

Hermosa Beach Police Department

Revisit of 2013 Review of Internal Investigations and Review Process:

Progress Report of 2013 Recommendations

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In 2013, OIR Group was requested by the City Manager of Hermosa Beach to conduct an independent review of the internal investigation and review functions of the Hermosa Beach Police Department. OIR Group conducted that review and prepared a report that contained 29 recommendations designed to improve those processes. More recently, as part of the settlement agreement in the Miller lawsuit, the City of Hermosa Beach agreed to request OIR Group to review the Police Department's progress on the 2013 recommendations and to have City Council host a public dialogue regarding the updated review. Following is OIR Group's report responsive to the City's request.

In our 2013 review, we made 29 recommendations. The current review is intended to determine the degree to which there is evidence of implementation of those recommendations. As detailed below, we found evidence of implementation of ten of the initial 29 recommendations. For six of the recommendations (4, 11, 12, 14, 20, and 29) while we found some indicia of progress, we found room for improvement with regard to implementation. The issues that were the subject of the remaining thirteen of the 2013 recommendations did not arise in the investigative materials examined in connection with this review. Finally, we identified seven additional recommendations for the Department's consideration.¹

It should be noted that, as with the initial review, OIR Group's revisit was accompanied by complete cooperation of the City and its Police Department. OIR Group received unfettered access to raw investigative materials and related materials, as well as the opportunity to talk with HBPD supervisors and command staff about these processes. The insights set out here would not have been possible without that access and cooperation.

We would also note that our reviews in both 2013 and 2016 did not find a police department with protocols significantly divergent from other similarly situated law enforcement agencies. Moreover, we did not consider simply whether HBPD was performing adequately in these areas; rather we advanced recommendations designed to having the Department conduct

¹ It should be noted that the current Chief was not the Chief of Police when we completed the 2013 review.

business at a “gold standard” commensurate with the most enlightened and progressive policing.

I. Review of HBPD Progress on 2013 Recommendations

A. Recommendations 1-5 (dealing with recorded evidence): Evidence of implementation of Recommendations 1, 2, 3, and 5. Full implementation not achieved as to Recommendation 4.

HBPD should expect that its officers record all citizen encounters and hold officers accountable when there is no justifiable reason for not having done so. HBPD officers are equipped with audio recorders so that citizen police encounters can be recorded. In several instances reviewed during this review period, officers neglected to record citizen police contacts. No formal inquiry was made regarding why the officers failed to activate their recorders during these contacts.

In 2013, OIR Group made five recommendations (Recommendations 1-5) regarding how to deal with recordings. With regard to four of the five recommendations, we saw progress in implementing the recommendations. However, with regard to Recommendation 4, we did not see full implementation:

Recommendation 4: When officers do not record citizen officer encounters, the investigation should make inquiry of why and if there is not justifiable reason for not having done so, HBPD should hold those officers accountable.

As noted above, there was no apparent inquiry into why officers did not engage their recording equipment during some citizen encounters. We urge the Department to implement this recommendation so that such inquiry occurs on a going forward basis.

B. Recommendation 6: Obtaining Officer’s Version of Events: Evidence of Systemic Implementation.

Consistent with Recommendation 6, when a complaint is received and an investigation is initiated, HPBD obtains the officer’s version of what has transpired.

C. Recommendations 7-8: Improvements to the Citizen Complaint form accomplished.

HBPD has revised the complaint form to remove a warning that citizens could be prosecuted for making a false complaint and to provide ample space on its complaint form for the complainant to provide a detailed narrative. In the 2013 review, we noted that the complaint form in use at the time contained an unconstitutional warning that complainants could be prosecuted for making a false complaint. We also noted that the citizen complaint then in use contained only space for five lines of text for the narrative account of the incident. As a result, we offered the following recommendations:

Recommendation 7: The Citizen Complaint form should be revised so that ample space is provided for the complainant to provide factual details of the incident.

Recommendation 8: The reference on HBPD's Citizen Complaint form that citizens could be prosecuted for making a false complaint should be removed.

In our current review, we learned that the Citizen Complaint form had been revised so that the unconstitutional warning had been removed and that additional space was available for the complainant to set out a more complete narrative of the incident.

D. Recommendation 11: Implementation not achieved.

HBPD should endeavor to interview complainants close in time to when the complaint has been made. In one case reviewed by OIR Group, the complainant was interviewed six weeks after the initial complaint was received. In another case, there was no outreach to the complainant until at least eight days after the initial complaint. And in a third case, it was one month before the complainant was interviewed. No explanation was provided in the investigative reports about the reasons for the delay. These delays are inconsistent with Recommendation 11 of the 2013 review:

Recommendation 11: HBPD should develop internal protocols that ensure that, whenever practicable, complainants should be interviewed close in time to when a complaint is made. If there are reasons why compliance with the protocols was not practicable, the investigative report should note that reason.

