

TECHNICAL ASSISTANCE STATEMENT

Subject: Force Audit

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City of Portland, Oregon

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This technical assistance statement is authorized by paragraph 161 of the Settlement Agreement, wherein “the COCL shall conduct the reviews specified in paragraph 173 of this Agreement *and such additional reviews* regarding the implementation of this Agreement as the COCL, the City, or DOJ deems appropriate” (emphasis added).

We issue this Technical Assistance Statement to the City and the Portland Police Bureau (PPB) regarding the requirements set forth in Section III of the Settlement Agreement (Use of Force) and specifically paragraphs 74, 75, and 77 dealing with an audit of force events, including accurate completion of the Force Data Collection Report (FDCR) by officers, 940 After Action reporting by supervisors, and chain-of-command reviews. This Technical Assistance Statement allows us to document our assessment of the current state of the Force Audit and provide guidance in the reform process. Such Technical Assistance Statements allow us to provide more context and detailed analysis of issues relevant to a particular topic than is possible in our semi-annual reports. The language of paragraphs 74, 75, and 77, and all respective subsections, are included as Appendix A of this TA Statement.

We have provided general updates to the Force Audit process in our Compliance Assessment Reports and Outcome Assessment Reports, but we have yet to issue a Technical Assistance Statement on the Force Audit. This Technical Assistance Statement provides a focused evaluation for paragraphs 74, 75, and 77. We retain the authority to further comment on the Force Audit in later reports and TA Statements.

This TA Statement summarizes the history and content of the Force Audit, describing the collaborative process between COCL and the Inspector to identify variables that respond to the requirements of the Settlement Agreement. It then describes new developments in the Force Audit process that have not yet been reviewed in our previous reports. Finally, organizational issues and challenges relevant to the Force Audit process are described and discussed.

Overall, we believe this new auditing system lays the foundation for a reliable and valid set of statistics about use of force reporting – one that significantly increases accountability to the organization and to the public. We also believe that this type of auditing system is sorely needed in police agencies throughout the country and with effective implementation, PPB could become a model for force auditing. We encourage PPB to continue this important work and to continue to consult with COCL at each step of the process.

Overview of Force Audit

In mid-2015, the COCL and PPB began collaborating on a system for auditing use of force, use of force reports (FDCRs), and the 940 After Action Review process. This auditing system required quantification of hundreds of variables related to comprehensive and accurate completion of FDCR's, comprehensive and accurate narratives, supervisor reviews, chain-of-command reviews, evaluation of policy, and other considerations as identified in paragraphs 74, 75, and 77 of the Settlement Agreement.

The function of the force audit is to ensure PPB's model of chain-of-command reviews is being carried out in way that results in a high degree of accountability and oversight. In the chain-of-command model, each supervisor -- from the chief of police down to the first-line supervisors -- is responsible for the actions of employees who report directly to him/her. Thus, the auditing system is designed to identify errors at each step of the force reporting process and build a system of reliable and valid data to improve Bureau accountability and oversight.

In January of 2016, the Inspector and analysts began to implement the new Force Audit system. They reviewed all use of force cases using an online survey tool to guide the data collection. In all, the data collection instrument examines 204 items for review (272 items if the interaction involves the use of an

Electronic Control Weapon) to ensure that force events are reported in a manner that allows for the highest level of accuracy and accountability. As part of our semi-annual Outcome Assessment, PPB provided the COCL with case documents for 10 use of force events so that the COCL team might independently verify the reliability of PPB's coding. While we identified some points of coder error and some areas of definitional dispute within the coding, overall we were satisfied with the reliability of the audit process.

The execution of the force audit has required extensive person hours on the part of the Inspector and analysts. Throughout the implementation process, the COCL and PPB engaged in a series of meetings, phone conferences, and emails to refine the method of data collection. We appreciate the hard work of the Inspector and analysts and their desire to create a system that encourages ownership of any force reporting problems throughout the organization.

This TA Statement is designed to provide an update on the roll-out of the force audit, identifying issues that have arisen during implementation, and new developments not previously reported by the COCL. We remind the reader that this is still to be a work in progress. However, we are encouraged by the direction the force audit has taken to date and the envisioned future direction of the force audit as defined by the PPB Inspector and Compliance Coordinator.

