

Las Cruces Police Department

SECOND SEMI-ANNUAL CASE REVIEW AUDIT REPORT

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OIR

GROUP

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Introduction

OIR Group ¹ is pleased to have completed a full year as the City of Las Cruces' Independent Police Auditor, a role that we have fulfilled since May 1, 2021.² In our role as the IPA, OIR Group reviews investigations of formal civilian 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. The independent review adds a layer of outside scrutiny to the Department's efforts at addressing allegations of misconduct, and our recommendations are intended to enhance the future strength of the underlying processes.

We also review closed litigation against the City of Las Cruces that involved members of the LCPD. This is an additional window into the performance issues that create potential liability, with an eye toward future risk management.

And, as part of our assignment, we produce a Semi-Annual Audit Report to share our work with City leadership, stakeholders, and the community to increase communication and transparency. This is our second such report.

In this second Report, we discuss our review of Internal Affairs cases that were initiated, investigated and closed by LCPD between December 1, 2021,

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

Full biographies of each team member are provided at the end of this report as Appendix C.

² An Independent Police Auditor, or IPA, is one form of civilian oversight of law enforcement that is increasingly being considered by jurisdictions throughout the country.

and May 31, 2022. 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.

A year into our engagement, we are pleased to report that the Department has made notable improvements to the Internal Affairs complaint process. We initially identified several systemic issues that suggested room for improvement in the LCPD complaint process – mostly related to the manner in which cases were classified and investigated -- that the Department has already implemented or is in the process of implementing. For example (and as we detail later in this Report), the Department immediately improved its case classification system to better track cases that rise to higher levels of misconduct. The Department now consistently makes official findings for all cases, even those more straightforward complaints that are resolved after viewing body-worn camera video and without a more extensive, formal investigation (called the “Preliminary Inquiry” level), so that every case is file is complete and accurate.

The Department also accepted or is considering recommendations related to other internal review systems, such as their use of force review process; as we detail later in this Report, LCPD is currently expanding its use of force review process to better evaluate force and the performance of officers in the field. The Department has addressed our recommendations regarding training concerns, the role of supervisors, and policy (most notably, considerations regarding the use of the Taser and related policy).

We find that the Department continues to be extremely cooperative and collaborative, and receptive in addressing our questions and responding to our ideas for change. And it is with that continued improvement in mind that we detail our findings from this review period. The considerations and recommendations offered in this Report are made in recognition of the importance of internal review to the operational effectiveness and public legitimacy of LCPD.

Internal Affairs Case Review

As reported by LCPD, in the period from December 1, 2021, to May 31, 2022, LCPD initiated 37 Internal Affairs cases across all case categories.³

Our scope of work requires that we review completed and closed investigation files from formal citizen complaints, Internal Investigations, and complaints with allegations against LCPD that are reported to the City of Las Cruces Ethics Hotline. This report covers cases that were initiated, investigated, and closed by LCPD from December 1, 2021 to May 31, 2022.

We received and reviewed sixteen cases⁴ in this period:

- **5 II.** Internal Investigations, or “II,” are 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.
- **11 EIC1.** External Investigations, or “EI,” are complaints reported by the Las Cruces public. These fall into one of three sub-classifications based on the perceived seriousness of the allegations.⁵ Category 1, which we review, is a “formal” complaint that is documented and investigated by Internal Affairs.

In our first Report, we also reviewed Supervisory Matters that rose to the level of serious misconduct. However, as a result of our recommendations regarding case classification, LCPD now classifies these matters as Internal Investigations (II). This re-classification is more effective to track cases involving more serious misconduct.

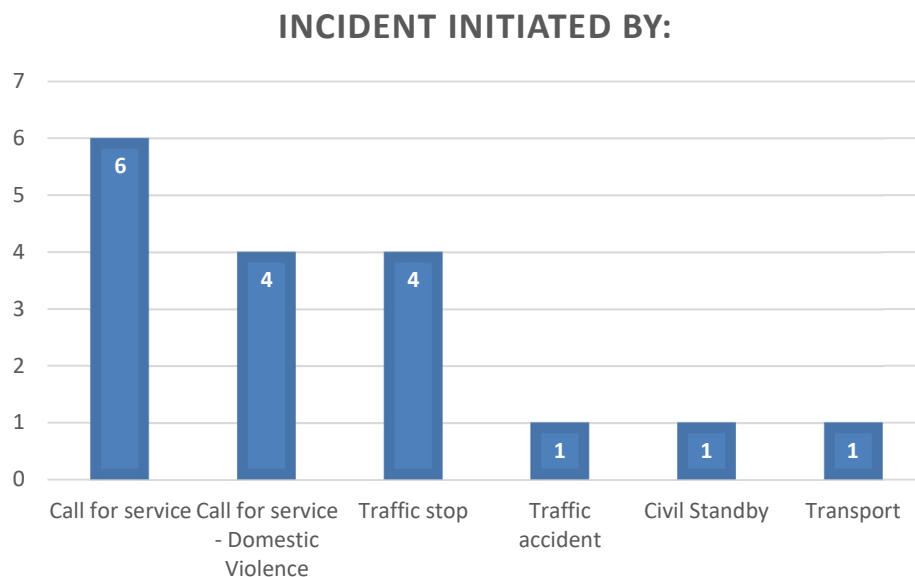
³ This data was provided by LCPD Internal Affairs from its IA Pro system.

⁴ We found that Department investigated two distinct complaints filed by the same complainant on the same day under one EIC1 number: 2021EIC1-016. As such, some of the counts in this Report will total 17.

⁵ Of these External Investigations, OIR Group only reviews EI Category 1, or “EIC1.”

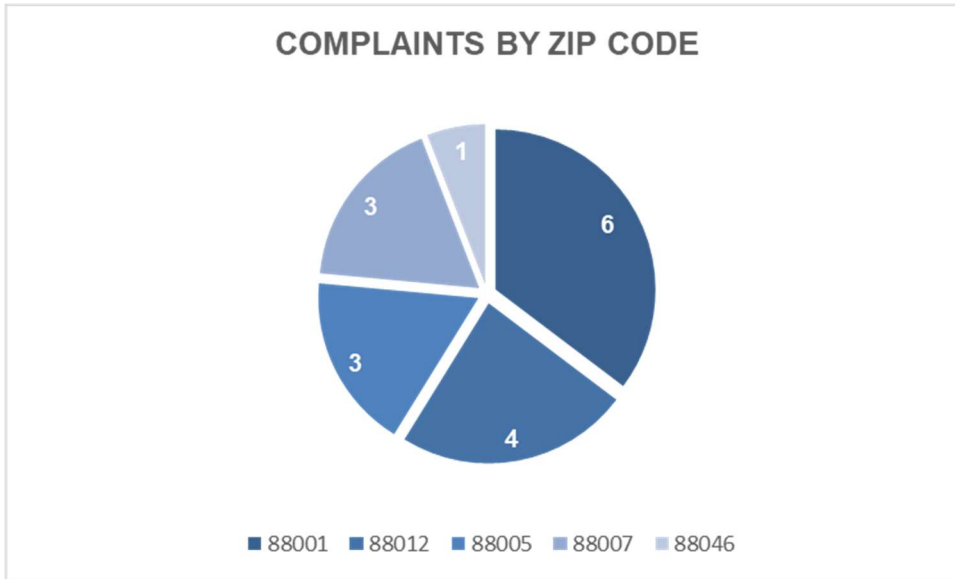
Civilian Demographics

Eleven 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 (10) stemmed from employee’s actions or conduct during a call for service. Notably, four of the ten “call for service” cases involved calls for service related to incidents of alleged or in-progress domestic violence.⁶



⁶ In our first Report, we noted a potential trend in policy violations during calls for service related to domestic violence, welfare checks and/or domestic/civil stand-bys. We reported that LCPD had recognized this trend and issued a Department-wide Training Bulletin regarding the Domestic Standby General Order after seeing repeated policy violations, and recommended that LCPD also consider additional, Department-wide training to supplement the bulletin it has issued, which it reportedly held in February 2022 and plans to repeat annually. Most cases that we reviewed this period occurred prior to these training updates. We will continue to monitor the trend in violations related to these types of calls for service to measure the effectiveness of the training moving forward.

As in the previous Report, of the 17 complaints, most (6) were initiated by incidents in or residents of the zip code 88001.



In our first Report, we noted that LCPD’s internal tracking system did not always note the race of the complainant unless it was provided by the complainant or relative to the investigation. As such, most cases in our first review had no record of the complainant’s race. However, LCPD improved its tracking and reported race in every case during this period. Eight cases involved a Hispanic complainant, 7 cases a white complainant, and 1 case a Black complainant.

Officer & Allegation Data

These complaint cases involved 59 formal allegations against 27 LCPD employees across several rank levels.⁷ According to the Department, 15 of these employees are Hispanic and 12 are white.

⁷ At the time of the investigation, 1 accused employee was a Detective, 2 were Sergeants, 22 were Officers, 1 was a Transport Officer, and 1 was a non-sworn Police Service Aide.

In our first report, we stated that our small sample size did not result in any statistically significant findings relative to demographics. We now have a larger total case count. We looked for, but did not identify, any notable trends in the following categories:

- Race of involved officers. We reviewed the race of the accused officers. There were no statistically significant findings that officers of a particular race were more likely to engage in potential misconduct or receive complaints of misconduct. Similarly, we looked for any notable trends in the findings relative to officers' race (e.g., was the Department more likely to sustain misconduct for officers of a certain race or issue more punitive discipline, which may indicate an internal bias); again, we did not find any significant findings in this area.
- Race of complainant relative to race of officer(s) generally. We reviewed the race of the complainant relative to the race of the accused officer(s); for example, we reviewed if officers of a certain race were more likely to engage in misconduct against complainants of a certain race (e.g., white officers against Hispanic complainants). We did not find any statistically significant results here.⁸ Most often, we found that the race of the involved officer(s) was the same as the race of the complainant; this small sample supports the Department's assertions that their personnel reflect the demographics of Las Cruces.
- Traffic stops. Traffic stop data is often used in studies of biased policing. We reviewed the race of the complainant relative to the race of the officer(s) for complaints related to traffic stops specifically.⁹ Here again, we did not note any significant disparities to suggest a pattern of bias.

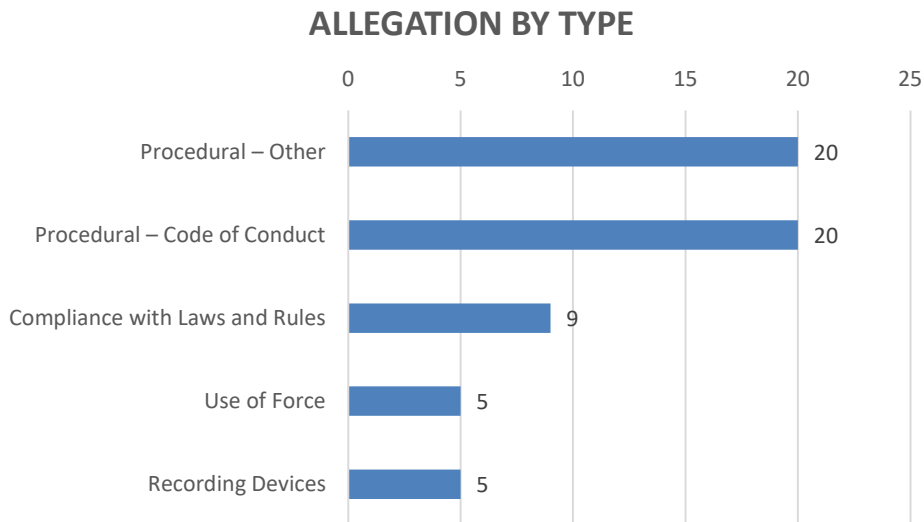
OIR Group intends to continue tracking officer and complainant demographics and will report any findings of significance related to race, area, and / or rank.

⁸ No cases reviewed in this period contained any allegations of racial bias.

⁹ It is important to note that such studies generally include a much larger sample size and are often done Department-wide. Here, we are very limited – this small sample only includes complaints of misconduct during a traffic stop. Again, none of these cases involved specific allegations of racial bias.

We also evaluated cases by allegation type to determine trends or areas of repeat concern. The allegation types were as follows:

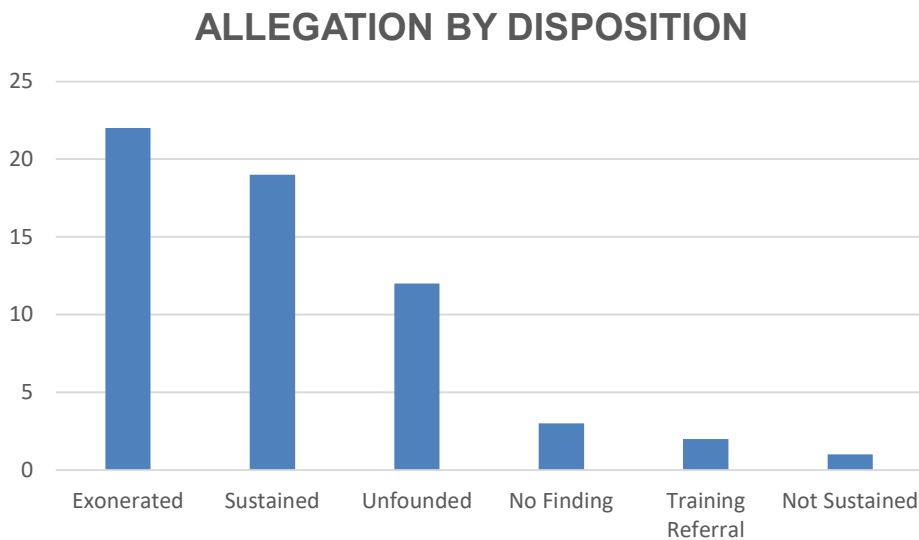
- Procedural – Other, which includes allegations of failure to investigate, reporting delays, or breaches of security / confidentiality, among others)
- Procedural – Code of Conduct, which includes conduct unbecoming, discourtesy, and insubordination, among others
- Use of Force, which includes allegations of excessive force
- Compliance with Laws and Rules
- Recording Devices, which involves an employee’s failure to activate a body-worn recording device or properly store recorded evidence



In this period, we saw an increase in allegations related to report writing and other procedural processes. Most often, the Department identified these procedural deficiencies in the course of investigating other allegations; for example, when pulling an Incident Report related to a complaint of discourtesy, the Internal Affairs investigator noted that the report was incomplete or not properly filed. Here, we commend the Department for identifying and framing allegations that are not part of the original complaint. And, as we detail below, this upward trend may suggest the need for more training regarding the procedural side of law enforcement work.

We also review case outcomes, or “dispositions.” In this period, officers were exonerated in 22 of these allegations, which means that the alleged action(s) occurred, but the office acted lawfully and within Department policy. Nineteen of the allegations (19) were sustained. One case was disposed before the Department implemented the new, OIR Group-recommended practice of making formal dispositions even when cases were closed out at the Preliminary Inquiry level; this resulted in three allegations that had “No Finding.”

And, for those sustained allegations, the discipline ranged from a verbal or written reprimand up to a 10-hour (1 day) suspension. In one case, officers were directed to training. In another, the Department recommended termination, but the officer resigned before termination proceedings were completed. We discuss our perspective and recommendations related to the Department’s “philosophy of discipline” in greater detail, below.



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 final memos with full

case summaries, recommendations, and LCPD's Management Responses, are included as **Appendix A** to this Report.

2020II-004

Department-initiated internal complaint related to an employee's illegal conduct with a female who the officer had previously transported during an arrest.

Transport Officer	Code of Conduct - Truthfulness	Sustained
Transport Officer	Code of Conduct - Criminal Conduct	Sustained
Transport Officer	Code of Conduct - Consorting	Sustained
Transport Officer	Code of Conduct - Conduct Unbecoming	Sustained

2022EIC1-004

Public-initiated complaint related to a traffic stop. Complainant alleged that an officer was discourteous and threatened to arrest her.

Officer	Code of Conduct - Conduct Toward Public	Unfounded
Officer	Code of Conduct - Unsatisfactory Performance	Not Sustained
Officer	Physical Arrest	Exonerated

2021EIC1-006

Public-initiated complaint related to a noise complaint. A complainant alleged that an LCPD officer used excessive force, arrested him without cause, and was rude.

Officer 1	Court Attendance	Sustained
Officer 1	Recording Devices	Sustained
Officer 2	Recording Devices	Sustained
Officer 1	Code of Conduct - Conduct Toward Public	Exonerated
Officer 1	Physical Arrest - Authority	Exonerated
Officer 2	Prisoner Transport	Exonerated
Officer 3	Prisoner Transport	Exonerated
Officer 2	Prisoner Transport	Sustained
Officer 1	Use of Force	Exonerated

2021EIC1-010

Public-initiated complaint related to a traffic accident investigation. The complainant alleged that the officer was not impartial and was rude. During the investigation, LCPD discovered misconduct related to report writing.

Officer	Police Reports	Sustained
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2021II-012

Department-initiated complaint related to possible domestic violence between an officer and his partner, a former LCPD employee. In the course of the investigation, LCPD discovered the misconduct of another employee who had shared confidential case information.

