

Las Cruces Police Department

FOURTH SEMI-ANNUAL CASE REVIEW AUDIT REPORT

August 2023

OIR

GROUP

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Introduction

OIR Group¹ has completed two years 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. This is an additional window into the performance issues that create potential liability, with an eye toward future risk management.

Our scope of work with the City also incorporates an element of transparency: we produce public reports on a semi-annual basis to share information about our work -- and about LCPD's accountability measures -- with City leadership, stakeholders, and the community. This is our fourth such report.

In this fourth Report, we discuss our review of 10 Internal Affairs cases that were completed and closed by LCPD between December 1, 2022, and May

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.

31, 2023.³ We share the recommendations derived from those reviews and provide a limited statistical analysis. We did not receive any closed civil litigation cases in this time frame.

In this report, we also summarize the recommendations that we have provided to the Department from the start of our engagement through May 31, 2023, all of which the Department has accepted, and many of which it has already implemented or is in the process of implementing.

We are 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.

Our compilation of this most recent Report overlapped with the retirement of Chief Dominguez. From our first meetings with him in 2021, he set a tone that has ensured effective communication, open access, and a constructive working relationship. This is not something we take for granted – having experienced more contentious dynamics in our work with other jurisdictions. With that in mind, we take this opportunity to extend our appreciation and best wishes.

³ Some of the underlying incidents occurred prior to this window of time. Additionally, we received and reviewed one case that City and Department leadership determined should not be released until related litigation has been closed; as of publication of this Report, the litigation is still pending.

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 is limited to 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

As we have noted before, we do not currently review complaint investigations that fall below a certain threshold of seriousness, nor do we review use of force cases unless we receive a complaint that involves allegations of excessive force.

The 10 released complaint cases that we reviewed in this six-month period encompassed 20 separate formal allegations against 15 LCPD employees

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.

across several rank levels.⁵ Of these, 12 allegations were exonerated, two were unfounded, and six were sustained.⁶

For those sustained allegations, the discipline was a verbal reprimand accompanied by some form of directed training. In two sustained cases, the employees resigned prior to completion of the investigation for, the Department reported, unrelated reasons and no discipline was issued.

Our detailed memos related to each case 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 two Internal Investigations and eight external complaints.

Internal Investigations

We reviewed two Internal Investigations. These cases both 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, these two cases included allegations of unsatisfactory performance, untruthfulness, and insubordination.

2023II-002

Department-initiated complaint regarding a police cadet’s behavior, which included shoplifting and being untruthful during the administrative interview. In this case, the allegations were sustained, and the employee is no longer with the Department.

⁵ At the time of the respective investigations, two were sergeants, 10 were officers (including one trainee officer), one was a cadet, and two were non-sworn employees.

⁶ “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.

Cadet	Code of Conduct - Insubordinate Conduct	Sustained
Cadet	Code of Conduct - General Standards	Sustained
Cadet	Code of Conduct - Truthfulness	Sustained

2023II-004

This complaint was received through the City’s Ethics Hotline. Based on the nature of the allegations, the Department believed it was likely that a current employee may have filed the complaint and classified it as an Internal Investigation. This complaint alleged biased and preferential treatment in the hiring process. In this case, the allegation was unfounded and no further action was taken.

PSA	Code of Conduct – Unsatisfactory Performance	Unfounded
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External Complaints

We reviewed eight 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 community outreach, and one from a police contact initiated by the complainant. The remaining complaints resulted from calls for service. While the receipt of these new complaints indicates that the Department fell short of *complete* public satisfaction, they constitute just a tiny fraction of Department’s overall interactions with the public: in this period, LCPD responded to 73,358 calls for service, and only these eight interactions resulted in a complaint being filed.⁷

The majority of these allegations involved code of conduct concerns. These complaints most often had to do with officers falling short of the public’s

⁷ This data was provided by Mesilla Valley Regional Dispatch Authority (MVRDA) via LCPD.

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.

Three allegations related to the applications of force that the complainants believed to be unwarranted or excessive. A formal review of LCPD’s use of force reports remains outside of our scope of work; we have access to use of force reviews only as they relate to public complaints that meet our review thresholds and include allegations of excessive force, like these three. The Department found these uses of force to be exonerated, which means that, although it occurred, the force applied was within Department policy and procedures. While we would have preferred more detailed documentation of the supervisors’ analysis in one case, we ultimately agreed with the Department’s findings after reviewing all available evidence in these cases.

2022EIC1-020

Public-initiated complaint alleging that a traffic stop was racially motivated.

Officer	Biased-Based Policing	Exonerated
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2022EIC1-021

Public complaint resulting from a police contact. After the incident, the complainant alleged that an officer violated a parking ordinance and that a second officer and trainee officer used excessive force, issued a trespass warning card without cause, conducted an illegal traffic stop, and performed a pat down search without cause.

Officer 1	Operation of Department Vehicles	Exonerated
Officer 2	Applying Force	Exonerated
Trainee Officer	Frisk or Pat Downs	Exonerated

2022EIC1-024

Public complaint alleging that an officer was discourteous to her son and failed to activate his body-worn camera.

Officer	Code of Conduct - Conduct Toward Public	Sustained
Officer	Recording Devices	Sustained

2022EIC1-027

Public complaint alleging that an officer had posted inappropriate content on a personal social media page while in uniform and on duty.

Sergeant	Social Media and Personal Devices	Sustained
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2022EIC1-029

Public complaint alleging that officers used excessive force to detain a juvenile after she had stopped resisting officer commands.

Officer 1	Applying Force	Exonerated
Officer 2	Applying Force	Exonerated

2022EIC1-030

Public complaint resulting from an on-going dispute between two private parties. The complainant alleged that LCPD did not respond to calls for service and that the Department had released video of her to the other party.

Sergeant	Code of Conduct - Conduct Toward Public	Exonerated
Officer 1	Code of Conduct - Conduct Toward Public	Exonerated
Officer 2	Code of Conduct - Conduct Toward Public	Exonerated

2022EIC1-032

Public complaint alleging that a non-sworn employee had laughed at and insulted a complainant when responding to a call regarding animals on the complainant's property.

Non-sworn Employee	Code of Conduct - Conduct Toward Public	Unfounded
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2023EIC1-004

Public complainant alleged that the officer did not conduct a complete investigation of his traffic collision and that, when he subsequently sought to speak with the officer, the officer did not respond to his communication in a timely fashion and did not provide satisfactory service.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Police Reports – Accuracy	Exonerated
Officer	Traffic Investigations	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 does not suggest any patterns of disparate policing, as we detail below.

Race and Racial Bias

Most cases involved at least some interaction with a member of the public. Three of these cases involved interaction with a white civilian, two a Hispanic civilian, one a Black civilian, and one a civilian of an unidentified race. Two complaints were anonymous; one of these was likely called in by a Department employee and the other by a member of the public. 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, nine of the subject employees are Hispanic, five are white, and one is Asian. As we have written in our prior three reports, we did not find any notable trends related to officer race or race of the complainant relative to the officer(s).

However, in this period, we reviewed a case that involved an allegation of racial bias (see 2022EIC1-020). In this case, a Black motorist who was pulled over for a traffic violation alleged that he had been profiled; LCPD concluded that the officer (who is Hispanic) had acted properly and exonerated the allegation. While we agreed with that specific finding, we found that the Department's investigation missed an opportunity to engage more fully and constructively around issues of racial bias and profiling. It seemed clear to us that the stop, though legal (for violation of speed limit restrictions), leaned into being perhaps pretextual in nature: by the officer's own account, his reason for initially turning to follow the man was because of the call from his partner, and any deviation from the speed limit that the officer subsequently observed was a minor one.

To the Department's credit, the notification letter that was sent to the man made a gesture at explanation (by referencing "suspicious circumstances in the area" that had preceded the stop) and, importantly, apologized for "any inconvenience this may have caused." These are positive steps that go beyond what is required.

Ideally, though, more would have been done, both externally *and* internally. For example, some additional interaction with the man at the conclusion of the investigation was warranted by the circumstances. This could have included an acknowledgment that he had been correct about the speed limit and an assurance that his perception of profiling had been taken seriously. This type of outreach could potentially strengthen a relationship that is unfortunately marked by genuine, and perhaps hard-earned, mistrust.

Further, this case suggested a more careful review of the officer's actions against state law. Per *State v. Ochoa*, New Mexico is one of only a handful of states nationwide that explicitly outlaws the use of pretextual stops; and though the burden of proof lies with the defendant (or here, the complainant), we encouraged LCPD to explore this issue further. LCPD agreed, stating that part of its regular Search and Seizure training includes discussions of pretext stops. And, though not directly related to this case, the Department reported that it has contracted with a legal advisor who will assist with these matters, including providing updated and regular training in Search and Seizure above and beyond what is required by the state. We commend the Department on this development.

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? To date, we have not identified any trends by location. We have noted that most cases involved incidents within or the residents of zip code 88001, but this 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 this period, three cases involved incidents in or the residents of the zip code 88001, one in 88005, one in 88011, and two in 88012. One was reported by

a complainant who resides in an out-of-area zip code. Two were reported “anonymously;” as such, there was no related zip code.

Review, Findings & Recommendations

In past reports, we have reported our findings for the cases reviewed in that period. In this report, however, we have chosen to report on our cumulative findings and recommendations from two years of work with the Department.

