

WORK SESSION AGENDA

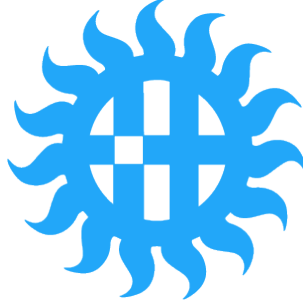
Monday, August 26, 2024 at 1:00 PM

Mayor
Eric Enriquez

Council Chambers

Mayor Pro Tem
Johana Bencomo

Councilors
Cassie McClure
William Mattiace
Becki Graham
Becky Corran
Yvonne Flores



CITY OF LAS CRUCES

**CITY HALL
P.O. BOX 20000
LAS CRUCES, NM
88004**

**700 N. Main St.
PHONE (575) 541-
2067**

If you need an accommodation for a disability to enable you to fully participate in this event please contact us 72 hours before this event at [541-2115/V](tel:541-2115) or [541-2182/TTY](tel:541-2182).

	Page
1. <u>JOBS OF THE WEEK</u>	
2. <u>PETS OF THE WEEK</u>	
3. <u>AGENDA ITEM</u>	
3.1. CITY STRATEGIC PLAN REPORT. WS #24-035 - Pdf	2
3.2. 6TH SEMI-ANNUAL POLICE AUDIT REPORT PRESENTED BY THE OIR GROUP. WS #24-045 - Pdf	3 - 86



Council Work Session Summary

Meeting: Work Session - Aug 26 2024

TITLE: CITY STRATEGIC PLAN REPORT.

PURPOSE(S) OF DISCUSSION: ☒ Inform/Update ☐ Direction/Guidance ☐ Legislative
Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Planning & Implementation Line of Business will provide the first ever progress reporting on the City Strategic Plan to City Council. Aided by the Envisio platform, City Staff will present the progress and status of the overall plan, its goals, and the associated Elevate Las Cruces Comprehensive Plan Actions. Staff will also present key considerations of the reporting process and highlight key findings.

Envisio is a Strategic Plan management, transparency, and reporting software implemented by the City in 2024.

PLAN(S):

City Council Strategic Plan, Elevate Las Cruces



Council Work Session Summary

Meeting: Work Session - Aug 26 2024

TITLE: 6TH SEMI-ANNUAL POLICE AUDIT REPORT PRESENTED BY THE OIR GROUP.

PURPOSE(S) OF DISCUSSION: ☒ Inform/Update ☐ Direction/Guidance ☐ Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In accordance with their contract via Resolution 21-128, the OIR group will present their semi-annual case review audit report of completed Las Cruces Poice Department internal affairs complaints.

SUPPORT INFORMATION:

[OIR Group Sixth LCPD Semi Annual Report - August 2024 - with case memos](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

Las Cruces Police Department

Sixth Semi-Annual Audit Report

August 2024



Michael Gennaco
Stephen Connolly
Teresa Magula



323-821-0586

6510 Spring Street #613 | Long Beach, CA 90815

OIRGroup.com

Table of Contents

Introduction 1

Internal Affairs Case Review3

 Internal Investigations5

 External Complaints7

 Additional Complaint Demographics 10

 Race 10

 Location 10

Review of Closed Litigation 11

Review, Findings & Recommendations 13

 Policy, Management and Training..... 14

 Uses of the Taser 15

 Improvement in Civil Stand-By Calls 16

 Duty to Intervene 17

Next Steps 18

Appendix A: OIR Group Case Memos 19

Introduction

OIR Group¹ is into its fourth year as the City of Las Cruces' Independent Police Auditor.² In our role as the IPA, OIR Group reviews investigations completed by the Las Cruces Police Department ("LCPD") into allegations of officer misconduct that are initiated by members of the public or the Department itself. Our goal is to determine whether LCPD's handling of each case was complete, objective, and thorough, and that actions taken in response to the investigations were appropriate.

We also review closed litigation against the City of Las Cruces that involved members of the LCPD. In doing so, we review performance issues that create potential liability for the City and Department with the intention of reducing risk in the future.

In this audit Report, we discuss our review of eight Internal Affairs cases that were completed and closed by LCPD and reviewed by our team between January 1 and June 30, 2024.³ This is a smaller total than usual, which is in part attributable to a gap this spring in our contractual relationship with the City

¹ OIR Group has been working in the field of independent oversight of law enforcement for two decades. We specialize in evaluating and seeking to strengthen law enforcement policies, practices, and accountability measures. You can learn more at our website, www.OIRGroup.com. You may contact us at Info@OIRGroup.com

² An Independent Police Auditor, or IPA, is one form of civilian oversight of law enforcement that is increasingly being considered by jurisdictions throughout the country. While leaving investigative and decision-making authority with the law enforcement agency itself, this model allows for outside scrutiny that helps ensure the legitimacy of an agency's internal accountability systems.

³ Some of the underlying incidents occurred prior to this window of time.

while budgetary issues were realigned. (With City Council approval, our annual budget has increased to reflect our volume of work in Las Cruces, which now includes the opportunity for formal engagement with the community.) We are currently in the process of completing our review of cases that were closed by the Department during that time.

While each detailed case memo is included in Appendix A, we share the recommendations derived from those reviews and provide a limited statistical analysis herein. We also reviewed four closed civil litigation cases from this time frame and provide our findings here.

We are pleased to acknowledge that the Department continues to be extremely cooperative, timely, and collaborative in providing us with the information we need to perform our role. And, importantly, the agency's leadership has been consistently receptive in considering and responding to our ideas for continued improvement.

Finally, and per the public's request, we are looking forward to the opportunity to directly engage with the Las Cruces community as we embark on the outreach component of our contract added in early 2024. We will host our first community meeting after the presentation of this report to your Council on August 26, 2024.

Internal Affairs Case Review

Our scope of work requires that we review completed and closed investigation files from formal citizen complaints, internal investigations, and complaints with allegations against LCPD that are reported to the City of Las Cruces Ethics Hotline. Our scope consists of two types of complaints: Internal Investigations, or “II,” which are complaints generated from within the Department when leadership becomes aware of allegations related to potential misconduct of employees on or off duty; and External Investigations - Category 1, or “EIC1,” which are complaints reported by the Las Cruces public with allegations that may rise to the level of formal misconduct.⁴

As mentioned above, we reviewed eight complaint cases in this period – a lower number than in prior audit cycles.⁵ But even within this smaller grouping,

⁴ External Investigations fall into one of three categories based on the perceived seriousness of the allegations: Category 1, which we review because they may involve formal misconduct, and Categories 2 and 3. Category 2 is an “informal” complaint that involves allegations of a “non-serious” nature where the reporting complainant chooses not to pursue a formal investigation; and Category 3 involves allegations of a “non-serious” nature where the complainant is not able to articulate a complaint, or where there is an apparent lack of General Order violations.

⁵ We anticipate that our next report will balance out this reduction as we address the remaining cases completed by LCPD during our brief contractual pause, as well as the typical total for the rest of this calendar year. Our previous case counts are as follows:

Report 1, January 2022: 12

there was continued evidence of improvement by LCPD in identifying, addressing, and, where appropriate, remediating misconduct at all levels. Two positive trends that we noted in our last report occurred again in this period: IA investigators continued to frame nuanced allegations that reflected each potential policy section violation and more frequently identified and framed issues that were identified during the investigation but were not the subject of the initial complaint, referred to as “ancillary issues.”

LCPD framed and investigated forty-two formal allegations against twelve LCPD employees across several rank levels.⁶ Of these, twenty-nine allegations were sustained, eight were exonerated, two were unfounded, and three were not sustained.⁷

For those sustained allegations, the discipline ranged from a verbal reprimand to suspension days or termination. All discipline except termination was accompanied by some form of directed training.

Our detailed memos for each case, with a full case summary, recommendations, and LCPD’s Management Response, are attached (see Appendix A). Here, we provide brief summaries of each case, list the allegations and ranks of the involved employees, and provide the

Report 2, June 2022: 16

Report 3, January 2023: 16

Report 4, June 2023: 10

Report 5, January 2024: 19

⁶ At the time of the respective investigations, eight were officers and four were non-sworn employees of various type. Two cases involved the same officer, who was eventually terminated.

⁷ “Exonerated” means that the alleged conduct occurred but was found to be within Department policies and procedures, “unfounded” means that the allegation did not occur in the way it was alleged, and “sustained” means that the allegation did occur and was a violation of Department policy and procedure. “Not sustained” means that there was insufficient evidence to prove or disprove that an allegation occurred.

Department’s findings for the two Internal Investigations and six external complaints.

Internal Investigations

We reviewed two Internal Investigations. One of these involved two officers’ response to a traffic collision that may have involved driver impairment. This case was notable because it involved the intervention of a third responding officer, who called a supervisor to the scene because he questioned the officers’ actions. This is commendable behavior by the third officer, and a promising sign of individual accountability within the Department (we discuss this in Duty to Intervene, below).

The second involved cross-allegations by civilian employees who each questioned aspects of the interview process for an open position.

These two cases generated procedural allegations, such as report writing and use of body-worn camera, and failure(s) to follow the Department’s Code of Conduct, General Order 103.⁸

2023II-006

Department-initiated administrative investigation of officers’ response to a traffic collision and their subsequent time-keeping errors.

Officer 1	Police Reports - Required Reports	Sustained
Officer 1	Recording Devices	Sustained
Officer 1	Recording Devices - Disposition of recording	Sustained
Officer 1	Code of Conduct - Unsatisfactory Performance	Sustained
Officer 1	Code of Conduct - General Standards	Sustained
Officer 1	Employee Work Rules	Sustained

⁸ This General Order sets out the Department’s expectations of its officers, including that they be effective, respectful of the chain of command and the public, and ethical in their behavior. As detailed in the tables below, some cases included allegations of unsatisfactory performance, untruthfulness, and unbecoming conduct.

Officer 2	Arrests - Reporting	Sustained
Officer 2	Recording Devices	Sustained
Officer 2	Recording Devices - Disposition of recording	Sustained
Officer 2	Employee Work Rules	Sustained
Officer 2	Traffic Crash Investigations	Sustained

2023II-013

Department-initiated administrative investigation of an internal interview process for an open civilian position.

Non-Sworn Employee	Code of Conduct - Truthfulness	Sustained
Non-Sworn Employee	Code of Conduct - Conduct Unbecoming	Sustained
Non-Sworn Employee	Workplace Policy - Discrimination & Harassment	Not Sustained
Non-Sworn Employee	Workplace Policy - Threats	Sustained
Non-Sworn Employee	Code of Conduct - Truthfulness	Not Sustained
Non-Sworn Employee	Traffic Crash Investigations	Exonerated

External Complaints

We reviewed six Category 1 External Complaints, which are complaints made by members of the Las Cruces public with allegations that potentially constitute formal misconduct.

Three of these cases resulted from dissatisfaction with aspects of traffic collision investigations, most often with the traffic collision report. Two stemmed from responses to civil standby calls, a common call for service category that we have been tracking since the start of our engagement, and which the Department is actively working to improve through increased training.⁹ The remaining case resulted from a complaint about a use of force in response to a loud party call and was investigated thoroughly by the Department’s Use of Force Cadre *and* Internal Affairs.

The complaints generated 23 unique allegations, some of which were reported by the public complainants, but others that were identified by the Department during the investigation, such as failure to properly activate body-worn cameras. While many were exonerated or unfounded, several were sustained, including the complaint of excessive force, and officers received the appropriate discipline accompanied by directed training.

2022EIC1-025

Public complaint resulting from a “hit and run” traffic collision. The complainant alleged that the officer had not conducted a full investigation of the collision and that he had provided her information to an auto repair company.

Non-Sworn Employee	Hit & Run Investigations	Sustained
Non-Sworn Employee	Recommending Services	Unfounded

⁹ A "civil standby" is a call for service in which law enforcement presence is requested in order to ensure the safe, orderly unfolding of a potentially adversarial event between private parties, such as the retrieval of property by someone leaving a living situation.

2023EIC1-012

Public complaint resulting from a traffic collision. The complainant alleged that the responding non-sworn employee had not accurately documented information in the collision report.

Non-Sworn Employee	Traffic Crash Investigations	Exonerated ¹⁰
--------------------	------------------------------	--------------------------

2023EIC1-013

Public complaint resulting from a call for service for a civil stand-by. The complainant alleged that the officer had not arrested her ex-boyfriend, was disrespectful, and ignored her request to call a supervisor and file a complaint.

Officer	Code of Conduct - Conduct Toward Public	Exonerated
Officer	Complaint Intake	Sustained
Officer	Physical Arrests	Exonerated

2023EIC1-017

Public complaint resulting from a call for service for a civil stand-by. The complainant alleged the officer allowed her ex to take items that were not covered by a stand-by call and that he was discourteous.

Officer	Domestic Standby Calls	Sustained
Officer	Code of Conduct - Conduct Toward Public	Exonerated

2023EIC1-020

Public complaint resulting from a noise / loud party call for service. The complainant alleged that the responding officers were discourteous and used

¹⁰ In our review, the evidence did not support this finding. We detail our concerns in the memo related to this case. See Appendix A.

excessive force. The Department later framed additional procedural allegations.

