

**THIRD STATUS REPORT FOR THE AUDIT OF THE STIPULATION OF  
SETTLEMENT BETWEEN THE MARYLAND STATE CONFERENCE OF NAACP  
BRANCHES, ET.AL. AND THE BALTIMORE CITY POLICE DEPARTMENT, ET.AL.**

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JUSTICE ASSESSMENT AND EVALUATION SERVICES  
April 30, 2013**

## **INTRODUCTION**

This is the third report of the Auditor for the settlement between the Maryland State Conference of the NAACP Branches, et.al. and the Baltimore Police Department (BPD), et.al. (hereinafter the Voluntary Agreement). It covers the period of July 1, 2012 to December 31, 2012. The Auditor was selected by the parties to the agreement and notified of his selection in October of 2010. The Auditor submitted a required work plan and detailed auditors manual that were approved by March of 2011. The contract for the services of the auditor was issued at the end of July 2011. The Auditor submitted to the parties, for their approval, staff who would work on the audit. The Auditor was notified of staff approval in March of 2011. The first audit report was submitted April 30, 2012; the second report was submitted October 31, 2012<sup>1</sup>.

As in the first two reports, this report uses the methods approved in the Audit Manual to assess the extent of compliance with each of the auditable tasks contained in the voluntary agreement. The audit has determined that the Baltimore Police Department is in compliance with 16 of the tasks (46%), in material compliance with 17 of the tasks (48%), and in noncompliance with one (3%) of the tasks. The compliance status of 1 (3%) of the tasks has not been determined.

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<sup>1</sup> Copies of previous reports are available from the Auditor.

These levels of compliance are unchanged from the first two audit reports<sup>2</sup>. While the Department continues to make progress in complying with tasks that address policies and procedures, to date the Baltimore Police Department has not achieved compliance with the task that measures behavioral changes in arrests for Quality of Life Offenses and has not fully implemented the required system to track citizen complaints and has not implemented a way to use that system to identify officers who may need more training and supervision<sup>3</sup>.

## **TASK AUDIT**

**Task 1.** Within thirty days of the effective date of this Agreement, the Department shall issue a policy stating that the Department does not support a policy of Zero Tolerance Policing. Quality of Life Offenses<sup>4</sup> committed in an officer's presence may be enforced by several means, including but not limited to: Counseling, verbal warning, written citation or arrest.

## **STATUS: COMPLIANCE**

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<sup>2</sup> For a number of the Tasks there has been limited demonstrated movement towards compliance despite the fact that they were required to be completed in the first year of the agreement. These are all tasks that involve the implementation of a new information system (IAPro). The Department is still in material compliance with these tasks because they are making progress towards operationalizing this new system. Counsel for the plaintiffs contends that all of these tasks should be judged as being in noncompliance. In the second audit report, we agreed that this conclusion would be reasonable and indicated that if in the next reporting period the Department did not provide access to staff and information needed to access these tasks and/or these tasks are found to be incomplete or not met they would be determined to be noncompliant. As we explain later, in our judgment access is now being provided to data that will be used to more fully determine compliance.

<sup>3</sup> The Voluntary Agreement requires inclusion of comments by the BPD on this report as an appendix to the report. These comments are contained in Appendix A.

<sup>4</sup> In the Voluntary Agreement, Quality of Life Offenses are defined as including the following offenses: "loitering, trespassing, public defecation/urination, open container, disorderly conduct (particularly "failure to obey" and disturbing the peace), hindering, and littering".

The Department issued a Police Commissioners Memorandum on July 29, 2010 (PC Memorandum 11-10) that contains all of the elements required by this task.

**Task 2.** Within 30 days of the Effective Date of this Agreement, the Department shall issue a written directive or directives enumerating the elements of each Quality of Life Offense and providing guidance on appropriately identifying and reacting to conduct that does and does not amount to a Quality of Life Offense, including guidance on conduct that is protected by the First Amendment to the U.S. Constitution.

### **STATUS: COMPLIANCE**

The Department issued a Police Commissioners Memorandum on July 29, 2010 (PC Memorandum 13-10) that contains all of the elements required by this task.

**Task 3.** The written directive or directives concerning Quality of Life Offenses required by Section IV.B.1.a.2 of the Voluntary Agreement shall include a requirement that any time an officer effects a custodial arrest for a Quality of Life Offense, the officer shall record in the incident report and the statement of probable cause the factual basis for his or her decision to effect a custodial arrest, rather than providing counseling, a verbal warning or issuing a citation.

### **STATUS: COMPLIANCE**

The Department issued a Police Commissioners Memorandum on July 29, 2010 (PC Memorandum 14-10) that exceeds the requirements of this task.

a. The Auditor shall review a statistically meaningful sample of statements of probable cause required by section IV.B.1.a.2.a to determine whether the factual narrative of the arrest could on its face support a finding of probable cause and that the arrest was in accord with the Policies.

### **STATUS: NONCOMPLIANCE**

To assess compliance with this task the Auditor selected a 25% sample of all Quality of Life Offense arrests for the months of July 2012 through December of 2012. The Department provided copies of the statements of probable cause for these sampled arrests. The attorney assisting the auditor read each of the sampled arrests to determine if they contained acceptable statements of probable cause and if the arrest was in accord with the department's policies noted in Tasks 1-3 above.