Over the past two years, OIR Group has reviewed 60 of LCPD's complaint cases. For each, we reviewed all evidence provided by LCPD and consulted with LCPD regarding case questions or potential recommendations.⁸ At the conclusion of our review, OIR Group submitted a memo for each case and LCPD provided a Management Response.

This process has resulted in a total of 91 recommendations to the Department regarding:

1. LCPD's internal review mechanisms, as managed by the Internal Affairs unit
2. The substance of the investigations themselves
3. Related operational (e.g., training or policy) issues

Here, we discuss our recommendations and the Department's progress toward their implementation, generally.

⁸ 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.

Internal Affairs: Process, Investigation, & Findings

We are pleased to report that, two years into our collaborative work, the Department has made notable improvements to the Internal Affairs complaint process, its internal investigations, and its ultimate findings.

The chart below details our recommendations related to the Internal Affairs process by category and count. It is important to note that repeated recommendations do not necessarily mean that the Department has not accepted our suggestions. 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, we grouped our recommendations by category; each category, while related, may include different unique recommendations. For example, our recommendation category “Close out letter” includes recommendations ranging from the letter including accurate and complete information to the timeliness of correspondence with complainants (e.g., periodic updates if an investigation goes longer than 180 days).

Table 1: Recommendations Related to the Internal Affairs Process

Recommendation Category	Number of Recommendations
Close-out letter	6
Evidence supporting other discipline	4
Evidence supported other findings	1
Follow investigative protocol	4
Failure to adequately frame all allegations	5
Evidence supported need for individual debrief	12
Investigative process challenges identified	9
Mediation/ACR related	5
New case protocol	3
Timeliness	5
Witness interviews warranted	4

Many of the systemic internal issues that we identified early in our engagement related to the way cases were classified and investigated (“new case protocol”). Encouragingly, these have been resolved. The Department is more regularly following its own investigative protocol and producing more complete and comprehensive investigations.

At the same time, we continue to identify areas for improvement in the investigative process.

Some of improvement recommendations are now quite nuanced and ask the Department to perform at the highest industry standards; for example, we have made recommendations related to including even more information in close-out letters to complainants, especially if the investigative timeline extends beyond 180 days (see our memo related to 2022EIC1-030, where the complainant alleged that the Department was being unresponsive to her complaint). The Department reported that it will now use a close-out letter template to ensure all closing letters articulate the full extent of the investigation. It has also directed its investigators to send regular communication to complainants.

We have also asked the Department to consider alternative complaint mediation or restorative justice strategies in five cases that may have been good candidates for this process. The goal here is to promote strategies that, where possible, enhance connection and understanding between the agency and the public – in both directions. While not every incident lends itself to such an approach, we have found that being "heard and taken seriously" is often one of the keys to complainant satisfaction, regardless of the bottom-line outcome of an individual allegation.

Our suggestions included viewing the body-worn camera footage with complainants and candid communication about intentions and outcomes. LCPD previously responded that it is in the process of developing a program similar to mediation for supervisors who are involved in the complaint intake process as well as "additional post-investigation outreach possibilities." We look forward to hearing more about these program developments and their effectiveness.

Other process recommendations are reminders to keep up the new structures and practices that LCPD has already adopted, such as consistently interviewing complainants and witnesses. We noted a brief lapse in this practice in this period, especially related to consistently interviewing all witnesses, which the Department has remedied in more recent investigations.

We also continue to remind the Department to frame and investigate all relevant allegations thoroughly and completely. While the Department generally identifies all allegations, including "ancillary issues" that go beyond the complainant's concerns (for example, failures to activate body-worn cameras has in a timely manner or report writing errors)⁹, we have sometimes identified missed allegations, or allegations that were not completely investigated.

For example, in case 2022EIC1-021, we found that the investigator did not frame all allegations as reported by the complainant in his initial complaint intake interview. In addition to the three allegations investigated by the Department, which included excessive force and an illegal search (both of

⁹ LCPD's willingness to identify and address issues that the complainants have not put forth themselves is one of the more creditable aspects of the process.

which were exonerated), the complainant also alleged that the officers had illegally solicited a trespass warning card without cause and asserted that a related traffic stop had been improper. As we detail in our memo related to that case, the investigator did not segregate these as allegations that needed to be individually addressed. Had these allegations been separately considered, our review of the evidence suggests that they may have resulted in corrective action for the involved officers.

Several of our process recommendations involve the case outcome; namely, where we found that the evidence supported a different finding (specifically, a finding of “Not Sustained” where the evidence did not definitively prove or disprove an allegation)¹⁰ or a different disciplinary measure (we discussed the Department’s “philosophy of discipline,” which we perceived to be too lenient or inconsistent at that time, in a prior Semi-Annual Report). Because the case is complete by the time we receive it, those formal outcomes cannot be retroactively changed.

With respect to disciplinary outcomes, LCPD has made a commitment to consistent and accurate outcomes by working to create a “Disciplinary Matrix.” The matrix would remedy many of these concerns by standardizing disciplinary consequences for sustained allegations across specific policy categories, with an eye toward consistency across individual cases and resolutions that appropriately reflect the gravity of the misconduct. The matrix will also serve to put employees on notice as to the Department’s expectations and commitments. We discussed this concept at length in our Second Semi-Annual Report. And we look forward to evaluating the LCPD Disciplinary Matrix, and the Department’s deployment of it, when it is complete.

In some of the cases, we also recommended 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, nonetheless. These interventions, where applicable, are a potential side benefit of the investigative process – an opportunity to treat the

¹⁰ While the end result is the same as an “unfounded” or “exonerated” finding (namely, no disciplinary consequence for the officer), the distinction remains noteworthy in our view – as well as being a more accurate reflection of the evidence in the cases where we cite it.

complaints as a feedback loop that could lead to worthwhile adjustments as a "valued added" element of review. And, because such "debriefs" are not formal discipline, the Department was both willing and able to conduct this outreach on the 12 occasions when we have recommended it during our tenure. This is to LCPD's credit and has hopefully proven to be useful.

LCPD also responded that they have formalized these types of debriefs in the use of force review context. 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). While it is currently only being used to resolve issues identified during use of force reviews, we encourage the Department to consider expanding the Deficiencies Noted memo to any type of review, including any issues identified internally or by OIR Group in complaint investigations. This ensures that the proverbial "feedback loop" is appropriately documented and closed.

The Department has also been responsive to another concern that we have raised periodically. During the first year and a half of our engagement, we noted a tendency for investigators to omit background information that, while peripheral, could have clarified aspects of the investigation (and, in turn, our review process). The LCPD managers with whom we interact have welcomed our supplemental questions when they arise in the review process, as we attempt to fully understand what transpired and the Department's decision-making. The insight or "backstory" that they have provided is always illuminating in ways that enhance the accuracy of our own process – but that reinforce our sense that the investigative file would ideally stand on its own as a complete recounting of the relevant factors in the case.

Fortunately, the Department's more recent efforts have been responsive to our suggestions for more completeness within the file itself. Regular and thorough documentation has a value that transcends our auditing purposes. It creates a record that is not dependent on the memory or impressions of particular individuals, and thereby contributes to effective supervision, proper accountability, and risk management.

At the opposite end of the spectrum, we have weighed in about the *inclusion* of certain elements that, in our view, did not strengthen the effectiveness of

the investigation. Specifically, we mean information that seemed to lapse into more subjective – and less convincing – editorializing as part of the discounting of a complaint's legitimacy.

For example, in case 2022EIC1-021, the investigator's analysis seemed intent on justifying the officers' questionable actions through characterization of the complainant's perceived culpability, rather than with the factual evidence at hand. Throughout the investigative memo, the investigator included commentary that we found was not inherently relevant to the incident – and thus undermined the perception of objectivity that is central to an administrative investigation's legitimacy.

Again, though, the Department responded with receptivity when we raised the point. Agreeing with our assessment, it said it would direct investigators to focus on evidence-based, objective investigations going forward.

Our future reviews will seek to identify additional areas of improvement to the complaint investigation process as they arise.

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. Over the past two years, we have made recommendations related to equipment¹¹ (specifically, use of GPS technology for tracking Department vehicles and requiring all officers to carry all necessary forms), policy, and training. We summarize these recommendations in the chart below.

¹¹ The Department reported that GPS tracking is installed in all Department vehicles, but, because of system compatibility issues, it does not function with the Department's upgraded CAD system. The Department anticipates that this will be resolved within the next six months. In the interim, all officers' body-worn cameras track an officer's exact location.

Table 2: Recommendations Related to the Policy, Management & Training

Recommendation Category	Number of Recommendations
Body-worn camera related	1
Department training	8
Equipment	2
Policy update (not UOF)	9
Report writing	1
Supervisor training	4
Post-UOF process	3
UOF Policy	4

Our collective decades of work in civilian oversight gives us a unique perspective on policing policies across jurisdictions. Where, considering this experience, we have identified LCPD General Orders (policies) that might be outdated or require clarification, we have made relevant recommendations.

Four of these policy recommendations were related to use of force. While evaluation of force remains outside of our formal scope of work, we continued to make recommendations when we observed areas for improvement in those force issues that emerged during complaint cases. These have included updates to the Department's Conducted Electrical Weapon policy (General Order 256), consideration of uses of the WRAP device, and evaluation of physical force techniques.