Detective	Code of Conduct - Security & Confidentiality	Sustained
Detective	Recording Devices	Sustained
Officer	Code of Conduct - General Standards	Unfounded
Officer	Code of Conduct - Criminal Conduct	Unfounded
Officer	Code of Conduct - Cruel, Unlawful, Improper Treatment	Unfounded

2021II-013

Department-initiated investigation related to an off-duty officer's DWI and his conduct during the administrative investigation.

Officer	Complaint Investigation	Sustained
Officer	Code of Conduct Criminal Conduct Prohibited	Sustained
Officer	Code of Conduct - Conduct Unbecoming	Sustained

2021EIC1-015

Public-initiated complaint related to the impound of a vehicle. Complainant alleged that the officers were discourteous.

Officer 1	Code of Conduct - Conduct Toward Public	Unfounded
Officer 1	Code of Conduct - Unsatisfactory Performance	Unfounded
Officer 1	Towing and Impounding	Exonerated
Officer 2	Code of Conduct - Conduct Toward Public	Unfounded
Officer 2	Code of Conduct - Unsatisfactory Performance	Unfounded
Officer 2	Towing and Impounding	Exonerated

2021EIC1-016

Public-initiated complaint related to two calls for service. In the first, the complainant alleged that an officer failed to cite the at-fault driver after a traffic collision. In the second, the complainant alleged that officers mishandled an investigation. This was the last case in which LCPD did not issue a formal disposition for a preliminary inquiry.

Officer 1 ¹⁰	Traffic Enforcement - Warnings	No Finding
Officer 2	Juvenile Interviews	No Finding
Officer 2	Crime Scene Investigation	No Finding

2021II-016

Department-initiated complaint related to negligent discharge of a firearm by a non-sworn employee. During the investigation, LCPD discovered misconduct related to report writing and failure to activate body-worn camera.

Police Service Aide	Code of Conduct - Criminal Conduct	Sustained
Officer	Recording Devices	Sustained
Officer	Police Reports	Sustained

2021EIC1-017

Public -initiated complaint related to two unique encounters with LCPD where the complainant alleged that officers were biased against him and were rude during a phone call. During the investigation, LCPD discovered peripheral misconduct related to report writing.

Sergeant	Code of Conduct - Unsatisfactory Performance	Unfounded
Officer 1	Domestic Family Disturbance	Unfounded
Officer 2	Domestic Family Disturbance - Reports	Sustained
Officer 3	Domestic Family Disturbance - Reports	Sustained

2021EIC1-018

Public-initiated complaint related to a call for service. Allegations included employees failing to activate their recording device and mishandling the call.

¹⁰ Where there was more than one employee of the same rank in the same case, we numbered the rank (e.g., Officer 1 and Officer 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.

Officer 1	Unsatisfactory Work Performance	Exonerated
Officer 2	Unsatisfactory Work Performance	Exonerated
Officer 1	Recording Devices	Exonerated

2021EIC1-019

Public-initiated complaint related to the complainant's arrest for DWI. Complainant alleged that the officers failed to book her property after arrest.

Officer 1	Evidence	Unfounded
Officer 2	Evidence	Unfounded

2021EIC1-020

Public-initiated complaint related to an officer's communication with the complainant's daughter during a call for service.

Officer	Domestic Family Disturbance	Exonerated
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2021II-022

Department-initiated complaint related to a use of force and subsequent arrest of a subject during a call for service.

Officer	Court Attendance	Training Referral
Officer	Police Reports	Training Referral
Officer	Physical Arrests	Exonerated

2021EIC1-022

Public-initiated complaint related to an officer's response to a mental health-related call for service. The complainant alleged that the officer was unprofessional, used excessive force, and had sexually harassed the subject of the call.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Physical Arrests	Exonerated
Officer	Use of Force	Exonerated

2021EIC1-025

Public-initiated complaint resulting from a domestic family disturbance call. Complainants alleged that officers entered the home without a warrant, used excessive force and lied to Child Protective Services regarding their child.

Officer 1	Domestic Family Disturbance	Exonerated
Officer 1	Use of Force	Exonerated
Officer 2	Domestic Family Disturbance	Exonerated
Officer 2	Use of Force	Exonerated
Officer 3	Domestic Family Disturbance	Exonerated
Officer 3	Use of Force	Exonerated

Review, Findings & 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.¹¹

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.

¹¹ 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

As we reported in January, we again found LCPD's internal affairs practices to be robust and effective. And the Department has shown its responsiveness to the auditing process by effectively implementing most of our recommendations in a short six-month timeframe.¹²

Here, we comment on newly discovered or recurring areas where LCPD systems and approaches might better align with the most effective practices.

Complaint Intake Form Modifications

In our January 2022 report, we identified aspects of the complaint intake 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. As we reported in January, the Department modified its complaint form to remove the first piece of such language, which read 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.

However, we noted that this second section is still included in the complaint form:

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

¹² The timeline of some cases may have overlapped with our first Report, meaning that that investigation was completed, or was nearly completed, prior to publication of our Report and related recommendations. For example, we reviewed one case where the Department had not yet implemented the process of creating formal findings for Preliminary Inquiry cases because that case was completed prior to publication of the recommendation.

knowledge. I understand that if I knowingly make false accusations, I may be subject to a criminal prosecution or civil penalties.

The Department committed to reviewing this language and further modifying the complaint form. We will continue to work with the Department to create a complaint form that in no way dissuades the public from reporting a complaint.

Following Investigation Protocol

In January, we reported that the Department did not always fully follow its investigative protocol for reviewing formal complaints. In this review period, we noted areas of continued challenge with this.

As we detail in this section, we first noted that LCPD does not always conduct its own interviews of complainant or potential witnesses. Second, we noted that LCPD was sometimes combining unrelated complaints from one complainant into one investigation, an issue that it quickly resolved within this same period. Finally, we noted that in some cases, LCPD did not thoroughly investigate all allegations. We discuss those process challenges in this section and offer recommendations.

In this period, we again noted that LCPD did not always conduct its own interviews of complainants or potential witnesses, relying instead on the complaint form only. We again 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.

In one case (see 2021EIC1-017), we noted that the Department “collapsed” two unique complaints by the same complainant into one case/investigation. While this initially seems practical, it can create process issues for the investigation itself (e.g., different officers, different fact patterns, etc.), for internal tracking (e.g., case counts and classification) and in transparency for the complainant (see our discussion of close-out letters below). LCPD immediately corrected this process concern as evidenced by cases 2022EIC1-

004 and 2021EIC1-015, where the investigator initiated unique investigations for two complaints submitted by the same complainant.

Finally, we noted two cases where the investigators did not thoroughly investigate all allegations. For example, in case 2020II-004, a complicated case of alleged domestic violence involving various Department personnel, we noted that the investigator focused more on exploring the interpersonal relationships between involved personnel than on fully investigating all evidence of the alleged domestic violence. In case 2021EIC1-025, where the complainants alleged excessive force and a potential head injury, the investigator did not seek any evidence, such as the complainant's medical clearance paperwork, to thoroughly investigate the alleged injury.

We recommended that investigators remain focused on the administrative allegations and on collecting any evidence that could prove or disprove them. Further, we recommend that LCPD should carefully review all available evidence to ensure a thorough investigation.

In their response to the cases listed herein, LCPD responded that "formal protocols will be adhered to on all investigations as recommended." We will continue to provide feedback on Department's adherence to effective investigative protocols.

Timeliness

In our January 2022 Report, we noted delays in opening a case or initiating an investigation. We noted timeliness concerns again in this review period. This time, they mostly occurred when LCPD was unable to "close out" an investigation due to the subject officer(s) being on leave (military, sick, or personal), which resulted in delays in their administrative interviews or disciplinary review. We also were pleased to find that, where possible, LCPD included rationale for the delays in their investigative memos as we previously recommended.

We noted an additional challenge with timeliness in this period: the internal delay resulted in concern for the complainant. For example, in case 2020II-004, where the complainant alleged that she had been assaulted by an officer,

the complainant contacted the Department and stated that she was upset to see the accused officer “driving around like nothing happened.” LCPD immediately sent an investigative update via email.

We recommend that LCPD send update letters to complainants when an investigation’s timeframe is extended beyond a 180-day period; LCPD agreed and will do so going forward.

Transparency for Complainants

OIR Group has commended the Department for its detailed close-out letters to complainants that go beyond form letters. And we offer additional considerations to increase transparency for complainants.

In this review period, we noted that some close-out letters were inadvertently misleading (see 2021EIC1-010, 2021EIC1-017, 2021EIC1-010, and 2021EIC1-025). Most often, this occurred when the investigation revealed additional procedural allegations, such as incomplete report writing, that were sustained, while the original allegations made by the complainant were exonerated, unfounded, or not sustained. For example, in 2021EIC1-017, the letter stated that the officer had “violated department rules and regulations.” This had the potential to mislead the complainant into thinking his original assertions had been corroborated by the evidence. But that was not the case. While the officer did violate policy related to report writing, this was not the subject of the complainant’s initial allegations; the complainant alleged biased behavior, an allegation that the Department determined was unfounded.

We have already discussed the preferability of including more information in these close-out letters. After discussion with OIR Group, LCPD has modified its close-out letter to reflect a more complete picture of the investigative process for complainants. We look forward to reviewing future close-out letters.

Further, we saw a potential opportunity to increase transparency for complainants using body-worn camera footage. In several cases, the complainant’s allegations were clearly disproven after watching the body-worn camera footage. For example, in case 2021EIC1-019, where the complainant alleged that officers did not properly book her property, the body-worn camera demonstrated a careful inventory of property during the booking process. Similarly, the body-worn camera footage in case 2021EIC1-022, where the

complainant alleged discourtesy, excessive force, and sexual harassment, showed that the officers acted professionally and appropriately in responding to a mental health call for service.

Here, we see an opportunity to go beyond the close-out letter; we advocate that law enforcement agencies offer complainants the opportunity to view video evidence, especially when that evidence proves determinative. We recommended that LCPD should consider in appropriate cases offering the complainant the opportunity to view video evidence, especially when such evidence is determinative; LCPD is considering this recommendation.

Finally, we reviewed cases that may be candidates for an informal resolution, such as mediation or restorative justice. For example, in watching the video footage for case 2021EIC1-010, it appeared as if the complainant was primarily looking for her concerns to be more patiently considered by the responding officer. This case would be a good candidate for mediation.

Restorative justice and mediation are, we believe, a worthy goal to keep in mind for the Department when considering its options for addressing such cases. LCPD should consider devising a mediation program for the resolution of some complaints that are less about problematic misconduct than gaps in communication or perspective. When we recommended this in our related memo, LCPD responded, “the mediation program for resolution suggested is a good recommendation, we currently are developing a program as part of the supervisor complaint intake process where supervisors will be trained on how to better resolve citizen issues utilizing customer service principles.”

Philosophy of Discipline

In several cases reviewed in this period, we found the disciplinary outcomes to be noticeably lenient. We encourage the Department to remain open to an ongoing assessment of its “philosophy of discipline” as it pertains to consequences in sustained cases.

For example, in investigating case 2021II-016, the Department identified repeated procedural issues with an officer’s use of his recording device (the Department called this behavior a “willful disregard” for policies regarding use of the body-worn camera) and a pattern of practice related to this officer’s lack

of diligence regarding other important administrative functions of policing, such as accurate report writing. Yet the Department issued a low-level suspension, discipline that we found was not commensurate with the officer's repeated pattern of misconduct.

And, in case 2021II-013, we questioned the resulting low-level discipline because the sustained allegations – related to integrity and honesty -- were of particular concern. In this case, an off-duty officer was found to be DWI after a field test (though criminal charges were never filed). The investigation also revealed that the officer was not truthful in two instances. In recommending discipline, the Department argued that the officer was “hard-working” and had not had past performance issues. This resulted in a low-level suspension.

In this case, we found that the problematic off-duty conduct (DWI) arguably warranted a more severe consequence in and of itself. Beyond that, though, the sustained allegations of dishonesty or intentional deception, even if they were a first-time offense, are of particular concern because an officer's honesty and integrity are essential parts of the job, especially when an officer is called upon to testify in court.

Our intent in commenting on discipline is not to advocate for an overly punitive system of discipline. Rather, our commentary is meant to ensure that discipline serves a meaningful and effective corrective purpose. An overly “lenient” disciplinary response runs the risk of diminishing the influence of the process on future officer performance. This being said, we would not advocate for *significant* increases in discipline in the aforementioned cases. And ultimately the sufficiency of discipline ultimately turns on whether it is accompanied by a substantive debrief or training that equips the officer to improve performance in the relevant way, which the Department has committed to do.

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.” LCPD also reported that it is currently developing a discipline system with a “Chart of Sanctions” to ensure discipline is taken in a prompt, fair, and consistent manner.

We will continue to assess the disciplinary outcomes of cases going forward in an effort to encourage appropriate accountability for misconduct.

Policy and Training

In this period, LCPD has had substantive accomplishments to training, including the addition of a Sergeant to the Training Division, management training for senior leadership to develop their management skills, Internal Affairs training for supervisors who may investigate “supervisory matter” level cases, and Department-wide training on topics such as search and seizure, domestic violence and harassment, and legal/risk liability.

And, during our reviews, we noted areas where LCPD might consider additional training and/or policy updates. 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.

Officer Professionalism

In some cases reviewed during this period, we observed occasional officer professionalism issues that may warrant additional attention from the Department. This was not because they were egregious, but because they showed the officers in a less favorable light than they mostly appeared.

For example, in case 2020EIC1-018, we observed instances of impatient banter with the complainant and repeated profanities as the officers chatted with each other during lulls in the process. In 2021EIC1-006, an officer who responded to the scene to interview witnesses to a use of force used profane language when interacting with the witnesses. And, we observed poor communication skills in case 2021EIC1-022, where the officer seemed brusque and inflexible in a way that “raised the temperature” of the encounter and precluded any further possibility of de-escalation.

None of these interactions devolved into outright rudeness, unprofessionalism, or misconduct, but we mention them, in part, because they were in contrast with the professionalism and composure that LCPD officers largely maintain in the hours of footage that we observe in our auditing work. We also recognize that casual conversations among officers (and many other professional groups) have a different tone and should be held to a different standard than direct interactions with members of the public.

Where LCPD members and other police personnel differ from professionals, though, is that recordings have become routinized in their “workplaces,” and that these recordings can easily have evidentiary significance in a variety of contexts. Reminders about the value of composure and controlled language are always worth reinforcing, particularly when the issues arise in the context of an administrative review.

We recommend that LCPD identify and address issues of officer professionalism that arise in the context of the investigative review process, even if they do not rise to the level of formal policy violations.

The Department responded that this topic will be covered in its upcoming, Department-wide “Code of Conduct” training. Further, when the issues arise during an administrative investigation, the Department has instructed that the investigator follow-up with section supervisors to ensure that supervisors are providing counseling to the involved officers.

Transport of Subjects

In this period, we reviewed two cases (2021II-022 and 2021EIC1-006) in which subjects were transported for medical care or to Detention after a use of force incident. In both cases, the subject was transported by the officer who used force, despite other officers being on-scene and available to transport the subject. This practice is not ideal for two reasons: continued engagement between an officer and the subject of force might heighten tensions (we observed this in case 2021EIC1-006 as the subject continued to berate the officer from the back of the police vehicle during transport), and the involved officer should be held back to provide a statement regarding the force to a supervisor.

When practicable, LCPD should encourage officers to take advantage of their staffing options and separate in-custody persons from the most directly involved officers after a use of force incident. LCPD responded that it will consider this as staffing allows.

Reports and Other Procedural Allegations

As we mentioned in our discussion of allegation types above, we noted an increase in the number of allegations involving law enforcement procedures; most often, these involved the inaccuracy and/or incompleteness of police reports, as well as failures to appear in court or to properly upload and tag body-worn camera footage. These were typically discovered while investigating other, unrelated allegations and, in most cases, sustained by the Department.

As a result, the involved officers were counseled on their report-writing, the importance of attending court dates, the policy related to body-worn camera footage, and other procedures that are of utmost importance to law enforcement.

At this time, we hypothesize that the increase in the count of procedural allegations is due to LCPD's careful investigative process, which uncovers this misconduct (versus an upward trend in procedural misconduct as a whole Department-wide). We will continue to monitor this trend in collaboration with the Department and, if needed, recommend Department-wide training on procedural issues.

Application of Policy to All Personnel

In January, we reported that non-sworn personnel appeared to be confused about whether all Department policies applied to them. We observed this again in our review of case 2021II-0016. In this case, there was confusion related to the reporting and tracking of a negligent discharge by a non-sworn employee.

According to LCPD, the policy regarding reporting a negligent discharge, General Order 143, specifically stated: “this General Order applies to commissioned employees.” Because the involved non-sworn was a *non-commissioned* employee, he and his chain of command believed the policy did not apply to him. As a result, the negligent discharge incident itself was never entered into LCPD’s internal force tracking software program, BlueTeam, or reported to the Professional Standards Bureau, despite the employee’s self-report and several supervisors knowing about the incident.