Officer 1	Recording Devices	Sustained
Officer 1	Physical Arrests - Post Arrests	Exonerated
Officer 1	Physical Arrests - Search Incident to Arrest	Exonerated
Officer 1	Evidence and Property	Sustained
Officer 2	Code of Conduct - Conduct Toward Public	Sustained
Officer 2	Code of Conduct - Insubordinate	Sustained
Officer 2	Code of Conduct - Truthfulness	Not Sustained
Officer 2	Police Reports – Accuracy	Sustained
Officer 2	Police Reports – Submission	Sustained
Officer 2	Physical Arrest – Authority	Sustained
Officer 2	Physical Arrests - Post Arrests	Exonerated
Officer 2	Use of Force- Applying Force	Sustained
Officer 2	Use of Force - De-escalation	Sustained

2023EIC1-022

Public complaint alleging that officers had failed to properly investigate a traffic collision.

Officer 1	Recording Devices	Unfounded
Officer 1	Preliminary Investigations	Sustained
Officer 1	Police Reports - Required Reports	Sustained
Officer 2	Preliminary Investigations	Exonerated

Additional Complaint Demographics

Our scope of work requests that we provide additional demographics related to complaint cases to identify any trends that might indicate racial bias or discriminatory policing based on geographic location. Four years in, the demographic data still does not suggest any patterns of disparate policing.

Race

Most cases involved at least some interaction with a member of the public. Four involved interactions with a Hispanic person and two a White person. The remaining cases were initiated internally and did not involve a member of the public.

We also track the race of Department employees. According to the Department, twelve of the subject employees are Hispanic, three are White, and one is of an unidentified race.

Location

Our scope of work also requires that we catalogue the zip code of any incident to identify any trends by area or location; for example, are complaints more likely to come from a certain area, perhaps indicating that officers are policing those areas differently than others or that those areas are indicative of a particular concern from residents about how they are being policed?

In our last report, we noted that the majority of cases involved incidents within or the residents of zip codes 88001 (the Department address, often used as the address for a complaint) and 88012. In this period, we also had two cases from zip code 88005. We did not identify any factors that might contribute to a higher complaint rate in any specific zip code.

Review of Closed Litigation

OIR Group also received four cases from the Las Cruces City Attorney that were closed during our review period.

The litigation matters involved a total of four claimants and 13 named LCPD employees. All four cases involved allegations of excessive uses of force:

We evaluated each case and then prepared a memorandum; these are included in Appendix A.

The outcome of these cases was as follows:

- Three cases were settled.
- One was dismissed.

Our scope of work requested that we summarize demographics related to the cases. The demographic data does not suggest any patterns or trends.

- Of the 13 named employees, seven are White and six are Hispanic.
- According to LCPD, ten of the officers are still employees of LCPD, two are retired, and one is no longer with LCPD.
- On the claimant side, three claimants are Hispanic, and one is Black.
- Three cases occurred in the zip code 88001, and one occurred in the zip code 88005.

We have frequently commented that litigation serves as a valuable “feedback loop” for accountability in the same way that the complaint investigation process does. In this period, we reviewed one case that illustrated this concept: in that case, which involved a claim of excessive force in the form of a Taser deployment, the use of the Taser had initially been deemed appropriate by an internal supervisor-level review. But upon receipt of a claim, the Department tasked the Force Review Cadre with a second, more detailed review, which concluded that the use of the Taser was not reasonable (we discuss that case, and uses of the Taser generally, below). Had the Department not used the claim as impetus for a more rigorous review, it would not have known to provide appropriate accountability and much-needed retraining to the involved officer.

This case suggests that even the best-intended accountability structures do not always immediately “get it right,” and speaks to the importance of multiple levels of review. Moreover, this case reinforces our repeated assertion that civil claims are an important component of the accountability process to identify, manage, and correct risk as well as improve service going forward. LCPD's willingness to engage with claims in this fashion is a positive development.

Review, Findings & Recommendations

OIR Group has reviewed nearly one hundred of LCPD's complaint cases and seventeen closed civil claims in the past four years. For each, we reviewed all evidence provided by LCPD and consulted with LCPD when necessary for clarification or research into potential recommendations.¹¹ At the conclusion of our review, OIR Group submitted a memo for each case, and LCPD provided a Management Response.

As we have reported in recent reports, the Department has already implemented many of the more than one hundred recommendations we have made, especially those related to its internal review mechanisms, and has established an effective investigative team. We now find ourselves making recommendations that constitute further refinements rather than fundamental shifts, often building on previously identified themes. We made four such recommendations in this period:

- We previously recommended general improvement in officer and witness interview techniques. In this period, we recommended finding creative interview techniques to uncover instances of dishonesty, which was a specific focus of that complaint investigation; for example, we suggested that the interviewer could have played selected portions of the subject officer's body-worn camera video to prompt further clarification.

¹¹ When LCPD closed an Internal Affairs investigation within the scope of our work, it provided OIR Group with all documentary and digital evidence related to the case file. This often included, but was not limited to, the investigative memo, internal case correspondence, disposition/findings memo, limited personnel files, disciplinary recommendations, body-worn camera video, radio / dispatch audio recordings, and recordings of interviews with personnel, complainants, and witnesses.

- In one of our first Semi-Annual Reports, we recommended providing more training for supervisors who conducted Supervisory Matter investigations, a classification of complaint that is handled at the unit level (and which is outside our standard scope of review). LCPD did so. It also required that supervisors better document their review process in “Deficiencies Noted” memos.¹²

However, due to staffing and deadlines, in early 2024, a unit supervisor was tasked with a low-level and straightforward, yet formal, IA matter. While we have no issue with this as a concept, we recommended that LCPD provide these unit supervisors with more support to conduct effective and thorough investigations. LCPD agreed.

- We previously recommended that LCPD frame and investigate all allegations of misconduct. This is an ongoing theme, and one where we have seen marked improvement overall. Still, we found room for improvement. In one case, we recommended that investigators select the most appropriate policy section(s) when framing allegations to ensure accurate findings. In another, we recommended the Department frame allegations consistently; in that case, while two officers failed to adhere to the body-worn camera policy, only one allegation was framed.

Policy, Management and Training

While our emphasis is largely on the internal complaint investigation process, we also often note areas where LCPD might consider additional training and/or policy updates. More often than not, the Department had already

¹² As we detailed in our fourth Semi-Annual Report and again in case 2022EIC1-033, if a supervisor identifies any issues that require further action, the Department now uses a “Deficiencies Noted” memorandum to document the issue(s) and the action taken (e.g., debrief, policy review, or direction to formal training or Internal Affairs). This change in protocol is a commendable one. It ensures that the “feedback loop” produced within the review process is appropriately closed and formally documented – steps that help translate effective issue-spotting into concrete results.

identified the need for policy clarification, updates, or training, and completed these changes prior to our review.

Uses of the Taser

We continue to review cases involving Taser deployments that are inconsistent with contemporary case law. We have had numerous discussions with Department leadership about these cases since first raising the issue in our Second Semi-Annual Report, and we note the Department's continued commitment to ensuring that all Taser deployments meet legal and policy requirements. The Department has taken many positive steps, including the addition of a police legal trainer who provides one-on-one and Department-wide training on case law, and compulsory retraining of officers who are involved in Taser uses that are out of policy.

The Department has also implemented numerous checks and balances to ensure that all force cases, including uses of the Taser, are effectively reviewed. First, and as we reported in our memo related to Litigation Case #1, the Department now requires more rigorous Supervisory Matter reviews that require supervisors to write "Deficiencies Noted" memos where applicable. Second, the Force Review Cadre reviews each case to identify individual retraining needs and any Department-wide trends; we continue to be impressed with Cadre's reviews (to the limited extent that we have had access to their memos). One case in this period reinforced that favorable view specific to use of the Taser: in its review of 2023EIC1-020, the Cadre's analysis methodical and detailed analysis established that the officer's actions at the scene was flawed from the outset and were followed by several other actions that were not justified under policy or training, including use of the Taser.

Finally, the Department has also expressed its commitment to updating policy, General Order 256: Conducted Electrical Weapons, to comply fully with established case law and the best practices for Taser use. We urge the Department to complete the policy update and provide additional training as necessary on the use of the Taser.

We will continue to monitor these processes, and how they impact use of the Taser (and any force options) as these cases come into our scope of work through complaints or litigation.

Improvement in Civil Stand-By Calls

We previously expressed concern with some officers' responses to civil stand-by calls¹³ but have observed improvement over time. Officers now respond more effectively to this category of service call that generated complaints (and performance shortcomings) in the past. After reviewing a series of complaints related to civil standby calls for service in late 2021 and 2022, we recommended that LCPD re-train officers regarding their duties and responsibilities. LCPD had also recognized the trend in failure to properly execute civil standbys and, even before our recommendations, had issued a Department-wide Training Bulletin regarding the Domestic Standby General Order. After our recommendations, LCPD committed to providing specific training on civil standby calls during its Domestic Violence¹⁴ biennium training.

In the cases we reviewed this period, we observed a distinctly different response to a civil stand-by call that hopefully can be attributed to this emphasis on training. Officers were professional and knowledgeable, set boundaries, interceded when necessary, and provided actionable information to the involved parties (e.g., how to settle larger item property disputes through the court). This is commendable in isolation, and ideally a reflection of a larger trend toward effective handling of these often-challenging situations.

¹³ See, for example, our memos related to cases 2021EIC1-007 and 2021EIC1-008, and our January 2022 Semi-Annual Report.

¹⁴ Ongoing tensions between one-time domestic partners are a primary basis for civil standby requests.

Duty to Intervene

In this period, we reviewed cases where officers intervened to prevent an encounter from escalating or to stop possible misconduct. These instances are commendable and suggest that LCPD is fostering a culture where their officers take real accountability for their own and their colleagues' actions.

While we have observed this in other cases, one case in this period was a direct example of an officer adhering to his duty to intervene. In case 2023II-006, officers responding to a traffic collision initially decided to let the driver find a ride for himself, despite indicia of driver impairment. A third officer who arrived on the scene challenged this approach and called a supervisor, and the driver was eventually arrested for driving under the influence.

We also observed officers “intervene” on their own behalf – and call on supervisors or other officers when they found themselves becoming heated or when their continued involvement was seemingly escalating a situation. In one case, a female requested numerous civil standbys to the same location. The same officer responded to these calls because of his knowledge of the ongoing case (and because he was on duty at the time). But the continued response of the same officer appeared to frustrate the woman, and the officer, sensing both her and his own tension escalating, called for a supervisor to assist.

Law enforcement officers' “duty to intervene” most often applies to preventing excessive or unlawful uses of force, but many Departments, including LCPD, have expanded this to include any type of potential misconduct or sub-optimal performance. This can be challenging in the law enforcement culture, especially when the officer engaging in potential misconduct has a higher rank or tenure. We commend LCPD for fostering a culture where officer intervention is expected and commended.

Next Steps

Over the past four years, OIR Group has continuously worked to enhance the accountability and transparency of the Department. We noted significant improvements in LCPD's identification, investigation, and remediation of misconduct, highlighting the Department's ongoing commitment to accountability. Our recommendations continue to focus on refining investigative techniques, enhancing training, and ensuring consistent policy application. In this period, we made recommendations for creative interview techniques, better support for unit supervisors conducting investigations, and rigorous framing of all misconduct allegations, all of which the Department accepted.

The review of Taser cases remains a priority, with LCPD showing commendable steps toward aligning their practices with contemporary case law and best practices. Similarly, our review of civil stand-by calls showed improvements, which may be attributed to targeted training. And the Department's emphasis on the duty to intervene is fostering a culture of accountability, with officers stepping in to prevent potential misconduct and de-escalating situations.

Despite a temporary hiatus at our end while contract issues were sorted out, LCPD maintained its commitment to investigation, and is regularly providing new case files for review. We are appreciative of the collaboration of Department leadership in these efforts. And we look forward to continuing our work with LCPD and engaging directly with the Las Cruces community in the upcoming public outreach initiatives.

Appendix A: OIR Group Case Memos



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 8, 2024
RE: Review of Administrative Investigation – #2023 II-006

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case, which was internally generated, focused on the alleged misconduct of two officers in their handling of a vehicle collision that involved a potentially intoxicated driver. It was investigated by LCPD Internal Affairs. OIR Group received the case file on January 16, 2024.

Case Summary

The two patrol officers (Officers 1 and 2) named in this case were on duty when they arrived separately at the scene of a one-car collision that occurred just after midnight (and as they were nearing the end of their respective shifts). After conducting some initial assessment at the scene (and detaining the driver of the car in handcuffs), they made the decision to resolve the situation by calling for a tow truck to remove the vehicle and having the driver and passenger secure a ride for themselves. This was in spite of the fact that indicia of driver impairment were apparent in a few different ways. Their motivation (as discernible from their own recorded comments on their body-worn cameras) was to avoid the additional hours of work that an arrest would inevitably have required – because both were scheduled for training early in the morning.

A third responding officer became concerned about this approach and summoned a supervisor to the scene, who ordered Officer 1 to "do your job." A more complete investigation, followed by an arrest and booking, then occurred.

