

December 8, 2016

Anaheim Public Safety Board,

During the quarterly meeting of the Public Safety Board (PSB) held on July 14, 2016, Michael Gennaco of the Office of Independent Review Group (OIR Group) presented a [report](#) summarizing his review of three (3) Major Incident Review Team (MIRT) reports, nine (9) Internal Affairs investigations into allegations of officer misconduct and eight (8) uses of force. OIR Group's quarterly audit and review resulted in fifteen (15) recommendations related to Department practices, policies and processes.

Attached herein are the responses from my Department to each recommendation put forth by OIR Group. This response is provided to the Public Safety Board (PSB), and following the public meeting on December 15, 2016 will be posted to the Anaheim Police Department website: www.anaheimpd.org. The information provided includes the reasoning supporting our position on each recommendation, all but two of which our Department either agrees with and is in the process of implementing or has already implemented.

The review and recommendations provided through this process continue to assist me in identifying areas for improvement and to implement improvements in training, tactics and policies while ensuring my officers have the best equipment and tools available to serve our community to the best of their ability. Once again, the technical knowledge and experience of Mr. Gennaco and the OIR Group combined with the excellent work product produced have provided significant value as we continue to improve our service delivery through the critical review of these significant events and investigations. Beyond OIR Group, our Professional Standards Bureau and Major Incident Review Team (MIRT) continue to seek best practices across the country related to critical incident review. To that end, MIRT are members of the National Association for Civilian Oversight of Law Enforcement (NACOLE) and also recently attended a use of force summit in Connecticut. These are but two proactive examples reflecting the Anaheim Police Department's commitment to delivering the highest quality public safety which is responsive to and considerate of the community we serve.

Thank You,

RAUL QUEZADA
CHIEF OF POLICE
Community, Teamwork, Excellence

Recommendation One:

The Department should look for additional ways to structure its MIRT [Major Incident Review Team] process to ensure a comprehensive, holistic review of critical incidents. One consideration would be to expand its limited approach to administrative interviews / questions of involved-personnel regarding the range of performance, training, and risk management issues that such incidents often implicate.

The Anaheim Police Department (APD) agrees with this recommendation and continues to hone its MIRT process, which has evolved significantly since the cases reviewed by OIR Group were conducted. The process now includes interviews of all involved personnel including supervisors. Planning, tactics, communication and other areas are examined to identify areas for improvement. Numerous other police agencies from both within and outside Orange County have attended our MIRT presentations for the purpose of learning best practices in this area as they develop their own processes. Of note, some of these agencies were referred to our process by OIR Group.

Recommendation Two:

The Department should finalize the timely finalization of pending cases that emerge from its MIRT process.

APD agrees with this recommendation. APD's MIRT process includes an in-depth command debrief of the incident within 7-10 days of the incident, which allows for rapid action to be taken to address areas for improvement identified early on in terms of training, policy, equipment, tactics, communication and impacts to the community. While there have been undue delays in the finalization of MIRT investigations, the process now includes the distribution of a memorandum from the Chief of Police following the command debrief which identifies action items with corresponding mandatory completion dates for each item. It is important for the officers involved and the Department as a whole to reach closure to these investigations in a timelier manner and as a remedy, additional processes have been implemented to expedite the timely final review, approval and close-out of the cases.

Recommendation Three:

The Department should continue to evaluate best practices regarding the timing of subject interviews after critical incidents, and put more emphasis on shrinking the current gap between a shooting event and the interview process.

APD agrees with this recommendation and actively and regularly looks for and implements best practices relating to the administrative investigation of critical incidents. While the primary investigative body (Orange County District Attorney's Office) conducts and oversees the interview process, APD works with them to ensure these interviews are conducted in a timely manner. While timeliness is important, obtaining a voluntary statement is also of extreme value and this process must take into consideration the wide range of differences among agencies including but certainly not limited to policy, practice, history, and culture. An additional factor would be the relationship between the particular department and the agency conducting the primary incident investigation to determine whether the officers' actions were lawful.

