

*Las Cruces Police Department*

# SEMI-ANNUAL CASE REVIEW AUDIT REPORT

January 10, 2022

OIR  

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GROUP

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# Introduction

In early 2009, the City of Las Cruces established the position of Independent Police Auditor.

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. An IPA is an entity separate from the police department that is typically responsible for monitoring the civilian complaint process and other police practices, usually including uses of force and internal investigations and sometimes including training, policy, and civil litigation. Its role is to help ensure the legitimacy of the police agency's internal review processes. It does this through its unfettered access to confidential investigative materials, which provide the basis for objective assessments and recommendations for improvement.

In March of 2021, the City selected OIR Group to fulfill a new contract for the role of IPA in Las Cruces.<sup>1</sup> We officially began our review work on May 1. In our role as the IPA, OIR Group reviewed investigations of formal citizen and Department-initiated complaints completed by LCPD to determine whether they were 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.

One key element of the IPA model is to increase police accountability through the presentation of periodic public audit reports. This Semi-Annual Audit Report is the first such report from OIR Group.

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<sup>1</sup> 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](http://www.OIRGroup.com). You may contact us at [Info@OIRGroup.com](mailto:Info@OIRGroup.com)

In this Report, we first discuss our review of Internal Affairs cases that were initiated, investigated and closed by LCPD between January 1 and November 30, 2021. We share the recommendations derived from those reviews and provide a limited statistical analysis. We then summarize our review of closed civil litigation against the city that involved Las Cruces Police Department and / or its officers.

As we begin our work with the Las Cruces Police Department, we are pleased to acknowledge here that the agency's leadership has been both cooperative and collaborative in facilitating our responsibilities. Our "learning curve" has been less steep because of the candor and willingness to engage that has characterized our various interactions in these months. The Department has been conscientious about providing us with materials, responsive to our questions and requests for information, and receptive to the reviews and recommendations that have emerged from our individual case evaluations. We are appreciative for the facilitation provided.

As we discuss below, we identified several systemic issues that suggested room for improvement in the LCPD complaint process. These related to the manner in which cases were classified and investigated, as well as occasional missed opportunities for turning individual incidents into opportunities for broader improvement. We offered several recommendations that would better align LCPD with contemporary best practices in handling complaints and misconduct allegations.

At the same time, the cases we have reviewed to date indicate an appropriate commitment to accountability. We found the outcomes of cases to be reasonable, and to be well-supported by the evidence that had been gathered. If there were shortcomings at times, they did not appear to be caused by a lack of seriousness or objectivity. And, importantly, the Department has been amenable to considering and adopting ideas for new approaches.

Public expectations for transparency and police accountability have never been higher. Our work in Las Cruces, and this report offering a window into the process as it transpires with LCPD, will ideally comprise a useful step in meeting those expectations for the community.

# Internal Affairs Case Review

## Data Analysis

At the City's request, OIR Group produced a limited data analysis of the complaint cases reviewed in this period. Because our work has just begun and our sample size is quite limited, we acknowledge that this analysis does not provide statistically significant results. As our work continues, we hope to present comparative case data and to highlight those statistically significant trends or findings that may emerge.

## LCPD Internal Affairs Cases

The Department presents a comprehensive, annual Internal Affairs report, which is available on their website. We found that report to be valuable and informative. Here, we present an overall count of cases for the period under our review to provide context as to the categorization and nature of the specific matters we evaluated.

LCPD Internal Affairs classifies complaints into one of four categories as follows:

- External Investigations, or “EI:” complaints reported by the Las Cruces public. These fall into one of three sub-classifications based on the perceived seriousness of the allegations.<sup>2</sup>
  - Category 1 is a “formal” complaint that is documented and investigated by Internal Affairs.
  - 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.

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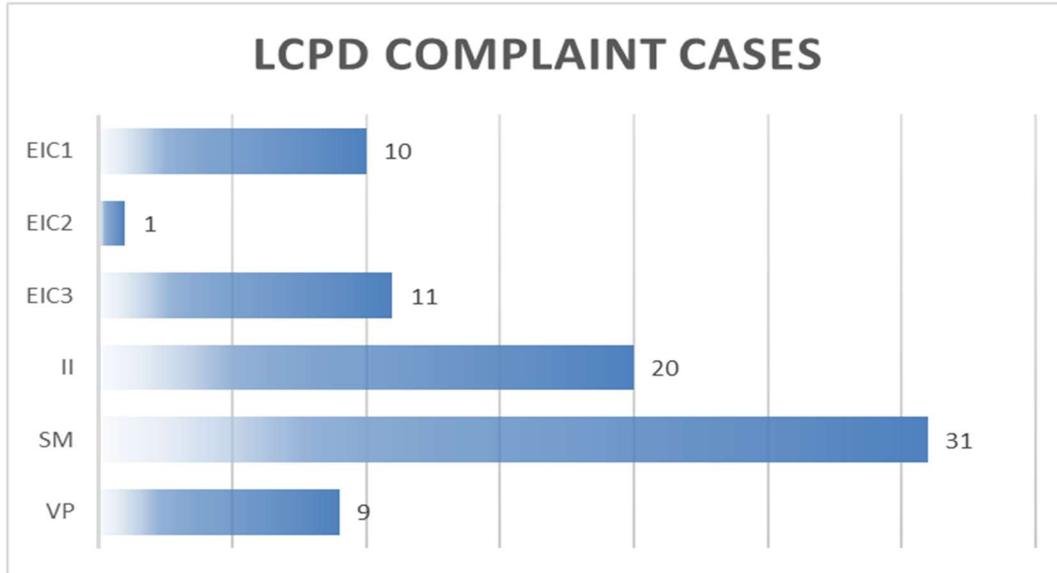
<sup>2</sup> Of these External Investigations, OIR Group only reviews EI Category 1, or “EIC1.”

- 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.
- Internal Investigations, or “II:” Complaints generated within the department that may result when there is an internal allegation related to misconduct or operational actions of employees on or off-duty. Unless serious or complex in nature, these operational concerns are investigated by the employee’s chain of command and then forwarded to IA for tracking and filing.
- Supervisory Matter, or “SM:” A non-serious incident/investigation typically conducted at the shift level for minor infractions that is not investigated by IA. The Supervisory Matter will be filed with IA for record purposes only.

As reported by LCPD, in the period from January 1 to November 30, 2021, LCPD initiated 82 Internal Affairs cases across these categories.<sup>3</sup>

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<sup>3</sup> This data was provided by LCPD Internal Affairs from its IA Pro system. As detailed below, in our role as IPA, OIR Group only reviews completed and closed EIC1 cases, Supervisor Matters that rise to the level of serious misconduct, and Internal Investigations.



## Cases as Percentage of Calls for Service

Departments sometimes compare complaint case counts against the total number of interactions with their public. And, typically, the resulting data shows that of all interactions with the public, very few resulted in complaints.

LCPD is no different. In the period reviewed, LCPD responded to 119,831 calls for service.<sup>4</sup> If we take the sum of all complaints, we find that complaints make up a mere 0.06% of all calls for service. If we isolate External Investigations, which are those initiated by the public, that percentage becomes even smaller (0.01%).<sup>5</sup>

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<sup>4</sup> This data was provided by Mesilla Valley Regional Dispatch Authority (MVRDA) via LCPD.

<sup>5</sup> It is important to note that not all complaints come from calls for service. Some might come from interactions that were not precipitated by a call, such as a traffic stop, accident investigation, or enforcement contact initiated by the police.

# IA Cases Reviewed by OIR Group

Our scope of work requires that we review completed and closed investigation files from formal citizen complaints (also known as “EIC1”), Supervisory Matters that rise to the level of serious misconduct, Internal Investigations (“II”) and complaints with allegations against LCPD that are reported to the City of Las Cruces Ethics Hotline. We also reviewed two Vehicle Pursuit cases.

This report covers cases that were initiated, investigated, and closed by LCPD from January 1 through November 30, 2021.<sup>6</sup>

We received and reviewed twelve cases in this period:

- 5 EIC1, including one case from 2019
- 2 II
- 2 Supervisor Matters
- 2 Vehicle Pursuits
- 1 Ethics Hotline complaint

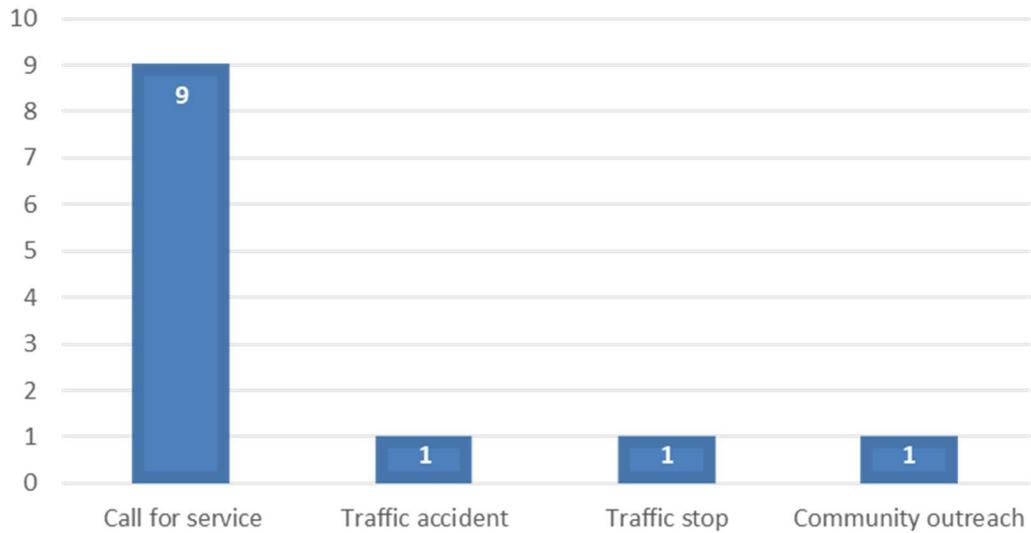
## Citizen Demographics

Seven of these cases were initiated by members of the public through the complaint process. Five were opened at the Department’s own initiative after becoming aware of potential misconduct. The majority of these incidents (9) stemmed from employee’s actions or conduct during a call for service.

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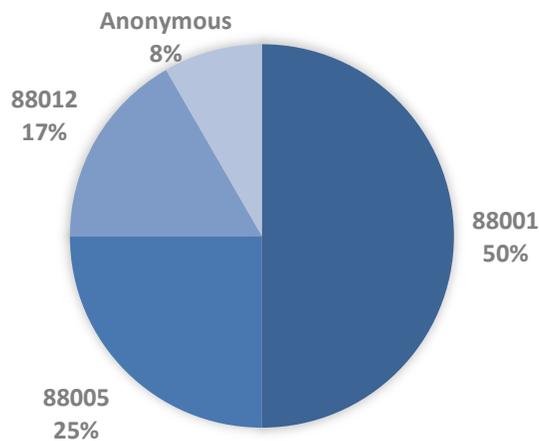
<sup>6</sup> This report also includes our review of a 2019 matter that is technically outside the established date range. LCPD provided us with materials in the interest of full transparency, given the complainant’s persistent concerns about the underlying incident and his subsequent outreach to various City officials within and outside the Police Department. The resident also contacted OIR Group directly after our selection was first announced.

### INCIDENT INITIATED BY:



Half of the cases (6) that we reviewed were initiated by incidents in or residents of the zip code 88001. The call to the Ethics Complaint Hotline was anonymous.

### COMPLAINTS BY ZIP CODE



LCPD's internal tracking system allows the Department to log the race of the reporting party, but this data was not always collected unless provided by the

complainant or relative to the investigation. As such, most cases (7) had no record of the complainant's race. For the remainder, three cases involved a Hispanic complainant, 1 case a Black complainant, and 1 case a White complainant.

## Officer & Allegation Data

These complaint cases involved 32 formal allegations<sup>7</sup> against 18 LCPD employees across several rank levels.<sup>8</sup> According to the Department, ten of these employees are Hispanic, four are Black, and four are White.

This small case number, or "sample size," did not result in any statistically significant findings relative to Department demographics as a whole. OIR Group intends to continue tracking officer and complainant demographics as we continue our work in Las Cruces. Over time, and as our sample grows, we will report any findings of significance related to race, area, and / or rank.

The allegation types were as follows:

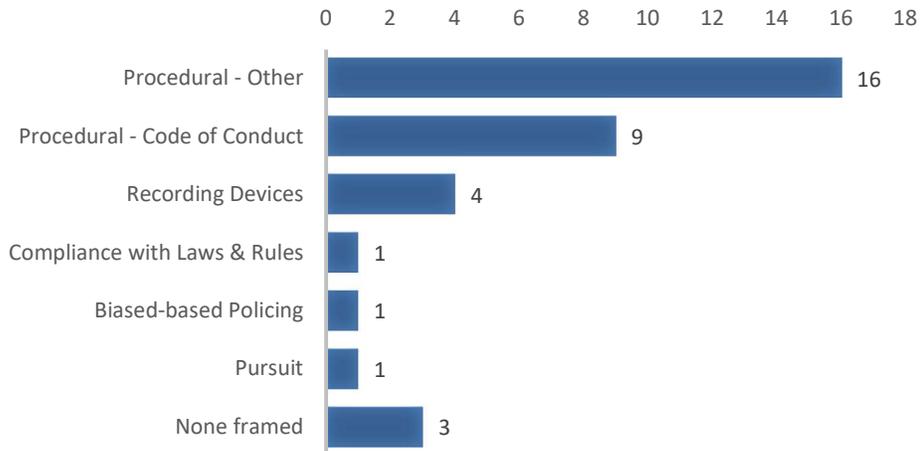
- Procedural – Other, which includes allegations of failure to investigate, reporting delays, or breaches of security / confidentiality, among others);
- Procedural – Code of Conduct, which includes conduct unbecoming, and insubordination, among others;
- Recording Devices, which involves an employee's failure to activate a body-worn recording device or properly store recorded evidence;
- Compliance with Laws and Rules;
- Biased-based policing; and
- Vehicle Pursuit

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<sup>7</sup> LCPD did not frame formal allegations for Hotline Complaint #64. We discuss this process issue and the resolution later in this Report.

<sup>8</sup> At the time of the investigation, 1 accused employee was a Lieutenant, 1 was a Detective, 5 were Sergeants, 8 were Officers, and 3 were non-sworn employees.

## ALLEGATION TYPES

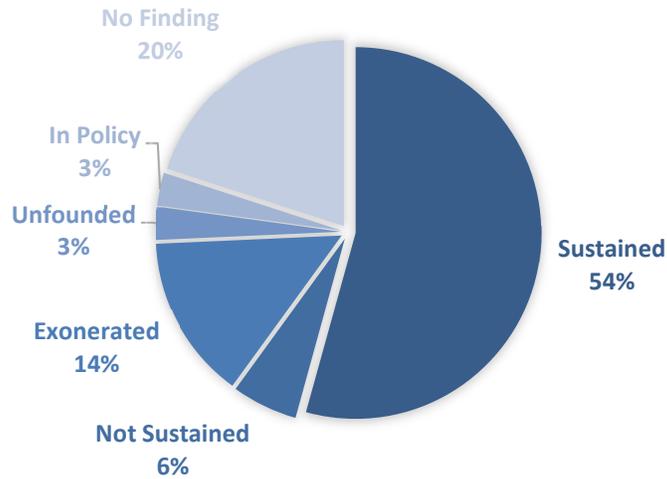


Of these, the majority of allegations (19) were sustained against 11 officers.<sup>9</sup> And, for those sustained, the discipline ranged from a Verbal Reprimand up to a 10-day suspension and Termination.

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<sup>9</sup> Later in this Report, we discuss our concerns with the disposition “No Finding,” which is mainly related to cases that were closed out as “Preliminary Inquiries” where no formal disposition was made. One Vehicle Pursuit was disposed as being “In Policy” instead of using the categories outlined in GO 160.

## ALLEGATION DISPOSITIONS



### Summary of Case Data

Here, we provide a very brief summary of each case with the rank of the accused employees, allegations and dispositions. Our completed memos with full case summaries, recommendations, and LCPD’s Management Responses, are included as **Appendix A** to this Report.

**2019EIC1-010**

Public-initiated complaint related to a call for service. Complainant believed that an Animal Control Officer improperly issued a warning notice, and had possibly done so with a discriminatory motivation.

Non-sworn Employee	Biased-based Policing	Unfounded
Non-sworn Employee	Procedural - Other	Sustained
Non-sworn Employee	Procedural - Other	Exonerated

**2021EIC1-006**

Public-initiated complaint related to a call for service. Allegations included employees failing to complete police reports, complete a comprehensive investigation, sharing of confidential information, and failure to record interviews.

Sergeant 1 <sup>10</sup>	Procedural - Other	Sustained
Sergeant 2	Procedural - Other	Sustained
Detective	Procedural - Other	Sustained
Detective	Procedural - Other	Sustained
Detective	Procedural - Other	Exonerated
Detective	Procedural - Other	Sustained
Detective	Procedural - Other	Sustained
Detective	Procedural - Code of Conduct	Not Sustained
Officer 1	Procedural - Other	Sustained
Officer 2	Procedural - Code of Conduct	Exonerated

**2021EIC1-007**

Public-initiated complaint related to a call for service. Complainant alleged that the officer failed to properly execute a Domestic / Civil Standby.

Officer 1	Procedural - Other	Sustained
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**2021EIC1-008**

Public-initiated complaint related to a call for service. Complainant alleged that the officer failed to properly execute a Domestic / Civil Standby and did not provide identifying information when asked.

Officer 1	Procedural - Other	Sustained
Officer 1	Procedural - Other	Sustained
Officer 2	Procedural - Code of Conduct	Sustained

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<sup>10</sup> Where there was more than one employee of the same rank in the same case, we numbered the rank (e.g. Sergeant 1 and Sergeant 2) to show the allegations and findings related to each employee. If there is no number, the employee listed was accused of all listed allegations.

**2021EIC1-011**

Public-initiated complaint related to LCPD's response to a traffic accident. Complainant alleged that the officer failed to perform a sobriety test, coerced her to sign a citation, and did not accurately complete a field investigation.

