security and Confidentiality Required.

This section asserts the confidentiality of official Department business and imposes various obligations on Department personnel to ensure that relevant information is not mishandled, improperly released, or used for inappropriate purposes. The investigation determined that this policy was most relevant to the identified misconduct in this set of facts, and the allegation was "Sustained."

Specifically, the subject officer used his Department access to download an official police report about the death of the complainant's husband, rather than filing a public records request in his personal capacity. He stated that he did this to expedite acquiring the material in light of timing exigency related to an upcoming court proceeding regarding custody of his son. Although the overwhelming majority of the

¹ The husband, who had been reported missing, was located by Department personnel after notification by a third-party observer. He was deceased inside a vehicle, and apparently had been for several hours. The incident was the subject of several LCPD reports and a formal autopsy investigation.

report was a public record to which anyone was entitled,² the normal process would have resulted in the redaction of specific personal identifying information about the decedent. The version that the subject officer had obtained – and included in his submission to family court – was unredacted, and thus amounted to an improper sharing of non-public information.

General Order 149 – Release of Department Information. This section delineates with some specificity the categories of official report considered available for public dissemination – and those that are restricted. The investigator used this section to focus on the sensitive content that had been the focal point of the complainant's concern. Because that information was not covered by any of the exceptions to public availability that the policy sets forth, this allegation was deemed "Exonerated."

City of Las Cruces Personnel Manual 603 (A) – Confidentiality. This section applies more broadly to all City employees and covers many of the same principles as the Department-specific sections cited above. It was classified as "Unfounded," primarily because the problematic conduct at issue was already and more directly addressed by the sustained violation of General Order 103.19 cited above.

Outcome: Discipline or Other Action

The Department took the officer's past disciplinary history into consideration in addressing this violation; there were two prior misconduct findings in the last five years, both minor in nature and unrelated to the issues in this case, and the Department had "unfounded" the complaints in the related "companion" case (see 2023EIC1-015) LCPD disciplined the officer and re-trained him regarding the confidentiality of records.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. The investigation included a review of the relevant records and a formal interview of the subject officer himself, in which he acknowledged his method and motivation for obtaining the documents at issue.

We found the investigation to be effective overall, and thought the Department's resolution of the different allegations was reasonable in the totality of the circumstances. In our memo regarding the companion case to this one (LCPD # 2023EIC1-015), we

² This included some of the sensitive details about the circumstances surrounding the man's death, which had been of primary significance to the complainant.

described concerns with certain aspects of the investigator's interview style.³ However, these ultimately did not affect the obtaining of necessary information or the soundness of the findings and conclusions.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. Please see the management response for 2023EIC1-015 for additional comments.

³ The memo for that investigation articulates the particular ways that, in our view, the investigator's interview technique could have been enhanced. These primarily related to apologetic comments and leading questions that undermined the overall impression of objectivity, and prompted a recommendation to the Department that was later endorsed by LCPD.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: November 17, 2023
RE: Review of Administrative Investigation – #2023EIC1-015

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was generated by Department management in response to a written complaint submitted by a member of the public, and was investigated by Internal Affairs.

OIR Group received the case file on October 11, 2023.

Case Summary

The complainant in this case was a woman who lived out of state, but whose former spouse was a Las Cruces resident. The woman reached out to LCPD out of concern that, for personal reasons, a Department member was inappropriately accessing and sharing confidential information about the ex-husband and about his past life with the complainant.

The complainant's marriage to her ex-husband had ended a few years ago, but they had children in common who now lived exclusively with the complainant. The ex-husband had gone on to marry another woman who brought her own minor child into the relationship.

That child's biological father was an LCPD member who had ongoing concerns about the child's well-being. As the complainant explained it during her intake interview with an Internal Affairs supervisor, those custody issues had apparently prompted the wife of the LCPD officer to seek contact with the complainant via social media outreach to the complainant's siblings. The goal was seemingly to gain information about the complainant's ex-husband and current wife and possible exposure of the minor child to harmful behaviors.

The contacts allegedly dated back for some two years, though there were long gaps between attempts at outreach. For personal reasons, the complainant did not wish to engage on the relevant subjects, and had not been in touch with the LCPD officer or his wife. Nor had she been contacted directly by either of them. But the recent sudden death of the ex-husband had prompted new communication, and the complainant found this to be inappropriate and upsetting. She also had the sense that some of the information that was being shared with one of her sisters (in a phone conversation with the officer's wife) was confidential. This included specific details about the circumstances of the ex-husband's death, which had involved LCPD police response.¹ The complainant believed some of this information could only have been accessed by the officer through his law enforcement status – which she considered a problematic misuse of his authority.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The allegations were all connected to policies imposing confidentiality requirements on Department employees with regard to certain categories of information. They included the following:

General Order 103.19 Code of Conduct – Security and Confidentiality Required.