The Department ultimately ordered an investigation into the officers' initial decision-making and performance at the scene. Several collateral issues, including compliance with report-writing and body-worn camera recording policy, accuracy with time sheets, and subsequent communication/cooperation with the District Attorney, also emerged during the review and were addressed.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The investigative memo named both of the officers as subjects, and several potential policy violations were implicated.

General Order 103.01 (A)(2) – Code of Conduct: Unsatisfactory Performance.

This section addresses an "unwillingness or inability to perform assigned tasks." This allegation was sustained with regard to both officers, given their initial intention to refrain from a thorough field investigation and arrest.

General Order 103.04 – Code of Conduct: General Standards of Conduct. This policy section, which includes the obligation of employees to treat each other and the public with respect and courtesy, was considered in light of the two officers' dismissive behavior toward their colleague at the accident scene. A finding of "sustained" for both officers was based on their disregard of the third officer's earnest efforts to promote a more thorough investigation, and a brief teasing reference to leaving him with the responsibility for resolving the question of how to deal with the detained suspect.

General Order 247.02 (A)(5): Traffic Crash Investigations: Field Investigations.

This section delineates the specific protocol that the "first responding officer" is required to follow in response to the possibility of driver impairment. Here, Officer 1 was found to have violated this policy in his sequencing and investigative thoroughness – which included informing the driver at one point that he would be allowed to leave. The allegation was "Sustained."

Along with these core allegations, the administrative review revealed several other shortcomings in the officers' respective compliance with policy in the aftermath of the initial incident. These included the following sections:

For Officer 1:

City of Las Cruces Personnel Manual 603.29 – Work Rules and Procedures. This specific section (which applies to all City employees) prohibits the falsification of time sheets. Officer 1 submitted an overtime form for his training day (which followed his patrol shift by just a short time) that was apparently inaccurate in its start time. Though the investigation did not establish malice or an attempt to "steal" overtime from the City on the day in question, the officer was not able to adequately explain the discrepancy in his record-keeping. The allegation was "Sustained."

General Order 231.17 (C) Physical Arrests – Reporting of Arrests. Among the responsibilities handling officers have in the aftermath of an arrest is maintaining required communication with the prosecution team as a case makes its way through the justice system. This specific policy section articulates that obligation. Here, Officer 1 failed to respond to repeated email requests from a prosecutor for discovery materials. This eventually caused the criminal case against the driver to be dismissed, in spite of evidence that he was well over the legal limit for alcohol. The allegation was "Sustained."

For Officer 2:

General Order 151.01 Recording Devices – General Procedure. This section requires officers to possess and utilize an audio recorder (provided by the Department) in the event that their body-worn camera becomes inoperable. In this case, the BWC of Officer 2 ran out of battery prior to the initiation of this call for service, and he did not engage an audio recorder as required. The allegation was "Sustained."

For Both Officers:

General Order 151.02 (B) Recording Devices – Disposition of Recordings. This is a fairly technical policy that requires officers to dock their body-worn cameras after each shift for uploading of certain recordings prior to going off-duty. In this case, both Officers 1 and 2 were remiss in this regard on the day of the relevant incident. The allegation against each was accordingly "Sustained."

Outcome: Discipline or Other Action

The Department disciplined both employees, with Officer 1 receiving the more significant consequence. Officer 2 also received directed training related to his

shortcomings in this incident.¹ The Department's decision-making took into consideration past disciplinary history.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. We were impressed with the rigor of the investigation itself, which was thorough enough to expose a number of additional issues that became the bases for sustained policy violations. This included, for example, an audit of body-worn camera data from the relevant dates to determine each officer's actions with regard to battery life and uploading.

The investigation also seemed appropriately attuned to the dynamics that started the case: namely, the decision by the third officer to involve a supervisor at the scene of the incident, out of concern that not investigating the likely DUI was an error in judgment. This action by a peer officer was both commendable and inherently sensitive – a likely source of strain with or even hostility from the officers who were ultimately held accountable. The Department addressed this during separate interviews with all three of the officers, and they were aligned in saying the third officer had not experienced any retaliation.

Fortunately (and in part because of the third officer's intervention), the initial lapse with regard to the collision investigation was mitigated by the sergeant's arrival and firm direction. However, and somewhat ironically, this salvaging of the situation was subsequently undone by Officer 1's failure to fulfill his discovery responsibilities to the prosecutor. The criminal charges against the motorist were dismissed because of this neglected duty. This, in conjunction with the original problem and the identified discrepancy in his overtime form, left a disappointing impression.

Our understanding from LCPD leadership is that both of the involved officers in this case were quite inexperienced at the time of the incident. Ideally, the accountability that resulted here will be influential in a couple of ways: as a learning experience for them, and as a "red flag" of sorts that will prompt careful managerial scrutiny as they continue to develop in their careers.

¹ As we have noted in other case memos, we consider this remedial strategy by the LCPD to be a commendable one. It is unclear why a similar approach was not taken with regard to Officer 1.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. Both officers involved in this case have had ongoing mentoring, training, and coaching. They have shown significant improvement since this incident.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 20, 2024
RE: Review of Administrative Investigation – #2023EIC1-013

Introduction

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

OIR Group received the case file on January 8, 2024.

Case Summary

A female, the complainant and victim of a domestic violence incident, called dispatch to request that an officer respond to her residence because her ex-boyfriend who had just been released from custody was coming to their apartment to collect his belongings. An LCPD officer responded and stood by, but the ex-boyfriend did not arrive. This officer advised her to request a "civil standby" for a later time.¹ Later that day, the female called to request the civil standby, stating that the ex-boyfriend and his mother planned

¹ A Civil Standby, also known as a Domestic Standby, is when one or both parties request that a police officer "stands by" to keep the peace in a situation involving a civil dispute.

to come to the apartment. She also advised that she had filed a restraining order that had not yet been served on the ex-boyfriend.

Meanwhile, the ex-boyfriend also called to request a civil standby to collect his belongings.

Another LCPD officer – the subject of this complaint – responded. The female told the officer that between her call to dispatch and the officer's arrival, the ex-boyfriend and his mother had arrived unannounced without a police escort. She was upset because as a condition of his release, the ex-boyfriend was not allowed to visit the female. At her insistence, they had left.

The female had placed the ex-boyfriend's smaller belongings into his car, but advised that the ex-boyfriend wanted larger items, like a bed. The officer advised that civil standbys are only for essential items and that the parties would have to go through the court to divide larger assets. The officer offered to serve the restraining order, but the female responded that she did not yet have the required paperwork.

The ex-boyfriend and his mother returned. The officer intercepted them, stating that the ex-boyfriend could not enter the apartment and that all his belongings were in his car. The ex-boyfriend stated that he needed his medication and the officer acted as an intermediary between the parties. The officer advised that the ex-boyfriend should follow up with the courts regarding division of any additional belongings. The ex-boyfriend left.

The female said that the officer was not taking the situation "seriously" because he did not arrest the ex-boyfriend. She requested a supervisor. The officer instructed the female to call the District Attorney and the court and said that he would fully document the incident on a police report. When she persisted, he explained the difference between conditions of release and a restraining order and how to call the court.

As this conversation was happening, the female's cat got out through the open door.

The officer provided a card with his name, badge number, and phone numbers for the court, and advised that she could file a complaint with his supervisor if she was displeased. As the officer walked away, the female stated that she did want to file a complaint. The officer said, "all right," but left the location. This ended the encounter.

Later that same day, the female called the officer's supervisor. She explained that an advocate told her that if her ex-boyfriend came to her apartment, he would be arrested; she could not recall this person's name or affiliation. She also reported that several dispatchers had hung up on her when she called 9-1-1. The supervisor explained that the officer could not arrest the ex-boyfriend for violating conditions of release, that the

officer's police report would document everything, and that the female should contact the court and District Attorney. The female maintained that the officer did not explain any of this, had dismissed her and used profanity, and had let her cat out (though she added that the cat had returned to the apartment).

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed three allegations in this matter related to the following policy sections:

1. **General Order 160.01 – Complaint Intake.** This section requires LCPD employees to request that a supervisor respond to the scene if a member of the public wishes to file a complaint. The investigation determined that the officer was aware that the female had requested a supervisor and wanted to file a complaint, but he did not call for a supervisor to respond to the scene.² The allegation was "sustained."
2. **General Order 231.03. – Authority to Arrest.** This policy outlines when an LCPD officer can and should arrest individuals. The investigation determined that the officer did not have authority to arrest the ex-boyfriend at that time because the restraining order was not yet in effect, nor did the female have a copy of the necessary paperwork. The investigation determined that the officer chose the best course of action – to keep the parties separate – and "exonerated" the officer of this allegation.
3. **General Order 103.03. Conduct to the Public.** This policy requires officers to be responsive, respectful, and attentive to members of the public. The investigation determined that the officer was patient, responsive, and courteous throughout the encounter, and that the officer did not use any profanity at any point in the incident. The investigation determined that the officer asked if he could open the apartment door and did not intentionally let the cat out. LCPD "exonerated" the officer of this allegation.

The investigator contacted the Mesilla Valley Regional Dispatch Authority (MVRDA) regarding the female's complaint that dispatch had hung up on her calls. The

² In his administrative interview, the officer stated that he left the residence quickly to avoid further conflict with the female, and, in his haste, had not heard the female's request to file a complaint. But the investigation determined that this was unlikely because the officer responded, "all right" as he departed the residence and the female had requested a supervisor earlier in the encounter.

investigator was advised that the female had called repeatedly in rapid succession and was informed by dispatchers that her repeat calls would be terminated; the investigator reviewed 9-1-1 records to confirm this and forwarded the complaint information to MVRDA for any additional action.

Finally, the investigator attempted to identify the advocate who had spoken to the female but was unable to do so.

Outcome: Discipline or Other Action

The Department reviewed the officer's personnel record and issued discipline for his failure to call a supervisor to the scene. As part of this, the officer's supervisor reminded the officer of his duties under **General Order 160**.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. The investigation included dispatch records, all relevant reports, body-worn camera video, and a formal interview with the subject officer.

We found the investigation to be thorough and complete, and the outcome to be evidence-based. We were particularly impressed that the investigator went beyond LCPD-specific complaints when he contacted MVRDA and attempted to identify the advocate. And, the investigator noted these investigative steps explicitly, which we have previously requested of Internal Affairs.

The investigator's choice to frame a specific allegation for the officer's failure to call a supervisor to take the complaint on scene speaks to LCPD's commitment to the complaint intake process. We acknowledge the Department's growth in this area.

Finally, we take this opportunity to note the positive evolution that this case appears to reflect: namely, an effective officer response during a category of service call that has generated complaints (and performance shortcomings) in the past.

After reviewing a series of complaints related to "civil standby" calls for service in late 2021 and 2022, we recommended that LCPD re-train officers regarding their duties and responsibilities during civil stand-by calls (see 2021EIC1-007, 2021EIC1-008, and our

January 2022 Semi-Annual Report). LCPD had also recognized the trend in failure to properly execute civil standbys and, even before our recommendations, had issued a Department-wide Training Bulletin regarding the Domestic Standby General Order. After our recommendations, LCPD committed to providing specific training on civil standby calls during its Domestic Violence biennium training.

In this case a year later, we observed a distinctly different response to a civil stand-by call that hopefully can be attributed to this emphasis on training. Here, the officer was professional and knowledgeable, set boundaries, interceded when necessary, and provided actionable information to the involved parties (e.g., how to settle larger item property disputes through the court). This is commendable in isolation, and ideally a reflection of a larger trend toward effective handling of these often-challenging situations.

LCPD Management Response

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



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

TO: City of Las Cruces
FROM: OIR Group
DATE: March 29, 2024
RE: Review of Administrative Investigation – #2022EIC1-025

Introduction

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

OIR Group received the case file on February 14, 2024.

Case Summary

A non-sworn LCPD employee responded to the scene of a hit-and-run accident where he initiated an investigation of the traffic collision. After a conversation with the victim, he completed a crash report and advised the victim that he would send a link for her to upload photographs.

Several days later, the victim contacted the non-sworn employee with additional information regarding the vehicle that had struck her, including a full license plate

number, VIN, and an address where the vehicle was parked in the driveway.¹ She also requested the link to upload photographs, which the non-sworn officer had not yet provided. The non-sworn officer provided the link.

The non-sworn employee then visited the address provided by the victim and learned the identity of the driver from a family member; he left a card for the suspect to contact him but did not follow-up. He advised the victim that he would write a supplemental crash report with the new information.