Officer	Procedural - Other	No Finding
Officer	Procedural - Other	No Finding
Officer	Procedural - Other	No Finding
Officer	Procedural - Other	No Finding

**2021II-001**

Department-initiated complaint related to an officer driving under the influence while off-duty.

Non-sworn Employee	Procedural - Code of Conduct	Sustained
Non-sworn Employee	Procedural - Code of Conduct	Sustained

**2021II-017**

Department-initiated complaint related to a sergeant's failure to respond to a critical incident.

Sergeant	Procedural - Code of Conduct	Exonerated
Sergeant	Procedural - Other	Exonerated

**2021SM-001**

Department-initiated complaint related to an on-call, non-sworn employee's failure to report to the scene when called by his supervisor to do so.

Non-sworn Employee	Compliance with Laws & Rules	Sustained
Non-sworn Employee	Procedural - Code of Conduct	Sustained
Non-sworn Employee	Procedural - Code of Conduct	Sustained
Non-sworn Employee	Recording Devices	Sustained

**2021SM-005<sup>11</sup>**

Public-initiated complaint related to a non-sworn employee's failure to adequately complete a dog bite investigation.

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<sup>11</sup> This case involved the same employee as 2021SM-001.

Non-sworn Employee	Procedural - Code of Conduct	Sustained
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**2021VP-004**

Department-initiated complaint related to a vehicle pursuit that occurred after a call for service. While the pursuit was found to be in policy, the officer failed to immediately activate his body-worn recording device.

Officer	Recording Devices	Not Sustained
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**2021VP-006**

Department-initiated vehicle pursuit investigation. Officer responded to a call for service related to a man pointing a firearm at another vehicle, located the suspect, and engaged in a pursuit.

Officer	Pursuit	In Policy
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**Hotline Complaint #64:**

Public-initiated complaint from an anonymous called related to a social media post in which LCPD officers were depicted wearing attire that was perceived as inappropriate and racially disparaging.

Lieutenant	None framed	No Finding
Sergeant 1	None framed	No Finding
Sergeant 2	None framed	No Finding

Finally, we were asked to provide information regarding any criminal charges associated with the incidents that we reviewed. Based on the information provided in the investigation files, the two vehicle pursuits may have resulted in criminal charges related to aggravated battery / assault, aggravated fleeing and reckless driving, and driving a stolen vehicle; these charges were a result of the totality of the incidents themselves, not an outcome of the complaint.

# Internal Affairs: Review, Findings and Recommendations

Since 2001, OIR Group's members have had unique outsider access to a full range of internal review processes for many police agencies. This includes countless Internal Affairs investigations into officer misconduct. We have seen firsthand the way that different agencies perform such important functions with greater or lesser effectiveness. We recognize the principles of sound, thorough investigation and its importance to appropriate accountability.

We brought this experience to these case reviews. Our review included an assessment and discussion of the following components:

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

To accomplish this, OIR Group reviewed all evidence provided by LCPD and consulted with LCPD regarding case questions or potential recommendations.<sup>12</sup>

OIR Group submitted a memo for each case and LCPD provided a Management Response. As noted above, our completed memos are included as **Appendix A** to this Report. In this section, we summarize the findings and recommendations from our reviews.

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<sup>12</sup> When LCPD closed an Internal Affairs investigation within the scope of our work, LCPD 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 Practices

Over the course of our collective experience, OIR Group has developed valuable perspective regarding law enforcement best practices, particularly related to internal review mechanisms. Overall, we found LCPD's Internal Affairs practices to be robust and effective. Even so, we identified areas where LCPD systems and approaches might better align with best practices.

To its credit, LCPD has already made several of our recommended changes and altered its practices accordingly; for others, it has committed to considering the recommendations internally to best formulate a response.

## Complaint Intake

When we reviewed our first external complaint, case 2019EIC1-010, we had the opportunity to view the "Citizen Complaint Form" for the first time. We identified aspects of the form that we asked the Department to re-consider due to their potentially chilling effect on public feedback. Specifically, we asked LCPD to consider changes to two elements of the pre-printed avowals to which complainants are asked to attest with their signature.

The first reads as follows:

*I understand that I may be asked to submit to a polygraph examination and provide a formal statement to the Professional Standards Unit of the Las Cruces Police Department.*

The second one is this:

*Under penalties as provided by law pursuant to Section 30-39-1 NMSA 1978, False Reporting, I certify that the allegations set forth in this complaint are true and correct to the best of my knowledge. I understand that if I knowingly make false accusations, I may be subject to a criminal prosecution or civil penalties.*

In July of 2021, we met remotely with the Chief and the head of Internal Affairs to discuss the complaint form. As we had speculated, they explained that the

former version was of long standing and not reflective of current LCPD priorities or practices. The Chief agreed that this could have the unintended effect of dissuading complainants from participating in the process.

LCPD has since reported that they removed the polygraph reference from the forms, stating, “All wording regarding a possible polygraph examination from our Citizen Complaint form have been removed to foster a fair and receptive environment for outside complaints.”

OIR Group also had concerns with complaint intake protocol when we reviewed a recording of the intake interview in a different case. After taking a detailed account of the incident, the Sergeant informed the complainant that she may have to submit to a formal polygraph with the police department, quoted the statute related to making false reports, and stated that the woman could be criminally charged for false reporting. These are potential red flags that deserve attention.

LCPD reported that this case predated the change to the form, and that, going forward, they will work to ensure that supervisors and investigators are trained on the shift toward a more receptive and objective approach.

We look forward to reviewing newer investigations to ensure that complainants are in no way dissuaded from reporting a complaint.

## Concept of “Preliminary Inquiry”

When we began our case reviews, we noted that some cases were closed out after what LCPD called a “Preliminary Inquiry.” In conversation with LCPD leadership, we learned that, after classifying a case at the outset based on the severity of the allegations, IA often conducts a “preliminary inquiry” of the case. This preliminary inquiry, which includes an assessment of the initially available evidence, is conducted by Internal Affairs, and serves to better assign the case for further investigation – or a prompt resolution of the case.

When the preliminary inquiry reveals that no misconduct occurred, LCPD closes out the case with no further investigation.<sup>13</sup>

We find the concept of preliminary inquiry to be sensible. As we have noted in other recent reviews, we recognize that some complaints lack substantive merit on their face, and that others are quickly refuted by readily available evidence. Accordingly, we do not suggest that LCPD *do away* with the preliminary inquiry as it serves to properly classify and route cases. But we did find areas of modification to better align with best practices as follows:

1. **Case Classification.** Historically, LCPD classified cases at initial intake based on the severity of the allegations. LCPD would input the initial case classification into IA Pro (its case review system). After the preliminary inquiry, some case classifications would change. For example, some cases that were initially classified as “formal” with serious allegations were (appropriately) “downgraded” as available

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<sup>13</sup> Preliminary Inquiry is defined in General Order 160.07.A. Complaint Investigation, Investigative Procedures, Preliminary Inquiry as follows:

1. Internal Affairs will review each complaint to determine its merit. Prior to initiating an official administrative investigation and notification of the affected employee, a preliminary inquiry may be made to identify the involved employee, to verify the reliability of the source or authenticity of the complaint, or to clarify the allegations.
2. A preliminary inquiry may not be necessary for certain types of complaints [...]
3. In some cases, the preliminary inquiry of the complaint will determine that the action(s) of the employee were in compliance with policy or that the complaint against the employee is one that, even if true, would not be a violation of law or department policy. In these situations, a formal administrative investigation is not needed, and the complaint can be closed out upon the Chief of Police’s approval.
4. If the preliminary inquiry determines that a specific allegation, if true, would constitute violation of policy and/or procedure, a formal administrative investigation will be initiated in accordance with this general order.

evidence was considered; these would then be investigated at a less formal level. So, a case classified as “formal” in the system might actually be investigated at the unit level instead of by IA, or not formally investigated at all.

This process of “midstream” adjustment makes sense to us as a response to the impact of additional information or evidence. Less clear was the Department’s practice of preserving the initial classification (case’s name and number) even when it no longer accurately reflected the relevant process being used, or the status of the case in terms of LCPD’s evolving sense of its severity.

Our understanding, per further exchanges with LCPD, was that this was to avoid having multiple entries for the same incident, which could lead to future confusion when it came to aggregating data and reconciling tracking information with actual investigative work and outcomes. This was helpful clarification. In our view, though, it simply trades one potentially misleading approach for another, and for the sake of a tracking system that ideally exists to facilitate the Department’s efficiency – not the other way around.

Accordingly, we recommend that the Department take steps to avoid leaving cases with original classifications that no longer align with the substantive reality of the investigation. For example, we suggest that LCPD consider conducting a preliminary inquiry *prior* to assigning a case classification in the IA Pro system. Alternatively, LCPD may consider changing the case classification if a preliminary inquiry determines that a case should be re-classified. LCPD leadership reported that it was already considering such process changes in an effort to address what it recognizes as a valid criticism.

2. **Disposition / Findings.** As mentioned above, the preliminary inquiry might conclude that no misconduct occurred. LCPD currently closes out these cases with the conclusion: “no further investigation.”

We suggest that LCPD consider the additional step of assigning dispositions to these types of cases, rather than leaving them without

formal finding. Some possible dispositions, per General Order 160.12, might include:

UNFOUNDED - act alleged apparently did not occur.

EXONERATED - employee's conduct was lawful, justified, and proper.

By assigned a formal disposition, LCPD can log a formal record of the case outcome. And all parties, including the officer(s) and complainant(s), are made aware that no misconduct occurred.

It is true that, in our experience, some agencies prefer to avoid "complicating" an officer's personnel history with complaints that prove to be unsubstantiated. However, as the public becomes more attuned to police accountability, we take the position that accuracy and completeness are also values, and that disproven cases do not and should not reflect poorly on the individual officer.

The Department was very receptive of these recommendations and has already implemented steps to add a formal finding component to all preliminary inquiries.

## Following Investigation Protocol

In some cases, we found that LCPD did not always fully follow their own investigative protocol for reviewing formal complaints. Most notably, LCPD did not always conduct their own interviews of complainants or potential witnesses (see, for example, case #2021EIC1-011).

In some cases, LCPD relied exclusively on the complainant's written correspondence or on a preliminary intake conversation rather than conducting a formal, complete interview. We recommended that, going forward, LCPD conduct a more formal interview (of at least the complainant) where possible. This is likely to result in a more complete investigation overall and may provide additional evidence to ensure that the investigation is thorough, fair, and accurate.

LCPD responded that “formal protocols will be adhered to on all investigations as recommended.”

## Delays in Investigation

In three cases, we noted a delay in either opening the case or initiating the investigation (see #2021II-017, 2020EIC1-006, and 2021EIC1-007). LCPD provided background details about the protracted timelines in these cases.

Overall, delays in initiation of an investigation can have potential consequences. Apart from the inherent value of addressing personnel issues promptly, the time lags can affect the quality of available evidence. For example, in 2021II-017, civilian witnesses to the incident claimed to have no recollection of the event. This “lack of recall” response would presumably have been less likely if the witnesses had been interviewed before several months had passed. OIR Group recommends that LCPD ensure that allegations of misconduct not “fall through the cracks” and work more diligently to ensure that avoidable delays do not undermine investigative quality.

LCPD agreed with our assessment of the time lags and stated, “the issue of timeliness was pointed out [...] and will be further emphasized in an upcoming IA training for supervisors in January 2022.”

LCPD also informed us of an additional timeliness concern: some completed investigations cannot be closed because at least one of the involved officers is on leave (medical, personal, or military) and LCPD cannot issue discipline. OIR Group acknowledges the challenge of this situation and opines that a case can only be considered “closed” when discipline has been issued. We requested that LCPD note the reason for the delay in their investigative memo or other related case documentation.

## Use of “Supervisory Matter”

In this period, we reviewed three cases that were initially classified as “Supervisory Matters,” but followed different courses as they unfolded.

One of them (2019EIC1-010) was shifted to an “EI” (or “External Investigation”) and handled by Internal Affairs when – during the pendency of

the original complaint review – an allegation of possible bias was introduced during further communications with the complainant.

The other two, 2021-SM001 and 005, kept their original “SM” designations, in spite of the ultimate seriousness of the allegations and the severity of the potential (and actual) disciplinary consequences.

While 2021-SM005 kept its “SM” designation, this case was ultimately investigated by a detective assigned to Internal Affairs. We agree that this was an appropriate level of formality for the investigations and believe that the relevant evidence was compiled and assessed in thorough and effective ways. In short, the substantive process seemed to work in spite of the framing of the case as a mere “Supervisory Matter.”

But this was less true for 2021-SM001. As our memo for that case indicates, the handling of that investigation by an involved supervisor – who was himself an important figure in the misconduct allegations – seems to have undermined the quality of the process (although we ultimately concurred with the findings of misconduct).

This issue overlaps with the “Case Classification” issue we cited above: it relates to the confusion that can arise when adherence (either in labelling or in substance) to an initial categorization creates discrepancies with policy, protocol, or overall efficiency. Though our understanding is that some of this is a matter of form over substance, we reiterate our earlier point about the confusion it potentially causes. More pointedly, our concern was that devotion to the initial designation for tracking seems to have dictated the quality of the 2021-SM001 investigation to its detriment.

We recommended that the Department revisit this practice and ensure that its relevant computer program and system of case categorization is serving LCPD’s interests in the most efficient, effective ways. LCPD immediately committed to reviewing the case assignment practice and to making adjustments to ensure the proper classification and assignment of each case.

LCPD reported that LCPD Administration will be assisting with case assignment, including addressing the technical capabilities of IA Pro. We look forward to learning about the changes and seeing them in practice as we continue our case reviews.

LCPD also committed to creating an Internal Investigations training program for new supervisors and a refresher training course for more experienced supervisors so that they can better investigate these Supervisory Matters.

## Counseling to Accompany “Verbal Reprimands”

In several cases, the discipline issued for policy violations was a “verbal reprimand.” From the case information provided, OIR Group was initially unclear if this consequence was to include any counseling, debrief or training (directed or informal) related to specific performance lapse at issue. The relatively mild sanction of a verbal reprimand could *potentially* be adequate as a corrective measure. But, in our view, some of that sufficiency turns on whether it is accompanied by a substantive debrief or training that equips the officer to improve performance in the relevant way.

We recommended that, where applicable in cases of sustained policy violations, LCPD should consider supplementing its disciplinary consequence with a training or counseling component that addresses the specific performance lapse at issue.

LCPD responded that “additional internal checks and balances will be implemented prior to completing the investigation to address all aspects of an officer’s performance. Training and counseling components as part of the disciplinary process will be formally documented where appropriate.”

## Process for Hotline Complaints

We reviewed one case that was initiated from the City of Las Cruces’ Ethics Hotline. It was submitted anonymously and forwarded to LCPD for review due to the subject matter. While addressing the substantive issues appropriately, the Department refrained from entering and resolving the case within its formal Internal Affairs tracking system, instead using a more informal approach.

Our understanding is that distinctive (but, in our view, ultimately peripheral) factors led to the decision to take an informal approach. These included that the complaint was submitted anonymously, that the complainant’s own request was simply that the relevant officers be counseled, and that it had gone

through the City's Ethics Hotline – thus prompting consultation with the City Attorney and City Manager.

We followed up with LCPD leadership as to these issues. It was reassuring to learn that anonymity is generally not dispositive in shaping the Department's willingness to pursue allegations (though it does, of course, potentially affect the thoroughness of an investigation when the complainant is not available for an interview). Moreover, while we recognize that "customer satisfaction" is one of the core goals of the complaint process, we also think the preferences of the complainant – in any direction – should be less relevant than the substantive conduct in determining the appropriate response.

Finally, we understand that the City's Ethics Hotline is a source that carries its own procedural expectations and obligations. Without disregarding those, we nonetheless think any complaint of officer misconduct – regardless of its origins – should be logged, evaluated, and resolved within LCPD's Internal Affairs tracking mechanisms.

LCPD responded that all hotline complaints will now be entered into the IA protocol.

## Policy and Training

During our reviews, we noted areas where LCPD might consider additional training and/or policy recommendations. While these recommendations are detailed in each memo, we have summarized them here. As with our recommendations regarding procedural concerns, LCPD committed to exploring these areas and providing relevant training or policy modifications as needed.

## Expectations of Non-Sworn

In case 2021II-001, the non-sworn employee asked if non-sworn employees, who are "civilian" employees, were held to a different set of standards when it came to General Orders than their sworn police officer counterparts. We recommended that LCPD "should remind all employees of LCPD that the

General Orders Manual, and the Code of Conduct in specific, apply to all Department employees, regardless of whether they are civilian or sworn.” LCPD responded that they would address this in the updated version of the Code of Conduct policy.

## Training for Domestic Stand-By Calls

In this period, we reviewed two cases (#2021EIC1-007 and 008) in which three officers failed in one way or another to properly execute a Domestic Stand-by Order. LCPD recognized this trend and, even before our recommendation, issued a Department-wide Training Bulletin regarding the Domestic Standby General Order after seeing repeated policy violations.

We recommended that LCPD also consider additional, Department-wide training to supplement the bulletin it has issued. This is an area that is inherently fraught with the potential for strong emotions and technical disputes. It would behoove the Department (or any law enforcement agency) to equip its personnel with a confidence bred of both legal knowledge and appropriate empathy. LCPD responded that this recommended training will be disseminated in the coming month and will be part of the Domestic Violence biennium training moving forward.

## Use of Recording Devices

At least two cases involved concerns with activation or proper storage of body-worn camera or audio recordings (see 2021-VP-004 and 2021EIC1-006).

Recognizing the complexity of many situations faced by law enforcement, some agencies have begun to employ auto-triggering technology that activates officers’ body-worn cameras automatically in certain situations, including when an officer activates the lights and sirens on his or her patrol vehicle. We suggested that LCPD consider the feasibility of this technology.

At the time of these case reviews, LCPD responded that the Department was currently looking into self-activating body camera technology as suggested.

## Contact and Cover

In our review of the officer's body-worn camera video related to 2021VP-006, we noted that the officer got out of his patrol car, closed the door, and began walking toward the motorcycle while addressing its driver. He reached the front of his patrol unit when the motorcycle pulled away. He was still some distance away from the motorcycle but had no cover. In this case, the initial call had reported that the subject was armed and had pointed his weapon at another vehicle. Given this, it would have been tactically safer for the officer to remain behind his patrol car door while giving the subject commands and waiting for backup (which was nearby, responding to the initial dispatched call).