LCPD has since corrected this specific policy and reported that all other applicable policies have been updated to indicate that they apply to all employees.

Use of Force Considerations

Several of the cases that we reviewed in this period included use(s) of force and/or allegations of excessive use of force. The use of force review process is a separate internal process that is conducted by the involved officers’ chain of command, not Internal Affairs. However, based on our decades of collective experience reviewing force cases, we were compelled to make recommendations related to uses of force when we observed areas for improvement.

To its credit, the Department was open and responsive to our recommendations. LCPD reported that it is currently expanding its use of force review process to better evaluate force and the performance of officers in the field. The Department has created a “force review cadre” – a team of seven subject matter experts from force training and Internal Affairs – to conduct more robust and thorough force reviews. This team will evaluate any incidents where the force used does not seem commensurate with the call for service (e.g., a trespassing call that results in force) or where force is used frequently (e.g., domestic violence calls), as well as any questionable uses of force that require more than the standard BlueTeam / chain of command review.

We are impressed with this initiative and look forward to learning more about it and its accomplishments as it progresses.

Additionally, we learned that the Department is currently reviewing and updating its Conducted Electrical Weapon (“CEW,” or more commonly referred to as a “Taser”) and Equipment policies to ensure that these reflect the most effective uses of the Taser. In our memo related to case 2021EIC1-025, we recommended that the Department evaluate (and, we recommended, restrict) the use of the Taser in “drive stun mode.”¹³ And, we recommended the Department impose a requirement for officers to warn of Taser use where practicable, and document the warning or lack thereof. We will review the new policies when they are available.

Positive Findings

Update to “Preliminary Inquiry” Process

When we began our case reviews a year ago, we noted that some cases were closed out after what LCPD called a “Preliminary Inquiry.” 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.

Prior to our reviews, LCPD closed out preliminary inquiries with no further investigation if the preliminary inquiry revealed that no misconduct occurred.¹⁴

¹³ “Drive stun,” referred to in LCPD General Orders as “contact mode,” is when an officer places the Taser directly against the body rather than deploying the electrical probes that conduct electricity. This is used entirely for pain compliance because this mode of operation does not incapacitate muscles like the probes do.

¹⁴ 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

We suggested that LCPD assign dispositions to these types of cases, rather than leaving them without formal finding. And, accordingly, LCPD now does so.

By assigning 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.

Supervisor Professionalism

We observed several cases in which supervisors' professionalism were commendable. For example, in case 2021EIC1-022, both the supervisor who responded to the scene of the call and the supervisor who took the complaint responded with empathy, encouragement, and professionalism.

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.

Customer Service Metrics

Our scope of work requires that we compare the complaint case counts against LCPD's total number of interactions with the public. As we reported in our first report, the resulting data shows that of all interactions with the public, very few resulted in complaints. In this period, LCPD responded to 54,552 calls for service.¹⁵ If we take the sum of all complaints, we find that complaints make up 0.06% of all calls for service.

And, going forward, the Department will also have a more accurate way to measure effective "customer service" and community feedback; during this period, the Department implementing a real-time customer service application to track its performance in the field. Developed by SPIDR Tech, the application allows LCPD to communicate with the public and receive feedback on various aspects of their operations, from texting anticipated response times to 9-1-1 calls and sending text updates and notifications to collecting "customer satisfaction" metrics once a call is completed. If a customer is dissatisfied or requests additional follow-up, the Department can choose to send a supervisor to revisit the call; this might include taking information for a complaint or simply providing an additional point of contact and communication such as clarification of the officer's actions.

The software compiles this data into dashboards for evaluation by Department leadership. The Department plans to use this data to track customer satisfaction beyond the complaint / commendation process.

¹⁵ This data was provided by Mesilla Valley Regional Dispatch Authority (MVRDA) via LCPD. 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.

Litigation Case Review

OIR Group also received and reviewed two cases from the Las Cruces City Attorney that were closed during our review period. Our memos related to each case with a detailed case summary and recommendations, are attached as **Appendix B**.

The litigation matters involved a total of 2 claimants and 3 named Las Cruces police officers.

Case #1

The Plaintiff alleged that during a traffic stop on September 22, 2018, a Las Cruces police officer searched him without consent, used excessive force that resulted in injuries, and that LCPD failed to properly investigate and document the incident. The case was dismissed.

The Plaintiff was charged with felony possession of a firearm, resisting a peace officer, assault on a peace officer, probation violation, possession of a controlled substance, and tampering with evidence. These criminal charges were dismissed.

The matter resulted in an internal Use of Force Review where the force used was found to be reasonable. The Plaintiff did not file a related administrative complaint and LCPD did not initiate an Internal Affairs investigation of the matter.

Case #2

This case was related to an officer-involved shooting that occurred in December of 2016; the Plaintiff alleged that the deceased was wrongfully killed by LCPD and that LCPD and the City were negligent in failing to provide adequate de-escalation, crisis intervention and mental health training for the officers.

The case resulted in a settlement for the deceased's minor children.

This matter resulted in an investigation by the joint Officer-Involved Shooting Task Force, which found the officers' actions to be justified. LCPD Internal Affairs also conducted an Internal Investigation of the matter; the Department framed one allegation of "Use of Deadly Force (General Order 255.04)" for each officer. The officers were exonerated.

Demographics and Findings

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

- Of the three named officers, two are white, one is Hispanic.
- According to LCPD, one of the officers is currently on administrative leave pending a criminal trial for an unrelated incident that occurred in early 2020. The other two are still employees of LCPD.
- On the claimant side, one claimant is white and one is Hispanic.
- One case occurred in the zip code 88001 and the other in 88005.

In both cases, we were pleased to note that the Department had initiated some form of internal review of the incident to track any potential related misconduct. In the first, the Department conducted a use of force review; in the second, Internal Affairs conducted a formal investigation and exonerated the officers. As we have commented in the past, litigation can serve as a valuable feedback loop for Departments to mitigate risk by identifying any officer accountability issues and by using lessons learned from the litigation to potentially improve LCPD's future response through training or other remediation when faced with similar circumstances.

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.

We will continue to monitor developments related to the community's interest in civilian oversight and engage with stakeholders regarding this and other important public safety topics.

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

Appendix A: OIR Group IA Case Memos



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

TO: City of Las Cruces
FROM: OIR Group
DATE: April 25, 2022
RE: Review of Administrative Investigation – #2022EIC1-004¹

Introduction

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

OIR Group received the above-referenced case file on March 28, 2022.

Case Summary

A complainant alleged that an off-duty LCPD officer was rude, “snatched” documents from her hand, was “extremely hateful” when he stated, “shut up, shut up, you’re being eccentric,” and placed his hand on his firearm in a threatening manner during a traffic stop.

The complaint stemmed from a traffic stop on September 10, 2021. A woman (the complainant) was driving her son to school; her son was in the passenger seat. An off-duty LCPD officer going home at the end of his shift pulled her over in his marked police vehicle. He approached the passenger side door, which the son opened. The officer

¹ This case is related to LCPD case #21-101909.

asked the woman why she was in a hurry, said she was tailgating him, and advised her that she had merged into a bike lane. He asked for her license, registration and insurance, which the woman handed to her son, who handed it to the officer.

The officer ran the information through the Mesilla Valley Regional Dispatch Authority (MRVDA) and learned that the woman had four outstanding warrants for traffic violations.

He walked back to the vehicle and informed the woman of the warrants. He advised her that he could “pick her up” and have the vehicle towed. He instructed the woman to attend to the warrants in municipal court immediately. He also stated that the woman was acting “erratic” and that he could give her additional traffic citations.

He warned that next time he saw the vehicle, and if she had not managed the warrants, he would arrest her, which would be “inconvenient” and “suck” for her son. The woman stated that her son was in trouble at school, and the officer encouraged the son to “do better.” He said, “have a good day” and ended the encounter.

LCPD’s Investigation and Analysis

LCPD’s Internal Affairs conducted a preliminary investigation of the incident and framed three allegations against the officer:

1. General Order 103. Code of Conduct – Conduct Toward the Public

This General Order outlines conduct with the public, including being respectful, controlling tempers, and exercising the “utmost patience and discretion and shall not engage in argumentative discussion even in the face of extreme provocation.”

2. General Order 103. Code of Conduct – Unsatisfactory Performance

This General Order states that unsatisfactory performance includes lack of knowledge and proper application of laws and procedures and “unwillingness or inability to perform assigned tasks.”

3. General Order 231.03.A. Physical Arrests – Authority to Arrest

This General Order gives officers authority to arrest persons when an officer has knowledge of or holds a warrant commanding the arrest of the named person.

After reviewing the body-worn camera footage of this incident, the IA investigator determined that the officer did not violate any of the General Orders listed. The

allegations were unfounded, not sustained, and exonerated, respectively.² No further investigation was conducted.

Additionally, the investigator recommended that LCPD conduct Department-wide remedial training on arrest warrants. That training was delivered on March 16, 2022, during the Department's Bi-annual Legal Update training.

OIR Group Review

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

In a prior memo, we recommended that the Department consider in appropriate cases offering the complainant the opportunity to view video evidence, especially when such evidence is determinative.³ This case may be another appropriate opportunity to consider this remediation.

We would also like to use this opportunity to commend the lieutenant who spoke with the complainant over the phone for her patience and professionalism during the complaint intake process.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD will work on a process allowing the complainant to view video evidence when appropriate.

² For reference, these dispositions are defined as follows:

- Unfounded: the act alleged apparently did not occur.
- Not sustained: there is not sufficient evidence to clearly prove or disprove the allegation.
- Exonerated: the employee's conduct was lawful, justified and proper.

³ See our memo related to IA# 2021EIC1-019.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 3, 2022
RE: Review of Administrative Investigation – IA #2020II-004¹

Introduction

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

OIR Group received the above-referenced case file on January 5, 2022.

Case Summary

LCPD responded to a call for service at an LCPD Transport Officer's apartment. A woman alleged that the officer had coerced her to his home, purchased and served her alcohol, and possibly drugged her.

This case was related to an incident during which the LCPD officer in question transported the woman when she was arrested for allegations of domestic violence.

¹ This case is related to LCPD case #2020-038385.

The woman advised that during this transport the officer learned her date of birth and that she was 20-years old.

Months later, the officer encountered the woman, still 20-years old, at a local gas station, where she initiated a conversation with him. The woman mentioned that she cleaned houses and needed work. The officer asked for the woman's phone number to schedule a house cleaning.

Approximately two weeks later, the officer requested, via text message and then a phone call, that the woman clean his apartment. After a discussion regarding price, the apartment location, and supplies, the officer asked the woman if she wanted him to buy her alcohol. She agreed.

When she arrived at his apartment, the woman noticed that the blinds were drawn and the apartment was not, in fact, very dirty. Nonetheless, she began to clean. The officer then offered her a shot of vodka which he poured from a large, gallon-size container. The woman drank at least one shot. She then left the apartment, claiming that she needed to smoke marijuana. The woman stated that she threw up while she was outside.

The woman returned to the apartment. The officer offered her another shot of vodka and said that he would not pay her the agreed-upon amount for her cleaning services if she did not take it. She drank the shot and stated that she immediately did not feel well and became scared. Because she was scared and ill, she went to the bathroom, locked the door, and called her boyfriend to pick her up.

The officer began to record the incident on his cellular phone, repeatedly saying that it was for his protection because he had been accused of similar behavior in the past. He knocked on the door several times and loudly asked if the woman was okay, if she was being held against her will, or if she was calling the police. The woman responded that she was fine and cleaning the bathroom.

While in the bathroom, the woman called her boyfriend and brother. She asked them to come help her. When her boyfriend and brother arrived at the apartment complex, they took the woman, whose speech was slurred and movement impaired, down the apartment stairs. The woman began to experience an anxiety attack and exhibit other medical concerns.

In the meantime, the woman's brother called LCPD. LCPD officers and medical personnel arrived. Later, a LCPD supervisor arrived at the scene. Due to her physical

and mental state, the woman was eventually transported to the hospital, where the supervisor responded to take her statement.²

Sometime thereafter, the officer took an extended and unrelated leave from his job.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted an Internal Investigation (II) formal investigation of the complaint. IA framed the following allegations against the accused officer:

1. **General Order 103.17.A-C – Code of Conduct – Truthfulness**

This General Order section details the standards for truthfulness for all personnel in all investigations.

2. **General Order 103.28 – Code of Conduct – Conduct Unbecoming**

This General Order section states that “employees shall not conduct themselves in a manner which would bring discredit upon themselves” or engage in any criminal acts that would impair the operations or efficiency of the department. This included conduct off-duty.

3. **General Order 103.08 – Code of Conduct – Criminal Conduct Prohibited**

This General Order section states that “employees shall not engage in any conduct, on- or off-duty, regardless of their whereabouts, which is in violation of the law.”

4. **General Order 103.19 – Code of Conduct – Consorting Prohibited**

This General Order section states that “employees shall avoid associating with persons who are known to engage in criminal behavior except in the discharge of their official duties.”

IA determined that the officer had violated the four above sections of General Order 103 when he hired the woman, an arrestee whom he had previously transported in his official duties, to clean his house, purchased and served alcohol to a minor, engaged in conduct that discredited himself and the Department, and was not forthright and honest during the investigation. The four allegations were sustained.

² According to LCPD, the woman did not submit to a toxicology test despite alleging that she had been drugged.

A Lieutenant reviewed the officer's personnel package. The Lieutenant recommended that the LCPD Department Director terminate the officer. The officer eventually resigned before the termination proceedings could be completed.

OIR Group Review

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

OIR Group has commented in the past about delays in investigation; the investigation and close-out of this case was also significantly delayed.³ In this case, the incident occurred on April 11, 2020. A one-time, 180-day extension was granted until October 18, 2020, but completion of the case was further delayed until July of 2021 because the involved officer was on extended leave.⁴

The majority of the investigation, including interview of the complainant and a preliminary interview of the accused officer, was completed shortly after the incident date, but the full interview of the accused officer was significantly delayed due to his leave. During his interview and again in his Loudermill Hearing, the officer claimed that he was experiencing memory loss and could not recall details of the incident. While OIR Group concurs with the Department's ultimate conclusion that the officer was purposefully vague and untruthful, had omitted key details during the interview, and continued to be deceptive in his Loudermill Hearing, the extended delay gave potential credence to the officer's claim of "memory loss."

In this case, the leave taken by the officer made him unavailable for an interview to no fault of the Department. However, the delay also caused concern for the complainant. In June of 2020, the complainant contacted the Department stating that she had observed the officer "driving around like nothing happened." The Department immediately responded with an investigation update via email. While the delay was unavoidable due to the officer being on leave and unavailable for a full interview, we encourage the Department to update complainants on a regular basis when investigations are significantly extended.

³ Please see OIR Group memo related to IA #2021II-017 for a detailed discussion of timeliness in investigations.

⁴ The initial extension was granted due to pandemic-related restrictions and the assigned Detective and involved officers being on extended leave.

RECOMMENDATION 1

LCPD should routinely send update letters to complainants when an investigation's timeframe is extended beyond a 180-day period.

As detailed in the case summary, the woman contacted her boyfriend and brother while at the officer's home; while these individuals responded to provide support at the scene, including helping the woman leave the apartment, LCPD also noted that they created additional challenges at the scene, including threatening the accused officer. Later, while at the hospital, the woman asked to call her mother. In reviewing the available body-worn camera footage and incident report of the responding supervising sergeant, OIR Group noted that the supervisor stated that the woman could contact "whoever you need to call" only after he had completed an interview, saying "I need to hold off on that [phone call]."

LCPD advised OIR Group that the circumstances related to this specific call, including a desire to quickly determine if the accused officer's apartment contained evidence of criminal acts, prompted the supervisor to record the victim's statement to preserve the integrity of the investigation before she communicated with others or others arrived to the scene. While this makes sense on some level, it does not completely dispel our initial impression that the well-being of a crime victim should have been prioritized more overtly.⁵

OIR Group acknowledges that there is a fine balance between investigative efficiency and allowing a victim to contact outside support, and we encourage LCPD to continue training supervisors on this type of incident.

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. LCPD is in the process of setting up a system to notify complainants when investigations are exceeding the 180-day period.

⁵ Perhaps even couching it differently, as a "request with explanation" rather than a requirement, would have been a viable and preferable option.



7142 Trask Avenue
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323-821-0586
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TO: City of Las Cruces
FROM: OIR Group
DATE: April 13, 2022
RE: Review of Administrative Investigation – #2021EIC1-006¹

Introduction

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

OIR Group received the above-referenced case file on March 19, 2022.

Case Summary

A complainant alleged that an LCPD officer used excessive force, arrested him without cause, and was rude during a call for service. The complainant, who was arrested during the incident, also alleged that an unknown officer called him “a fool” during the booking process.

The complaint stemmed from an incident in February 2021 related to a noise complaint. An LCPD officer stated that he heard a call for service responded to the location, which

¹ This case is related to LCPD case #21-013366. This case is also related to a Civil Claim filed on behalf of the complainant on May 6, 2021.

was known to him from prior calls.² He heard and observed a party in the backyard of a residence. He entered the backyard through a gate and met a man (the complainant), who stated that the officer could not be in the backyard and refused to provide identification. The man exited the backyard and the officer followed him.

