

WORK SESSION AGENDA

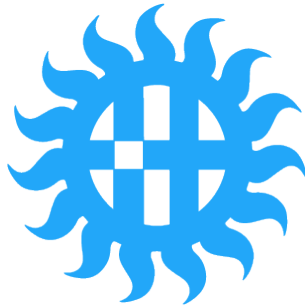
Monday, February 24, 2025 at 1:00 PM

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Eric Enriquez

Mayor Pro Tem
Johana Bencomo

Councilors
Cassie McClure
William Mattiace
Becki Graham
Becky Corran
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1. **JOBS OF THE WEEK**

2. **PETS OF THE WEEK**

3. **READ CLOSED MEETING STATEMENT FOR FEBRUARY 24, 2025.**

4. **AGENDA ITEM**

- 4.1. THE ALLIANCE FOR REGIONAL MILITARY SUPPORT (ARMS) UPDATE. 2

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- 4.2. 7TH SEMI-ANNUAL POLICE AUDIT REPORT PRESENTED BY THE OIR GROUP. 3 - 119

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Council Work Session Summary

Meeting: Work Session - Feb 24 2025

TITLE: THE ALLIANCE FOR REGIONAL MILITARY SUPPORT (ARMS) UPDATE.

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

ARMS is the Alliance for Regional Military Support. It is a non-profit 501 (c)6 organization whose sole mission is to support the three military installations in the region referred to as the TRIAD: White Sands Missile Range, Holloman Air Force Base, Fort Bliss and by extension William Beaumont Army Medical Center, and our adjoining communities of Las Cruces, Alamogordo, and El Paso. The focus areas are to grow the missions of each installation and to retain, attract and recruit defense-related industries to the region. The City entered into an agreement with ARMS in late 2020 to perform promotion and advocacy services; this will be the organization's second quarterly update to Council on its efforts.

COMMITTEE/BOARD REVIEW:

None



Council Work Session Summary

Meeting: Work Session - Feb 24 2025

TITLE: 7TH 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 Police Department internal affairs complaints.

SUPPORT INFORMATION:

[OIR Group Seventh LCPD FINAL REPORT w MEMOS- OIR Group LCPD Seventh Semi Annual Report - February 2025](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

Las Cruces Police Department

Seventh Semi-Annual Audit Report

February 24, 2025

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Introduction

OIR Group¹ is now in its fifth year serving as the Independent Police Auditor (IPA) for the City of Las Cruces.² In this capacity, we review investigations conducted by the Las Cruces Police Department (LCPD) into allegations of officer misconduct, whether initiated by members of the public or the Department itself. The foundation of our model is the access that we have to otherwise confidential files and records – including body-worn camera recordings. This transparency gives us the basis for making informed and independent judgments about LCPD's handling of these cases. We are then able to issue public reports that provide detailed information about allegations and outcomes (while remaining mindful of officer privacy rights).

Through our evaluations – and, where relevant, recommendations for systemic change – we hope to contribute to appropriate officer accountability in Las Cruces.

Additionally, we examine closed litigation involving LCPD officers to identify performance issues that could pose liability risks for the City and the Department. This component of our work offers both additional transparency and a vehicle for mitigating potential future risk with a focus on "lessons learned."

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 used by jurisdictions throughout the country.

This audit report – our seventh – presents our analysis of 20 Internal Affairs cases completed and closed by LCPD between July 1 and December 31, 2024. While detailed case memos are included in Appendix A, this report highlights key recommendations from our reviews of the entire case file, including all available body-worn camera footage, police reports, and other materials provided by LCPD.

In addition to conducting our standard audit functions during the second half of 2024, we also hosted our first Community Engagement session on August 26. The session, held in Council Chambers in City Hall, was well-attended by members of various community organizations, family members of those who had contacts with LCPD, general members of the public, and City staff. We provided an overview of our work and opened the forum to questions and discussion.

This latter part of the session was especially valuable. While we welcomed the opportunity to increase awareness of our role, the chance to hear directly from community members allowed us to see LCPD's work from other vantage points and thereby increase our understanding.

Attendees brought several different perspectives to our attention. Some described feeling frustrated by the lack of information available related to critical incidents (though some noted that the Department has made improvements more recently). We heard skepticism about the sufficiency of discipline and desire for more detailed access to case outcomes. Others pointed out the limits to our scope of work and wondered whether LCPD meets its notification and transparency requirements when dealing with us.³

We appreciate the community's level of engagement, the thoughtful questions, and the concerns that were raised. The insights we developed in the meeting have provided new context for our ongoing review of individual incidents and trends. We will host a second session after the presentation of this report to your Council on February 24, 2025, and we hope for comparable levels of participation and constructive dialogue.

³ We respected the question about LCPD cooperation but were pleased to note that over our years as the Auditor, we have not had reason to doubt the Department's willingness to meet the City's expectations regarding our access.

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 submitted by the Las Cruces public with allegations that may rise to the level of formal misconduct.⁴

As mentioned above, we reviewed twenty-on complaint cases in this period.⁵ In this period, we again saw improvement by LCPD in identifying, addressing, and, where appropriate, remediating misconduct at all levels.

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 As we anticipated in our last report, this count is higher than our previous average. This is partly because we “caught up” on cases completed by LCPD during our brief

LCPD framed and investigated 88 formal allegations against 33 LCPD employees across several rank levels.⁶ Of these, 71% (63) of the allegations were sustained; this higher percentage reflects the fact that most of these cases were generated *internally*, after the Department identified potential misconduct through supervisor reviews or officer/supervisor reports.⁷ The remaining were exonerated (17), unfounded (2), and not sustained (6).⁸

contractual pause in the first part of 2024, as well as the typical total for the rest of the calendar year. Our previous case counts are as follows:

Report 1, January 2022: 12

Report 2, June 2022: 16

Report 3, January 2023: 16

Report 4, June 2023: 10

Report 5, January 2024: 19

Report 6, August 2024: 8

⁶ At the time of the respective investigations, 20 were officers, one was a Lieutenant (since retired), four were detectives, four were sergeants, three were cadets (since dismissed) and one was an officer trainee. Two cases involved the same officer, who was eventually terminated.

⁷ In our experience across a number of jurisdictions, the dynamic of internally generated cases yielding more sustained findings is a common one, since the agency's own knowledge of its policies and the relevant facts give a significant "head start" to the investigative process. At the same time, the fact that LCPD itself opened significantly more investigations than came from the public complaint process seems noteworthy as a reflection of a commitment to accountability.

⁸ "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.

For those sustained allegations, the discipline ranged from a verbal reprimand to suspension days or termination. All discipline except termination was also 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 Department's findings for the 17 Internal Investigations and three external complaints.

Internal Investigations

We reviewed 17 Internal Investigations in this reporting period. Four of these involved use of the Taser device that we found did not meet the threshold for that force option, a topic that we have been tracking since the start of our engagement and discuss in more detail below. One involved an officer's response to a call for a person experiencing a mental health crisis, and how another employee responded to the person's distraught family.

One of these involved an officer's response during a traffic stop that may have involved driver impairment. Others involved issues of integrity, such as workplace harassment, cheating (among new recruits at the training academy), failure to investigate, or off-duty conduct unbecoming. Two cases involved the same subject officer, who has since been terminated by the Department.

These internally-generated complaints resulted in 70 unique allegations, most of which were sustained by the Department, including allegations of uses of force and unbecoming conduct. LCPD issued what we determined was the appropriate disciplinary outcome, which for continuing personnel always included directed training and/or counseling to prevent future similar actions. This is a clear indication that LCPD is committed to holding its employees accountable for misconduct, regardless of rank or tenure.

2022II-001⁹

Department-initiated administrative investigation of a call for service involving a person experiencing a behavioral health crises and officers' interactions with the family of that individual.

Officer 1	Code of Conduct	Sustained
Officer 1	Domestic Family Disturbances	Exonerated
Officer 1	Physical Arrests	Exonerated
Officer 1	Assisting Mentally Ill	Exonerated
Officer 1	Use of Force	Exonerated
Officer 2	Assisting Mentally Ill	Sustained
Officer 2	Use of Force	Sustained

2023II-010

Department-initiated administrative investigation into use of a Taser on a shoplifting subject that did not meet the threshold for use of this device.

Officer	Use of Force	Sustained
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2023II-015

Department-initiated administrative investigation into use of the Taser device on an arrested subject that a supervisor determined needed additional review. Ultimately, the Department found the use to be reasonable.

Officer	Use of Force	Exonerated
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2023II-016

A public complainant alleged an unsatisfactory investigation into her case, leading to additional allegations that triggered a Department-initiated administrative investigation.

Detective 1	Unsatisfactory Performance	Exonerated
Detective 1	Conduct Unbecoming	Exonerated
Detective 2	Unsatisfactory Performance	Exonerated
Detective 2	Conduct Unbecoming	Sustained

⁹ This case is related to a claim for damages. See Closed Litigation section below.

Detective 2	Failure to Notify	Sustained
Detective 2	Case Management	Sustained

2023II-020

Department-initiated administrative investigation of a vehicle pursuit and high-risk vehicle stop.

Sergeant 1	Vehicle Pursuit	Sustained
Sergeant 1	Vehicle Pursuit	Sustained
Sergeant 2	Vehicle Pursuit	Sustained
Sergeant 2	Vehicle Pursuit	Sustained
Officer	Vehicle Pursuit	Not Sustained

2023II-022

Department-initiated administrative investigation into an officer's off- and on-duty interactions with another officer.

Officer	Code of Conduct	Sustained
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2024II-001

Department-initiated administrative investigation into an officer's conduct toward a trespassing subject while responding to a call for service.

Officer	Conduct Unbecoming	Sustained
Officer	Conduct toward Public	Sustained

2024II-003

Department-initiated administrative investigation of a negligent discharge of a firearm during defensive tactics training.

Officer	Use of Force	Sustained
Detective	Use of Force	Sustained

2024II-004

Department-initiated administrative investigation of an officer's behavior while off-duty that resulted in a police call.

Detective	Off-duty misconduct	Sustained
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2024II-005

Department-initiated administrative investigation of a cadet's failure to properly report a "hit and run" accident that occurred in the parking lot.

Officer Trainee	Criminal Conduct	Sustained
Officer Trainee	Operation of Department Vehicles	Sustained
Officer Trainee	Damage to Department Property	Sustained

2024II-006

Department-initiated administrative investigation into a potentially unreasonable use of the Taser device during a call for service that also involved alleged domestic violence.

Officer	Use of Force	Sustained
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2024II-007

Department-initiated administrative investigation of a potentially unreasonable use of the Taser device during a call for service where officers did not have sufficient probable cause to enter a home (and, therefore, to use any force).

Officer	Domestic Family Disturbances	Sustained
Officer	Physical Arrests	Sustained
Officer	Physical Arrests	Sustained
Officer	Domestic Family Disturbances	Sustained
Officer	Use of Force	Sustained

2024II-008

Department-initiated administrative investigation into an officer's unauthorized use of the LCPD official patch alongside profanity.

Officer ¹⁰	Code of Conduct	Sustained
Officer	Code of Conduct	Sustained

¹⁰ This subject officer is the same as the subject officer in 2024II-001.

Officer	Code of Conduct	Unfounded
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2024II-009

Department-initiated administrative investigation into workplace harassment issues.

Sergeant	Discrimination/Harassment	Sustained
Officer 1	Discrimination/Harassment	Sustained
Officer 1	Conduct Unbecoming	Not sustained
Officer 2	Discrimination/Harassment	Sustained
Officer 2	Conduct Unbecoming	Not sustained
Officer 3	Conduct Unbecoming	Not sustained
Officer 4	Discrimination/Harassment	Sustained

2024II-010

Department-initiated administrative investigation into an officer's performance during a traffic stop.

Officer 1	Unsatisfactory Performance	Sustained
Officer 2	Truthfulness	Not sustained
Officer 2	Unsatisfactory Performance	Sustained

2024II-011¹¹

Department-initiated administrative investigation into allegations of workplace harassment and conduct unbecoming by a supervisory employee to a subordinate employee.

Lieutenant	Workplace harassment	Sustained
Lieutenant	Conduct Unbecoming	Sustained
Lieutenant	Work Rules	Sustained
Lieutenant	Work Rules	Not sustained
Lieutenant	Work Rules	Not sustained
Lieutenant	Work Rules	Sustained

¹¹ This case is related to a claim for damages. See Closed Litigation section, below.

2024II-014

Department-initiated administrative investigation of cadets cheating during Academy classes.

Officer 1	Supervisor Responsibilities	Sustained
Officer 1	Supervisor Responsibilities	Unfounded
Cadet 1	Academy rules	Sustained
Cadet 1	Academy rules	Sustained
Cadet 1	Academy rules	Sustained
Cadet 2	Academy rules	Sustained
Cadet 2	Academy rules	Sustained
Cadet 3	Academy rules	Sustained
Cadet 3	Academy rules	Sustained

External Complaints

We reviewed three Category 1 External Complaints, which are complaints made by members of the Las Cruces public with allegations that potentially constitute formal misconduct. All three of these cases resulted from dissatisfaction with aspects of calls for service.

The complaints generated 19 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 or submit reports. While many were exonerated or unfounded, several were sustained, and officers received the appropriate discipline accompanied by directed training.

2023EIC1-009

Public complaint resulting from an unsatisfactory response to a call for service, including allegations that officers were unprofessional and prevented the complainant from recording the interaction.

Sergeant	Code of Conduct	Exonerated
Sergeant	Rights of Onlookers	Exonerated
Sergeant	Investigations	Exonerated

Sergeant	CIS Call out Procedures	Exonerated
Officer 1	Code of Conduct	Exonerated
Officer 1	Rights of Onlooker	Exonerated
Officer 1	Investigations	Sustained
Officer 1	CIS Call out Procedures	Exonerated
Officer 1	Juvenile Crimes	Exonerated
Officer 2	Investigations	Sustained
Officer 2	CIS Call out Procedures	Exonerated
Officer 2	Juvenile Crimes	Sustained

2024EIC1-004

Public complaint resulting from mishandling of an arrestee's property.

Officer	Property/Evidence Mishandling	Sustained
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2024EIC1-005

Public complaint resulting from an unsatisfactory response to a call for service for a domestic disturbance.