The victim eventually filed this complaint, stating that the officer had not included the new information in the crash report. She also alleged that a vehicle repair company had contacted her within 24 hours of the crash; the representative from that company stated that they received her personal information from an unidentified officer, who had given the company information about the crash and the victim's contact number in exchange for a \$100 gift card.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed two allegations in this matter against the non-sworn employee related to the following policy sections:

1. **General Order 275.03 – Hit & Run Crash Investigation Follow-Up.** This section details the steps to be taken in investigating a "hit and run" traffic collision, including attempting to identify and contact the suspect and complete a supplemental crash report. The investigation determined that the non-sworn employee had identified the suspect but did not make further attempts to communicate with him, and that he did not include the new information in a supplemental crash report. In his administrative interview, the non-sworn employee acknowledged his mistakes. The allegation was "sustained."
2. **General Order 103.12 – Recommending Attorneys, Bondsmen, or other Services.** This policy prohibits LCPD employees from recommending any service providers to victims. In his administrative interview, the non-sworn employee denied contacting any vehicle repair company or receiving a gift card in exchange for providing a victim's personal information. The investigator contacted the company but did not receive any response. The investigation

¹ When asked how she had obtained this detailed information, the victim responded that the suspect lived in her neighborhood, and she observed the vehicle.

determined that the company likely obtained the information from the initial crash report because crash reports are available to the public upon request.² The allegation was “unfounded.”

Outcome: Discipline or Other Action

A supervisor reviewed the non-sworn employee’s personal history, noted that it did not contain any prior allegations of misconduct and acknowledged that the non-sworn employee took responsibility for his mistake. Based on this, the Department took the appropriate disciplinary and remedial actions.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. We found the investigation to be thorough and the outcome to be evidence-based.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review conducted by the OIR Group.

² When we inquired about this conclusion, LCPD’s Records Section confirmed that various companies, including the one named in this complaint, regularly – often daily - request all crash reports per the state’s Inspection of Public Records Act (IPRA). While some personal identifying information is redacted per IPRA, the released reports may contain contact information.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: March 12, 2024
RE: Review of Administrative Investigation – #2023EIC1-012

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case began with a complaint from a member of the public and was ultimately handled as a "unit level" review by a supervisor not assigned to the Internal Affairs unit.

OIR Group received the case file on February 6, 2023.

Case Summary

The complainant in this case was involved in a non-injury traffic collision with another car to which LCPD responded. A report on the crash was generated by a civilian Department employee; he was accompanied at the scene by a sworn officer, who was the one who primarily dealt with the complainant.¹

¹ The complainant received citations at the scene based on his lack of required insurance and the resultant "suspended" status of his vehicle registration. He did not dispute this at the scene or in his complaint.

A few months after the incident, and as one of the involved parties, the driver submitted a written complaint in which he alleged that the report had been undermined by significant inaccuracies, and should have included statements about the accident that he had provided at the scene. He asserted that the other driver was to blame, and accused the LCPD employee who had prepared the report of mischaracterizing events in order to avoid assigning fault.

Apart from the administrative discipline process, an LCPD supervisor reviewed the original incident based on the complainant's concerns. He ended up preparing a supplement to the original crash report that captured both involved parties' version of what had transpired.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The Department identified the civilian employee as the sole subject of the investigation. This aligned with the complaint, which singled out the employee on the basis of his authorship of the traffic report that the complainant had taken exception to.

The case memo that was ultimately prepared focused on one allegation:

General Order 274 – Traffic Crash Investigations: This policy sets out the detailed expectations for responding LCPD personnel in the aftermath of a crash. The investigator determined that the named civilian subject should be "exonerated" of any allegations of wrongdoing.

Outcome: Discipline or Other Action

In light of the substantive finding of no misconduct, there were no disciplinary consequences; nor were other interventions implemented.

OIR Group Review

LCPD provided OIR Group with the case file for review of the available evidence. This included body-worn camera recordings from the original crash investigation as well as reports and other documentation.

In looking at the available materials within the case file, we noted that the investigation was initially handled within Internal Affairs. The investigator requested the opportunity to interview the named employee to address seeming deficiencies in the original traffic report, and referenced a specific policy section that was *not* the one eventually featured in the Department's finished product. Instead, the original investigator had cited **General Order 141.02 – Police Reports Accuracy and Thoroughness**.

That investigator also seems to have identified and interviewed a third-party witness to the collision whose information was not included in the original report.² Additionally, the file contains "investigator notes" that he generated. These notes (correctly) identify numerous and fundamental mistakes in the very brief accounting of events that the employee had prepared.

After this seemingly rigorous start, the investigation stalled for months before being re-assigned to a supervisor. According to the three-page memo he ultimately produced, he took the steps of interviewing both the officer and the civilian, and reviewed both the original report and the supplement that had been prepared months later.

After summarizing the evidence straightforwardly, the memo concludes with the finding that the officer should be "Exonerated." There was no accompanying analysis.

This, in our view, was a highly questionable result. While there is no reason to believe that *intentional* misrepresentation had occurred, or that the civilian employee had reached an invalid conclusion as to fault, it is plainly evident that there was legitimacy to the complainant's assertion that the report had multiple factual errors. To the extent this undermined his confidence in the work product and fueled a sense of injustice, it was understandable – even if the more accurate supplement that was eventually prepared did not change the overall outcome.³

Accordingly, the second investigator's decision to focus on a less appropriate policy and to then "exonerate" the officer was puzzling at best. A much better reflection of what had seemingly happened would have been a sustained complaint for inaccuracy in

² The original investigator's method for doing this was not clear from the documentation. But his brief interview with the third-party indicated that she had called 911 based on what she had witnessed. (The non-complainant driver had also done so.) In fairness to the personnel who had responded to the scene, we note that the third-party did not stay for the investigation – and that there were no apparent witnesses present.

³ If anything, further scrutiny (and the statement of the third-party witness who was ultimately identified) was far from entirely helpful to the complainant with regard to blameworthiness.

reporting. The gap between the actual result and our own assessment is perhaps the largest we have experienced in our time with Las Cruces.

RECOMMENDATION 1

LCPD should revisit this incident to ensure that the employee is aware of the performance shortcomings that prompted the complaint.

It is hard to know how much to fault the second investigator. Certainly, there are deficiencies in the finished product: the case file reflected minimal effort (the two interviews with the involved employees were less than ten minutes in length – combined), did not incorporate the evidence that was gleaned from the initial investigator's work, and reached its outcome without documented explanation. Even setting aside the questionable result, none of this reflects well on the validity of the process.

But some of this blameworthiness is offset by other apparent factors. The case file also contains the memo from management that quite belatedly reassigned the investigation to a seemingly inexperienced person; more importantly, it provided minimal guidance as to how to proceed.

We were recently informed by Department leadership of a new strategy for addressing a frustrating backlog in complaint cases: namely, the "farming out" of certain low-level and straightforward matters to supervisors not assigned to Internal Affairs. We have no issue with this as a concept. On the contrary, we appreciate LCPD's continuing emphasis on rectifying issues of timeliness. We also recognize that many complaints – including the one in this case – involve allegations that are relatively straightforward in nature and lower-level in severity, thus lessening the need for complete Internal Affairs involvement. And we certainly advocate the notion of the discipline process being a shared responsibility throughout the management level – as opposed to the isolated (or even ostracized) purview of Internal Affairs alone.

However, the *effective* use of a larger pool of supervisors requires some level of infrastructural support. Proper training is a fundamental starting point, of course, and it also makes sense to utilize Internal Affairs as a form of "quality assurance" to offer guidance as needed to evaluate the soundness of completed investigations.

An investment in proper preparation is, of course, demanding of resources in its own right, at a time when workload concerns have created the problem in the first place. But the credibility of individual results and the process as a whole depends on a level of

rigor that was missing from this example. We hope LCPD will give further consideration to its approach.

RECOMMENDATION 2

LCPD should devote the necessary support (in the form of training and quality assurance) in order to ensure that any "unit level" misconduct investigations are handled competently and reach appropriate outcomes.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. We are hopeful that with changes in internal affairs personnel and the addition of a third IA detective, we will not have to assign cases to supervisors in the future. Yearly IA training is already provided to all supervisors and includes training in complaint investigations. However, in this case, the training was clearly not adequate, and we will ensure that it is emphasized more in this year's training.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: January 10, 2023
RE: Review of Administrative Investigation – #2023 II-013

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case, which involved allegations by two civilian LCPD employees against each other, was investigated by Internal Affairs.

OIR Group received the case file on December 27, 2023.

Case Summary

This investigation involved cross-allegations by a supervisor and subordinate who were both civilian employees of the Department.

The subordinate employee was one of two candidates for a newly designated opening in the same unit where he had been working. The supervisor decided that he and a peer colleague who was similarly situated should go through an interview process prior to selection. The subordinate thought this was strange, because there were multiple positions available and no other candidates besides his colleague and himself. He would later allege that this was part of a pattern of harassing behavior on the part of the supervisor.

The interviews were held in a conference room, and the complainant's peer went first. During that person's interview, the subordinate went to speak with another co-worker whose workstation was quite proximate to the conference room. He was there for several minutes, and by his own admission overheard some of what was being said in the conference room.¹

When the supervisor became aware of this, she expressed her disapproval and deliberated about how best to respond. Eventually, another manager conveyed to the subordinate that he should just apologize. He did, though his accompanying statements were deliberately vague, since he claimed to believe that any overhearing had been inadvertent and harmless.

In spite of her initial indecision, the supervisor eventually decided to report the matter formally to the Department's leadership, and a misconduct investigation against the subordinate was initiated. Upon learning of this, the subordinate submitted his own written complaint against the supervisor for what he characterized as gender-based discrimination and bullying. This included multiple alleged instances of her directing unprofessional and threatening comments at him.

Internal Affairs grouped the pair's mutual allegations into one case and conducted an investigation.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The investigative memo named both of the civilian employees as subjects. There was one policy section that applied to both of them:

General Order 103.17 – Code of Conduct – Truthfulness. This section sets out requirements for honesty in various contexts – including administrative investigations – that apply to all Department members. The investigation determined that the subordinate had made several statements in his lengthy, often discursive interview that were knowingly inconsistent with the facts. The allegation was sustained as to him.

¹ He even congratulated the other candidate for having done well.

For the supervisor, minor conflicts between her statements and the other evidence were identified but determined to be ambiguous in nature. She not only made concessions at times but also requested a follow-up interview for clarification purposes. The final recommendation was that the allegation be "Not Sustained" as to her.

The Department framed one additional allegation against the subordinate employee as follows:

General Order 103.28 – Conduct Unbecoming. This "catch all" policy obligates employees to refrain from any behavior that would bring discredit upon themselves or the Department, either on- or off-duty. The investigation determined that the subordinate knew or should have known that standing by the conference room for several minutes during the audible interview process of a colleague (for a position he too was seeking) was inappropriate and discrediting. The allegation was "Sustained."

The Department framed two additional allegations against the supervisor employee as follows:

City of Las Cruces Personnel Manual 616.1.,2. – Threat of Violence in the Workplace. This citywide employment rule forbids any workplace threat of "violence, harassment, intimidation or physical violence." The investigation established that there had been instances in which the supervisor engaged in "verbal outbursts" that fell within the definitions in this section. The allegation was "Sustained."

City of Las Cruces Personnel Manual 1103 – Discrimination and Harassment. This section, also applicable to all City employees, sets out the prohibitions against a range of discriminatory or harassing behaviors in the workplace. The allegations against the supervisor for bullying and gender-based mistreatment of the subordinate were addressed under this policy. While the investigation found aspects of the supervisor's conduct toward the subordinate to be inappropriate (see above), the nexus to discrimination as a motivation or intent was not established. Accordingly, this allegation was "Not Sustained."

Outcome: Discipline or Other Action

The Department disciplined both employees. The subordinate was released from service with the agency, in large part because of the truthfulness issue. The supervisor received a moderate disciplinary consequence and was directed to attend training on communication and conflict resolution.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. The memorandum in this case was lengthy, in large part because the findings were based on the varying and sometimes conflicting interview testimony of the various witnesses and focused employees.² Several of the involved parties were even re-interviewed for clarification purposes. And a nearly complete transcript for the subordinate employee was included, in an effort to more thoroughly capture the seemingly evasive or tangential responses that were provided.

We found the Department's conclusions and remedial responses to be appropriate.

LCPD Management Response

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

² Because the case allegations related to inter-office conflict between civilian employees, there were no relevant body-worn camera recordings to serve as independent evidence – a marked contrast to the contemporary "standard case" involving officers in the field.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 8, 2024
RE: Review of Administrative Investigation – #2023EIC1-017

Introduction

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

OIR Group received the case file on January 8, 2024.

Case Summary

A female contacted dispatch to request a “civil standby” to collect her and her children’s belongings from the home she had shared with her soon-to-be ex-husband (who would eventually become the complainant.)¹ Moments later, the male also called dispatch, stating that the female was not supposed to be at the residence because of a domestic

¹ A Civil Standby, also known as a Domestic Standby, is when one or both parties request that a police officer “stands by” to keep the peace in a situation involving a civil dispute.

violence incident that resulted in a restraining order; he later clarified that he had agreed to dismiss the order when the female agreed to leave the home.²

Officer 1 responded. The male agreed to allow the female into the home for fifteen minutes to collect her personal belongings but was concerned that the female would take other items. Officer 1 assured him that, per the rules of a civil standby, he would only allow the female to gather essential personal items. The male agreed and advised Officer 1 that he had a firearm in a kitchen drawer. The officer secured the firearm and placed it in the trunk of the male's vehicle for everyone's safety.