The man re-entered the backyard and the officer followed. The man again stated that the officer could not lawfully be in the backyard. The officer responded that he was there for the noise complaint and continued to ask for ID, which the complainant refused to provide. The officer told the man that he would be arrested for “concealing identity” and the man responded, “charge me.” The officer instructed him to turn around but the man refused.

The officer then grabbed the man’s wrist and again instructed the man to turn around. The man refused and struggled. In the ensuing movements, the officer’s body-worn camera fell off. The officer pushed the man away and requested backup. The officer then reached for the man again and attempted to perform a wristlock as the man struggled to break away.

Meanwhile, several other people approached and yelled, “you can’t even be back here!” and “get back” and “videotape this!”

The officer and man moved behind an open gate. According to the officer, the man punched the officer in the face. The officer stepped back and deployed his Taser to subdue the man, but it was ineffective. The officer again deployed the Taser. This time, the man fell to the ground and the officer straddled him. The man refused to submit his hands; the officer used his Taser again. The man complied and was handcuffed.

Two additional LCPD officers arrived at the location.

The officer placed the man on his side and then seated him upright. The man stated, “you didn’t have to do that.” The officer responded, “yes, I did because you punched me in the face.” The man responded, repeatedly, “I punched you in the face?” and “oh my god,” in an incredulous way. The officer took the man to his patrol vehicle.

Many additional officers responded to the scene.

² According to the officer, he personally had responded to noise complaints at the address on previous occasions. LCPD could not locate records to show that this officer had responded to prior calls for service at that location but other LCPD officers had. According to those officers, in past instances, the residents were hostile toward the officers and had escorted the officers off the property. The officers noted that future officers should request back-up before responding to this address.

After speaking to his supervisor and taking photographs of his face, the officer transported the man to the hospital for medical clearance. Later, the man was transported to the Dona Ana County Detention Center for booking.

While the man was in the holding area, another LCPD officer who was not involved in the call entered. That officer called the man, “a fool.”

The man was charged with concealing identity and resisting a peace officer. The officer failed to appear in court when subpoenaed for this case. As a result, the charges were dismissed. The man filed a civil claim with the City, which is still pending.

LCPD’s Investigation and Analysis

LCPD’s Internal Affairs conducted a preliminary investigation of the incident, as is their standard practice, and initially determined that no formal investigation was needed. However, after further review of the body-worn camera evidence, Internal Affairs determined that a formal investigation was warranted.

IA framed the following allegations against the officer:

1. General Order 103.05. A-B Code of Conduct – Conduct Toward the Public

This General order outlines conduct with the public, including being respectful, controlling tempers, and exercising the “utmost patience and discretion and shall not engage in argumentative discussion even in the face of extreme provocation.” This General Order also prohibits the use of violent or profane language.

2. General Order 231.03.A.2 Physical Arrests – Authority to Arrest

This General Order gives officers authority to arrest persons who commit an arrestable offense in the officer’s presence.

3. General Order 233.01.B Prisoner Transport – Treatment of Prisoners

This General Order states that employees “will not ridicule, mock [...] or belittle any prisoner.”

4. General Order 255.02.A.1 Use of Force – Procedures – Applying Force

This General Order section states that personnel “will use only reasonable force necessary to accomplish lawful objectives.”

5. **General Order 142.01 Court – Court Attendance.**

This General Order section stated that employees who are subpoenaed to court shall appear unless other arrangements were made.

6. **General Order 151.01.E – Recording Devices - Procedure**

This General Order section states that “employees shall activate their body-worn camera whenever responding to a call for service or at the initiation of any law enforcement of investigative encounter and a member of the public.”

The IA investigator determined that the officer violated the General Orders listed in allegations 5 and 6; these were sustained. The remaining allegations were exonerated because IA determined that the officer acted in a lawful way. A lieutenant reviewed the employee’s personnel package and recommended that the employee receive a verbal reprimand, which was given by his supervisor.

Additionally, the investigator framed two allegations against an LCPD officer who responded to the Detention Facility:

1. **General Order 233.01.B Prisoner Transport – Treatment of Prisoners**

This General Order states that employees “will not ridicule, mock [...] or belittle any prisoner.”

2. **General Order 151.01.E – Recording Devices - Procedure**

This General Order section states that “employees shall activate their body-worn camera whenever responding to a call for service or at the initiation of any law enforcement of investigative encounter and a member of the public.”

The IA investigator determined that the officer violated this General Order when he was observed on body-worn camera footage calling the man a “fool” and failed to activate his own body-worn camera. The allegations were sustained.

A lieutenant reviewed the employee’s personnel package and recommended that the employee receive a verbal reprimand, which was given by his supervisor. The lieutenant also wrote that that he and the officer’s direct supervisor will monitor the officer’s future performance for any indication of repeated behavior. We commend this language and recommend that LCPD consider including this standard when issuing low-level discipline such as a verbal reprimand.

Finally, IA framed an allegation against an officer who the investigator originally believed had called the complainant a “fool.” Because the officer did not use that language, the allegation was exonerated.³

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, we have the following additional observations.

Officer Safety & Tactical Decisions

We noted potential operational and officer safety concerns in this incident that were not addressed by IA. We highlight these here not as a critique of the thoroughness of this IA investigation, but rather as an opportunity for the Department to identify and address operational concerns.

The first of these concerns is that the officer self-dispatched alone to a location where, based on his own prior experience at the address and the experience of his fellow officers, the residents displayed uncooperative and, at times, hostile behavior.⁴

The second issue was the officer’s choice to *re-enter* the backyard once the man had escorted him out of the backyard. This action seemed to escalate an already tense situation in a yard full of partygoers, creating an unsafe situation for the single officer.

³ A more accurate disposition for this allegation would be “unfounded,” which is defined as “the alleged act did not occur,” whereas “exonerated” means that the act *did* occur, but the employee’s conduct was lawful, justified, and proper.

⁴ We acknowledge that staffing concerns often result in single-officer responses. On this evening, the reporting party suggested to dispatch that responding officers take back-up because the partygoers tended to be “rowdy,” though dispatch did not communicate this information to the officer. We note that LCPD uses the Mesilla Valley Regional Dispatch Authority, which is not under the Department’s command. We recommend that the Department discuss this case and the implications resulting in the failure of the dispatcher to communicate the information to responding officers and to request that MVRDA dispatch supervisors advise the involved dispatcher of the importance of communicating all information from reporting parties/9-1-1 calls to responding officers.

Third was the officer's choice to threaten to arrest the man for failure to show an ID and then go hands-on with the man, rather than attempt de-escalation techniques, such as using distance, finding cover (e.g., moving around the gate) or waiting for back-up. As detailed in the Department's **General Order 255**, "Use of Force," "an officer's approach to an individual can influence whether a situation escalates, resulting in the use of force." We acknowledge the fine balance between enforcement, use of de-escalation and officer safety, and note the Department's recent commitment to retrain all personnel in de-escalation.⁵

Finally, we noted that the officer attempted a wristlock / control hold but it was not effective. We encourage LCPD to re-train this officer specifically and consider more frequent Department-wide, hands-on tactical training relating to these force options.

RECOMMENDATION 1

LCPD should counsel and/or train the officer regarding tactical and officer safety concerns such as requesting back-up, communication, de-escalation, and control holds.

RECOMMENDATION 2

With Las Cruces experiencing a significant increase in calls for service related to noise complaints in 2021,⁶ if appropriate, LCPD might consider conducting a Department-wide training on responding to noise complaints using this incident as an example.⁷

Additional Allegation

We observed that another officer not named in this investigation used profane language when communicating with an agitated witness after the incident. Specifically, the officer repeated "step the [profanity] back" several times when a male witness moved toward

⁵ As evidence of the commitment to de-escalation, LCPD shared that all Department personnel will attend a refresher training for de-escalation and communication techniques called "Interaction Principles for De-Escalation Success" by May 15 this year.

⁶ "Las Cruces mulls changes to noise ordinance after receiving 737 complaints in six months." Las Cruces Sun News, September 17, 2021.

⁷ The Department advised that this specific incident was debriefed during a daily shift briefing ("roll call") where officers were advised to call for back-up for future calls to this address.

him, a potential violation of **General Order 103.05**, “Conduct Toward the Public,” detailed above. This interaction seemingly escalated tension at the location.

RECOMMENDATION 3

We recommend that LCPD consider counseling this officer for the use of profane language.⁸

Transport After Use of Force

Finally, OIR Group observed that the officer who used force also transported the man to the hospital. LCPD recognizes that this is not a best practice but reported that countervailing Department concerns regarding subject transport were present during the time of the incident.

We recommend that, when feasible, an uninvolved officer transport the subject in a use of force, especially when the subject is intent on continued engagement with the officer.

RECOMMENDATION 4

When feasible, LCPD should assign an uninvolved officer to transport a suspect who was the subject of a use of force.

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 department strives to be professional in all our encounters with citizens. The recommendation of remaining professional even when not in close contact with citizens but still being recorded will be covered in our Code of Conduct training. Following up with officers involved in such incidents as recommended already exists to some extent, but department wide training is a better option as recommended. IA will follow-up with section supervisors to ensure that supervisors are aware and following up.

⁸ We acknowledge that this incident had many moving parts and that LCPD *did* discover, investigate, and address several additional concerns.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: March 30, 2022
RE: Review of Administrative Investigation – IA2021EIC1-010

Introduction

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

OIR Group received the above-referenced case file on March 14, 2022.

Case Summary

LCPD received a written complaint from a woman who had been involved in a traffic collision. She alleged that the responding LCPD officer did not complete an impartial investigation by not providing the complainant equal time to state her case; moreover, she claimed that he was discourteous.

LCPD conducted an investigation of the allegations and determined that the officer did not commit misconduct in dealing with the complainant. However, during LCPD's review, it did determine that the responding officer had violated General Order 141.02 ("Police Reports – Accuracy and Thoroughness") by failing to include relevant information in his report: he had omitted any reference to the child that was in the back seat of the complainant's vehicle.

OIR Group Review

OIR Group's independent review of the reports and body camera footage available in this matter found no support for the allegation that the officer failed to conduct an impartial investigation and was discourteous to the complainant. We also consider it creditable that the Department was willing to go beyond the allegations raised by the complainant when additional issues emerged during the review process.

While endorsing the outcome and the Department's "extra effort," we take this opportunity to suggest the interaction between the responding officer and the complainant could have been the starting point for additional constructive intervention. The complainant was certainly persistent in her discourse toward the officer, but not to the point of being abusive or beyond reason. The officer's approach was initially cordial but as the complainant continued to challenge the officer's decision to cite her, it was apparent that his level of frustration grew while his patience for her questions waned.

The officer could have benefited from a "coaching" from an LCPD official with a special skill set in dealing with similar individuals. A joint review of the recording could be a forum for accentuating the strengths and potential for improvements within the officer's handling of the interaction. Every complaint provides a potential learning experience and LCPD should take advantage of opportunities for helpful critiques when they arise.

Additionally, this incident could well have been a candidate for informal resolution such as mediation or restorative justice. From the video of the account, it appears as if the complainant was primarily looking for her concerns to be more patiently considered. The perspective strikes us as reasonable one – just as we acknowledge that the side of a busy street is not always the ideal forum for such patience. These are circumstances that lend themselves to the intervention of a neutral facilitator who could help promote a better understanding on both sides. This seems like a worthy goal to keep in mind for the Department when considering its options for addressing such cases.

Finally, the letter sent to the complainant advising her of the results of the investigation could have been more precise. While the letter indicated that the investigation found that the responding officer had violated policy, it did not advise her of the nature of the violation. As a result, the unknowing complainant could well have concluded that the officer had been found to have been improperly partial or rude, which were the essences of her complaint.

RECOMMENDATION 1

LCPD should consider using each “discourtesy” complaint as an opportunity for “coaching” and should schedule a meeting to go over the questioned encounter between the involved officer and LCPD personnel trained in dealing with a questioning public.

RECOMMENDATION 2

LCPD should consider devising a mediation program for the resolution of some complaints that are less about problematic misconduct than gaps in communication or perspective.

RECOMMENDATION 3

LCPD should ensure that closing letters to complainants identify with specificity the nature of any founded allegation.

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. Each complaint is indeed an opportunity for coaching, we will follow up with supervisors after complaints so they can review the incident and provide coaching. The mediation program for resolution suggested is a good recommendation, we currently are developing a program as part of the supervisor complaint intake process where supervisors will be trained on how to better resolve citizen issues utilizing customer service principles.



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TO: City of Las Cruces
FROM: OIR Group
DATE: February 17, 2022
RE: Review of Administrative Investigation – IA #2021II-012

Introduction

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

OIR Group received the above-referenced case file on January 20, 2022.

Case Summary

In April of 2021, a supervisor from another law enforcement agency learned about a possible domestic battery incident during a phone call with his friend, the victim, who was a former LCPD employee. The victim sent him photographs of herself that showed significant injuries to her face, including two black eyes. According to the supervisor, in that phone call the victim stated that the injuries were the result of physical abuse by her boyfriend, a current LCPD officer, during a vacation that the couple took to a cabin several months prior. According to the reporting supervisor, the victim did not want to report the incident.

Approximately two months later, the supervisor decided to share the incident and photographs with an LCPD officer who was also a friend of the victim. This officer

reported it to an LCPD lieutenant, who reported it to the Chief of Police. Around that same time, an LCPD detective heard about the incident from a mutual friend of the victim. This friend stated that the victim herself would not share the photographs or incident with members of LCPD because of the victim's prior employment with the Department. Concerned that the photographs were consistent with domestic battery at the hands of a current LCPD employee, this detective reported the incident to his supervisor, an LCPD sergeant.

This LCPD sergeant showed the photographs to *another* LCPD detective and requested that the detective conduct a domestic violence investigation. This detective became emotional upon seeing the photographs because, when the victim was employed by LCPD, they were partners and the two had worked on domestic violence issues together.

But, concerned for her welfare, the second detective called the victim directly. He said that he did so as her friend and former partner to check on her. During that phone call, the victim denied being abused. The detective then provided the victim confidential information related to the case and began to question the victim about the incident.

Around that time, the Chief also initiated an internal, administrative investigation of the accused officer. The accused officer was placed on administrative leave. During the internal investigation, LCPD learned that the second detective had called the victim; the detective then also became a subject in the administrative investigation.

The New Mexico State Police initiated a criminal investigation.¹

During the parallel administrative and criminal investigations, the victim and accused officer both denied the allegation of domestic abuse. The victim stated that the injuries were a result of falling from a hot tub on the vacation cabin's deck while intoxicated. The accused officer submitted to a polygraph test to confirm that he was being truthful.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted an Internal Investigation (II) formal investigation of the complaint. IA framed the following allegations against the accused officer:

1. **General Order 103.04. – Code of Conduct – General Standards of Conduct**

¹ A criminal investigation was conducted by the New Mexico State Police. The completed investigation was presented to the District Attorney, who declined to prosecute due to insufficient evidence. OIR Group reviewed that case file only as it served to inform the administrative investigation.

This General Order states that employees shall not engage in any conduct, on- or off-duty, which is unbecoming to their duties, position, or to the Department. This includes conduct in both their private and professional life.

2. **General Order 103.08 – Code of Conduct – Criminal Conduct Prohibited**

This General Order section states that “employees shall not engage in any conduct, on- or off-duty, regardless of their whereabouts, which is in violation of the law.”

3. **General Order 103.11. – Code of Conduct – Cruel, Unlawful or Improper Treatment**

This General Order section states that employees shall not treat any person cruelly, use excessive physical force, or otherwise mistreat a person.

The IA investigator determined that these three allegations were unfounded because the officer successfully passed a polygraph test where he was directly asked about the alleged abuse, the victim denied being abused, and the explanation given for the victim’s injuries was “plausible” given the weather conditions and general structure of the hot tub and cabin deck. The IA investigator also questioned the informing supervisor’s motives, truthfulness, and his long delay in reporting the incident.

Additionally, the investigator framed the following allegations against the LCPD detective who called the victim:

4. **General Order 103.18 – Code of Conduct – Security and Confidentiality**

This General Order section states that “operations and official business of the Department are confidential” and that employees shall not release this information to anyone not authorized to receive it.

5. **General Order 151.01 – Recording Devices - Procedure**

This General Order section requires personnel to activate their body-worn cameras “whenever responding to a call for service or at the initiation of any law enforcement or investigative encounter with a member of the public.”

The IA investigator determined that the detective violated the two above sections when his initial “friendly” phone call with the victim turned into an investigation encounter, which he failed to record, and he disclosed official and confidential Department business. The allegations were sustained.

A lieutenant reviewed the detective's personnel package. The lieutenant recommended that the LCPD Department Director give the detective a verbal reprimand, which was issued by his supervisor.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, OIR found that the investigation was appropriately scoped and that the outcome is fair based on the evidence collected by Internal Affairs.