Officer	Domestic Family Disturbances	Sustained
Officer	Domestic Family Disturbances	Sustained
Officer	Domestic Family Disturbances	Sustained
Officer	Police Reports	Sustained
Officer	Recording Devices	Sustained
Officer	Code of Conduct	Sustained

Additional Complaint Demographics

Our scope of work includes our providing additional demographics related to complaint cases, in order 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/Ethnicity

Most cases involved at least some interaction with a member of the public; since the start of our engagement, we have tracked the race/ethnicity of these individuals where their race/ethnicity was known. Across all cases over five years, we were able to identify the race/ethnicity of 60 complainants: 41% were identified as Hispanic, 23% were identified as White Alone, not Hispanic or Latino, and 6% were identified as Black.¹² In our basic statistical analysis using Census data for Las Cruces, these counts do not reflect a disproportionate frequency of any one race/ethnicity reporting misconduct or being the subject of incidents that may have involved misconduct.

We also track the race/ethnicity of Department employees. Here again, the race/ethnicity of Department employees who are the subjects of complaints reflect the general makeup of the Department: 64% are Hispanic, 29% are White Alone, and 5% are Black.

We did not identify any statistical outcomes that suggest that certain race/ethnicities of Department employees are engaged in misconduct to a disproportionate extent. Nor did we see a significant imbalance that suggested a racial/ethnic component as influencing the negative interactions that prompted complaints. (That is, for example, Hispanic members of the public are not more likely than non-Hispanic members of the public to have negative interactions with white officers).

¹² In some cases, the reporting or involved party was anonymous. In others, the case was initiated internally and did not involve a member of the public. And in a small number of situations, we were not able to determine the race/ethnicity of the complainant definitively.

Location

Our scope of work also requires that we catalogue the zip code of any incident to identify any trends by area or location. We have analyzed zip code statistics since the start of our engagement,

Since that time, most cases were listed as occurring in zip code 88001; this is the Department's address, often used as the address for any complaints that are internally generated, occur in Department facilities (e.g., training rooms, parking lot, or Academy) or that do not have an underlying call for service. The next highest case counts came from zip codes 88011, 88005, and 88012, respectively. However, after discussion with Department leadership, we have not identified any specific factors that might contribute to a higher complaint rate in these specific zip code.

Review of Closed Litigation

OIR Group also received files for two cases from the Las Cruces City Attorney that were closed during our review period. As we noted above, these cases each had a related administrative investigation. This is significant in our view. For purposes of internal accountability and potential systemic improvement, it is important for law enforcement agencies to look at litigation as a feedback loop that overlaps with the administrative complaint process in a key respect: it involves an allegation of shortcomings. Accordingly, it is good practice for an agency to conduct an internal review when assessing claims and lawsuits, and to conduct a formal investigation when warranted and when it has not already been done.

In previous reports, we identified challenges in how and when the City notified LCPD of claims that involved Department employees. LCPD and the City Attorney's Office established a notification protocol upon receipt of a claim so that LCPD can appropriately address the matter. This process has been effective, as evidenced by LCPD opening a concurrent administrative investigation for each claim this period. However, LCPD also expressed that the process could be further refined to include periodic updates on claims that are taking longer to resolve, such as those involving use of deadly force. We encourage the Department to continue working with the City Attorney's Office to establish regular update notifications as part of their protocol.

In this period, the two litigation matters involved a total of three claimants and two named LCPD employees. One case involved allegations of excessive use of force and unsatisfactory response to a call involving a call for service. The other involved workplace harassment concerns.

We evaluated the litigation outcomes within the memorandum prepared for the Internal Affairs administrative investigation (see memos for 2022II-001 and 2024II-011 in Appendix A).

Both cases were settled.

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

Agenda Item #4.2.

- Both named employees were Hispanic.
- According to LCPD, one employee retired during the pendency of this matter. The other remains employed.
- On the claimant side, two are Black and one is Hispanic.

Review, Findings & Recommendations

OIR Group has reviewed over one hundred of LCPD's complaint cases and nineteen closed civil claims to date. For each, we reviewed all evidence provided by LCPD and consulted with LCPD when necessary for clarification or research into potential recommendations.¹³ At the conclusion of our review, OIR Group submitted a memo for each case, and LCPD provided a Management Response.

The Department continues to be responsive to our recommendations, especially those related to its internal review mechanisms. In the past year, it has strengthened its investigative and review functions, including increasing staffing for Internal Affairs, working extensively with its Legal Advisor, and regularly referring cases to its Force Review Cadre. As we have reported in our past two Semi-Annual Reports, our recommendations now typically constitute process refinements rather than fundamental shifts. In this period, we made three such recommendations that build on previously identified themes.

- We identified continued challenges with framing allegations in complaint cases, an ongoing theme that we actively discuss with IA personnel. In one case, we noted that allegations were framed against some subject employees but not all. In another, not all the allegations made were captured in the investigation. (See 2023EIC1-009 and 2023II-016, respectively). Conversely, we identified some cases where allegations

¹³ 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.

seemed duplicative; for example, framing individual allegations for similar sub-sections of the same General Order, rather than framing one broader allegation that captured the alleged misconduct (e.g., framing allegations for several sub-sections of the Police Report General Order when an officer failed to submit a timely *and* complete report).

It is admittedly difficult at times to strike the right balance between allegations that are too broad to reflect the exact nature of alleged misconduct, and those that are too nuanced and become duplicative. We appreciate IA's continued commitment to this challenging component of investigations. We recommend that IA continue to work toward greater precision and clarity when choosing the specific policy sections that frame allegations of misconduct in administrative cases, and work with us at the onset of investigations to frame the most effective allegations. The goal is an approach that maximizes clarity and efficiency while ensuring that all relevant concerns are addressed.

- Similarly, we noted that the Department's review of use of force cases were oftentimes too-narrowly focused on the force itself at the expense of other important factors, such as use of de-escalation and other tactical considerations (see, for example, case 2022II-010). When the Use of Force Cadre began reviewing cases, we recommended that it review incidents more holistically, with the idea that tactics, training, equipment, supervision, and decision-making are all potentially relevant to the unfolding of a particular encounter. We also recommended that the related IA investigation also consider these tactical and "ancillary" concerns. Formally framing a broader set of allegations in force cases ensures both accurate accountability and informs any remedial/directed training topics.

To its credit, the Department enhanced its approach over the course of this audit cycle. For example, in case 2024II-007 the Cadre considered the entire incident, including the officer's limited use of de-escalation tactics, in making its final determination that the use of force was unreasonable. We also noted its careful analysis of the immediacy of the threat – a key factor in evaluating uses of force generally, and one that is specifically recognized in 10th Circuit case law. More generally, we noted that the Cadre's review form now includes section headers for de-escalation, mental health concerns, influence of drugs or alcohol, and the number and

size of subjects relative to officers – a practical enhancement to its process that ensures these important areas are specifically considered.

- In one case, we observed a delay in conducting interviews of involved personnel (see 2023EIC1-009). As we have said before, long delays in the process are sub-optimal for a number of reasons. One of those is that the recollection of participants can be understandably compromised by the passage of time. Moreover, any significant delay has an impact on both the complainant and involved officer who are awaiting a disposition. Finally, because most discipline is intended to be remedial, any such corrective action is delayed if there is a delay in the pace of the investigation. We are aware of staffing and workload challenges that contributed to a backlog in the Internal Affairs unit in 2023. And we are encouraged by the Department's recognition of the problem and recent efforts to rectify it.

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

Importance of Supervisors

We have commented in the past on the importance of effective line-level supervisors. In this period, we reviewed two cases where the supervisor played a major role – with mixed results. In one, an effective supervisor intervened to ensure the appropriate resolution of a domestic violence investigation. In the other, a supervisor's inability to direct a highly volatile situation escalated the incident and led to unfortunate (and unreasonable) uses of force.

Case 2023EIC1-005 exemplifies strong supervisor intervention. In this case, the supervisor, an expert in domestic violence, proactively intervened when she learned of the officer's investigative failures, provided coaching and

written instructions and guidance, and followed up several times to ensure that the officer was taking action. When the officer did not complete her instructions to Department standards, she appropriately notified Internal Affairs. This type of supervisory intervention is commendable.

Conversely, in case 2022II-001, while the responding supervisor initially appropriately directed the scene, ensuring that a subject who had been detained inappropriately was released, the supervisor then stepped back. He merely observed as the lead officer -- who was clearly causing the subject distress -- removed the subject from the vehicle and attempted to remove his handcuffs. Here, the supervisor could have directed other officers on scene to interact with the subject. Then, upon seeing the subject turn toward the lead officer, the supervisor used force on the subject instead of attempting any de-escalation. We noted that the supervisor's body (and that of another officer) was already between the subject and lead officer; there was no immediate threat or urgency. Here, the supervisor may have had time to slow down the incident, create distance, or otherwise defuse the situation. Finally, the supervisor failed to effectively communicate with involved family members, refusing to tell them where the subject would be taken before driving away from the scene.

As we noted in our memo regarding that case, the Department missed an opportunity to formally assess the actions of the supervisor on scene and provide any counseling or training deemed necessary. The Department has since remedied this misstep and continues to provide supervisory training on a regular basis.

Improvement in Domestic Disturbance and Civil Stand-By Calls

In our last several memos involving incidents of civil standby and domestic disturbance¹⁴ calls -- a category of complaint that has been prominent since

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

early in our engagement – we reported that Department employees seemed to show a better understanding of the Department's policies and procedures regarding these difficult calls for service, and that these outcomes reflected well on the Department's continued training and accountability. In this period, for example, we reviewed case 2024II-006, which involved a domestic family disturbance. In this case, officers kept the parties separate, obtained sufficient evidence to determine who was the victim and who was the perpetrator, arrested the subject, completed a Domestic Violence worksheet, and provided the victim information about obtaining a protective order or seeking additional assistance.

Against that promising backdrop, we also reviewed cases 2023EIC1-005 and 2022II-001, both of which involved officers who failed to properly respond to domestic disturbance calls. In 2023EIC1-005, an officer failed to investigate a domestic violence incident. The officer's shortcomings here were egregious – and even more glaring in light of the subsequent harms experienced by victims in this family. More encouragingly, though, the supervisor's concerted efforts at "course correction" (which we detailed above) and the Department's appropriately robust response to the misconduct are signs that the agency's leadership continues to prioritize this area of officer performance.

A counterexample from this cycle occurred with case 2022II-001. There, officers *and* their supervisors displayed a disappointing lack of professionalism and patience when dealing with a family experiencing crisis. We acknowledge, however, that the incident occurred in 2021 and well before the Department began actively addressing this area of concern.¹⁵

Overall, we remain optimistic that the Department's efforts in this area are paying off as we see fewer contemporary complaints related to this type of call for service.

¹⁵ The delay in our review was attributable to pending litigation that was settled in this audit cycle.

Uses of the Taser

After we and the Force Review Cadre identified challenges with use of the Taser device and gaps in its existing policy, the Department worked with its Legal Advisor to update **General Order 256: Conducted Electrical Weapons**, to comply fully with established case law and the best practices for Taser use. We were able to review the policy and provide recommendations, which the Department incorporated. We find that the updated version of **General Order 256** addresses many of the concerns identified in our case reviews and aligns with current case law. We anticipate that LCPD's focus on this issue will be reflected in officer decision-making and deployments going forward.

In the interim timeframe, however, we reviewed four cases involving uses of the Taser device: cases 2023II-010, 2023II-015, 2024II-006, and 2024II-007 each involved uses of the Taser device on subjects who we found did not meet the threshold for use of the device. To their credit, supervisors identified these concerning use cases and sent them through the chain of command for review and, when they determined necessary, corrective action.

While we identified nuances that could have improved the investigations of 2023II-010, 2024II-006 and 2024II-007, we ultimately found that these three investigations were thorough, fair, and reached an appropriate outcome. However, as we detail in our related memo, we respectfully disagreed with the Department's findings of "exonerated" in case 2023II-015. It is important to note that our primary role in this process is to ensure the legitimacy of LCPD's internal review – not to substitute our judgment for that of the decision-makers regarding ultimate determinations such as this one.

While we saw the ultimate outcome of that case differently than did the Department, we are heartened that LCPD's approach to the Taser as a force option is continuing to evolve. The policy update, recent trainings, and Department-wide briefings on the subject (which emphasize the 10th Circuit's legal requirements for justified use) are positive developments that we expect will strengthen future performance. And we continue to endorse and commend the Department's implementation of the Force Review Cadre as an added mechanism for thoughtful review in this important arena.

Next Steps

Over the past five years as the Independent Police Auditor (IPA) for the City of Las Cruces, we have collaborated with the Department to enhance transparency and accountability. Through detailed reviews of Internal Affairs cases, litigation outcomes, and community feedback, we have identified areas of improvement and provided actionable recommendations to refine LCPD's investigative processes, training, and policies.

Our review of the 20 cases during this reporting period demonstrates continued progress by LCPD in addressing misconduct effectively and implementing appropriate corrective actions. The Department's willingness to adopt policy updates, expand training, and prioritize supervision highlights its commitment to accountability and professionalism. Notably, advancements such as updates to the Taser policy, holistic reviews of use-of-force incidents, and consistent supervisory training reflect meaningful improvements.

While challenges remain, particularly in framing allegations, we are encouraged by LCPD's receptiveness to our feedback and its proactive efforts to strengthen internal mechanisms. As we prepare for the assessment period, we remain dedicated to contributing to LCPD's culture of accountability and continuous improvement.

Community engagement is a new focus of our work, and we value the input and concerns raised by Las Cruces residents during our August 2024 session. These conversations have reinforced the importance of maintaining open communication, addressing public frustrations about transparency, and expanding the scope of oversight where necessary.

OIR Group appreciates the opportunity to serve as an independent voice in this critical work and looks forward to ongoing collaboration with LCPD, City leadership, and the Las Cruces community.

Appendix A: OIR Group Case Memos



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Long Beach, CA 90815
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OIRGroup.com

TO: City of Las Cruces
FROM: OIR Group
DATE: September 10, 2024
RE: Review of Administrative Investigation – #2022II-001 and Closed
Litigation D-307-CV-2023-00231

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 classified as an Internal Investigation (II) and investigated by Internal Affairs.