Additionally, three recommendations were related to post-use of force processes. In two cases, the subjects of the force continued to challenge officers verbally after being placed in custody, often directing their anger at the officers who used force. Despite this, these same officers transported the subjects; while the officers exhibited control in the face of an angry subject, we advised against this practice and recommended that the Department separate officers from subjects as soon as practicable in these situations to lessen the potential for additional conflict. Further, we recommended that, when significant force is used, the involved officer(s) be removed from the scene as soon as practicable and not remain involved in any subsequent investigation.

We also recommended that the Department consistently follow its own internal force review process. For example, in case 2022EIC1-001, the force report

did not include a complete Show of Force report as is required by the use of force reporting policy; in another, the related force report (often called a “BlueTeam”) did not, in our opinion, contain sufficiently detailed analysis by supervisors to justify the final findings (see 2022EIC1-029 from this period). In each related memo, the Department reported that it is committed to fully following its own force review process.¹²

We hope that the Department has followed through on its commitments in this important arena – where we continue to have a limited window into the effectiveness of LCPD internal review measures. As we mentioned in a prior Report, the development of the Force Review Cadre, a specialized team of subject-matter experts tasked with reviewing force cases, is a commendable development. Under the direction of the Interim Chief, the Cadre has expanded from four specially-training employees to nine. And the Cadre has developed an “apprentice” training program to ensure the effective continuation of the program; as of this Report, the Cadre has two apprentices.

Additionally, the Interim Chief sent a total of 16 employees to a two-week Use of Force Instructor course (some of these employees are on the Cadre) for additional training.

It gives us hope that the Department is moving in the right direction with respect to use of force incidents and any related policies and review procedures. We look forward to opportunities to review future force cases as they arise within our scope of work.

Over the past two years, we have also made nine recommendations related to policies that were not use of force specific. For example, after reviewing several complaint cases related to how officers responded to civil standby calls, we recommended that the Department consider creating more explicit guidelines by clarifying General Order 203.11. We recommended updates to the Department’s Social Media General Order 158 to ensure that all employees are subject to the restrictions of using and posting to social media

¹² Overall, the Department reported and we have observed, that LCPD has significantly increased and improved its force review process since the start of our engagement, including clear guidelines/expectations for supervisor review of incidents, which involves at least two levels of supervisory review (sergeant and lieutenant at minimum), the Force Review Cadre, and the Deficiencies Noted memo.

while on duty and in uniform (see 2022EIC1-027), and updates to General Order related to calls involving the hearing-impaired.

Our training and policy recommendations often go hand-in-hand; where we recommended an update to policy, where applicable, we also recommended training. For example, along with the aforementioned update to General Order 203.11, we recommended that LCPD consider training related to domestic / civil disturbance calls to include de-escalation, proactive problem-solving, communication, and boundary-setting. And, along with our recommendation related to General Order 158, we recommended that the Department provide Department-wide training to remind all personnel about the requirements and restrictions of social media use.

Finally, we identified a training need related to complaint intake. In our review of case 2023EIC1-004, we noted that, when the complainant sought to file a formal complaint, the supervisor with whom he spoke stated that the complainant would have to come in person to file the complaint, and then, that he was not aware of the steps needed to file the complaint. The supervisor told the complainant that he would call the complainant back once he learned how to properly file a complaint.

We learned that the complainant ended up submitting his complaint via the City's Ethics Hotline later that same day, at which point the Department initiated the complaint investigation. While the person's perseverance meant that his concerns were ultimately investigated, we made note of the obstacle that the supervisor had initially – if inadvertently – created. In response, the Department reported that it immediately trained all supervisors on the principles of effective complaint intake and will continue to highlight in their Annual Supervisor training program.

Next Steps

OIR Group looks forward to our continued engagement with LCPD and to future opportunities to help improve Department systems and practices. 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. For example, the Department's 2023 training curriculum includes specific training blocks that seem responsive to our concerns; the Department opted to include several hours of de-escalation training, a "fair and impartial policing" course, and a training block related to engaging with those who are deaf or hard of hearing.¹³ The Department also contracted with a legal advisor to help provide the appropriate responsive actions to our findings.

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.

¹³ OIR Group has not reviewed these training materials nor confirmed employee attendance at these training as this is not part of our Scope of Work.

Appendix A: OIR Group Case Memos



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TO: City of Las Cruces
FROM: OIR Group
DATE: March 8, 2023
RE: Review of Administrative Investigation – #2023II-002

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 February 10, 2023.

Case Summary

A loss prevention employee from a superstore contacted LCPD supervisors. He showed the supervisors photographs of a male wearing a uniform with law enforcement insignia. LCPD identified the male as an LCPD cadet. The loss prevention employee provided evidence of the cadet shoplifting items from the store on three separate occasions. The total amount of the items shoplifted was under \$100. The loss prevention employee also provided a company letter prohibiting the cadet from returning to the store (sometimes referred to as a "trespass notice").

When questioned by Internal Affairs, the cadet initially denied having shoplifted. When shown video and photographic evidence, the cadet admitted that he had failed to scan

items on two of the three occasions in question but asserted that this was not intentional shoplifting; the cadet explained that he was having personal issues at that time.

The cadet also contacted another cadet to talk about the investigation.¹

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 cadet as follows:

1. **General Order 103.09 (A) – Code of Conduct.** The Department alleged that the cadet violated this general order when he spoke to another cadet about an ongoing investigation even after being notified that he should not.

LCPD sustained this allegation based on the cadet's own admission and the interview of the second cadet.

2. **General Order 103.17 – Code of Conduct - Truthfulness.** The Department alleged that the cadet was not truthful during his administrative investigation, even when offered an opportunity to correct his statements.

LCPD sustained this allegation based on the evidence provided by the loss prevention employee and the cadet's statements during his administrative interview, which directly contradicted the evidence.

3. **General Order 103.04 – Code of Conduct – General Standards of Conduct.** The Department alleged that the cadet's shoplifting violated the Department's code of conduct and, further, that the cadet had engaged in these actions while in LCPD uniform.

LCPD sustained this complaint based on their own extensive review of the loss prevention employee's evidence of shoplifting and their interview with the cadet.

¹ At the time of these conversations, the second cadet had not yet been notified that he was a witness to an administrative investigation.

Outcome: Discipline or Other Action

The cadet resigned from LCPD prior to completion of this case.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found this investigation to be thorough and complete, and that the evidence provided supported the findings. We especially commend the Department's careful consideration of the loss prevention employee's evidence to ensure that the information was accurate.

LCPD Management Response

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



7142 Trask Avenue
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323-821-0586
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TO: City of Las Cruces
FROM: OIR Group
DATE: May 4, 2023
RE: Review of Administrative Investigation – #2023II-004

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 April 12, 2023.

Case Summary

An anonymous complainant contacted the Ethics Hotline in two concurrent calls. This complainant alleged that a Las Cruces Police Services Administrator (PSA) had used her influence to help two applicants for Crime Victim Advocate roles be hired into the position. The complainant alleged that the PSA knew that one of the candidates had been arrested for domestic violence, which would disqualify him from the position, and that the other had dated the PSA, which was an unfair advantage for this candidate.

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 one allegation against the PSA as follows:

1. **General Order 103.01 – Unsatisfactory Performance.** The complainant alleged that the PSA violated this general order when she influenced the hiring process for two Crime Victim Advocate positions.

LCPD unfounded this allegation.

First, LCPD concluded that the PSA's involvement in the hiring process was not substantive; the vetting and hiring process occurred through the City's Human Resources Department. The hiring panel did not include the PSA. There was no identifiable way for the PSA to have influenced the process.

Second, LCPD reviewed the Interstate Identification Index, the nationwide criminal records history system, for the candidate alleged to have an arrest for domestic violence. The search revealed that the candidate did *not* have any criminal record; as such, LCPD was able to unfound the allegation that he should have been disqualified for having a domestic violence arrest.

Outcome: Discipline or Other Action

There was no discipline in this case as the complaint was unfounded.

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 thorough and complete, and that the analysis provided supported the findings.

LCPD Management Response

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



7142 Trask Avenue
Playa del Rey, CA 90293
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TO: City of Las Cruces
FROM: OIR Group
DATE: January 30, 2023
RE: Review of Administrative Investigation – #2022EIC1-020

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 January 3, 2023.

Case Summary

This case originated as a citizen complaint from a man who was stopped by an LCPD officer as he drove home on his motorcycle in the early morning hours of a weekday in summer. He believed that the officer had improperly pulled him over, since the supposed reason was a speed limit violation about which there was some uncertainty. He thought (correctly, as it turned out) that the officer was wrong about the limit being 25 mph in the area where the stop occurred. Because of this, and because he didn't end up receiving a citation, he asserted that the officer had profiled him and then intentionally misrepresented the standard in order to justify the wrongful detention.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a formal investigation of the incident and framed it as a potential violation of **General Order 165.01(A)(C)(E) Bias-Based Policing**. This policy requires officers to provide the same level of policing to all members of the public. And it insists that people will only be stopped or detained when reasonable suspicion or probable cause exists to believe that they have committed, are committing, or are about to commit a violation of the law.