This section asserts the confidentiality of official Department business and imposes various obligations on Department personnel to ensure that relevant information is not mishandled, improperly released, or used for inappropriate purposes.

General Order 149 – Release of Department Information. This section delineates with some specificity the categories of official report considered available for public dissemination – and those that are restricted. This was relevant in that the LCPD

¹ The ex-husband, who had been reported missing, was located by Department personnel after notification by a third-party observer. He was deceased inside a vehicle, and apparently had been for several hours. The incident was the subject of several LCPD reports and a formal autopsy investigation.

reports relating to the death of the complainant's ex-husband were all available as a matter of public record.

City of Las Cruces Personnel Manual 603 (A) – Confidentiality. This section applies more broadly to all City employees and covers many of the same principles as the Department-specific sections cited above.

The investigation included a review of the relevant records, emailed communications from the complainant's siblings (who provided detailed information about their respective interactions with the LCPD officer's wife), other witness interviews,² and a formal interview of the subject officer himself. It established that any information that was communicated by the LCPD officer's wife (and potentially attributable to the officer's access) was in fact publicly available and non-confidential in nature.³

Accordingly, the investigation determined that any misconduct allegations should be unfounded.

Outcome: Discipline or Other Action

Given that no misconduct was established in the investigation, there were no disciplinary consequences.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. We found the investigation to be rigorous in gathering information and for the resulting memo to be thorough, clear, and persuasive in addressing a somewhat complex set of circumstances and relationships.⁴ Appropriately, the fact that the officer's wife had been

² The Internal Affairs investigator had repeated contacts with the representative from the state's Office of Medical Investigation, which conducted the autopsy of the ex-husband. That autopsy – and whether its contents had been known to and improperly disseminated by the LCPD officer – was a significant element in the allegations. However, the investigation established that the autopsy report had not been finalized at the time of the complaint and that no one other than the decedent's spouse had made inquiries as to its status while it was pending.

³ This included information about a "Child Protective Services" case out of Texas, where the complainant and her ex-husband had resided during their marriage. The LCPD officer had, in his private capacity, requested and received publicly available records through the official channels in that state. Though references to this matter were upsetting to the complainant, it did not render the obtaining of the records improper.

⁴ The investigation was also completed within a timeframe of several weeks, which is a marked improvement over our past experience and a positive reflection on the Department's renewed commitment to timeliness.

the point of actual contact with the complainant's family was considered relevant but not dispositive in terms of assessing whether the officer had acted consistently with policy and Department expectations.⁵

The investigation was particularly effective in clarifying an apparent misunderstanding about whether autopsy information had been accessed and prematurely shared. Though completed autopsy reports are also a matter of public record in New Mexico, information from pending matters is not. But the evidence established not only that the officer had not contacted the OMI investigator, but also that the specific facts that had been shared by the officer's wife and prompted the allegation were discernible from the official (and available) police reports themselves.

The Internal Affairs interview of the involved LCPD member addressed allegations arising from two different complaints against him submitted by separate complainants (though many of the issues overlapped). The Department has opted to address them under separate cover, and we have not yet received or reviewed the completed case file for the other, related matter. We look forward to reviewing that case when it is finalized.

In the meantime, we take this opportunity to note that we found room for improvement in some aspects of the investigator's approach to the formal interview. Though it lasted nearly an hour and covered a significant amount of relevant information, the interview would have benefitted from a higher level of objectivity and rigor.

Finally, while agreeing with the results of the investigation, we also found the complainant to be sincere, reasonable, and understandably concerned about the possibility that official access had been misused for personal reasons. The Department's notification letter ideally might have gone beyond the terse "insufficient evidence of misconduct" language that was offered to her. This seemed to be a worthwhile occasion for LCPD to explain the basis for its findings in a bit more detail, so as to provide a clarifying reassurance that no abuse of authority had been involved in the different communications.

We have recommended this type of engagement in previous reviews (see, for example, 2022EIC1-020); as we reported in our 4th Semi-Annual Report, the Department is in the process of developing post-investigation outreach possibilities, including creating a new alternative complaint resolution process. We look forward to hearing more about these program developments and their effectiveness.

⁵ It was also noted – accurately, in our view – that the contacts themselves were limited in nature and respectful in tenor.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. We agree with this recommendation. We are committed to comprehensive and ongoing training for our Internal Affairs (IA) detectives that will assist them in their interviewing skills, among other things. As an example of that commitment, IA personnel have attended two separate training courses or conferences in the past three months.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: November 29, 2023
RE: Review of Administrative Investigation – #2023EIC1-016

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was generated by Department management in response to a written complaint submitted by a member of the public and was investigated by Internal Affairs.

OIR Group received the case file on November 3, 2023.