OIR Group initially received the above-referenced case file on March 16, 2023. Upon submitting our case review memo, we learned that a related civil litigation matter, D-307-CV-2023-00231, was still open, and the City requested that we hold our review until the matter was closed. On August 26, 2024, we received the closed case file from the City Attorney's Office.

Case Summary

This case was initiated by the Department upon receipt of a Tort Claim File notice. The claim alleged that the City of Las Cruces wrongly sent police officers instead of mental health care professionals to the underlying call for service (a suicidal subject). The

claim also alleged that one officer did not have probable cause to arrest the subject's father, that the officers did not have probable cause to arrest the subject, and that tactics used during the subject's arrest caused the subject physical injury.

The investigation memo stated that, at the direction of command staff, this investigation would focus only on the father's arrest and the detention, release, and subsequent arrest of the subject.¹

The incident occurred when a reporting party called 9-1-1 to report that his brother, the subject, was intoxicated and threatening to commit suicide. The brother reported that the subject (an adult Black male), was likely at their mother's residence. LCPD Officers 1 and 2 responded to the mother's residence for a "suicidal subject" call.

When they arrived, Officer 1 contacted the mother while Officer 2 went to the side of the house to locate the subject. During the conversation between Officer 1 and the mother, the father arrived. The father said, "I don't want you guys beating on him just because he's drunk." Officer 1 advised that they were there to help.

The father became upset and told Officer 1 to "get the f* off my property" while waving his arms. Officer 1 again said, "we came to help" as the mother said, "calm down." The father again told Officer 1 to leave. The father then aggressively commanded the mother to get inside while moving toward her; the mother put out her arm to stop the father. Officer 1 said, "don't push her or you're gonna get charged." The father clapped his hands aggressively, moved behind the mother, and walked toward the front door away from the mother and Officer 1.

Officer 1 grabbed the father's right arm and placed the father's arms behind his back. Officer 2 arrived and assisted in handcuffing the father. Officer 1 stated that he would not allow the father to "lift a hand" against the mother, especially in front of the officers. The father and mother protested, saying he did not touch the mother. As they walked toward the police vehicle, the father said that the officers could "beat [him] all [they] wanted." Officer 1 requested a supervisor as the officers placed the father in the police vehicle.

Meanwhile, the subject's brother (the reporting party) and his wife arrived. The brother said the subject had an argument with their father and was suicidal. The mother, upset at the father's arrest, said she did not want to give information to the officers. Officer 1 said that they had paramedics "down the street" waiting for the officers to call them in.

¹ LCPD also opened a Supervisory Matter ("SM") for this incident, which addressed minor issues such as the officer's report-writing and body-worn camera-related deficiencies. We requested and reviewed that case file for informational purposes, but did not formally review it as that case classification is not in our scope of work.

The brother, who was very emotional, spoke to the officers about the subject's past suicidal ideations.

Officer 1 advised that the father would be taken to jail for Assault on a Household Member. The mother repeatedly protested, stating that the father had not pushed her or even touched her. Officer 1 insisted that, legally, he could not release the father. Officer 1 offered to show the everyone present his body-worn camera footage to support his arrest, but ultimately did not do so.

Additional officers arrived at the scene.

Officer 1 then explained that they would continue to search for the subject with the goal of placing him on a 72-hour hold. At some point, a family member contacted the subject and told him that his father had been arrested.

When the mother continued to question the father's arrest, Officer 1 said that the way the father "came yelling at us for us just being here, that's not right."

Meanwhile, Officer 2 entered his police vehicle to transport the father to jail. When he had driven less than a block, he observed the subject walking back to the residence on the sidewalk. The subject was carrying a plastic bag in his left hand, a wallet in his right hand and was walking at a regular pace. Officer 2 activated his overhead lights, stopped the vehicle, and exited. Officer 2 called for Officer 1 to assist him.

Officer 2 instructed the subject to walk toward him; the subject did not, and continued walking toward his residence, stating that he had not done anything wrong.

Officer 2 stated that the subject did not "have a choice" because the subject was suicidal. The subject responded that he was not suicidal. Officer 2 rapidly closed the distance and grabbed the subject's right arm at the elbow, turning the subject toward him. The subject, surprised, stated, "I haven't done nothin'!" Officer 2 then grabbed the subject's right wrist and upper arm as the subject continued to verbally protest, "Stop grabbing me!"

Officer 1 approached and grabbed the subject's left arm. The subject, squirming against the officer's grip, repeated that he was not doing anything. While holding the subject, the officers instructed the subject to "relax" because they just wanted to talk to him. The subject repeatedly asked to be let go. Officers responded, "we're not letting you go."

The brother ran over to intervene. Officer 1 drew his Taser and pointed it at the brother. The brother raised his hands (as if in surrender) and moved back. The subject said, "are you serious?" and moved his body between Officer 1 and his brother. Officer 1 said, "you're gonna get Tased" as he placed his Taser directly on the subject's chest,

and then, "I'm dead serious," as he moved the Taser to the subject's upper back/armpit area. The officers handcuffed the subject and Officer 1 holstered his Taser.

The family approached again, asking why the officers were doing this. Officer 1 repeated, "we're trying to help," as the officers moved the uncooperative subject toward the police vehicle.

Once at the police vehicle, Officers 1 and 2 started to search the subject. Officer 1 attempted to take the subject's wallet from his hands as the subject yelled, "Stop trying to hurt me!" The subject requested that Officer 2 take over. To Officer 2, the subject said, "You're really gonna support this, bro?" The subject eventually sat in the police vehicle. He was heard cursing and then yelling that he was going to throw up. He refused to respond to the officers' questions regarding his mental state.

Meanwhile, additional officers, including a supervisor, responded.

The family, now very upset, cursed at Officer 1 but remained at a distance. The subject's sister-in-law informed an officer that the subject was prone to panic attacks and asked for him to be transported to a hospital. An officer called for an ambulance response.

Officer 1 informed the supervisor that the subject had resisted. The supervisor directed Officer 1 to release the subject. While other officers looked on, Officer 1 removed the subject from the police vehicle and removed the handcuffs as the subject, now even more agitated, cursed at the officer.

The subject walked away, but then turned around and began walking toward the officers, cursing and yelling at Officer 1. The supervisor and another officer stepped between the subject and Officer 1. The subject turned back toward his family at the curb and, while turning, raised his right arm. The supervisor moved to grab the arm, and his momentum carried himself and the subject to the ground. The supervisor, Officer 1, and another officer handcuffed the subject as the subject yelled that his shoulder and wrist were injured. After a brief struggle, the subject sat in the police vehicle.

Officer 1 transported the subject to the hospital. While en route, the subject tried to engage with Officer 1. Officer 1 eventually responded, "You're a grown ass man, you make your own decisions" and "Don't make excuses for your decisions" and "You're a grown ass man and look how you're acting." The subject laughed, saying, "This is the suicidal call [and] this is what you get." Officer 1 responded, "It stopped being a suicide call when you started committing crimes, man, plain and simple."

At the hospital, the subject refused treatment. He was transported to the jail, where he was booked.

Meanwhile, Officer 2 returned to his police vehicle and transported the father. During transport, the father passed out in the rear of the police vehicle and fell to the floorboard; Officer 2 pulled over to check on his welfare. The father mumbled that he had high blood pressure. Officer 2 stated that he had to take the father to the hospital, but the father refused, asking to just be taken to jail. Another officer arrived. The officers called for paramedics to respond to the location.

When paramedics arrived, the father again refused treatment and remained slumped over in the seat. The paramedics left without providing aid. The officers determined that, because the father was uncooperative and refusing medical aid, they would take the father directly to jail. Once at jail, Officer 2 added a second set of handcuffs to offer more comfort.

Litigation Outcome and Demographics

Our scope of work related to closed litigation claims requires that we provide the outcome of the litigation and a demographic summary of the case. In this case, all charges against both father and subject were eventually dismissed. The father filed a civil claim against the City, which was recently settled by the involved parties.

The demographic summary of this case is:

- The Plaintiff is Black.
- One LCPD employee was named in the claim; that employee is Hispanic and no longer employed by LCPD.
- This encounter occurred in zip code 88005.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's Internal Affairs conducted a formal investigation and framed allegations against the involved employees as follows:

1. **General Order 103.05 (A)(B) – Code of Conduct.** The Department alleged that Officer 1 violated this general order when he was initially speaking with the mother and father.

LCPD sustained this allegation based on their review of the body-worn camera footage, which showed Officer 1's demeanor and tone to be argumentative. The Department concluded that Officer 1's tone "was not conducive to solving this emotional situation."

2. **General Order 203.03 (A)(1) – Domestic Family Disturbances – Enforcement Action.** The Department alleged that Officer 1 violated this order when Officer 1 arrested the father without probable cause.

LCPD exonerated this allegation, stating that Officer 1, after witnessing the father's behavior (aggressive hand gesture, close proximity, yelled commands) and observing the mother's response (flinching, attempt to create space), reasonably believed that a misdemeanor (assault on household member) had occurred. The Department also concluded that Officer 1's choice to arrest was in "good faith" and "without malice."

3. **General Order 231.03 – Physical Arrests – Authority to Arrest.** The Department alleged that Officer 1 violated this order when he arrested the subject after the subject had been released from police custody.

LCPD exonerated this allegation, stating that the subject's actions met the criteria for "Assault upon a Peace Officer" when the subject turned toward the officers and walked forward with clenched fists, cursing and waving his arms. Officer 1 and surrounding officers, including a supervisor, believed that an assault of Officer 1 was imminent.

4. **General Order 245.05 – Assisting the Mentally Ill.** The Department alleged that Officer 2 violated this general order when he detained the subject to conduct an emergency mental health evaluation, and that Officer 1 violated this order when he assisted Officer 2 in detaining the subject.

LCPD sustained this allegation for Officer 2, stating that, at the time he first detained the subject, the subject did not meet the criteria for an emergency evaluation / detention: the subject was not inherently dangerous at that moment, had no visible weapons, had not committed a crime in the officer's presence, and expressed that he did not consent to be detained.

LCPD exonerated this allegation for Officer 1, stating that Officer 1 arrived after Officer 2 had detained the subject to provide assistance, and that Officer 1 did not know the circumstances of the detention.

5. **General Order 255.02 (A)(1) – Use of Force.** The Department alleged that Officers 1 and 2 violated this general order when they used force on the subject to detain him initially.

The Department sustained this allegation against Officer 2, stating that any force used during an unlawful detention is unreasonable.

The Department exonerated this allegation against Officer 1, arguing that Officer 1 was acting on the assumption that Officer 2 had made a lawful detention. His force, including displaying the Taser, was therefore evaluated on its own terms as reasonable to effectuate the detention.

The Department stated that the force used to subsequently arrest the subject (after he had been released and became aggressive) was reasonable.

Outcome: Discipline or Other Action

After reviewing the officers' personnel files, LCPD took the following actions:

- For the single sustained allegation against Officer 1, LCPD issued discipline and directed training in general communication skills and de-escalation.
- For the two sustained allegations against Officer 2, LCPD issued discipline commensurate with his level of involvement and policy violations. LCPD also directed training in **General Order 245: Assisting the Mentally Ill** and Officer 2 attended the Department's formal Search and Seizure training.

OIR Group Review

LCPD provided OIR Group with the case file. OIR Group reviewed all documents and digital evidence in the case file, including the Use of Force Review conducted by the

Department's Force Review Cadre.² Where the Department identified and assessed the officers' actions, we found the investigation to be thorough.

However, in our original review of the administrative case, we identified potential misconduct that was *not* investigated by the Department and issues that were not framed as formal allegations.³ Specifically, we were concerned that the Department:

- Had not sufficiently assessed the supervisor's and Officers 1 and 2's failures to effectively use de-escalation tactics, which we found heightened tensions in the exact ways the de-escalation policy is meant to forestall;
- Had not fully assessed Officer 1's "show of force" when he unholstered and threatened to use his Taser against the subject and the subject's brother;
- Determined that Officer 1 should be exonerated for the father's arrest because Officer 1 had acted "in good faith,"⁴ rather than relying on the available evidence (which we found better supported a finding of Not Sustained for violation of **General Order 203.03 (A)(1) – Domestic Family Disturbances – Enforcement Action**, a minor but important distinction); and
- Had not fully assessed its officers' response to what was originally a mental health crisis call for service.

² When we first received the case in March of 2023, LCPD had just established the Force Review Cadre. This case was our first opportunity to review their evaluation. At that time, we noted that their review was particularly thoughtful and detailed, and distinctly more thorough than previous force assessments that we had seen.

³ In discussions regarding our observations in March of 2023, LCPD reported that these "missing" matters were considered but never formally investigated. At the direction of command staff, the investigative scope was limited to the enforcement actions of Officers 1 and 2. Supervisors were directed to *informally* address the incident's broader issues with the involved officers.

⁴ It is not particularly clear if the circumstances of this incident meet the criteria for Assault Against a Household Member. The father was upset, waved his hands aggressively, and yelled at the mother in close proximity to her person, causing the mother to extend her arm and verbally question his behavior. But he then moved away and toward his home, a sign that he was departing the immediate vicinity and did not intend to engage further with the mother or officers. The criteria for Assault Against a Household Member requires that the household member "reasonably believe that [she] is in danger of receiving an immediate battery." In our review, the evidence may not support that the mother was at risk of immediate battery.

At the time of our initial work in responding to this case (March 2023), our then-draft made several recommendations to address these concerns, including that LCPD's investigations should explicitly consider use of de-escalation tactics and shows of force, and frame all relevant allegations. We discussed the challenges of addressing calls involving Domestic Family Disturbances and how the Department might better train officers to respond. We outlined what we perceived to be missteps in how the officers handled the mental health component of this call for service.

Since that time, the Department has made improvements in all of these areas. As we have recently reported, their Force Review Cadre's investigations now consider incidents more holistically, including careful analysis of de-escalation tactics and shows of force. IA investigators are more practiced in framing the appropriate allegations. And the Department has conducted more training on responding to calls involving mental health crisis and Domestic Family Disturbances: LCPD reported that this incident and others since that time resulted in internal evaluation of several aspects of public safety, including their role in responding to mental health calls. LCPD has held numerous formal and informal training sessions on each of these topics.