New Developments

When developing the Force Audit methodology, attention focused on identifying a wide range of variables that might be responsive to the requirements of paragraphs 74, 75, and 77. (For details, see our Outcome Assessment and Compliance Assessment reports) Since the release of these reports, new developments have occurred that have moved the Force Audit process forward. These developments pertain to the implementation of the Force Audit and actions taken after the FDCRs and 940s have been coded by the audit team.

The first development is a procedure for disseminating Force Audit results to the individuals within the chain of command who are responsible for correcting problems in force reporting or review. This comes in the form of an Audit Findings Report which identifies reporting deficiencies and where these deficiencies occurred in the chain of command. Individuals responsible for evaluating and addressing each deficiency are then required to complete an Audit Response Form, indicating how the deficiency was evaluated and addressed. These forms are then provided to the appropriate Assistant Chief, who is tasked with reviewing the responses and determining whether the action taken is appropriate and sufficient. This accountability system is also designed to identify repeat problems or patterns of deficiencies. In the event that repeat deficiencies involving the same individual occur after an initial correction period, the corrective action will gradually increase, including formal administrative investigations and appropriate discipline.

At this time, the chain of review ends with the Assistant Chief reviewing the responses and any action taken. While there are plans to audit the responses and action taken in the future, the Inspector and analysts currently do not have the resources or the authority to conduct a thorough audit. While the responses are returned to the Inspector for documentation (and are therefore subject to an informal review process), the current system assumes that the command staff is the final authority and should take ownership of the review process. That has not yet happened, as we discuss in greater detail below.

Another potential benefit of the Force Audit is that the results are available for the Training Division to utilize in their Needs Assessment. A “dashboard” can be used for comparisons between precincts, supervisors, and shifts. Information from the dashboard can then be used to identify areas of training targeting all officers during In-Service training or topics more appropriate for smaller groups. We recommend that this practice be enshrined into policy related to the Training Needs Assessment. We also recommend that the findings from the Force Audit be reviewed by the Employee Information System (EIS) administrators to identify “potentially problematic trends.” While deficient reporting should not be equated with an “at-risk employee, supervisor and team,” it does provide a basis for coaching with an emphasis on commitment to professionalism in the execution of their job responsibilities. In the near future, COCL will provide additional feedback to the Inspector on the structure and content of the initial audit report and feedback reports.

For this TA Statement, we will not report the results of the Inspector’s force audit. Preliminary results will be summarized in our next Compliance Assessment Report and covered more extensively in our next Outcome Assessment Report. For the moment, we have asked the Inspector to identify trends in deficiencies to document the potential effectiveness of the auditing system as a mechanism to provide feedback and general education to officers and supervisors. Over time, the new auditing system is expected to result in:

1. Fewer errors and oversights by supervisors and commanders in the chain-of-command review
2. More complete and appropriate feedback to officers in how to correct and avoid errors in report writing
3. Fewer mistakes by officers in completing force reports

The Inspector and analysts are also in the process of determining how the collected variables should be reported and how many variables are needed in order to respond to the specific requirements of the Settlement Agreement. In the initial phase of developing the Force Audit, COCL and the Inspector identified as many variables as possible that might be relevant to the requirements of the Agreement. This was done purposefully so that no stone would go unturned. With the data collected after two quarters of auditing, the Inspector and analysts are seeking to identify redundant data items are time consuming and do not contribute significantly to improved force reporting and are not necessary for the Settlement Agreement. We have worked with the Inspector and analysts in the second quarter of 2016 on this process and will continue to work with them in future quarters to ensure that the Agreement can be addressed in an efficient fashion.

Coding issues

Some coding problems were found during our independent review, but the large majority of them related to the use of the codes “Yes”, “No”, and “N/A”. For instance, one of the variables measured in the audit asks whether the subject’s mental health issues influenced the officer’s decision making. In cases where no mental health issues are identified, this variable should be answered “N/A”. This problem is rare and can be easily resolved through better communication between COCL and PPB on when “N/A” is a more appropriate response option.