The Department's investigator conducted a "preliminary inquiry" based on the readily available information – primarily, the officer's body-worn camera video of the encounter.¹ While the inquiry phase was productive, the investigator determined that a formal interview of the subject officer was needed to clarify some factual questions relating to the location of the stop and the applicable speed limit. Accordingly, those interviews – with both the subject officer and a witness officer who provided backup during the traffic stop – occurred.

These interviews provided useful context for what had occurred. It transpired that the witness officer had been the first to observe the complainant, when both were at a gas station. The witness officer thought there was something potentially suspicious about the man's behavior and reactions to his presence.² The officer also noticed that the man's motorcycle had only temporary tags, so he decided to do a computer check on the vehicle. Additionally, he called a partner officer whom he knew to be in the area and encouraged him to keep an eye out for the man. The motorcyclist/complainant left the gas station while the officer was still waiting for information about his data request.

Within moments, the second officer spotted a lone motorcyclist and assumed him to be the individual that he had been alerted about. They were going in opposite directions, and the officer turned around to follow him. After a short distance, the officer believed that the motorcyclist's speed was approximately 35 mph – or ten miles above what he understood to be the limit. This purportedly provided the legal basis for the stop, which lasted for approximately 10 minutes and resulted in a range of inquiries about registration, insurance, and other technical matters. Ultimately, the officer decided not to issue any citations, although

¹ As discussed below, this initial process identified peripheral issues that also received formal attention.

² For example, the man initially appeared to be walking back toward his motorcycle after making purchases but changed direction when he spotted the officer.

he seemingly had a legal basis for doing so in light of different technical infractions (as well as the alleged speeding itself).

The investigator was also able to ascertain that the prevailing speed limit at the location of the stop was in fact 30 mph. However, even while acknowledging his error, the officer maintained that the stop was nonetheless legal because that higher limit had in fact been exceeded as he followed the motorcyclist. He explained his understanding that even one mile per hour over the limit constituted a violation.

Based on the available evidence, including the explanations provided by the officers, the investigator determined that the allegation of biased policing should be resolved as “Exonerated.” This recommendation was accepted by Department management.

Outcome: Discipline or Other Action

Because of the finding that the officer had not in fact violated policy during the stop, there was no disciplinary consequence.

OIR Group Review

LCPD provided OIR Group with body-worn camera video of the traffic stop, as well as recordings of the two officer interviews conducted by the investigator. We also reviewed the memos and other documentation produced during the investigation.

Assessment of Investigation as Completed by LCPD

The body-worn camera recording, in conjunction with the officer interviews, provided a solid basis for determining what had transpired. Moreover, as mentioned above, the investigation identified two collateral issues that apparently led to separate interventions by the Department. These related to deviations from General Order 151.02(E) “Recording Devices – Disposition of Recordings,” specifically with regard to the obligation to properly label recordings that are connected to a particular enforcement action or other matter. The implicated personnel were as follows: the witness officer who backed up the call, and the sergeant who spoke with the motorcyclist the following day when the latter called to express concerns about the stop.

That additional issue-spotting was creditable. Overall, we found the investigation and analysis regarding the complainant's main concerns to be effective – with one reservation. Our slight disappointment stems from a sense Department appears to have taken a “letter of the law” approach to its evaluation that sidestepped key aspects of the complainant's understandable perceptions. Accordingly, it missed an opportunity to engage more fully and constructively about a sensitive issue of long standing: the profiling of Black motorists.

This is not to say that LCPD reached an incorrect conclusion in finding that no improper bias had occurred. The witness officer who had first noticed the motorcyclist was able to articulate specific observations that had contributed to race-neutral suspicions about the person. He was asked about “descriptors” that he might have provided during his phone call with the other officer from the gas station, and only recalled mentioning that it was a male on a motorcycle.³ Similarly, the subject officer denied noticing anything particular about the motorcyclist when first observing him and making the decision to follow.

It seems clear, though, that the stop was much more pretextual – as a basis for following up on the first officer's suspicions – than grounded in a significant vehicle code violation. By the officer's own account, his reason for initially turning to follow the man was because of the call from his partner, and any deviation from the speed limit that the officer subsequently observed was a minor one.

It should be noted that the stop itself was of reasonable duration and entirely professional.⁴ The officer exercised his discretion by not citing the man in spite of different opportunities to do so, and he offered some practical advice regarding nuances of the (new) motorcycle's appropriate registration.

Having said, that, though, the complainant's experience of the event also resonated as completely reasonable. The stop was predicated on a speeding issue, and the motorcyclist expressed his (justified) confusion over the relevant limit and the extent to which he was in violation at all. When the officer insisted (incorrectly if politely) at the end of the stop that the prevailing limit was 25 mph, the man's sense that he was being “lied” to (as he wrote in his complaint) was understandably reinforced. And his identity as a Black male presumably fed

³ Here, more specific questions about the race of the motorcyclist might have been useful; additionally, a more detailed recollection might have emerged had the interview occurred closer in time to the incident. It instead took place approximately four and a half months after the complaint was lodged.

⁴ The complainant also remained polite and cooperative throughout the encounter, including letting the officer know that he was carrying a weapon on his person pursuant to his license to do so.

into his belief that he had been profiled, stopped without justification, and willfully misled. Moreover, his frustrations were compounded when the sergeant with whom he spoke the next day theorized about possible confusion due to construction-related changes to the speed limits in the area.⁵

To the Department's credit, the notification letter that was sent to the man made a gesture at explanation (by referencing "suspicious circumstances in the area" that had preceded the stop) and, importantly, apologized for "any inconvenience this may have caused." These are positive steps that go beyond what is required.

Ideally, though, more would have been done, both externally *and* internally. It is true that a formal interview with the complainant was not necessary (in light of the straightforward nature of his concerns and the details he provided in his written submission). However, some additional interaction with the man at the conclusion of the investigation was warranted by the circumstances. This could have included an acknowledgment that he had been correct about the speed limit and an assurance that his perception of profiling had been taken seriously.⁶ This type of outreach could potentially strengthen a relationship that is unfortunately marked by genuine, and perhaps hard-earned, mistrust.

As for the internal dynamics, at its best the complaint process serves in part as a "feedback loop" that a police agency should utilize in assessing its practices and strengthening the performance of its officers. This case might well have provided an interesting forum for evaluating "pretext stops." This is a longstanding practice that is both legal and considered by law enforcement to be a valuable tool in proactive policing. Unfortunately, it is also closely associated with discrimination and bias, and many jurisdictions are reconsidering – and limiting – its use.⁷

Here, even if the officer had been correct about the speed limit, the officer's decision to initiate a car stop based on the slightest of violations understandably provoked the

⁵ We listened to the sergeant's conversation with the man, which had been recorded on body-worn camera. The sergeant was polite and informative about the complaint process and the different options that were available, and his efforts to speculate about a benign explanation were seemingly well-intentioned. Still, he seemed not to be connecting with the man's clear frustration about being stopped on multiple occasions in the past and his concerns about being "harassed" by law enforcement.

⁶ While a personal contact would be preferable, even a more detailed notification letter would have been a useful forum for acknowledging the relevant issues.

⁷ The concern is that officers exercise their discretion to conduct such stops – which could theoretically occur dozens of times per shift based on the ubiquity of technical driving violations – in ways that single out people of color and often escalate.

suspicious of the Black motorcyclist who was stopped (and who alleged that the officer had ignored another vehicle that was going faster than he had been). We reiterate that the conclusion that no policy had been violated was justified. But a “bigger consideration” of the incident would have been beneficial for the agency as a whole, and we encourage LCPD to explore this issue further.

RECOMMENDATION 1

LCPD should consider different forms of outreach to complainants when an investigation reveals a relevant mistake by the involved officer, even if it did not rise to the level of a policy violation.

RECOMMENDATION 2

LCPD should evaluate the circumstances in which its officers use pretext stops as an investigative tool, and determine whether a refinement of its standards is warranted.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD will explore additional post-investigation outreach possibilities. Extensive training efforts have been added for all officers as it pertains to Search and Seizure. Part of the training addresses pretextual stops.



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TO: City of Las Cruces
FROM: OIR Group
DATE: March 1, 2023
RE: Review of Administrative Investigation – #2022EIC1-021

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 February 1, 2023.

Case Summary

This complaint resulted from an interaction in a Wal-Mart parking lot. An LCPD officer, Officer 1, was working an off-duty assignment¹ at the Wal-Mart and was seated in her parked patrol vehicle when a male, the complainant, approached the passenger-side door. The complainant challenged Officer 1, stating that she had parked her vehicle too

¹ At that time of this incident, a private security firm contracted with LCPD to provide security services to Wal-Mart. Uniformed officers could choose to fill these shifts during their time off duty. This contract has since been cancelled by LCPD.

close to a fire exit. Officer 1 exited her vehicle; the complainant requested her name and badge number, which she provided.

Officer 1 asked the complainant for his name and date of birth, which the complainant refused. He continued to challenge Officer 1 using profane language. Officer 1 continued to engage with the complainant. The interaction became argumentative and Officer 1 requested additional units.

Two on-duty officers, Officer 2 and Trainee Officer responded. Upon seeing the other officers, the complainant entered the Wal-Mart.

Officer 1 shared that the complainant was known to police for trying to “instigate” conflict with police officers and that the Department had previously sent a department-wide bulletin (via email) about his behavior. Officer 1 pointed out the complainant’s vehicle.² Officer 2 ran the complainant’s license plate to determine his identity. Officers discussed having Wal-Mart personnel request a trespass citation.