Most importantly, our review of more recent cases shows that the Department is more regularly holding officers accountable for any performance shortcomings in these areas. As such, while we continue to monitor these areas, we are cautiously optimistic that we will continue to see improvements – a perspective we are happy to acknowledge in this updated draft.

Two areas of consideration remain. First, we noted concerns with the subject's transport in this case, an issue that we have now noted in two other cases (see 2021EIC1-006 and, more recently, 2024II-006). Here, Officer 1, an officer significantly involved in the incident, transported the reportedly suicidal subject. Unsurprisingly, considering all that had occurred, the subject was intent on engaging with the officer in counter-productive ways. We are hopeful that LCPD will evaluate the feasibility of having an involved officer transport the subject as we previously recommended.

Finally, we identified a missed opportunity to evaluate the on-scene supervisor's performance. The responding supervisor arrived after the reportedly suicidal subject was initially detained; he appropriately directed release of the subject. However, the supervisor then did not effectively direct the remainder of a volatile situation. He watched as Officer 1, who was clearly causing the subject distress, removed the subject from the vehicle and attempted to remove his handcuffs. Here, the supervisor could

have directed other officers on scene to interact with the subject and removed Officers 1 and 2 from the immediate area.

Then, upon seeing the subject turn toward Officer 1, the supervisor used force on the subject instead of attempting any de-escalation. We noted that the supervisor's body (and that of another officer) was already between the subject and Officer 1. Here, the supervisor may have had time to slow down the incident, create distance, or otherwise diffuse the situation. Finally, the supervisor failed to appropriately communicate with the family, refusing to tell them where the subject would be taken before driving away from the scene.⁵

Here, the Department missed an opportunity to formally assess the actions of the supervisor on scene and provide any counseling or training deemed necessary.

RECOMMENDATION 1

LCPD should formally evaluate supervisor performance on scene and, when warranted, provide any counseling or training deemed necessary.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. We agree with this recommendation. Since this incident, there has been significant investment in supervisor training and mentorship. We will continue that investment.

⁵ The family asked the supervisor where the officers were taking the subject. The supervisor refused to respond, saying that the subject was an adult.



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TO: City of Las Cruces
FROM: OIR Group
DATE: June 20, 2024
RE: Review of Administrative Investigation – #2023II-010

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 use of force that the Force Review Cadre found to be unreasonable, and was investigated by Internal Affairs.

OIR Group received the case file on June 12, 2024.

Case Summary

An LCPD officer responded to a retail store to assist a Loss Prevention employee with a detained shoplifting subject. As the officer, Loss Prevention employee, and subject walked toward the Loss Prevention office, the subject began to argue and use profanity. The officer unholstered his Taser, pointed the Taser's laser sights at the subject, and stated that he would put the subject in handcuffs if the subject did not enter the office. The subject argued and taunted the officer, but moved into the office and toward a chair to sit down.

The officer instructed the subject to sit down on a bench in the office, not the chair. The subject became angrier, claiming that the officer was disrespecting him and asserting

that he was the officer's "boss." While yelling, he turned away from the officer and moved toward the bench. Without warning, the officer deployed his Taser, which struck the subject in the back and caused him to fall onto the bench and then to the ground onto his back. The officer instructed the subject to turn around, warning that he would use the Taser again if the subject did not comply. The subject complied and was handcuffed.

A second officer arrived and took control of the subject, telling the subject to take deep breaths as the subject continued to yell that he had not shoplifted. A supervisor arrived and initiated an on-scene use of force investigation. Paramedics arrived and medically cleared the subject.

The subject initially requested to be taken to the hospital, and later stated that he just wanted to be taken to jail. When they arrived at the jail, staff refused to book the subject without medical clearance from the hospital because of the use of the Taser. The officer transported the subject to the hospital, where he was medically cleared, and returned to the jail. The subject was booked for "Resisting, Evading, and Obstructing" and Shoplifting.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

Upon review of this incident, LCPD supervisors referred this case to the Force Review Cadre for their evaluation. The Force Review Cadre conducted an analysis and determined that the use of force – the Taser deployment – was unreasonable because the subject's actions did not meet the threshold for Taser use specifically and force generally. The Cadre also noted that the body-worn camera did not support the officer's Incident Report narrative, in which the officer described the subject having clenched fists and "sizing [him] up." Finally, the Cadre concluded that the body-worn camera footage did not support a charge of "Resisting, Evading, and Obstructing."

Because of these determinations, the case was routed to Internal Affairs for a formal internal investigation.¹ LCPD framed one allegation against the officer as follows:

¹ We discussed the intersection of the Force Review Cadre and Internal Affairs in our most recent Semi-Annual Review (March 2024) and were pleased to see that the Cadre's "unreasonable" determination triggered an Internal Affairs investigation of this case as the process intended.

1. **General Order 255.01 – Use of Force: Graham v. Connor.** This policy section outlines the factors that must be present for an officer to use force against a subject. Based on the Force Review Cadre's evaluation, review of surveillance footage from the retail store, and an administrative interview with the officer, the investigation determined that the totality of the circumstances did not meet those factors for use of the Taser specifically or force generally. The allegation was "sustained."

Outcome: Discipline or Other Action

The Department reviewed the officer's personnel history. To determine a fair disciplinary action consistent with those issued in the past, the Department also reviewed all discipline issued for similar sustained allegations over the last two years.² Using this information, 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, including the Force Review Cadre's memo and all video footage. While we concur with the determination and disciplinary outcome in this case, we identified areas that were not addressed by either the Force Review Cadre or the subsequent Internal Affairs investigation. We found that the investigation (both by the Cadre and IA), focused too narrowly on one section of General Order 255 - the legal factors necessary to use force – and did not evaluate other important considerations related to the use of force.

The first is de-escalation, which officers shall consider prior to using force per General Order 255 and the Department's extensive training. In our review of the evidence, we noted that the officer did not seem to attempt any meaningful de-escalation tactics despite having time and space to do so. In his Incident Report and administrative interview, the officer stated that the subject was verbally aggressive and that he felt that the subject would become physically combative or attempt to run, but these factors were not provided as a rationale for his failure to attempt de-escalation. The

² In the past, we noted concern with the Department's "philosophy of discipline" (see, for example, our memos related to cases 2021II-013 and -016); namely, that disciplinary outcomes appeared to be inconsistent across cases. But we have seen much improvement in this area; as such, we commend the Department for its careful assessment to ensure that this disciplinary outcome was fair and consistent.

investigation did not explore this topic, and LCPD did not frame a formal allegation regarding the officer's seeming failure to meet this important expectation.

A second relevant policy requirement is the issuing of a verbal warning prior to using force when feasible. In this case, the officer did not issue a verbal warning that he would use the Taser prior to deploying it. The officer did initially unholster and point the Taser's laser sights at the subject, which gained the subject's initial compliance. While this may have suggested to the subject that the Taser might be used, a show of force is not a substitute for an explicit verbal warning. In fact, a warning alone may gain compliance: we noted that the officer's later warning that the Taser would be used again was sufficient to gain the subject's compliance for handcuffing. Here again, the Cadre review and subsequent IA investigation did not address this topic formally.

We continue to encourage the Force Review Cadre to consider "use of force" more holistically, beyond the literal use of force itself, to include the use of de-escalation tactics, verbal warnings, and other considerations listed in General Order 255. Interestingly, these areas were part of the remedial training provided to the officer, indicating that the Department recognized these concerns and addressed them, despite not formally documenting them in the investigative process. While this is a commendable result of the process, we maintain that framing formal allegations is an important component of accountability and documentation, as we have discussed in previous memos and our August 2022 Semi-Annual Report.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. The use of force cadre exists to determine whether or not a particular use of force is reasonable. Additional concerns, like de-escalation attempts, should be framed as part of the internal investigation. When the internal affairs investigator receives the use of force report from the cadre, they will look beyond their findings when framing the allegations for the internal investigation. We will work to continue improving the thoroughness of our investigations.



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TO: City of Las Cruces
FROM: OIR Group
DATE: August 23, 2024
RE: Review of Administrative Investigation – #2023II-015

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 to provide additional administrative scrutiny of a specific use of force that had occurred several months earlier. We received it on July 25, 2024.

Case Summary

This incident stemmed from the felony traffic stop of a vehicle that was reportedly connected to a recent "aggravated burglary" that included the stealing of automatic weapons. A field training officer ("FTO") riding with his trainee in a patrol car recognized the car's description from a briefing, and made the stop. After backup officers arrived, the FTO orchestrated the removal of the three occupants by calling them out one by one. The female driver and male front seat passenger both cooperated with instructions. They walked to the officers and complied with directions that led to their being handcuffed and placed in separate police cars. The back seat passenger was next.

This individual, an adult male who was larger than the officers, was initially semi-cooperative, but was clearly unhappy with being detained and believed that his status as a mere passenger meant that he was entitled to greater rights and latitude. Along

with repeatedly stating his disagreement with being detained, he struggled mildly against handcuffing, and his physical resistance increased as officers attempted to seat him in the rear of an unoccupied police car.

At one point, four officers surrounded the man and worked to physically guide him into the car while giving commands that were ignored. One of the four removed his Taser, gave warnings, and proceeded to "drive stun"¹ the man in the back of one leg. Later review determined that there were two drive-stun deployments that, combined, lasted less than two seconds. At that point, the other officers were able to effectuate the seating of the man through the door of the police vehicle.

Several months later, the case was considered for the first time by the new "Use of Force Cadre," a panel of subject matter experts from within the Department to whom the Chief refers certain incidents for additional scrutiny.² After assessing the totality of the circumstances and looking at the available evidence (including police reports and body-worn camera recordings), the Cadre issued an opinion that the use of the taser was "unreasonable." This was based on the panel's application of case law and Department policy to the facts of the incident.

As a result of this outcome, the case was referred for an investigation by Internal Affairs and potential disciplinary consequences.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD evaluated the officer's compliance with the following policy section.

- 1. General Order 256.02 (E)(2) Conducted Energy Weapon:** This subsection of the Department's Taser policy lists specific types of person on whom the weapon

¹ The drive stun is an alternate method of administering conducted energy with a Taser in order to overcome resistance. In contrast with the standard "probe" deployment – in which darts connected to wires are released from the weapon (and are meant to create a spread of contacts between which immobilizing current can travel) – a drive stun is essentially a form of pain compliance that is achieved through direct contact of the weapon with the person's body.

² We have discussed the Cadre concept – which we consider to be a valuable addition to the Department's internal review processes, in a number of previous reports.

"should *generally* not be used" [emphasis added]. The list includes "a handcuffed or secured prisoner that is resisting/refusing to enter a police vehicle." In spite of the relevance of this section, the Department concluded that the circumstances of this case constituted an exception to the general discouragement.

Accordingly, the officer was "exonerated" of the allegation of misconduct.

Outcome: Discipline or Other Action

Due to the analysis and outcome, no further action resulted from the investigation.

OIR Group Review

We received the body-worn camera recordings, documentation, and investigative interviews that comprised the record in this case. (This included interviews with two witness officers as well as the subject officer.) We found the investigation to be appropriately thorough. At the same time, we take this opportunity to make a couple of additional observations.

The first and most glaring concern regarding this investigation related to the timeline: nearly two years passed between the incident and the final resolution of the review and investigative processes. We need not belabor our past focus on the importance of timeliness in these matters: the current LCPD leadership has agreed with us regarding this point on several occasions and, more importantly, has taken concrete steps to address older matters and improve efficiencies within the Internal Affairs unit. But one of the fundamental purposes of the discipline process is to assess performance issues for the sake of future effectiveness as well as accountability. That component is especially relevant when the use of physical force is at issue.

Secondly, our own assessment of the evidence was more aligned with the Use of Force Cadre's initial determination that the force was "unreasonable."³ After review of the case memo and further discussion with LCPD leadership, we understand how the

³ Beyond this, we again express our concern with use of the Taser device for drive-stun, which is currently permitted for pain compliance per the Department's policy. In various memos and discussions with Department leadership, we have recommended that LCPD reconsider this use of the Taser device. Please see cases 2021EIC1-025, "Closed Litigation – February 2024 – Case #1" and the discussion in our Second Semi-Annual Report. We remain cautiously optimistic that the Department's Taser policy updates will reflect our perspective and prohibit drive-stun as a pain compliance tool.

Department came to its conclusion of “exonerated.” However, while recognizing that the decision-making was principled, we continue to respectfully disagree.

The administrative investigation's different outcome seemed to hinge on the idea that there was an exigency that justified the use of the drive stun to gain the compliance of a handcuffed subject who was physically surrounded by three other officers. Specifically, the case memo cited the officer's later explanation that the suspect vehicle had yet to be completely cleared. This meant that other occupants might still be inside (though not visible) – a concern that was purportedly intensified by the idea that stolen guns were reported in the underlying crime that the car was associated with. The longer the officers were occupied by their efforts to get the resistant subject into the car, the longer they were away from cover and therefore vulnerable.

While this is plausible in theory, the reliance on *speculative* threat to establish exigency is deserving of close scrutiny as to its reasonableness. Here, the extended visual surveillance of the stopped vehicle (in daylight) had not suggested the existence of another occupant; moreover, there was at least one other officer who was not occupied by the subject and thus was in a position to monitor the car and provide cover. Importantly, the Use of Force Cadre also considered the relevance of the exigency argument and found it unpersuasive in light of the evidence available to it.⁴

Our primary role in this process is to ensure the legitimacy of LCPD's internal review – not to substitute our judgment for that of the decision-makers with regard to ultimate determinations such as this one. Here, we recognize that the uncertainty cited by the officer had a colorable basis in fact, thus making the analysis more complex (and debatable) than it otherwise would be. We note also that the deployment itself was controlled, accompanied by a warning, and very brief in nature, with no indication of malice on the part of the officer. However, the question of whether the use corresponded to the current legal and policy standards for a justified Taser deployment still gives us pause.⁵

While we saw the ultimate outcome of this case differently than did the Department, it is important to note that LCPD's approach to the Taser as a force option is continuing to

⁴ It should be noted that the Cadre's initial finding did not include the more detailed explanation offered by the officer in the context of his administrative interview.