In response, LCPD stated:

*This reflects a training/ officer safety issue that should be addressed. Keeping the tactical advantage over the suspect is a goal to keep officers safe. We train our officers that officer safety is paramount in any situation and that time is on our side when dealing with possibly armed subjects. Because of the review our academy has been instructed to add a segment covering cover and concealment in our upcoming mandatory biennium training. This will be added to our normal training and used in every training going forward.*

We appreciate the Department's receptivity for its own sake. More importantly, though, the case illustrates how a robust, effective internal review process extends beyond the parameters of individual officer accountability and narrow questions of policy. Here, LCPD has taken the opportunity to derive a "teachable moment" from the incident and to disseminate it throughout the agency. It is a creditable approach, and one to which we are pleased to contribute through our own scrutiny of these matters.

# Positive Findings

## Uninvolved Supervisors for Vehicle Pursuit Reviews

In both Vehicle Pursuit cases, we noted that the Pursuit Review Memorandum was completed by a sergeant uninvolved in the pursuit. In our reviews of other law enforcement agencies, we often see force or pursuit reviews completed by the on-scene sergeant who directed the force or supervised the pursuit.

Having an involved sergeant write an evaluation that concludes the force or pursuit was within policy obviously veers from the ideal of objective analysis in ways that undermine the legitimacy of the process. We commend LCPD for its practice of tasking uninvolved supervisors with conducting pursuit reviews.

## Framing Additional Allegations

In several investigations, we were impressed with LCPD's willingness to identify and take formal action, including framing allegations and issuing discipline, on misconduct that only emerged in the course of the investigation – and transcended the particulars of the original complaint.

We do note that this was not true for every case. In at least one case, we opined that LCPD could have framed, and possibly sustained, additional allegations. We encourage the Department to build on its positive examples of rigorous self-assessment.

At its best, the complaint process is a vehicle for self-scrutiny that an agency will approach in the inclusive manner that LCPD manifested in some cases here. The broader “issue spotting” and remedial action is commendable, and we encourage LCPD to use this practice across all Internal Affairs investigations.

## Paraphrasing Interviews

A specific positive highlight across several cases was the investigating officer's summary of interviews. To the extent Department decision-makers are relying on these summaries to inform their determinations, it matters that they be comprehensive and accurate in rendering the essence of the underlying statements. While the overall quality of the summaries was impressive in our view, we did note at least one instance in which failure to capture all details in a paraphrased write-up seemed to have some evidentiary significance (2019EIC1-010).<sup>14</sup> We encourage LCPD to reinforce the good work being done, and to train on this practice so that its investigators are equally well-versed in the “art” of effective paraphrasing.

## Close-Out Letters

We wish to acknowledge a particularly positive trend: we noted that the close-out letters sent by LCPD to complainants upon completion of an investigation are timely, thorough and provide detailed information. We commend the Department for these letters. While the complainant may not always agree with the investigation's outcome, a detailed close-out letter helps communicate the notion that the complaint was given serious consideration, and ideally helps foster understanding and acceptance of the results. These are the kinds of small steps that foster trust between the community and police agencies, and the effort invested by LCPD in this arena reflects well on the Department.

## Internal Tracking: Compliance Officer

LCPD is one of a few progressive agencies that has adopted the position of “Compliance Officer” to ensure that all recommendations, both from our reviews and otherwise, are tracked, evaluated, and, where appropriate, implemented. This notion of specific responsibility for ensuring that new ideas actually come to fruition is an important – and often overlooked – component of effective reform. We commend LCPD for the commitment that is reflected

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<sup>14</sup> It should be noted that the issue did not change our view about the ultimate reasonableness of the outcomes that LCPD reached.

by this choice. We look forward to working with the Compliance Officer to track progress toward implementation of our recommendations.

# Litigation Case Review

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

## Data Analysis

The litigation matters involved a total of seven claimants and seven named Las Cruces police officers. Of these, one case against two officers resulted from the negligent discharge of an officer's firearm and false arrest. One involved a traffic collision where the officer was at fault. Two cases against four officers resulted from calls for welfare checks. We summarize each case below, as well as any related LCPD Internal Affairs investigation.

The outcome of these cases was as follows:

- Four cases were settled
- One was dismissed for the Claimant's failure to provide information
- One was a request to expunge and seal records, which was granted

In two cases, charges were initially filed against the claimants but were eventually dismissed.

Our scope of work requested that we summarize demographics related to the cases.

- Of the seven named officers, three are White, three are Hispanic, and one is Black.
- According to LCPD, four of the seven officers are still employees of LCPD. Of the three no longer with LCPD, one officer retired, one resigned (not because of the matter in question), and one did not return from an extended leave of absence.

- On the claimant side, two claimants are White, two are Hispanic, and one is Black.<sup>15</sup>
- Three cases occurred in the zip code 88001. One case occurred in the zip code 88011.

## Litigation Case Summaries

### Case #1

Claimants alleged that during a traffic stop on August 22, 2018, a Las Cruces Police Officer drew his weapon and fired one round at them. The officer admitted to a negligent discharge of his weapon.

The Claimants alleged that a second officer ordered them out of their vehicle at gunpoint, handcuffed them, and placed them in the back of two police vehicles for over one hour. They were later moved from the police vehicles to the curb, where they were held for approximately three hours until released and told to “go home.” There were no criminal charges related to this matter.

The Claimants claimed violation of due process, excessive use of force, assault, intentional infliction of emotional distress, and false arrest. The parties in this case reached a settlement and it was dismissed with prejudice on August 8, 2021.

This matter resulted in two LCPD investigations: an Internal Investigation naming both officers, and a Firearm Discharge investigation of the officer who negligently fired his weapon. LCPD found the Firearm Discharge to be sustained and the officer received a 1-day Suspension for his policy violation. LCPD did not frame allegations against the second officer and this officer has since retired from the Department. As we detail later in this Report, we recommend that LCPD frame and investigate all possible allegations in these matters.

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<sup>15</sup> The City was unable to provide demographics for two of the Claimants in advance of our deadline.

Officer 1	Negligent Discharge	Sustained – 1-day Suspension
Officer 2	No allegations	No finding

## Case #2

Claimant alleged that a LCPD police officer used control techniques, handcuffed her, and placed her in the back of a police vehicle when she called for a welfare check of her partner, who was experiencing a mental health episode. The same officer then fired a Taser two times on her mentally ill partner, restrained him, and transported him to a hospital.

The Claimant herself was initially charged with “obstructing or resisting an officer” but the charges were dismissed when the officer failed to appear in court.

The Claimant alleged negligence and reckless acts, including excessive force, battery, false arrest, and other related claims against the officer, as well as negligence in hiring, training, and policy against the Department and City. The parties in this case reached a settlement and it was dismissed with prejudice on August 24, 2021.

This matter resulted in two LCPD investigations: an Internal Investigation and a Use of Force review for use of the Taser. LCPD framed the following allegations:

Officer 1	Illegal Search & Seizure	Exonerated
Officer 1	Excessive Use of Force	Exonerated
Officer 2	Illegal Search & Seizure	Exonerated
Officer 2	Excessive Use of Force	Sustained – 4-day Suspension
Officer 2	Recording Procedures	Sustained – 4-day Suspension
Officer 2	Reports - Accuracy	Sustained – 4-day Suspension

Officer 2 in this case is no longer with the Department, though not as a result of this matter.

## Case #3

Claimant alleged that, on October 23, 2018, she and her minor daughter had an argument, causing the daughter to call 9-1-1 and ask for a welfare check of the Claimant. Dispatch coded the call as a domestic violence incident. An LCPD officer responded. When she refused to exit her home, Claimant alleged that one of the officers used excessive force to remove her from her home and arrested her. This officer and a second officer then entered her home, interviewed her minor daughter, and searched her home.

The Claimant was initially charged with “resisting, evading, or obstructing an officer” and “concealing identity.” These charges were eventually dismissed.

The Claimant alleged violation of civil rights, false imprisonment, unlawful search, and negligence, among other counts. The parties in this case reached a settlement and it was dismissed with prejudice on September 1, 2021.

LCPD could not locate an internal investigation associated with this matter in their case system.

## Case #4

Claimant alleged that on September 11, 2017, an officer became involved in a traffic collision with her due to his negligence. Claimant alleged physical injuries as well as lost wages, mental anguish, and other related expenses.

The parties in this case reached a settlement and it was dismissed with prejudice on May 18, 2021.

LCPD conducted a Vehicle Accident investigation and filed a Traffic Crash Report related to this matter. This officer is no longer with the Department.

Officer 1	Vehicle Accident / Traffic Crash	No formal finding
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## Case #5

This case was a petition to expunge arrest records and seal all public records related to a 1994 case in which the petitioner was convicted of a battery charge. The petition was granted in August of 2021.

## Case #6

Claimant alleged that on December 19, 2019, an unnamed officer forced his arms behind his back and a second officer used force. The court dismissed the case when the Claimant failed to file an amended complaint with any additional specific information.

# Findings & Recommendations

While it is outside our scope to conduct a comprehensive review of the related LCPD internal investigations, we do offer the following procedural and training recommendations. We acknowledge that, due to often-lengthy process of civil litigation, some of these matters are over four years old and these issues may no longer be of concern. Regardless, we suggest:

1. Litigation can serve as a valuable feedback loop for Departments to mitigate risk by offering corrective action. To that end, we were pleased that LCPD initiated cases and internally investigated three of these matters, Cases #1, 2, and 4, using one of their various their Internal Affairs processes, which resulted in discipline for two of the involved officers.

But a fourth matter, Case #3, was apparently not internally investigated despite having a similar fact and allegation pattern. And, while we did not fully review the cases, we noted that LCPD did not frame all possible allegations in Case #1 (e.g., excessive force, false arrest, etc.).

We recommend that the Department always initiate an internal investigation for these matters and fully frame and investigate all potential allegations.

2. We noted a potential trend in allegations: two cases involved policy violations during welfare checks. In reviews of more recent (2021) cases, we noted a pattern of violation of LCPD's civil / domestic standby policy, which can be somewhat similar in practice to a welfare check. LCPD responded that they will offer more comprehensive training to officers on how to respond to domestic standby calls.

We recommend that LCPD consider including best practices and policy updates on responding to welfare checks when they offer training on domestic standbys.

# Next Steps

OIR Group looks forward to our continued engagement with LCPD and to future opportunities to deepen our understanding of the Department's practices. We will continue to review cases as they are completed by Internal Affairs.

Our next Report will likely be issued in the Summer of 2022.

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

# Appendix A: OIR Group Case Memos



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

TO: City of Las Cruces  
FROM: OIR Group  
DATE: July 22, 2021  
RE: Review of 2019EIC1-010

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## Introduction

OIR Group began its auditing responsibilities for the City of Las Cruces in May of 2021. Although, per our contract, cases completed prior to that date are outside the scope of our review protocol, the Police Department officials provided us with materials regarding this matter from 2019-20. This was in response to the complainant's persistent concerns about the underlying incident, as well as various aspects of the investigation process as they have unfolded over time. He has engaged various City officials, both inside and outside the Police Department, during this period, and in fact contacted OIR Group itself in March of 2021 after our selection was first announced.

## Case Summary

The employee at the heart of these allegations is an Animal Control officer ("ACO"). Responding to a complaint that was submitted anonymously to the local dispatch center, the employee visited the home of the complainant to check for activity that corresponded to the reporting party's concerns. These issues included excessive animal waste on the property, multiple animals living at the location, and animals being allowed to run loose behind the house.

Per the employee, he visited the site but did not get a response to his attempts to announce himself. He conducted a visual inspection of the property but was unable to get confirmation regarding any of the claims. Given the unresolved nature of his visit,

he decided to address the situation with an official “Warning Notice” that he filled out and placed on the fence. The language on the notice included the following introductory explanation:

*This courtesy warning has been given to you by the Las Cruces Police Department Animal Control Section. It does not require a court appearance, but a receipt will be kept on file. Please remember to help promote the safety of our community by complying with all City Municipal Ordinances.*

The Warning Notice form then listed ten pre-printed municipal code violations. The goal of the warning notices was apparently to invite interaction with recipients as a vehicle for further education and greater compliance. In this instance, the Animal Control officer wrote an “X” to denote five of the violations as potentially relevant – in spite of the fact that he had not determined the actual applicability of any of them. He also included his name and badge number to facilitate further contact.

The complainant did contact the subject officer the next day and, by his own acknowledgement, “made clear his anger” regarding the content of the Warning Notice and what he perceived to be the officer’s poor handling of the visit. He claimed that any reasonable effort by the officer to make his presence known would have prompted a reaction from his animals or otherwise alerted him.

He also asserted that the officer had fabricated three of the five supposed violations (to the extent they exceeded the substance of the alleged anonymous complaint). Dissatisfied with the response he got from the ACO (including what he perceived to be a threat in the form of future enforcement visits), he submitted a complaint to the Chief later that same day, and continued to monitor the ensuing developments.

The complainant’s frustration with the Department (and other City officials) expanded and intensified over time. He initially took exception to the pace of the investigation, and he has subsequently disputed the soundness of different investigative techniques as well as the veracity of several assertions made (or explanations offered) by the agency in voluminous correspondence with him.

## LCPD’s Investigation and Analysis

The Department initially categorized this complaint as a lower level “Supervisory Matter” that did not require a formal Internal Affairs investigation, but could be handled at the unit of assignment. Accordingly, the Department’s “Chief Codes Administrator” took the first pass at conducting a review. Before that process was finalized, however, the Department had received several emails from the complainant, as well as a copy of a

blog post the man had authored about his concerns. These included a suggestion (based on the Star of David prominently visible on his garage) that antisemitism had been a motive for the ACO's actions. Based on this issue of potential bias, the Department decided to formalize the different allegations into a formal Internal Affairs case.<sup>1</sup>

That investigation ended some six months after the incident. As part of its review, the Department obtained an authenticated copy of the dispatch notes that generated the original call for service after the anonymous report about the animals on the complainant's property. A key part of the investigation was an interview with the ACO, who offered his recollection of the incident and who denied the influence of any bias in his handling of the call for service.

The Department determined that the ACO had been acting in compliance with normal procedure in making the visit and issuing the Warning Notice. However, it also found that, in failing to record the telephonic conversation with the complainant that occurred on the day after his visit, the ACO had violated General Order 151.01 (A, D6) Recording Devices.<sup>2</sup>

Importantly, the Department also made a procedural adjustment as a result of the complaint. It recognized that its standard "Warning Notice" form was framed in such a way as to give the misleading impression that violations had been verified, as opposed to being *potential* issues that warranted the attention of the recipient. Accordingly, it revised its form in order to reflect the intent and significance of the notice more accurately.

## OIR Group Review

OIR Group reviewed the Department's investigative memos, a large amount of email correspondence related to the incident and investigation, and other documentary evidence (including the dispatch printout and a copy of the Warning Notice that was left

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<sup>1</sup> This additional effort was frustrating to the complainant, who asserted that he had not intended his supplemental references to the Star of David as a formal complaint, who explained his belief that matters of motive should be handled through counseling or other managerial intervention, and who suspected that the Department's belated expansion of its investigation (several weeks after his initial introduction of the issue) was dilatory in nature. In our view, the decision to make the "suggestion" of bias part of the investigation was appropriate. The intentions or preferences of the complainant should be relevant but not dispositive when issues of potential misconduct have been raised.

<sup>2</sup> The ACO explained this lapse by saying that he had been in the office working on a report instead of in the field at the time he spoke with the complainant; he claimed to have left his recording equipment in his service vehicle. This was particularly unfortunate, insofar as it fueled subsequent allegations by the complainant that a recording – problematic to the Department's version of events – did exist but had been intentionally destroyed.

on the complainant's property). We also listened to the recording of a lengthy meeting that the then-Chief, other LCPD personnel, and selected City officials had with the complainant to discuss some of the procedural concerns that had arisen while the investigation was pending.

We found the investigation was substantively appropriate and that the findings were reasonable.

## Observations and Recommendations

This matter became extraordinarily contentious and protracted in ways that belie its relatively straightforward origins. As instigated by a (verified) report of possible violations from an anonymous party, the ACO's visit to the complainant's property was appropriate. While the facts are disputed as to whether and how the ACO attempted to announce his presence and engage directly with the complainant, there is no dispute about the "Warning Notice" that was left behind. And there was legitimacy to the complainant's concerns, based on that notice, that the Department had made unjustified findings as to violations.

Much of the ensuing conflict, and the escalation of this matter into one that has commanded the attention of multiple officials within and outside of Las Cruces, seems attributable to a disconnect in the initial interpretation of events. From the Department's early perspective, the issue was sufficiently minor as to fall below the threshold of a formal Internal Affairs investigation. This seemed reasonable in the context of the Animal Control unit's intentions and its understanding of the Warning Notice's significance in relation to its usual practices. To the Department, the notice was more of a "courtesy alert" than a consequential set of findings. But the complainant's interpretation was also reasonable, and explained the anger he later acknowledged feeling when he contacted and spoke with the ACO the following day.

It is unfortunate that the earliest interactions between the complainant and the Department did not defuse the situation. Clarification, apology, and a swift resolution of any lingering questions about the Warning Notice might well have succeeded in forestalling the clashes that followed. But the call with the ACO himself went poorly,<sup>3</sup> the Department was slow to take effective action after receiving the complaint, and the

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<sup>3</sup> Again, the required but unaccomplished recording of this interaction would have been helpful for a variety of reasons.

complainant filled the vacuum with a series of follow-up communications that were accusatory and antagonistic.

The adversarial dynamic seems to have been compounded by the complainant's high standards for timeliness and information-sharing, as well as by the semantic and procedural precision with which he interpreted (and found fault with) virtually all communications from the Department. This too is unfortunate. The complainant's persistence and keen eye for detail produced a number of legitimate observations along the way, several of which increased our understanding of the underlying issues. They also constituted a sharp edge of expectation upon which the Department could hone its procedures and improve future interactions. At times, though, his distrust also seems to have undermined the objectivity and reasonableness of his conclusions. It is regrettable that the positive reform that did occur – in the form of a useful amendment to the official "Warning Notice" that was directly a result of the complaint – seemed overshadowed by the rancor that the process created.

