

OFFICE OF THE INSPECTOR GENERAL



CITY OF OAKLAND

Oakland Police Commission

Office of the Inspector General

Public Synopsis

Limited Scope Preliminary Review:

Reports of Investigation

Released: July 8, 2022

Michelle N. Phillips, Inspector General



Office of the Inspector General
Michelle N. Phillips, Inspector General
250 Frank H. Ogawa Plaza
Oakland, California 94612



July 8, 2022

Dear Residents of the City of Oakland,

The Office of the Inspector General (OIG) is responsible for monitoring the Oakland Police Department's (OPD) compliance with policies, procedures, and laws intended to further strengthen the City's ability to decrease instances of police misconduct. This oversight also includes but is not limited to auditing and reviewing the Community Police Review Agency's (the Agency) complaint and investigative process, compliant with the City Charter¹ and enabling ordinances. The OIG provides reports and recommendations to the Police Commission as the action holder for implementation. The OIG's primary charge is overseeing the city's compliance with the negotiated settlement agreement.

Background

In 2016, residents of the City of Oakland voted to approve Measure LL. This measure established the Oakland Police Commission, which is charged with overseeing the OPD policies and procedures as they relate to constitutional policing, procedural justice, equity, and accountability. Measure LL also established the Agency, which is tasked with investigating complaints of police misconduct. The intent of Measure LL as it relates to the Agency was to establish an independent civilian oversight body dedicated to the investigation of officer misconduct.

In 2020, Measure S1 was passed to amend Measure LL and strengthen Oakland's police reform efforts. Measure S1 established an independent OIG that reports to the Police Commission and oversees OPD's compliance with policies, procedures, and laws through the negotiated settlement agreement. The OIG's jurisdiction includes examining the Agency's investigative actions and providing reports and recommendations to the Police Commission for substantive improvement and change.

The Oakland Police Commission appointed the Inspector General in January 2022. Shortly after the appointment, the OIG observed the practice of OPD's Internal Affairs Division (IAD) sending draft Reports of Investigations (ROI) to the Agency prior to the Agency's completion of their independent and parallel investigation.

Preliminary Review and Methodology

The OIG conducted a preliminary review into the practice of IAD giving ROIs to the Agency prior to the Agency concluding their independent investigations. The preliminary review included discussions with OPD and the Agency, legal guidance from the Oakland City Attorney's Office, as well as an analysis of the following documents:

¹ Also referred to Oakland Municipal Code

- *Delphine Allen et al. v. City of Oakland*
 - Negotiated Settlement Agreement
- Measure LL
- Measure S1
- IAD investigative policies

The OIG also requested the Agency's standard operating procedures (SOPs) to determine how investigations are to be conducted. However, the OIG was informed that the Agency was working on SOPs, and that the document had not yet been completed. To navigate the relative absence of SOPs, the Agency has a series of expectations that are conveyed via emails, team meetings, and standard forms, and checklists. It is to be noted that this guidance is not provided in a comprehensive policy manual for Agency employees. The Agency's lack of completed SOPs outlined in a comprehensive document posed a limitation to this OIG review.

During discussions with the Agency and the IAD, it was determined that IAD sends the draft ROIs to the Agency because the Agency requests the documents. The Agency contends the practice was inherited from past management.² The OIG confirmed the practice was in place during the time of the Civilian Police Review Board and subsequently after the change to the Agency.³

City Charter Analysis

According to Measure S1 604(f) § 1, the Agency shall not be required to investigate each public complaint it receives, beyond the initial intake procedure, but shall investigate public complaints involving uses of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, untruthfulness, and First Amendment assemblies. The Agency shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Commission.⁴

It is important to note that Measure S1 604(g), § 3 states in part that the Chief of Police prepares his or her own findings, proposes discipline and provides that information to the Agency before the Agency's investigation is initiated or completed. The Agency may close its investigation or may choose not to conduct its own investigation in order to allow final discipline to proceed as proposed by the Chief, except that in investigations of Level 1 uses of force, sexual misconduct or untruthfulness, the Commission must approve the Agency's decision by a majority vote. Further, in accordance with the negotiated settlement agreement under Task 8, IAD is required to investigate Class I uses of force. Unless otherwise directed by the Chief of Police or acceptable designee (i.e., Acting Chief, Assistant Chief, or Deputy Chief), Class I offenses shall be investigated by IAD investigators.⁵

² The Civilian Police Review Board (CPRB) was renamed to the Community Police Review Agency in December 2017; staff and leadership remained in place at that time.

³ OIG has continued practiced from 2017 through stop of practice at direction of the Commission

⁴ Measure LL and Measure S1 can be reviewed at <https://www.oaklandca.gov/resources/learn-more-about-measure-ll>

⁵ The Negotiated Settlement Agreement in its entirety can be reviewed at <http://www2.oaklandnet.com/oakca1/groups/police/documents/report/dowd006410.pdf>.