Within the context of those unique differences among departments, and the inherent benefits of a voluntary statement provided during the primary (criminal) investigation, APD agrees with OIR's recommendation to shrink the length of time between the shooting event and the interview. It is APD's goal to have the subject interviews completed as soon as practicable.

Recommendation Four:

The Department should ensure that the MIRT review considers and assesses supervisory tactical decisions and that any such decision making by sergeants is thoroughly examined during the administrative interviews.

APD agrees with this recommendation and within the past twelve (12) months, the MIRT process has evolved and now includes the formal interview(s) of all involved personnel, including supervisors and managers to examine and assess their role in the incident. This examination includes pre-event planning, development of the Event Action Plan, tactical decision-making, communication and the directing / coordination of resources. Of note, the most recent officer-involved shooting which occurred in August 2016 included the administrative interviews of two (2) lieutenants as well. In summary, APD agrees with OIR's recommendation and has taken it further to include members of management depending on their level of involvement and oversight.

Recommendation Five:

The Department should assess the effectiveness of its training for field supervisors to ensure that the curriculum adequately instruct sergeants to take command of tactical incidents by directing resources and delegating assignments.

APD agrees with this recommendation and has revamped its training for newly promoted sergeants as well as recurrent training for supervisors. Training for newly promoted sergeants in Patrol is now formalized and includes review and completion of a Critical Task List to ensure sergeants are exposed to and prepared for specific challenges they are likely to encounter in the field. In addition, during recurrent Department-wide training, sergeants are placed in the role of supervisor during scenario based training evolutions which simulate dynamic and highly volatile situations. In these scenarios, sergeants direct a group of officers in the handling of the scenario and are critiqued immediately following.

Recommendation Six:

When sergeants fail to adhere to the Department's training, standards, and expectations for management and control of tactical situations, the Department should hold them accountable for those shortcomings through briefing, training or discipline.

APD agrees with this recommendation and as stated in response to Recommendation Four, the Department has over the past year expanded the scope and purview of the MIRT process to include the assessment of supervisory involvement, actions and tactical decisions as a standard component of the investigative work product. Since the inclusion of this component, the Department has imposed remedial training as well as discipline to individual, involved supervisors. In addition, the expanded MIRT work product has provided the Training Section highly relevant material specific to the role of the sergeant which is now incorporated into Department – wide training.

Recommendation Seven:

The Department should modify its current body-worn camera policy to include a requirement that officers activate their cameras whenever they initiate a code 3 response.

The Department agrees with this recommendation and has already implemented the change to the body-worn camera (BWC) Policy – see below (Specifically 451.4). This Policy and other APD Policies are also accessible via the Department’s website at www.anaheimpd.org.

Body Worn Cameras (BWC)

451.1 PURPOSE AND SCOPE

The Anaheim Police Department recognizes that audio and video recording of contacts between Department personnel and the public provides an objective record of these events, and the use of a recording system complements field personnel in the performance of their duties by providing a digital record of enforcement and investigative field contacts. A recording of an event or contact also enables the delivery of timely, relevant and appropriate training to maximize safety for our personnel and improve the provision of services to the community.

The Department provides Body Worn Cameras (BWC) to uniformed personnel for use while on- duty. These recorders are intended to assist personnel in the performance of their duties by providing audio and video records of contacts. Except as provided below, all enforcement and investigative contacts, as well as all contacts specifically related to a call for service, will be recorded to ensure we collect the best evidence for criminal investigations. These recordings will also protect personnel from false accusations and can be instrumental in resolving citizen complaints.

While recordings obtained from a BWC provide an objective record of these events, it is understood video recordings captured by a BWC (or any other recording device) do not necessarily reflect the experience or state of mind of the individual employee(s) in a given incident. Moreover, the video recording has limitations and may depict events differently than the events recalled by the involved employee. Specifically, it is understood the BWC may capture information that may not have been heard and/or observed by the involved employee and may not capture information observed by the employee.

451.2 UNIFORMED SWORN PERSONNEL RESPONSIBILITIES

Prior to going into service, each employee issued a BWC is responsible for making sure the BWC is in proper working order. Uniformed personnel assigned to field and enforcement duties during regular and extra duty assignments shall wear the BWC on their person in a forward facing position that facilitates comprehensive recording of the contact and/or incident.