Case Summary

This complaint resulted from a call for service. Officers received a call of a suspicious person wandering in an apartment complex with a knife. Officers contacted the person, who turned out to be the landlord, and instructed him to drop the knife, which he did.¹ The landlord stated that he had an eviction notice for the tenant in one of the

¹ While two officers responded, one took the lead in contact and communication while the other stood by as backup and did not play an active role in the incident. The complainant specifically noted that the "other officer" was cordial and very professional. Because of these dynamics, LCPD focused this investigation on the actions of the contact officer. We found this to be appropriate.

apartments, that he wanted to cut the apartment's power, and that there was a male living in that apartment who was not on the lease. The landlord stated that this male had recently placed a lock on the electrical box to prevent the landlord from cutting their power. The landlord asked officers for bolt cutters to open the box and cut the power.

The officer responded that the landlord could not cut the bolt or the power, and informed the landlord that he had no legal standing to take action that evening. The officer advised the landlord to resolve the matter in civil court. The landlord then requested that officers speak with the tenant about loud music.

Officers contacted the tenant and the male living with her, who reported that the landlord had been harassing them and trying to cut their power. The landlord and male began to yell at each other, and officers tried to diffuse the tension.

The landlord then walked away, found an axe, and began striking the electrical box. The contact officer instructed the landlord to stop and to drop the weapon (the axe); he did not. Once he had broken the lock and the box itself, the landlord dropped the axe and returned to the officers. The officer handcuffed the landlord and informed him that he was under arrest for resisting the officers' commands. As they moved the landlord into the police vehicle, the officers noted that the landlord smelled strongly of alcohol.

The officers called for a supervisor at the landlord's request.

Officers and the male from the apartment then returned to the electrical box, where they found the broken lock and a cell phone with the flashlight function on to illuminate the box. The contact officer moved the cell phone to an adjacent box as they looked at the broken lock.² The male from the apartment stated that the lock was his, but that he did not want to press charges for the broken property. They discussed calling the electrical company to fix the box as they walked back toward the apartment. When the male asked the female tenant to get his phone so that he could call the electric company, the officer stated that a cell phone was on the adjacent electrical box. The male retrieved it and placed it in his pocket.

After additional discussion, officers learned that the male himself had an outstanding warrant and stated that they had to arrest the male. The male asked if he could leave his property with the female tenant; officers agreed. As they searched him, officers handed over property to the female. When they removed the cell phone from his pocket, officers advised that the male keep his cell phone with him to make calls once he was released. Upon hearing this, the female tenant handed the male a different cell phone. The two had a confused discussion about these cell phones ending with the

² This cell phone later became one subject of the landlord's complaint: the landlord alleged that the cell phone found on the electrical box was his and that the officer had failed to properly secure it.

male claiming that both phones were his and ultimately leaving both phones with the female tenant.

In the meantime, a supervisor arrived. The contact officer and supervisor discussed the incident, and the supervisor approved the charge.³ They also determined that the landlord should go to jail rather than be cited and released at the scene. This was because he smelled of alcohol and was thought likely to cause further issues at the location.

The supervisor then spoke with the landlord, informing the landlord that the landlord had failed to obey the officers' commands and was being arrested for resisting.

The landlord and male were transported to jail in separate police vehicles, where Sheriff's Office personnel took custody.

Several months later, the landlord appeared for his court date, but the arresting officer failed to appear, and the charges were dismissed. Believing this indicated that the officer had acted illegally, the landlord contacted LCPD in an effort to "press charges" against the arresting officer. He stated that the officer was rude, had falsely arrested him, did not inform him of the reason for the arrest, failed to secure his personal property (a cell phone), and, ultimately, failed to appear in court.

LCPD learned that the officer had indeed failed to appear in court. But the officer had advised the court of his military leave in advance as required by policy; the court had erroneously scheduled a hearing during the leave time and failed to provide the officer with a notice to appear.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The Department framed allegations regarding arrests, conduct toward the public, and requirements to appear in court. They included the following Department policies:

General Order 103 - Code of Conduct – Conduct Toward the Public. This section requires officers to treat all members of the public with respect. The Department exonerated this allegation after reviewing body worn camera footage that showed the officer treated the landlord in a professional manner.

³ While other charges, such as destruction of property, may have also applied, the officer and supervisor determined that the best charge was resisting a peace officer.

General Order 142 – Court – Court Attendance. This policy requires officers to appear in court when subpoenaed unless other arrangements have been made with the court. LCPD exonerated this allegation after reviewing evidence that showed that an error had been made in scheduling the hearing for a date when the officer was on military leave. LCPD also advised the court of their error.

General Order 231 – Physical Arrest. This policy details the requirements and procedures for effecting an arrest. Here, LCPD framed allegations based on the landlord's assertions related to his arrest: false arrest, failure to inform of probable cause, and failure to properly book property.

LCPD exonerated the first two allegations: first, the officer *did* have sufficient cause to arrest the landlord for resisting the officer's commands; second, the officer and the supervisor explicitly informed the landlord of the reason for his arrest.