During this period the Department provided files on 45,882 arrests of which 3,188 (6.9% of all arrests) were for Quality of Life Offenses as defined by the Voluntary Agreement<sup>5</sup>. The random sample of these quality of life offenses totaled 759. Compliance with this task was determined by the analysis of these sampled cases. The Audit Manual stated that to be in full compliance the analysis

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<sup>5</sup> In our first report we noted that we had also requested and were provided arrest data for April of 2010 and September of 2010. We compared these months to the comparable months in 2011. This analysis showed a decline in arrests and Quality of Life arrests of between 16 and 25%. For the second report we compared April through June of 2011 with the same months in 2012 and found a 3% decrease in total arrests and about a 1.6% increase in quality of life arrests. In our next report we will compare 2011, 2012 and 2013 for the period April through June.

of the sampled cases would have to result in a level of estimated compliance that included the possibility that 100% of the cases were compliant.

As in the first two reports, in reviewing the sampled cases to determine compliance, we encountered two unexpected issues. First, each month a number of the sampled cases of Quality of Life arrests involved arrests for offenses that emerged after the stop for the Quality of Life Offense. For example, an officer approaches a person who is on private property and as the officer approaches, the person of interest drops something that later turns out to be a controlled substance. The officer arrests the person for trespassing and for possession of the controlled substance without indicating in the report that an alternative to arrest was considered. In these instances we determined, after consultation with the parties to the Voluntary Agreement, that as long as the arrest report accurately stated probable cause these arrests would be considered consistent with departmental policy and were compliant for purposes of this audit. In other words, those arrests were counted as compliant even though the probable cause statement did not indicate that an alternative was considered.

The second issue we continue to encounter is that the Department reported that 119 of the cases we sampled in this six month period were unavailable because the records had been expunged. It was explained that pursuant to statute the Department was required to expunge the records of those who were arrested

but were released without charges (referred to as RWOC cases). We sought these records because these cases are similar to the kind of cases that prompted the law suit that resulted in the Voluntary Agreement we are auditing. When the draft report of our first report was reviewed by the representatives of the plaintiffs, they pointed out that while the statute (Md.Code, Crim. Proc. §10-101) requires expungement in these cases, it further requires that the Department retain the record for three years. The Department, in response to our inquiry concerning this, stated that after expungement the records were not available through the Department's management information system. We indicated in our first two reports that during the next reporting period we would continue to seek access to these cases. Then and now the Department is not compliant with this task no matter how we handle the expunged cases. We no longer expect that we will have access to these cases in future reports. This will make it extremely difficult to determine if the Department is in compliance with this task<sup>6</sup>. We may not be able to confidently determine the Department is in compliance with this task without access to the expunged cases. For the current report, this is not a significant issue because the Department is not in compliance whether or not the expunged cases are included. If however, a future report would find compliance was achieved, but the expunged cases were not reviewed, it would be difficult to accurately

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<sup>6</sup> Recently, the Department acknowledged they had these reports but were not willing to provide them to us because the court had expunged the cases. It does not appear we will receive access to these cases.

determine compliance with confidence. This is why for future reports we will continue to work with the Department to get access, in some form, to them<sup>7</sup>.

The Department contends that even if though they have access to the incident reports for the expunged cases that they cannot give them to us for two reasons: 1) the statement of probable cause in the incident report may be different from the final statement of probable cause; and 2) since the record has been expunged they cannot provide the auditor with a copy of the report that would identify the person arrested because that would violate the purpose of expungement. Specifically, the Department has contended:

Probable cause statements pertaining to the arrest of an individual that has been expunged are not part of the records considered to be in the custody of the Baltimore Police Department. Maryland Code of Criminal Procedure Section 10-103.1 requires that all police records regarding the arrest of a person who is arrested or confined and is released without being charged with the commission of a crime are entitled to an automatic expungement.

The State's Attorney's Office has the discretion to determine which cases to prosecute. An individual may be released without charges for numerous reasons, all of which are within the prosecutorial discretion of the State's Attorney. Consequently, the Auditor is not required by the terms of the Settlement Agreement to speculate on whether there is a direct correlation between someone being released without charges and the absence of probable cause to arrest. Furthermore, any estimation of the rate of compliance with the terms of the Settlement Agreement would be speculative, and is not contemplated within the task language of the Settlement Agreement for this litigation. Accordingly, any reference to said materials is outside of the purview of the Auditor's stated tasks<sup>8</sup>.

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<sup>7</sup> The attorney for the plaintiffs in the original actions continues to contend that these cases can be made available to the auditor.

<sup>8</sup> Email from the Office of Legal Affairs, Baltimore Police Department dated 9/11/12.

We have offered a number of ways to address these concerns but to date the Department contended that they cannot provide to us the information needed to determine whether those arrests are in compliance or not.

The review of the sampled cases (not including the expunged cases) determined that the Department complied with this task in 78% of the arrests with a margin of error of +/-3%<sup>9</sup>. The primary reason for non-compliance was the absence of an explanation of why a non-custodial disposition was not appropriate in the case. Therefore, it was determined that the Department was not in compliance (the Auditor's Manual makes clear that for this task material compliance and compliance are treated without distinction).