Eventually, the complainant exited the Wal-Mart and engaged with the officers again. The complainant tried to look into Officer 2’s police vehicle. Officer 2 advised Trainee Officer to close the vehicle’s mobile data terminal (MDT) because he believed the complainant was trying to see data on the MDT screen.

Officer 2 then used an open palm and four fingers placed on the back of the complainant’s arm to guide the complainant away from the police vehicle. The complainant stepped away and continued to badger the officers, including stating that Officer 1 could call him “daddy,” and requesting the officers’ names and badge numbers (which they provided). Officer 2 responded that he did not want to engage in further conversation. As the complainant walked away, the complainant gave the officers the middle finger.

Officer 2 and Trainee Officer then spoke with Wal-Mart loss prevention personnel who, according to the officers, agreed to a trespass warning. By the time these officers exited the Wal-Mart, the complainant had left the location. The officers determined that they should track the man to advise him of the trespass warning.

Officer 2 and Trainee Officer located the complainant as the complainant was parking in front of his residence and was exiting his car. They initiated a traffic stop. Officer 2 instructed the complainant to stay in his car. The complainant continued to exit his

² This complainant was known to drive a pick-up truck that had a fishing pole hanging from the rear of the vehicle. A print-out photo of a donut and a sign that read “Cop Bait” hung from the fishing pole.

vehicle and moved to open his front driveway gate. Officer 2 instructed Trainee Officer to “pat him down.” Trainee Officer conducted a pat down search.

Officer 2 then informed the complainant that he was trespassed from Wal-Mart. The complainant began recording the interaction and repeatedly interrupted Officer 2, stating that the trespass was “illegal.” Officer 2 finally stated, “don’t go back to Wal-Mart or you will be arrested.”

When he returned to his police vehicle, Officer 2 stated, “piece of shit” under his breath.

Meanwhile, a supervisor responded to Wal-Mart where Officer 1 was waiting. Upon learning that the other two officers had left in search of the complainant, the supervisor also began to drive to the complainant’s location. While enroute, he called the complainant, who stated that he wanted to file a formal complaint telephonically.

Officer 2 and Trainee Officer returned to Wal-Mart and filed a trespass warning card for the complainant with loss prevention personnel.

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 Officers 1 and 2 and Trainee Officer as follows:

1. **General Order 119.01 – Operation of Department Vehicles** and **NMSA 66-7-351 – Stopping or parking prohibited in specified places**. The complainant alleged that Officer 1 exhibited gross disregard for public safety when she parked her police vehicle too close to a fire door.

LCPD exonerated this allegation stating that Officer 1 had parked her vehicle in compliance with the state statute and in a location that was requested by Wal-Mart. The investigator also contacted the Fire Department to inquire about the police vehicle’s placement; a Fire Investigator confirmed that the parked vehicle met Fire Department safety standards.

2. **General Order 225.02 – Use of Force Procedures – Applying Force**. The complainant alleged that Officer 2 used excessive force – what he termed “assault” -- when Officer 2 moved him away from the police vehicle.

LCPD exonerated this allegation. First, LCPD opined that the complainant was attempting to view sensitive law enforcement data on the MDT, and that Officer 2

was within his right to move the complainant to secure the data. Second, the officer's use of "gentle physical contact" on the complainant's shoulder did not amount to a formal use of force.

3. **General Order 294.02 – Frisk or Pat Downs** The complainant alleged that the Trainee Officer conducted an illegal search of his person when he conducted a pat down.

LCPD exonerated this complaint, stating that the complainant was non-compliant and attempting to flee the traffic stop.

Outcome: Discipline or Other Action

There was no formal discipline or review of the officers' personnel files in this case because the allegations were exonerated. The Trainee Officer subsequently separated from LCPD for unrelated reasons.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. With respect to the first and second allegations, we found the investigation to be thorough and complete, and that the evidence provided supported the findings. The IA investigator's outreach to Fire Department personnel to inquire about parking regulations was especially diligent and commendable. And, after reviewing body-worn camera footage, we concur with LCPD's assessment of how Officer 2 moved the complainant.

However, from that point forward, the investigation seemed to lapse into more subjective – and less convincing – analysis. The memo seemed intent on justifying the officers' questionable actions through characterization of the complainant's perceived culpability, rather than with the factual evidence at hand. Accordingly, and as discussed in detail below, key concerns that we identified – and that had been raised by the complainant – were not given adequate attention.

Even in the face of a troublesome complainant whose self-proclaimed purpose is to "bait" police officers, the Department's standards for objectivity, thoroughness, and rigor

in handling misconduct allegations should still apply. Instead, the investigator's evident frustration with this complainant undermined the effectiveness of the review in multiple ways, as we discuss below.

Assessment of Investigation as Completed by LCPD

We identified several issues with this investigation.

The investigator did not frame all allegations. In addition to the three complaints noted above, the complainant also alleged that the officers had illegally solicited the trespass citation from Wal-Mart without cause and asserted that the traffic stop had been improper. The supervisor noted both of these concerns on the Citizen Complaint Form.

However, the investigator did not segregate these as allegations that needed to be individually addressed. As a result, LCPD missed a critical opportunity to evaluate the officers' use of the trespass citation and their decision to "track down" the complainant (and conduct a traffic stop) in order to advise the complainant that he was not allowed to return to the Wal-Mart because of a trespass citation.

Had these allegations been separately considered, our review of the evidence suggests that they may have resulted in corrective action for the involved officers.

Regarding the trespass citation itself, we acknowledge that generally, officers have discretion to cite individuals for trespassing if the private business is desirous, which occurred here; the complainant's allegation that it was "illegal" for officers to seek a trespass warning was not technically accurate.

However, we found that the officers' rationale to obtain the trespass (as well as the store's reason for authorizing it) was unclear: the store was open for regular business, the complainant was not engaged in vandalism, loitering, blocking entryways, or other behavior that might prompt a private business to request a trespass citation, and the complainant was a paying Wal-Mart customer.³ Here, LCPD might have counseled the

³ No rationale was provided in the officers' Incident Reports, except that the complainant was a "suspicious person." Later, while on the phone, the sergeant informed the complainant that the rationale for the trespass was "causing a disturbance." When the complainant asked, "what disturbance," the sergeant responded that he did not know.

officers on documenting sufficient rationale for the citation and/or seeking alternative action(s) when dealing with a difficult member of the public.⁴

The officers observed the complainant leave the property. They then chose to track down the complainant to his residence to “advise him that he was trespassed.” But the main purpose of issuing a trespass citation is typically to remove a person from private property and/or prevent their return; here, the complainant left the parking lot on his own. It is an unusual exercise of discretion to follow an individual for some distance to effectuate a low-level citation that is designed to accomplish what the complainant essentially accomplished himself. Accordingly, it is one that LCPD should have evaluated to determine if these actions were effective and necessary uses of Department resources, and consistent with leadership's preferences.

With regard to the traffic stop: the complainant alleged that there was no reason to stop him. According to the officers, the rationale for the stop was to “advise [the complainant] that he was trespassed.” On its face, this appears to be insufficient cause to initiate a traffic stop, and certainly an allegation that LCPD should have carefully considered.

RECOMMENDATION 1

LCPD should frame, investigate, and appropriately dispose all allegations made by complainants to ensure a thorough investigation.⁵

The evidence does not support the finding of “exonerated” for Allegation 3 (the pat down).⁶ When the officers initiated the traffic stop, the complainant exited his car and began to open his driveway gate. Officer 2 reported that this was “unusual” behavior and that the complainant was attempting to “flee” the traffic stop. Because of this, he directed the Trainee Officer to detain the complainant and conduct a pat down search, which the Trainee Officer did.

⁴ This might have included not engaging the complainant at all. Had Officer 1 simply refused to engage with the complainant’s provocations, this incident perhaps would not have occurred. But Officer 1 admitted that the complainant “got” her, and the incident spiraled from there.

⁵ We recommended this in five previous memos and in our August 2022 Semi-Annual Report.

⁶ “Exonerated” here means that the pat down did occur but was found to be within Department policy or law.

LCPD's policy regarding pat downs is explicit: "the subject to be frisked or patted down must have *been stopped based on reasonable suspicion of criminal activity*, and the officer must be able to articulate *a reasonable belief that the person to be frisked is presently armed and dangerous*" (**General Order 294.02**, emphasis added).

Neither criterion was met here – at least to any extent documented in the officers' statements or the complaint memo. As we noted, the officers did not articulate reasonable suspicion for the traffic stop itself. And there was no evidence provided to suggest that the complainant was "presently armed" or "dangerous." He was, at worst, non-compliant, which we find to be insufficient cause to conduct a pat down per policy.

Perhaps realizing this, the investigator provided extraneous rationales to support the officers' traffic stop and pat down – justifications that were not cited by the officers. For example, the investigator wrote, "though not articulated in the [police] report, [the complainant] did commit a violation by parking his vehicle against the flow of traffic." While this is presumably a pretext that gave the officers' more solid footing, it would have been preferable for this to emerge from them directly (in their reports or in an administrative interview), rather than as a matter of the investigator's post-hoc speculation.

We recommend that investigators make findings based on the factual evidence collected during the course of the investigation, and should refrain from speculation about what might have been influencing the incident in one direction or another.