In the end, our scope was primarily relegated to the initial "Warning Notice" investigation and its outcome. We can say is that, while there were places where communication with the complainant could have been clearer and more effective in subsequent weeks and months, the investigation itself seems to have been adequately thorough, and its outcomes were sound.

## LCPD Complaint Forms

This is the first case involving an external complaint that we have audited. It provided the occasion for us to review the Department's "Citizen Complaint Form" for the first

time, and there were aspects of it that we hope the Department will re-consider due to their potentially chilling effect on public feedback.<sup>4</sup>

Specifically, we mean two elements of the pre-printed avowals to which complainants are asked to attest with their signature. The first reads as follows:

*I understand that I may be asked to submit to a polygraph examination and provide a formal statement to the Professional Standards Unit of the Las Cruces Police Department.*

The second one is this:

*Under penalties as provided by law pursuant to Section 30-39-1 NMSA 1978, False Reporting, I certify that the allegations set forth in this complaint are true and correct to the best of my knowledge. I understand that if I knowingly make false accusations, I may be subject to a criminal prosecution or civil penalties.*

Our understanding is that the reference to a polygraph test has been omitted on the form since the time of this complaint in August of 2019. However, at the time of this writing, the online version of the complaint form continues to include it, and the reference to false reporting is also intact.

We have scheduled a meeting with Department leadership later this month to express our concerns and advocate for revisions.

## UPDATE: 7-28-21

We met remotely with the Chief and the head of Internal Affairs to discuss the complaint form. As we had speculated, they explained that the former version was of longstanding and not reflective of current LCPD priorities or practices. While the polygraph reference had been eliminated recently (thus addressing one of our identified issues concerns), the allusion to state law and possible criminal prosecution remains. The Chief agreed that this could have the unintended effect of dissuading complainants from participating in the process. He said he would be willing to re-visit the form to address this element. We appreciated the dialogue and look forward to acknowledging any additional changes that occur.

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<sup>4</sup> Certainly, the complainant in this case was not dissuaded by the language in the form. But for the reasons stated above, we can see the potential for dissuasion of differently situated potential complainants.

## LCPD's Management Response

After sharing an initial draft of our report with LCPD, we received the following response:

**Case 2019EIC1-10** -The Las Cruces Police Department appreciates the review completed by the OIR Group. The review of this case is an accurate account of the investigation. This case resulted in several changes which have since been implemented. The rewording on the "warning notice" which had been used daily has been changed to courtesy notice. Our complaint form has also been changed due to recommendations from this review. The statement, "I understand that I may be asked to submit to a polygraph examination and provide a formal statement to the Professional Standards Unit of the Las Cruces Police Department. " has been removed from the form.



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

TO: City of Las Cruces  
FROM: OIR Group  
DATE: November 23, 2021  
RE: Review of Administrative Investigation – IA # 2020EIC1-006

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## 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.

OIR Group received the above-referenced case file on October 14, 2021. We were able to complete our review after getting clarification on specific questions from the involved investigator.

## Case Summary

This case originated with a complaint from an adult female resident of the City, who was concerned about various aspects of a call for service she had initiated some weeks earlier. At that time, she had contacted her then-boyfriend – an LCPD officer who was off-duty at the time – in a state of distress about a break-in and assault that had allegedly just happened at her home soon after midnight. LCPD, as well as medical personnel, soon responded to the scene to assist and investigate. Her boyfriend also arrived.

The woman claimed that a man she didn't know, wearing a ski mask, had entered her home and subdued her, causing her to lose consciousness and possibly drugging her. The intruder also made a series of threatening statements, and she attributed various

puncture marks on her skin to his actions, though she was unsure of what exactly had transpired when she was unconscious. (This included the possibility of a sexual assault, about which she was similarly uncertain.) In terms of anything that might have been taken from her home, she said she was missing certain prescription drugs.

The woman was interviewed at the hospital that night by an LCPD detective, who raised questions about aspects of her account.<sup>1</sup> This interview would become a focal point of her subsequent complaint: she found his approach to be rude and did not appreciate the ways in which he seemed to challenge her story and insinuate that she was seeking to get premature access to prescription refills.

The woman's criminal allegations were ultimately not substantiated, and the case was closed. Soon after the incident, the romantic relationship with the LCPD officer also ended.

Her complaint (which she provided in both a lengthy interview and a handwritten summary of her concerns) was directed at the detective who had questioned her at the hospital. More broadly, she was frustrated over not having been believed, and said she no longer felt safe in her home or able to rely on the Department. Her original complaint interview and her subsequent outreach to investigators also led to allegations that her former boyfriend had gained improper access to information about her case and had inappropriately spoken about it to others.<sup>2</sup>

## LCPD's Investigation and Analysis

The investigation was assigned to an Internal Affairs detective, who was thorough in his review of the extensive body-worn camera evidence, his interviewing of multiple witnesses, and his identification of potential policy violations that were beyond the scope of the woman's specific concerns. These related to both the initially named employees and three additional officers who responded to the incident.

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<sup>1</sup> Investigation of the woman's apartment and surrounding area also failed to provide corroborating evidence. But it did raise questions in terms of some of the unusual medical paraphernalia that was present.

<sup>2</sup> She initially refrained from including him as a named subject of her written complaint, saying that she was conscious of his family obligations and did not wish to create harmful consequences for him. However, to its credit, the Department nonetheless moved forward in formally investigating the allegations against him.

The latter three were found, rather straightforwardly, to have not completed required reports as to their own actions in investigating the alleged crime. Each received a minor consequence.

The center of the woman's original complaint concerned the adequacy of the criminal detective's investigative efforts – and the manner in which he questioned her in the hours after the incident. The administrative review ultimately determined that her allegations were not supported by the available information. Based on his evaluation of evidence, the Internal Affairs investigator took the position that appropriate due diligence had occurred, that serious flaws and discrepancies undermined the legitimacy of the woman's claims about the alleged attack, and that the detective's approach and line of questioning were warranted by the circumstances.

At the same time, the administrative investigation revealed flaws in the detective's adherence to required protocols – including his failure to properly upload the recording of the hospital interview with the complainant that was central to her displeasure with LCPD. It was ultimately lost (although not before he had at least prepared a detailed report in reliance on it). This meant, unfortunately, that there were avoidable limits to the Department's ability to assess the particulars of the disputed interview.

The detective also fell short of expectations in his processing of medical evidence in the case – leading to a lengthy delay in the proper submission of these materials for evaluation. Though the totality of the circumstances had created understandable skepticism on the part of the detective, this was nonetheless a performance lapse that reflected poorly.

These procedural shortcomings provided the basis for three separate findings of a “sustained” policy violation, though none had been identified by the woman herself as part of her own grievances.

As for the other officer – her then-boyfriend – who was implicated by the woman's original complaint, his alleged access to/improper sharing of confidential information about the woman's confidential case details was not supported by the evidence. The investigation established that he had not attempted to review any materials in the Department's file for the criminal case. While he had discussed the broader situation with others, this was in the context of his known relationship to her and concerns about her overall well-being. Finally, a specific additional allegation, involving a third-party who made claims to the complainant about the officer's inappropriate discussion of her case, was pursued but also not substantiated.

## OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, body-worn camera footage, photographs, recorded interviews, and administrative memos. Based on our review of these materials, we found that the investigation was solid overall, if questionable in some particulars (as discussed below). We concurred with the outcomes as to the various officers.

We had the following additional observations:

### ***Intake Interview:***

Some two months after the incident, the woman came to an LCPD facility to be interviewed for purposes of her complaint. This was recorded. The interview lasted more than ninety minutes and was somewhat discursive. For some reason, the LCPD investigator who conducted the original interview was not the one who ultimately conducted the main investigation. When the interview was summarized later for purposes of the administrative case file, some of the details and components of the woman's concerns were not well-captured. While some of this information was extraneous, there were other aspects of the interview that warranted further attention and seem to have been "lost in translation."<sup>3</sup>

The detective who took her original statement also made efforts to reassure her that seemed oddly expansive and personal, particularly toward the end of the conversation. He offered perspective on her relationship with the former boyfriend, for example, in a way that appeared well-intentioned but was unnecessary.

The goal of an intake interview is to elicit a complete and detailed account of the complainant's concerns, to provide clarifying information about the process as needed, and to reinforce the notion that the complaint will be taken seriously and pursued appropriately. Anything beyond that has the potential to be counterproductive.

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<sup>3</sup> For example, she expressed frustration that a urine sample she provided at the emergency room was apparently not processed, thus leaving a gap in her ability to corroborate claims of having been drugged. This did not seem to have been further investigated.

Additionally, she showed the interviewer text messages that were relevant to the case, but it was nearly a year later that the investigator obtained copies from her. And the summary mistakenly said she was "unable to locate and provide" the messages to the interviewer.

RECOMMENDATION: LCPD management should work with personnel to reinforce the goals of an initial complaint intake interview.

***Timeliness:***

The woman submitted her original complaint some two months after the incident at her home. Though, by his own account, the eventual Internal Affairs investigator was able to determine after only a “brief review” that a full and formal investigation was needed, the request for authorization to move beyond the Preliminary Inquiry did not occur for months – and it was several months after *that* when the completed case was finalized.<sup>4</sup> Although new facts emerged that expanded the scope of the review, these did not seem so complex or unusual as to warrant the slow pace with which these matters were ultimately resolved.<sup>5</sup>

A range of factors can understandably contribute to a case’s extended timeline. Some of these in this specific situation were explained to us by the Department, including the handoff of the case to different investigators as personal circumstances arose. But there are values to efficiency that LCPD clearly recognizes, given the relatively prompt resolutions of several other investigations we have evaluated. Here, it took more than a year to finalize the outcomes – jeopardizing the impact of any needed corrections in officer approach, and extending the complainant’s wait for closure.

***Thoroughness:***

While the investigation was often effective in compiling and reviewing the available evidence, the gap created by the detective’s missing recording from his interview with the complainant was a significant one: it eliminated an independent and therefore especially useful version of the disputed interactions between the key figures in the case. Unfortunately, the Internal Affairs detective seemingly did not follow up on a significant possible lead (in the form of a third-party witness) that could have mitigated this problem. This was the representative from an assault survivor’s support group whom the detective specifically suggested that the investigator contact (though he did not recall her name).

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<sup>4</sup> Much of the lag appears to have happened on the front end, after the complaint was received but before the Preliminary Inquiry investigative work was actually initiated.

<sup>5</sup> Indeed, a few of the aforementioned “peripheral” matters that led to the sustained violations did not even lead to additional interviews, but were determinable on the basis of available evidence.

Presumably, this information was attainable. And even if the witness had declined to be interviewed in light of protocols associated with her role (assuming any applied), the effort would have constituted appropriate due diligence.

RECOMMENDATION: LCPD investigators should routinely attempt to identify and interview percipient witnesses to events that are the subject matter of complaint allegations.

***Scope of Review:***

We were impressed with LCPD's willingness to take formal action in addressing problems that only emerged in the course of the investigation – and transcended the particulars of the woman's original complaint. These included not only the detective's procedural lapses in the aftermath of his initial interview, but the failure of three other Department members – including two supervisors – to properly document their participation in responding to the original call for service. At its best, the complaint process is a vehicle for self-scrutiny that an agency will approach in the inclusive manner that LCPD manifested here. The broader "issue spotting" and remedial action is commendable.

## LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. We agree with OIR's assessment and will work on an initial complaint intake training through internal affairs. Issues such timeliness and thoroughness will also be emphasized routinely and as part of the training.



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

TO: City of Las Cruces  
FROM: OIR Group  
DATE: December 2, 2021  
RE: Review of Administrative Investigation – IA #2021EIC1-007<sup>1</sup>

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## 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 a formal, or "Category 1," External Investigation (EI-C1) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on November 2, 2021.

## Case Summary

LCPD received a complaint from a woman who alleged that an officer did not act appropriately during a Domestic Standby when the officer allowed her ex-boyfriend to take her laptop.<sup>2</sup>

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<sup>1</sup> This case is related to LCPD case #2020-142862.

<sup>2</sup> A Domestic Standby, also known as a Civil Standby, is when one or both parties request that a police officer "stands by" to keep the peace in a situation involving a civil dispute.

The relevant incident began when a man requested a Domestic Standby from LCPD so that he could collect items from his former residence. An officer met him and a second male outside of the residence, where they discussed that the man wanted to retrieve his laptop and firearms from the residence. The officer said that the man had 15 minutes to complete this task.

When a woman, the complainant, answered the door, the officer explained that the man needed personal items. The woman first refused but eventually allowed the two men and officer into the home.

The woman informed the officer that the man had a “no contact order.” The woman and the officer began to engage in an argument over their respective knowledge of laws.

The man then started to unplug electronics and the woman pleaded with the man to “please stop.” She looked to the officer for help. The man then picked up and packed a laptop that was open on the kitchen table. The woman continued to plead with the man to stop taking items, becoming more agitated.<sup>3</sup> The officer grabbed her arm and instructed her to sit down.

The woman told the officer that the laptop was hers. The officer stated that it was not up to him to decide ownership.

The woman asked the officer to please get her laptop back. The officer responded that he would not. He then stated that there were five minutes left of the Domestic Standby and that he would leave, and that the men would be allowed to stay in the house after he left. He advised the woman that the man could “come and go as he please[d]” because the man shared residence of the home. This appeared to agitate the woman, who told the officer that the man threatened to kill her when she became pregnant. The woman began to breathe heavily, and the officer asked if she needed medical help. She said she did not.

The men and the officer left the residence.

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<sup>3</sup> The man also asked where his firearms were. He and the woman argued over the location of the firearms as well as the well-being of a cat and the ownership of pet supplies. After some argument, the man eventually took a cat and pet supplies that the woman argued were also hers. Later, the officer told the man that the unknown location of the firearms was “concerning.”

## LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a Category 1 (C1) formal investigation of the complaint. LCPD framed a single allegation against the accused officer, based on a potential violation of the following policy:

1. **General Order 203.11.A-C – Domestic Family Disturbance Domestic Standby Calls for Service**

This General Order section outlines the role of an officer during a Domestic Standby. Among other details, the General Order states that the officer shall:

- Not become involved in the division of property between the household members
- Stand by while one party gathers "personal belongings" such as "clothing [...] basic grooming and personal hygiene supplies"

And shall not "allow one party to remove home furnishings and/or electronic equipment from the premises."

The Internal Affairs Lieutenant assigned to this case:

- Framed one allegation
- Conducted an administrative interview of the accused officer
- Reviewed information from a Sergeant regarding the complaint
- Reviewed the officer's body-worn camera video

Using this evidence, LCPD determined that the officer violated General Order 203.11 when he allowed the man to remove the internet equipment and laptop from the residence because these items were outside the scope of allowable items for a Domestic Standby. The allegation was sustained.

A Lieutenant reviewed the officer's personnel package. The Lieutenant recommended that the LCPD Department Director give the officer a verbal reprimand.

## OIR Group Review

LCPD provided OIR Group with the case file. OIR Group reviewed the case documents and viewed the officer's body-worn camera video. In our view, the outcome fairly reflects the evidence collected by the investigator. At the same time, though, our

impression is that there was a basis for further for scrutiny and accountability in this matter. Additional allegations seem to have been warranted. Moreover, the lack of a formal interview of the complainant is a deficiency that undercut the overall effectiveness of the investigation.

Based on the evidence provided, OIR Group found that LCPD could and should have pursued additional allegations, including the following Code of Conduct violations:

1. Unsatisfactory Performance as defined in **General Order 103.01**: “Unsatisfactory performance is [...] lack of knowledge and proper application of laws and procedures.”
2. Conduct Toward the Public as defined in **General Order 103.05**:
  - A. Employees shall be respectful to the public, other employees, and supervisors, as well as any person the employee has contact with during the performance of his/her duties and responsibilities. Employees shall be tactful and control their tempers in the performance of their duties. Employees must exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. [...]
  - B. Employees shall be responsive and attentive toward the public and attempt to facilitate the problem solving process.

As the investigation concluded, the officer in this case did not seem to fully comprehend the nature of a Domestic Standby. During the incident and in his administrative interview, the officer appeared to be unclear about his role in a Domestic Standby and the related General Order. At best, this contributed to the dispute with the complainant over what was allowable and added to the strain of an inherently unpleasant situation. At worst, it caused him to mishandle the substance of the call – including allowing the removal of the laptop – in a way that was understandably upsetting as well as wrong.

Nor did other aspects of the officer’s demeanor or approach serve to offset the problems caused by his baseline of faulty understanding. On the contrary, we found him to be unprofessional in ways that rose to the level of a policy violation, including when he argued with the woman over his authority and “the law,” grabbed her arm, and then threatened to leave her residence while allowing the man to “come and go as he please[d],” which visibly upset the woman. Finally, the officer did not engage in proactive problem solving while on this call, as guided by General Order 103.5 B. These issues merited further investigative attention, and in our view could have been a further basis for discipline.

OIR Group also noted that LCPD relied on preliminary intake interviews of the complainant and a witness conducted by a Sergeant rather than conducting its own interviews. Conducting a more formal interview of at least the complainant may have resulted in a more complete investigation and additional evidence for the recommended Code of Conduct allegations.<sup>4</sup>

OIR Group also noted email correspondence directing a supervising officer to issue the discipline, a verbal reprimand, to the officer. The message asked the supervisor to email IA “when discipline is served,” but did not outline the content or topic of the verbal reprimand (aside from noting the General Order violated). From this email, it is unclear if the verbal reprimand was to include any debrief or training (directed or informal) related to the Domestic Standby General Order. The relatively mild sanction of a verbal reprimand could *potentially* be adequate as a corrective measure. But, in our view, some of that sufficiency turns on whether it is accompanied by a substantive debrief or training that equips the officer to improve performance in the relevant way.

Finally, OIR Group also noted a six-month delay in opening this investigation. As noted in a previous memorandum with similar time lag issues, LCPD should ensure that allegations of misconduct are promptly documented, and that necessary investigations should commence in a timely fashion.<sup>5</sup>

### RECOMMENDATION 1

To ensure a complete investigation, LCPD should ensure that the initial interview (and/or subsequent follow-up) provides a detailed account of the complainant’s perspective and concerns regarding the relevant incident.