As stated in the 2013 review, when the complainant is interviewed close in time to the incident, the resulting investigation will be more effective. If there is a delay in obtaining the complainant's complete version of the incident, in addition to memories fading and the natural deleterious consequences of obtaining a stale witness statement, the complainant may also believe that the Department is not that concerned with the complaint and not very serious about conducting an effective investigation. We urge HBPD to again consider Recommendation 11.

E. Recommendation 12: Implementation not apparent in all cases.

The need to interview percipient witnesses in force cases. One complaint investigation reviewed by OIR Group involved an allegation of excessive force and unprofessional treatment while the complainant was in custody and awaiting treatment at a hospital. The force incident may have been witnessed by hospital staff yet the investigation made no attempt to identify and then interview such witnesses.²

In our 2013 review, we noted the need to ensure that potential witnesses to allegations of excessive force are identified and interviewed.

Recommendation 12: HBPD should develop protocols to ensure that percipient witnesses to allegations of excessive force are interviewed.

In the one force case reviewed during this review, there was no effort to identify and interview any potential civilian witnesses to the allegations of excessive force. We urge HBPD to implement this recommendation on a going forward basis.

F. Recommendations 14-15: Evidence of systemic implementation but more consideration needed re scoping of investigations.

Mixed evidence about whether internal investigations are being sufficiently broadly scoped; additional allegations of misconduct learned during the investigation were appropriately

² Moreover, there was no apparent effort to contact the hospital to learn whether the force incident may have been captured by video cameras. Please see additional discussion later in the report.

pursued. OIR Group reviewed a complaint that an HBPD employee was disrespectful when he issued a parking citation. While the tape-recorded encounter showed that the allegation was unfounded, the supervisor admonished the employee about whether the contact could have amounted to a detainment, instructed the employee about what violations to include in the citation, and reminded the employee that HBPD policy requires employees to identify themselves when asked to do so. The holistic approach in these cases is consistent with Recommendations 14 and 15.

Recommendation 14: HBPD should develop protocols designed to ensure that any internal investigation is scoped broadly so that the incident can be effectively reviewed for accountability and systemic issues such as training, supervision, equipment, and policy. Any current policy statement that suggests a contrary approach should be revised.

Recommendation 15: The Department should develop protocols to ensure that when it learns of additional allegations of misconduct through an internal investigation, those allegations are also pursued and investigated.

As noted above, the HBPD supervisor did not limit his inquiry into whether the employee was rude but took advantage of the complaint to address important related issues with the employee. In a second case, additional allegations of misconduct which became known to the Department during the internal investigation were also pursued. These types of holistic reviews are consistent with best practices of internal investigations.

However, in a third investigation, the subject employee complained that she should not be held accountable because the policy that she was accused of violating was not clear and that she had been provided no training with regard to appropriate procedure on how to handle recyclables illegally possessed by scavengers. A more broadly scoped investigation would have pursued these issues and developed a broader corrective action plan.

When this matter was raised with HBPD, the response was that the employee should well have known that the way in which she handled recyclables was tantamount to theft and the Department should not need to train its employees on its prohibition on stealing. However, HBPD misses our point; even if the defense raised by the employee might not have affected her

own culpability, the Department should have made inquiry into whether sufficient guidance and training was being provided its employees regardless.³ Internal investigations can alert police agencies to other potential issues in the ways they are doing business and those issues are deserving of appropriate follow up.

In a fourth case, the Department recognized that new law required a warrant before an officer could peruse an arrestee's cell phone and recommended that a training bulletin be prepared with regard to the new law. While such information was circulated Department-wide, the initial investigation did not sufficiently also inquire into whether there was a legitimate law-enforcement purpose for the officer going into the cell phone. The investigation did not fully evaluate this aspect of the officer's conduct in determining appropriate accountability. We urge that the Department emphasize the need to broadly scope any investigation consistent with Recommendation 14.

G. Recommendation 20: Use of force not timely reported.

The need for HBPD to more closely monitor and enforce its force reporting policy. OIR Group reviewed a complaint investigation involving allegations that excessive force was used while the individual was in custody awaiting treatment at a hospital. Current Departmental use of force policy requires that a use of force report will be submitted whenever an officer "applies weaponless physical force that causes visible injury or the complaint of injury." The officer's audio recording of the incident indicates that the subject complained of the force contemporaneous with the incident, alleging that the officer had choked him. No use of force reports were prepared by the officer with regard to the arrestee's complaint of injury. Further,

³ In fact, the investigation itself revealed contradictory responses among the interviewed employees and supervisors about how to handle recyclables with some indicating that they should be booked as evidence, others indicating that they should be placed in the nearest recyclable bin, another responding that they should be taken to the City yard, and yet another indicating that they could be returned to the scavenger. The results of the investigation were indicative of widespread confusion about how to handle recyclables and ideally HBPD should have learned from the investigation of the need to provide training so that its employees deployed a consistent and uniform way to handle scavengers and illegally obtained recyclables.

there is no evidence that the officer reported his use of force to a supervisor contemporaneous with the incident.