We have identified a couple items within the force audit where COCL and PPB have differing opinions as to how they should be coded. As noted in our most recent Outcome Assessment, the largest point of difference relates to the definition of de-escalation, when it occurs and how it should be coded. We

commented that at present, the Inspector codes instances of command-and-control tactics as de-escalation since they often lead to a subject submitting to the officer's authority (e.g. "Stop what you are doing now or else I will have to Tase you!"). The Inspector's office would prefer that we use the term "verbal direction" rather than command and control. Understanding the argument behind this labeling, we are will to use the terminology "verbal commands," with a footnote that the Taser or other weapon may be visible to the community member as part of the officer's overall presentation of threat. Regardless, we question whether verbal command tactics should be rolled into the same definition as de-escalation, as the reason for the outcome is often different. With de-escalation, the outcome is a result of cooperation between the officer and the community member, while with verbal commands, the outcome is the result of the threat of force. In the near future, we will be discussing with PPB how these concepts are different, as they have implications for training, force reporting, and organizational metrics. Rather than debate the value of different choices that an officer might make (and we do not question that verbal commands are effective in many confrontational encounters to avoid actual use of force), we think it is important to record them separately from de-escalation techniques for future examination.

Overall, we have found very few instances of coding error during our independent review of the force cases. We have discussed these instances with the Inspector and analysts. At this point, we are not concerned about the coding errors and expect that they will decrease in frequency as the analysts become more accustomed to the process.

Making the Force Audit System Work: "Buy In" and Command Authority

When this new force auditing system was conceived, our expectation was that the Inspector would identify deficiencies in use of force reporting and communicate such deficiencies to the Chief's Office. The assumption was that the Chief's Office and his top commanders would take ownership of this process and ensure that issues were resolved and that changes in force reporting and review were made. We further expected that this review process would be communicated to officers as something that would be helpful to the Bureau and the community in the long run. Unfortunately, rather than endorse and support this new system, the message that has been received by many officers at roll call is that the force audits are punitive in nature, imposed upon the PPB by the Settlement Agreement in the form of the Inspector's Office. This communication from the top is not consistent with the intent of the Settlement Agreement nor is it consistent with how the force audit has been portrayed by the COCL or the Inspector. The force audit has always been discussed as a way to identify areas in force reporting that would improve the Bureau's recording keeping system and enhance accountability with the public.

The force audit system was designed to require that each level in the chain of command accept specific responsibilities for holding their employees accountable. At this point in time, we do not see a leadership structure within the PPB that is willing to accept responsibility for this new function. Interviews with various employees suggest that the leadership of PPB views DOJ reforms as the responsibility of the Strategic Services Division and the position of the Inspector, and not something that should be incorporated into the daily work of supervisors. We believe this has contributed to a "silo mentality," wherein the responsibility of accurate force reporting is defined as a problem for the Inspector to solve rather than everyone within the chain of command.

In any organization, reforms must start at the top and be reinforced from the top down. Since the initiation of the force auditing system, there has been little dialogue between the Inspector's office and the top command structure. We recommend upper management begin to view the force audit as a mechanism for organizational improvement. The final responsibility for correcting identified problems and encouraging good reporting should be on the shoulders of commanders more so than officers on the street. Everyone, not just the Inspector, should be tasked with understanding the requirements and importance of detailed force reporting.

Finally, the absence of consistent "buy in" from top management causes us to reflect on the current administrative structure and the placement of the force auditing system and other Settlement Agreement strategies under the direction of one Captain and one Lieutenant. The Settlement Agreement requires that the Inspector be a "command position" but it is currently filled by a Lieutenant and the Compliance Coordinator is filled by a Captain. Frankly, we maintain that neither individual has sufficient authority by rank or position to orchestrate the reforms needed within the Portland Police Bureau. There are four assistant chiefs above them who run the major branches within the PPB. The organizational structure of the PPB should be re-evaluated to ensure that those responsible for introducing organizational change have the organizational authority to achieve maximum impact. Also, the top level of Assistant Chiefs and Commanders must communicate the right message to their employees, so that reforms are received with minimal resistance and maximum support at all levels of the organization.