### RECOMMENDATION 2

LCPD should pursue all questionable aspects of an officer’s performance in the context of a complaint incident, even if they are not specifically highlighted or formally raised by the complainant.

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<sup>4</sup> In her intake interview, the woman stated that she “had issues with the way the call was handled,” but did not elaborate on these “issues” aside from the officer allowing the man to take her laptop.

<sup>5</sup> Please see OIR Group memorandum related to IA #2021II-017 for a discussion of this recommendation.

### RECOMMENDATION 3

When an investigation rises to the level of a formal Category 1, LCPD should follow its formal investigation protocols, including interviews, to ensure that the investigation is thorough, fair, complete and accurate.

### RECOMMENDATION 4

Where applicable in cases of sustained policy violations, LCPD should consider supplementing its disciplinary consequence with a training or counseling component that addresses the specific performance lapse at issue.

## LCPD Management Response

Case 2021EIC1-007 - The Las Cruces Police Department appreciates the review completed by the OIR Group. OIR's review of this investigation are accurate and point out some areas of improvement to our investigation process to insure thorough, fair, complete and accurate investigations. Additional internal checks and balances will be implemented prior to completing the investigation to address all aspects of an officer's performance. Training and counseling components as part of the disciplinary process will be formally documented where appropriate.



7142 Trask Avenue  
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323-821-0586  
OIRGroup.com

TO: City of Las Cruces  
FROM: OIR Group  
DATE: December 2, 2021  
RE: Review of Administrative Investigation – IA #2021EIC1-008<sup>1</sup>

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## 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 a formal, or "Category 1," External Investigation (EI-C1) and investigated by Internal Affairs.

OIR Group received the above-referenced case file on November 2, 2021.

## Case Summary

LCPD received a complaint from a woman who alleged that two officers did not act appropriately when they responded to a domestic disturbance call, and wrongly allowed her ex-boyfriend to take electronics and other items that belonged to her from their shared residence. The woman also alleged that the first officer ignored her when she asked for his name.

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<sup>1</sup> This case is related to LCPD case #2021-009721.

The relevant incident began when officers responded to a domestic disturbance call between a woman and a man who shared a residence. When they arrived, the first officer entered the residence to speak with the woman. The woman called LCPD, she told the officer, because the man “was crazy” and she had two young children in the home. She also said that the man wanted to take two firearms from her vehicle, and she did not want him to take items that did not belong to him.

The second officer remained outside to speak with the man, who was holding a baby. The man stated that he had arranged for a ride from his brother to leave the residence but needed to collect items from the residence. The man stated that the woman came home, was angry at him and locked his firearms in her vehicle. The man stated that he wanted his firearms and clothes.

The call turned into a Domestic Standby while the man packed.<sup>2</sup> The man’s brother arrived. The man took his packed belongings to his brother’s vehicle but then re-entered the home.

The man and woman then began to verbally engage over items that they both claimed were theirs, including a pair of designer sandals and the firearms. They argued over who paid for each item and the woman claimed that she had credit card receipts. The woman stated that the man had taken his allowable personal items and that he was “done.” At this point, the officers asked the woman to unlock her vehicle so that the man could retrieve his firearms. The woman refused. The man continued to repeatedly enter and exit the residence as the officers stood by.

The officers then attempted to negotiate with both parties, proposing that the man return the sandals in exchange for the woman giving the man his firearms. The man returned the sandals, but the woman refused the officers’ proposition. The officer informed the man that the only alternative was to go through the court, but the man walked back into the home and asked to report his guns as stolen. The officer said that he could do so.

When the woman continued to argue, the officer asked the woman what her goal was: if she wanted her things or if she wanted the man to leave the residence. The woman responded that the man needed to leave. The officer told her, “all you had to do was give him his guns and he would have been gone.” The woman maintained that the man did not have to “take stuff.” The officer stated that they did not have a way to prove which party owned what items and demanded that the woman produce receipts.

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<sup>2</sup> A Domestic Standby, also known as a Civil Standby, is when one or both parties request that a police officer “stands by” to keep the peace in a situation involving a civil dispute, often while one party collects specific personal items from a shared residence.

The officer then obtained the packaging box for one of the firearms. He ran the serial number on the box and learned that the firearm was clear. He told the man that he could retrieve his firearm if he produced receipts for the firearm.

The man then said that, in retribution, he would take his X-Box game console. The officer stated in passing, “this is why we don’t stand by for electronics” as the man entered the house again.

Meanwhile, the woman was becoming more upset.

The man then took a television and the X-Box game console, arguing that he purchased the television. When the woman argued that these electronics were her property, the officer told her, “he’s taking the X-Box [game console]” as the man took the television off the wall. The officer instructed the man, “let’s go.” The woman began to yell obscenities at the officers.

The officers followed the man out of the house and provided him what appeared to be a business card with the case number. The man attempted to re-enter the residence to take more items, but the officers instructed him to leave.

## LCPD’s Investigation and Analysis

LCPD’s Internal Affairs conducted a Category 1 (C1) formal investigation of the complaint. LCPD framed the following allegation against one officer:

1. **General Order 103.05 – Conduct Toward the Public:**

This General Order details how officers should act with members of the public, including being respectful, not argumentative, and responsive, to attempt problem-solving, and to provide name and IDs to any person requesting this information.

LCPD framed the following allegation against both officers:

2. **General Order 203.11.A-C – Domestic Family Disturbance Domestic Standby Calls for Service**

This General Order section outlines the role of an officer during a Domestic Standby. Among other details, the General Order states that the officer shall:

- Not become involved in the division of property between the household members
- Stand by while one party gathers “personal belongings” such as “clothing [...] basic grooming and personal hygiene supplies”

And shall not “allow one party to remove home furnishings and/or electronic equipment from the premises.”

The Internal Affairs Lieutenant assigned to this case:

- Framed allegations
- Reviewed the relevant incident reports
- Conducted an administrative interview of one accused officer<sup>3</sup>
- Reviewed a recording of the complainant’s intake interview
- Reviewed the officers’ body-worn camera videos

Using this evidence, LCPD determined that both officers had violated General Order 203.11 when they allowed the man to remove electronics from the residence and seek his firearms because these items were outside the scope of allowable items for a Domestic Standby. The allegation was sustained for both officers.

LCPD determined that the first officer did not violate General Order 103.05 because he was patient, communicative, and attempted problem-solving. The Department determined that the complainant never asked the officer to identify himself and that, as a result, the officer could not have violated the requirement to identify himself. The officer was exonerated with respect to this allegation.

A Lieutenant reviewed the officers’ personnel packages. The Lieutenant recommended that the LCPD Department Director give the officers a verbal reprimand. This discipline was issued to one officer only since by the time the investigation was initiated, the second officer was no longer employed by LCPD.

## OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed the case documents and viewed the available video evidence. We find that the outcome fairly reflects the evidence, though we did find an opportunity for additional training, discussed below.

In this case as in prior cases, we again noted that the discipline was a verbal reprimand. As discussed in a previous memo, OIR Group believes that the corrective goals of the discipline process are often best achieved when the consequence is accompanied by a

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<sup>3</sup> As noted in this memorandum, by the time that this investigation was initiated, one of the two officers was no longer employed by LCPD and was not available to be interviewed.

training or counseling component that addresses the specific performance lapse at issue.<sup>4</sup> Further, we suggest that LCPD consider Department-wide training, below.

OIR Group also had concerns with complaint intake protocol when we reviewed a recording of the intake interview by a Sergeant. After taking a detailed account of the incident, the Sergeant informed the complainant that she may have to submit to a formal polygraph with the police department, quoted the statute related to making false reports, and stated that the woman could be criminally charged for false reporting. The Sergeant asked, “do you agree to this?” The woman responded that she was not “one hundred percent sure” and asked if she should talk to “someone else” for her complaint. These are potential red flags that deserve attention.

In a memo relating to our review of case 2019EIC1-10, which we submitted in July of this year, we addressed our concerns over elements of the standard Citizen Complaint form that reflected the concepts of the polygraph and the potential for criminal liability, and that complainants were asked to acknowledge. We took the position that such references were “chilling” of participation in a way that seemed contrary to both objectivity and receptivity. This prompted a meeting with Department leadership in which we learned that these ideas were vestiges of an earlier approach that had endured through inertia more than conscious choice. Indeed, as we wrote in an addendum to that memo:

*“The Chief agreed that this could have the unintended effect of dissuading complainants from participating in the process. He said he would be willing to re-visit the form to address this element. We appreciated the dialogue and look forward to acknowledging any additional changes that occur.”*

While adjustments to the form are a fine starting point, we also hope the spirit behind the change is extending to the overall philosophy of the agency at all rank levels. Here, the Sergeant’s approach seems to have been out of step with the latest best practices regarding intake.

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<sup>4</sup> Please see OIR Group memo related to IA #2021EIC1-007 for a detailed discussion of this recommendation.

## RECOMMENDATION 1

LCPD should ensure that all personnel responsible for intake of civilian complaints understand the Department's updated thinking on the importance of creating a receptive and fair environment for outside complaints to be lodged and investigated and to avoid any advisories that are inconsistent with current protocols and that could "chill" complainants from coming forward.

## Policy, Training, or Equipment Recommendations

OIR Group commends LCPD for its own recommendation to issue a Department-wide Training Bulletin regarding the Domestic Standby General Order after seeing repeated policy violations. We also see an opportunity for LCPD to consider *additional* training.

LCPD informed us that, generally, LCPD personnel should not respond to Domestic Standbys as these are a matter to be handled by appointment with the Dona Ana Sheriff's Office.

Regardless, LCPD personnel *are* likely to respond to domestic disturbance or civil dispute calls such as the one in this case, where the eventual Domestic Standby was unanticipated. As such, we recommend that the Department consider training beyond a printed Training Bulletin to equip officers to engage in the effective de-escalation, problem-solving, communication, and boundary-setting that these calls are likely to require, and to ensure that officers are well-versed in the specifics of the Domestic Standby General Order.

For example, in this case, the officers' well-intentioned attempts to negotiate (e.g., trading sandals for firearms) resulted in the escalation of an already-volatile situation where young children were present and firearms were involved. In this case, once the man had collected his personal items and exited the home with his packed bags to his brother's vehicle, and the woman claimed that he was "done," the officers could have escorted the man from the home and ended the call. Instead, the officers allowed the man to continue to enter and exit the home and engaged in extensive negotiation between the two parties that eventually devolved into the officers wrongly allowing the man to take a television just to get him to leave, and the woman yelling profanities.

## RECOMMENDATION 2

LCPD should consider training related to domestic / civil disturbance calls to include de-escalation, proactive problem-solving, communication, and boundary-

setting, and that details the specific requirements of a Domestic Standby and related General Order, to ensure that all officers are equipped to respond to such calls.

## LCPD Management Response

Case 2021EIC1-008 - The Las Cruces Police Department appreciates the review completed by the OIR Group.

All wording regarding a possible polygraph examination from our Citizen Complaint form have been removed to foster a fair and receptive environment for outside complaints. This information was relayed to our supervisors and will be emphasized during all Internal Affairs investigation trainings moving forward. This investigation intake predated the removal of a possible polygraph examination component from all our Citizen Complaint intakes.

The recommended training will be disseminated this month and will be part of our Domestic Violence biennium training moving forward.



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TO: City of Las Cruces  
FROM: OIR Group  
DATE: November 14, 2021  
RE: Review of Administrative Investigation – IA #2021EIC1-011<sup>1</sup>

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## 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 initially classified as a formal, or "Category 1," External Investigation (EI-C1), and closed out after a preliminary inquiry.

OIR Group received the above-referenced case file on October 14, 2021.

## Case Summary

LCPD received a citizen's complaint from a driver who was involved in a traffic collision with another vehicle.

The accident occurred during daytime hours between two vehicles. The officer arrived at the scene of the crash and asked if any individuals were injured or in need of a tow truck. The officer asked the driver of the second vehicle what had happened. Based on

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<sup>1</sup> This case is related to LCPD case #21-045729.

the condition of the second vehicle, which was damaged and parked on the sidewalk, the officer called a tow truck for the second vehicle.

The officer returned to the driver of the first vehicle, the complainant, and took her statement. The driver of the first vehicle stated that she stopped at a stop sign and that the intersection was clear when she proceeded through the intersection. She alleged that the second driver was speeding through the intersection, and they collided. She reported that she was not injured.

The officer returned to his police vehicle and completed an accident report.

The officer then looked inside of the second vehicle before it was towed, stating that he was making sure that all property had been removed. During this search, which included the officer opening every door and the trunk to look inside, and which was captured on the officer's body-worn camera, an opened, half-empty bottle of an orange liquid was observed tipped over next to the rear center console. Later in the search, the bottle was observed standing upright in the rear cupholder.<sup>2</sup>

The officer returned to the first vehicle and informed the driver that he was citing her for failure-to-yield. The driver asked for an explanation. The officer explained the citation, asked her to sign, and said that he would "work with her" in court. He stated that signing the citation was not an admission of guilt. Despite the driver's protests, the officer again asked the driver to sign and said, "honestly, if you don't sign it, I have to arrest you."

A friend of the driver arrived at the scene. The driver of the first vehicle asked the friend to put her fallen bumper and other parts into her trunk. With the officer, they agreed that the driver could drive her vehicle home, which, according to the driver, was only a few blocks away.

The driver continued to dispute the citation and stated that her back was hurting. The officer asked her if she needed to sit down. The driver responded that she did not. The officer again stated that he would have to arrest her if she did not sign. The driver stated that she was being forced to sign. The officer said that he would include all this information in his accident report.

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<sup>2</sup> In correspondence sent to LCPD, the complainant alleged that the open container was Smirnoff Ice, an alcoholic beverage, and that the driver of the second vehicle may have been intoxicated. The complainant alleged that an officer asked the driver of the second vehicle about the bottle and the driver of the second vehicle stated that the liquid was a Jarritos, an orange soda. This interaction was not captured on the officer's body-worn camera and it is unclear how the complainant learned of this conversation regarding the open container.

The driver asked to call her grandfather. The officer said that she could not because he needed to clear the roadway and had given her sufficient time. The officer said, “you need to sign this. Take your finger and sign it,” while showing the driver a mobile device with the accident report. The driver signed the citation but said that it was “a false accusation.”

The complaint later alleged that the officer violated her civil rights when the officer did not properly investigate the accident, did not include all facts in the accident report, did not allow her to contact her grandfather, forced her to sign a citation, and did not provide medical attention. Further, she alleged that the officer failed to cite the other driver for driving with an open container of alcohol, possibly driving intoxicated, driving without corrective lenses, and parking on the sidewalk.

## LCPD’s Investigation and Analysis

LCPD’s Internal Affairs conducted a “preliminary inquiry” of the complaint. IA reviewed several General Orders (GO’s) related to the complaint allegations but did not frame formal allegation against the accused officer. The GO’s reviewed were:

1. ***General Order 271.07.A – Traffic Citations: Refusal of a Violator to Sign Citation***

This General Order section states that the purpose of enforcing traffic laws is to reduce the changes of future violations. Subsection A states that the officer should make clear that, in signing the citation, the driver is promising to appear in court. Further, refusal to sign a citation will result in the violator’s arrest.

2. ***General Order 274.02.A.5 – Field Investigation***

This General Order section states that the first responding officer shall investigate a crash. Subsection A.5 states that as part of the investigation, the officer shall observe the drivers’ physical condition for suspected impairment and administer a field sobriety test if necessary.

3. ***General Order 141.02.A – Accuracy and Thoroughness***

This General Order section outlines the methodology for completing a crash report in a factual and accurate manner, using the first-person narrative form in chronological order.

4. ***General Order 271.05 – Impaired Drivers***

This General Order section states that officers shall assess the driver’s ability of driving and, if necessary, administer a field sobriety test.

The Internal Affairs Lieutenant assigned to this case reviewed:

- Correspondence from the complainant
- The officer's body-worn camera (BWC)
- The crash report and related photographic evidence
- General Orders relevant to the allegations in the complaint

After assessing this evidence, IA determined that there was no evidence that any misconduct had occurred, and that no further investigation was needed. IA concluded that the officer acted within policy and used his discretion and background as a traffic investigator when he issued a failure-to-yield citation to the first driver and did not issue an open container citation to the second driver; the officer appropriately asked all parties if they needed medical treatment; the officer appropriately assessed the condition of both drivers (e.g., for intoxication) and their vehicles; per policy, the officer advised the cited driver that signing the citation was not an admission of guilt and that she would be arrested if she failed to sign her citation.

No interviews were conducted, and no formal findings were made. LCPD issued the complainant a close-out letter listing the General Orders related to the case, that a preliminary inquiry determined that no misconduct occurred, and that the case was closed.

## OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed the case documents listed above as well as the applicable General Orders and viewed the officer's body-worn camera.

As with other recent cases, we were initially perplexed by the mechanics of this specific case's review and sought clarification from LCPD leadership.

## Preliminary Inquiry: General Impressions

In conversation with LCPD leadership, we learned that, after classifying a case at the outset based on the severity of the allegations, IA often conducts a "preliminary inquiry" of the case. This preliminary inquiry, which includes a cursory review of the available evidence, is conducted by Internal Affairs, and serves to better assign the case for

investigation. In some cases, like this one, the preliminary inquiry reveals that no misconduct occurred, and LCPD closes out the case with no further investigation.<sup>3</sup>

We find the concept of preliminary inquiry to be helpful – as we have noted in other recent reviews, we recognize that some complaints lack substantive merit on their face, and that others are quickly refuted by readily available evidence. We do not suggest that LCPD *do away* with the preliminary inquiry as it serves to properly classify and route cases. But we did find areas of modification to better align with best practices as follow:

1. **Case Classification.** Historically, LCPD classified cases at initial intake based on the severity of the allegations. LCPD would input the initial case classification into IA Pro (its case review system). After the preliminary inquiry, some case classifications would change. For example, some cases that were initially classified as “formal” with serious allegations were (appropriately) “downgraded” and investigated at a less formal level. So, a case classified as “formal” in the system might actually be investigated at the unit level instead of by IA, or not formally investigated at all.

This process of “midstream” adjustment makes sense to us as a response to the impact of additional information or evidence. Less clear was the Department’s practice of preserving the initial classification (case’s name and number) even when it no longer accurately reflected the relevant process being used.