**Task 4.** Within 30 days of the effective date of this Agreement, the Department shall issue a written directive requiring officers to provide their names and badge numbers to any individual who requests this information.

## **STATUS: COMPLIANCE**

The Department issued Police Commissioners Memorandum (14-10) on July 29, 2010 that met all of the requirements of this task.

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<sup>9</sup> As noted above, each month a substantial portion of the quality of life arrests included arrests for other offenses. After consultation with the parties to the agreement, the Auditor decided that as long as probable cause was established these arrests were judged to be compliant. If these arrests were eliminated from the analysis, the compliance rate would be 65% (+/-4%). If the expunged cases were counted as non-compliant and included in the denominator, the compliance rate would be estimated at 51% (+/-3%).

**Task 5.** The Zero Tolerance Policing policy required by section IV.B.1.a.1 shall not be rescinded or diminished by the Department during the term of this Agreement.

**STATUS: COMPLIANCE**

The Auditor has verified that this policy has not been rescinded.

**Task 6.** The written directive or directives required by section IV.B.1.a.2 of the Voluntary Agreement shall not be rescinded or diminished by the Department during the term of this Agreement unless (a) the Department determines, in good faith and upon advice of counsel, that the policies conflict or will conflict with any applicable law, regulation, or court order; or (b) the Department determines in good faith that such rescission or diminishment is necessary for the safety of the public or Department personnel. In the event the Department concludes a modification of the written directive or directives required by section IV.B.1.a.2 is necessary, it will notify Plaintiffs' Counsel of the planned modification and offer a reasonable opportunity for Plaintiffs' Counsel to comment upon it. The Department shall in good faith consider such comments.

THERE IS NO AUDIT FUNCTION ASSOCIATED WITH THIS TASK AND IT WILL NOT BE INCLUDED IN AUDIT REPORTS. HOWEVER, IF CHANGES ARE MADE USING THE PROCESS SPECIFIED THE AUDITOR WILL

INCLUDE THOSE CHANGES IN THE AUDIT MANUAL AFTER BEING  
INFORMED OF THE CHANGES BY THE DEPARTMENT.

**STATUS: NO CHANGES NOTED**

**Task 7.** The Municipal Defendants shall provide the Auditor with access to all officers, employees, documents, and data of the Municipal Defendants that are reasonably necessary to complete the Tasks enumerated in this Agreement.

THERE IS NO AUDIT FUNCTION ASSOCIATED WITH THIS TASK AND IT WILL NOT BE INCLUDED IN AUDIT REPORTS. ALL INSTANCES OF FAILURE TO PROVIDE ACCESS WILL BE NOTED IN RELEVANT SECTIONS OF THE REQUIRED BI-ANNUAL AUDIT REPORTS ALONG WITH AN ASSESSMENT OF HOW SUCH DENIAL MAY HAVE IMPACTED THE AUDIT.

**Task 8.** Within 120 days of the Effective Date of this Agreement, the Department shall develop a document and database retention protocol to maintain and retain all records, including documents and the database described in Section IV.B.1.c of the Voluntary Agreement, documenting compliance with the terms of this Agreement and all documents required by or developed pursuant to this Agreement. The protocol shall be evaluated and reported on by the Auditor.

**STATUS: MATERIAL COMPLIANCE<sup>10</sup>**

Completion of this task and a number of tasks that follow are related to the development of new software and related operational procedures. The BPD has selected a vendor for the development of this software (IAPro is one of the standard internal affairs software packages used by police departments) and has entered into a contract for the adaption of this software to the needs of the BPD. IAPro will address issues of record retention, supervisory review of quality of life arrests, and the tracking and monitoring of citizen complaints. IAPro has the capabilities to provide for all of the tasks related to these activities. In our first and second reports we noted that the vendor was to test IAPro in January of 2012 with implementation by the end of March but that at the time of the last report the system was still not operational. IAPro is now operational and is being used in the Department. The auditor attended training on the system in late January and can confirm that the system can accomplish all of the tasks required by the Voluntary agreement. While models for review of quality of life cases and for identifying at risk officers have not been fully implemented they are designed and are being completed. Significant steps have been taken during this last reporting period in the use of IAPro as a records management system. While the progress is commendable, we still do not have

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<sup>10</sup> The attorney for the plaintiffs in the original action objects to classifying these and other tasks as being in material compliance. We understand his position and his concerns and agree that if there had not been the progress in implementing IAPro that we observed in January we would have judged the Department to be in non-compliance with a number of tasks .

access to files of the investigations of citizen complaints<sup>11</sup>, the specifics of the system to be used to identify at risk officers, or the specifics of the quality of life segments of the system. When it became clear that the new system would not be available for this report, we requested access to files or information from those files concerning the investigation of citizen complaints<sup>12</sup>. These have not been provided. While we do conclude that a properly functioning IAPro will be useful in reaching compliance with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

**Task 9.** Within 180 days of the effective date of this Agreement, the Municipal Defendants shall create and automate a database to track police officer performance.