As the female began loading property from the home into her vehicle, the male, who was observing from the driveway, argued that she was taking items that did not belong to her. This occurred several times and, each time, Officer 1 advised that any disputed property would have to remain at the residence. The female returned the property.

Officer 1 briefly lost sight of her when the female entered the back bedroom. When he located her, he observed that the contents of a bag and drawers were on the floor and the bed was unmade. The female then took various items from the bedroom and bathroom. The female took what appeared to be children's clothing from another room. She placed all of these in her trunk.

After approximately 25 minutes, Officer 1 instructed the female to leave and to contact her attorney. The male argued that she had taken items that did not belong to her, and the officer suggested that he look through the items in the female's trunk. The male did not. The female eventually left.

The male then told Officer 1 that the female had come five previous times to collect items and he did not want her in the home. Officer 1 advised the male to contact an attorney and explained the difference between civil and criminal matters.

The male entered the home and exited, reporting that the female had "thrown [his stuff] everywhere" in the bedroom. He requested a supervisor. The officer admitted that he had lost visual contact of the female for a moment and offered to document the misstep in his police report.

A supervisor responded. The male explained that previous officers had advised him that the female could not come to the home, and he wanted to arrest the female. The supervisor explained that because there were no court orders, LCPD could not take

² The female had thrown a knife at the male, which resulted in a restraining order and the female moving out of the shared residence a month earlier. The male eventually agreed to dismiss it. The female asserted that she could legally now be in the home and collect her property if she had a civil standby.

enforcement action. Later in the conversation, Officer 1 again admitted that he had lost sight of the female, apologized, and said he should have been more vigilant.

Several hours later, the male contacted LCPD to report that the female had stolen items from his home. Officer 2, who had responded to the location on prior occasions, responded, took a detailed police report listing the allegedly stolen items and departed. He called the female; she denied stealing items and reported that the male had threatened to kill her.

Three days later, the female again called for a standby and Officer 2 responded. Noting escalating tension and confusion, the officer called for a supervisor. A supervisor and third officer responded.

The supervisor and officers attempted to negotiate a peaceful resolution, offering various solutions while keeping the parties separated. After consulting with dispatch, the supervisor confirmed that the female had indeed requested and received several previous civil standbys. The supervisor informed the female that she should now work with the court to divide property as civil standbys were only to collect essential personal items. The female responded that she understood and would contact the court to retrieve her remaining property.

Officer 2 then authored an internal Department-wide memo regarding the repeated calls for service and directing that any future calls for civil standbys at that location should be referred to the Sheriff's Office and the courts.

Later that same day, the male filed a formal complaint regarding the incident alleging that Officer 1 had allowed the female to vandalize his property and steal items from the home. The male also alleged that Officer 1 was unprofessional while at the residence.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed two allegations against Officer 1 in this matter related to the following policy sections:

1. **General Order 203.11 – Domestic Standby Calls for Service.** This section details officers' roles in domestic standby calls, and specifically requires that officers limit the duration of the standby and the types of items taken. The investigation determined that Officer 1 violated this policy when he did not maintain visual contact of the female, during which time the female apparently took items outside of the essential "personal belongings" authorized by the

Order. Officer 1 acknowledged this failure on scene and again in his administrative interview, and accepted responsibility for his actions. The allegation was “sustained.”

2. **General Order 103.03. Conduct to the Public.** This policy requires officers to be responsive, respectful, and attentive to members of the public. The investigation determined that Officer 1 was patient and neutral throughout the encounter and did not display an unprofessional demeanor, and that Officer 1 apologized for his misstep and completed a thorough police report to document what he had missed. This allegation was “exonerated.”

Outcome: Discipline or Other Action

The Department reviewed the officer's personnel record and issued discipline for his failure to continually monitor the female inside the home. As part of the corrective action, the officer's supervisor reminded the officer of his duties under **General Order 203** and the protocols for civil standby calls.

OIR Group Review

LCPD provided OIR Group with the case file for review of the available evidence. The investigation included all relevant reports, body-worn camera video, and a formal interview with the subject officer.

We found the investigation to be thorough and complete, and the outcome to be evidence-based.

This is the second recent complaint case involving a civil standby call for service (see 2023EIC1-017, also received on January 8, 2024). As we discussed in that other recent case memo, we have noticed an improvement in officers' understanding of the Department's Domestic Standby General Order and handling of these often-complicated calls. In this case, despite briefly losing visual contact with the female, the officer handled the call well: he negotiated with the male to allow the female time to collect her belongings, limited the duration, repeatedly confirmed that items being taken by the female were hers, and, when he learned that she may have taken disputed items, suggested that the male look through the items in the female's trunk (the male declined). Officer 1 also appropriately referred both parties to the court system. Finally,

while on scene, he took responsibility for losing sight of the female and apologized for his misstep.

At least some of the confusion in this case could be attributed to the fact that different LCPD officers from different shifts responded to the same civil conflict without information about prior calls. Without prior knowledge, each allowed the female to enter the home to collect “essential items,” to the understandable (and escalating) frustration of the male. While there is no set “limit” on how many times LCPD will respond to civil standby requests at the same location in the interest of public service and safety, officers might have responded differently had they known the history of this on-going dispute.³

The importance of equipping officers with relevant history for locations or subjects is one that we have addressed in a recent prior case (see 2023E1CI-003). In a discussion with LCPD about this matter, they reiterated their response to that earlier memo: a recognition that the efficient dissemination of such information is a priority that they are both mindful of and regularly seeking to enhance.

LCPD accomplishes this, in part, by disseminating Department-wide informational memos via its email system as soon as practicable: Officer 2 wrote and shared such a memo on his next assigned shift and after responding to three calls at the location.

LCPD also emphasized the importance of direct supervisor-to-supervisor communication between shifts. Here, however, it appears that information regarding the repeated calls for service for this on-going civil dispute was not widely shared until after approximately seven calls.⁴ We take this opportunity to encourage the Department to remain focused on the goal of ongoing improvement in this arena.

³ For example, had they known that the female had previously collected “essential belongings,” they may have referred her to the court directly rather than negotiate for her to have time inside the home. And, for officer and public safety, it was important to share the presence of an unsecured firearm, the instance of documented domestic violence, and the male’s alleged death threat to the female.

⁴ We also learned that it is, in part, the Mesilla Valley Regional Dispatch Authority’s (MVRDA) responsibility to advise officers about a location’s call history. From his police report, it does not appear that Officer 1 had prior information from dispatch about prior calls at the address. LCPD leadership may wish to advise MVRDA’s leadership about this matter and how this responsibility may be more effectively communicated to responding officers.

Ultimately, however, despite not having prior knowledge, we noted that each officer who responded did so professionally, safely and in alignment with the Department's policy and procedures.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. Internal communication is an area that requires constant effort and should be continuously improved. We will continue to look for ways to improve the accuracy and efficiency of internal communication.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 20, 2023
RE: Review of Administrative Investigation – #2023 EIC1-020

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews internal investigations completed by the Las Cruces Police Department (LCPD) to ensure they are complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. This case was initiated by a complaint that an arrestee submitted to the Department; the identification and review of other potential violations followed from there. The investigation was handled by LCPD Internal Affairs.

OIR Group received the case file on January 22, 2024.

Case Summary

The officer who became the primary focal point of this investigation was responding to a call for service regarding a loud party and a possible fight. Several people were leaving the scene, which was in a residential neighborhood. As the officer spoke with a young woman, a young man – who eventually became the complainant – called out to her that she should not talk to the officer.

The officer immediately engaged with the complainant by directing a profanity at him, and the two began to have a verbal exchange that prompted the officer to close distance and confront him. Turning away, he pushed at the officer casually and made contact with her body-worn camera. This further exacerbated the conflict. The officer ended up pushing the young man two times, and the situation then devolved into a

standoff where she was pointing her Taser at him and giving commands. He refused to comply, instead telling her to call a supervisor. Eventually, as the young man started to walk away from her, she did deploy the Taser.

While the barbs did strike him, the Taser did not have the intended effect of incapacitating him. He walked away while commenting on the Taser's failure, and started to get into the vehicle of a friend who had been at the scene. At that point, another officer arrived, and they were able to overcome his mild resistance and get him into handcuffs. He was ultimately arrested.

Within days of the incident, he submitted a written complaint to the Department, alleging that his arrest was unjustified, that the force used against him had been excessive, and that LCPD officers had mishandled property belonging to him.

On a separate track, a Department supervisor identified issues with the officer's performance in this incident, relating to both the timeliness and accuracy of her reporting. Additionally, the Department referred this case to its "Use of Force Cadre" for an in-depth assessment of the Taser deployment and additional force utilized by the original officer (Officer 1) and then her backup (who aided in the handcuffing). That second officer (Officer 2) was also investigated for issues relating to the complainant's phone, which was mishandled when he was taken into custody (though eventually found and returned to him intact – as he acknowledged in his complaint).

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The investigative memo framed a number of individual allegations against Officer 1. These arose from identified performance issues in her initial engagement with the complainant, her use of force against him, her subsequent communications with him, and her compliance with Department expectations regarding post-incident reporting.

General Order 103.05 – Code of Conduct: Conduct Toward the Public. This policy section sets out with some specificity the expectations regarding officer professionalism, patience, and self-control in their interactions with the public. Here, Officer 1's use of multiple profanities and her argumentative demeanor toward the complainant at the outset of her encounter led to "Sustained" finding.

General Order 231.03 – Physical Arrests: Authority to Arrest. This section affirmatively authorizes officers to take individuals into custody when an "arrestable offense" has been committed in their presence. By implication, the absence of such (or

any other) justification is problematic. Here, the Department determined that Officer 1 did not have a legitimate basis for her original detention of the complainant – thus negating the validity of her subsequent actions as well. The allegation was "Sustained."

General Order 231.08 – Physical Arrests: Arrest Procedure. This section requires officers to wait for backup before making an arrest "if circumstances allow." LCPD noted Officer 1's failure to follow this directive in her decision to engage with the complainant prior to the arrival of an additional officer.

General Order 255.02 Use of Force Procedures: Applying Force. This policy expresses the fundamental requirement that all physical force be "objectively reasonable and undertaken in service of lawful objectives." The investigation determined that Officer 1's pushing of the complainant and her use of the Taser were both lacking in sufficient justification. The allegation of a policy violation was "Sustained."

General Order 255.03 Use of Force: De-Escalation. This policy encourages officers to look for opportunities to de-escalate situations in order to avoid using force, when doing so would not jeopardize themselves or others. Here, the investigation established that Officer 1 did not do this, but instead exacerbated the encounter with her actions. Accordingly, the alleged violation was "Sustained."

General Order 231.10 Physical Arrests: Post Arrest. This policy section covers the obligation to inform an arrestee of the charges for which/reasons why he was taken into custody. In this case, the complainant observed that he had not been read his Miranda rights or informed about the arrest. The investigation determined that Miranda rights had not been required under the circumstances (no questioning), and recordings showed that both Officers 1 and 2 had in fact explained to him why he had been arrested. The allegation was "Exonerated."

General Order 103.17 Code of Conduct: Truthfulness. This section imposes a strict prohibition against knowing false statements in the context of criminal or administrative investigations; it was invoked here to address the different inconsistencies that were evident between Officer 1's reports about the incident and the body-worn camera recordings of same. Officer 1 acknowledged these gaps but said they were a matter of apparent misperception and not an intent to mislead. The investigation determined that the allegation should be "Not Sustained" in the absence of conclusive proof of a violation.

General Order 141.02 Police Reports: Accuracy and Thoroughness. The issues of apparent accuracy (as well as ones of inadequate description/explanation) in Officer 1's report were also relevant to this policy. Because she had not reviewed her video before

writing her report (which she could have), the Department found that the report's inadequacies were blameworthy pursuant to this policy section.

General Order 141.03 Police Reports: Submission of Reports. This policy obligates officers to "correctly and completely" submit relevant reports prior to the end of their shift, unless authorized to do otherwise by a supervisor. Here, Officer 1's failed to meet this requirement for several days after the arrest. The violation was "Sustained."

General Order 103.09 Code of Conduct: Insubordinate Conduct. This policy sets the requirement that employees "carry out and promptly obey" lawful orders they receive from an agency supervisor. In this incident, Officer 1 failed to comply with a supervisor's orders to enter information about the matter into the Department's use of force database. The allegation was "Sustained."

Officer 2 was also the focus of three additional allegations related to aspects of his own conduct.

The first two were related to the complainant's mention of his mishandled property, which had been inadvertently left on the hood of a radio car at the time of his arrest. (It was later recovered.) There were two potentially relevant policy sections related to proper search procedures and evidence handling. The Department found that Officer 2's search had been consistent with policy. However, it addressed the temporarily misplaced possession of the complainant as follows:

General Order 300.14 Evidence and Property: General Rules for Packaging. This policy imposes a duty of care on officers for handling collected evidence and arrestee possessions. Officer 2's acknowledged mistake in temporarily losing track of the complainant's cell phone was a basis for a "Sustained" finding.