Personnel will upload their digital audio/video files at the end of each work shift.

Recordings made at extra duty events will be uploaded on or prior to the employee's next work shift unless otherwise approved by a supervisor.

Each employee will be responsible for the use and care of the BWC recorder he or she is using. When an employee determines a BWC is not operating properly, the employee shall notify a supervisor at the earliest practicable time.

451.2.1 NON-UNIFORMED SWORN PERSONNEL RESPONSIBILITIES

Any detective/officer/investigator assigned to a non-uniformed position may carry and activate a department BWC at any time the employee believes such a device may be beneficial to the situation.

All non-uniformed personnel who are executing pre-planned enforcement activities such as serving a search or arrest warrant or parole/probation searches shall wear and operate a BWC.

Non-uniformed employees shall be responsible for uploading their digital recordings in the same manner as described above for uniformed employees.

Field Training Officers who are wearing civilian clothing during the "shadow phase" are not required to wear a BWC, but may do so if they wish. However, they are still responsible for ensuring their assigned trainee is recording all contacts.

451.3 IDENTIFYING INFORMATION REQUIRED FOR ALL RECORDINGS

All employees utilizing the Evidence Transfer Manager to upload audio/video files into the Evidence.com database shall include identifying information for each and every recording. All recordings, whether evidence or not, shall, at minimum, include the following basic information:

(a) General Offense (G.O.) or Incident number in the following formal: ##-##### (i.e., 15-001234, 15-123456), etc.)

(b) Type of Incident

451.4 ACTIVATION OF BODY WORN CAMERA

All enforcement and investigative contacts, as well as all contacts specifically related to a call for service by uniformed sworn personnel issued a BWC, will be recorded. Activation of the BWC should take place during a moment of safety, prior to the actual contact and at a time that ensures sufficient pre-contact coverage to record the officers' approach. In addition to enforcement, investigative and calls for service related contacts, officers shall record high risk and critical incidents, which include Code 3 responses, in the same manner as described above. If an officer is unable to activate his or her BWC prior to initiating contact or enforcement activities, the BWC shall be activated as soon as it is practical to do so.

Additionally, officers shall activate the BWC while transporting a prisoner or detainee.

Pre-planned police actions shall stipulate when BWCs should be activated. This should be documented in the Event Action Plan. BWCs shall be activated prior to the initiation of the police action and in the same manner as described above.

In the event an officer is unable to activate his/her BWC as directed above, or in any instance during which an employee determines a BWC cannot or should not be used, the employee shall report the circumstance to a supervisor as soon as practicable, and document the reason the BWC was not used in a report.

Circumstances when a BWC may not be used include but are not limited to:

- (a) Officer safety would be compromised due to unexpected or sudden altercation.
- (b) An informant or community member requests the BWC be turned off before giving information.
- (c) The recording would potentially endanger a confidential informant of an undercover officer.
- (d) A health care provider is discussing medical issues with a patient.
- (e) While in a hospital or other health care facility. However, the BWC should be turned on in the hospital if a situation arises which requires police action, but officers should consider medical privacy and other sensitive information in determining the duration and scope of the recording.
- (f) While conferring with other officers regarding the specifics or tactics of a call. Employees are prohibited from utilizing a department issued BWC for personal use.

Penal Code § 632 prohibits an individual from surreptitiously recording a conversation in which any party to the conversation has a reasonable belief the conversation is private or confidential; however, Penal Code § 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation.

- (a) No member of this department may surreptitiously record a conversation of any other member of this department without the express knowledge and consent of all parties. Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code § 3303(g).
 - (b) Any member of this department may surreptitiously record any conversation during the course of a criminal investigation if the officer reasonably believes that such a recording will be beneficial to the investigation.
1. For the purpose of this policy, any officer contacting an individual suspected

of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.

451.5 STATEMENTS AND REPORTING

All recorded victim, witness and suspect statements, as well as any other evidence specifically recorded, shall be identified as such in the corresponding report for future use.