#### **STATUS: MATERIAL COMPLIANCE**

Completion of this task and a number of tasks that follow are related to the development of new software and related operational procedures. The BPD has selected a vendor for the development of this software (IAPro is one of the standard internal affairs software packages used by police departments) and has entered into a contract for the adaption of this software to the needs of the BPD. IAPro will address issues of record retention, supervisory review of quality of life

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<sup>11</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

<sup>12</sup> Appendix A contains the Department's response to this report.

arrests, and the tracking and monitoring of citizen complaints. IAPro has the capabilities to provide for all of the tasks related to these activities. In our first and second reports we noted that the vendor was to test IAPro in January of 2012 with implementation by the end of March but that at the time of the last report the system was still not operational. IAPro is now operational and is being used in the Department. The auditor attended training on the system in late January and can confirm that the system can accomplish all of the tasks required by the Voluntary agreement. While models for review of quality of life cases and for identifying at risk officers have not been fully implemented they are designed and are being completed. Significant steps have been taken during this last reporting period in the use of IAPro as a records management system. While the progress is commendable, we still do not have access to all the files of the investigations of citizen complaints<sup>13</sup>, the specifics of the system to be used to identify at risk officers, or the specifics of the quality of life segments of the system. When it became clear that the new system would not be available for this report, we requested access to files or information from those files concerning the investigation of citizen complaints. These have not been provided. While we do conclude that a properly functioning IAPro will be useful in reaching compliance

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<sup>13</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

**Task 10.** Within 180 days of the effective date of this Agreement, the Department shall:

a. establish and enforce a policy and procedure requiring shift supervisors to review statements of probable cause for custodial arrests for Quality of Life Offenses to ensure that probable cause in fact existed and that the arrest was in accord with the Policies. If, after this agreement has been in effect for 365 days, the result of the review is a determination that the arrest was in contravention of the Policies, the supervisor shall refer the matter to his or her command for action consistent with the policy established. If the result of the review is a determination that the arrest is consistent with the Policies, the supervisor shall determine the necessity, if any, for non-punitive counseling.

b. establish and enforce a policy and procedure requiring a line supervisor's review of probable cause statements for custodial arrests for Quality of Life Offenses is reviewed by second-level supervisors on a periodic basis, not to exceed every six months, to ensure that probable cause in fact existed and that the arrest was in accord with the Policies;

c. establish a policy identifying corrective actions, up to and including disciplinary action, as warranted and consistent with established Departmental disciplinary policies, procedures, contracts, memoranda of understanding, and all applicable laws governing the discipline of law enforcement officers, including, but not limited to the Law Enforcement Officer's Bill of Rights. ("LEOBR"), Md. Ann. Code, Public Safety Act, 3-101, et seq., to be taken by the Department when an officer's conduct is deemed to be in contravention of the Policies;

## **STATUS: MATERIAL COMPLIANCE**

The BPD has established policy to require supervisors to review probable cause statements in all quality of life arrests. Furthermore, the BPD now requires periodic review by second-level supervisors. Hence there is already compliance with sections a and b of this task. To date the policy on corrective actions has not been implemented and will not be until such time as the information system to track complaints (see above discussion of IAPro) is operational<sup>14</sup>. Hence, the conclusion of material compliance which is, in this instance, partial compliance with action to complete task 10 c. underway. When we are able to access the reviews by supervisors of quality of life offenses it will be important that we understand how expunged cases are reviewed and, if they are reviewed, how we can retrieve the probable cause statements for inclusion in the analysis conducted

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<sup>14</sup> The Department has recently indicated that when the quality of life segment of IAPro is operational the review of quality of life arrests will be done by Internal Affairs.

to assess compliance with Task 3 a. If they are not reviewed that would strongly suggest non –compliance with this and related tasks.

**Task 11.** Within 365 days of the effective date of this Agreement, the Department shall develop protocols for use of the database in evaluating compliance with the Policies. Such protocols shall establish reasonable triggering thresholds for review of officer conduct to monitor effective compliance with the Policies. The protocols referred to here are the “triggering points” for the EWS. The Auditor will confirm that each of the protocols required by the Agreement is developed and implemented. The Auditor will also report on the efficacy of the triggering points established by the Department.

#### **STATUS: MATERIAL COMPLIANCE**

Completion of this task and a number of tasks that follow are related to the development of new software and related operational procedures. The BPD has selected a vendor for the development of this software (IAPro is one of the standard internal affairs software packages used by police departments) and has entered into a contract for the adaption of this software to the needs of the BPD. IAPro will address issues of record retention, supervisory review of quality of life arrests, and the tracking and monitoring of citizen complaints. IAPro has the capabilities to provide for the all of the tasks related to these activities. In our first and second reports we noted that the vendor was to test IAPro in January of 2012

with implementation by the end of March but that at the time of the last report the system was still not operational. IAPro is now operational and is being used in the Department. The auditor attended training on the system in late January and can confirm that the system can accomplish all of the tasks required by the Voluntary agreement. While models for review of quality of life cases and for identifying at risk officers have not been fully implemented they are designed and are being completed. Significant steps have been taken during this last reporting period in the use of IAPro as a records management system. While the is progress is commendable, we still do not have access to files of the investigations of citizen complaints<sup>15</sup>, the specifics of the system to be used to identify at risk officers, or the specifics of the quality of life segments of the system. When it became clear that the new system would not be available for this report, we requested access to files or information from those files concerning the investigation of citizen complaints. These have not been provided. While we do conclude that a properly functioning IAPro will be useful in reaching compliance with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

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<sup>15</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

**Task 12.** Within 90 days of the effective date of this Agreement, the Municipal Defendants shall enter all citizen complaints into a database. The database shall include the file number of the complaint (also provided to the complainant); the names of all accused officers, if provided or known; contact information for all complainants, non-accused but related officers, and witnesses, if provided or known; the race and gender of all involved officers and complainants if known or ascertainable by reasonable investigation; a narrative description of the allegations; significant dates; the street address and district of the incident; and the disposition of the complaint (sustained, not sustained, unfounded or exonerated).