During the course of several discussions, OIR Group learned of the complexities and challenges involved in investigating this case, namely because of the varied interpersonal relationships of the involved personnel. The Department shared that it sought to discover any possible evidence related to the allegations by conducting an extremely thorough investigation, especially with respect to the parties interviewed and some evidence collected. We acknowledge the complex challenges presented by this case and the numerous personnel involved.

However, OIR Group noted that the investigation, while extremely thorough in reaching all possible witnesses, at times focused more about the interpersonal relationships of current and former Department personnel, and in a way that seemingly overshadowed the particulars of what occurred during the relevant incident. At times, the interviews (both directed questions and response narratives) were less about the allegation of domestic violence and more about the personal lives of these personnel. While some of this was relevant (insofar as it went to individual people's reliability or motivations), much of it was not. And it certainly reinforced the notion that the number of unusual personal entanglements was an argument in favor of a third-party investigation (as we discuss again below).

We noted that LCPD carefully analyzed some details that might "explain" the incident. For example, LCPD investigated the weather where the cabin was located to know if the cabin deck would be slippery enough to cause the victim to fall. And LCPD sought detailed evidence dating back to 2015 to learn whether the reporting supervisor had a history of false allegations.

Conversely, we also found that the investigation could have done more regarding assessing the evidence of domestic violence itself. Specifically, we found that LCPD did not sufficiently analyze one piece of very relevant evidence: photographs of the victim's injuries. LCPD did not consult an uninvolved domestic violence expert to review

the photographs of the victim's injuries, one key piece of evidence of possible domestic violence.² While this may not have been dispositive, it would have been an objective and potentially useful way to pursue the difficult question of what had happened.

Allegations of this nature can be sensitive, emotional, and complicated, especially in a tight-knit Department. Considering the relationships between the alleged victim and accused officer and the involvement of a supervisor from another law enforcement agency as the informant, it may have behooved the Department to have also assigned the administrative investigation to an outside independent entity.

RECOMMENDATION 1

In cases where there is potential conflict between Department (or former Department) employees of this nature, the Department should consider assigning both the criminal and administrative investigations to outside independent entities.

OIR Group further advises that, regardless of the topic or nature, investigators remain focused on the administrative allegations and evidence that could prove or disprove them. LCPD should also carefully review all available evidence, especially in sensitive matters such as this, to ensure a thorough investigation.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. LCPD will take the recommendations into consideration. This case was very complicated involving serious allegations and several individuals. It was criminally investigated by an outside agency to eliminate conflict between current and former Department employees.

² We did note that some witnesses, such as the later-accused detective, who were well-versed in specifics of investigating domestic violence, opined that the victim's injuries in the photographs were consistent with domestic violence and not a fall.



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TO: City of Las Cruces
FROM: OIR Group
DATE: May 19, 2022
RE: Review of Administrative Investigation – #2021II-013¹

Introduction

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

OIR Group received the above-referenced case file on April 22, 2022.

Case Summary

On the early morning of June 16, 2021, a Dona Ana County Sheriff deputy responded to a call for a suspicious vehicle parked near closed businesses. The deputy made contact with the driver of the vehicle, who he later learned was an off-duty Las Cruces Police Department police officer. The deputy reported that he could smell alcohol on the officer's breath and that his eyes were watery and bloodshot. The officer initially stated that he drove to the location to "cool off" from a domestic dispute with his ex-girlfriend. The deputy conducted a field sobriety test and instructed the officer to sit on the curb. The officer then stated that he had walked, not driven, to the location.

¹ This case is related to DASO case #21-035876.

The deputy requested a field breath test and the officer refused. The deputy advised the officer of the potential consequences of refusing a breath test, including revocation of his driver's license and arrest. The officer stated that he understood and still refused. The deputy arrested the officer for Driving While Intoxicated (DWI) and completed driver's license revocation paperwork.

An LCPD supervisor was informed of the arrest and met the officer at the Dona Ana County Main Station. The LCPD supervisor took the officer's credentials. The officer was transported and booked at the Dona Ana County Detention Center.

The officer was placed on administrative leave. One month later, the court declined to prosecute the officer, citing that there was "insufficient evidence of impairment," and LCPD returned the officer to full duty.

During his first administrative interview, the officer made several statements that were inconsistent with the evidence and was not forthcoming with all information related to the incident.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a formal Internal Investigation (II) of the complaint. IA framed the following allegations against the officer:

1. **General Order 160.07 – Complaint Investigation – Employee Requirements**
This General Order section states that "employees are required to answer questions, submit to tests, or render materials and relevant statements ... in administrative investigation." Failure to comply "constitutes insubordination and may subject the employee to further discipline."
2. **General Order 103.08 – Code of Conduct – Criminal Conduct Prohibited**
This General Order section states that "employees shall not engage in any conduct, on- or off-duty, regardless of their whereabouts, which is in violation of the law."
3. **General Order 103.28 – Code of Conduct – Conduct Unbecoming**
This General Order section states that "employees shall not conduct themselves in a manner that would bring discredit upon themselves, the department, or any employee of the department" and specifically notes that this applies to conduct on- and off-duty.

All three allegations were sustained. A lieutenant reviewed the officer's personnel file and recommended that the officer serve a low-level suspension, which he did.

OIR Group Review

LCPD provided OIR Group the case file, including all evidence from the Dona Ana County Sheriff. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, we found the investigation to be extremely thorough and complete. We commend the IA investigator for his careful review of this incident, which included re-interviewing the accused officer when evidence from witnesses and reports did not align with the officer's original statement.

We have the following additional observations.

First, the investigation revealed that the officer was not truthful during the initial interaction with the deputies (for example, he stated that he walked to the location when he clearly had driven) and also withheld information during his first administrative interview in an effort to minimize the incident. The disciplinary memo considered that the officer had "brought discredit upon himself by eventually lying" and that he had "held back relevant statements," but eventually recommended low-level discipline, citing that the officer was "hard-working" and "has never had any significant or ongoing performance issues."

While an officer's performance history certainly should be considered in recommending discipline, the absence of prior performance issues should not be the exclusive rationale for the disciplinary outcome. In this case, the problematic off-duty conduct arguably warrants a more severe consequence in and of itself (particularly since he avoided any of the corrective measures that a criminal conviction might have produced). Beyond that, though, the sustained allegations of dishonesty or intentional deception, even if they were a first-time offense, are of particular concern because an officer's honesty and integrity are essential parts of the job, especially when an officer is called upon to testify in court. We therefore question the resulting low-level discipline in this case.

This is not the first time that we have commented on the perceived leniency of discipline issued for sustained allegations (see, most recently, our memo related to case 2021 EIC1-017). In previous memos, we recommended that the Department carefully consider its philosophy of discipline, not with an intent to be overly punitive, but to ensure that the discipline serves its intended corrective purpose. The Department responded that it "will continue to assess discipline to ensure it serves a meaningful

corrective purpose.” We, too, will continue to assess the disciplinary outcomes of cases going forward in an effort to encourage appropriate accountability for misconduct.

RECOMMENDATION 1

LCPD should continue to review its philosophy of discipline to ensure that it serves a meaningful and corrective purpose.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD will take recommendations into consideration. LCPD is currently developing a discipline system with a Chart of Sanctions to ensure discipline is taken in a prompt, fair, and consistent manner.



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TO: City of Las Cruces
FROM: OIR Group
DATE: April 22, 2022
RE: Review of Administrative Investigation – IA # 2021 EIC1 - 015

Introduction

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

OIR Group received the above-referenced case file on March 28, 2022.

Case Summary

The complainant in this case was a mother who called to complain about the impounding of a car in conjunction with a theft case involving her juvenile son. She was frustrated, in part because she had been led to believe that she'd be allowed to drive the car away from the scene where officers had originally conducted a stop of her (unlicensed) son and two companions. As it turned out, the car was registered to another person and lacked any current insurance, and the officers made the decision to impound it. She described the officers as "hateful" and felt like she was not treated with the proper levels of courtesy and respect.¹

¹ The woman registered her complaint in the form of a phone call with a Department lieutenant; she also raised a separate complaint about another traffic stop that the Department investigated under a different file number. (See #2022 EIC1-004).

The Department was able to resolve this case at the “Preliminary Inquiry” level, based on the body-worn camera recordings of both officers and the written report of the encounter. It found that allegations of improper conduct were not supported by the evidence, and that the officers had been justified – and in fact obligated under the circumstances – to impound the car rather than releasing it to the complainant at the scene.

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, and body-worn camera footage. We concur with the outcome of the case.

It was not disputed that the officers had a legitimate basis for stopping the car and ultimately issuing citations to the woman’s son and his two juvenile companions; the evidence was clear that they had just been involved in a shoplifting incident at a local pizza restaurant.² It is also true that the complainant was correct as to one of the bases for her complaint: one of the officers had indeed indicated a willingness to allow her to avoid the impound by taking the car herself when she responded to the scene. But that seemingly well-intentioned gesture was superseded by the new information about the status of the car.

While the complainant’s disappointment was understandable, the officers’ discretion was removed once it became clear that there was no applicable insurance and that the woman herself was not the registered owner.³ Nor were the other exchanges between the officers and complainant reflective of hostility or a lack of professionalism on their part.

In short, the complaint does not seem to have been supported by the evidence, and the LCPD handling of it was appropriate.

² The involved officers treated the young people with an age-appropriate mildness and consideration that was noteworthy.

³ In contrast to her subsequent complaint, which was shared a few weeks later, she seemed somewhat understanding of the situation in real time.

LCPD Management Response

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



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: December 13, 2021
RE: Review of Administrative Investigation – IA2021EIC1-016

Introduction

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

OIR Group received the above-referenced case file on November 18, 2021.

Case Summary

LCPD received a written complaint with two separate allegations from the same person. The complainant alleged that following a traffic accident, LCPD committed misconduct when a responding officer to a non-injury accident failed to cite the at-fault driver. The complaint further alleged that on a different date, LCPD committed misconduct regarding the way in which a detective interrogated employees at a fast-food restaurant, some of whom were minors.

With regard to the first allegation, LCPD reviewed the body-worn camera footage and police reports to make its determination. It found that the decision whether to cite the driver of the other vehicle or issue a verbal warning was within the responding officer's discretion; accordingly, it found that no policies had been violated.

Regarding the second allegation, LCPD reviewed the body-worn camera footage and police reports and determined that the detective at issue had committed no violations of policy in the way he interviewed the restaurant employees while conducting a homicide investigation.

OIR Group Review

Allegation Involving LCPD's Handling of Traffic Collision

With regard to the first allegation, OIR Group's independent review of the reports and body camera footage available in this matter found no support for the allegation that the officer abused his authority in failing to cite the driver. New Mexico law and LCPD policy allows police wide discretion on when and whether to cite individuals involved in non-injury traffic collisions. The body camera footage that was available showed the officer performing professionally in his interactions with both parties. The complainant expressed no concern at the time about how the officer was handling the situation. OIR Group concurs with the finding that the officer was well within his discretion in determining not to issue a citation to the at-fault driver.

Allegation Relating to Conduct of Detective's Interrogation of Restaurant Employees

OIR Group reviewed the reports and body-worn camera footage of the investigative visit to the restaurant that had been the basis of the other complaint. Earlier on the day in dispute, the detective had arrested an individual under suspicion of homicide at the restaurant. He later received information that the individual's cell phone had been handed off to another employee prior to the arrest. The follow-up visit was to attempt to locate the cell phone.

While we agree with the conclusion that the detective's response at the restaurant did not rise to the level of misconduct, there are aspects of his handling of the incident that could have been better. The detective's frustration over the perceived lack of cooperation from the managers was exhibited at several points during the visit. For example, when a restaurant supervisor simply raised her voice, the detective responded: "You are gonna' yell, you are gonna' get arrested for obstruction of justice". On two different occasions, the detective was heard on the phone to other LCPD personnel stating that the incident had "turned into a giant sh** show."

As bothersome as the management's perceived recalcitrance may have been, the detective seemingly could and should have deployed a strategy other than obvious

exasperation and threat of arrest. A show of more patience and understanding from the officer could have de-escalated the situation and reduced the friction that was apparent all throughout the operation.

On the other hand, there were other aspects of the detective's response that were admirable, particularly his interviews of the employees. In particular, the detective's interview with an employee effectively provided the initial information that led to the discovery of the cell phone. As a result, he was able to learn the identity of another employee who was in likely possession of the phone.

When the detective interviewed that employee, a minor, he appropriately read him his Miranda rights:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you.

However, the detective failed to obtain an acknowledgement that the juvenile understood his rights and still wished to speak to him. The following questions, standard following every Miranda warning was not provided to the juvenile:

Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?

As a result, the statements and (possible evidence) produced as a result of that interview may have been found to have not been voluntarily obtained if challenged in court. Particularly when the interrogation involves a juvenile, it is incumbent upon law enforcement to ensure any statement provided is voluntary. A full and complete reading of the Miranda warnings and *then* questioning the individual about his understanding of rights and his willingness to speak to the officer will go far towards meeting that responsibility.

Every police operation is subject to review as a learning opportunity. Whenever LCPD receives a complaint, it should review the incident not only to learn whether the involved employees performed consistent with policy but also to examine whether there were any aspects of that performance that could be improved (as well as point out aspects of the operation that went well). Here, it would have been helpful for that type of constructive review to occur.

RECOMMENDATION 1

LCPD should identify performance issues – both positive and negative – that emerge from the complaint review process, even if specific policy violations are not implicated, and should engage in appropriate follow-up with the involved employee.

RECOMMENDATION 2

The involved detective should have been debriefed about his performance relating to the interrogation of the restaurant employees, especially the failure to follow the reading of Miranda rights with questions indicating an understanding of those rights and a willingness to speak to the detective.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD is in agreement with the recommendations. Follow-up will be conducted with involved officers to discuss performance issues-both positive and negative. Additional training will be conducted if necessary.



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TO: City of Las Cruces
FROM: OIR Group
DATE: March 31, 2022
RE: Review of Administrative Investigation – #2021II-016¹

Introduction

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

OIR Group received the above-referenced case file on March 3, 2022.

Case Summary

In January 2021, a non-sworn LCPD employee called dispatch to report that he had negligently discharged his personal firearm while in his apartment playing a first-person shooter video game. The bullet traveled through his television set, through a joint wall with the neighboring apartment, through the neighbor's couch, and eventually out to a staircase. The non-sworn employee checked on his neighbors and learned that no one was injured. The employee then secured his firearm and waited for officers to respond.

¹ This case is related to LCPD case #21-005641.

Around the same time, the neighbor also called dispatch to report that a non-sworn LCPD employee had fired the gun.

Two LCPD officers arrived. When the first responding officer learned that an LCPD employee was the suspect, he contacted a sergeant who advised a lieutenant of the incident. The sergeant then responded to the scene.

The officers secured the firearm as evidence, collected evidence and information to file a criminal complaint, and advised the non-sworn employee that he would receive a criminal summons to appear in court for this incident via mail.

In August 2021, LCPD received a notification from the Las Cruces Municipal Court that the Court had issued a warrant for the non-sworn employee for failure to appear. An IA investigator learned that, due to a reporting error on the criminal complaint paperwork submitted by the responding officer, the non-sworn employee had never received his summons. LCPD requested and the Court approved a motion to quash the warrant and reissue the summons to the correct address.

When they learned of the warrant, IA placed the non-sworn employee on administrative leave and initiated a formal Internal Investigation of the incident.

In the course of the investigation, the IA investigator noted that the reporting officer had made other errors on the related report and had failed to properly upload and label body-worn camera footage related to this and other incidents.

IA also noted a policy flaw that they have since corrected, as discussed later.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a formal Internal Investigation (II) of the complaint. IA framed the following allegations against the non-sworn employee:

1. **General Order 103.08 – Code of Conduct – Criminal Conduct Prohibited**

This General Order section states that “employees shall not engage in any conduct, on- or off-duty, regardless of their whereabouts, which is in violation of the law.”

The IA investigator determined that this allegation was sustained because, per his own admission, he negligently discharged his personal firearm while playing a video game.

IA determined that this amounted to criminal conduct as it violated **City Ordinance 19-164**, “Prohibited Use of Weapons and Firearms.”²

A lieutenant reviewed the employee’s personnel and recommended that the non-sworn employee serve a low-level suspension, which he did.

Additionally, the investigator framed two allegations against the LCPD officer who responded to the scene:

1. **General Order 141.02.A – Police Reports – Accuracy and Thoroughness**
This General Order section states that “reports shall include all pertinent information and be submitted in the correct form” and “must be factual, accurate, logical, clear, concise, complete and unbiased.”
2. **General Order 151.02 – Recording Devices – Disposition of Recordings**
This General Order section requires personnel to enter all audio, image, and video recordings into the correct system prior to going on days off. Further, it requires all officer to properly tag the case with a category, case number, and location on or before their next duty day.

The IA investigator determined that the officer violated the first section because his report contained erroneous information that ultimately resulted in the non-sworn employee not receiving his summons. The officer violated the second section when he failed to properly tag/label over 150 body-worn camera videos, upload body-worn camera videos in a timely fashion, and properly dock his body-worn camera device regularly. The allegations were sustained.

A lieutenant reviewed the officer’s personnel package. The lieutenant recommended that the officer serve a low-level suspension, which he did upon his return from military leave.