- (a) To assist in future retrieval of a statement in the event it is needed for prosecution purposes, report narratives shall include:
 - 1. whether a statement or evidence was recorded;
 - 2. whether that statement or recording was uploaded as evidence;
 - 3. by whom it was recorded; and
 - 4. time and date of the recording.
- (b) Whenever any employee believes a particular contact may lead to a citizen complaint, he/she should bring the contact to the attention of a supervisor or the Section/Watch Commander.

451.6 RETENTION OF BWC MEDIA

Recorded media placed into Evidence.com shall be retained as specified in the City of Anaheim Record Retention Schedule. In general, the retention schedule requires recordings to be retained for two (2) years unless they are identified as evidence. If a recording is identified as evidence the retention will follow the Evidence/Property Files retention schedule. Recordings which become part of a citizen complaint or administrative/internal investigation will follow the retention time identified for the complaint/investigation. Inadvertent/accidental recordings of personal events and conversations shall be purged as soon as practicable upon the approval of a Watch/Section Commander or Records Administrator.

451.7 REVIEW OF BWC MEDIA FILES

Unless prohibited by applicable law, recorded files may be reviewed in any of the following situations by the following personnel:

- (a) Except as provided under APD Policy 451.7(l) and/or (m) below:
 - 1. By the employee(s) who originally recorded the incident.
- (b) With prior supervisory approval, an employee may review another employee's recording provided the other employee was also directly involved in the incident in question.
- (c) By a supervisor investigating a specific incident involving a department employee;

- (d) By members of the City Attorney's office or Risk Management in connection with pending litigation;
- (e) Upon approval by a supervisor/manager, by a Department employee who is conducting an official investigation such as a personnel, administrative or criminal investigation;
- (f) Pursuant to lawful process or by court personnel otherwise authorized to view evidence in a related case;
- (g) Third party investigations: In the event a third party law enforcement agency (e.g. Orange County District Attorney's Office) is conducting a criminal investigation related to an incident involving a Department employee, recordings may be made available to that agency.
- (h) With approval by the Chief of Police by members of the OIR Group for review of a critical incident, internal affairs investigation, use of force review or other internal review.
- (i) Except as provided under 451.7(l) and/or (m), the Internal Affairs Detail shall provide subject employees the opportunity to view recordings obtained from their BWC relating to an Internal Affairs investigation prior to the administrative interview.
- (j) The Chief of Police has the discretion to allow viewing or release of recorded files if the Chief determines it is in the best interest of the Police Department or the City of Anaheim. When appropriate, every effort will be made to notify involved employees prior to release.
- (k) As part of department approved training.
- (l) An officer involved in the intentional discharge of a firearm, an incident where any party sustains great bodily injury, or an in custody death shall not review recorded files unless approved by the Chief of Police or the Deputy Chief of Police.
- (m) Subject to the provisions of this policy, the Chief of Police or the Deputy Chief of Police has the discretion to prohibit the review of any recordings by Department employees if it is determined it is in the best interest of the Police Department or the City of Anaheim.

Subject to the provisions of (l) and (m) above, in the event that an employee is to be interviewed pursuant to an investigation related to an incident which results in injury, bodily harm, death or involves the use of force, the employee and/or his/her attorney will be afforded an opportunity to review his/her video of the incident prior to the interview or after the employee has been interviewed by the appropriate investigative personnel. If the employee elects to view the video after being interviewed, the employee shall be afforded the opportunity to review the video immediately after providing his/her statement regarding the underlying

incident and be given an opportunity to offer a supplemental statement. Prior to the employee offering an initial statement, the following admonishment shall be provided to the employee:

“In this case, there is video evidence that you have had (or will have) an opportunity to view before (after) giving your initial statement. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The “frame rate” of video may limit the camera’s ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your initial statement explains your state of mind at the time of the incident.”

451.8 AUDITING

For the purpose of ensuring police-related incidents are being recorded per this Policy, a supervisor or manager has the ability to periodically audit the system to determine usage.