⁵ The Cadre's emphasis was on the "objective reasonableness" of the deployment as applied to the "totality of circumstances" factors articulated by the U.S. Supreme Court in its landmark *Graham v. Connor* decision (1989). The administrative investigation focused instead on the narrower question of whether there was an applicable exception to General Order 256.02's stated discouragement of Taser use on a handcuffed individual.

evolve. Its recent briefings on the subject (which emphasize the 10th Circuit's stringent requirements for justified use), as well as its current re-visiting of relevant agency policy, are positive developments that we expect to strengthen future performance. And we continue to endorse and commend the Department's implementation of the Use of Force Cadre as an added mechanism for thoughtful review in this important arena.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. The use of a Taser generally occurs under tense, uncertain, and rapidly evolving circumstances. These decisions often have to be made in split seconds. A combination of professional legal training and evidence-based scenarios ensures officers make the best decisions possible in these instances.



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TO: City of Las Cruces
FROM: OIR Group
DATE: July 9, 2024
RE: Review of Administrative Investigation – #2023II-016

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 elevated to a formal Internal Affairs investigation.

OIR Group received the case file in March of 2024.¹

Case Summary

A young woman who had come to the Department alleging sexual assault wrote a letter to the Chief of Police several months after the incident. She was disappointed in the progress of the criminal investigation and expressed concerns about different aspects of LCPD's involvement. These included a lack of responsiveness from the lead detective ("Detective 1") in the case, and an episode in which she said that a supervisor to whom she had spoken about the incident "blamed" her for her own handling of the alleged

¹ In April 2024, OIR Group was requested to briefly suspend our reviews so that our contract with the City could be updated. As such, we paused review of this case until advised by the City to resume in June.

assault's aftermath (which had included a week's delay before getting the relevant medical exam). She was also concerned to have learned that a third LCPD member, a detective with whom she had some personal acquaintance ("Detective 2"), had been involved in the investigation – including participating in the voluntary interview of the alleged perpetrator.

After receiving the letter, the Department conducted further outreach with the complainant to get more information about her concerns. She was able to provide text messages that showed her communications with Detective 2, whom she thought might have a conflict of interest. Some of these related to the alleged assault, and occurred prior to her coming forward with her allegations, but Detective 2 had not brought the matter to the Department's official attention.

Based on issues identified in its initial review, the Department moved forward with a full formal investigation.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The Department framed allegations against the two detectives whom the complainant had cited in her letter to the Chief. Several potentially relevant policy sections were identified for each:

General Order 103.01 (A): Unsatisfactory Performance. This is a broad category that relates to several different potential shortcomings by employees. Here, it was applied to the question of whether Detective 1's investigative efforts had met standard expectations. Having reviewed the case record and interviewed Detective 1 about the complainant's specific concerns, the Department found that Detective 1 had shown appropriate due diligence (including a timely presentation of available evidence to the District Attorney's Office for filing consideration), and the allegation was resolved as "Exonerated."

The same section was applied to Detective 2, specifically in regard to whether the text messages from the complainant about the alleged crime had created an obligation for Detective 2 to take formal action. The Department determined that, based on the limited available information and the complainant's own apparent indecision about coming forward, that Detective 2 had not violated policy in this way, and the allegation was resolved as "Exonerated."

General Order 103.05 (B): Conduct toward the Public. This policy provision related to the issue of whether Detective 1 was appropriately "responsive and attentive" to the complainant over the course of the investigation. The facts showed that Detective 1 contacted/responded to the complainant at numerous stages, and that the criminal case had reached a point where no updates were applicable. The allegation was accordingly resolved as "Exonerated."

General Order 103.07(A) Notices to Department of Certain Activities Required and **General Order 103.28 (A)(B): Conduct Unbecoming:** These two policies applied to the established failure by Detective 2 to notify Department leadership or his partner of his personal connection to the complainant (and, by extension, the criminal case) once he had become aware of it. This not only violated a specific notification requirement (103.07 (A)), but also tended to discredit the Department's reputation by potential compromising the efficacy of an investigation into alleged criminal behavior (which implicated sections 103.28 (A) and (B)). The accused party's status as a member of another law enforcement agency (thereby implicating suspicions of biased treatment) added to this concern.

Both were "Sustained."

General Order 215.06(D)(1)(a) Investigations – Case Management: This section was added as an "ancillary issue" by the Department based on information that emerged during the administrative review: specifically, it was learned that Detective 2 had not completed written reports in conjunction with his involvement in the case. Instead, he had decided to simply rely on the body-worn camera recording of his interview with the alleged perpetrator as the documentation of his work. This was found to be insufficient, and the allegation was "Sustained."

Outcome: Discipline or Other Action

Detective # 1 was exonerated of any allegations of misconduct. Detective # 2 received a formal disciplinary consequence for his sustained violations. In deciding on the appropriate sanction, the Department appropriately considered his past history of sustained misconduct; although there were several past violations in his record, they were for unrelated issues.

OIR Group Review

LCPD provided OIR Group with the case file for review of the available evidence. This included administrative interviews of the officers who had been named in the complaint letter.

The file established that the handling detective had done an appropriately thorough job with the investigation, and had taken various steps to pursue evidence related to the complainant's allegations of what had occurred.² We accordingly concurred with the finding that Detective 1 had met expectations and had not violated policy.

Detective 2's failure to provide appropriate notifications regarding his familiarity with the complainant was also established by the evidence – and plainly acknowledged as a mistake during his subject interview. His justification for having participated in the moment primarily related to not wanting to leave his partner without needed backup for the interview with the accused person. This was plausible (if ultimately ill-advised), but certainly should have been accompanied by the subsequent disclosure that was never made. While his involvement with the case was minimal and did not appear detrimental, the Department's recognition of the problem – and the resultant accountability – were certainly warranted.

We also commend a practice we have cited approvingly in the past, which is the addition of allegations by the Department itself when the investigative process reveals issues that go beyond the specifics of the complaint. Here, the lack of a formal report by Detective 2 compounded the shortcomings in his performance, as was rightfully captured in the review.

One apparent limitation to the Department's investigation was treating the involved supervisor as a witness rather than a subject. The complainant's letter to the Chief expressly named an interaction with that person as a source of her disappointment in LCPD's handling of her allegations and her experience as a survivor of sexual assault.

The case memo here makes clear reference to the allegation, and the file appropriately includes the body-worn camera recording of the complainant's relevant meeting with the

² Significant among the complainant's articulated concerns was the long delay without action being taken in terms of a prosecution. The administrative investigation established that the case had been submitted for consideration on an appropriate timeline; the handling prosecutor accepted responsibility for the delay. The case was eventually declined.

supervisor. As a substantive matter, the supervisor's conduct in the 20-minute conversation seemed reasonable and professional to us (including those statements to which the complainant took exception). Nonetheless, a specific framing and consideration of the allegation in the case memo was seemingly warranted and should have occurred.

We raised this concern in several recent memos (see for example 2023II-010 and our August 2022 Semi-Annual Report) and again here urge the Department to formally address all relevant allegations within a complaint.

RECOMMENDATION 1

The LCPD investigative process and case memo should include and address all relevant allegations within a complaint.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. In this case, the involved supervisor's actions were conclusively exonerated during the preliminary investigation. The video of the interaction clearly shows that a violation of policy did not occur; however, the allegation should have been discussed in the investigative memo. We will address this issue in future investigations.



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TO: City of Las Cruces
FROM: OIR Group
DATE: August 21, 2024
RE: Review of Administrative Investigation – #2023II-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 generated by a supervisory review of a vehicle pursuit that ended in a Precision Immobilization Technique (PIT) maneuver.¹ We received it on July 25, 2024.

Case Summary

While on patrol around midnight, a supervisor observed a vehicle that lacked operable taillights and was speeding and swerving. The supervisor believed that the driver was possibly driving while intoxicated (DWI). When the supervisor initiated a traffic stop by activating his lights and sirens, the driver of the vehicle initially appeared to be pulling over. But the driver then fled, reaching speeds of up to 80 miles per hour (MPH) on residential streets, running several red lights and swerving into medians.

A second unit joined the pursuit and took over broadcasting the subject's actions and direction of travel. The supervisor attempted two PIT maneuvers, but these were unsuccessful in stalling the vehicle. When the vehicle briefly slowed down to turn, the

¹ A PIT aims to stop a fleeing vehicle by deliberately striking it in such a way that it spins abruptly, thereby stalling the engine.

supervisor attempted another PIT maneuver. This time, it was successful: the subject's vehicle struck a curb and stopped. The subject's vehicle sustained significant damage.

Officers conducted a high-risk vehicle stop. The driver and a passenger, who both had outstanding felony warrants, were taken into custody without further issue. Both denied being under the influence, and the driver stated that she fled because she was scared. Both were taken to the hospital for medical clearance.

After the pursuit, the supervisors and officers on scene discussed whether the pursuit required a report to the City's Risk Management unit. They determined that the damage to the police vehicle was minimal and did not require reporting. None documented the damage to the subject's vehicle in their police reports.

A supervisor reviewed the pursuit in its entirety as required by policy and authored a Pursuit Review memorandum. The supervisor determined that, while the initiation of the pursuit was appropriate, the pursuit should have been terminated as soon as the driver began to engage in high-risk driving behavior, such as high speeds on surface streets. This supervisor determined that the pursuit was unreasonable and out of policy. The pursuit was then referred to Internal Affairs for a formal internal investigation.

During their administrative interviews, the supervisors reported that they had not understood the requirement to report *subject* vehicle damage in their police reports or to Risk Management; they understood that the policy required reporting only significant damage to police (fleet) vehicles. They also reported that they had recently attended a training regarding "apprehension of DWI subjects for public safety," during which they believed that they had been instructed to pursue possibly DWI subjects.²

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed various allegations against the three involved personnel.

² In the administrative memo, LCPD clarified that while the training did suggest that officers should seek to apprehend DWI subjects for public safety, it also advised that officers should pursue DWI subjects only ***if the pursuit met the requirements of LCPD's policy*** and the New Mexico Safe Pursuit Act (a statewide law that specifies the criteria for vehicle pursuits that must be incorporated into every law enforcement agency's formal vehicle pursuit policy to ensure safe standards across the state).

1. **General Order 208.02 – Vehicle Pursuits.** This policy outlines the reasons for initiating a vehicle pursuit and the risk factors that officers must consider when choosing to continue a pursuit. LCPD framed this allegation against the supervisor who initiated the pursuit and the officer who joined as the second unit. LCPD sustained the allegation against the supervisor, finding that he chose to continue to pursue when the risk of the driver's actions outweighed the benefits of apprehending her. LCPD found the allegation to be "not sustained" against the officer; LCPD determined that the officer was following the direction of two supervisors and did not have the authority to command the pursuit (or terminate it).
2. **General Order 208.6 – Vehicle Pursuits – Damage.** This section defines the procedures that must be taken following a vehicle pursuit, which include reporting all damage sustained from a vehicle pursuit to any involved vehicle, including the subject's vehicle, in a police report and submitting paperwork to the City's Risk Management unit. The Department framed one allegation against each supervisor and sustained them, finding that the supervisors did not follow the appropriate reporting procedures when they decided that the incident did not require a report to Risk Management and did not detail the damage to the subject's vehicle in their police reports.
3. **General Order 208.14 – Vehicle Pursuits – Supervisor Duties.** This policy section defines the responsibilities of the pursuit supervisor. The Department framed and sustained one allegation against the supervisor who was monitoring and directing the pursuit, finding that the supervisor failed to appropriately direct that the involved units terminate the pursuit when it became unsafe.

Outcome: Discipline or Other Action

The Department evaluated the supervisors' personnel history and considered their responses during their administrative interviews (that they had misunderstood the reporting requirements and the recent DWI pursuit training). The Department issued discipline to both. The Department also provided each with directed training regarding the reporting requirements and the pursuit policy.

The Department also noted that there appeared to be general confusion regarding vehicle pursuits and provided Department-wide online training on "reasonable versus unreasonable" pursuits, the Safe Pursuit Act, and the LCPD pursuit policy. The

Department trained all supervisors in their specific responsibilities to monitor and terminate pursuits. Finally, the Department noted that officers and supervisors all had challenges with pursuit-related report writing and suggested delivering training specific for these types of reports.

OIR Group Review

Vehicle pursuits, which we have previously reviewed in Las Cruces³ and review regularly in other jurisdictions we audit, are a challenging component of law enforcement's operations: as this case illustrated, there is an inherent tension between effective apprehension of subjects and the risk of pursuits. The determination of whether an incident meets the criteria for a pursuit can be nuanced and requires quick decision-making in real-time by both officers and their supervisors. Accordingly, the likelihood that standards will be misapplied by officers and supervisors is often greater than for other policy requirements.

In this specific case, we found the investigation to be thorough and to carefully weigh the supervisors' decision-making against LCPD's policy. We found the outcomes to be appropriate and constructive, both for the involved supervisors and Department-wide.⁴ As we have commented in the past, we commend the Department for having a robust Pursuit Review process at the supervisory level to assess these often-high-risk activities with an appropriate accountability response when appropriate.

And while this memo was focused on the pursuit itself, our review of body-worn camera footage showed that the supervisor and officers on scene conducted an effective high-risk vehicle stop after the pursuit ended which included clear communication with each other, clear and loud commands to subjects in the vehicle and careful tactical positioning. Similar to pursuits, high-risk vehicle stops can be challenging, but LCPD showed effective tactical command of this portion of the incident.

³ Early in our tenure as Las Cruces' IPA, we reviewed two Vehicle Pursuit cases: 2021VP-004 and 2021VP-006, both of which were found to be in policy. Since that time, we have reviewed one other out of policy vehicle pursuit case, 2023II-001, and cases that involved vehicle pursuits (see, for example, 2021II-017).

⁴ The decision to re-visit training on this topic was particularly beneficial here, especially considering the supervisors' confusion as to recent guidance on DWI suspects. Adapting to new "data points" (rather than simply assuming that recent training has been fully digested) is a commendable response that not all agencies employ.

LCPD Management Response

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



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TO: City of Las Cruces
FROM: OIR Group
DATE: July 1, 2024
RE: Review of Administrative Investigation – #2023II-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 initiated when Department leadership learned of a verbal altercation between two LCPD officers. It was investigated by Internal Affairs.

OIR Group received the case file on June 21, 2024.