RECOMMENDATION 2

LCPD investigators should remain focused on the evidence discovered during the investigation, and refrain from providing extraneous information as evidence.⁷

Editorializing. Throughout the investigative memo, the investigator provided his own characterization of the complainant, such as calling him "sexist and/or a misogynist," and "woefully misinformed and misguided," that we found were not inherently relevant to the incident. Ideally, the objectivity of both an investigation and the memorandum that summarizes it should prevail over the subjective frustrations that a particular complainant may provoke (however understandably).

⁷ We recommended this or similar in two previous memos.

RECOMMENDATION 3

LCPD investigators should refrain from written characterizations that gratuitously reflect personal opinions or impressions about complainants.

LCPD Management Response

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

RECOMMENDATION 1

LCPD should frame, investigate, and appropriately dispose all allegations made by complainants to ensure a thorough investigation.

The citizen's complaint was identified four specific complaints (parking 30 ft from door, assault for an officer putting his hands on him, claims trespass was solicited, and illegal search for the pat down). The investigation framed the following policies (Operation of Department vehicles, Use of force procedures -Applying force and frisk or Pat Downs. This investigation addressed each of the citizens' complaints and provided information for each finding.

RECOMMENDATION 2

LCPD investigators should remain focused on the evidence discovered during the investigation, and refrain from providing extraneous information as evidence.

LCPD IA and administration is in agreement with the recommendation, investigators have since received training to keep from providing extraneous information as evidence.

RECOMMENDATION 3

LCPD investigators should refrain from written characterizations that gratuitously reflect personal opinions or impressions about complainants.

LCPD IA investigators have received training to keep from reflecting personal opinions and or impressions about complainants.



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TO: City of Las Cruces
FROM: OIR Group
DATE: April 3, 2023
RE: Review of Administrative Investigation – #2022EIC1-024

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 March 13, 2023.

Case Summary

The mother of a high school student complained about an on-campus incident that had involved her eighteen-year-old son and an LCPD officer. She had been on the phone with her son during the student's encounter with school security and then the officer, whose presence had been requested after the security staff reached an impasse with the young man regarding his desire to leave the campus property in his car in the midst of a school day.

The complainant had overheard the exchange between her son and the LCPD officer, and found the latter to have been discourteous – specifically in the form of calling her son a "baby" after learning that the complainant was on the line. Soon thereafter, she had a secondary concern about the same officer when she called the school

immediately after that incident; she ended up on speaker phone with the officer and a school official and took exception to aspects of the officer's different responses to her. She lastly raised a question as to the apparent lack of body-worn camera evidence of the original encounter between the officer and her son.

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 complaint:

General Order 103.05 (A) – Code of Conduct – Conduct toward the public.

This provision requires employees to be respectful to the public during the performance of their duties and responsibilities. It holds that employees *shall* be tactful and control their tempers, and admonishes them to exercise the utmost patience and discretion, and not "engage in argumentative discussions even in the face of extreme provocation." [Emphasis added.

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."

Outcome: Discipline or Other Action

The Department's investigation included an interview with the complainant, a review of available materials from the incident (including BWC from the discussion in the Assistant Principal's office), and a subject interview with the officer. During the interview, he acknowledged engaging in the specific behaviors that were featured in the original complaint.¹ He also took responsibility for having failed to activate his camera during the initial encounter with the student and school security; he said he had

¹ While his abrupt departure from the conversation with the complainant was partially attributable to his need to respond to a situation at a different nearby school, he also made gratuitous reference to the woman repeating herself. He did not, however, slam the door or "stomp" out of the room as was alleged.

(mistakenly) expected it to be a routine event, and that he had subsequently adjusted his standard practice to avoid a recurrence of the issue.

The officer received minor discipline in conjunction with direction to attend relevant training on de-escalation. The Department included his prior disciplinary history in the case file; there were no sustained cases for related misconduct.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found the investigation to be appropriately thorough, and that the evidence provided supported the findings. Though there were participants in the disputed encounters who were not interviewed (including the Assistant Principal, the student himself, and the witness security guards), the nature of the incident and the sufficiency of the other evidence meant that these omissions were reasonable.

We did wonder about the lengthy delay between the incident/complaint and the initiation of the investigative process. The subject officer was not interviewed for more than nine months, which obviously made the Department's intervention less timely and effective than it might otherwise have been.² We have addressed this concept with LCPD on five prior occasions, most recently in our 3rd Semi-Annual Audit Report. Though the allegations were not of grave significance, and while there were apparently some gaps in the officer's availability to be interviewed, the timeline here still strikes us as both avoidable and sub-optimal.

Having said that, we note that the consequence (which included not only formal discipline but a tailored training requirement) seemed commensurate with the misconduct at issue. We were impressed with the officer's willingness to accept responsibility and apologize in the moment during his telephonic interaction with the complainant. He similarly recognized his own shortcomings during his administrative interview. These qualities show that the corrective purposes of the discipline process were well on their way to being accomplished due to the officer's own mindset.

² When the investigator contacted the complainant to get an updated mailing address, she shared that she had assumed that the Department had "blown off" the complaint when so many months had passed without any updates. This is direct evidence of how delays in the investigative process can lead to lost trust.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The delay in completing the investigation was partially a result of officer and investigator availability. Steps have been taken to reduce investigation completion time moving forward.



7142 Trask Avenue
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OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: December 12, 2022
RE: Review of Administrative Investigation – #2022EIC1-027

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 December 1, 2022.

Case Summary

This case was initiated by an email submitted by a community member. The community member, who wished to remain anonymous despite sending the email from an identifiable address, stated that an LCPD sergeant told him that another sergeant had posted videos on her personal social media pages (TikTok and Instagram) of herself in uniform pretending to be “a gangster” and disparaging Fire Department personnel. The complainant provided these two video clips. The complainant believed that the Department should address these social media posts.

LCPD identified the sergeant and immediately reviewed her publicly available, personal social media accounts. LCPD discovered several posts related to law enforcement,

including the posts referenced by the complainant and posts that included other LCPD employees on duty, in LCPD facilities or vehicles, and in uniform.

In her administrative interview, the sergeant stated that, upon personal reflection, she chose to delete the videos on her social media accounts before she became aware of the investigation or complaint; the sergeant stated that she did not delete the videos in response to the investigation. The sergeant acknowledged that the videos could have been taken in a negative or disparaging way, though that was not her intention. She stated that all other LCPD personnel in the videos were aware that they were being filmed and posted on her social media accounts.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a formal investigation of the incident and framed one allegation related to **General Order 158.02 Social Networks and Other Websites** as follows:

1. The complainant alleged that a sergeant posted videos of herself in LCPD uniform in LCPD facilities/vehicles that reflected negatively on law enforcement professionals and disparaged other first responders. LCPD identified the sergeant through the two video clips sent by the complainant.

LCPD sustained this allegation, stating that the sergeant violated LCPD policy when she posted videos to her social media accounts of herself and other LCPD personnel in uniform and in LCPD vehicles without the express approval of the Chief of Police.

Outcome: Discipline or Other Action

This was the second complaint involving this sergeant's social media content decisions. The first, which we also reviewed, came from the City's Ethics Hotline; an anonymous complainant reported that LCPD's submission for a nationwide law enforcement "lip sync" challenge on social media included this sergeant dressed in attire and lip syncing to a song that suggested she was a gang member in a way that disparaged Hispanics.¹

¹ As we discuss at length in our memo related to that case, "Hotline Complaint 64," dated November 14, 2021, the complaint was not formally entered, tracked, or disposed in the Department's complaint system. As a result, that complaint does not appear in this sergeant's disciplinary history, though she received what amounted to low-level discipline for her

As a result of that complaint, LCPD counseled all the involved employees, including this sergeant. It also required that all social media content/posts to the Department's *official* social media pages be expressly approved by the Chief of Police before posting, a process that the Department currently utilizes.

The Chief determined that because the sergeant had chosen to delete the posts on her own and had acknowledged that the posts could be viewed in a negative way, she showed sound judgement. The Chief issued a low-level discipline. The Chief also directed the sergeant to complete online training regarding the use of social media.

The sergeant made all her personal social media accounts "private" so that they can only be accessed/viewed by personal connections and not members of the public at large. The sergeant is also no longer involved in the Department's social media team or online recruiting.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found the investigation to be complete and that the evidence supported the findings.

Assessment of Investigation as Completed by LCPD

Upon review of the case materials, we immediately questioned the sergeant's choice to delete her personal social media posts: had she deleted evidence she knew to be related to a personnel complaint? LCPD assured us that she had not; the sergeant had not yet been notified of the complaint when she deleted them, and the complaint was not known outside the Chief's office. Her deletion of the posts was, they maintain, a coincidence, and a decision that showed her sound judgement.

To its credit, LCPD recorded the videos immediately upon receiving the complaint to preserve evidence.

The outcome of this case presents an interesting balance between employees' First Amendment rights and their duties as a Department employee. Now that the sergeant's social media accounts are private, the Department must trust that the sergeant will adhere to the General Order without being able to access her account. The Department

involvement in the incident. The Department has since changed its procedure and tracks all complaints in their internal system, IAPro.

assured us that they do trust this employee, and all employees, to follow General Order 158 as part of their job requirement.