² IA also noted that, because this employee was “non-commissioned,” the policy regarding use and negligent discharge of a firearm (**General Order 143**), which at the time of the incident was only applicable to commissioned personnel, did not apply to this case. As such, IA did not frame allegations related to that General Order. We elaborate on this policy gap and corrective action by LCPD later in this memo.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, we found the investigation to be fair, thorough and complete. We have the following additional observations.

We again comment that the discipline issued in this case seemed lenient. In particular, we noted that the responding officer showed what the Department called a “willful disregard” for policies regarding body-worn camera video upload and labeling. Further, we noted a pattern of practice related to this officer’s lack of diligence regarding important administrative functions of policing, such as accurate report writing.

As we stated in previous memos,³ the purpose is not to create an overly punitive system of discipline. Rather, our recommendation is meant to ensure that discipline serves a meaningful corrective purpose.

RECOMMENDATION 1

LCPD should continue to consider its “philosophy of discipline” as it pertains to consequences in sustained cases.

Second, we noted a significant policy flaw related to reporting requirements in this incident that the Department has since corrected. The IA investigator noted that the negligent discharge incident itself was never entered into LCPD’s internal force tracking software program, BlueTeam, or reported to the Professional Standards Bureau. As such, Internal Affairs only became aware of the negligent discharge incident when the Department received the failure to appear warrant for the officer, despite the employee’s self-report and several supervisors knowing about the incident.

According to LCPD, this was because the policy regarding reporting a negligent discharge, **General Order 143**, which includes the requirement to enter the incident into BlueTeam and triggers an automatic Supervisor Matter/IA review, did not apply to him as a non-commissioned employee. Indeed, this policy specifically stated: “this General Order applies to commissioned employees.”

LCPD reported that this and other applicable policies have since been updated to apply to *all* employees. LCPD provided a Department-wide training on this topic in its bi-

³ See the OIR Group memos re: 2021EIC1-010 and 2021II-022 for a more detailed discussion of this concern.

annual “Legal Update” and trained supervisors on reporting requirements in its lieutenant and sergeant training.

RECOMMENDATION 2

LCPD should periodically review all General Orders and policies to ensure that, where intended, the policies apply to *all* personnel.

RECOMMENDATION 3

LCPD should ensure that these updated policies are uploaded to the Department and City’s websites.⁴

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. LCPD will continue to access discipline to ensure it serves a meaningful corrective purpose. All policies are being reviewed yearly and personnel has been advised when policies pertain to all staff. City and Department websites are up to date with the latest policies.

⁴ OIR Group noted that the version of **General Order 143** on the City’s “Munidocs” website was last updated in 2018.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: March 31, 2022
RE: Review of Administrative Investigation – #2021EIC1-017

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 March 3, 2022.

Case Summary

This investigation was initiated in response to a complaint by a man who was unhappy with two separate encounters involving LCPD, which occurred approximately six weeks apart. In the first, he alleged that he had been wrongfully arrested for violation of a restraining order that required him to stay away from the home of his former partner. In the second, he claimed that LCPD had responded in an unsatisfactory manner when he called for assistance weeks later for what he considered to be antagonistic behavior on the part of his ex-wife. His unifying contention was that the Department had a sexist response to the disputes with his ex-wife and sided with her unfairly in both instances.

LCPD reviewed these allegations and was able to refute them during the "Preliminary Inquiry" phase of its investigative process. The body-worn camera and other recordings sufficed to establish that the officers had handled both incidents appropriately in the Department's view.

The initial call for service had involved an encounter with the man and his former wife that devolved into conflict. Under circumstances that were disputed, she somehow ended up with his cell phone, and later he apparently went to the woman's residence to retrieve it – in violation of the restraining order that required him to stay away from that location. They allegedly clashed again at the scene, and she called the police as he left. He was soon taken into custody at his residence by Sheriff's Office personnel, and then turned over to responding officers from LCPD.

The man agreed to speak with the arresting officers. He was upset, and his version of events was somewhat convoluted and internally contradictory. The handling officers had decided that there was probable cause to arrest for violation of the restraining order, based on the woman's representations and the flawed nature of the man's own account. A sergeant confirmed this when he spoke with the man in his holding cell at the station.

Upon review of the police report and relevant recordings, the investigator determined that the complaint's assertion of a wrongful arrest was "without merit." However, a peripheral issue emerged during the investigation. It was discovered during the review process that one of the officers on the original call and the sergeant who spoke with the newly arrested complainant at the station had failed to complete a report that documented their respective involvement. This was identified as a violation of Department policy, and the allegations were sustained for both the officer and the sergeant.

As for the second issue, the man was upset about his attempt to report alleged misconduct by his ex-wife in a phone call to LCPD. His reason was that she had come to his workplace (a restaurant) in what he believed was an attempt to improperly harass him. His subsequent complaint was that the officer who spoke with him was rude, and that a requested follow-up call with a supervisor never occurred.

Body-worn camera recordings captured two relevant events: the initial call, and a sergeant's two subsequent – and unsuccessful – attempts to reach the man by phone a short time later. (He left a message.) The latter two recordings established the sergeant's appropriate diligence and appeared to belie the man's claim that no one had tried to reach him. The first recording was brief, because of the complainant's somewhat hasty shift into annoyance when the officer attempted to get some additional details. (He seemed to suspect the officer was intending to make him a focal point of

scrutiny instead of the victim in the encounter.) It was the complainant who ended the call abruptly, and the officer's actions did not rise to the level of anything sanctionable.¹

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, and body-worn camera footage. We agree with the case outcomes as to the individual allegations, and have the following additional observations:

Notification Letter:

The Department provided the complainant with a letter at the conclusion of the case, and it informed him that “the officer(s) violated departmental rules and regulations.” However well-intentioned and technically accurate this characterization was, it had the potential to mislead to man into thinking his original assertions had been corroborated by the evidence. This was not the situation. And even the Department's listing of the actual violated policy (that pertained to the report-writing obligation), while helpful, probably did not serve to dispel any confusion. We identified an identical issue in another recent case², and we reinforce our recommendation there that the Department revisit this practice.

Disciplinary Consequences:

We found the Department's disposition of the sustained allegations for failing to write reports to be noticeably lenient. It is a phenomenon we have noted with concern before, and we wish to emphasize that our intent is not to be punitive or hostile. Instead, we think that the “messaging” and standard setting established by the consequence for sustained violations are elements of effective discipline, and that overly “light” responses run the risk of diminishing the influence of the process on future officer performance.

¹ That said, the officer's demeanor did border on “testy” when he was challenged by the complainant. His responses were delivered in a tone that certainly did nothing to ameliorate any skepticism the man may have brought to the call in the first place. It is our understanding that the complainant is someone with whom the Department has considerable – and sometimes frustrating – familiarity. But this is all the more reason for the people who engage with him to maintain their high levels of professionalism.

² See the OIR Group memo re IA2021EIC1-010.

This is not to say that we would advocate for a *significant* increase for either of these officers. We also recognize that, but for the investigator's diligence in flagging the issues during the complaint review, the shortcomings were mild enough to have been handled as "Supervisory Matters" that generally merit the lowest levels of intervention.

Here, though, both of the involved employees had aggravating factors that in our view warranted a stronger indication of the agency's disapproval. The patrol officer, for example, is apparently a repeat offender in this arena – a reality that makes progressive discipline all the more warranted.³ And the sergeant, though lacking any relevant history in his own past, was of course a supervisor, and someone who presumably should be held to a higher standard than the outcome here would reflect.

We encourage the Department to remain open to an ongoing assessment of its "philosophy of discipline" as it pertains to consequences in sustained cases.

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. LCPD will continue to access discipline to ensure it serves a meaningful corrective purpose. Modifications to notification letters are currently being made to provide as much information as possible to the complainant.

³ In fact, this case was resolved concurrently with another that happened in the same approximate time period, and which also involved a (somewhat more substantial) neglect of basic ministerial duties. See IA # 2021 E.I. C1 – 017.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: January 5, 2022
RE: Review of Administrative Investigation – IA # 2021EIC1-018

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 December 8, 2021.

Case Summary

This case originated with a complaint from an adult female resident of the City, who was dissatisfied in various ways by the response of two LCPD officers who took her into protective custody after a call for service. The woman had requested officers to assist her in removing someone from her apartment whom she no longer wished to have as a roommate. When that encounter deteriorated into her arming herself with two knives and briefly confronting the man, the officers detained and handcuffed her. They ended up bringing her to a behavioral health hospital for admittance.

Officers first encountered the woman in the parking area that was approximately 100 yards from her apartment. Attempts by the officers to clarify ambiguity over the man's status in the home (in terms of how long and under what conditions he had been living there) created immediate friction with the woman. She ended up walking away from

them, but not before making a vague reference to harming the man if the police were not going to assist her on her terms.

This caused the officers to linger in the area for a few moments to discuss their options, only to be summoned by the woman as she stepped back outside and told them to “come on in.” They walked the short distance to the apartment and found the door was open – and that the woman was holding two knives as she stood several feet away from her seated male roommate.

At gunpoint, the officers ordered her to drop the knife and get on her knees; she readily complied. One officer escorted her to the patrol car in handcuffs while the other spoke with the man. He said he did not wish to press charges while expressing concerns about her mental well-being. The officer left him at the scene, though they encouraged him to make other living arrangements for himself.

The officers decided to bring her to the hospital out of concern that her erratic and threatening behavior constituted a “danger to self or others” that warranted custodial care. The woman was indeed admitted.

It was a week later that she left her complaint with the Department in the form of two phone messages, asserting that the officers had mishandled the call, and saying that one of them had failed to properly deploy his body-worn camera to record her interactions with the police.

LCPD’s Investigation and Analysis

The investigation was assigned to an Internal Affairs detective, who looked at reports, body-worn camera recordings, and other evidence as part of his “preliminary inquiry” into the incident. (The case memo does not specify as to any attempts to conduct a supplemental interview with the complainant, though one of her messages does acknowledge a reply voicemail from the Department.)

This material was considered sufficient to refute the different allegations. Both cameras clearly were operational and deployed in keeping with LCPD policy.¹ And the recordings also show the woman’s level of agitation, shifting moods, and – importantly – armed threats against the man with whom she was conflict over his presence in her apartment.

¹ The complainant focused repeatedly (in the moment and in her complaint) on one officer’s description of his own BWC as an “inanimate object.” His point, seemingly, was to dismiss her tactic of addressing the camera directly, but she interpreted (or chose to interpret) it as a claim that the camera was broken or otherwise not recording.

Accordingly, the Department found that both officers acted appropriately and that the woman's claims of policy violations should be exonerated.

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, body-worn camera footage, photographs. Though in the past we have questioned different aspects of LCPD's "preliminary inquiry" model of case resolution (and prompted adjustments by the Department), this seems to have been an appropriate example of the concept's use. The recordings confirmed the relevant facts and were sufficient to refute the woman's allegations of misconduct.

The evidence in the case also revealed occasional elements that warranted additional attention from the Department. This was not because they were egregious, but because they showed the officers in a less favorable light than they mostly appeared. These included instances of impatient banter with the woman, and repeated profanities as they chatted with each other during lulls in the process.

With regard to the minor moments of frustration, we mention them in part because they were in contrast with the professionalism and composure that the officers largely maintained. And we recognize that casual conversations among officers (and many other professional groups) have a different tone and should be held to a different standard than direct interactions with members of the public. Where LCPD members and other police personnel differ from professionals, though, is that recordings have become routinized in their "workplaces," and that these recordings can easily have evidentiary significance in a variety of contexts. Reminders about the value of composure and controlled language are always worth reinforcing, particularly when the issues arise in the context of an administrative review.

RECOMMENDATION 1

LCPD should identify and address issues of officer professionalism that arise in the context of the investigative review process, even if they do not rise to the level of formal policy violations.

RECOMMENDATION 2

To that end, the involved officers should be debriefed about the encounter by sitting with them and going over the pluses and minuses of their performance on this call.

LCPD 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 department strives to be professional in all our encounters with citizens. The recommendation of remaining professional even when not in close contact with citizens but still being recorded will be covered in our Code of Conduct training. Following up with officers involved in such incidents as recommended already exists to some extent. IA will follow-up with section supervisors to ensure that supervisors are aware and following up.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: February 22, 2022
RE: Review of Administrative Investigation – IA# 2021EIC1-019¹

Introduction

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

OIR Group received the above-referenced case file on February 2, 2022.

Case Summary

In October of 2021, LCPD received a complaint from a female who was arrested by two LCPD officers for Driving While Intoxicated (DWI). The female alleged that when she recovered her property from the Dona Ana County Detention Center, some of her property was missing, including a necklace, earrings, a SENTRI (passport) card, and a driver's license.

¹ This case is related to LCPD case #20-110783.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a preliminary investigation of this matter. IA framed the following allegation against both accused officers:

1. **General Order 300.10. – Evidence/Property possessed by employees:**

This General Order states that employees shall properly submit items of evidence as soon as practical but always prior to going off-duty, and that employees shall not retain any evidence for their personal use or possession, nor delay submission of property to evidence

The IA investigator determined that this allegation was unfounded because the body-worn camera footage showed the officers collect and properly book this evidence when the complainant was booked into the Detention Center. After communicating with the District Attorney's Office, the investigator also determined that the complainant's driver's license was revoked due to the DWI arrest and that, therefore, it would not have been returned to her.

No further investigation was conducted.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, OIR found that the investigation was appropriately scoped, was thorough and that the outcome is fair based on the evidence collected by Internal Affairs.

In reviewing body-worn camera footage, OIR Group noted that the officers actually tried to coordinate easy retrieval of the female's property "because [the female had] a flight to catch" the next day. The arresting officer asked her partner officer to bring the female's purse and backpack to booking so that the female could have them sooner. But the partner officer stated that it would be faster to retrieve those larger items from the tow yard because the Detention Center would not accept larger items. The officers made a concerted effort to make properly retrieval easier for the female.

OIR Group has commended Internal Affairs for detailed close-out letters to complainants that go beyond form letters. In this case, we found that the close-out letter could have included more details about the critical steps undertaken during the investigation, such as the review of the video evidence that demonstrated the inventory

of property during the booking process. Moreover, we advocate that law enforcement agencies offer complainants the opportunity to view such video evidence, especially when, as here, that evidence proves determinative.²

RECOMMENDATION 1

LCPD should consider in appropriate cases offering the complainant the opportunity to view video evidence, especially when such evidence is determinative.

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. In such cases, IA will make an effort to provide video evidence to complainants if they wish. This transparency will improve our relationship with citizens.

² In this case, if the complainant had accepted an invitation to review the video evidence, she may have then decided to pursue her lost property concerns with the Detention Center.



7142 Trask Avenue
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TO: City of Las Cruces
FROM: OIR Group
DATE: April 12, 2022
RE: Review of Administrative Investigation – #2021EIC1-020

Introduction

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

OIR Group received the above-referenced case file on March 28, 2022.

Case Summary

In December 2021, the complainant traveled to LCPD's station to complain about an incident that had resulted in her and her daughter's arrest for battery. Specifically, the complainant alleged that when her daughter had subsequently called to request that domestic violence charges be placed on her father, the officer told the daughter that the father was the victim and that "she was a nobody." The complainant expressed concern about the way in which the officer spoke to her daughter over the phone.

LCPD's Investigation and Analysis

LCPD reviewed the allegation as a preliminary inquiry, reviewed the police report, body-worn camera video of the officers' response, and the tape-recorded phone call made by the daughter to the responding officer.

Based on that review, the investigator determined that there was no concerning conduct in the way the officer communicated with the daughter when she called to register her concerns. The review went beyond the scope of the allegation and also found no issues with the performance of the officer relating to the initial call for service and the on-scene interviews.

He therefore recommended a finding of EXONERATED which was endorsed by the chain of command.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. Based on this review, we agree with the outcomes as to the complainant's allegations.

The responding officer's body-worn camera captured the on-scene interview of the daughter, and a review of it revealed nothing untoward in the way the officer conducted the interview or otherwise handled the event. The outcome of the scene investigation – namely, the arrest of both the complainant and her daughter for domestic violence battery – seems to have been justified, despite the complainant's dissatisfaction with it.

It was based on the LCPD response team's thoughtful evaluation of the evidence, which included consideration of the relevant injuries of the parties and a discrepancy in the daughter and mother's account of events which varied from the versions provided by the father and two uninvolved eyewitnesses.

As for the subsequent recorded telephone call that prompted part of the complaint, a review of it did not support the allegation that the officer called the daughter a "nobody". Instead, the officer attempted to patiently explain why no charges would be lodged against the father. Again, there was no evidence to indicate that the officer's conduct on that call was discourteous or otherwise problematic, in spite of the woman's assertions to the contrary.

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. In such cases, IA will make an effort to provide video evidence to complainants if they wish. This transparency will improve our relationship with citizens.



7142 Trask Avenue
Playa del Rey, CA 90293
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TO: City of Las Cruces
FROM: OIR Group
DATE: March 2, 2022
RE: Review of Administrative Investigation – IA # 2021 II - 022

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 February 3, 2022.