LCPD unfounded the third allegation regarding the landlord's cell phone. Body-worn camera footage showed that the officer had indeed located a phone during the incident. However, the male from the apartment had immediately and convincingly claimed it as his and placed it in his pocket. LCPD noted that the officer could have done more to identify the cell phone's true owner. But, ultimately, LCPD found that the officer's actions did not rise to the level of misconduct and that it was a reasonable mistake given the set of circumstances.

Outcome: Discipline or Other Action

Given that no misconduct was established in the investigation, there were no disciplinary consequences.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. We found the investigation to be complete with respect to the allegations made by the landlord, and the outcomes appropriate. While the mistake with the phone was especially unfortunate, the Department gave it due consideration, and we found the ultimate outcome to be supportable.

We did notice that the officers used profane language casually during conversation with all parties; this was not addressed as an ancillary issue in the investigation. Use of casual profanity in this manner is hardly unique to LCPD officers, but we believe that it clashes with public expectations of officer professionalism in ways that deserve consideration and potential course correction.

When we discussed this topic in our Second Semi-Annual report (June 2022) after identifying similar instances of unprofessional language, the Department agreed to address these occurrences when they were identified during an administrative investigation, and to remedy them by directing section supervisors to provide counseling to the involved officers. We advise that the Department implement that counseling here.

The Department also committed to incorporating the topic into its Department-wide “Code of Conduct” training. While training is an essential component, we also recommend that LCPD look for ways to promote the use of professional language when officers interact with their public. Other agencies have gone so far as to issue commendations to officers who exhibit professional communication, as a means of reinforcing this approach.

RECOMMENDATION 1

LCPD should address the use of profane language in this case through informal counseling of the involved contact officer.

RECOMMENDATION 2

In addition to continued training, LCPD should look for ways to affirmatively promote the use of professional language.

LCPD Management Response

RECOMMENDATION 1

The Las Cruces Police Department appreciates the review completed by the OIR Group. The supervisor of the officer involved in this case will have a conversation with them regarding building rapport without the use of profanity.

RECOMMENDATION 2

The Las Cruces Police Department appreciates the review completed by the OIR Group. We agree with this recommendation. The elimination of profanity has been prioritized by the LCPD and is weaved into multiple trainings. Although this is a process that will take time to get us where we would like to be, we are seeing encouraging

evidence that the training is effective. We are open to and will explore additional measures that will help reduce the use of profanity by officers in all contexts.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: November 9, 2023
RE: Review of Administrative Investigation – #2023EIC1-023

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was generated by Department management in response to a written complaint submitted by a member of the public, and was investigated as a "Preliminary Inquiry."

OIR Group received the case file on October 11, 2023.

Case Summary

The complainant in this case was an adult male who was the subject of an early morning arrest for driving under the influence. After an LCPD officer pulled the man over for failing to maintain his lane, the officer summoned a trainee to respond for purposes of gaining experience in as to investigating a potential drunk-driving violation. A trainee did respond, along with two other officers, and conducted different field sobriety tests before determining that the man should be arrested. LCPD took the man into custody and then brought him to a Sheriff's Department facility (for a breath test), to the police station for booking, and then to county jail – a series of actions that took more than three hours to complete.

During that time, the man's interactions with the trainee officer (who was primarily in charge of him) were frequently marked by complaints and expressions of discomfort and frustration. While the man did not contest the legitimacy of the arrest itself, he identified several aspects of the encounter that were, in his view, mishandled.

The articulated concerns in the written complaint that he later submitted included the following: that his repeated references to pain from handcuffing was ignored, that the officer who transported him after the arrest had deliberately put on the brakes so as to make him fall forward, that the same officer was discourteous in responding to his different requests during the booking process, and that his car key had been damaged in police custody. He also checked the "Excessive Force" box on the official complaint form that he submitted.¹

While acknowledging his own fault in the incident, he expressed disappointment in the way he had been treated, and alleged lingering issues with his hands and wrists as a result of the encounter.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

Though, as noted above, several officers were involved in the response, the complainant focused on the trainee officer, and LCPD organized the administrative investigation accordingly. A few different policy sections were cited as applicable to the allegations that were raised:

General Order 103.05 (A) Code of Conduct – Expected Conduct Toward Public. As the name suggests, this section frames the standards of patience, courtesy, and responsiveness to which LCPD holds its personnel in their dealings with members of the public (including those in custody). The Department found that the officer in question (and his colleagues) had maintained an appropriate demeanor throughout the encounter with the complainant, and exonerated him of this charge.

General Order 231.12 (A) (4-5) – Physical Arrests – Safety Precautions. This section establishes with particularity the steps that officers are expected to take in order to maintain effective control of persons in custody while ensuring that their safety and other needs are addressed. The investigation noted this policy in part to support the

¹ No physical "force" beyond routine, non-reportable escorting of the arrestee (which he did seem to begrudge at times) occurred during the process.

involved officer's repeated reminders to the complainant that the handcuffs were required and could not be removed in spite of his multiple entreaties. The memo also noted that checks and adjustments of the handcuffs did occur, and that officers were attentive to the complainant's mentions of the issue. This allegation also resulted in an "Exonerated" finding.