To ensure this, however, we recommend that the Department offer a Department-wide refresher training on the requirements and restrictions of social media use. We noted that some of the videos in question here included other LCPD personnel, presumably while on duty, and also in uniform and in LCPD facilities.² The investigation did not address these officers' involvement in the videos, though many are clearly identifiable and the accused sergeant reported that they knew that they were being filmed and posted.

A refresher training, and reminder that violations may result in discipline, is advisable.

RECOMMENDATION 1

LCPD should hold Department-wide training on General Order 158 to remind all personnel about the requirements and restrictions of social media use.

Additional Policy, Training, or Other Findings

We did not identify any additional findings in this case.

² These employees' actions were potentially counter to current policy, specifically Sections C and D of General Order 158, which read as follows:

C. Employees shall not authorize any party to use photographs or other depictions for the purpose of endorsing or promoting a product or service without written permission from the Chief of Police or his designee. Such items include but are not limited to:

1. *LCPD uniforms*
2. *Badges*
3. *Patches*
4. *Marked patrol cars*
5. *Any other item or material which is identifiable to the LCPD*

D. Employees are prohibited from using City or LCPD property (on-or off-duty) to engage in personal use of social media. Employees while on-duty are further prohibited in using privately owned property to engage in personal use of social media unless it is directly related to his/her official duties.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. A department wide training bulletin was sent out to all personnel as a reminder about the requirements and restrictions of social media use.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: January 30, 2023
RE: Review of Administrative Investigation – #2022EIC1-029

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 January 5, 2023.

Case Summary

This complaint resulted from a call for service for a disorderly subject. The complainant, a female juvenile, and her mother, who was not physically present for the incident, alleged that during the police response to that call, LCPD officers used excessive force to detain the juvenile long after she stopped resisting police.

Officer 1 responded to a call for a disorderly subject in an apartment complex courtyard. Officer 1 arrived and contacted three female juveniles at the door to an apartment. One of the females was on the phone with her mother. That same female told Officer 1 that the apartment resident, an 18-year old female, was trying to have a sexual relationship with her ex-boyfriend, who she said was 16. Officer 1 explained that the relationship, if

consensual, was not illegal.¹ This upset the female, who yelled profanities at Officer 1. Around this time, Officer 2 arrived.

Officer 1 turned away from the females to contact the apartment resident in question. When he did so, the upset female threw down her keys, yelled “fuck this!” and ran to Officer 1 waving her arms.

Officer 2 reached out to stop her but fell, causing the female to also fall into a seated position in front of Officer 1. Officers 1 and 2 used control holds to move the female forward onto her stomach, where Officer 2 placed his knee on her upper shoulder area and held her right arm/hand in a control hold. Officer 1 applied handcuffs. The female continued to yell and cry, “are you fucking joking? I didn’t even do anything!” And, to her mother, who was still on the phone, “they slammed my head onto the concrete!”

As soon as the handcuffs were double locked, the officers lifted up the female and escorted her to a police vehicle, where they placed her in the back seat.

Officer 1 opened the police vehicle door to speak with the female. She continued to cry and refused to give her name. The officers briefly spoke with the two other females.

Meanwhile, Officer 2 called the detained female’s parents and reported that the female was detained but not injured. The father asked to come to the scene. Officer 2 interviewed witnesses in the apartment complex, then returned to the police vehicle. Officer 2 turned on the vehicle’s air conditioner upon request. The female stated that she “didn’t mean to,” was sorry and did not want to get into trouble. The female said that her knee, hip, and rib cage hurt and that the handcuffs were too tight; Officer 2 adjusted her handcuffs.

Fire personnel examined the female’s visible injuries, which included scrapes on her knee. A supervisor responded to the scene and an officer took photographs of the injuries. The female was issued juvenile citations for disorderly conduct and assault on a peace officer. The female was released to her father.

Later that evening, the female and her mother requested to file a formal complaint. A LCPD lieutenant responded to the hospital, where the female and her mother were sitting in the hallway. The lieutenant took a recorded statement to file a formal complaint. A female officer took additional photos of all injuries under clothing and in sensitive areas.

¹ According to LCPD, per NM Stat § 30-9-11, a sexual relationship between a 16- and 18-year-old is legal if consensual.

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 one allegation related to **General Order 225.02 – Use of Force Procedures – Applying Force** against Officers 1 and 2 as follows:

1. The complainants alleged that Officers 1 and 2 used excessive force when they continued to restrain the female subject after she had stopped resisting. The complainants also alleged that the officers' applications of force could have caused injuries including possible rib fractures and a potential concussion.

LCPD exonerated the officers after watching the body-worn camera footage and reading the police reports; the investigator determined that the tactics used by officers were within policy based on the female's actions and that the officers lifted the female from the ground as soon as handcuffs were applied. The related internal force review, though limited, had also found the force to be reasonable.

Outcome: Discipline or Other Action

There was no formal discipline or review of the officers' personnel files in this case because 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, including the related use of force review. We found that the evidence provided supported the findings.

Assessment of Investigation as Completed by LCPD

We found the preliminary investigation to be timely and thorough, and found that the IA investigator's own careful analysis of the force supported exonerating the officers.

Initially, we found the file to be incomplete -- the investigative file did not include or reference the Department's internal Use of Force Review report, where we would expect to find a robust evaluation of the reasonableness and necessity of the force used. This is in part because IA cases involving force allegations typically reference the

Use of Force report in making recommended findings. We requested, and LCPD immediately provided, the related Use of Force “BlueTeam” report.²

Formal review of LCPD’s use of force reports remains outside of our scope of work; we have access to use of force reviews only as they relate to public complaints that meet our review thresholds *and* include allegations of excessive force, like this one. As such, we see a very limited number of force reports. Their quality has been mixed: while some contain detailed supervisor summaries or supplemental memos with command staff’s evaluation, others provide little or no analysis to support the final finding. This case’s force review fell into this latter category.

While the IA investigator was able to reach an independent conclusion based on review of the body-worn camera recordings and other available information, a thorough supervisory review of the force would certainly have been beneficial – both in the context of responding to this complaint case and for its own sake as a vehicle for accountability and internal self-improvement. Accordingly, we found the absence of such an assessment to be noteworthy.

How rigorously an agency reviews an individual use of force depends on a variety of factors, including its standard protocols and the severity of the incident itself. Lower-level force – like the control holds and the accidental takedown that officers used here – may not always require deeply detailed analysis. But we have worked with jurisdictions that analyze even low-level force incidents with an eye toward improvement. Even when policy violations are not at issue, a holistic evaluation can produce useful observations and interventions that enhance future officer performance.

The Department has repeatedly assured us that its force review process is becoming more robust, with the addition of the Force Review Cadre and more supervisor training. We look forward to opportunities to review future force cases as they arise within our scope of work.

Further, as we have recommended twice in the past, LCPD should include all relevant information in the case file and reference it in the investigative memo to ensure its completeness, especially when the evidence (here, the use of force report) is directly relevant to the findings.

² BlueTeam is the software program used by many law enforcement agencies to review and track uses of force.

Additional Policy, Training, or Other Findings

We take this opportunity to revisit our previous recommendation that the Department develop an alternative complaint resolution process. In two previous memos (2021EIC1-019 and -022) and our June 2022 Semi-Annual Report, we recommended that the Department consider the addition of a restorative justice or mediation process for some complaints.

The complainants in this case may have been good candidates for this process, which might include viewing the body-worn camera footage and candid communication about intentions and outcomes. LCPD previously responded that it is in the process of developing a program similar to mediation for supervisors who are involved in the complaint intake process. We look forward to hearing more about this program and its effectiveness.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD will explore additional post-investigation outreach possibilities. The complaint intake process is part of our supervisory training.



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TO: City of Las Cruces
FROM: OIR Group
DATE: April 13, 2023
RE: Review of Administrative Investigation – #2022EIC1-030

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 March 16, 2023.

Case Summary

In late 2022, the complainant submitted a complaint form on which she alleged that LCPD officers failed to respond to her reports of harassment and intimidation, did not respond to her contacts in a timely manner, and released body-worn video footage of her to the man who was harassing her. The complainant named three specific employees – a supervisor and two officers -- and the Department at large.

This case involved an on-going dispute between the complainant and a man that began in 2019. In short, the complainant and the man each alleged that one was harassing and intimidating the other through social media and by using law enforcement and court orders to harass the other. Over the course of several years, the parties filed

restraining orders, as well as other claims in the court system, against each other. The complainant filed complaints with other agencies.

During this time period, LCPD responded to several calls for service at the complainant's residence or other locations. The complainant corresponded with various LCPD personnel, including two named officers and one named supervisor, telephonically or via email.

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 allegations as follow:

1. General Order 103.1 (A). Code of Conduct

The complainant alleged that two LCPD officers and one supervisor failed to respond to her reported crimes and failed to enforce a protection order. LCPD exonerated these allegations because the evidence showed that named officers (as well as others) *did* respond to her calls for service. When the officers and supervisor attempted to resolve her issues, the complainant did not follow-up with requested documents or paperwork.

Further, LCPD found that the complainant did not have a valid protection order, making it impossible to enforce.

2. General Order 103.03 (A). Code of Conduct

The complainant alleged that LCPD personnel released video of her to the man who was harassing her. LCPD exonerated itself of this allegation, stating that any release of information was consistent with the New Mexico Inspection of Public Records Act (IPRA).