In our 2013 review, we recommended that HBPD more closely audit its use of force reporting policy:

Recommendation 20: HBPD should develop protocols requiring officers to immediately report to a supervisor when an arrestee complains of pain or injury subsequent to a force incident. The protocols should also require supervisors to make further inquiry of the arrestee regarding the complaint and ensure its documentation.

The fact that in the incident reviewed that there was no evidence that the officer reported his force to a supervisor and did not complete a use of force form indicates that current Department policy and the OIR Group recommendation was apparently not enforced. We urge that the Department revisit this recommendation.

H. Recommendation 23: Evidence of accountability for low level violation.

Officers properly held accountable for low level policy violations. OIR Group reviewed a complaint investigation consisting of numerous allegations, including use of excessive force. While the more serious allegations, including the allegations of excessive force, were not sustained, HBPD did hold two officers accountable for unprofessional conduct relating to their mocking of the complainant while he was in their custody. As part of the remedial action, a command staff officer was assigned to discuss the incident with the officers, reminding them of the significance of their words and the obligation to remain professional.

This outcome was consistent with Recommendation 23 from the 2013 review:

Recommendation 23: Supervisors who review internal affairs investigations must be instructed to hold officers and first level supervisors accountable who commit low level policy violations. If subsequent to such instruction, reviewing supervisors fail to hold such employees accountable, those supervisors must be held accountable by the Chief of Police.

I. Recommendation 25: Feedback being provided to officers.

Feedback being provided to officers. As discussed elsewhere in this report, we reviewed cases in which supervisors either took the initiative or were called upon to provide feedback to HBPD employees about their performance. In our 2013 review we made the following recommendation:

Recommendation 25: HBPD should develop investigative and review guidelines so that feedback is provided back to the involved officers regarding their performance.

As we indicated in our 2013 review, we noted that in addition to being a mechanism to collect facts to identify whether there is any legitimacy to the complaint, the review process can and should be used to return individualized training, feedback, and insight to the impacted employee. Our current review found evidence that feedback is now regularly being provided to officers.

J. Recommendation 29: Retention recommendation not implemented

Retention of internal affairs investigations and complaints still limited to five years. California law requires that all complaint investigations be retained for at least five years. However, there is no bar to retaining such materials for longer periods of time. In fact, the two largest law enforcement agencies in Los Angeles County retain all such materials permanently. A retention period longer than five years has significant benefits; most importantly, the ability to have available the complete history of an employee's prior investigations of misconduct rather than having such material destroyed after five years. As a result, in 2013 we made the following recommendation:

Recommendation 29: HBPD should modify its protocols so that there is no purging of internal affairs investigations and complaints until at least five years beyond the employment end date of the employee.

While longer retention has benefits, there is no real advantage to purging such materials at five years. Accordingly, we recommend that the Police Department and the City implement this recommendation.⁴

II. Additional Recommendations

Recommendation 2016-1: HBPD should create written protocols designed to ensure that the complainant is interviewed as soon as possible and that the investigation is begun promptly.

Recommendation 2016-2: HBPD should develop internal deadlines for the review of investigations similar to the deadline for completion of investigations.

HBPD should reexamine the time lags in initiating an investigation and completing the review process. Under California law, in order to formally discipline a peace officer, an internal investigation must be completed within one year of the time the Department became aware of the investigation. However, and to its credit, HBPD has created a ninety day internal requirement for investigations to be completed. If an investigation cannot be completed within ninety days, the investigator needs to seek authorization for an extension.

However, there is often a significant time lag in the Department between the time a complaint is received and an investigation is officially opened.⁵ This lag has real consequences; as noted above, the result may be that the complainant is not formally interviewed until days or sometimes weeks after making the complaint. And, as noted above, by the time the investigator reaches out to the complainant, he or she may not be as interested in pursuing the complaint. The time lag also can be viewed by the complainant that the Department does not consider the complaint serious and is not that interested in learning about it. Moreover, the best time to obtain the facts of an incident is in the hours or couple of days within its

⁴ Changing the five year retention period may require a change in City policy. If so, we urge the City to support this recommendation and make any necessary changes.