General Order 121.02 – Damage to Public/Private Property. This section obligates Department members to take specific steps in order to address damage to property that occurs as a result of their actions. The investigation used this section to cover the complainant's claim that his car key had been broken after his arrest. Because body-worn camera video showed the man's keys to be intact at the time the car was turned over to the towing company, the allegation of misconduct was "Exonerated."

General Order 233.01(A) Prisoner Transport – Treatment of Prisoners. This section broadly prohibits any intentional abuse or mistreatment of people in LCPD custody. Here, LCPD applied it to the complainant's specific allegation that he had been victimized by intentional driving activity that was intended to physically jostle him as he rode in the back seat of the trainee officer's radio car. The investigation found no evidence in the relevant video recordings to support this claim, and the allegation was accordingly "Exonerated."

Outcome: Discipline or Other Action

Given that no misconduct was established in the investigation, there were no disciplinary consequences.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence, which was primarily comprised of extensive body-worn camera recordings from the field and the booking process. There were no officer interviews conducted in light of the extent to which the recordings provided resolution for the questions raised by the complainant's different allegations.²

We agreed with the Department's determinations that the different allegations were not supported by the evidence. The complainant was disgruntled and contentious through

²The complainant himself was also not contacted for a follow-up interview. While we consider such a step to be a "best practice" in most cases (and have raised this point with LCPD in prior reports; see, for example, 2021EIC1-007, 2022EIC1-002, and 2023EIC1-001), the original written complaint did establish the key issues in this case in a sufficiently straightforward and detailed manner.

much of the lengthy booking process. It seemed as if many of his individual complaints were offshoots of a fundamental resentment that the officers were not affording him consideration based on his status as a retired former officer (from an agency in another state). The trainee officer who became the focus of the investigation was consistently patient and reasonably responsive in addressing the many requests and expressions of dissatisfaction that the arrestee generated during the encounter.

We have two additional observations. One is procedural, and relates to the efficiency and timeliness with which the investigation was finalized. We have criticized LCPD in the past for long gaps in the resolution of administrative cases. Here, it only took approximately six weeks for the investigator to produce a thorough, detailed memo as to the evidence and potential findings. This reflects a commendable prioritization.

Our other note relates to a transportation concern. Given the allegation of intentionally abrupt braking (a form of harassment that is intended to propel an arrestee into the partition that separates the back seat from the front), we paid attention to the three different car trips that occurred during the process. We did not see any irregularities that supported the complainant's claim. However, we did note that the arrestee did not seem to be seat-belted – in spite of a Department requirement to the contrary.³ This may have contributed to unsteadiness and a perception of antagonism in the officer's driving pattern.

Ideally, the investigation would have flagged this issue – and, more importantly, would have prompted a remedial response. In our experience across multiple law enforcement agencies, compliance with this specific safety practice can be spotty, especially on short trips. This complaint case should serve as an impetus for a worthwhile reminder to all officers.⁴

RECOMMENDATION 1

LCPD should address the Department's "Prisoner Transport" policy with the involved officers from this case, and should re-communicate relevant expectations to all patrol personnel.

³ The relevant policy (General Order 233.04 (A)(3)) does contain an exception for situations in which it would be "hazardous" for the officer to engage the seatbelt, presumably because of arrestee antagonism. But that did not seem to be applicable here.

⁴ We identified this same issue in a previous complaint memo earlier this year (see 2022II-001).

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. We agree with this recommendation. The applicable policy is one that officers should be frequently reminded of. LCPD training staff will provide a refresher training on this policy and add it to the list of annual policy trainings.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: June 22, 2023
RE: Review of Closed Litigation

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. OIR Group received two cases from the City Attorney that were closed in this review period. OIR Group received files related to this case on May 22, 2023.

Review Summary

In this period, OIR Group received two cases from the Las Cruces City Attorney's Office.

Case #1: The Plaintiff, a pedestrian, began to cross the intersection at the direction of a crossing guard (crossing guards are non-sworn employees of the Las Cruces Police Department) when he was struck by an oncoming driver. This incident occurred in October of 2019.

In late 2021, the Plaintiff filed a claim. He alleged that the crossing guard was negligent in his duties, which resulted in the accident. The Plaintiff alleged serious bodily injury and long-term damages. The case was dismissed pursuant to a settlement in the amount of \$20,000.

No charges were associated with this claim.

Our scope of work requires that we summarize demographics related to litigation cases. In this case:

- The Plaintiff is Hispanic.
- The non-sworn employee is white.
- The case occurred in the zip code 88011.