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<sup>3</sup> Preliminary Inquiry is defined in General Order 160.07.A. Complaint Investigation, Investigative Procedures, Preliminary Inquiry as follows:

1. Internal Affairs will review each complaint to determine its merit. Prior to initiating an official administrative investigation and notification of the affected employee, a preliminary inquiry may be made to identify the involved employee, to verify the reliability of the source or authenticity of the complaint, or to clarify the allegations.
2. A preliminary inquiry may not be necessary for certain types of complaints [...]
3. In some cases, the preliminary inquiry of the complaint will determine that the action(s) of the employee were in compliance with policy or that the complaint against the employee is one that, even if true, would not be a violation of law or department policy. In these situations, a formal administrative investigation is not needed, and the complaint can be closed out upon the Chief of Police’s approval.
4. If the preliminary inquiry determines that a specific allegation, if true, would constitute violation of policy and/or procedure, a formal administrative investigation will be initiated in accordance with this general order.

Our understanding, per further exchanges with LCPD, was that this was to avoid having multiple entries for the same incident, which could lead to future confusion when it came to aggregating data and reconciling tracking information with actual investigative work and outcomes. This was helpful clarification. In our view, though, it simply trades one potentially misleading approach for another, and in service of a tracking system that ideally should be the entity making the accommodation.

Accordingly, we recommend that the Department take steps to avoid leaving cases with classifications that do not align with the substantive reality of the investigation. For example, we suggest that LCPD consider conducting a preliminary inquiry *prior* to assigning a case classification in the IA Pro system. Alternatively, LCPD may consider changing the case classification if a preliminary inquiry determines that a case should be re-classified. LCPD leadership reported that it was already considering such process changes.

2. **Disposition / Findings.** As this case exemplified, the preliminary inquiry might conclude that no misconduct occurred. LCPD currently closes out these cases with the conclusion: “no further investigation.”

We suggest that LCPD consider the additional step of assigning dispositions to these types of cases, rather than leaving them without formal finding. Some possible dispositions, per General Order 160.12, might include:

UNFOUNDED - act alleged apparently did not occur.

EXONERATED - employee’s conduct was lawful, justified, and proper.

By assigned a formal disposition, LCPD can log a formal record of the case outcome. And all parties, including the officer(s) and complainant(s), are made aware that no misconduct occurred.

It is true that, in our experience, some agencies prefer to avoid “complicating” an officer’s personnel history with complaints that prove to be unsubstantiated. However, as the public becomes more attuned to police accountability, we take the position that accuracy and completeness are also values, and that disproven cases do not and should not reflect poorly on the individual officer.

## RECOMMENDATION 1

LCPD should consider the additional step of assigning dispositions to all cases, including those that are closed-out with a preliminary inquiry only.

In our recent conversation with LCPD leadership, the Department showed receptivity to a re-consideration of its IA case classification system. We are, as always, appreciative that the Department is willing to re-consider its practices.

### Preliminary Inquiry: Specific Case Review

We now turn to the specifics of the case under review.

While it was initially classified as an “E1C1,” or formal complaint, IA’s preliminary inquiry determined that no further investigation of this case was needed. OIR Group does not concur. In this case, a formal investigation, including an administrative interview of the involved officer, may have shed light on what we found to be unanswered questions and made for a more complete, fair and thorough investigation.

Our issues include the following:

1. Why the officer did not question potential witnesses.

The complaint alleged that the officer failed to conduct a thorough investigation of the accident. In reviewing both the BWC and correspondence from the complainant, OIR Group noted that the officer may have missed an opportunity to interview two witnesses to the accident, as required in **General Order 274.02.A.5 – Traffic Crash Investigation, Field Investigation:**

Locate all witnesses, if possible, and obtain names, addresses, and telephone numbers from each witness. Obtain an initial statement from witnesses of what occurred and make all attempts to have witnesses available for the crash investigation.

In the officer’s body-worn camera footage, upon the officer’s arrival to the scene, two males in orange safety or traffic vests approached the officer. They stated that they were working “right there” when the accident happened and came over to check on the

individuals involved. Both men walked away, and the officer did not attempt to contact them further.<sup>4</sup>

The preliminary inquiry does not discuss any possible witnesses.

2. Why the officer chose not to cite the second driver for an open container in her vehicle.

As detailed above, during the search, we observed an open container of an unknown liquid in the rear of the vehicle. The complainant alleged that this open container was alcohol and that the driver may have been intoxicated. In the preliminary inquiry, the IA investigator concluded that the officer used “his discretion” in not citing the driver for an open container and not conducting a field sobriety test. But we find this conclusion to be highly speculative; the officer does not make any mention of the open container during the course of the recorded body-worn camera footage. And that decision, if it occurred, merits more attention: if the liquid was just soda, than no “discretion” was needed. If there was alcohol, though, then the possible relevance to the accident obviously adds to the significance.

Further, the complainant alleged that the officer asked the second driver about the open container, and the second driver stated that it was an orange soda. This conversation was not captured on any body-worn camera footage.

An interview of at least the involved officer could have provided valuable information regarding each of these questions and made the investigation more complete, fair, and thorough.

## RECOMMENDATION 2

When there are outstanding questions regarding a case that are not addressed in a preliminary inquiry, LCPD should follow its formal investigation protocols, including interviews, to ensure that the investigation is thorough, fair, complete and accurate.

Finally, because this was a preliminary inquiry, the IA investigator did not make any findings in this case beyond stating that no further investigation was needed. As we mention earlier in this memorandum, assigning a formal disposition, even in preliminary inquiries, may make for a more complete case review process.

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<sup>4</sup> The complainant also mentioned these possible witnesses in her complaint correspondence.

## Closing Letters

We wish to acknowledge a particularly positive trend: in this case, as well as others reviewed, OIR noted that the close-out letters sent by LCPD to complainants upon completion of an investigation are timely, thorough and provide detailed information. We commend the Department for these letters. While the complainant may not always agree with the investigation's outcome, a detailed close-out letter can provide a sense of completeness and foster trust between the community and Department.

## LCPD Management Response

Case 2021EIC1-11 -The Las Cruces Police Department appreciates the review completed by the OIR Group.

From prior conversations with OIR steps have been implemented to add a formal finding component to all preliminary inquiries. The investigation from this officer during this incident as well as the preliminary investigation lacked information that was learned but not documented. Formal protocols will be adhered to on all investigations as recommended.



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

TO: City of Las Cruces  
FROM: OIR Group  
DATE: November 17, 2021  
RE: Review of Administrative Investigation – IA #2021II-017

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## 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.

OIR Group received the above-referenced case file on October 29, 2021.

## Case Summary

LCPD received a complaint from a retired LCPD police officer. The retired officer alleged that, he was present at a barber shop when he observed an on-duty LCPD sergeant at the same location. The sergeant was about to get a haircut when he received a radio call that the complainant was able to overhear.

The call concerned a vehicle pursuit in progress, which had begun after the subject murdered a New Mexico State Patrol officer. It turned out to be a critical incident involving multiple agencies. Eventually, an LCPD officer successfully executed a PIT maneuver<sup>1</sup> to stop the suspect vehicle, but the driver exited and began shooting at the

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<sup>1</sup> A PIT or "Precision Immobilization Technique" aims to stop a fleeing vehicle by contacting it in such a way that it spins abruptly, thereby stalling the engine.

officer rather than surrendering. The LCPD officer was wounded; he and other law enforcement personnel on scene returned fire in response and fatally wounded the subject.

The thrust of the the retired officer's complaint was that the LCPD sergeant continued getting his haircut instead of immediately responding to the incident. A delayed but thorough investigation interviewed salient witnesses and determined that there were no violations of policy.

This outcome was based on two key findings. The first was that, when the sergeant was finished with his haircut, he did assist with other calls for service in a way that counterbalanced his decision not to respond to the end location of the pursuit. Additionally, the analysis concluded that the sergeant's choice not to respond immediately did not materially impact the outcome of the pursuit, since he would not have arrived in time to provide tactical assistance.

## OIR Group Review

### Delay in Opening Investigation

While the allegation of misconduct occurred in early 2021 and was reported to an LCPD supervisor the day after the incident, the investigation was not officially opened until July 2021. It was completed in October 2021.

While the specifics were not documented in the investigative file, OIR Group was provided additional details about the protracted timeline. We learned that, even though the sergeant who received the complaint advised his chain of command about the allegation, no investigation was started until the Chief became personally aware of the allegation (months later) and ordered appropriate follow-up.

This delay in initiation of the investigation had potential consequences. Apart from the inherent value of addressing personnel issues promptly, the time lag may well have affected the quality of available evidence. When civilian witnesses to the incident at the barber shop were interviewed, they claimed to have no recollection of the event. This "lack of recall" response would presumably have been less likely if the witnesses had been interviewed closer in time to the event.

OIR Group recommends that LCPD ensure that allegations of misconduct not "fall through the cracks" and work more diligently to ensure that such allegations are timely handled.

## Conduct of Involved Employee

On the date of the incident, the involved sergeant was working a special assignment as a community outreach officer and did not ordinarily handle calls for service. And while he was on duty while getting his haircut, he was at least available to respond to emergency calls – and such an arrangement is consistent with accepted LCPD practice for conducting errands on a limited basis during their shifts. After the haircut was concluded, the sergeant assisted with calls for service while other LCPD personnel were tied up at the pursuit terminus.

After finishing with his haircut, the sergeant appropriately concluded that he was more valuable to the Department answering calls for service than going to the site where the pursuit had come to an end. Clearly, though, the sergeant's choice to continue with his haircut in the midst of a genuinely critical incident, and one that resulted in a wounding of an LCPD officer and the fatal shooting of the murder suspect, had the potential to reflect poorly on his priorities.<sup>2</sup>

The resulting criticism from a former member of the Department reinforces this idea in obvious ways. While we agree that the performance of the sergeant did not rise to the level of a policy violation, we believe a better approach would have been for the sergeant to immediately leave the barber shop and communicate with the watch commander for direction on how he might be most able to assist while LCPD was dealing with the crisis.

There seems to be some ambiguity about the expectations of community outreach supervisors. While it is helpful to the community outreach mission to create an assignment not burdened by routine calls for service, it should be made clear that when LCPD is dealing with a tactically or otherwise challenging incident, all hands should proactively make themselves available for assistance as directed by the watch commander.

### RECOMMENDATION 1

LCPD should ensure that allegations of misconduct are promptly documented, and that necessary investigations should commence in a timely fashion.

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<sup>2</sup> In contrast, the other community outreach sergeant did respond to the scene.

## RECOMMENDATION 2

LCPD should debrief the involved sergeant about how the perception of tending to personal needs while a critical incident is in progress is not helpful to the reputation of the agency.

## RECOMMENDATION 3

LCPD should provide written guidance to community outreach officers setting out Department expectations when the agency is in crisis mode.

## LCPD Management Response

The following response was provided by LCPD on December 6, 2021:

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

Recommendations –

The delay on this investigation was a result of the supervisor first becoming aware of this incident not reporting the allegation through established complaint protocols. Administration upon becoming aware about this incident through informal conversations sometime after the actual incident occurred, ordered the originating supervisor to submit the complaint through the formal process. We agree with OIR's assessment that the quality of evidence due to the time lag may have hindered this investigation. The issue of timeliness was pointed out to this supervisor and will be further emphasized in an upcoming IA training for supervisors in January 2022. Additional recommendations will also be adhered to and documented.



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

TO: City of Las Cruces  
FROM: OIR Group  
DATE: October 13, 2021  
RE: Review of Administrative Investigation – IA # 2021SM-001<sup>1</sup>

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## Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was investigated as a "Supervisory Matter" at the unit level.<sup>2</sup>

OIR Group received the above-referenced case file on September 14, 2021.

## Case Summary

An on-call non-sworn employee was called to remove several dogs from the scene of an unattended death. The sergeants on-scene requested removal of the dogs to prevent contamination of the scene as some of the dogs were in the same room as and on top of the deceased's body.

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<sup>1</sup> This internal investigation is related to LCPD Case #20-141316.

<sup>2</sup> General Order 160.07 defines a "Supervisory Matter" as follows: "a non-serious incident/investigation typically conducted at the shift level for minor infractions that is not investigated by IA. The Supervisory Matter will be filed with IA for record purposes only."

In his first call with dispatch requesting that he respond to the scene, the non-sworn employee stated that he would not respond because the family members on-scene should remove the dogs. Dispatch called again. Again, the non-sworn employee stated that he did not have to respond if there were family members on-scene to take the dogs. Dispatch requested the non-sworn employee's supervisor's name, which the non-sworn employee provided.

An on-scene sergeant then called the unit supervisor, who directly called the non-sworn employee and ordered him to respond to the scene. According to the supervisor, the non-sworn employee became argumentative with him, used profane language, and hung up the phone without confirming if he would respond to the call.<sup>3</sup>

The supervisor called a second non-sworn employee and requested that he respond to the scene. The second non-sworn employee agreed to respond, though it is unclear if he arrived.

Eventually, the involved non-sworn employee responded to the scene. Once there, the non-sworn employee stated that he spoke to several family members who, according to the non-sworn employee, said that they were willing to take all the dogs because they did not want the dogs to go to the animal shelter. The non-sworn employee said that he followed an on-scene criminal investigator to keep the dogs away from evidence and prevent the dogs from biting the investigator.<sup>4</sup>

The non-sworn employee did not activate his body-worn camera during any part of this incident.

## LCPD's Investigation and Analysis

LCPD determined that this was a "Supervisory Matter" case and, as such, it was assigned to the involved employee's unit supervisor. The supervisor framed four allegations against the involved non-sworn employee:

### 1. ***Violation of General Order 103.01 – Unsatisfactory Performance***

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<sup>3</sup> This call was not recorded. It is unclear if the supervisor was in a position to record the call. The details of this call were reported by the involved supervisor who also investigated the case. We note the concern with this later in this Memo.

<sup>4</sup> According to the investigative memo and a memo submitted by an on-scene sergeant, the non-sworn employee refused to take the dogs and instead "[stood] guard" at the entrance of the room where the deceased was located to "corral the dogs" and prevent the dogs from contaminating the scene.

This General Order section lists eight criteria of unsatisfactory performance, including “an unwillingness or inability to perform assigned tasks” and “failing to conform to work standards”.

2. ***Violation of General Order 103.03 – Compliance with Laws, Rules, and Regulations***

This General Order section states that employees shall assist each other when requested and that “such assistance shall include the utilization of any special skills or talents that an employee may have.”

3. ***Violation of General Order 103.09 – Insubordinate Conduct***

This General Order section states that employees shall carry out and promptly obey all lawful orders given to them by supervisors without hesitation. It goes on to state, “the failure or refusal to obey any lawful order shall be deemed insubordination.” The second part of this General Order states that “employees shall not be insolent and/or disrespectful to any supervisor,” which includes being argumentative, insulting a supervisor, or verbally or physically showing disrespect.

4. ***Violation of General Order 151 – Recording Devices***

This General Order section states that employees shall activate their body-worn cameras whenever responding to a call for service. Activation is required “upon dispatch to a call for service.”

During the administrative interview, the non-sworn employee stated that he did not refuse the calls but needed more information before responding to the scene. He stated that removing the dogs would be a health hazard for him because the dogs were under a bed near the deceased’s body; he stated that he did ensure that everyone, including the dogs, were safe on the scene and that the investigator could do his job photographing the scene.<sup>5</sup>

All four allegations were sustained.

The supervisor assigned to this case:

- Framed four appropriate allegations using Department policy as the basis for the allegations

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<sup>5</sup> As discussed later in this memo, the non-sworn employee’s interview was not thorough and did not address the allegations in detail.

- Conducted an administrative interview of the accused non-sworn employee
- Reviewed a memo detailing the incident submitted by an on-scene supervisor
- Reviewed the body-worn camera (BWC) of another on-scene employee and recordings of calls with dispatch

Using this evidence, the supervisor completed an investigative memorandum, in which he detailed the evidence and allegations, provided relevant sections of the LCPD policy manual, and presented rationale for his recommendation of “sustained” findings -- namely, that the non-sworn employee had violated two General Orders (103 and 151) when he refused a call for service after a direct order, used profanity with his supervisor, failed to utilize his specialized skill set (removing dogs from the scene), and failed to activate his body-worn camera.

A Lieutenant reviewed the investigative memo and the non-sworn employee’s personnel package. Based on a prior sustained allegation of a similar nature, the Lieutenant recommended that the LCPD Department Director give the non-sworn employee a 10-day suspension for these sustained allegations.

The non-sworn employee was advised of the proposed discipline for this case and a second, unrelated Supervisory Matter, placed on paid administrative leave, and provided the date of a Loudermill hearing. The non-sworn employee did not attend his Loudermill hearing.<sup>6</sup>

## OIR Group Review

LCPD provided OIR Group the Supervisory Matter file. OIR Group reviewed the case documents listed above as well as the applicable General Orders, the non-sworn employee’s personnel package, and all related administrative paperwork related to the non-sworn employee’s discipline. OIR Group also listened to recordings of the non-sworn employee’s administrative interview and dispatch calls and viewed the body-worn camera of another on-scene officer.

Based on the complexity of this case beyond the scope of a Supervisory Matter, a classification intended for “a non-serious incident/investigation typically conducted at the

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<sup>6</sup> The non-sworn employee was terminated as a result of the second, unrelated Supervisory Matter. OIR Group reviewed that case, 2021SM-005, in a separate memo.

shift level for minor infractions,” we opine that the case would have been better classified as an “Internal Investigation” (II) and investigated by Internal Affairs.<sup>7</sup>

We identified issues with the investigation’s thoroughness and objectivity that may have been avoided if the investigation had been classified as and completed by Internal Affairs instead of at the unit level.<sup>8</sup> These issues yielded uncorroborated evidence that could have significantly impacted the final dispositions in this case had it not been for the dispatch and BWC recordings. Because of these, we ultimately concur with the findings.

First, we noted a concern with the **objectivity** of this investigation: the investigation was conducted at the unit-level by a *directly involved* supervisor who was a witness to at least two of the allegations. Having an involved supervisor investigate a case can be problematic both substantively and procedurally. The perception of bias is a concern when someone’s own performance is relevant to the assessment of a particular incident. And the mechanics of an effective investigation can be strained when, as here, the investigator is the source of important evidence.