The investigation also uncovered a gap in Officer 2's body-worn camera recordings while he had custodial responsibility for the complainant. This deviated from the expectations set forth in **General Order 151.01 Recording Devices: Procedure**. Interestingly, the investigation determined that the gap had occurred when Officer 2 was reviewing his own BWC in an effort to retrace steps and determine where the missing phone might be. While this was considered appropriately resourceful on his part, his failure to document his actions deviated from the requirements stipulated in 151.01. The alleged violation was accordingly "Sustained."

Outcome: Discipline or Other Action

The Officer 2's sustained allegations led to a low-level disciplinary intervention; he had no previous instances of comparable performance issues.

Officer 1 is no longer with the agency as a consequence of this case and her previous performance history.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. One cornerstone of the investigation was the evaluation of the incident by the Department's "Use of Force Cadre," a recently developed mechanism for the comprehensive assessment of certain force deployments.

We have previously cited our regard for this initiative. The idea behind it – that force incidents merit careful scrutiny for the sake of both accountability and improvement of future performance – is one we have endorsed in multiple jurisdictions, and LCPD's new commitment to it is encouraging. And in our limited experience of seeing actual examples of the Cadre's work, we have been impressed with the thoughtful and thorough analysis that it produces.

This case reinforced that favorable view: the analysis was methodical and detailed in establishing that the officer's handling of the subject's presence at the scene was flawed from the outset, and was by followed several other actions that were not justified under policy or training. Officer 1's verbal aggression, her choice to detain the subject, the absence of de-escalation efforts, and the faulty threat perception that prompted the pushing and the Taser deployment, were all problematic contributions to a negative outcome.

The findings of the Force Cadre became a foundation for the subsequent Internal Affairs investigation into Officer 1's performance. She shared her perspective during the interview, but her efforts at clarification and explanation did not ultimately outweigh the impact of the body-worn camera recordings in showing the missteps and questionable decision-making that had occurred.

The investigation was also effective in going beyond the parameters of the complainant's issues to incorporate other policy issues into the review. This included

the timely reporting deficiencies that were a recurring problem for Officer 1 and that manifested themselves following this incident as well.

We do note that one of the allegations that was not sustained related to "truthfulness" – an allegation that arose from the gaps between Officer 1's police report and the actual unfolding of specific events as captured by her body-worn camera recording. The investigation memo cited her assertions of innocent misperception (during her Internal Affairs interview) as sufficing to preclude a definitive finding against her. While this makes a certain analytical sense, and while these allegations are notoriously difficult to prove (because state of mind is so personal and subjective), we also felt like a more thorough exploration of the issue was warranted.

For example, the interviewer could have played selected portions of the video in an effort to prompt further clarification (and perhaps better illustrate the plausibility of Officer 1's claims). Instead, the issue of an intentionally misleading report (for which there was motive, given the problems with the officer's actions) was covered almost perfunctorily in an interview that was shorter than twenty minutes in its entirety.

Given the numerous sustained violations that *were* established, this shortcoming did not ultimately interfere with the Department's decision to hold Officer 1 accountable in a significant way. But we encourage LCPD to consider investigative techniques that will maximize the development of best evidence for adjudicating this important allegation in future cases.

RECOMMENDATION 1

When issues of officer truthfulness are a component of an Internal Affairs, LCPD should consider investigative techniques to help ensure that mere denial by the subject officer does not effectively end the inquiry.¹

¹ While we have previously made recommendations regarding IA interviews generally (see, for example, 2022EIC1-026), this recommendation is specific to investigations regarding officer truthfulness.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. We agree with this recommendation. When considering discrepancies between perception, memory, and video evidence, human performance factors must be considered. This fact makes it difficult to substantiate some untruthful behavior, but every resource or investigative tool should be used to aid in that determination.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: February 20, 2024
RE: Review of Administrative Investigation – #2023EIC1-022

Introduction

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

OIR Group received the case file on January 23, 2024.

Case Summary

Officers 1 and 2 responded to a call for service regarding a traffic collision. When they arrived, they were met by several partygoers, who pointed them to a female driver and a male and several witnesses who were standing next to a parked truck.

The parties reported conflicting stories. The female driver reported that as she was driving by, she accidentally side-swiped the open door of the parked truck. She did not see anyone next to the open door. The male reported that he was standing between the truck's open door and the body of the truck. When the female struck the door, he was pinned between the door and the body of the truck and struck his head on the

window, causing injury to his torso and head. Various witnesses corroborated the male's story.

Officer 1 spoke with the female driver. The female reported that the other witnesses did not like her and were "causing drama." Officer 1 asked if she had been drinking. The female admitted to having one drink several hours earlier. According to Officer 1 and evident on the body-worn camera footage, the female did not display any outward signs of intoxication. Officer 1 collected the female's information for the crash report and provided a case number.

Officer 2 contacted the male, who requested medical attention. The Fire Department arrived, checked the male but did not find any external injuries, and prepared to transport him to the hospital at his request. Officer 2 photographed the male. Officer 2 observed that the truck's passenger window was freshly broken, with a notable circular-shaped strike at approximately head height.

Officer 2 then contacted the driver's mother, who reported that the male had "faked" being struck and falling.

The officers discussed the evidence and everyone's accounts. Officer 2 concluded that the male would have suffered more significant injuries had he been struck in the manner described.

A supervisor responded. Officer 2 explained the situation to the supervisor. The officers and supervisor examined the passenger door's broken window. The supervisor finally advised the officers to thoroughly document the conflicting accounts in a traffic collision report.

Several weeks later, one of the witnesses contacted LCPD to obtain the collision report but it was told it was still unavailable. The witness then filed a complaint via email for the delayed report and alleging that officers had let the female driver, who she believed was intoxicated, leave the scene.

IA reviewed the collision report, which had been filed the same day as the complaint, and found it to have errors, omissions, and duplicative information. Officer 1 stated that she had trouble with the reporting system when attempting to initially submit the report.

While investigating the incident, IA also noted that Officer 1 had deactivated her body-worn camera before concluding the encounter, and that Officer 2's body-worn camera had deactivated due to low battery.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed two allegations in this matter against Officer 1 related to the following policy sections:

1. **General Order 151 – Recording Devices.** This section requires LCPD employees to activate their body-worn camera devices and keep the device recording until the conclusion of any investigative encounter. Officer 1 reported that she deactivated her body-worn camera because she believed that the investigation was complete. The allegation was “unfounded.”
2. **General Order 141 – Police Reports – Submission of Reports.** This policy requires officers to complete and submit all reports before the end of shift, unless they receive permission from their supervisor. The investigation determined that Officer 1 did not submit her report in a timely manner and did not advise her supervisor of the delay. The allegation was “sustained.”

LCPD framed allegations against Officers 1 and 2 for violation of **General Order 215.01 – Preliminary Investigations.** This policy outlines the on-scene requirements for preliminary investigations, including conducting a thorough analysis of evidence and accurately and completely recording all information in a police report. The investigation determined that, while both officers conducted a “reasonable” preliminary investigation, Officer 1 did not accurately and completely document the information in a police report. As the primary officer on scene, Officer 1 was responsible for the report. The Department “sustained” the allegation against Officer 1, but “exonerated” Officer 2.

Outcome: Discipline or Other Action

Officer 1's personnel history contained a series of similar sustained allegations, and Officer 1 was already under a performance improvement plan. Based on this, the Department took the appropriate disciplinary and remedial actions.

The allegation against Officer 2 was exonerated and no further action was taken.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. The investigation included all relevant reports, body-worn camera video, and a formal interview with Officer 1.

We found the investigation to be thorough with respect to Officer 1's actions, and the outcome to be evidence-based. However, while the investigation noted that Officer 2's body-worn camera automatically shut off prior to full completion of the investigation because of low battery, the investigator did not frame an allegation for Officer 2's failure to ensure that his equipment was functional or for his failure to activate a back-up audio recorder when his body-worn camera died (per **General Order 151: Recording Devices**).

We found that the Department should have framed that allegation, especially in light of having framed a similar allegation against Officer 1 for her failure to fully document the encounter on body-worn camera (which it ultimately unfounded based on her assertion that the encounter was over).

RECOMMENDATION 1

LCPD should frame all allegations to ensure complete and thorough investigations.¹

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. We will continue to work on improvement in this area.

¹ We have made this or similar recommendations regarding framing allegations in six prior cases; we also note that, as we reported in our 5th Semi-Annual, LCPD has made great improvements in framing detailed and accurate allegations.



6510 Spring Street #613
Long Beach, CA 90815
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: March 28, 2024
RE: Review of Closed Litigation February 2024 – Case #1

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. The intent is to use these matters as a vehicle for evaluating both the conduct of LCPD personnel in the underlying incidents and the effectiveness of any LCPD administrative response.

OIR Group received four cases from the City Attorney that were closed in this review period. OIR Group received files related to these four cases on February 28, 2024. Due to the complexity of each case, we will provide an individual memo for each matter. This memo reviews the first of the four cases – City Attorney case number 2021-00033976 – and a related Internal Affairs Internal Investigation, case 2022II-017.

In this case, the plaintiff alleged that LCPD officers had wrongfully arrested and used excessive and unlawful force during a custodial exchange. The claim was originally filed in June of 2021. LCPD initiated an administrative investigation of the matter in March of 2022. The claim was settled in September of 2023.

Factual Summary

This case stemmed from a custody dispute. A father (the plaintiff) called LCPD to report that the mother of his two young children was not allowing him to take their two children for his court-ordered custodial time. When Officer 1 responded to the location, the father stated that he did not need the police there. Officer 1 cleared the call and left.

The father called approximately ten minutes later and again requested an LCPD response. Officer 1 responded and observed the father now holding the younger child, a baby. Officer 1 met with the mother, who reported that the court order only allowed the father to take the older of the two children, but the father wanted both. The mother reported that the older child was ready to leave, but that she was not letting the father take the baby because the father did not have a car seat and had previously returned the baby with a bruise. The mother showed Officer 1 court paperwork confirming that the father could only take the older child.

Officer 1 requested that the father give the baby back to the mother. The father refused and began to record Officer 1 with his cell phone camera. Without attempting any de-escalation or additional communication, Officer 1 placed his hand on the father's shoulder and threatened to arrest the father "for resisting." Officer 1 handcuffed the father's left hand as the mother attempted to take the baby from his other arm. Officer 1 unholstered his Taser and placed it directly on the father's upper back, advising that he would deploy the Taser if the father did not hand off the baby. Officer 2 arrived. Officer 1 instructed Officer 2 to take the baby; when he confirmed that Officer 2 had hold of the baby, Officer 1 deployed a cartridge from the Taser, which struck the father in the back. The father fell to the ground as Officer 2 took control of the baby. Officer 2 handed the baby to the mother, who went inside with both children.

Officer 1 deployed several more Taser cycles, including using the Taser in "drive stun" or "direct contact mode," when the father attempted to roll over onto his back, and then refused to give up his arm from under his body. Officer 1 handcuffed the father and lifted him to his feet. Officers 1 and 2 searched him and placed him in the rear of the police vehicle.

Additional officers and supervisors arrived, and medical personnel were called to the scene. The father was eventually transported to the hospital for evaluation because the Taser had been used. While he was initially charged for resisting, all charges were eventually dropped.

LCPD Review Process

While on scene, the first responding supervisor initiated a use of force investigation per Department policy. This supervisor responded to the hospital to interview the father because he complained of injury.

Several days later, a different supervisor completed the Department's use of force review forms ("BlueTeam"). That supervisor reported that the use of force appeared to be unreasonable, and he requested additional review of the incident. A command-level supervisor conducted a detailed review and concluded that the force used by Officer 1 was reasonable. No further action was taken.

However, upon receipt of the claim notification several months later, the Force Review Cadre¹ conducted another comprehensive evaluation of the incident and found the use of force to be *unreasonable*. Unlike the initial review, the Cadre accurately determined that Officer 1 lacked legal grounds to forcibly remove the baby from the father. All subsequent actions -- including any uses of force or arrest -- were unreasonable on their face. Even if those had been reasonable, however, the Cadre found Officer 1's use of the Taser itself to be unreasonable based on the totality of the circumstances because the father's behavior did not meet the legal threshold for that level of force (e.g., use of a Taser). And the Cadre determined that the use of the Taser in direct contact mode to facilitate arrest was also unreasonable per case law.

The Cadre determined that Officer 2 arrived at the scene to assist Officer 1 and was acting based on Officer 1's prior assessments and direct commands. Therefore, Officer 2's actions were reasonable.

Based on this finding, IA initiated an internal investigation (case 2022II-017). The investigation framed, investigated, and sustained several allegations against Officer 1 regarding his unreasonable use of force, his lack of authority to arrest, his failure to appropriately address the initial call for service (which, IA appropriate noted, could have been "domestic violence in disguise"), his choice to forcibly remove the baby, his reporting failures, and failures in activating, uploading and tagging his body-worn

¹ As we have reported previously, the Force Review Cadre is a relatively new LCPD panel of subject matter experts that provides a heightened level of scrutiny and analysis to force incidents.

camera footage within the timeframes required by policy.² The Department recommended discipline that we found to be appropriate.