Case #2: The Plaintiff alleged that in April of 2017 he was unlawfully arrested by an LCPD detective without probable cause. The Plaintiff alleged that he had acted in self-defense when he brandished his firearm at a male during an attempted home burglary, but he was later arrested by LCPD for aggravated assault (the court later dismissed all criminal charges against the Plaintiff). The Plaintiff also alleged that the male who had burglarized his home had not been arrested despite being identified.

The Plaintiff then filed this claim in August of 2020.

The City argued that the Department's investigation showed that the Plaintiff was known to be involved in criminal activity, that the "home burglary" was not a burglary, but a drug transaction, and that the Plaintiff had brandished the firearm to threaten the male. The detective drafted an arrest warrant for the Plaintiff and the Plaintiff was arrested.

The court issued a summary judgement in favor of the detective and dismissed a subsequent appeal.

In this case:

- The Plaintiff is white.
- The LCPD employee is Hispanic. This employee retired from LCPD.
- The case occurred in the zip code 88001.

Recommendations

As we have written in two previous litigation reviews (see memos dated January 4 and March 22, 2022), litigation can serve as a valuable feedback loop for Departments to mitigate risk by offering corrective action. We recommended that the Department

always initiate an internal investigation of these matters, fully frame and investigate all potential allegations, and provide appropriate corrective action if warranted.

The Department previously accepted this recommendation and reported that they implemented a practice to initiate internal investigations for all cases involving litigation as soon as they became aware of the claim.

In discussion with LCPD, the Department reported that it would immediately review Case #1 and initiate an internal investigation, especially due to the serious nature of the allegation. The Department reported that, because the employee in Case #2 is no longer with LCPD and has retired from law enforcement, they will not take any further action on that matter.

RECOMMENDATION #1

We again recommend that the Department always initiate an internal investigation of all cases involving litigation when they become aware of the case.

Management Response

When the Las Cruces Police Department receives a tort claim notice that is not already accompanied by a citizen complaint, an Internal Investigation will immediately be generated in IA Pro by the Internal Affairs (IA) lieutenant. Assignment of that internal investigation will be made as soon as reasonably possible based on the severity of the accusations and the current caseload of IA investigators.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: August 9, 2023
RE: Review of Closed Litigation

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. OIR Group received one case from the City Attorney that was closed in this review period. OIR Group received files related to this case on July 13, 2023.

Review Summary

In this case, the plaintiff alleged that he was illegally and wrongfully detained and transported to a healthcare facility in 2020.

We requested, received, and reviewed all available evidence related to this claim. Per LCPD documents, various LCPD officers responded to the plaintiff's home three times for welfare checks in late December 2020. Within days of these welfare checks, LCPD received a Certificate of Evaluation for the plaintiff.

As observed on body-worn camera, an LCPD officer went to the plaintiff's address to transport the plaintiff to a medical facility per the Certificate. When the officer arrived, the plaintiff exited the vehicle he had been sitting in. He was on a telephone call with his doctor. The officer informed the plaintiff that the officer had to transport the plaintiff per a court order. The plaintiff took several steps away from the officer, prompting the

officer to take the plaintiff's arm and hand. The officer then handcuffed the plaintiff. The plaintiff protested, saying, "please don't" and "you don't have to arrest me." A second officer arrived. The plaintiff requested an attorney. The officers explained that the plaintiff was not in trouble and not under arrest. The officer asked to search the plaintiff's pockets; he agreed while protesting being held in handcuffs.

The officer then explained the situation to the plaintiff, stating that the plaintiff's doctor had contacted LCPD requesting transport. The plaintiff insisted that he had "medical rights." The officer escorted the plaintiff to his police vehicle. The plaintiff sat in the rear seat voluntarily, stating that the transport was "bullshit" but that the officers were just doing their job. The plaintiff asked to view the court order and the officer showed it to the plaintiff. The officer then transported him to the medical facility. The officer handed custody of the plaintiff to medical staff.

No criminal charges were associated with the incident at issue in this claim. The civil litigation was dismissed because it was filed outside the statute of limitations.

Our scope of work requires that we summarize demographics related to litigation cases. In this case:

- The Plaintiff is white.
- The LCPD officer is Hispanic and is no longer with the Department. The supervisor is white and is currently an employee of LCPD.
- The case occurred in the zip code 88001.

Recommendations

As we have written in three previous litigation reviews (see memos dated January 4, and March 22, 2022, and May 2023), litigation can serve as a valuable feedback loop for Departments to mitigate risk by offering corrective action. LCPD has seemingly accepted this concept, reporting on numerous occasions that it is committed to initiating an investigative review of the underlying incidents when they become aware of any such matters.

However, LCPD reported to us that it does not regularly and systematically receive notice of claims filed from the City Attorney's Office, and therefore is not aware of them until OIR Group provides our memorandum regarding closed litigation. As such, despite the potential value of the exercise and intention to embrace our prior recommendation,

LCPD obviously cannot initiate an investigation before becoming aware that allegations have arisen.