### **STATUS: MATERIAL COMPLIANCE**

Completion of this task and a number of tasks that follow are related to the development of new software and related operational procedures. The BPD has selected a vendor for the development of this software (IAPro is one of the standard internal affairs software packages used by police departments) and has entered into a contract for the adaption of this software to the needs of the BPD. IAPro will address issues of record retention, supervisory review of quality of life arrests, and the tracking and monitoring of citizen complaints. IAPro has the capabilities to provide for the all of the tasks related to these activities. In our first and second reports we noted that the vendor was to test IAPro in January of 2012 with implementation by the end of March but that at the time of the last report the

system was still not operational. IAPro is now operational and is being used in the Department. The auditor attended training on the system in late January and can confirm that the system can accomplish all of the tasks required by the Voluntary agreement. While models for review of quality of life cases and for identifying at risk officers have not been fully implemented they are designed and are being completed. Significant steps have been taken during this last reporting period in the use of IAPro as a records management system. While the progress is commendable, we still do not have access to files of the investigations of citizen complaints<sup>16</sup>, the specifics of the system to be used to identify at risk officers, or the specifics of the quality of life segments of the system. When it became clear that the new system would not be available for this report, we requested access to files or information from those files concerning the investigation of citizen complaints. These have not been provided. While we do conclude that a properly functioning IAPro will be useful in reaching compliance with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

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<sup>16</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

**Task 13.** Complainants shall be allowed to initiate complaints against an officer in person, by telephone, by mail, by fax, or via the internet. A complainant shall not be required to fill out or sign a form to initiate a complaint. Municipal Defendants may seek from the complainant sufficient information to enable the identification of the involved officers and incident.

#### **STATUS: COMPLIANCE**

General Order C-07 issued on April 8, 2004 details the process for receiving and processing civilian complaints. In part it states that a citizen cannot be turned away or instructed to go to another office or person to lodge a complaint against a police officer. However, the citizen is given the address and location of other offices where a complaint can be filed. As specified in that document, in a brochure that has been developed by the BPD to explain the complaint process, and on the BPD website (in the FAQ section) which was last modified in August of 2011)) complaints can be made in person, by phone, by mail or by e-mail. While they do not provide for fax submission, these procedures are fully compliant with the intent of the task which was to provide multiple ways for the public to file a complaint.

**Task 14.** Complainants shall be permitted to initiate complaints anonymously, in writing or verbally. Third-part complaints shall be allowed.

#### **STATUS: COMPLIANCE**

In General Order C-07 and the above referenced brochure and website, citizens are informed that they can file complaints in writing or verbally. If a complaint involves allegations of excessive force, courtesy, or harassment, the BPD requires that the complainants put the complaint in writing and swear to its accuracy, but members of the Internal Affairs Division can notarize these complaints. While The BPD policy and procedures as described on the website do not specifically include or exclude third party complaints, the Department indicates they are accepted.

- For Tasks 13, 14, 18 – 21, the Settling Parties anticipate that the Auditor will evaluate the Department's compliance with this task by reviewing a statistically meaningful sample of complaint investigation files and other documentation, if any, identified by the Auditor. Such sample shall include a meaningful percentage of investigation files regarding complaints for false arrest or lack of probable cause for Quality of Life Offenses to satisfy section IV.B.1.b.18 of this Agreement.

**STATUS: Not yet determined**

The BPD has informed the Auditor that until the information system being developed to track complaints (IAPro) is developed, it is not able to provide access

to the information required to select a sample of files for investigation<sup>17</sup>. The auditor has requested access to files to audit this task, but they have not been provided. This task will be evaluated in the next semi-annual report.

**Task 15.** Within 180 days of the Effective Date of this Agreement, a telephone number shall be created to allow for toll free calls to initiate complaints.

The auditor will verify that such a number is created and will on a monthly basis verify that it is operational by calling it with a test report.

#### **STATUS: COMPLIANCE**

A toll-free number is provided on the BPD website and is operational. Testing each month demonstrated that the line is operational and being answered.

**Task 16.** Within 180 days of the Effective Date of this Agreement, the telephone number shall be advertised with the goal that Baltimore residents and visitors should be generally aware of how to initiate a complaint.

The Auditor will verify that the number is advertised by reviewing the advertisement strategies that the Department uses and verifying that the strategies are in fact implemented. There will be no effort to determine the extent to which the advertising effort reaches the intended audiences.

#### **STATUS: COMPLIANCE**

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<sup>17</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

The number has been included on the website and is contained in a brochure that is available in each district station, at police headquarters, and at other City offices. Printed posters are displayed in each District and in the Office of the Civilian Review Board, the Legal Affairs Bureau, and the Internal Affairs Office. The website and the brochure give clear instructions on how to make a complaint. The Audit does not include an assessment of the success of these strategies.