The IA investigation also discovered that another responding supervisor had failed to properly upload and tag his body-worn camera video in this incident; this allegation was framed and sustained. While the sustained finding is appropriately documented, it does not appear that any disciplinary actions were taken. **We recommend that, in the absence of formal discipline, LCPD consider directed training for this supervisor related to uploading and tagging body-worn camera footage.**

RECOMMENDATION 1

In the absence of formal discipline, LCPD should consider directed training for this supervisor related to uploading and tagging body-worn camera footage.

Litigation Outcome and Demographics

All charges against the father were dismissed. The parties in the civil suit reached a settlement.

As set forth in our scope of work with the City, our review of matters resulting in litigation includes a demographic summary of involved parties. In this case:

- The Plaintiff is Hispanic.
- Two LCPD officers were directly involved in this incident, and both are Hispanic. One is no longer employed by LCPD and the other is a current employee.

² Our review suggested that Internal Affairs could have also framed a specific allegation against Officer 1 for his failure to de-escalate. Instead, the Department included Officer 1's poor de-escalation/communication skills in a single allegation regarding "Code of Conduct: Unsatisfactory Performance," which encompassed all of Officer 1's failures related to his duties as a peace officer involved in a custodial dispute. As we noted in our 5th Semi-Annual Report, the Department has more recently (and appropriately) framed an allegation for each potential policy sub-section violation.

This incident occurred in zip code 88001, but the Plaintiff resides outside of the Las Cruces area.

Recommendations

This case suggests that even the best-intended accountability structures do not always immediately “get it right,” and speaks to the importance of multiple levels of review. Moreover, this case reinforces our repeated assertion that civil claims are an important component of the accountability process to identify, manage, and correct risk.

In this case, the supervisor who responded to the field reported that she was initially “concerned” with Officer 1’s demeanor on scene. But, after speaking with the officer, she found the use of force to be “typical” and not cause for concern. Through the Department’s internal force review process, a second supervisor who reviewed the related body-worn camera footage disagreed; he requested additional review because the use of force appeared questionable. Unfortunately, the reviewing command level supervisor came to an inaccurate conclusion: the force used was found to be “reasonable” and in policy.

Because no misconduct had been identified, Officer 1’s behavior was not corrected and he remained in the field, where similar behavior may well have compromised other calls for service. We reviewed at least one additional incident involving a complaint against him of a similar nature that occurred in the interim timeframe (see our memo related 2021EIC1-022, dated May 6, 2022).³ While Officer 1 was appropriately exonerated in that case, we noted that Officer 1’s actions – namely, poor communication during a civil dispute and rapid escalation – resulted in the same heightened tension that we observed in this incident. In that case, we advised the Department to consider counseling Officer 1 as follows:

From the moment he got out of his car, the officer seemed brusque and inflexible in a way that “raised the temperature” of the encounter and precluded any further possibility of de-escalation. Similarly, his later discussions [...] reflected exasperation and a hasty perception of impasse.

The officer’s frustration may well have been hard earned [...] and it should be noted that he never devolved into outright rudeness or unprofessionalism. Still,

³ The incident for that case occurred in September of 2021, five months after the incident in question in this case, which occurred in April of 2021.

the effective handling of this kind of dynamic [...] is a challenge that young officers should be guided to meet when opportunities to do so present themselves. LCPD may not have taken full advantage of that opportunity in this case.

We learned that at some point in the interim, the officer was re-assigned due to an identified pattern of behavior in his interactions with the public.⁴ However, per Department records, no other corrective actions were taken.

Eventually, and because of the civil claim, the Force Review Cadre came to the correct conclusion: the force used by Officer 1 was unreasonable. This use of force, coupled with the identified pattern of behavior in this case and others, led to the appropriate outcome. But we cannot help but wonder if earlier intervention and corrective actions could have led to a different outcome for this officer.

As we have reported, the Department has engaged in numerous efforts since this incident to ensure more timely and appropriate outcomes, including more rigorous Supervisory Matter reviews that require supervisor to write “Deficiencies Noted” memos,⁵ regular use of the Force Review Cadre that result in more thorough and accurate findings and establishment of an internal review process immediately upon notification of a claim (which we saw work effectively here, despite the delay from date of incident to claim notice). We will continue to evaluate these processes.

However, considering the different outcomes in this case, we recommend that LCPD consider developing a policy that allows for revising and amending review findings based on additional information such as the filing of a complaint or civil claim.

⁴ The officer was re-assigned to a position where he was less likely to respond to these types of calls for service but remained in the field.

⁵ As we detailed in our fourth Semi-Annual Report and again in case 2022EIC1-033, if a supervisor identifies any issues that require further action, the Department now uses a “Deficiencies Noted” memorandum to document the issue(s) and the action taken (e.g., debrief, policy review, or direction to formal training or Internal Affairs). This change in protocol is a commendable one. It ensures that the “feedback loop” produced within the review process is appropriately closed and formally documented – steps that help translate effective issue-spotting into concrete results.

RECOMMENDATION 2

LCPD should consider developing a procedure or policy that allows for revising and amending review findings based on additional information such as the filing of a complaint or civil claim.

Finally, we use this case to revisit previous recommendations regarding use of the Taser, which we first discussed in case 2021EIC1-025 and again in our Second Semi-Annual Report. The first was related to the use of the Taser in drive stun mode. We recommended that LCPD update its Conducted Electrical Weapon (Taser) policy, General Order 256, to prohibit the use of a Taser in drive stun (or, what the Department calls “contact mode”) for pain compliance.⁶ In that same memo, we also noted that the current policy does not require that officers issue a warning prior to deployment of the Taser, nor requires that officers document the warning or lack thereof, and we recommended policy language.⁷

At that time, LCPD reported that it was in the process of evaluating its CEW and Equipment policies to ensure that these reflected the most effective uses of the Taser. We again recommend that LCPD evaluate the use of drive stun mode and impose a requirement for officers to warn of Taser use where practicable and document the warning or lack thereof.

RECOMMENDATION 3

As it considers updates to their Conducted Electrical Weapons policy, General Order 256, LCPD should: 1) consider whether to eliminate or restrict the use of

⁶ As noted by the Force Review Cadre in its review of this case, and indicated by the manufacturer (Axon), case law, and law enforcement agencies nationwide, Tasers should not be used merely for pain compliance; they are neither generally intended for this purpose nor consistently effective in this mode. Instead, drive stun mode should only be deployed to complete the incapacitation circuit when one of the two probes has not sufficiently attached to the subject's body. Accordingly, many agencies either prohibit the use of drive stun mode for pain compliance or limit its use to situations where the officer needs to create distance from the subject.

⁷ In this case, Officer 1 did warn the father that he would be “Tased” if he did not comply.

the Taser in drive stun mode as a pain compliance weapon; 2) add language that requires that officers provide a verbal warning prior to deployment of the Taser; and 3) add a requirement to document the warning or reason that a warning was not given.

Management Response

The Las Cruces Police Department appreciates the thorough review conducted by the OIR Group.

Recommendation 1

The lieutenant of that section addressed these deficiencies with the involved sergeant. The department has also implemented automatic tagging so that the labeling of videos is more consistent and frees the officers of one of their many administrative tasks.

Recommendation 2

The initial use of force review occurred before the review cadre's inception. One of the cadre's many benefits is that reviews are not dependent on one person's opinions but are always reviewed separately by three experts. A policy that allows for revising findings or reports may conflict with the collective bargaining agreement between the City of Las Cruces and the Las Cruces Police Officer's Association. This potential conflict highlights the importance of getting the review right the first time.

Recommendation 3

Several changes have already been made since this event took place. The addition of a licensed attorney as a police legal trainer has had a tremendous effect on the level of officers' legal knowledge. He has addressed several of the concerns outlined in the report, including the use of a Taser on a passively resisting person. This includes both contact and probe applications. It is also important to note that the newest Taser does not have the ability to deliver energy without deploying probes. General Order 256: Conducted Electrical Weapons is also in the process of being updated to comply fully with established case law and the best practices for Taser use.



6510 Spring Street #613
Long Beach, CA 90815
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: March 28, 2024
RE: Review of Closed Litigation February 2024 – Case #2

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. The intent is to use these matters as a vehicle for evaluating both the conduct of LCPD personnel in the underlying incidents and the effectiveness of any LCPD administrative response.

OIR Group received four cases from the City Attorney that were closed in this review period. OIR Group received files related to these four cases on February 28, 2024. This memo reviews one of the four– City Attorney case number 2020-OTC007.

In this case, the plaintiff accused the Department and specific members of wrongfully arresting him, unjustifiably subjecting him to force, and maliciously pursuing a prosecution against him. The claim was originally filed in August of 2020, with the lawsuit following in October. LCPD had conducted a secondary force review into the incident and determined that the primary involved officer's actions had been reasonable; no further administrative review occurred. The claim was eventually settled in January of 2024.

Factual Summary

This case began as a welfare check that had been prompted by an argument between the plaintiff (an adult man) and his aunt as they rode in a car together. During their dispute, the aunt had inadvertently called another relative, who overheard the nature of the interactions and became concerned. She called LCPD and spoke with a dispatcher.

An officer responded to the address he originally received from dispatch, but was unable to find that location, and made further efforts to get clarification and locate the involved parties. Through interaction with neighbors and the original reporting party, he was able to re-locate and find the home where the aunt and the plaintiff resided.

In his efforts to investigate further, he obtained a telephone number and called the aunt, who acknowledged the argument but said that she was physically fine and did not wish to have help. He was still on the phone with her when a man approached the residence purposefully and walked past the officer, ignoring his attempts to stop and question him. Then the man turned back and walked back in the officer's direction without responding to him in any way. This ultimately prompted the officer to reach for the man in an effort to stop his movement.

The physical contact immediately provoked a strong negative response: the man pulled away, told the officer not to touch him, and repeatedly directed him to leave the property. The officer persisted in his efforts to explain that he was responding to a call and needed to speak with him. The man continued to yell at the officer to leave.

Eventually, the officer took out his Taser and warned the man that he would deploy it if the man did not comply with orders to stop walking away. This opened up a new line of contention, since the man believed he had done nothing to warrant the use of the Taser and spread his arms to show a lack of weapons. He eventually took out his phone as if to record and continued to argue over the particulars of the officer's presence there, all while declining to comply with repeated commands to "get on the ground."

A second LCPD officer soon arrived, which further agitated the man and prompted more yelling. At this point, after one additional command, the officer used his Taser, which knocked the man to the ground; he was then handcuffed without additional incident, though he remained upset as additional officers and paramedics responded to the scene.

The man was charged with resisting/obstructing the officer in the performance of his duties, but the case against him was dropped when the officer did not show up to an initial hearing. We are unclear as to why this happened, or whether it was addressed at the time by LCPD.

LCPD Review Process

The use of force was initially addressed through the usual Department protocols. However, the first-level supervisor (who had been at the scene and was eventually named as a defendant in the litigation) ended up flagging a few different concerns after his initial review of the available materials. These included the fact that the sole charge against the subject turned out to be resisting/obstructing, which raised questions about the validity of the detention itself and the resultant use of force. At the supervisor's request, a lieutenant conducted a separate review of the incident and prepared a detailed memo.

The lieutenant's assessment was that the officer's "actions and decisions," including his use of the Taser, had been reasonable under the totality of the circumstances (we discuss our assessment of this finding below)

Litigation Outcome and Demographics

As set forth in our scope of work with the City, our review of matters resulting in litigation includes a demographic summary of involved parties. In this case:

- The Plaintiff is Black.
- Two LCPD officers were named in the lawsuit¹; both are white and still employed by the agency.
- This incident occurred in zip code 88005, but the Plaintiff resides outside of the Las Cruces area.

¹ As noted above, the suit named both the primary handling officer and the supervisor who had eventually responded to the scene; the inclusion of the latter was based on his "failure to intervene" in stopping the arrest, detention, and criminal charge from proceeding.

OIR Group Review

This was an unfortunate combination of circumstances. A review of the body-worn camera recordings shows how a concerned third-party's request for a welfare check devolved into a confrontation, use of force, and arrest. The plaintiff's initial demeanor and refusal to engage compounded the officer's sense of a potential problem as he tried to get his bearings at the scene. Similarly, the officer's presence and repeated efforts to stop the man for questioning intensified whatever agitation he may have been experiencing.

The encounter was seemingly derailed at an early point despite the officer's initial attempts to establish rapport and gather information: the first physical contact between the officer and the plaintiff prompted a strong reaction that presumably intensified both the man's indignation and the officer's level of suspicion. Subsequent attempts to communicate and to gain compliance were unsuccessful. In its use of force review memo, the Department suggested that this lack of compliance contributed to the officer's decision to use the Taser once his backup officer was on-scene.

Interestingly, the man's relative arrived at the residence within minutes of the arrest, and she provided officers with more background as to the events of the day (as well as proof of her well-being). The supervisor and officer, to their credit, discussed citing and releasing the man at the scene – a possibility that seemed potentially reasonable in light of their recognition that his relative was, in fact, fine, and amenable to his presence. This would have limited the implications of the officer's decision-making and the ensuing liability exposure. But the man needed to be medically cleared at the hospital and remained highly agitated, and these factors ultimately led to his being taken to jail.