Case Summary

In September of 2023, while on duty and in uniform, an LCPD officer responded to a school to deal with an administrative matter regarding his child. When school personnel learned that he would be arriving, they requested that a School Resource Officer (SRO) respond to assist because the officer had allegedly been discourteous or threatening in previous encounters with school staff.¹

When the officer arrived, the SRO opened the locked front door and requested that the officer walk in front of him. The two engaged in a back-and-forth argument over who

¹ In this memo we will refer to the subject officer as "officer" and the SRO as "SRO."

would walk first during which the officer used profanity. Then, when the SRO held another door open for the officer, the officer responded rudely. The officer, SRO and school administrator entered the school administrator's office. During that conversation, the officer remained standing when others were seated, wore his sunglasses, and interrupted the school administrator, all of which the school administrator found to be discourteous.

The SRO contacted his supervisor to report the interaction. The following day, the officer's supervisors called the officer in to review the body-worn camera footage recorded by the SRO. They warned the officer about his professionalism, respectful interactions, and tending to personal duties while on duty in uniform. A Supervisory Matter memorandum was written and routed for review to Internal Affairs.² When Internal Affairs read the Supervisory Matter memo, they determined that this should be a formal investigation because the officer's actions rose to the level of misconduct.

During the investigation, LCPD learned that there had been a prior complaint from school personnel regarding the officer that had never been formally addressed: in March of 2023, school personnel alleged that, during a meeting regarding his child, the officer placed his hand on his gun, demanded information, and was rude to school staff. School personnel had considered filing a trespassing warning against the officer. The SRO and an LCPD supervisor had offered both to file a formal complaint and issue the trespass warning. But according to LCPD command staff who spoke at length with the school administrators, school personnel changed their minds.

During his administrative interview, the officer denied the allegations about his previous encounter with the school personnel.

With respect to tending to personal matters while in uniform and on duty, the officer acknowledged that he did not request permission from a supervisor when he should have. He was contrite and presented compelling arguments for why he did so. He also reported that he discussed this with his supervisors after the incident.

² A "Supervisory Matter" (SM) is a supervisory-level internal review mechanism by which to track any performance deficiencies identified by the Department but that do not rise to the level of formal misconduct. These traditionally result in some form of non-disciplinary remedial action for the subject officer, such as a training referral, or informal counseling / debrief, and are documented in a memo that is routed to Internal Affairs for review and filing in the officer's personnel file.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

As noted above, LCPD initially handled this matter as a Supervisory Matter, and resolved by a review of video evidence and informal counseling. But, to its credit, Internal Affairs noted that the identified issues rose to the level of misconduct and initiated a formal investigation.³ LCPD framed one allegation against the officer as follows:

1. **General Order 103.04 – Code of Conduct – General Standards.** This policy section requires that officers conduct their personal and professional lives in a manner that reflects well on the Department, and that employees treat each other and the public with respect. Based on the investigation, the Department found that, while in uniform and on duty, the officer was disrespectful to his colleague (the SRO) and rude to the school administrator. These actions reflected poorly on the officer and on the Department as a whole. The allegation was "sustained."

Outcome: Discipline or Other Action

The Department reviewed the officer's personnel history and took the appropriate disciplinary and remedial actions.

OIR Group Review

LCPD provided OIR Group the case file for review of the available evidence. We commend the investigator for interviewing all possible witnesses and collecting all available evidence. And while we concur with the ultimate outcome in this case, we identified two areas where we found that IA could have been more thorough and complete, and also noted a possible conflict of interest worth addressing.

We found that the investigation could have been more thorough and complete as it related to framing allegations for *all* potential misconduct. We noted, for example, that

³ By routing Supervisory Matter memos through Internal Affairs, LCPD adds an important level of checks and balances that translated to effective issue-spotting here. In our Fourth Semi-Annual Report, we noted that LCPD had significantly improved its documentation of deficiencies by requiring that supervisors write SM memos and submit them for IA review; this case suggests that the process is working as intended.

the investigator did not frame an allegation regarding the involved the officer tending to personal matters while on duty and in uniform. The investigator discussed these concerns in his administrative interview and, as we noted above, the officer provided a series of extenuating circumstances and was appropriately contrite. And the officer's supervisors discussed the matter with him the following day.

But even if LCPD had decided to exonerate this allegation because of the officer's explanations and the informal counseling from supervisors, framing formal allegations is an important component of accountability and documentation. We highlighted the importance of fully framing all allegations in a very recent memo (see 2023II-010) and in various past reports (see, for example, August 2022 Semi-Annual Report). Here, the evaluation of the incident as a whole (above its initial status as a Supervisory Matter) meant that capturing all the identified issues would have made for a complete and more accurate package.

We also noted a missed opportunity to informally counsel the officer on his actions during the March 2023 incident with school personnel. We acknowledge that there were different versions and perceptions of what had occurred on that day. Regardless, when the incident was brought to LCPD supervisors' attention, LCPD could have used it as an opportunity to intervene and correct the officer's behavior in early 2023.

Finally, we noted a potential conflict of interest: the supervisor who reviewed the officer's personnel file and made disciplinary recommendations was also interviewed as a witness in this case, based on her interactions with the officer at the initial "Supervisory Matter" stage of the complaint review. While we found the supervisor's disciplinary recommendation to be thorough and fair, it would have been more appropriate for an uninvolved supervisor to take on this task.

RECOMMENDATION 1

Whenever it is reasonably practical to do so, LCPD should request that an uninvolved supervisor conduct the disciplinary review and recommendation process.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group and agrees with this recommendation.



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TO: City of Las Cruces
FROM: OIR Group
DATE: August 15, 2024
RE: Review of Administrative Investigation – #2023II-015

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 to provide additional administrative scrutiny of a specific use of force that had occurred several months earlier. We received it on July 25, 2024.

Case Summary

While addressing concerns about an officer who had been placed on administrative leave for another incident, the Department learned about an encounter in which this same officer had allegedly engaged inappropriately with a male subject. It decided to open a separate investigation for this case.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed two allegations against the officer.

1. **General Order 103.5 – Conduct toward the Public:** This policy establishes the baseline expectations for officer engagement with members of the public, and emphasizes the importance of respect, patience, controlled tempers, and appropriate language. This allegation was "Sustained."
2. **General Order 103.28 - Conduct Unbecoming:** This policy outlines the Department's expectations for officer conduct both on and off duty. Specifically, it restricts any conduct that may bring discredit upon the officer and the Department. This allegation was also "Sustained."

Outcome: Discipline or Other Action

This was one of three administrative investigations conducted against this officer within the same several months. For this specific case, the Department issued a significant disciplinary consequence that was later superseded by his separation from employment as a result of another matter.

OIR Group Review

We received the body-worn camera recordings, documentation, and investigative interviews that comprised the record in this case. We found the investigation to be appropriately thorough, and we agreed with the Department's determinations.

Once the issue had come to the Department's attention, the investigation itself was relatively straightforward: the body-worn camera recordings of the officers established that the problematic statements had in fact been made. Though the exchange was brief and the officer had wisely stepped away to let his partners handle further

communication¹, it was clear that he had lost his composure in a way that reflected poorly on himself and the agency. He acknowledged as much in his interview. He explained that he was very upset by the male subject's racially tinged hostility toward the partner officer, but had no excuse for his response to that provocation. As for the reference to gang affiliation, the officer explained that his own upbringing and family connections had familiarized him with the group that he named. He denied being a member of it; again, though, the statement was clearly inappropriate.

Our one additional question about the incident – and the Department's investigation of it – related to the long delay before it was identified and addressed. We wondered about the partner officers and whether they had had an unmet obligation to bring the matter to the attention of supervisors at the time it initially transpired.

The Department did address this issue in the investigation, which included interviews not only with each of the three officers who had also been on scene for the encounter but also the supervisor of their unit. The peer officers described being mindful of anger management issues that were emerging in the subject officer's behavior more broadly. One in particular described being troubled by the encounter; he said they had spoken to their partner in the immediate aftermath of this incident and counseled him not to react so aggressively. It was apparently part of a larger pattern of behavior that the peer officers thought merited attention.

None of them claimed to have notified the supervisor about this specific episode, but one did say he mentioned it afterward in a more general conversation about the subject officer's anger management issues. He claimed the supervisor stated he was aware; another of the witness officers also mentioned the supervisor's having made reference to recognizing the need to talk to the subject officer about the problem.

Unfortunately, the supervisor himself did not corroborate this. He did not recall being approached by one of the officers on the team, and said that the knowledge of possible temper issues that he did possess did not lead him to actively intervene, since he trusted the officer's intelligence and had not personally witnessed problematic behavior.

This was somewhat troubling. While the differing accounts of notification/awareness can fairly be chalked up to sincere disparities in recollection, the supervisor's acknowledged familiarity with *some* related concern was presumably enough to "err on the side of caution" and engage with the officer.

¹ One of the partner officers made a commendable effort to interpose himself into the confrontation for purposes of de-escalation.

Dealing with a fellow officer's misconduct is recognized as one of law enforcement's genuine challenges. The officers here did make some efforts in response to the concerns implicated by the incident (particularly in the moment)², and we understand the decision to limit the disciplinary focus here to the main party.

At the same time, though, the case offers a reminder about the importance of prioritizing the larger issues of the "duty to intervene" and proactive supervision. We hope LCPD used it as a vehicle for assessing whether its expectations were met here, and are being met more generally.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. The LCPD has continued to prioritize duty to intervene training and a culture that encourages compliance with the principles taught in those trainings. Fortunately, we have seen multiple examples in the recent past where officers intervened in appropriate and commendable ways. This incident was ultimately brought to our attention by the officers involved, and that triggered the internal investigation, although the delay was certainly not optimal.

² One of the three was especially conscientious in a way that we found creditable.



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TO: City of Las Cruces
FROM: OIR Group
DATE: July 26, 2024
RE: Review of Administrative Investigation – #2024II-003

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 the negligent discharge of a firearm inside a police training facility. We received it on July 1, 2024.

Case Summary

This incident occurred during a break at a training for new LCPD hires that was related to defensive tactics. One of the instructors – an LCPD patrol officer – was looking at the duty weapon of a colleague (a detective also serving as an instructor) that had been brought into the "mat room" where some of the day's program was happening. While the participants were on break, the officer picked up the weapon, was curious about the model, and spent some time inspecting it. Not realizing the weapon was loaded, the officer pulled the trigger and sent a round through the wall of the training room and into a park outside. The officer and others went out to ensure that no one had been struck; then a supervisor was notified. A memo about the incident was prepared for the Chief, and an Internal Affairs investigation was generated.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

Both the officer who fired the round and the detective whose gun had been involved were named as subjects of the investigation.

General Order 143.15 – Firearms Use: This policy includes various components that set forth the obligation of employees to ensure firearm safety and security at all times. The allegation was "Sustained" against both of the named Department members: the shooting officer for his negligent discharge and the detective for his decision to unholster his weapon and leave it in an accessible open area of the training room.

Outcome: Discipline or Other Action

The disciplinary history of both employees was taken into consideration as a precursor to choosing corrective measures. Both had prior policy violations, but none related to the issue in this case. The officer who fired the round received a formal consequence, while the detective's sanction was lower level in nature.

OIR Group Review

For obvious reasons, negligent discharges are worthy of careful attention from law enforcement agencies. LCPD certainly provided that in this case, with a fast and efficient investigation that determined exactly what had happened and why. It seemed noteworthy (and appropriate) that the investigation encompassed both officers, and attributed responsibility for what happened to each of them for different reasons.

Both officers (who were interviewed separately by Internal Affairs and who declined to have a representative present), were candid in acknowledging what they had done.

We found the investigation to be appropriately thorough, and we concurred with the findings and disciplinary outcomes.

LCPD Management Response

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



6510 Spring Street #613
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TO: City of Las Cruces
FROM: OIR Group
DATE: September 18, 2024
RE: Review of Administrative Investigation – #2024II-004

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 Department management after an LCPD detective became involved in an off-duty incident with possible criminal implications. We received it on August 20, 2024.

Case Summary

LCPD involvement in this matter began with a call for service involving a social gathering at a private residence that devolved into a brief physical confrontation between two male attendees – one of whom was an off-duty LCPD detective. The incident occurred in Las Cruces, and a Department supervisor responded to conduct a criminal investigation that extended over a few days as multiple statements from involved parties (including the detective himself) were gathered.

The accounts were essentially the same. In the late stages of a party where there had been drinking, the LCPD member had come into the dining room where a man and two women were seated at a table. He asked the man (whom he apparently did not know) a question that seemed to provoke him, and the man stood. That prompted the LCPD

member to take off his own jacket and prepare for a possible physical encounter. He ended up pushing the man once in the chest, which caused the other person to fall back into a seated position. The two were separated at that point by other attendees.¹ The LCPD member then left the party prior to police arriving (and without realizing they were being called).

The Department eventually submitted a misdemeanor criminal charge of battery to the Las Cruces Municipal Court, with the detective as the suspect. The City ultimately declined to prosecute and dismissed the case.

LCPD opened an administrative investigation regarding the same issues.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD's administrative case focused on the physical contact and whether it constituted a violation of policy. The specific allegation at issue was **General Order 103.08 (A) Criminal Conduct Prohibited**, and the review focused on whether the evidence established that an assault and/or a battery under New Mexico law had occurred.

The detective gave consistent statements in both the criminal and administrative investigations: a detailed version of events that explained his behavior as a reaction to the unreasonable hostility that the other man had suddenly begun directing at him. He described the physical contact that he initiated as being an open-handed push that was defensive in nature, and surmised that the man had only fallen back into a seated position because of intoxication.

While this account was given credence in the review, the Department also found that the detective's other actions – especially his decision to "close distance" in response to the other person's seeming antagonism – had technically satisfied the definition for a misdemeanor assault. Accordingly, the allegation was sustained.

¹ The detective alleged that the other man's wife had responded by swinging a fist at him.

Outcome: Discipline or Other Action

The detective received a formal disciplinary consequence for his actions. There were very few administrative investigations in his prior employment history, none of which were related to the allegation here.

OIR Group Review

We received the reports, and other documents from the underlying criminal case, and reviewed the lengthy administrative interview that the Department conducted with the subject officer. The matter appears to have been taken seriously and addressed appropriately.