The OIG is unable to find any language that states IAD or OPD is required to submit a draft or completed ROI to either investigative entity prior to the completion of their mandated independent investigations. However, the OIG must note that there is language in Measure S1 604 (f) § 2 that states in part, subject to applicable law and provisions of this Charter § 604, the Commission, OIG, and Agency shall have the same access to all Department files and records, including IAD files and records, related to sworn employees of the Department, in addition to all files and records of other City departments and agencies related to sworn employees of the Department, as IAD, including but not limited to the same access to electronic data bases as IAD as permitted by law.

The OIG also reviewed the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics and the Association of Inspectors General (AIG) Principles and Standards. NACOLE states civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair, and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein. The Code of Ethics states in part that civilian oversight practitioners should be independent and thorough and conduct oversight activities with transparency and confidentiality in mind.⁶ AIG recommends in part that investigative assignments must be free from personal or external impairments to independence and should constantly maintain an independent attitude and appearance.⁷

Findings and Recommendations

The OIG has determined that the Agency and IAD are required to conduct parallel or simultaneous investigations of Class I misconduct violations. The example ROI noted in this document contained an allegation of a Class 1 offense, use of excessive force. Therefore, both the Agency and IAD would have been required to investigate the complaint.

Allowing, the Agency to receive any variation of the IAD ROI or vice versa, prior to the completion of both investigations, calls into question the independence of each process and the ultimate decision on discipline. The Agency has stated that they do not have the resources that IAD has and therefore IAD is able to complete their investigations faster.

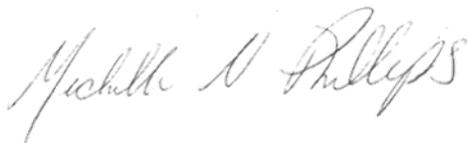
To preserve the independence and integrity of the Agency's investigations and pursuant to NACOLE and AIG best practices, the OIG recommends to the Police Commission that the Agency discontinue the practice of reviewing IAD reports or being made privy to any of the investigative analysis of IAD prior to the completion of their own investigative process. Since it is noted that the Agency does not have any SOPs, it is also recommended that the Police Commission seek to understand why complaint and investigative processes and procedures have not been established to govern the processes within in the Agency and mandate the Agency establish SOPs in accordance with the enabling ordinance.

⁶ Information is derived from National Association for Civilian Oversight of Law Enforcement https://www.nacole.org/nacole_code_of_ethics_2

⁷ Information is derived from the Association of Inspectors General website. <http://inspectorsgeneral.org/files/2014/11/AIG-Principles-and-Standards-May-2014-Revision-2.pdf>. Although, CPRA is not the OIG, the principles of independent investigative oversight should apply regardless of the name of the agency as a best practice.

The OIG will continue to conduct reviews, audits, evaluations, and inspections of OPD and CPRA practices, policies, and procedures per its Charter mandate.

Respectfully,

A handwritten signature in cursive script that reads "Michelle N. Phillips".

Michelle N. Phillips,
Inspector General

Cc: Honorable Mayor Libby Schaaf
Honorable City Administrator Ed Reiskin
Honorable Members of the City Council
Honorable Members of the Police Commission

Oakland Police Commission Response



POLICE COMMISSION

250 FRANK H. OGAWA PLAZA, SUITE 6302 • OAKLAND, CALIFORNIA 94612

June 30, 2022

Ms. Michelle Phillips
Office of the Inspector General
150 Frank Ogawa Plaza
Suite 4313
Oakland, California 94612

Re: CPRA Draft Report Sharing and Standard Operating Procedures

Dear IG Phillips,

The Oakland Police Commission (“Commission”) thanks the Inspector General (“IG”) for the detailed report proposing the Commission exercise its oversight and policy powers to discontinue the practice of sharing Internal Affairs Division (“IAD”) reports and investigative analysis with the Community Police Review Agency (“CPRA”), or vice versa, prior to both agencies’ respective completions of their own investigative processes. I share your stated interest in better ensuring the City of Oakland’s investigations reflect the utmost integrity and independence, both as to findings and as to levels of discipline.

You also memorialized in your report that after numerous requests, the CPRA provided you with no official, codified standard operating procedures (“SOPs”), and you recommended that we direct the CPRA Director to establish SOPs, in accordance with best practices and the Commission’s authority under the Charter and the Oakland Municipal Code. Like your recommendation about report sharing, this point is well taken and deserves the Commission’s immediate attention.

Please be advised that the Commission plans to agendaize both of these matters for its next regular meeting, on July 14, 2022

Sincerely,

A handwritten signature in black ink that reads "Tyfahra Milele". The signature is written in a cursive, flowing style.

Tyfahra Milele
Chair, Oakland Police Commission