APPENDIX A

B. Compliance Audits Related to Use of Force

74. In consultation with the COCL, the Inspector, as part of PPB's quarterly review of force, will audit force reports and Directive 940.00 Investigation Reports to ensure that:

- a. With respect to use of force generally:
 - i. reports describe the mental health information available to officers and the role of that information in their decision making;
 - ii. officers do not use force against people who engage in passive resistance that does not impede a lawful objective;
 - iii. when resistance decreases, officers de-escalate to a level reasonably calculated to maintain control with the least amount of appropriate force;
 - iv. officers call in specialty units in accordance with procedure;
 - v. officers routinely procure medical care at the earliest available opportunity when a subject is injured during a force event; and
 - vi. officers consistently choose options reasonably calculated to establish or maintain control with the least amount of appropriate force.
- b. With respect to ECW usages:
 - i. ECW deployment data and Directive 940.00 reports are consistent, as determined by random and directed audits. Discrepancies within the audit should be appropriately investigated and addressed;
 - ii. officers evaluate the reasonableness and need for each ECW cycle and justify each cycle; when this standard is not met, this agreement requires supervisor correction;

- iii. officers are universally diligent in attempting to use hands-on control when practical during ECW cycles rather than waiting for compliance; and
 - iv. officers do not attempt to use ECW to achieve pain compliance against subjects who are unable to respond rationally unless doing so is reasonably calculated to prevent the use of a higher level of force.
- c. With respect to use of force reporting, the reports:
- i. are completed as soon as possible after the force incident occurs, but no later than the timeframes required in policy;
 - ii. include a detailed description of the unique characteristics of the event, using common everyday language, sufficient to allow supervisors to accurately evaluate the quality of the officer's decision making and performance;
 - iii. include a decision point description of the force decision making;
 - iv. include a detailed description of the force used, to include descriptive information regarding the use of any weapon;
 - v. include a description of any apparent injury to the suspect, any complaint of injury, or the absence of injury (including information regarding any medical aid or on-scene medical evaluation provided);
 - vi. include the reason for the initial police presence;

- vii. include a description of the level of resistance encountered by each officer that led to each separate use of force and, if applicable, injury;
- viii. include a description of why de-escalation techniques were not used or whether they were effective;
- ix. include whether the individual was known by the officer to be mentally ill or in mental health crisis;
- x. include a general description of force an officer observes another officer apply; and
- xi. demonstrate that officers consistently make diligent efforts to document witness observations and explain when circumstances prevent them from identifying witnesses or obtaining contact information. Reports will include all available identifying information for anyone who refuses to provide a statement.

75. In consultation with the COCL, the Inspector shall audit force reports and Directive 940.00 investigations to determine whether supervisors consistently:

- a. Complete a Supervisor's After Action Report within 72 hours of notification;
- b. Review all use of force reports to ensure they include the information required by this Agreement and PPB policy;
- c. Evaluate the weight of the evidence;
- d. Use a "decision-point" approach to analyze each use of force;

- e. Determine whether the officer's actions appear consistent with PPB policy, this Agreement, and best practices;
- f. Determine whether there was legal justification for the original stop and/or detention;
- g. Assess the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options;
- h. Determine whether additional training or counseling is warranted;
- i. Implement corrective action whenever there are material omissions or inaccuracies in the officers' use of force report, and for failing to report a use of force, whether applied or observed;
- j. Document any non-disciplinary corrective action to remedy training deficiencies, policy deficiencies, or poor tactical decisions in EIS;
- k. Notify PSD and the shift supervisor of every incident involving an officer's Serious Use of Force, and any Use of Force that could appear to a reasonable supervisor to constitute misconduct; and
- l. Notify the Detective Division and shift supervisor of every force incident in which it could reasonably appear to a supervisor that an officer engaged in criminal conduct.

77. In consultation with the COCL, the Inspector shall audit the adequacy of chain of command reviews of After Action Reports using the following performance standards to ensure that all supervisors in the chain of command:

- a. Review Directive 940.00 findings using a preponderance of the evidence standard;
- b. Review Directive 940.00 reports to ensure completeness and order additional investigation, when necessary;
- c. Modify findings as appropriate and document modifications;
- d. Order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings and counsel the investigator;
- e. Document any training deficiencies, policy deficiencies, or poor tactical decisions, ensure a supervisor discusses poor tactical decisions with the officer and ensure the discussion is documented in EIS;
- f. Suspend an investigation immediately and notify the branch Assistant Chief, the Director of PSD, and the Detectives Division whenever the investigating supervisor, shift commander or Division commander finds evidence of apparent criminal conduct by a PPB officer; and
- g. Reports a matter to PSD for review and investigation whenever an investigating supervisor, shift commander or precinct commander finds evidence of apparent misconduct by a PPB officer or employee.