**Task 17.** Within 365 days of the Effective Date of this Agreement, the Municipal Defendants shall publicize information concerning the purpose and goals of the citizen complaint and resolution process, and the process for initiating a complaint, including publishing and distributing pamphlets describing the complaint and resolution process and holding at least one community meeting in each police district.

The Auditor will verify that the required information is publicized as specified by reviewing the required pamphlet, how the pamphlet is distributed, and the minutes of all community meetings where the information is discussed and/or presented. Compliance will require development of the pamphlet, its distribution, and documentation of at least one community meeting in each police district where the citizen complaint and resolution process is described.

#### **STATUS: MATERIAL COMPLIANCE**

The Auditor has reviewed the above mentioned brochure and determined that it contains the elements required by this task. The BPD has provided minutes of District Council meetings that document the presentation of the complaint and resolution process in all districts..

**Task 18.** Investigators shall attempt to interview complainants and witnesses at their own convenience, but, if necessary, shall offer to conduct interviews during non-business hours or at locations other than Departmental offices.

#### **STATUS: MATERIAL COMPLIANCE**

General Order C-07 requires and the brochure states that the investigator of civilian complaints is to make every effort to “reasonably accommodate you during the complaint process”. Once the Auditor has access to the complaint files and the Internal Investigations Division staff, the extent to which this policy is adhered to will be determined.

**Task 19.** If conduct in contravention of Departmental policy, other than the conduct alleged by the complainant, is discovered in the course of an investigation, the Department shall investigate such other conduct.

#### **STATUS: MATERIAL COMPLIANCE**

General Order C-08 issued August 26, 2011 specifies the Internal Investigation Division (IID) has responsibility for all investigations of all allegations of misconduct by employees of the Department. This policy does not

limit the IID's ability to initiate investigations of instances of conduct in contravention of Departmental policy that is discovered during the course of an investigation. The BPD reports it is the practice of the IID to investigate all violations of departmental policy regardless of the manner in which they become aware of the violation. However, until the information system being developed to track complaints (IAPro) is developed or the Department provides the auditor with access to case files, the Auditor will not be able to select a sample of cases to study to determine the extent to which this occurs<sup>18</sup>.

**Task 20.** Upon request, the Department shall provide a complainant reasonable updates on the status of the investigation. Even absent any such request for information, complainants shall be apprised of the status of open complaints every 60 days and promptly upon resolution of the investigation.

#### **STATUS: MATERIAL COMPLIANCE**

The policy on investigations and the above referenced brochure provided to the public make clear that the complainants may contact their assigned investigator to get answers to questions about their complaint or to express concerns. However, until the information system being developed to track complaints (IAPro) is developed or the Department provides the auditor with access to case

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<sup>18</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

files, the Auditor will not be able to select a sample of cases to study to determine the extent to which this occurs.

**Task 21.** All findings shall be based on the “preponderance of the evidence” standard, and all investigators shall be trained on that standard. Investigators shall be required to state the factual basis for each finding in the final report of each investigation.

#### **STATUS: MATERIAL COMPLIANCE**

All investigations are conducted to meet the preponderance of evidence test. This is the burden of proof required by Maryland statute (Md. State Code Ann. § 10-217). Investigators are instructed to use this standard. However, until the information system being developed to track complaints (IAPro) is developed or the Department provides the auditor with access to case files, the Auditor will not be able to select a sample of cases to study to determine the extent to which this occurs.

**Task 22.** The Municipal Defendants shall make final determinations of all citizen complaints, and shall inform each complainant in writing of the final determination on his or her complaint.

#### **STATUS: MATERIAL COMPLIANCE**

The BPD reports that it is the practice of the department to inform each complainant in writing upon the completion of the investigation of their complaint.

A revision of the policy on the conduct of IID investigations is being developed. The BPD reports that the revisions will include a specific requirement that complainants will be informed in writing when the investigation is completed. The Auditor will review the revised policy when it is available. BPD has informed the Auditor that until the information system being developed to track complaints (IAPro) is developed, it is not able to provide access to the information required to select a sample of files for investigation<sup>19</sup>. The auditor requested access to internal affairs staff and files to assess compliance with this task but these were not provided.

**Task 23.** When a review of an officer's performance is triggered by a data analysis under Section IV.B.1.c.3 of the Voluntary Agreement, the Department shall notify the appropriate supervisor of the officer or officers in question. This notice shall include the information available from the database (Task 9 above) that triggered the review.