With this dynamic in mind, we highly recommend that LCPD leadership and the City Attorney's Office collaborate to establish a system whereby all claims filed with the City are communicated in a timely manner to the Department.

RECOMMENDATION #1

LCPD leadership and the City Attorney's Office should collaborate to establish a system whereby all claims filed with the City are communicated in a timely manner to the Department.

Next, we reviewed the officers' actions in this specific case. While we observed that the officers (who we learned were Crisis Intervention-trained), communicated patiently and treated the plaintiff with respect, we also questioned the immediate need to handcuff the subject and transport him in a radio car.

We discussed this at length with Department leadership. We learned that, in general, LCPD's philosophy on handling any calls related to mental health issues is to be as unobtrusive as possible. This includes preference for unrestrained transport and responding with Crisis Intervention-trained officers, and the requirement to attempt verbal de-escalation to gain voluntary compliance. All of these components of a "lighter touch" – one that reflects the distinctive sensitivity of the situation – are listed in the current policy, **General Order 245** (dated 2013). If a person is compliant and willing to be transported, LCPD reported that officers will transport that individual unrestrained. LCPD also reported that officers attempt to take patients to Las Cruces' Crisis Triage facilities, rather than to hospitals, and do not take these patients to jail (unless a related crime has occurred).

Unfortunately, as LCPD leadership emphasized in a recent discussion, law enforcement is often called in more extreme or complicated cases where the subject is not compliant and may not respond to de-escalation. These circumstances may call for security precautions more commonly associated with enforcement activity, such as handcuffing. This case was one such case; the Plaintiff first took steps away, and then repeatedly protested the transport, suggesting to the officers that he would not voluntarily comply.

At the same time, LCPD expressly conveyed that it recognizes the advisability of – and works to utilize – the lowest level of physical intervention when dealing with such calls.

This aligns with our recommended approach, which urges the agencies we monitor to regularly re-evaluate their policies to align with modern best practices and state laws regarding mental health crises and police involvement. We have focused, for example, on whether there is a need for handcuffing in every situation, and the importance of officers providing a clear advisement that the subject is not under arrest.

Our larger point is that LCPD should carefully consider these factors with each call for service, seeking to take the most respectful and effective actions. This case is one of the first involving these concerns that has come to our attention; we look forward to evaluating future such incidents and ensuring that the approach in the field reflects the Department's stated commitments.

And this case is timely: we learned that the Department internally reviewed **General Order 245** but has not yet implemented a formal update; we have not reviewed the proposed new policy. As such, we urge the Department to review its policy updates, ensure they are aligned with their stated philosophy, and implement the new policy and any related training.

RECOMMENDATION #2

LCPD should implement its updated version of **General Order 245** and provide any related training to ensure that non-criminal calls involving persons experiencing mental health crises are addressed with the least level of imposition that preserves officer and subject safety.

Management Response

RECOMMENDATION #1

The Las Cruces Police Department appreciates the review completed by the OIR Group. This process has been discussed with the new city attorney, and we will develop a process that ensures all involved departments receive notices of tort or other documents related to civil suits. Once the LCPD receives the notice, we will initiate an investigation if one has not already been generated.

RECOMMENDATION #2

The Las Cruces Police Department has carefully considered how it responds to those experiencing a mental health crisis. We adhere to all requirements in state statutes and the established best practices in this area. However, there is always room for improvement and there are constant changes in best practices and the applicable laws. We will work to stay current on these issues and look for ways to improve our response.

The Las Cruces Police Department is in the process of updating General Order 245: Assisting the Mentally Ill to ensure the policy meets the guidelines set forth by the Commission on Accreditation of Law Enforcement Agencies (CALEA). Training will take place for all personnel once the updates are finalized.



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: November 8, 2023
RE: Review of Closed Litigation

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. The intent is to use these matters as a vehicle for evaluating both the conduct of LCPD personnel in the underlying incidents and the effectiveness of any LCPD administrative response.

OIR Group received one case from the City Attorney that was closed in this review period. OIR Group received files related to this case on October 10, 2023.

Review Summary

In this case, the plaintiff alleged that LCPD officers had illegally and wrongfully detained, used force on, and transported her adult son, who was experiencing a severe mental health crisis. The plaintiff also alleged that LCPD officers, among others, failed to provide adequate care and attention when the son complained of pain in his right leg, which turned out to have been fractured.

This case stemmed from two different incidents on the same day at two locations – a residence and a hospital. A total of four LCPD officers were involved. We requested, received, and reviewed all available evidence related to both incidents.

In the first call for service, an officer responded for a welfare check for a possible suicidal subject. He met with the mother, who expressed her preference for a medical or crisis team response. When the officer assured her that he was trained in crisis intervention, the mother reported that her son was off his mental health medications, had declared suicidal intentions via text message, was alone in the home and had access to small fishing knives.