451.9 BWC RECORDINGS STORAGE & INTEGRITY

- (a) Only the Administration Captain or his/her designees may transfer or copy recordings onto any third party media storage device. Examples of a third party media storage device include but are not limited to: Compact Disc, floppy disk, portable hard drive, memory stick, thumb-drive, DVD, or other electronic media device.
- (b) Only the Administration Captain or his/her designees may produce, reproduce or modify recordings for production in response to a subpoena, Public Records Act request or other request.
- (c) No files shall be transferred or sent via email.
- (d) All recordings are considered official Department records and shall not be shared with any person not having authorization to access the files as part of his or her official duties.
- (e) In the event video files are utilized for training purposes and the involved employee(s) object to the use of the video, such objection shall be submitted to the Operations Support Captain. Such objection shall weigh the value of the video for training against the employee(s) objections and basis for the objection.

Digital files may not be deleted by any person from the recording device or the archival storage media without the authorization of a Watch/Section Commander or Program Administrator.

451.9.1 COPIES OF ORIGINAL BWC STORAGE MEDIA

A copy of a recording may only be released to a third party in response to a valid court order or by approval of the Chief of Police or his/her designee. All requests generated by the District Attorney, City Attorney and/or a Defense Attorney will be handled by the Administration Division or assigned Investigative Detail. Requests for recordings in civil matters will be handled by the Administration Division.

451.9.2 BWC STORAGE MEDIA AS EVIDENCE

In exceptional circumstances, the digital recorder may be booked into evidence prior to any uploading of media storage. Exceptional circumstances may include a major or significant incident; at the direction of a Watch Commander/Section Commander or above; or in the event the data cannot be uploaded due to a mechanical or technological malfunction. If the storage media is booked into evidence, established booking procedures shall be followed and referenced in the police report.

451.9.3 PROGRAM ADMINISTRATOR

The Department shall designate a Program Administrator who has oversight responsibilities including, but not limited to:

- (a) Documenting system malfunctions as well as equipment failures related to BWC;
- (b) Properly training administrative staff regarding the use, retention and confidentiality of video records;
- (c) Maintain digital video files and equipment in a secure and confidential environment and released only in accordance with this Policy and applicable federal, state, local statutes and other applicable laws;
- (d) Issue BWC devices and provide BWC training and instruction on use and operation of BWC; and
- (e) Provide recommendations on additional policy development and equipment integrity.

Recommendation Eight:

The Department should create a separate force reporting and review mechanism so that all reports, documents, recordings, and other evidence pertaining to a particular force incident are collected in one distinct package, and that the supervisory review process is clear and well-documented.

The Department continues to move forward in introducing and bringing on line a new database (AIM) which will provide a more seamless and comprehensive system for the review and documentation of force applications. The new system will require certain steps be taken by the reviewing sergeant before a case can be closed. For example, the review of all relevant body-

worn camera footage must be completed and indicated prior to closure. In addition, this system will generate data and will allow for greatly improved access to these reviews by command staff to identify trends and implement necessary training / tactics as indicated. Beyond that, the Department has an integrated Records Management System (RMS), which captures, catalogs and stores all reports (with certain exceptions). In addition, the Department has an extensive Property and Evidence Detail responsible for the documentation and storage of all evidence. Therefore, the addition of a separate and distinct mechanism to store reports and other related evidence would be redundant and unnecessary and would not result in increased efficiency or improved accessibility. Equally important, the additional redundant steps require a significant additional time commitment on the part of supervisors and would invariably result in a reduction in their time spent supervising in the field.

In terms of a separate reporting mechanism, however, the completion of a separate report for the purpose of documenting only the use of force related to an incident would require the redundant and unnecessary repeating of facts already included in the General Offense (G.O.) report. The G.O. report serves as a chronological and comprehensive account of events, observations, actions and statements. This includes all relevant components of the incident. As it relates to force, the G.O. report also includes the type of force applied, the officer(s) who applied the force and most importantly the reasoning behind it. In addition to the G.O., APD currently tracks and catalogs use of force reviews via a separate database: the Force Analysis System (FAS). This allows for the easy access to force reviews by supervisors and command staff in a location removed from the Records Management System.