Off-duty conduct can be challenging to regulate, especially in the context of encounters that seem low-level in nature. LCPD's showed a willingness here to pursue the matter, present findings for deliberation in the criminal justice system, and then move forward with administrative accountability. Its handling reflected an important philosophy of taking such accusations seriously and not "playing favorites" when its personnel clash with civilians.

LCPD Management Response

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



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TO: City of Las Cruces
FROM: OIR Group
DATE: August 19, 2024
RE: Review of Administrative Investigation – #2024II-005

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 learning of a "hit-and-run" traffic collision in the Public Safety Complex parking lot. We received it on July 19, 2024.

Case Summary

While on patrol, an officer noticed minor damage to his police vehicle, notified his supervisor, and filed a police report. Based on his past assignment as a crash reconstruction expert, he believed that the damage likely resulted from being struck by another fleet vehicle with a "push-guard bumper," possibly in the LCPD fleet parking lot.¹ Supervisors reviewed surveillance footage from the lot. From the footage, they were able to determine that a trainee officer had struck the officer's vehicle while attempting to park his own police vehicle, and Internal Affairs opened an internal investigation.

¹ A push-guard bumper is a set of rails affixed to the front bumper of most police vehicles to allow the car to be used as a battering ram for simple structures or fences, or to push disabled vehicles off the road.

During his administrative interview, the trainee officer admitted to the crash and said that he had not reported it to either his training officer or other LCPD supervisors because he was new to the field training program and was afraid of getting into trouble. He stated that he knew he should have reported it, was contrite, and took responsibility for his actions.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed three allegations against the trainee officer.

1. **General Order 103.08 – Criminal Conduct Prohibited:** This policy prohibits officers from engaging in criminal acts. The investigation determined that the trainee officer knowingly engaged in a “hit-and-run” collision, and the allegation was "Sustained."
2. **General Order 119.01 – Operation of Department Operated Vehicles:** This policy outlines the Department's expectations for safe operation of Department owned vehicles. The investigation determined that the trainee officer did not engage in safe driving behavior, and the allegation was "Sustained."
3. **General Order 121.01 – Damage to Department Property:** This policy states that officers are to immediately report any damage to Department property to their on-duty supervisor and ensure that any necessary investigation occurs. The investigation determined that the trainee officer did not report the vehicle damage, and the allegation was "Sustained."

Outcome: Discipline or Other Action

The Department evaluated the trainee officer's very limited personnel history and his performance in the training program. The Department also considered that the trainee had been truthful, cooperative, and contrite throughout the investigative process. The Department issued discipline commensurate with the sustained allegations.

OIR Group Review

We found the investigation to be thorough and concur with the findings. We especially appreciated the careful analysis in the Disciplinary Recommendation memo. In that memo, the supervisor noted that this type of sustained allegation (specifically, criminal conduct) has resulted in significant discipline, including termination, in the past. Here, the supervisor noted that in determining the appropriate outcome, he balanced the trainee officer's potential value to the Department against his poor decision-making, and recommended discipline that would send a clear message while also allowing the trainee an opportunity for rehabilitation. This was, in our view, an appropriate outcome.

LCPD Management Response

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



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TO: City of Las Cruces
FROM: OIR Group
DATE: September 6, 2024
RE: Review of Administrative Investigation – #2024II-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 was initiated by Department management after a supervisor flagged a potentially unreasonable use of the Taser during a call for service. We received it on August 12, 2024.

Case Summary

Two LCPD officers responded to a call for service regarding a potential domestic family disturbance and met a female outside. She reported that her adult son – the subject - had pushed her, struck her in the face, and tried to strangle her; she showed injuries consistent with this account.

The officers entered the female's apartment and contacted the subject in a dark bedroom. At the officers' request, the subject moved out onto the apartment's front porch. After observing that the subject had injuries on his hand consistent with striking someone, officers asked the son to provide his side of the story. The subject stated that he had struck his dog and made other irrelevant statements. The subject then turned, entered the apartment and tried to close the door; officers took his arm, handcuffed him, and informed him that he was being detained while they finished their investigation. He sat on the curb while officers again tried to get his side of the story, but the subject was

not cooperative. After several minutes of trying to interrogate the subject with no success, officers decided to arrest him for battery on a household member.

When they attempted to move him into the rear seat of the police vehicle, the subject pushed against the doorframe and turned toward the officers, who repeated commands to get in the vehicle. Officer 1 unholstered his Taser device and said that he would use his Taser if the subject refused to comply. The subject responded that the officer could not use his Taser and, eventually, Officer 1 holstered the device.

After more negotiation during which Officer 1 tried to physically move the subject into the police vehicle, the subject leaned his body weight into Officer 1. Officer 2 stated, "Taser" and deployed one round from his Taser device in contact mode to the subject's leg.¹ The subject sat back in the police vehicle and said, "That's it, that's all you got?!" as he rocked forward. Officer 2 deployed a second cycle, again in contact mode, to the subject's abdomen. The officers were then able to get the subject into the vehicle, where he cursed and yelled.

Officer 2 then entered the front seat of the same vehicle to complete paperwork; the subject taunted and cursed at the officer.

A supervisor responded to the scene and initiated a use of force investigation per policy. The supervisor interviewed the subject, who demanded to know why officers had used a Taser. When the supervisor did not respond to his satisfaction, the subject again started yelling and banging his body against the police vehicle's seats. Officers discussed using the WRAP device to restrain the subject, but the subject calmed down. On at least two occasions, the subject denied needing any medical attention.

Officer 2 then transported the subject to the jail to be booked.

After conducting a review of the use of force, the supervisor referred the incident to the Use of Force Cadre. Upon reviewing all evidence, the Cadre found the use of the Taser to be unreasonable, and Internal Affairs initiated a formal investigation.

¹ Contact mode, also referred to as "drive stun," is an alternate method of administering conducted energy with a Taser in order to overcome resistance. In contrast with the standard "probe" deployment – in which darts connected to wires are released from the weapon (and are meant to create a spread of contacts between which immobilizing current can travel) – a drive stun is essentially a form of pain compliance that is achieved through direct contact of the weapon with the person's body.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed one allegation against Officer 2:

- 1. General Order 256.02 (E)(2) Conducted Energy Weapon:** This subsection of the Department's Taser policy lists specific types of persons on whom the weapon "should generally not be used." The list includes "a handcuffed or secured prisoner that is resisting/refusing to enter a police vehicle."

Both the Cadre and the IA investigation determined that, while the subject was resisting officer commands and became physically aggressive at various points in the encounter, the subject did not pose an immediate threat to the officers, and the situation could have been resolved using other force options. Accordingly, the allegation was "Sustained."

Outcome: Discipline or Other Action

After evaluating Officer 2's personnel history, the Department issued discipline and directed the officer to use of force refresher training, including defensive tactics and case law regarding force.

OIR Group Review

We found the investigation to be sufficiently thorough and concur with the findings. In prior cases, we have raised questions as to whether LCPD officers' Taser uses were aligned with legal and policy guidelines, and whether contact or "drive stun" deployments were advisable.² Accordingly, it is encouraging to see the Department scrutinize incidents like this in a rigorous way – beginning with the referral to the Use of Force Cadre. Here, LCPD issued appropriate corrective action and discipline to the

² See, most recently, our 6th Semi-Annual Report and case 2023II-015, which had a very similar fact pattern to this incident (officers using drive stun on a handcuffed subject to move him into the police vehicle), and in which we disagreed with the Department's decision to "exonerate" the involved officer.

officer who used the device when it was not reasonable or necessary on a subject that was not an immediate threat to officers.

We are currently in the process of reviewing the Department's updated Taser policy, General Order 256, which we hope will provide more guidance and guardrails for use of the Taser.

This call involved also a response to a domestic family disturbance, a topic we have been tracking over the past four years. In this case, officers kept the parties separate, obtained sufficient evidence to determine who was the victim and who was the perpetrator, arrested the subject, completed a Domestic Violence worksheet, and provided the victim information about obtaining a protective order or seeking additional assistance. We did notice that both officers initially questioned the victim (the mother), at times speaking over each other or cutting off her responses. It is preferable for one officer to take the role of "contact" (that is, engaging in communication) while the other assumes the role of "cover" (that is, ensuring the safety of the scene). Ultimately, however, the officers resolved the situation effectively and consistent with Department policy and procedure (use of the Taser aside).

Finally, we observed that the officer who used force also transported the subject to jail. We raised this previously (see case 2021EIC1-006), and the Department acknowledged that this is not best practice. In this case, however, the subject was already seated in the rear of the involved officer's police vehicle. Moving him to an uninvolved officer's vehicle may have proven challenging given his previous behavior.

While this case was an exception to best practice, we use this opportunity to recommend that the Department update its procedures and/or policy to express a preference, when feasible, for an uninvolved officer transport the subject after a use of force.

RECOMMENDATION 1

LCPD should update policy to express a preference for an uninvolved officer to transport a suspect who was the subject of a use of force when feasible.³

³ LCPD might consider adding this language to General Order 255.02 (Procedures – Applying Force), to General Order 233 regarding Prisoner Transport, or to a policy that LCPD determines to be the most appropriate.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review conducted by the OIR Group. We agree with this recommendation and will seek opportunities to implement it consistently.



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TO: City of Las Cruces
FROM: OIR Group
DATE: September 10, 2024
RE: Review of Administrative Investigation – #2024II-007

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 Department management after a supervisor flagged a potentially unreasonable use of the Taser during a call for service. We received it on August 20, 2024.

Case Summary

An LCPD officer responded to a call for service regarding a domestic family disturbance in progress. The reporting party said that a female had kicked a male out of an apartment.

Upon arrival, he met a female – an uninvolved neighbor -- in front of an apartment. She stated that the female party in the dispute had left the location and the male party possibly needed help. The officer contacted a male standing inside the apartment, who initially spoke in Spanish. The officer responded that he did not speak Spanish. In English, the male stated that he had “restrained” the female “a little bit,” and the female broke the window. The officer asked to enter the apartment to check if anyone was

inside; first, the male said “no,” then said that he had “a little ice for his bones” and that the officer would see it if he came inside.¹ The officer said he did not care about that.

Moments later, the male said, “pasale, pasale” (“come in”), gesturing for the officer to follow him inside. The officer asked the male to step outside instead. The male stepped back to the doorway and put his hands in his pockets, and the officer asked him to take his hands out of his pockets; the male pulled out his phone to show that his pockets were empty.

The officer called for back-up. He then explained that he was just trying to figure out the situation. The male said, in Spanish, “I will not come out,” and began to close the front door. The officer placed his foot in the doorway, preventing it from closing. This resulted in the male pushing the door forcefully, repeating, in Spanish, “I will not come out!” The officer broadcast, “step it up,” which is a request for backup to respond faster. He unholstered his Taser as he broadcast that the male was trying to barricade himself and that he did not know if the female was inside. He asked where the next unit was.

The officer and male continued to push and pull at the door. The officer commanded, “stop, or you’re going to get Tased,” “open the door,” and advised the male that more officers were on their way and that it would not end well if he did not comply.

A second officer arrived. Officer 1 said that the female might be inside. Together, they kicked, and then pushed, open the door. Officer 2 grabbed the male and moved him against a wall, where the male struggled. Officer 1 stated that he would use the Taser. Officer 2 let go of the male as Officer 1 deployed one round from his Taser device, which struck the male. This caused the male to drop to the ground, where additional officers handcuffed him.

The officers then searched for the female they believed may be in the house. The house was empty.

The male received medical attention at the scene and was issued a criminal citation for resisting and obstructing. This was eventually dismissed.

¹ “Ice” is a common term for methamphetamine. In his police report, the officer said that he was not concerned with the narcotics but suspected that the female may still be inside the apartment as the male was acting strangely and he had not observed a female leaving the location as he arrived.

A supervisor conducted a use of force review on scene. Later, after reviewing all evidence, a different supervisor² referred the incident to the Use of Force Cadre. After conducting its own review, the Cadre found the use of the Taser to be unreasonable, and Internal Affairs initiated a formal investigation.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed one allegation against Officer 1 for his use of force, and several additional allegations for identified "Ancillary Issues:"

- 1. General Order 203.01 - Domestic Family Disturbance:** This policy generally outlines the necessary steps when investigating a possible domestic family disturbance. Section 203.01 states that an officer can enter a private residence without a warrant if he has cause to believe any person inside is in imminent danger. Both the Cadre and the IA investigation determined that the officer did not have reasonable cause to believe that anyone was inside the home or was in danger, and that the officer's decision to enter the home was therefore unlawful. This allegation was "Sustained."
- 2. General Order 203.02 - Domestic Family Disturbance:** This section outlines the information an officer should collect when investigating a possible domestic family disturbance. The IA investigation determined that the officer had sufficient time to collect this information but did not, and that this inadequate investigation led to poor decision-making. This allegation was "Sustained."
- 3. General Order 231.03 – Physical Arrests – Authority to Arrest:** This policy section states that officers have authority to arrest a person if an arrestable offense is being conducted. The IA investigation found that the officer should not have charged the subject with resisting and obstructing; the officer's commands and attempts to enter the apartment were unlawful (which therefore justified the male's refusal to follow commands and prevent entry). This allegation was "Sustained."

² The officer was working overtime, and the responding supervisor was not in his assigned (regular) chain of command. Per policy, the officer's assigned chain of command reviews uses of force.

4. **General Order 231.03 – Physical Arrests – Criminal Citations:** This policy section states that officers shall forward criminal citations to the appropriate location. During his administrative interview, Officer 1 admitted that he did not turn in the criminal citation in a timely manner. This allegation was “Sustained.”
5. **General Order 255 - Use of Force:** This section outlines when officers can use force. Both the Cadre and the IA investigation determined that because the officer did not have a legal basis for entering the home, any use of force was unreasonable. Accordingly, the allegation was "Sustained."

The Department did not frame allegations against the additional officers who responded to the scene; those officers, it reported, were acting on the information broadcast and communicated on scene by Officer 1 (that is, that a female might still be inside the home and that the male was attempting to barricade himself) and had no reason to question him. Their actions were appropriate given the circumstances provided by Officer 1.

Outcome: Discipline or Other Action

The Department reviewed Officer 1’s personnel history and issued discipline. It also directed the officer to refresher training on all the identified deficiencies.