⁵ This time lag is apparent even in internally generated investigations. For example, it took over two months between the time the Department was aware of an internally generated allegation of misconduct and the opening of an investigation.

occurrence, not days or weeks later. It appears that the lag is due to the delay during which the complaint is received, processed, forwarded up the chain of command, and approved for investigation by the Chief. For the reasons stated here, HBPD should reexamine that bureaucracy and develop a more streamlined system whereby the investigation can be initiated immediately, the complainant interviewed close in time to the incident, and the facts collected shortly thereafter.

At times, we also observed another delay in the time it took for a completed investigation to be reviewed by command staff. In one case, the investigation was not reviewed until 3 ½ months after it was completed. In another case, it took approximately six months for the investigative review process to be completed. As with the internal deadline for investigations, HBPD should create an internal deadline for the review process.

Recommendation 2016-3: HBPD should develop investigative protocols to ensure that all percipient witnesses to an incident are interviewed.

Investigators should investigate all percipient witnesses to an incident. In one case, while the complainant was interviewed about the incident, the investigator determined there was no need to interview his spouse even though she was clearly a percipient witness to the incident. Best investigative practices dictate that all percipient witnesses to an incident should be interviewed.

Recommendation 2016-4: HBPD should develop investigative protocols that instruct interviews to be conducted in person when practicable. When not practicable, the investigative report should state the reason for the need to conduct the interview telephonically.

Investigators should avoid telephone interviews. In one case, a number of the witness interviews were conducted telephonically. Best investigative practices discourage the use of telephone interviews because the investigator cannot see demonstrations, body language, and other cues when interviews are conducted over the phone. Moreover, taking the time to meet witnesses in person emphasizes the importance that the Department places in the

investigations. Especially in a community such as Hermosa Beach where witnesses will usually live in close proximity to the police station, it is advisable to conduct interviews in person.⁶

Recommendation 2016-5: HBPD should ensure that in all force investigations, inquiries are made to ascertain whether the incident was captured on video.

HBPD should ensure that an inquiry of potential video evidence of a force incident is initiated.

Video evidence of a force incident is invaluable to ascertain the appropriateness of the force. In one case reviewed, the force occurred in a hallway of a hospital setting. Oftentimes, hospitals are equipped with surveillance cameras. However, there was no apparent effort to determine whether this force incident was captured on video. We recommend that the Department develop investigative protocols so that such inquiry is made in all force incidents.

Recommendation 2016-6: HBPD should consider listing the nature of evidence collected as part of its investigation in its closing letter to complainants.

HPBD prepares detailed hand-crafted letters to complainants. California state law requires police agencies to notify complainants of the results of an internal investigation. In too many jurisdictions, at the end of an investigation, the complainant will receive a boilerplate form letter informing them of the completion of the investigation, leaving them often frustrated and with the impression that their complaint was not taken seriously.

However, our review of the complainant letters prepared by HBPD found them detailed and hand crafted to the issues raised by the complainant. This type of communique can message complainants that their concerns had been considered by the Department, even if they had hoped for a different result.

⁶ HBPD responded that there were extenuating circumstances in the case reviewed that made it difficult to schedule in person interviews with the witnesses. However, there was no documentation or explanation of the extenuating circumstances in the investigative report. We agree that there may be times in which in person interviews may prove impracticable; that is why our recommendation is that when there are such challenges, HBPD should move forward with telephone interviews and explain the extenuating circumstances in its report.

There is one aspect of the letters deserving of comment. While the letters appropriately say that state law prevents the Department from discussing the details of the investigation, there is no prohibition on relating to the complainant what information was collected and reviewed by the police agency in reaching its investigative decision. Jurisdictions that provide that information give additional solace to the complainant that the concerns raised were taken seriously and we suggest that the Department consider including this information in its letter to complainants.

Recommendation 2016-7: HBPD should consider improving its cataloguing of complaints so that the concerns and the Department's response are easily retrievable.

Inability to readily retrieve documentation of complaints and any Departmental response. In one case reviewed, a business owner reached out directly to the Chief regarding concerns she had about the performance of a responding police officer. When we asked about the matter, we were initially informed that no documentation existed. Eventually, the Department was able to produce an email stream setting out the complaint and HBPD's response. As it turned out, the matter was appropriately handled as a training issue.⁷

The issue in this matter is not the eventual handling of the concern but the fact that HBPD could not readily access the matter and its response. The Department should consider developing improved ways to catalogue complaints that do not rise to the level of a formal investigation so that retrieval of those concerns and the Department's response can be more facile.

⁷ It is unclear from the Department's documentation to what degree the business owner learned about how the Department handled the concerns that were raised.