This can, and did here, result in concerns with the **thoroughness** of the investigation. An uninvolved supervisor, or, better, an investigator from Internal Affairs more practiced in administrative investigation, may have resulted in collection of thorough evidence. We noted the following:

- A lack of witness interviews.
  - The case file included information about at least two, and possibly more, employee witnesses that were on-scene but were not formally interviewed

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<sup>7</sup> Per Department policy, an investigation should be classified as an II “when there is an internal allegation related to misconduct or operational actions of employees on or off-duty.” And while some IIs are investigated by the employee’s chain of command, Department policy states that “IA shall be responsible for conducting Internal Investigations of a serious nature.” (General Order 160.05: Administrative Investigations)

<sup>8</sup> In response to this concern, LCPD stated that the matter of case classification/assignment is constrained at times by their internal tracking and numbering system, managed in IA Pro, but assured that each case is appropriately re-assigned and ultimately investigated based on its complexity.

We discuss the issue of case classification generally and make recommendations in our memo related to 2021-SM005. In short, we recommend that LCPD’s case assignment practice may benefit from review of current practices for assigning cases and a review of the technical capabilities of IA Pro.

for this investigation.<sup>9</sup> Other possible witnesses included sergeants, the crime investigator, and/or patrol officers on-scene, but none was interviewed to provide corroborating evidence of what occurred on-scene.

- Two allegations, those of “Insubordinate Conduct” and “Unsatisfactory Performance,” were directly related to the non-sworn employee’s telephone call with the investigating supervisor, during which, according to the supervisor, the non-sworn employee refused an order/assignment, used profanity and hung up on the supervisor. This call would not normally have been recorded – and was not. Moreover, the supervisor could not logically “interview” himself about the matter, leaving the evidence of misconduct somewhat limited.<sup>10</sup>
- The administrative interview of the non-sworn employee, conducted by the involved supervisor, was not thorough. The supervisor did not ask about the phone call in question between himself and the non-sworn employee. And the supervisor did not ask any follow-up questions related to the specific allegations or probe the non-sworn employee in a manner that might be expected of a thorough administrative interview.
- Not all available evidence was presented in the investigative memo. We reviewed BWC footage of a conversation between the non-sworn employee and a witness employee during which the non-sworn employee confirmed that he did not initially respond to the call (because, he stated, family members should take the dogs) and that he did not remove the dogs from the scene as requested of him (again, because family members said that they would take the dogs). This conversation was not captured in the investigative memo.

Each of these could have provided more conclusive evidence for the final dispositions.

Ultimately, however, based on how the allegations were framed using the General Orders, we concur with the final dispositions based on the recordings from dispatch and BWC footage from the witness employee. These conversations support the allegations

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<sup>9</sup> The case file included two “Witness Notification” emails to witness officers from Internal Affairs. One witness officer responded with a memo regarding the incident but was not formally interviewed.

<sup>10</sup> This supervisor submitted a memo to Internal Affairs about the incident when the incident occurred in which he detailed the phone call.

that the non-sworn employee did not immediately respond to the call for service in the manner that was ordered and expected of him in his assigned capacity.

More positively, we note that the investigating supervisor showed appropriate diligence in adding an allegation when he discovered that the involved non-sworn employee had not activated his body-worn camera.

## Policy, Training, or Equipment Recommendations

In a conversation recorded on BWC footage from the scene, the non-sworn employee stated that the dispatch officer(s) did not provide sufficient information and that information “got mixed up.” He stated that this happened frequently. He also reported that the sworn personnel on-scene were “curious” or “confused” about how his unit operated and that, in general, there was a lack of communication between his unit and LCPD officers.

While OIR Group acknowledges that this was the opinion of one employee who was already allegedly “put-off” by having been called to a scene and ultimately had performance failures resulting in violations of policy, any allegation suggesting systemic dysfunction should be plumbed whenever received. It would have been helpful for LCPD to examine the dispatch call to see whether the information provided met Departmental standards and whether there is a need for better communication and coordination between the unit and sworn staff.

### RECOMMENDATION 1

Whenever LCPD receives an allegation regarding systemic concerns during an internal investigation, the Department should consider and examine those issues as well.

## LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. The case assignment practice is currently under review, adjustments will be implemented to insure the proper classification and assignment of each case. The technical capabilities of IA Pro will be addressed.

Additionally, the lack of administrative investigation experience and training by the supervisor in this investigation was very evident. The Las Cruces Police Department Internal Investigations program will create a training program for new supervisors as well as a refresher for more experienced supervisors.



7142 Trask Avenue  
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OIRGroup.com

TO: City of Las Cruces  
FROM: OIR Group  
DATE: June 22, 2021  
RE: Review of Administrative Investigation – File # 2021II-001

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## Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews Internal Affairs 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.

## Case Summary

Case 2021II-001 involved an off-duty Las Cruces Police Department non-sworn employee who was arrested, by the Doña Ana County Sheriff's Office (DASO) for Aggravated Driving While Intoxicated. The non-sworn employee was booked and released on his own recognizance with a court date. The non-sworn employee reported the arrest to his supervisor according to Department policy (General Order 103.3(H)). The following business day, LCPD placed the non-sworn employee on Administrative Leave with Pay pending the outcome of the Internal Affairs investigation.

## LCPD's Investigation and Analysis

LCPD framed two allegations against the involved non-sworn employee:

- 1. Violation of General Order 103.28 – Conduct Unbecoming**

This General Order section states that "employees shall not conduct themselves in a manner which would bring discredit upon themselves, the department, or any

employee of the department and shall conduct themselves both on-and off-duty in a manner so as to reflect favorably upon the department.” The Order goes on to state that driving under the influence is one scenario that would “bring discredit” to the LCPD.

## **2. Violation of General Order 103.08 – Criminal Conduct Prohibited**

This General Order section states that employees shall not engage in any criminal conduct, on- or off-duty and that “criminal conduct is sufficient grounds for disciplinary action regardless of whether the employee is cited, indicted, tried, and/or convicted of a criminal offense.”

During the administrative interview, the non-sworn employee admitted to consuming alcohol and did not dispute the investigation findings during the Loudermill hearing.<sup>1</sup>

Both allegations were Sustained.

OIR Group found this Internal Affairs investigation to be high quality, consistent with best practices for Internal Affairs investigations, and completed in a timely manner. The Detective assigned to this case:

- Framed two appropriate allegations using Department policy as the basis for the allegations
- Provided the accused non-sworn employee a “Focus Employee Notification” letter, form, and directed documents for review (e.g., related General Orders)
- Conducted an administrative interview of the accused non-sworn employee consistent with policy
- Reviewed all documentary evidence provided by DASO, including charging documents, DWI Citation, and breath receipts from the non-sworn employee’s breath sample, among other paperwork
- Reviewed the body-worn camera and in-vehicle dashboard camera footage of the DASO arresting officer

Using this evidence, the Detective completed a robust investigative memorandum, in which he detailed the evidence and allegations, provided relevant sections of the LCPD policy manual, and presented substantive rationale for his recommendation of “Sustained” findings -- namely, that the non-sworn employee had clearly violated two General Orders when he engaged in criminal conduct.

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<sup>1</sup> A “Loudermill hearing” is part of the “due process” requirement that must be provided to a public employee prior to removing or impacting the employment property right. The purpose is to allow the employee an opportunity to defend themselves.

The non-sworn employee's supervisor, a Lieutenant, recommended that the LCPD Department Director terminate the non-sworn employee for these Sustained allegations. A Notice of Termination letter was provided to the non-sworn employee. The non-sworn employee was then provided a Loudermill hearing, during which the non-sworn employee did not dispute the findings or present evidence in his defense. The non-sworn employee stated that he would prefer to resign than to be terminated and that he had retained an attorney.

The non-sworn employee then submitted a timely letter of resignation, which LCPD accepted.

### OIR Group Review

LCPD provided OIR Group the entire Internal Affairs file. OIR Group reviewed the case documents listed above, as well as the applicable General Order 103 and all related administrative paperwork related to the non-sworn employee's resignation. OIR Group also listened to audio recordings of the non-sworn employee's administrative interview and Loudermill hearing and viewed the body-worn camera and in-car camera footage of the DASO arresting officer.

Based on this review, OIR found that the investigation was thorough, appropriately scoped, and that the outcome is consistent with LCPD's Code of Conduct and based on the evidence collected by Internal Affairs.

A specific positive highlight is the investigating officer's summary of the non-sworn employee's administrative interview. We sometimes find paraphrased interview summaries to be insufficient or inaccurate. This investigating officer captured the full scope and details of the interview in the memorandum.

### Policy, Training, or Equipment Recommendations

During the non-sworn employee's administrative interview, both the non-sworn employee and his union representative asked if there was a distinction between non-sworn employees, who are "civilian" employees, and sworn police officers. Specifically, the non-sworn employee asked if he, as a civilian department employee, was required to meet the expectations listed in the Code of Conduct. The non-sworn employee asked this question again in his Loudermill hearing.

OIR Group noted that the Code of Conduct explicitly states: “this General Order applies to all employees.” However, based on the non-sworn employee’s repeated question, this may not be clear to all Department personnel.

#### Recommendation 1

LCPD should remind all employees of LCPD that the General Orders Manual, and the Code of Conduct in specific, apply to all Department employees, regardless of whether they are civilian or sworn.

#### Recommendation 2

LCPD should remind its members that off duty conduct that involves criminal activity will be taken seriously and could end a career in law enforcement.

Finally, OIR Group observed that the Las Cruces Public Safety “Transparency” web page, where the Department has listed the General Orders Manual, is shown as being “under construction” since February of 2021. As such, the entire General Orders Manual is incomplete, with many General Orders listed as “Pending upload,” or policies that are active but are currently not available on the Transparency page.

#### Recommendation 3

LCPD should work to complete and update the Transparency page of the Public Safety website.

## LCPD's Management Response

After sharing an initial draft of our report with LCPD, we received the following response:

**Case 2021II-001** - The Las Cruces Police Department appreciates the review completed by the OIR Group. Initially, we experienced a technology obstacle with providing videos to OIR during the 30-day review period. Time delays for the first two cases were due to permissions set by our agency on the evidence.com website. These obstacles have been overcome and we now have a solid foundation to allow OIR access in a timely manner." The language of the policy is under review and the final policy will be available on the LCPD transparency page. Training bulletins are being created for dissemination to all employees as a reminder using our training application within 3 months. Regarding recommendation (3) (*LCPD should work to complete and update the Transparency page of the Public Safety website*), the updates to the transparency page have been completed.



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TO: City of Las Cruces  
FROM: OIR Group  
DATE: October 13, 2021  
RE: Review of Administrative Investigation – IA # 2021SM-005

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## 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 originally opened as a "Supervisory Matter"<sup>1</sup> but was actually investigated by Internal Affairs.

OIR Group received the above-referenced case file on September 14, 2021.

## Case Summary

This case emerged from concerns raised by a female resident. On January 23, 2021, she and her two-year old son were injured by a dog owned by a neighbor. The dog, which weighed nearly 100 pounds, was on a leash but nonetheless managed to lunge at the mother and son as they were speaking with the man. The dog pulled the owner forward and got close enough to bite the young boy quite severely.

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<sup>1</sup> General Order 160.07 defines a "Supervisory Matter" as follows: a non-serious incident/investigation typically conducted at the shift level for minor infractions that is not investigated by IA. The Supervisory Matter will be filed with IA for record purposes only, these investigations can lead to penalties as outlined in the LCPOA Contract Section 33. Timelines for Supervisory Matters will be consistent with 160.05.

The dog owner called 911 and an ambulance responded to the scene. It transported the mother and son to the hospital soon after the arrival of an Animal Control Officer (“ACO”) from LCPD. Unable to speak with the victims, the ACO did talk briefly to the husband/father and got basic contact information from him. He also spoke with the dog’s owner, who provided an account of what had occurred.

In short, the dog was known by the owner to have some behavioral issues, and he accordingly discouraged the interested mother and son from attempting to pet him. As the mother crouched down to explain to the son that they couldn’t get closer, and was speaking with the owner, the dog lunged forward and made contact with both parties. He described the injury as involving a bite to the boy’s shoulder. (It actually involved a significant tearing away of the flesh covering the boy’s elbow, an injury that required surgery.) Asked by the ACO if the dog was properly vaccinated, the owner said that it was. However, there was no follow-up to confirm this through relevant documentation.

The ACO wrote up a report and initiated a 10-day quarantine protocol for the dog. But he neglected to pursue the matter under the “Dangerous Dog” statute or potentially applicable city ordinances. Nor did he follow up with the mother to take a statement from her or to conduct additional investigation into the incident, the severity of injuries, or other relevant information. When he did speak with the mother by phone four days later, he was seemingly defensive of the dog and of his original assessment, and more intent on explaining his past decision than considering the relevant new perspective she was offering.

Frustrated over this lack of response, concerned about the dog’s potential to be an ongoing safety issue, and further dissatisfied with the initial contact she initiated with the ACO’s supervisor, the mother contacted LCPD administration and complained over the phone about the service she had received. The lieutenant who spoke with her did two things: one was to give internal direction to ensure that proper investigation into the incident would occur,<sup>2</sup> and the other was to initiate an administrative investigation into possible misconduct by the ACO in his handling of the matter.

## LCPD’s Investigation and Analysis

As noted above, the investigation was assigned to an Internal Affairs detective, who completed his work in a timely fashion and produced a lengthy memo that summarized the relevant evidence. It was determined that the ACO had deviated from several

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<sup>2</sup>The underlying dog bite case was re-assigned to a different ACO, and the determination was made that the incident was in fact appropriate for prosecution of the animal as a “Dangerous Dog.”

applicable Animal Control protocols. More broadly, the ACO's overall handling of the incident was found to have violated the Department's policy against "Unsatisfactory Performance" (General Order 103.01 A) in the following ways:

1. Lack of knowledge and proper application of laws and procedures.
2. An unwillingness or inability to perform assigned tasks.
5. Failing to take appropriate action regarding a crime or other condition brought to their attention.

This case was resolved in conjunction with another pending performance issue, which had also resulted in a finding of policy violations. In light of the ACO's overall work history and the significance of his mishandling of a serious bite incident, the Department determined that discharge from employment was appropriate.

According to LCPD, the non-sworn employee did not challenge the Department's proposed disciplinary action after receiving notification, and he was separated from the agency.

## OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, body-worn camera footage, photographs, recorded interviews, and administrative memos. Based on our review of these materials, we found that the investigation was appropriately thorough, and concurred with the outcome.

We had the following additional observations.

## Employee Representation

Our reading of General Orders 160.07 K. ("Investigative Procedures") indicates that employees do not have a right to counsel for administrative investigations, but that members of the LCPOA are permitted to have an association representative.

Here, the ACO participated in his investigative interview without the benefit of a representative. Although this was his stated choice (as covered by the investigator at the outset of the interview), it appeared to have been based in part over confusion as to his status in the union and what his options were. Given the serious nature of the

allegations (as borne out by the ultimate consequence), more clarity for non-sworn personnel regarding their rights in the process would seem to have been warranted.

### Scope of Review

While the performance of the original ACO was the proper focal point for the investigation, the complainant also spoke with the officer's immediate supervisor in a way she found unsatisfactory. When she spoke to the lieutenant who ultimately re-assigned the underlying bite case and initiated the complaint investigation, the complainant expressed dissatisfaction with the supervisor as well as ACO. However, the administrative investigation did not encompass the supervisor's performance – which seems to have raised at least some questions in terms of his passive approval of the ACO's initial reporting.

In our view, a more comprehensive approach would have at least considered the efficacy of the supervisor's role in the case, for purposes of improved performance if not formal accountability.

### Use of "Supervisory Matter"

This is the third case involving an ACO that we have reviewed since initiating our role in Las Cruces earlier this year. All of them were originally styled as "Supervisory Matters," but followed different courses as they unfolded.

One of them was shifted to an "EI" (or "External Investigation") and handled by Internal Affairs when – during the pendency of the original complaint review – an allegation of possible bias was introduced during further communications with the complainant. The other two (which include this one and involved the same employee) kept their original "SM" designations, in spite of the ultimate seriousness of the allegations and the severity of the potential (and actual) disciplinary consequences.<sup>3</sup> However, though it kept its "SM" designation, this case was ultimately investigated by a detective assigned to Internal Affairs.

We agree that this was an appropriate level of formality for the investigation, and believe that the relevant evidence was compiled and assessed in thorough and effective

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<sup>3</sup> The "companion" case to this one for the same employee is IA # 2021-SM001. It was also reviewed by OIR Group and is addressed in a separate memo. It resulted in a finding that substantial discipline was appropriate, which belies the description in policy of Supervisory Matters being "non-serious" and involving "minor" misconduct. See Footnote 1, above.

ways. In short, the substantive process seemed to work in spite of the framing of the case as a mere “Supervisory Matter.”

But this was less true for 2021-SM001. As our memo for that case indicates, the handling of that investigation by an ACO supervisor – who was himself an important figure in the misconduct allegations – seems to have undermined the quality of the process (although we ultimately concurred with the findings of misconduct).

Our understanding from speaking with the Department is that the “labelling” issues are a matter of form over substance: that the initial framing of a case for entry into the relevant computer database is based on first impressions, and from there the “SM” listing endures for purposes of tracking consistency within the system – even if impressions change based on further understanding or new evidence. Importantly, this is *not* supposed to dictate the substantive approach that LCPD ultimately takes, and we have been assured that it does not in practice. Still, it seems confusing. And, in at least one of the three instances we’ve observed, devotion to the initial designation for tracking seems to have dictated the quality of the resulting investigation to its detriment.

In short, our recommendation would be for the Department to revisit this practice and ensure that its relevant computer program and system of case categorization is serving LCPD’s interests in the most efficient, effective ways.

## RECOMMENDATION 1

LCPD should consider revising its case tracking system so that there is flexibility in how a case is categorized (and potentially recategorized).

## LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate and we are in agreement with the recommendations. Our case assignment practice was also an issue in this investigation. The practice is currently under review, Las Cruces Police Department Administration will be assisting with case assignment. Our case tracking system (IA Pro) limitations will be addressed to insure proper case categorization.