This information prompted the officer to enter the residence to conduct a welfare check. He contacted the son, who was seated on a couch. Despite the officer's calm demeanor, the son became upset, stood up and grabbed a knife from the table. The officer stepped behind a threshold, unholstered his firearm and requested backup. In an even tone, the officer commanded the son to drop the knife, which the son did. The officer raised his voice when the son did not comply with his commands to kneel on the ground. This was effective and the son complied.

A second officer arrived. The officers asked the son what they could do to resolve the situation peacefully, but the son continued to yell and curse at the officers and his mother, prompting officers to place him in handcuffs and walk him out of the home. As he walked by her, the son spit on his mother. Officers placed the son in the back of a police vehicle.

The mother, officers and a responding supervisor debated the next step. The mother argued that the son needed mental health assistance, not jail, but officers believed they had cause to arrest him. Eventually, they determined that the son should be taken into protective custody and transported to the hospital, which they did. LCPD officers turned over custody to hospital staff. This ended the first interaction.

Later, two other LCPD officers were dispatched to the hospital in response to assault on health care workers. When officers arrived, they were advised that the patient, who was later identified as the son from the earlier incident, had become belligerent and was spitting on healthcare staff. When two nurses administered medication to calm him down, the man spit on one and pushed and punched the second. Private security employees responded and engaged in a physical altercation with the son, eventually taking him to the ground.

When the officers entered the son's hospital room, he was being held on the ground by three security employees. The officers sat the man up and spoke with him at length. About 20 minutes into this encounter, the son stated that his leg hurt from the security employees' use of force; he repeated that his leg hurt or may be broken. A supervisor

and other officers responded to investigate the assault and take photographs of the injuries, but no one requested additional medical attention for the son's complaint of leg pain.

The son was eventually transported by an LCPD officer to the Dona Ana County Detention Center, where he was turned over to jail personnel. It was later determined that the son had a leg fracture.

The son was charged with battery on a healthcare worker.

The parties in the civil suit eventually reached a settlement.

As set forth in our scope of work with the City, our review of matters resulting in litigation includes a demographic summary of involved parties. In this case:

- The Plaintiff is white.
- Four LCPD officers were directly involved in this incident. Three are Hispanic and one is white. Three are current employees of LCPD.
- The first encounter occurred in zip code 88012 and the second in 88011.

Recommendations

This is the second claim we have reviewed involving LCPD's response to a person in mental health crisis. When we reviewed the first, LCPD expressed its commitment to applying the "lightest touch" when responding to calls for service involving those experiencing mental health crises (see our detailed discussion in "Review of Closed Litigation" dated August 9, 2023). We also learned that the Department was updating its related policy, **General Order 245: Assisting the Mentally Ill**.

The underlying events that gave rise to this litigation happened prior to the emergence of that first review – and LCPD's responses. Nonetheless, and encouragingly, we did observe many tactics that align with LCPD's stated philosophy for responding to these types of calls. The initial responding officer de-escalated the situation while also balancing his and the subject's safety; the officers at the residence engaged in extensive discussion about the most appropriate outcome for the son and decided to transport him for medical treatment rather than arrest him; and officers at the hospital were compassionate and calmed the son down several times.

While these were positive steps, this case is a reminder that effective mental health responses are a central expectation in contemporary law enforcement – and a key element in risk management. When we last reported on this issue, the Department's updated "General Order 245" was in the process of final implementation; the Department recently shared their working draft with us for review. And, starting in January of 2024, the Department plans to adopt the "Crisis Response and Intervention Training" (CRIT) model, a training curriculum designed to better prepare officers in responding to individuals experiencing mental health crisis. The course includes 40 initial hours of advanced crisis response training and supplemental courses designed to help with retention. This program is in addition to the training already required for LCPD officers in crisis intervention, de-escalation, and other related topics.

Aside from the aforementioned attributes in the officers' treatment of this individual, we noted a feature of the call for service that perhaps merited further attention: the officers did not seek a medical evaluation to address the specific (and apparently well-founded) complaints of leg pain. The young man's subsequent time in custody (including at the County jail) prior to receiving treatment for the fracture contributed to the allegations of mishandling that drove the lawsuit.

We recognize the fact that the hospital setting of the arrest, and the presence of different medical professionals throughout the officers' time there, may have created some ambiguities regarding responsibility. Still, ensuring the medical fitness of arrestees is a standard component of taking someone into custody, and an after-action analysis by the Department would have been worthwhile.

This dynamic reminds us of another IPA recommendation that post-dated these events: We previously recommended that the City Attorney's Office collaborate with the Police Department to identify new claims promptly and thereby afford LCPD the chance to initiate whatever review protocols seemed warranted. While the establishment of this protocol came too late to be applicable here, we are optimistic that it will pay dividends in the form of more timely and meaningful future responses.

Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. This case demonstrates the professionalism of LCPD officers in the vast majority of interactions, even in difficult situations where someone is experiencing a mental health crisis.