Case Summary

This investigation was generated internally by LCPD management, several months after the underlying incident. It related to potential shortcomings in the performance of an officer who responded to a domestic disturbance call out.

The call originated in a 911 "hang up" that prompted officers to respond to the relevant residence. Two different officers arrived separately, and they encountered a woman, her male domestic partner, and a small child.

As the first officer arrived, the child emerged from the open front door of the home. He did not appear to be upset, but said that his parents were fighting. Shortly thereafter, the male adult appeared. He acknowledged that he had been arguing with his girlfriend, though he too was calm and minimized the level of conflict. He also stated clearly that

he did not want the officer to make entry into the home, though he did agree to summon the woman so that the officer could speak with her.

At that point, the man exited the home past the first officer and began to walk away from both the residence and the second officer, who was standing outside. The second officer attempted to speak with him, but the man continued toward the driveway and then entered the interior of his truck, which was parked in the driveway. Though he was not actively uncooperative, he also made it clear that he was not submitting to the officers or conceding that they had a basis to take enforcement action.

The man retrieved something from inside his truck and then came back out again. At that point, the second officer decided to detain the man and to handcuff him in light of his lack of cooperation. He ordered the man to turn around. After initially complying and putting his hands behind his back, the man tensed up when one handcuff had been placed on him and attempted to pull away, swearing at the officer's attempts to take control of him in front of his child.

The first officer, who had been speaking with the woman, heard the commotion and came out to assist his partner. After a brief struggle, they took the man to the ground and were able to complete the handcuffing process. The man was then put into the back of the second officer's radio car and eventually booked for resisting the officers and other charges.

The incident subsequently moved through the normal LCPD internal review protocols, including written reports by the involved officers and subsequent supervisory assessments of what had occurred (including a review of the body-worn camera recordings). At one point in this process, a Department manager flagged a concern over whether there had been a legitimate basis for detaining the man based on what the relevant officer knew at the time. This, in turn, predicated the legitimacy of the use of force that resulted from the man's resistance. The Deputy Chief ordered an Internal Affairs review.

The investigator was able to make a determination without conducting formal interviews. This is because of the sufficiency of the available records in the case (including the video recordings), and the relevant statements that the officers had already made in their recordings and written work product. The investigation concluded that the subject officer had in fact been legally justified in his decision to detain the man.

At the same time, the additional scrutiny that the case received led to the identification of two shortcomings in the subject officer's performance. One was the adequacy of his

written report – the minimal details of which had contributed to supervisory questions about what had happened. The other was his subsequent failure to appear in court for a hearing related to the case in question, which led to the dismissal of the charges against the man who had been arrested.

Both of these matters were found to be worthy of some intervention, but there were mitigating circumstances that led the Department to the position that neither rose to the level of a formal policy violation. Accordingly, the officer was given a referral for tailored training on the two specific topics.

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, and body-worn camera footage. We concurred that there was a sufficient basis to exonerate the officer without formalizing the case and requiring administrative interviews. The key finding was that the officers did have a sufficient basis for determining that an investigative detention was warranted, and that handcuffing him was an appropriate step in light of his insistence on moving around the premises and disregarding the officer's lower-level efforts at managing the situation. The investigative memo addressed the issue in a thorough and thoughtful manner.

We also found it commendable that the Department approached its review "holistically," in the sense of identifying issues that were outside the narrower original concern that initiated the investigation. The recognition that the officer would benefit from further attention to his report writing skills and court attendance protocols was constructive, and we assume the tailored training response ordered by LCPD management was beneficial. More generally, we heartily support the willingness to take advantage of additional opportunities for intervention when they arise in the context of an investigation. We encourage LCPD to "keep up the good work" in this regard.

While agreeing with the case outcome and peripheral measures described above, we had two additional observations: one substantive and one procedural.

The substantive matter related to a moment, captured on video, in which the officers were preparing to leave the scene in their respective cars and go to the hospital, where the subject was medically checked. The first officer on scene – who had been focused on speaking with the woman and was not involved in the initial conflict with the subject – offered to take responsibility for the transport of the man so as to minimize the potential

for additional antagonism during the drive. The second officer declined, and ended up taking the subject himself.

While no significant problems arose, the first (and more senior) officer's preemptive impulse struck us as a wise one, and one worth following when possible. (Notably, the sergeant on scene did not himself promote the switch or seemingly engage with the issue.) In the aftermath of a contentious encounter, and particularly a use of force, the notion of defusing further tension by swapping out duties in this manner is one the Department should encourage among its personnel.

RECOMMENDATION 1

When practicable, LCPD should encourage officers to take advantage of their staffing options and separate in-custody persons from the most directly involved officers after a use of force incident.

The procedural matter pertained to the long delay between the incident itself and the subsequent investigation. It is to the Department's credit that it puts individual uses of force through multiple levels of review, and that the due diligence of the Deputy Chief prompted constructive further inquiry into the underlying events. But some of the value in the process is lost when months pass with no activity. While there are many legitimate reasons – such as resource limitations, the press of other business, or the unavailability of key personnel – for such gaps in time, we take this opportunity to reiterate that timeliness is an important component of an effective discipline process.

RECOMMENDATION 2

LCPD should strive to complete all phases of its internal review processes in a reasonably timely fashion – particularly when individual officer accountability is at issue.

LCPD 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. We will discuss this issue about separating in-custody persons after a contentious encounter from officers involved when staffing options allow. Additionally, we continue to make process adjustments to improve the timeliness of all investigations.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: May 6, 2022
RE: Review of Administrative Investigation – IA # 2021 EIC1- 022

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 April 13, 2022.

Case Summary

This case arose from a call for service outside a home. The complainant was the aunt of an adult male who has mental health challenges and had come to the location in spite of being formally unwelcome due to past encounters with her and her husband. On this occasion the husband called the police in the midst of his wife and the nephew engaged in an argument; however, the woman ended up taking exception to aspects of the officer's subsequent handling of the event. She complained four days later, alleging that the officer had been unprofessional, that he had been overly aggressive in detaining him, and that the pat down of the nephew had been sexually harassing.

The Department was able to resolve this case at the "Preliminary Inquiry" level, based on the body-worn camera recording and the officer's report. The video established that the man had been uncooperative when the officer originally approached him, that there

had been a brief struggle as the officer tried to take a rock from the man's hand,¹ that the officer detained him in the back of his vehicle after first patting him down for weapons, and that he was eventually released from custody at the scene after the arrival of another family member and a sergeant. The disputed elements of the officer's handling of the stop were assessed by the investigator and determined to be consistent with Department expectations, in spite of how they were characterized or interpreted by the complainant.

OIR Group Review

LCPD provided OIR Group with the relevant investigation materials, including reports, other documentation, and body-worn camera footage. We concur with the outcome of the case. We do have additional observations.

Supervisor Performance

We watched body-worn camera recordings that were taken by two supervisors involved in this complaint. Both made a favorable impression.

The first was a video recording by the sergeant who responded to the scene based on the complainant's request as her nephew was being detained. His demeanor was steady, respectful, and patient. He did a fine job of communicating the Department's perspective regarding the underlying dynamic: namely, that the nephew's many prior encounters with LCPD had presumably framed aspects of the officer's approach, and that the conflict between the woman and her husband over the nephew's status made for a challenging situation for law enforcement to navigate.² Ultimately, he orchestrated an effective resolution to the incident.

The second was the video that the lieutenant made to document her intake interview with the complainant, who came in person to the station to express her concerns. She, too, brought a helpful demeanor to the exchange. She listened carefully, responded with empathy and encouragement to discussion of the nephew's difficulties, and offered explanation where applicable without trying to convince the woman that she was wrong.

¹ The man reportedly had a practice of collecting and painting rocks.

² The woman repeatedly acknowledged that LCPD was "between a rock and hard place" in trying to satisfy both her and her husband, who were decidedly at odds about the nephew's conduct and presence at the location.

The efforts of these supervisors reflected the positive contributions that police managers can make in defusing tension in the field and promoting confidence in the legitimacy of the complaint process. We found their respective performances noteworthy in the best of ways.

Officer Communication Skills

As stated above, we agreed with the LCPD findings as to whether the officer had violated any of the policies that were relevant in light of the allegations. He had a basis for detaining the man, faced immediate resistance, and accomplished the ensuing handcuffing and pat down search in a quick and reasonable manner. While the speed with which the situation became confrontational was clearly bothersome to the complainant, the video shows justification for the specific actions that generated her complaint.

To us, though, an additional and relevant point seemed to be less about the bottom-line legitimacy of the officer's detention and pat down, and more about the effectiveness of his approach – both at the outset of the call and subsequently. From the moment he got out of his car, the officer seemed brusque and inflexible in a way that “raised the temperature” of the encounter and precluded any further possibility of de-escalation.³ Similarly, his later discussions with the detained nephew, his frustrated aunt, and his later-arriving second aunt reflected exasperation and a hasty perception of impasse.⁴

The officer's frustration may well have been hard earned (in part based on past experiences with the same parties), and it should be noted that he never devolved into outright rudeness or unprofessionalism. Still, the effective handling of this kind of dynamic (in which repeated calls for service are complicated by mental health issues as well as family discord) is a challenge that young officers should be guided to meet when opportunities to do so present themselves. LCPD may not have taken full advantage of that opportunity in this case.

³ The rock that the man held was understandably concerning, but he never brandished it or appeared aggressive in any way.

⁴ He essentially cut off communication with the complainant after her initial refusal to step out of the street at his request, choosing to characterize it in his report as not wanting to speak with him, and described her as “yelling and screaming” in a way that seemed exaggerated.

RECOMMENDATION 1

LCPD should consider using relevant incidents that emerge in the complaint process as a forum for individual or Department-wide training regarding options for effectively addressing those individuals or locations that generate frequent calls for service and seem likely to recur.

RECOMMENDATION 2

Consistent with Recommendation 1, LCPD should debrief the involved officer with an eye toward improving demeanor and tone in future circumstances.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD will take recommendations into consideration. Information will be forwarded to the Professional Development section of our academy for future training opportunities.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: May 12, 2022
RE: Review of Administrative Investigation – #2021EIC1-025¹

Introduction

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

OIR Group received the above-referenced case file on April 13, 2022.

Case Summary

Two complainants, a husband and wife, alleged that LCPD officers used excessive force -- including punching, a strike with a flashlight to the back of the head, and use of the Taser -- illegally entered and searched their home, failed to read them their Miranda Rights, and made false accusations to Child Protective Services (CPS) during a call for service.²

¹ This case is related to LCPD case #21-28398.

² Each complainant submitted a separate complaint form on June 16, 2021, with a similar narrative and allegations.

The complaint stemmed from a call for service for a possible domestic violence incident on the evening of March 18, 2021. The reporting party stated that a man had struck a woman, his wife, in the face and that the two were arguing loudly, and that they had entered their trailer home. When Officer 1 arrived and approached the home, he heard a man yelling and a woman screaming inside. When he knocked on the door and identified himself as a police officer, the home went quiet.

Meanwhile, Officers 2 and 3 arrived. The officers knocked several more times and, hearing no response, decided to break down the door. Officer 3 unsuccessfully attempted to kick down the door. He then walked to his vehicle to retrieve a sledgehammer, which he used to open the door. While he was away, Officer 1 continued knocking and yelling, “come out, it’s the police department.”

From the doorway’s threshold, the officers again identified themselves and instructed “come to the front door now!” Within the trailer home, a man emerged from the right side of the home yelling, “what the f***” as a woman came from the left side, yelling that the officers had broken her door. Both demanded a warrant.

The woman moved to the threshold and attempted to close the door while pushing at the officers. The man approached, reached across the woman, and also attempted to close the door.

As officers commanded the two to “move back,” Officer 2 unholstered his Taser with his right hand and grabbed the man’s shirt with his left hand. At the same time, the man pushed the woman’s left shoulder to move her away from the door. The woman, however, pushed herself between the man and Officer 2. A struggle ensued in the tight doorway as the man attempted to pull away and the woman continued to insert herself between the man and Officer 2. All three moved into the home.

Officer 1 moved into the home to assist Officer 2. Officers 1 and 2 grabbed the man’s arms as he continued to fight. The woman fell to the ground and this momentum allowed the man to free his right hand, which he used to swing at Officer 1. Officer 1 delivered two strikes to the man’s face and one knee strike to the man’s hip. The man dropped to the ground, holding himself upright on his elbows. Officer 1 grabbed the back of the man’s neck and, according to LCPD, performed a “lateral head displacement” to control the man. The man continued to fight the officers.

Officer 2 placed his Taser between the man’s upper shoulder blades and deployed one round in “drive stun” mode.³

³ “Drive stun,” referred to in LCPD General Orders as “contact mode,” is when an officer places the Taser directly against the body rather than deploying the electrical probes that conduct

Meanwhile, the woman again tried to intervene. The woman grabbed the man's shirt and moved toward Officer 1 as if to push him away. Officer 1 pushed the woman away as Officer 3 entered the home to assist. The woman fell partly on top of the man. Officer 3 grabbed the woman by her legs and dragged her off of the man. He then picked up the woman, who was yelling, "you broke my arm!" and carried her to the exterior elevated porch of the home.

Officers 1 and 2 eventually handcuffed the man's left arm. He refused to give up his right arm. Officer 2 warned that he would use the Taser again, and the man submitted. However, he remained uncooperative refusing to roll over, stand up, and sit in the police vehicle.

Meanwhile, the woman continued to complain of pain to her shoulder, stating that it was dislocated.

Throughout the duration of this incident, the couple's six-year-old son was standing in the room watching. Officer 3 helped the woman into the home to join her son. She sat on the bed and the boy sat next to her.

Officer 3 collected information from the woman, who alternated between gesticulating with her arms and complaining of pain to her shoulder. When Officer 3 asked about blood on her lips and mouth, she denied that the man had struck her and asserted that she would have fought back if he had.

A supervisor who had responded to the scene called the LCPD Criminal Investigation Section (CIS) to investigate the possible assault on a peace officer. CIS determined that there was insufficient evidence for the charge.

Meanwhile, officers transported the man to the hospital for medical clearance. He was cleared and transported to the Dona Ana Detention Center, where he was booked for battery against a household member and resisting/obstructing a peace officer.

The officers also filed a criminal summons for the woman for battery against a household member.

LCPD's Investigation and Analysis

LCPD's Internal Affairs conducted a preliminary investigation of the incident and framed two allegations against three officers:

electricity. This is used entirely for pain compliance because this mode of operation does not incapacitate muscles like the probes do.

1. General Order 203.01. Domestic Family Disturbance

Among other guidelines for responding to domestic disturbances, this General Order allows officers to enter a private residence without a warrant where there is reasonable cause to believe that the person inside requires immediate aid to preserve their safety.

2. General Order 255.02. Use of Force

This General Order outlines when use of force is appropriate and includes a section, referenced in this investigation, regarding the requirement to summon emergency medical personnel to treat or render first aid as soon as reasonable.

After reviewing the body-worn camera footage of this incident and the related Use of Force internal review, the IA investigator determined that the officers' conduct was lawful and justified. The officers were exonerated. No further investigation was conducted.

OIR Group Review

LCPD provided OIR Group the case file. OIR Group reviewed all documents and digital evidence in the case file. The conclusions reached for the two allegations that LCPD framed as listed above – those related to use of excessive force and entering/searching the residence -- were valid.

However, we found that the investigation did not frame and explicitly investigate all the allegations raised by the complainants, including the allegation of injury to the man's head and false statements made to CPS. And, by closing the investigation at the preliminary inquiry level instead of elevating it to a formal investigation (where, presumably, more evidence would have been collected), LCPD missed an opportunity to fully investigate these allegations. In short, this investigation left too many "missing pieces" and questions unanswered. We found that this investigation was not sufficiently complete and thorough.

We also identified ancillary concerns related to the uses of force.

Review of Preliminary Inquiry

On their respective complaint forms, the man and woman made additional allegations that were not framed in this investigation. In addition to the allegations framed (see above) the complainants alleged that:

- Officers did not read her Miranda Rights (woman)
- Officers used a flashlight to strike the back of the man's head, resulting in a possible brain hematoma (man)
- Officers inappropriately called Child Protective Services (man) and LCPD made false accusations to CPS (woman)

We advise that investigators frame and investigate all allegations as reported by complainants. We recommended this in prior memos and LCPD accepted our recommendation for future cases; the investigation of this case preceded that recommendation.

We also noted that the close-out letter was only addressed to the woman and only listed one of the framed allegations (that of excessive use of force). While the man and woman both listed the same mailing address, it would have been more complete to address the letter to both or send each a letter regarding their individual complaint. We have already discussed the preferability of including more information in these close-out letters; LCPD has modified its close-out letter to reflect a more complete picture of the investigative process for complainants. We look forward to evaluating these new letters in future cases.

Finally, we noted that the circumstances of this case and the resultant allegations seemed to be at (or even over) the limit for suitable disposition at the preliminary inquiry level, as opposed to its moving into the formal investigation process. The Department's policy (**General Order 160**) states:

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.

Here, the available evidence, including video and the Department's related internal force review investigation, suggested that the allegations occurred, but were lawful, justified and did not violate Department policy (though, as noted above, not all

allegations were considered). As such, the case was closed out at the initial stage of “preliminary inquiry” and no further investigation was conducted.