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323-821-0586  
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TO: City of Las Cruces  
FROM: OIR Group  
DATE: June 21  
RE: Review of Administrative Investigation – File # 2021VP-004

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## Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews Internal Affairs 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.

## Case Summary

An officer cleared a call for service regarding a loud party and was leaving the area when he observed a vehicle on the side of the road, with a woman standing in front of it, yelling "That's my car!" The officer pulled behind the car and activated his overhead lights. The suspect vehicle backed up slightly, then pulled forward and away, striking the woman. The officer remained in his vehicle, but could see that the woman was not seriously injured as she continued pointing to the fleeing vehicle. He broadcast her location and description, requesting backup and medical response as he began his pursuit of the suspect vehicle.

The officer also called out the vehicle's license plate number, and dispatch advised him the car had been reported by New Mexico State University Police to be stolen. The officer activated his siren and pursued the vehicle for approximately a quarter-mile at a speed of about 30 miles per hour. The subject driver stopped the vehicle voluntarily,

and the officer conducted a high-risk traffic stop without further incident, detaining three individuals.

The officer did not activate his body-worn camera during the pursuit, and only turned it on as he was conducting the stop.

## LCPD's Investigation and Analysis

The officer's supervising lieutenant completed a Pursuit Review Memorandum that evaluated the event from the standpoint of training completed pursuant to the New Mexico Safe Pursuit and LCPD General Order 208. The LCPD policy (which mirrors state law) states:

### **208.02 PURSUIT**

A. A law enforcement officer may initiate a pursuit to apprehend a suspect who:

1. The officer has reasonable grounds to believe poses a clear and immediate threat of death or serious injury to others.

or

2. Who the officer has probable cause to believe poses a clear and immediate threat to the safety of others that is ongoing and that existed prior to the pursuit.

B. A law enforcement officer shall not initiate or continue a pursuit when the immediate danger to the officer and the public created by the pursuit exceeds the immediate danger to the public if the occupants of the motor vehicle being pursued remain at large.

The Pursuit Review Memorandum provides a detailed analysis of factors to consider in determining whether a pursuit is within policy, including: the nature of the offense or threat before the pursuit began, the officer's knowledge of the suspect's identity, the nature of the pursuit, and weather and road conditions.

In this case, the officer had witnessed the subject commit an Aggravated Battery with a Deadly Weapon when he struck the victim with the vehicle, and then the officer learned the vehicle was reported stolen. The pursuit was short and did not reach high speeds. It was late on a cold night, with no pedestrians present and little traffic on the road. The officer broadcast his pursuit and remained in radio contact throughout.

While these factors suggested the officer's decision to pursue the suspect vehicle were appropriate, the officer did not activate his body-worn camera during the pursuit, but turned it on only when the suspect vehicle had stopped. The Pursuit Review

Memorandum concluded that the pursuit was not within LCPD policy (presumably because of the officer's failure to activate his camera), and the reviewing Deputy Chief recommended an administrative investigation be conducted at the shift level, by the lieutenant who had completed the Pursuit Review.

The investigation focused on the language of General Order 208 pertaining to body-worn cameras, which at the time stated:

### **208.03 PURSUIT PROCEDURES**

...

B. If an officer is issued a body-worn camera (BWC), officer must activate BWC **as soon as possible**. (emphasis added)

The investigator interviewed the involved officer and, taking into consideration all of the circumstances surrounding the pursuit, concluded:

[T]he policy provides allowances for officers to activate their BWC as soon as it is practical to do so based on safety and reasonableness. Because of the brief, complex and intense nature of the call, [the officer] was tasked with multiple critically necessary actions in a circumstance where his available cognitive bandwidth would have drawn his limited attention to the most important behaviors prior to activation of his BWC. The officer did activate his BWC "... as soon as possible" as compared with other reasonable and similarly trained officers in comparable circumstances.

The investigation concluded the officer's actions were within policy and the allegation of violation of General Order 208.03 (B) was NOT SUSTAINED.

## **OIR Group Review**

OIR Group reviewed the entire investigative file, including available body-worn camera footage, recorded radio traffic, the interview of the involved officer, and relevant policies, as well as the Pursuit Review and Investigative Memoranda.

Based on this review, OIR found that the investigation was thorough, appropriately scoped, and that the outcome fairly reflects the evidence collected by the investigator and is consistent with LCPD's Code of Conduct, insofar as the policy at the time only required officers to activate their cameras "as soon as possible."

## Policy, Training, or Equipment Recommendations

OIR Group's review identified one recommendation for change to LCPD's policy, but then learned that this change has already been made. The language in the pursuit policy – requiring officers to activate body-worn cameras “as soon as possible” – did not match the language of General Order 151, pertaining to Recording Devices. That policy sets out more detailed instructions about when cameras should be activated, including “When activating police vehicles emergency equipment during an emergency response to a call for service and/or vehicle pursuit.” General Order 151 does not include the more vague “as soon as possible” language.

The Pursuit policy (General Order 208.03 (B)) now states: “Officers must activate BWC in accordance with General Order 151 Recording Devices.”

This modification to policy was part of a larger effort to standardize body-worn camera activation protocols and eliminate confusion about Department expectations and did not seem to be directly prompted by this investigation. Regardless, LCPD deserves credit for recognizing and rectifying the inconsistency between the two policies.

Recognizing the complexity of situations like the one the officer here faced, some law enforcement agencies have begun to employ auto-triggering technology that activates officers' body-worn cameras automatically in certain situations, including when an officer activates the lights and sirens on his or her patrol vehicle. LCPD should consider the feasibility of this technology.

## LCPD's Management Response

After sharing an initial draft of our report with LCPD, we received the following response:

**Case 2021VP-004** - The Las Cruces Police Department appreciates the review completed by the OIR Group. Initially, we experienced a technology obstacle with providing videos to OIR during the 30-day review period. Time delays for the first two cases were due to permissions set by our agency on the evidence.com website. These obstacles have been overcome and we now have a solid foundation to allow OIR access in a timely manner." Our Compliance/Research & Development section continues to be diligent on policy review to find inconsistencies in our policies and to keep updated with law and Law Enforcement best practices. Our department is also currently looking into self-activating body camera technology as suggested.



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OIRGroup.com

TO: City of Las Cruces  
FROM: OIR Group  
DATE: July 21, 2021  
RE: Review of Vehicle Pursuit – File # 2021VP-006

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## Introduction

In addition to reviewing all Internal Affairs investigations, part of OIR Group's role as the City of Las Cruces' Independent Police Auditor is to review and report on allegations of a non-serious nature categorized by the Las Cruces Police Department (LCPD) as "EI-C3 complaints," as requested by the LCPD, City Manager, City Attorney, and/or City Council. Included among these "non-serious" complaints are vehicle pursuits.

LCPD sent for our review a vehicle pursuit in this category of complaints. The incident did not result in a formal IA investigation, but was reviewed internally by a sergeant who conducted a Pursuit Review.

## Case Summary

Just before 7:00 PM on a weekend evening, officers were dispatched to a call involving a man on a red and orange motorcycle driving behind a car and pointing a handgun at the car. The call came from a witness, and not the occupant of the car being targeted. The responding officer was in the area of the reported assault and located a motorcycle matching the description within two minutes. The officer initiated a traffic stop, and the motorcycle driver pulled over. But when the officer got out of his patrol vehicle and yelled for the motorcycle's driver to turn off his motorcycle, the driver yelled obscenities and fled.

The officer initiated a vehicle pursuit that lasted two minutes and 23 seconds. In this timeframe, the officer obtained a license plate number from the motorcycle and learned from the supervising sergeant that no one had called to report being a victim of the alleged assault.

The pursuit reached the speed of about 55 miles per hour, and the officer reported the subject ran through a red light during the pursuit. Once the supervising sergeant confirmed that no victim had reported the incident, meaning there were no underlying charges sufficient to justify the pursuit of the motorcycle, he instructed the officer to terminate the pursuit.

Officers identified the registered owner of the motorcycle but could not immediately locate him at his associated addresses. That investigation was still ongoing at the time the Pursuit Review was completed. No one reported being a victim of the subject's alleged assault.

The officer activated his body-worn camera before his initial contact with the subject, and it remained on throughout the pursuit.

## LCPD's Investigation and Analysis

A sergeant completed a Pursuit Review Memorandum that evaluated the event from the standpoint of training completed pursuant to the New Mexico Safe Pursuit and LCPD General Order 208. The LCPD policy (which mirrors state law) states:

### **208.02 PURSUIT**

A. A law enforcement officer may initiate a pursuit to apprehend a suspect who:

1. The officer has reasonable grounds to believe poses a clear and immediate threat of death or serious injury to others.

or

2. Who the officer has probable cause to believe poses a clear and immediate threat to the safety of others that is ongoing and that existed prior to the pursuit.

B. A law enforcement officer shall not initiate or continue a pursuit when the immediate danger to the officer and the public created by the pursuit exceeds the immediate danger to the public if the occupants of the motor vehicle being pursued remain at large.

The Pursuit Review recommended the pursuit be found within policy. The witness reported that the driver of the motorcycle was driving with a handgun, which he

extended and pointed at another vehicle, creating a clear and immediate threat to others. The involved officer broadcast his pursuit effectively, including the route of the pursuit, the subject's description and actions, and the subject's license plate number.

The sergeant appropriately ordered the pursuit terminated, and the officer complied.

## OIR Group Review

OIR Group reviewed the entire file, including available body-worn camera and the Pursuit Review Memorandum.

Based on this review, we found that the review of this vehicle pursuit was thorough and that the outcome is consistent with LCPD's Code of Conduct. It was appropriate for the officer to initiate the pursuit, given the reported allegation, but likewise appropriate for the sergeant to terminate the pursuit when he did, given traffic conditions and all other available information.

We did find one issue related to officer safety that was not adequately addressed in the documentation of this incident. The Pursuit Review states that when the officer first contacted the motorcycle driver, he "exited his patrol unit with distance and cover." In our review of the officer's body-worn camera video, we noted that the officer got out of his patrol car, closed the door, and began walking toward the motorcycle while addressing its driver. He reached the front of his patrol unit when the motorcycle pulled away. He was still some distance away from the motorcycle, but had no cover. Given the report that this subject was armed and had pointed his weapon at another vehicle, it would have been tactically safer for the officer to remain behind his patrol car door while giving the subject commands and waiting for backup (which was nearby, responding to the initial dispatched call). Ideally, a pursuit review will evaluate these tactical issues as a constructive training opportunity.

## Policy, Training, or Equipment Recommendations

Beyond our evaluation of the pursuit itself, we note one positive aspect of LCPD's review of the incident: the Pursuit Review Memorandum was completed by a sergeant uninvolved in the pursuit. In our reviews of other law enforcement agencies, we often see force or pursuit reviews completed by the on-scene sergeant who directed the force or supervised the pursuit. Having an involved sergeant write an evaluation that concludes the force or pursuit was within policy obviously veers from the ideal of objective analysis in ways that undermine the legitimacy of the process. We commend LCPD for its practice of tasking uninvolved supervisors with conducting pursuit reviews.

## LCPD's Management Response

After sharing an initial draft of our report with LCPD, we received the following response:

**Case 2021VP-006** - The Las Cruces Police Department appreciates the review completed by the OIR Group. This draft reflects a training/ officer safety issue that should be addressed. Keeping the tactical advantage over the suspect is a goal to keep officers safe. We train our officers that officer safety is paramount in any situation and that time is on our side when dealing with possibly armed subjects. Because of the review our academy has been instructed to add a segment covering cover and concealment in our upcoming mandatory biennium training. This will be added to our normal training and used in every training going forward.



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OIRGroup.com

TO: City of Las Cruces  
FROM: OIR Group  
DATE: November 14, 2021  
RE: Review of Hotline Complaint #64

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## 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.

OIR Group received the above-referenced case file on October 26, 2021.

## Case Summary

LCPD received an anonymous complaint from the City of Las Cruces' Ethics Hotline. The complaint stated that LCPD had posted a photo of two Hispanic officers with their LCPD uniforms modified as "stereotypical gang members" and a photo of two Hispanic officers in regular uniform on May 5, commonly the date of the holiday "Cinco de Mayo." The complaint alleged that the Department was mocking Hispanic individuals. According to the complaint, these photos were posted "on [the Department's] feed."

The complainant requested that the two officers be counseled and reprimanded.

## LCPD's Investigation and Analysis

LCPD consulted with the City Attorney's Office and determined that this case did not rise to the level of a formal misconduct complaint. As such, LCPD followed the City Manager's preferred review format, which included an informal investigation and a memorandum from LCPD to the City Manager outlining the facts and any outcomes.

In the course of its investigation, IA discovered that the recruitment officers from the LCPD Academy were using the social media platforms Tik Tok and Instagram for outreach. On May 5, 2021, these officers posted a short video on Tik Tok and Instagram featuring two screenshot images of female Hispanic officers and language wishing the community a happy Cinco de Mayo. IA also determined that these screenshots were taken from a 2018 YouTube video created by the Department for a national "lip sync" challenge.

In that 2018 video, two female Hispanic officers were lip syncing to a popular hip hop track and had modified their uniforms to represent a 1990's hip hop style, which included a bandana, dark lipstick, and a shirt with only the top button fastened over a white t-shirt. One officer was making a peace sign with her right hand. This was part of a well-intentioned, Department-sponsored effort at public relations, the conceit of which was to show a few "rejected" song excerpts (including that one) before featuring a humorous full-length video of LCPD officers performing to a country-western song.

Recognizing the potential concern with the imagery in question, particularly when viewed outside of its original context, IA immediately removed the May 5 post from all social media platforms.

IA interviewed three personnel from the Academy who were involved in creating and posting the Tik Tok content. According to the IA memorandum, they stated that the post was not intended to mock Hispanics in any way and was intended to increase recruitment.<sup>1</sup>

The Department counseled the officer who initiated the post on exercising caution when posting on social media. This officer agreed that the post could be "taken the wrong way."

Further, the Department concluded the following:

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<sup>1</sup> As this was not a formal IA investigation, these interviews were not recorded.

- Social media should no longer be used for recruitment efforts.
- All other social media posts shall go through the Department's Public Information Officer (PIO) and shall be approved by the Chief of Police prior to posting.

## OIR Group Review

LCPD provided OIR Group the memorandum written by IA to the City Manager, a link to the original 2018 YouTube post, and photos of the Tik Tok post in question. OIR Group reviewed this evidence.

We found that the investigation itself was complete, objective, and thorough, and concur with the outcome. At the same time, though, there were *mechanical* aspects of the process that seemed needlessly convoluted. In particular, we found it strange that – while addressing the substantive issues appropriately – the Department refrained from simply entering and resolving the case within its formal Internal Affairs tracking system.

Instead, our understanding is that distinctive (but, in our view, ultimately peripheral) factors led to the decision to take an informal approach. These included that the complaint was submitted anonymously, that the complainant's own request was simply that the relevant officers be counseled, and that it had gone through the City's Ethics Hotline – thus prompting consultation with the City Attorney and City Manager.

We followed up with LCPD leadership as to these issues. It was reassuring to learn that anonymity is generally not dispositive in shaping the Department's willingness to pursue allegations (though it does, of course, potentially affect the thoroughness of an investigation when the complainant is not available for an interview). Moreover, while we recognize that "customer satisfaction" is one of the core goals of the complaint process, we also think the preferences of the complainant – in any direction – should be less relevant than the substantive conduct in determining the appropriate response.

Finally, we understand that the unique circumstances of this case (including the City's awareness/endorsement of the original video campaign) argue against the need for a formal disciplinary *consequence*. Nonetheless, in our opinion, any complaint of officer misconduct should be logged, evaluated, and resolved within LCPD's Internal Affairs tracking mechanisms.

We recognize that some complaints lack substantive merit on their face, and that others are quickly refuted by readily available evidence. And this case represents another relevant scenario for which a full-fledged investigation is not required. But we also think

that the cleanest, most efficient way to address such situations is to process them and document the relevant outcomes within the “regular” IA protocols.

In fact, LCPD did take most of the same steps that they would have taken if this had been a formal complaint. And while no intentional misconduct occurred, IA took down the post, counseled the involved officer and proposed larger-scale policy changes. This is all worthy of documentation in the formal IA system.

In our recent conversation with LCPD leadership, the Department showed receptivity to a re-consideration of its IA case classification system, both in light of this case and more generally. As always, we appreciate the dialogue and the Department’s willingness to engage.

## RECOMMENDATION 1

When made aware of any complaint of officer misconduct, LCPD’s IA should follow its established IA protocol for all cases, regardless of their origin, and track all complaints through their internal system from intake to final disposition.

## Policy, Training, or Equipment Recommendations

The memorandum to the City Manager suggested changes to the social media policy that should be formalized in Department policy. The Department informed us that they have a Compliance Sergeant in Research and Development who tracks these recommendations and will update policy on a periodic basis. We commend the Department for staffing this important role.

We noted that the memorandum to the City Manager stated that LCPD should ban the use of social media platforms for recruiting purposes. Despite the unfortunate outcome in this particular situation, we encourage the Department to revisit this recommendation and, instead, consider developing new policies and procedures for use of social media. Social media, when used carefully and in a specific, limited way, can be an effective and powerful tool for reaching potential recruits.

## RECOMMENDATION 2

LCPD, and specifically Research and Development, the PIO and Recruitment, should consider developing policies and procedures for effective and limited

use(s) of social media platforms for recruitment rather than banning its use all together.

Finally, the Department noted that the screenshots in question came from a 2018 “Lip Sync Challenge” YouTube video that is still available online. If the Department has determined that the *screenshots* were potentially offensive to its community, the Department might also consider removing the original video containing this imagery.

### RECOMMENDATION 3

LCPD should consider removing the 2018 “Lip Sync Challenge” video from YouTube.

### LCPD Management Response

Hotline Complaint #64 - The Las Cruces Police Department appreciates the review completed by the OIR Group.

OIR makes a valid recommendation on formalizing all hotline complaints through the Internal Affairs protocol. While all steps were taken to ensure a thorough investigation, all hotline complaints will now be entered into the IA protocol.

Social media platforms for recruitment are still being utilized, content must be authorized at the Academy Lieutenant and Police Chief level as an added safeguard.