OIR Group indicated in their report that one of the incidents reviewed was a complex case involving the arrest of multiple individuals for various and different crimes which generated a 300 page General Offense report. OIR stated that interspersed within the 300 pages were brief descriptions of relatively minor uses of force which created a burden for a reviewing executive to find only those portions related to the force. Without the critical context surrounding those applications of force, however, the reader is left only with a standalone snapshot of an application of force. This would undoubtedly require additional research and generate additional questions, all of which could be answered by reading the General Offense report.

Recommendation Nine:

The Department should explore ways to engage Department executives in the force review process to ensure that force incidents are reviewed holistically, with evaluation of any ways in which the tactics, supervision, application of force, post-incident handling, and investigative process could be improved.

We agree with this recommendation and are currently exploring various methods whereby a select number of force incidents are reviewed by the entire executive command team to identify potential trends and as an opportunity to implement improvements in tactics, application techniques and the review process itself.

Recommendation Ten:

The Department should consider ways to formalize its criteria for evaluating complaints and giving an "Inquiry Only" designation, and should ensure that an appropriate level of due diligence is reflected in the accompanying documentation.

The Department agrees with this recommendation and has formalized its criteria for evaluating which complaints are designated as “Inquiry Only.” Specifically, only those complaints which lack workable information (e.g. no complainant contact information provided, unwillingness on the part of the complainant to provide necessary information, illegible or incoherent content); the conduct, if true, would not amount to a policy violation; or available evidence (e.g. BWC video) clearly shows the complainant was mistaken or disingenuous. All other complaints are designated as Internal Affairs Investigations.

Recommendation Eleven:

The Department should develop internal deadlines for completion of Internal Affairs investigations that will ensure cases are completed substantially earlier than the one year statutory deadline.

APD agrees with this recommendation and although the majority of cases are completed and closed well within the one year statute, timeliness of the process is an imperative. Prolonged investigations cause delays in providing closure to complainants and result in continued anxiety on the part of the involved employee(s). Analysis of the cases which were not closed in a timely manner showed the majority of the excessive delays occurred in the executive review phase. Since OIR Group’s report, processes have been streamlined to expedite that critical review component. We are confident these changes along with the continued commitment to complete these important investigations in a timely manner will minimize unnecessary delays and in turn better serve the administrative and disciplinary processes to correct behavior and improve service delivery.

Recommendation Twelve:

The Department should strive for completeness in its review of potential policy violations and systemic issues, even if such matters extend beyond the specific allegations in the originating complaint.

We agree with this recommendation, and clear direction has been provided over the past year to the Internal Affairs Section and to all supervisors tasked with conducting an administrative investigation to examine the incident in its entirety and not focus solely on what was alleged or solely on a particular employee whom the original complaint identified.

Recommendation Thirteen:

The Department should consider moving toward in-person witness interviews as more of a “default” practice in its administrative investigations. Though deviations from this standard are sometimes reasonable and/or necessary, the rationale for doing so should be documented in the investigation file.

APD agrees with this recommendation, and does conduct in-person interviews as a “default” practice. Understanding the critical importance of ensuring that personnel complaints are professionally, thoroughly and objectively investigated in a timely manner, it is the Department’s practice to conduct in-person interviews whenever possible. Regularly, Internal Affairs Sergeants travel significant distances and during non-traditional work hours to conduct in-person interviews. While there are occasions when an in-person interview cannot be undertaken, these

instances are exceptions. It is important to note that in those instances where telephonic interviews are conducted, the interviews are recorded with the knowledge and consent of the interviewee.

Recommendation Fourteen:

The Department should pursue practical ways to extend its recording policies and technology to ensure that transport of subjects is captured through audio or video or both.

We agree with this recommendation and the recording of prisoner transport is now included in the Department's Body-Worn Camera Policy – attached and highlighted below.

Recommendation Fifteen:

The Department should consider ways to standardize its use of recorded evidence during the interview and investigations process of an administrative case.

We agree that recorded evidence can prove invaluable in the investigative process and the Department is currently examining how best to incorporate it systematically as recommended by OIR. While processes and systems can be helpful, it is prudent to be mindful that the variety and unique complexities and challenges of these cases require a certain latitude and investigative discretion.