However, we found the allegations, especially the allegations of excessive force resulting in alleged injuries, to be of a sufficiently serious nature to consider initiating a formal investigation. This would have prompted a more thorough investigation, including interviews with the complainants and collection of medical records, both which would have better informed the outcome.

While the preliminary inquiry is a useful process to initially classify all complaints, and can suffice to effectively resolve minor issues when the evidence is clear, we caution the Department not to over-utilize it – particularly in cases such as this involving multiple allegations of a serious nature.

RECOMMENDATION 1

LCPD should more carefully consider use of the “preliminary inquiry: no further investigation needed” category when cases involve allegations of a serious nature that are not definitively refuted by the initially available evidence.

Use of Force Considerations

We noted two issues in this case related to the uses of force themselves. We note that the force review process is a separate internal process conducted by the involved officers’ chain of command, not Internal Affairs.

The first was related to the use of the Taser in drive stun mode. The use of a Taser in drive stun (or, what the Department calls “contact mode”) for pain compliance is currently allowable per the Department’s Conducted Electrical Weapons policy (General Order 256). But best practices suggest that Tasers should not be used merely for pain compliance; they are neither generally intended for this purpose nor consistently effective in this mode. Instead, drive stun mode should only be deployed to complete the incapacitation circuit when one of the two probes has not sufficiently attached to the subject’s body. Accordingly, many agencies either prohibit the use of drive stun mode for pain compliance or limit its use to situations where the officer needs to create distance from the subject.

In reading the Department’s policy for this review, we also noted that the current policy does not require that officers issue a warning prior to deployment of the Taser, nor

requires that officers document the warning or lack thereof.⁴ This language is commonly included in modern Taser/CEW policies. While the Department's Use of Force policy includes language regarding providing verbal warnings, we encourage the Department to also include this language specifically in its CEW policy. We recommend language such as:

Prior to use of the device, and when feasible, an officer shall provide a verbal warning and permit the subject reasonable time to comply with the officer's order. Verbal warnings combined with spark testing or laser aiming can be effective in gaining compliance without an application of electrical stimulation.

The verbal warning or the reasons it was not given shall be documented by the officer firing the device.

LCPD reported that it is currently in the process of evaluating its CEW and Equipment policies to ensure that these reflect the most effective uses of the Taser. As it considers updates, we recommend that the Department evaluate the use of drive stun mode and impose a requirement for officers to warn of Taser use where practicable, and document the warning or lack thereof.

RECOMMENDATION 3

As it considers updates to their Conducted Electrical Weapons policy, General Order 256, LCPD should: 1) consider whether to eliminate or restrict the use of the Taser in drive stun mode as a pain compliance weapon; 2) add language that requires that officers provide a verbal warning prior to deployment of the Taser; and 3) add a requirement to document the warning or reason that a warning was not given.

We also noted concerns related to the use of two physical force options: strikes to the head and the "lateral head displacement" technique.

These were particularly concerning in light of the suspect's (unverified) assertion of injury – a "possible brain hematoma" -- to his head; while it was not investigated here to

⁴ In this case, officers did warn the suspect that he would be "Tased" if he did not comply.

confirm the alleged injury, we speculate that this injury, if true, could have been a result of either of these physical force techniques.⁵

First, Officer 1 delivered two “custody strikes” (which the force review corrected to be called “defensive strikes”) to the left side of the suspect’s face/head. It is unclear if Officer 1 delivered his strikes with his closed fist or with the palm of his hand. In the force review, these strikes were determined to be reasonable because they were used in self-defense against an “unarmed attack.”

When necessary, we advocate for palm strikes to avoid injuries to civilians and officers alike, and aimed at the center mass. Further, head strikes of any kind are not advised, again due to the potential for injury.

Second, Officer 1 used a “lateral head displacement” when the man refused to give up his arms and continued to struggle with the officers. In the force review, this technique was determined to be within Department policy because it was used to “stabilize” a combative suspect. According to LCPD Training, a “lateral head displacement,” when performed correctly, is intended to gain compliance from a suspect who is holding his/her arms underneath the body and resisting handcuffing. In this case, we observed that the officer seemed to place downward pressure on the neck while the man was in a prone position; according to LCPD, this is not the correct way to implement the technique.

While we understand the purpose of this pain compliance technique and its benefits over other ways of achieving compliance (e.g., repeated strikes to the body), we urge the Department to evaluate it carefully. In general, we discourage use of techniques that place a suspect in a position that may increase the risk of positional asphyxia. “Positional asphyxia” occurs when someone’s position prevents the person from breathing adequately.⁶ People may die from positional asphyxia accidentally when the

⁵ As we noted above, the investigation did not frame an explicit allegation for this claim of injury. Because of this, and because this investigation was closed out as a preliminary investigation, IA did not collect medical records to confirm the man’s assertion.

⁶ California recently enacted legislation prohibiting law enforcement agencies from authorizing techniques or transport methods that involve a substantial risk of positional asphyxia, prompting agencies state-wide to modify their force, prisoner transport, and other related policies. We noted that LCPD’s Prisoner Transport policy (General Order 233), updated in 2019, very briefly discusses the danger of positional asphyxia as a result of “hog-tying” a prisoner, which is prohibited; positional asphyxia is not mentioned elsewhere.

mouth and nose are blocked or where the chest may be unable to fully expand. In the law enforcement context, positional asphyxia may occur when a subject is positioned face-down and with downward pressure on the neck.

LCPD reported that it is currently expanding its use of force review process to better evaluate force and the performance of officers in the field. The Department has created a force review cadre – a team of seven subject matter experts from force training and Internal Affairs – to conduct more robust and thorough force reviews. This team will evaluate any incidents where the force used does not seem commensurate with the call for service (e.g., a trespassing call that results in force) or where force is used frequently (e.g., domestic violence calls), as well as any questionable uses of force that require more than the standard BlueTeams / chain of command review.

We are impressed with this initiative and look forward to learning more about it and its accomplishments as it progresses. In the meantime, we recommend that this team evaluate the propriety of strikes to the head and the lateral head displacement technique with an eye toward their potential to cause injury and, in the case of the lateral head displacement, increase the risk of positional asphyxia.

RECOMMENDATION 4

The new LCPD force review cadre should evaluate the use of head strikes and the “lateral head displacement” technique in recognition of their potential to cause unintended injury and increase the risk of positional asphyxia.

LCPD Management Response

The Las Cruces Police Department appreciates the review completed by the OIR Group. The review is thorough and accurate, LCPD will take recommendations into consideration. As noted by OIR, this investigation preceded the recommendations made about our preliminary inquiry process. Our process has since been improved implementing these recommendations. Additional recommendations made in this review involving reviews of use of force tactics and our Conducted Electrical Weapons policy are currently in progress.

Appendix B: OIR Group Litigation Case Memos



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

TO: City of Las Cruces
FROM: OIR Group
DATE: March 23, 2022
RE: Review of Closed Litigation

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. OIR Group received one case from the City Attorney that was closed in this review period. OIR Group received files related to this case on February 28, 2022.

Review Summary

In this period, OIR Group received one case from the Las Cruces City Attorney's Office. The case involved one Plaintiff and one named Las Cruces police officer. The Plaintiff alleged that during a traffic stop on September 22, 2018, a Las Cruces police officer searched him without consent, used excessive force that resulted in injuries, and that LCPD failed to properly investigate and document the incident. The case was dismissed.

The Plaintiff was charged with felony possession of a firearm, resisting a peace officer, assault on a peace officer, probation violation, possession of a controlled substance, and tampering with evidence. These charges were dismissed.

The matter resulted in an internal Use of Force Review where the force used was found to be reasonable. The Plaintiff did not file a related complaint and LCPD did not initiate an Internal Affairs investigation of the matter.

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

- The Plaintiff is Hispanic.
- The named officer is white and currently on administrative leave pending a criminal trial for an unrelated incident that occurred in early 2020.
- The case occurred in the zip code 88005.

Recommendation

As we wrote in our previous litigation review, litigation can serve as a valuable feedback loop for Departments to mitigate risk by offering corrective action. We recommend that the Department always initiate an internal investigation for these matters and fully frame and investigate all potential allegations.

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. LCPD has implemented changes to initiate internal investigations for all cases involving litigation.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: April 28, 2022
RE: Review of Closed Litigation

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. OIR Group received one case from the City Attorney that was closed in this review period. OIR Group received files related to this case on April 15, 2022.

Review Summary

In this period, OIR Group received one case from the Las Cruces City Attorney's Office. The case involved one Plaintiff and her minor children and two named Las Cruces officers. This case was related to an officer-involved shooting that occurred in December of 2016; the Plaintiff alleged that the deceased was wrongfully killed by LCPD and that LCPD and the City were negligent in failing to provide adequate de-escalation, crisis intervention and mental health training for the officers. The case was dismissed.

Additionally, the court approved a settlement for the deceased's minor children: a structured annuity totaling \$37,924 made in future periodic payments to the children.

No charges were associated with this claim.

The matter resulted in an investigation by the joint Officer-Involved Shooting Task Force, which found the officers' actions to be justified. LCPD Internal Affairs also conducted an Internal Investigation of the matter; the Department framed one allegation of "Use of Deadly Force (General Order 255.04)" for each officer. The officers were exonerated.

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

- The Plaintiff is white.
- The two named officers are white and Hispanic.
- The case occurred in the zip code 88001.

Appendix C: OIR Group Member Biographies

Michael Gennaco

Michael Gennaco served from 2001 to 2014 as the Chief Attorney of Los Angeles County's Office of Independent Review and is a founding member of OIR Group. He graduated from Dartmouth College and Stanford Law School. Before joining OIR, Mr. Gennaco was Chief of the Civil Rights Section at the United States Attorney's Office for the Central District of California. He also served for ten years as a trial attorney with the Civil Rights Division at the Justice Department in Washington, D.C., first with the Voting Section and then with the Criminal Section.

While at the Civil Rights Division and the United States Attorney's Office, Mr. Gennaco supervised over 20 federal grand jury investigations into police misconduct, most of them involving force and in-custody death investigations. He also conducted a number of successful civil rights prosecutions against police officers for excessive force, including officers of the Los Angeles Police Department, the Los Angeles Sheriff's Department, and federal immigration detention officers. In addition, Mr. Gennaco conducted hate crime prosecutions, including the prosecution of Buford Furrow, a white supremacist who killed a Filipino-American postal carrier and grievously shot children at the Jewish Community Center in Los Angeles, and prosecuted human traffickers, such as the eight individuals responsible for enslaving seventy Thai workers for years in El Monte, California. Mr. Gennaco received high recognition for his work including the esteemed Attorney General's award.

As an oversight practitioner, Mr. Gennaco has performed, with the assistance of OIR Group attorneys, a number of monitoring tasks, audits and reviews for a federal judge, special masters, and other governmental entities. He is a recognized expert in law enforcement reform and accountability systems and regularly teaches Constitutional policing classes sponsored by the State of California's Commission on Peace Officer Standards and Training.

Under Mr. Gennaco's leadership, OIR Group has become a valuable resource for numerous California cities grappling with officer-involved shootings and other critical incidents in an effort to bridge the gap between the police and the communities they serve and to utilize those incidents as learning tools. Upon request, Mr. Gennaco submitted testimony to the President's 21st Century Task Force on Policing.

Mr. Gennaco's knowledge of best practices and his longstanding commitments to police accountability are hallmarks of a distinguished career. In keeping with his accomplishments and reputation, he was honored in 2011 by the National Association

for the Civilian Oversight of Law Enforcement (“NACOLE”) as recipient of its highest recognition: the Flame award for outstanding contributions to the field.

- Principal and founder of OIR Group
- With OIR since 2001
- Licensed attorney with all necessary qualifications to perform functions as set out in Scope of Services
- Educational background: BA: Dartmouth College, JD: Stanford Law School

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Stephen Connolly

Stephen Connolly is a Principal of OIR Group, an attorney, and a longtime practitioner in the police oversight field. His experience dates back to 2001, when he served as an original member of Los Angeles County's Office of Independent Review; in that role, he monitored hundreds of internal investigations and disciplinary determinations involving the Los Angeles County Sheriff's Department. He was also the first Executive Director of the Orange County Office of Independent Review from 2008 to 2016. His two decades of work with law enforcement agencies throughout California and in several other states has taken a variety of forms, including real-time monitoring, investigation, auditing, policy review, and extensive public outreach and reporting.

For several years he has also provided training to law enforcement on a variety of subjects related to supervision, risk management, and effective internal review. Certified as an instructor by California's Commission on Peace Officer Standards and Training ("POST"), he teaches several mandatory training blocks each year to lieutenant-level police managers from throughout the state.

Mr. Connolly is currently serving as one of the Independent Police Auditors in the California cities of Palo Alto, Anaheim, and Davis. He is also part of the court-appointed monitoring team that is overseeing implementation of multiple police reforms in the Stockton Unified School District.

He graduated from Holy Cross College and Loyola Law School.

- Principal of OIR Group
- With OIR since 2001
- Licensed attorney with all necessary qualifications to perform functions as set out in Scope of Services

Julie Ruhlin

Julie Ruhlin is a Principal of OIR Group. From 2011 to 2014, Ms. Ruhlin served as Deputy Chief for the Office of Independent Review in Los Angeles County. In addition to her regular responsibilities monitoring internal affairs and critical incident investigations at the Sheriff's Department and making independent recommendations regarding disciplinary determinations, she worked closely with the Training Bureau, preparing a special report to the Board on issues surrounding the Department's Training Academy. She also focused on issues within the County's jails, including the investigation and review of inmate suicides and other deaths in custody, and worked with Department leaders to develop a mechanism for executive-level review of uses of force within the jails. Ms. Ruhlin recently worked with Mr. Gennaco to prepare a report examining the Internal Affairs functions of the Denver Sheriff's Department.

Ms. Ruhlin joined OIR in 2006 after working with Merrick Bobb at the Police Assessment Resource Center in Los Angeles, where she was responsible for investigating and drafting special reports to the County Board of Supervisors regarding policy and training deficiencies within the Sheriff's Department. Prior to working with PARC, her private law practice focused on civil rights and criminal defense. She graduated from American University and the University of Southern California School of Law.

- Principal of OIR Group
- With OIR since 2006
- Licensed attorney with all necessary qualifications to perform functions as set out in Scope of Services
- Educational background: BA: American University, JD: USC Law School
- Experience in Auditing and Oversight: 15 years
- Work history
 - Independent Police Auditor for Cities of Anaheim, Davis, and Portland (Oregon)
 - Independent reviews of over twenty law enforcement jurisdictions
 - Independent investigations for Merced County Sheriff's Department

Teresa Magula

Teresa Magula is a member of OIR Group and a former Special Investigator for the Los Angeles Police Department's Office of Inspector General responsible for investigating of misconduct allegations. She is an expert on use of force policy and the response to high-profile, large-scale events. Most relevant, Ms. Magula was the lead investigator in the OIG's review of the events of the 2001 "May Day" incident in MacArthur Park; in this capacity, she collected and evaluated event data from various sources, such as surveillance and body worn camera footage, radio communications and media stories, interviewed stakeholders, victims, and involved officers, and attended community meetings.

Ms. Magula has a broad range of experience, including as a Senior Consultant with Deloitte Consulting, LLP where she specialized in data system implementation, audits, and reviews. Ms. Magula served on the Los Angeles Mayor's Performance Management Unit, where she was the liaison between City public safety agencies and the Mayor's Office and worked with the Santa Monica Commission on the Status of Women and Girls. She received a master's degree in Public Policy from UCLA's Luskin School and has expertise in database management and statistical analysis. She also is a native Spanish speaker.

- Member of OIR Group
- With OIR since 2017
- Possesses all necessary qualifications to perform auditing functions as set out in Scope of Services; will work under the direction of OIR Group attorneys
- Educational background: BA: UCLA; Master of Public Policy: UCLA School of Public Affairs
- Work history
 - Independent reviews of Santa Ana, Burbank and Davis Police Departments
 - Reviews of large-scale civil unrest for various jurisdictions
 - Monitor for Stockton Unified School District
 - Investigation of critical incidents, use of force cases, and misconduct allegations for the LAPD Office of Inspector General

Samara Marion

Samara Marion is an attorney and former Director of Policy for the San Francisco Department of Police Accountability (DPA), a civilian-run agency that investigates misconduct complaints involving the San Francisco Police Department. During her two decades of work at DPA, Ms. Marion wrote and negotiated new SFPD police procedures on a variety of topics including use of force, officer-involved shootings, bias-free policing, language access, domestic violence, juvenile policing protocols and children of arrested parents.

Before joining the DPA, Samara Marion was a Santa Cruz County public defender for fifteen years where she represented indigent clients at the trial and appellate level in juvenile, adult, and capital cases. She has also taught at Santa Clara University School of Law and Stanford Law School. She received her J.D. from University of California, Davis, a J.S.M from Stanford University, and a B.A. from University of California, Santa Cruz.

- Member of OIR Group
- With OIR since 2020
- Attorney with over two decades of work in law enforcement oversight

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