Outcome: Discipline or Other Action

There was no formal discipline or review of the officer's personnel file in this case because 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 the investigation to be complete and that the evidence supported the findings.

Assessment of Investigation as Completed by LCPD

In discussion with LCPD about this complex case, LCPD reported that it attempted to investigate this matter as thoroughly as possible. However, the complainant continued to expand the scope of the allegations and involved parties (and, thus, the investigation) over time without follow through. She used aliases in subsequent communications, which increased the confusion. Eventually, LCPD determined that continued engagement with this complainant was using extensive Department resources without clear identification of new misconduct and that the investigation should be closed out.

To his credit, the investigator did commendable work trying to discern if any misconduct had occurred. He pulled all contacts with the complainant from the CAD system and police reports to determine that each call for service was appropriately handled. In each documented call for service, LCPD found that either the officer met the needs of the call or was awaiting further information from the complainant to proceed (for example, in one call the complainant alleged that the man had violated an active restraining order but did not have a copy of the order; in another, the officer provided a link for the complainant to upload evidence, which, according to LCPD records, the complainant did not do). The investigator also pulled court records and public records requests over two years to determine if the complainant's reported crimes had validity.

In the investigative memo, the investigator acknowledged that it was possible that he had missed calls for service or correspondence as the complainant used aliases. LCPD recommended that all officers be reminded of the importance of tracking cases and filing reports, documents, and any evidence received from the public in the appropriate way, though they did not find evidence that any errors occurred here. The file also contained an email from a supervisor directing all personnel to record all conversations with the complainant and the man, and to file any identified charges promptly.

Despite this thorough review, we again noted that the close-out letter to the complainant was incomplete (we have made recommendations related to close-out letters on six prior occasions, most recently in 2023EIC1-004 submitted earlier this month); the letter

only referenced one of the three named employees and was unclear regarding the allegations. A detailed close-out letter was warranted in this case especially because the complainant's ongoing complaint was that LCPD was non-responsive to her contacts. We again remind the Department of the need to continue to prepare closing letters that articulate the full extent of the investigation.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD IA section will utilize a letter template to ensure all closing letters articulate the full extent of the investigation.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: December 15, 2022
RE: Review of Administrative Investigation – #2022EIC1-032

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 December 15, 2022.

Case Summary

This case was initiated by a call to the City's Ethics Hotline. The complainant, who was not involved in the incident, stated that a non-sworn employee from LCPD discriminated against her neighbor and was unprofessional when the non-sworn employee laughed at the neighbor and accused her of using drugs.

This incident stemmed from a complaint called into LCPD that a resident of an apartment complex was housing several hens and a rooster on her property in violation of City of Las Cruces Ordinance Section 7-31, "Special Animal Permits: Chicken and Ducks." A non-sworn employee responded to the residence in question and observed several hens and a rooster in cages with feces and without food or water.

After a long delay, a female answered the door of the residence and stated that she was only keeping the chickens for a day until they could be transported elsewhere. The non-sworn employee demanded that the resident feed and water the animals and clean their cages for the animals' welfare. The resident became agitated, stating that she could not clean the cages because she needed to get to an appointment for a "monkey shot." The non-sworn employee responded that he "had no idea what [she] was talking about." The female entered her apartment.

A male came out of the apartment and took one of the cages, saying that he would take the chickens to another location.

The female again came out again while on her phone. She again asked the non-sworn employee if he knew what the "monkey pox vaccine" was and expressed her disbelief that he did not. The non-sworn employee calmly responded that he did not care what that was and again requested that the female move the chickens.

The male returned and took another cage while cursing that the chickens were pecking at him.

The non-sworn employee then requested that the female clean the feces on the patio. The female argued over the length of time that it would take to build up that level of feces. The non-sworn employee stated that he would return in one week to check on the state of the patio.

As the non-sworn employee walked away, the female began yelling at another person, who may have been the person who had called in the violation. The non-sworn employee then contacted this person, a female who stated that the chickens had been at the residence for over two months. This female then reported that the chicken owner sold drugs and harassed people and showed the non-sworn employee photos of the chicken owner's neglected dogs. The non-sworn employee responded that he would check back on the dogs.

The contact ended.

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 one allegation related to **General Order 103.05 Conduct Toward the Public** as follows:

1. The complainant alleged that a non-sworn employee was rude and discriminated against the female when he laughed at her and accused her of using drugs.

LCPD unfounded this allegation after watching the body-worn camera footage. In the video footage, the non-sworn employee was patient, did not laugh at the female, and did not make any disparaging comments regarding the female or use of drugs.

Outcome: Discipline or Other Action

There was no formal discipline or review of the officer's personnel file in this case because the allegation was unfounded.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. We found the investigation to be complete and that the evidence supported the findings.

Assessment of Investigation as Completed by LCPD

We found the preliminary investigation to be timely, thorough, and complete. As documented in the investigative file, LCPD attempted to contact the complainant for an interview three times but received no response. We were encouraged to see this documentation in the file.

Additional Policy, Training, or Other Findings

We did not identify any additional findings in this case.

LCPD Management Response

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



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: April 7, 2023
RE: Review of Administrative Investigation – #2023EIC1-004

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 March 16, 2023.

Case Summary

This case was initiated by a call to the City's Ethics Hotline. The complainant alleged that an LCPD officer conducted an incomplete investigation of the complainant's vehicular accident. The complainant further alleged that when he attempted to seek an amendment to the police report, the officer did not respond to his communication in a timely manner. According to the complainant, when he finally spoke with the officer with his attorney on the line, the officer agreed to amend the report but, when the attorney left the call, the officer's behavior "changed."

This incident stemmed from a traffic collision. While on scene, the complainant told the officer various (and conflicting) accounts of what had occurred. The complainant was

taken to the hospital. According to LCPD, the officer responded to the hospital and issued the complainant a traffic citation, at which point the complainant amended his statement again.

The officer wrote an incident report that included each of the complainant's various accounts as well as information obtained from a witness.

Several months later, the complainant spoke telephonically with the officer and subsequently at least two LCPD supervisors. In each call, he asked the supervisor or officer to amend the account in the original traffic report by using a supplemental report.

The officer and supervisors informed the complainant that his alleged "new" accounts were already included in the original report and that, as such, a supplemental report was not required.

In one of these calls, the complainant insisted that the officer speak to his attorney. The officer tried to explain his point of view, but the complainant was not satisfied and continued to interrupt the officer. The complainant stated that his attorney would contact the officer. The officer said, "Have your attorney call me" and ended the call.

In another call, the complainant asked for a fax number to submit a complaint; the officer responded that he did not know if they had a fax number for complaint intake. The officer responded that his supervisor would contact the complainant to take the complaint.

A supervisor contacted the complainant. This supervisor offered to provide the complainant a complaint form in person or via email. The supervisor said that the complainant had to file the completed form in person. The complainant said that he had already completed a complaint form and had emailed it to the Chief. He did not want to come in person. The supervisor said that he did not know what steps were needed to file the formal complaint and that he would find out and call the complainant back.

Later that same day, the complainant submitted his complaint via the City's Ethics Hotline.

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 as follow:

- 1. General Order 103.05 (A). Code of Conduct**

The complainant alleged that the officer did not amend his police report and hung up on him. LCPD exonerated this allegation, stating that the officer communicated several times with the complainant, was cooperative, and ended an “unfruitful” conversation with the complainant.

2. General Order 141.02(A). Police Reports

The complainant alleged that the officer’s police report was incorrect and the officer would not amend the report using a supplemental report. LCPD exonerated this complaint, stating that the report was factual and included each of the complainant’s versions of the traffic crash.

3. General Order 274.02 (A). Traffic Crash Investigations

The complainant alleged that the officer had not completed a full and accurate traffic crash investigation. LCPD exonerated this complaint, stating that the officer completed an accurate traffic crash investigation: he included all versions of the crash, sought witness accounts, and took photographs.

[Outcome: Discipline or Other Action](#)

There was no formal discipline or review of the officer’s personnel file in this case because 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 the investigation to be complete and that the evidence supported the findings.

[Assessment of Investigation as Completed by LCPD](#)

We found the preliminary investigation to be timely and complete.

We noted that the close-out letter to the complainant only referenced one of the three allegations, which might leave this complainant wondering if all his allegations were investigated. LCPD’s closeout letters are typically very complete and informative; we have commended the Department for them in the past. Here, we remind the

Department of the need to continue to prepare closing letters that articulate the full extent of the investigation.

Additional Policy, Training, or Other Findings

We noted that the complainant sought to file a formal complaint with at least one supervisor. When a supervisor contacted the complainant, the supervisor stated that the complainant would have to come in person to file the complaint, and then, that he was not aware of the steps needed to file the complaint.

In a conversation with LCPD, we learned that the complainant submitted his complaint via the City's Ethics Hotline moments later that same day, at which point the Department initiated the complaint investigation.

We recommend that LCPD review the complaint intake process with all supervisors to ensure that all supervisors know the procedure for accurate and timely complaint intake.

RECOMMENDATION 1

LCPD should review the complaint intake process with all supervisors to ensure that all supervisors know the procedure for accurate and timely complaint intake.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD IA section will utilize a letter template to ensure all closing letters articulate the full extent of the investigation. All supervisors attend a yearly IA training which includes the complaint intake process. New supervisors will be required to take this training as part of their supervisor training.