We appreciated the "deeper dive" that the agency took at the time of the initial review process, in recognition of the incident's complicating factors. We also considered the officer to be genuine in his concerns and appropriately low-key and constructive at the outset of his interactions with the man.

That said, we have lingering questions about whether the use of the Taser was consistent with contemporary (and increasingly restrictive) standards under applicable case law. While the man was clearly uncooperative, his resistance (apart from the initial and spontaneous "shaking off" of the officer that preceded use of the Taser by some two minutes) was not physically aggressive. He remained in the same basic area (as opposed to trying to flee or to enter the residence), made a point of establishing that he

was unarmed, kept his hands visible, and never became threatening in his verbalizations or posture.

On the contrary, he was arguing with the officer in a way that perhaps could have lent itself to a different resolution with more time. Rather than attempting to reset the encounter (which, importantly, had begun as a welfare check that was largely accomplished), the officer seemed to lock in on his own repeated commands to "get on the ground." The dynamic created a stalemate that ended with the use of force—an escalation that seemed dictated more by the arrival of his backup officer than a change in the subject's behavior.

The topic of appropriate, authorized Taser use is one that we have flagged in other contexts (including the litigation memo for Case #1 of the recently settled matters) as a "growth area" for LCPD. We would like to think that the newly developed Force Review Cadre would have taken a more thorough, methodical look at the circumstances here and applied them more rigorously to the prevailing standards in law and policy. And, as we have indicated in the past, an update to the Department's relevant policy for conducted energy weapons should be a priority.

Now that the litigation has been settled, perhaps LCPD can revisit the case for its value as an impetus for policy review, discussion piece, or training example.

Management Response

The Las Cruces Police Department appreciates the thorough review conducted by the OIR Group. This case highlights the importance of high-quality and frequent legal training. Since this event occurred, the Las Cruces Police Department has retained a licensed attorney who acts as our police legal trainer. The police legal trainer has addressed all of the concerns outlined in this memo multiple times through formal in-service training, training bulletins, briefing training, and one-on-one coaching sessions.



6510 Spring Street #613
Long Beach, CA 90815
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: March 28, 2024
RE: Review of Closed Litigation February 2024 – Case #3

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. The intent is to use these matters as a vehicle for evaluating both the conduct of LCPD personnel in the underlying incidents and the effectiveness of any LCPD administrative response.

OIR Group received four cases from the City Attorney that were closed in this review period. OIR Group received files related to this case on February 28, 2024. Due to the complexity of each case, we will provide an individual memo for each matter. This memo reviews the third of the four cases – City Attorney case number L2021-048672. This case preceded our ongoing recommendation that the Department initiate whatever review protocols are appropriate, including a potential administrative investigation upon receipt of a claim or lawsuit notice and based on the allegations therein. In this case, there was no related Internal Affairs investigation, but the use of force was internally reviewed by LCPD as part of its use of force review protocols.

In this case, the plaintiff alleged that LCPD officers had wrongfully detained him and used excessive force that caused significant injury. The incident occurred in May of 2021 and the claim was filed in July of 2021. It was dismissed in December of 2023.

Factual Summary

The case began with a call for service: Officer 1 responded to a call from a school principal relating to a middle-aged male who was loitering across the street from the school. Officer 1 approached the subject and asked for his identification, but the subject was uncooperative and claimed that he was being harassed. The subject said he was waiting for his mother to pick him up and offered to leave.

Officer 1 told the subject that he was being detained to determine his identity, and then threatened to arrest the subject for concealing his identity. The subject provided what the officer believed to be false identifying information. A female approached; when the officer attempted to verify the subject's identity with this female, the subject turned and ran. He ran toward the school, then across the roadway into a row of apartments. Officer 1 pursued him on foot and broadcast his location, direction of travel, and subject's description. Officer 1 eventually lost sight of the subject but continued to search for the subject in the apartment complex, jumping over a low wall and entering a fenced backyard.

Meanwhile, a supervisor monitoring the radio broadcast identified the subject as someone with whom he had previous encounters.¹ He and other officers responded to the area.

As officers began to search apartments, a resident advised that the subject was inside a neighboring apartment. Officers commanded him to exit, but he shut the front door. Officers kicked open the door, which struck the subject in the face, and tackled the subject as he attempted to run up the apartment stairs. The subject began to yell that he could not breathe as officers pulled his arms out from underneath his body. Officers handcuffed the subject.² As officers attempted to sit the subject up, he went limp and began to moan. An officer rubbed the subject's sternum, determined he was breathing, and moved him to the curb. That officer then held the subject in a seated position and

¹ In his police report, this supervisor wrote that he had previous interactions with this subject, and that he knew the subject had an outstanding arrest warrant for a probation violation. From the information in the file, it is unclear exactly when other responding officers knew that the subject had the outstanding arrest warrant.

² Using body-worn camera footage, we determined that once the subject was handcuffed, he remained prone for less than one minute before officers turned him to his side and then attempted to sit him up.

requested paramedics to the scene.³ Officers then placed the subject into the rear of a police vehicle where an officer stood next to him as they waited for the paramedics to arrive.

Approximately five minutes later, paramedics arrived and evaluated the subject. Paramedics determined that his respiratory rate was “good,” but that they would transport him to the hospital for evaluation. The subject was eventually admitted to the hospital, where supervisors and officers responded to conduct a use of force investigation. A supervisor also conducted a use of force investigation on scene.

LCPD Review Process

A supervisor conducted a use of force review per Department policy and found the officers’ actions to be reasonable. No further investigation was conducted.

Litigation Outcome and Demographics

The subject was charged with concealing his identity and fleeing/resisting/obstructing a peace officer.

The claim was dismissed.

The demographic summary of this case is:

- The Plaintiff is Hispanic.
- Three LCPD employees were named in this incident. All three are Hispanic. One is retired and two are current LCPD employees.
- This encounter occurred in zip code 88001.

Review & Recommendations

We have previously advised, and the Department agrees, that civil litigation serves as a valuable tool to identify and correct potential individual officer misconduct. While the Department did not initiate a formal Internal Affairs investigation, it did review the

³ It is unclear from the available body-worn camera footage if the subject lost consciousness, though he did appear to be unresponsive and limp. The claim reported that the subject was unconscious and suffered a “Level 1 traumatic injury.”

actions of the involved officers using its internal use of force review process; after reviewing the available evidence, including body-worn camera footage, photographs, and on-scene interviews with the involved officers, supervisors found the force used to be reasonable and that no further action was necessary. We found that analysis to be fair and sound, though reiterate our preference that the Department initiate an internal investigation of all claims upon notification of the claim (the Department has agreed to this going forward).

We did identify an area of risk that the Department did not meaningfully address in its review process: Officer 1's decision to engage in a foot pursuit – alone -- of (at the time of the pursuit) a petty misdemeanor subject who had merely evaded identification. This led us to request a copy of LCPD's formal foot pursuit policy, and we learned that the Department does not currently have one.

Foot pursuits are inherently risky and can present a number of officer safety concerns, especially when an officer is acting alone.⁴ While they are sometimes a necessary component of police work, foot pursuit policies advise officers to carefully weigh their own and the public's safety when determining whether a foot pursuit should be initiated or continued. Policies often state that, "immediate apprehension of a suspect is rarely more important than the safety of the public and department members," and asks officers to consider alternatives to engaging in foot pursuits, such as setting a perimeter for containment.

The Department shared that it trains officers in the tactical considerations that a policy might contain: officers are trained to provide a suspect description, location, and pertinent information such as if the suspect is armed; officers are advised to maintain a visual and wait for other resources to assist when practicable; and officers are trained to use other methods, such as drones or canine units, for successful apprehension. This is essential training.

We recommend that the Department formalize that training into policy. We provided LCPD with model policies, and two guidebooks (from the International Association of

⁴ For example, the subject being pursued determines the path of the pursuit, has a tactical advantage and can ambush the pursuing officer, particularly (as in this case) when an officer loses sight of the subject. A long foot pursuit also can leave an officer (who is weighed down by necessary gear on his or her belt) winded, and the exhaustion can compromise the officer's tactical skills and decision-making ability. The dynamic of a solo officer foot pursuit is also unsafe for the public and the subject being pursued, as the heightened sense of danger faced by officers in this scenario may cause the officer to mis-perceive potential threats.

Chiefs of Police and Stanford University Law School's Center for Racial Justice) for developing a comprehensive policy that balances officer and public safety with the occasional operational need to engage in foot pursuits.

RECOMMENDATION 1

LCPD should consider implementing a formal Foot Pursuit Policy that incorporates nationwide best practices as well as its own current training on the subject.

As it does with vehicle pursuits, we further recommend that the Department routinely and meaningfully assess officers' decisions to engage in foot pursuits against the inherent risk factors, and to assess whether there were safer, practicable alternatives for apprehending the subject. The Department should view cases such as this one as opportunities for training and reinforcing its expectation that officers will consider their own safety and the safety of others before engaging in potentially dangerous foot pursuits.

RECOMMENDATION 2

LCPD should meaningfully assess officers' decisions to engage in foot pursuits against the inherent risk factors, and to assess whether there were safer, practicable alternatives for apprehending the subject.

Management Response

The Las Cruces Police Department appreciates the thorough review conducted by the OIR Group.

Recommendations 1 & 2

Foot pursuits are significantly different than vehicle pursuits in the danger they pose to the public and should be treated differently. A foot pursuit does not pose the same risk of injury or death to our citizens that a vehicle pursuit poses. Although officers must quickly weigh the advantages and disadvantages of pursuing someone on foot, this

decision should be guided by training and does not require a separate policy. An important note about this specific case is that the suspect fled into an apartment that was not associated with him. Had the officers broken off the pursuit due to the initial level of crime, there would have been an elevated level of danger to anyone who was in the home the suspect invaded. There are deficiencies noted in this case that were addressed through training.

NOTE: In response, LCPD also provided OIR Group with detailed training materials related to foot pursuits, including the training curriculum for Advanced Patrol Tactics.



6510 Spring Street #613
Long Beach, CA 90815
323-821-0586
OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: March 28, 2024
RE: Review of Closed Litigation February 2024 - Case #4

Introduction

In its role as the City of Las Cruces' Independent Police Auditor, OIR Group reviews closed civil litigation against the city that involved Las Cruces Police Department and / or its officers. The intent is to use these matters as a vehicle for evaluating both the conduct of LCPD personnel in the underlying incidents and the effectiveness of any LCPD administrative response.

OIR Group received four cases from the City Attorney that were closed in this review period. OIR Group received files related to this case on February 28, 2024.

This fourth case involves a critical incident that occurred in 2022. As of the date of this memo, the Department's internal administrative investigation is still pending. In addition to reviewing closed litigation, our scope of work includes ensuring that the Department conducts thorough and complete investigations and that outcomes are fair and appropriate. As it has not yet completed its internal review process, we are unable to fully assess the investigative process and outcomes, despite the claim being closed.

As such, this memo provides a brief factual summary and demographics related to the claim. We will complete a formal review of this entire incident upon completion of the administrative investigation. LCPD reported that the review will be completed within this calendar year.

Factual Summary

This case stemmed from an LCPD supervisor's observations and call for service; while on patrol, the supervisor heard what he believed to be gunshots, and then observed a vehicle drive past him at a high rate of speed. Several bystanders directed the supervisor to a residence; meanwhile, a female contacted 9-1-1 stating that she had been shot. The supervisor entered a residence where he found the female who had multiple gunshot wounds. She provided the description of the subject and the supervisor issued a "Be on the Lookout" (BOLO) to officers.

Officer 1, a canine officer, located the subject's vehicle and conducted a vehicle stop. The subject stopped, exited his vehicle, and fired rounds from his firearm. Officer 1 exited his vehicle and fired six rounds in response. The subject fled. Officer 1 and other responding officers continued to follow. The subject eventually crashed his vehicle. Officers initiated a high-risk vehicle stop. When the subject exited his vehicle, Officer 1 deployed his police canine. The canine bit the subject. Officers apprehended the subject.

LCPD Review Process

The Officer-Involved Incident Task Force (OITF), LCPD detectives, and a LCPD Internal Affairs investigator responded to the scene to initiate their respective investigations of the incident.¹ The District Attorney determined that Officer 1 had not violated any criminal statutes. In the interim, the subject filed this claim.

As noted above, LCPD is still actively conducting an administrative investigation of the incident. We will provide a more detailed review of this case, the outcomes, and the review process when LCPD completes that investigation.

Litigation Outcome and Demographics

The subject was charged with shooting his wife (the female) and at officers and was sentenced to ten years. The involved parties settled the claim.

The demographic summary of this case is:

- The Plaintiff is Hispanic.

¹ For a detailed description of the OITF and the critical incident review process, please see our memo related to case 2020II-005 and our 5th Semi-Annual Report.

Agenda Item #3.2.

- Six LCPD employees were named in the claim. Five are white and one is Hispanic. One is retired, and the remaining five are current employees of LCPD.
- This encounter occurred in zip code 88001.

Management Response

The Las Cruces Police Department will provide a management response once the OIR Group reviews the completed administrative investigation.