#### **STATUS: MATERIAL COMPLIANCE**

Completion of this task and a number of tasks that follow are related to the development of new software and related operational procedures. The BPD has selected a vendor for the development of this software (IAPro is one of the

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<sup>19</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

standard internal affairs software packages used by police departments) and has entered into a contract for the adaption of this software to the needs of the BPD. IAPro will address issues of record retention, supervisory review of quality of life arrests, and the tracking and monitoring of citizen complaints. IAPro has the capabilities to provide for all of the tasks related to these activities. In our first and second reports we noted that the vendor was to test IAPro in January of 2012 with implementation by the end of March but that at the time of the last report the system was still not operational. IAPro is now operational and is being used in the Department. The auditor attended training on the system in late January and can confirm that the system can accomplish all of the tasks required by the Voluntary agreement. While models for review of quality of life cases and for identifying at risk officers have not been fully implemented they are designed and are being completed. Significant steps have been taken during this last reporting period in the use of IAPro as a records management system. While the progress is commendable, we still do not have access to files of the investigations of citizen complaints<sup>20</sup>, the specifics of the system to be used to identify at risk officers, or the specifics of the quality of life segments of the system. When it became clear that the new system would not be available for this report, we requested access to

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<sup>20</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

files or information from those files concerning the investigation of citizen complaints. These have not been provided. While we do conclude that a properly functioning IAPro will be useful in reaching compliance with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

**Task 24.** Once notified, a supervisor shall conduct a reasonable investigation of the performance of the officer in question by reviewing records relative to the conduct that triggered the review (e.g., complaint records, statements of probable cause, incident reports, etc.). The review shall specifically include a determination of the sufficiency of the probable cause underlying each Quality of Life arrest that is associated with the conduct under review. Based upon the review of related records, the supervisor shall determine, based upon a preponderance of the documentary evidence, whether the officer's actions are in contravention of the Policies. If the result of the review is a determination that the officer's actions are in contravention of the Policies, the supervisor shall refer the matter to his or her command for action consistent with the policy established under section IV.B.c.2.c of the Voluntary Agreement. If the result of the review is a determination that the officer's actions are consistent with the Policies, the supervisor shall determine the necessity, if any for non-punitive counseling.

#### **STATUS: MATERIAL COMPLIANCE**

The BPD reports and General Order C-08 requires that these procedures are followed. However, completion of this task requires the development of new software and related operational procedures. Completion of this task and a number of tasks that follow are related to the development of new software and related operational procedures. The BPD has selected a vendor for the development of this software (IAPro is one of the standard internal affairs software packages used by police departments) and has entered into a contract for the adaption of this software to the needs of the BPD. IAPro will address issues of record retention, supervisory review of quality of life arrests, and the tracking and monitoring of citizen complaints. IAPro has the capabilities to provide for all of the tasks related to these activities. In our first and second reports we noted that the vendor was to test IAPro in January of 2012 with implementation by the end of March but that at the time of the last report the system was still not operational. IAPro is now operational and is being used in the Department. The auditor attended training on the system in late January and can confirm that the system can accomplish all of the tasks required by the Voluntary agreement. While models for review of quality of life cases and for identifying at risk officers have not been fully implemented they are designed and are being completed. Significant steps have been taken during this last reporting period in the use of IAPro as a records management system. While the progress is commendable, we still do not have

access to files of the investigations of citizen complaints<sup>21</sup>, the specifics of the system to be used to identify at risk officers, or the specifics of the quality of life segments of the system. When it became clear that the new system would not be available for this report, we requested access to files or information from those files concerning the investigation of citizen complaints. These have not been provided. While we do conclude that a properly functioning IAPro will be useful in reaching compliance with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

**Task 25.** Upon completion of the review, the investigating supervisor shall provide written documentation of the process and the results of the investigation in the form of a review memorandum. The review memorandum shall specifically document the conduct of the investigation, the outcome of the review and whether the supervisor provided the officer with non-punitive counseling.

## **STATUS: MATERIAL COMPLIANCE**

The BPD reports and General Order C-08 requires that these procedures are followed. However, completion of this task requires the development of new software and related operational procedures. Completion of this task and a number of tasks that follow are related to the development of new software and

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<sup>22</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

segments of the system. When it became clear that the new system would not be available for this report, we requested access to files or information from those files concerning the investigation of citizen complaints. These have not been provided. While we do conclude that a properly functioning IAPro will be useful in reaching compliance with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

**Task 26.** When an officer's performance is being reviewed as part of the Department's periodic performance evaluation process, copies of any review memoranda created during the period under review shall be provided to and considered by the reviewing officer in evaluation the subject officer's performance.

#### **STATUS: MATERIAL COMPLIANCE**

The BPD reports and General Order C-08 requires that these procedures are followed. However, completion of this task requires the development of new software and related operational procedures.

Completion of this task and a number of tasks that follow are related to the development of new software and related operational procedures. The BPD has selected a vendor for the development of this software (IAPro is one of the standard internal affairs software packages used by police departments) and has entered into a contract for the adaption of this software to the needs of the BPD.

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<sup>23</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

functioning IAPro will be useful in reaching compliance with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

**Task 27.** When an officer, who is the supervisor of other officers, is the subject of a review as part of the Department's periodic performance evaluation process, copies of any review memoranda relating to the officer under the subject officer's supervision created during the period under review will be provided to and considered by the reviewing officer in evaluation the subject officer's performance

## **STATUS: MATERIAL COMPLIANCE**

The BPD reports and General Order C-08 requires that these procedures are followed. However, completion of this task requires the development of new software and related operational procedures. Completion of this task and a number of tasks that follow are related to the development of new software and related operational procedures. The BPD has selected a vendor for the development of this software (IAPro is one of the standard internal affairs software packages used by police departments) and has entered into a contract for the adaption of this software to the needs of the BPD. IAPro will address issues of record retention, supervisory review of quality of life arrests, and the tracking and

monitoring of citizen complaints. IAPro has the capabilities to provide for all of the tasks related to these activities. In our first and second reports we noted that the vendor was to test IAPro in January of 2012 with implementation by the end of March but that at the time of the last report the system was still not operational. IAPro is now operational and is being used in the Department. The auditor attended training on the system in late January and can confirm that the system can accomplish all of the tasks required by the Voluntary agreement. While models for review of quality of life cases and for identifying at risk officers have not been fully implemented they are designed and are being completed. Significant steps have been taken during this last reporting period in the use of IAPro as a records management system. While the progress is commendable, we still do not have access to files of the investigations of citizen complaints<sup>24</sup>, the specifics of the system to be used to identify at risk officers, or the specifics of the quality of life segments of the system. When it became clear that the new system would not be available for this report, we requested access to files or information from those files concerning the investigation of citizen complaints. These have not been provided. While we do conclude that a properly functioning IAPro will be useful

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<sup>24</sup> On March 13, 2013 the Department notified the auditor that it had identified all of the citizen complaints concerning quality of life offenses for the period requested by the Auditor. The Department has stated that it will make all of the files for these investigations available to the Auditor. The analysis of these cases will be included in the next audit report.

in reaching compliance with this task and others, we cannot conclude at this time that the Department is in full compliance with this task.

**Task 28.** The Municipal Defendants shall monitor citizen complaints related to Quality of Life Offenses to gauge the effectiveness of training and to detect the need for new or further training.

#### **STATUS: COMPLIANCE**

It is reported that the BPD Director of Training has revised training curricula in response to information on problems in the probable cause statements in some Quality of Life arrests. In addition, the Director has instituted on-going training to improve report writing generally. Once the IAPro system is developed and used to identify problems, this task will be addressed with more systematic data on issues that training can address.

**Task 29.** Except with respect to complaints subject to the statutory requirements of Article 4, section 16-44 of the Public Local Laws of Maryland, the Municipal Defendants shall monitor and be responsible for completing all investigations and shall not have discretion to reject a citizen complaint without investigation if sufficient information is provided to or obtained by the Municipal Defendants through reasonable investigation.

#### **STATUS: COMPLIANCE**

Departmental policy (General Order C-07), the essence of which is included on the BPD website describing the complaint process, requires that all complaints be investigated. Once the Auditor has access to the sample of complaints and investigations, we will determine the extent to which these policies and statements are followed.

**Task 30.** Within 120 days of the effective date of this Agreement, the Municipal Defendants shall create and maintain individual training records for all police officers, documenting the date and topic of all pre-service and in-service training completed. These records shall also reflect whether the training was completed satisfactorily, as well as the reasons for any mandatory re-training.

## **STATUS: COMPLIANCE**

The Auditor inspected the training records maintained by the training academy and verified that individual records were being maintained and that they contained all elements specified in the task.'

**Task 31.** Within 180 days of the effective date of the Agreement, the Department shall develop training curricula for pre-service and annual in-service training regarding Quality of Life Offenses, assessing probable cause, rights protected by

the First Amendment to the U.S. Constitution, especially the lawful exercise of those rights on City sidewalks and other public areas, and the appropriate officer response when an individual requests an officer's name and badge number.

### **STATUS: COMPLIANCE**

Within 180 days of the signing of the Agreement, the BPD developed training guides for pre-service and in-service training on the policies of the Department concerning zero tolerance policing, the use of arrest in Quality of Life Offenses, the requirement to provide names and badge numbers, and the rights of free speech and assembly. The training curricula were reviewed by the parties to the agreement and the Auditor and were found to contain all elements specified in this task.

**Task 32.** Within 120 days of the effective date of this Agreement, the Department shall provide the training curricula required by section IV.B.1.f of the Voluntary Agreement to the Auditor and Plaintiff's Counsel for comment, to be received no later than 30 days from receipt of the curricula. The Department shall consider in good faith any comments so received, but is not required to make any changes to the curricula based upon the comments.

### **STATUS: COMPLIANCE**

As noted above, the training curricula were provided to the Plaintiff's counsel and the Auditor for review and comment. All comments made were addressed by the BPD.

**Task 33.** Pre-service training based upon the training curricula required by this section shall be provided to all incoming classes as of the first incoming academy class after the finalization of the training curricula.

#### **STATUS: COMPLIANCE**

All pre-service requirements since February 2011 have included the training specified in the task.

**Task 34.** In-service training based upon the training curricula required by this section shall be provided to officers beginning with in-service training that occurs within 90 days of the finalization of the required training curricula, and shall continue for all in-service training sessions provided during the term of the Agreement.

#### **STATUS: COMPLIANCE**

The in-service training curriculum has been included in all in-service training plans since it was approved.

**Task 35.** Notice of this in-service training shall be disseminated to all officers employed by the Department as of the effective date of this Agreement within 120 days of the effective date of this Agreement.

## **STATUS: MATERIAL COMPLIANCE**

Notice of the in-service requirement was sent to all officers in the BPD on February 2, 2011. This exceeded the requirement of completing this task within 120 days. In-service training continues to include these elements.

## Appendix A

RESPONSE FROM THE BALTIMORE POLICE DEPARTMENT