OIR Group Review

After reviewing the available evidence, we found the investigation to be thorough and concur with the Department’s findings. We also agree with the Department’s rationale for not framing allegations against the other responding officers.

When the Use of Force Cadre began reviewing cases, we recommended that it review incidents more holistically -- beyond the use of force itself. We are seeing improvement in this regard. In this case, the Cadre considered the entire incident, including the officer’s limited use of de-escalation tactics, in making its final determination that the use of force was unreasonable. We also noted its careful analysis of the immediacy of the threat – a key factor in evaluating uses of force generally, and one that is specifically emphasized in 10th Circuit case law.³

³ In concluding that the use of force was unreasonable, the Cadre noted that, while the male was actively aggressive toward the officers, the number of officers, their relative size, and their capacity to control the male in other ways reduced the immediacy of the threat.

More generally, we noted that the Cadre's review form now includes section headers for de-escalation, mental health concerns, influence of drugs or alcohol, and the number and size of subjects relative to officers – a practical enhancement to its process that ensures these important areas are always considered.

IA went even further by framing “ancillary issues” related to how the officer responded to the domestic family disturbance and his authority to arrest the male. As we noted in our 6th Semi-Annual Report, this type of robust analysis shows LCPD's commitment to internal accountability.

We also found the directed training to be a suitable response: navigating uncertainty in the context of domestic violence cases is a particularly fraught responsibility for patrol officers. Our sense was that the officer's shortcomings were mitigated by good intentions and sincere concerns. And, encouragingly, the Department's remediation had the desired effect: after attending his directed training, the officer reported that he learned how he could have handled the situation differently.

LCPD Management Response

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



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TO: City of Las Cruces
FROM: OIR Group
DATE: August 1, 2024
RE: Review of Administrative Investigation – #2024II-008

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 learning of a post made on an officer's social media page. We received it on July 8, 2024.

Case Summary

While on administrative leave for his involvement in an officer-involved shooting, an LCPD officer posted a photo on his social media account of a t-shirt that he had created and was selling. Printed on the t-shirt was LCPD's official patch,¹ the letters "FYPD," and the phrase "F*** Your Police Department." The post had an accompanying statement that read:

I'd like to thank those that order for your continued patronage. I only had enough for 50 shirts and sold out quickly! All funds continue go towards attorney fees! Thanks again I plan on having more shirts made and some stickers as well! God bless.

¹ The LCPD patch is the "logo" worn on the sleeve of an officer's uniform and is the official identification of the Department.

Another officer took a screenshot of this post and submitted it to Internal Affairs. The investigator confirmed by logging into his personal social media account, where he, too, saw the post.

When the investigator served the officer a "Focus Notice" for this complaint via electronic mail, the officer responded with anger and profanity. Internal Affairs determined that attempting to conduct an interview could potentially escalate the situation and place the investigator at risk if he were in an interview room with the officer. Further, the investigator noted that the evidence they had already obtained (the screenshot and confirmation) was dispositive. As such, LCPD did not seek to interview the officer.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD framed two allegations against the officer.

- 1. General Order 158.02 – Social Media:** This policy restricts the representation of LCPD patches (and other LCPD "branded" items) on social media or other websites without written permission from the Chief. It also restricts officers from posting content that may have an adverse impact on the Department. The post and t-shirt depicting the LCPD patch (without any permission from the Department) violated this policy, and the allegation was "Sustained."
- 2. General Order 103 - Conduct Unbecoming:** This policy outlines the Department's expectations for officer conduct both on and off duty. Specifically, it restricts any conduct that may bring discredit upon the officer and the Department. The content and language of the post and t-shirt violated this policy, and the allegation was "Sustained."

Outcome: Discipline or Other Action

At the time of this investigation, the officer was already on administrative leave pending termination for his involvement in a critical incident and a serious misconduct case. No further discipline was pursued in this case.

OIR Group Review

We found the investigation to be sufficiently thorough and concur with the findings. While we typically advocate for subject officer interviews to allow officers to provide their side of the story, this situation is unique. After discussion with LCPD and review of email correspondence with the officer, we agree that an interview of this officer had more potential risk than benefit given the evidence already collected by the investigator.

We also noted that an uninvolved officer was proactive in capturing a screenshot from social media and submitting it to Internal Affairs. This intervention is commendable, and we hope it was formally acknowledged by the Department's leadership. We have recommended such a step in the past for officers who intervene to prevent, interrupt, or report misconduct. Recognition can be an important means of reinforcing ethical behavior that, even though required by policy, can be easier said than done within the culture of large organizations.

LCPD Management Response

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



6510 Spring Street #613
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TO: City of Las Cruces
FROM: OIR Group
DATE: October 11, 2024
RE: Review of Administrative Investigation – #2024II-009

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 Department management after an officer submitted a lengthy memorandum featuring allegations of misconduct within the special unit to which he was assigned. We received it on September 26, 2024.

Case Summary

A Department member ("Officer 1") was experiencing tension within the small specialized unit that he had been part of for more than a year. After a meeting within his chain of command about his attitude and performance, he was concerned that negative perceptions of him were both unfair and a sign that his place within the unit was tenuous. At that point, he decided to prepare a memorandum to address a number of concerns about how the unit was operating, with a particular focus on his immediate supervisor.

The memo itemized several perceived shortcomings in the supervisor's handling of the unit, from inadequate emphasis on training to favoritism to repeated instances of

shutting down officers' enforcement initiatives. The memo also described alleged deficiencies or irregularities in the handling of travel arrangements for two different trips that the unit made for training purposes.¹

Additionally, the Officer 1 listed specific examples of harassing behavior that he had recently experienced (including three different "photoshopped" images that were created and distributed with the intent to embarrass him)². Although the perpetrators were peers, he claimed that the supervisor had responded inadequately to this misconduct.

These different allegations became the basis for a formal administrative review, with LCPD putting particular emphasis on the harassment allegations. In his interview with Internal Affairs at the outset of the investigation, Officer 1 added an allegation that a peer officer had treated him in a derogatory manner shortly after the memo was submitted. Officer 1 believed that this was in response to his coming forward.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

Based on the details/allegations featured in the memorandum and intake interview of Officer 1, LCPD named the supervisor and three officers from the unit as subjects of the administrative investigation. An additional officer was added later in light of his own admissions while being interviewed as a witness.

The Department framed allegations based on a policy in the City's Personnel Manual relating to **"Discrimination and Harassment."** Part 1 of that policy prohibits a range of harassing behavior, and includes specific mention of language and jokes based on a number of identified categories. Importantly, the policy identifies such activity as prohibited, *"regardless of whether the conduct was intended or not intended to offend or intimidate."*

¹ This included a change of hotels that was initiated by the supervisor, and a different trip in which much of the planned itinerary did not come together as intended.

² One of these had been printed and posted in the locker room and purported to show the complainant posing in front of a strip club. Another, shared in the unit's group texting, had involved the digitally altering of a photo to feature a penis in place of the ice cream cone the complainant officer had been eating.

A total of three different officers within the specialized unit were charged with violation of this section, based on their alleged involvement with incidents cited by the complainant officer as harassing behavior. The evidence (which included acknowledgements by the participants) established that the policy had been violated, and the charges were accordingly "Sustained" for each person.

The supervisor of the unit was charged with another section of the "Discrimination and Harrssment" policy – specifically (2)(A)(6), which deals with supervisory responsibility to take pro-active steps to address the kind of conduct at issue here.³ The Department found that intervention should have occurred but did not, and the allegation was therefore "Sustained."⁴

Additionally, three officers (but not the supervisor) were charged under the Department's own **General Order 103.04 Code of Conduct: General Standards of Conduct**. As the name suggests, this is a wide-ranging expectation that employees avoid "unbecoming" behavior and to treat the public and each other "with respect and courtesy."

The policy was applied to two officers on the basis of the allegations that the "banter" within the unit had constituted disrespectful mistreatment of the complaining officer. The evidence established that the off-color joking and image-sharing was widespread within the unit – and included the participation of Officer 1 himself.⁵ Based on this context, the Department determined that his charge should be "Not Sustained."

The same conduct policy was applied to a subject officer for the alleged antagonism directed at Officer 1 in the immediate aftermath of the memo's submission, which had included hostile gestures and name-calling. The accused officer's version of the relevant encounter differed from that of Officer 1.⁶ He also denied having had knowledge of the memo at that time– which meant his intentions would not have been retaliatory. In the absence of definitive evidence, the allegation was "Not Sustained."

³ Interestingly, the relevant standard is that the supervisor "knew or should have known" – a reflection of the significant expectation to monitor subordinates that the City policy imposes in this area. At any rate, the supervisor here acknowledged his familiarity with some of the relevant conduct.

⁴ As discussed below, the Department chose to address Officer 1's other allegations about the supervisor's performance without connecting them back to potential policy violations.

⁶ While the accused officer's explanation was, in our view, less than completely convincing, the Department's assessment was reasonable in light of conflicting evidence.

Outcome: Discipline or Other Action

The Department reviewed the disciplinary history of the three officers and supervisor who were found to have violated policy. Though each had prior violations in their performance history, that misconduct was minor and unrelated to the issues implicated in this investigation. Accordingly, they all received a low-level consequence.

OIR Group Review

We received and reviewed the evidence in the case, which included interviews with the named subjects and several witnesses, and copies of the communications and photos that were at issue. We found the Department's outcomes to be reasonable.⁷

Although the memorandum that initially prompted the case was focused on different aspects of the unit supervisor's leadership, those issues (with the exception of possible responsibility for failing to control the harassing behavior) were largely diverted from the disciplinary context. Any substantive, "bigger picture" shortcomings in management approach were considered best addressed in another arena. This made sense to us: criticisms about leadership and decision-making, even if valid, are not intrinsically issues of formal "misconduct." Moreover, our understanding is that constructive interventions did occur.

As for the specific allegations about mishandling aspects of the unit's travel for training, the Department researched the issues and found no impropriety in the supervisor's actions. Though this was covered substantively in the investigative memo, LCPD did not specifically frame the issues as matters of policy. In our view (and as we have said before), such a format would have been cleaner and more definitive – and suitable to the relatively concrete nature of the disputed conduct in this category.

Turning to the harassment allegations, the dynamic that emerged in the investigation is a disappointing if familiar one. We have seen it played out in multiple agencies, and with varying degrees of detriment to operations, reputations, and public legitimacy. Apart from clashing with policy, the unprofessional "joking" at issue here lends itself all too well to the internal discord reflected in this case. And when such behavior becomes a

⁷ Since different high-ranking members of the agency were mentioned in Officer 1's complaints as being friendly with/supportive of named parties, the Department was careful about ensuring that a non-involved member of the leadership team had decision-making responsibility as to outcomes.

matter of public record (as happens at times during discovery in civil or criminal litigation), it undermines community perception of agency culture.

One saving grace here (which has not always been true in comparable scenarios we have encountered) is that the problematic written communications and photos were not transmitted through work phones or other LCPD equipment. This showed some level of restraint. But the interactions did make their way into the workplace in different forms (including one of the relevant photos that was posted in the locker room), and obviously had a corrosive effect on the unit's functioning. Accordingly, the Department's efforts to address it, and to sanction the problematic behavior, were appropriate in our view.

While Officer 1's own participation in the dynamic had an understandable (and mitigating) influence on the Department's overall assessment of the situation, this too is a common scenario: everyone in the group is seemingly "in on the joke" until someone is not – at which point things are cast in a new and inherently unfavorable light. One way to ensure that edgy, crude banter doesn't spill over into harassment, and that participants won't have to be abashed (or resentful) when someone protests formally, is to avoid engaging in it in the first place. We hope the Department will find a forum for re-emphasizing the City's expectations in this arena.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review conducted by the OIR Group. Although the department is disappointed in the behavior that transpired in this case, we believe it will be an opportunity to remind everyone of the importance of professional behavior between employees. Law enforcement is inherently traumatic, and a certain level of joking and kidding is essential for the mental health of officers and the cohesion of the department. However, when lines are crossed, the beneficial interactions become detrimental to the department. We will continue to emphasize this distinction.



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TO: City of Las Cruces
FROM: OIR Group
DATE: September 11, 2024
RE: Review of Administrative Investigation – #2024II-010

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 Department management after a supervisor identified ongoing concerns with the primary officer's performance. We received it on August 12, 2024.

Case Summary

This case began with a traffic stop by an officer and a backup – both of whom would go on to become subjects of investigative scrutiny. The stop occurred in the early morning hours and was based on erratic driving behavior. The driver was a male who was cooperative with the police but also quite agitated. He said he was in the process of reclaiming the car, which he said had been stolen. The handling officer ("Officer 1") gauged the driver's behavior and asked questions about whether he had been "taking" anything. The man acknowledged drinking, and he also used a couple of slang expressions to denote drug use, though he claimed it had been a few hours earlier.

After some deliberation, Officer 1 decided she would follow the man to a safe place so that he could sleep in the car until he was better suited to be driving. They went a short distance and the man pulled over. He got out of his car and again expressed agitation, expressing worry that there was a gun and possibly another person inside. At one point, he lay on the ground of his own volition. The same backup officer ("Officer 2") rejoined them and checked the inside of the car to ensure that nothing was amiss. The officers allowed the man to leave a second time, based on his assurances that he was simply going to go to a nearby parking lot to sleep.

Shortly thereafter, a different officer was almost involved in a collision with the same person. As that officer began his investigation, the man mentioned the previous encounters. Eventually, a supervisor arrived on scene and ordered Officer 1 to come back. He questioned her about the particulars of her encounters with the man, and specifically asked whether he had made reference to drug and alcohol use. Officer 1 claimed that he had not mentioned drugs, that any drinking had supposedly happened much earlier, and that he was not displaying signs of alcohol intoxication.

At the supervisor's direction, Officer 1 conducted field sobriety tests. These ultimately resulted in the man's arrest.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

LCPD evaluated the officers' compliance with the following policy sections:

- 1. General Order 103.01 Unsatisfactory Performance:** This policy applies to a range of potential shortcomings in the handling of fundamental job responsibilities, including "failing to conform to work standards" and "failing to take appropriate action" regarding an enforcement issue. Both Officers 1 and 2 were cited for this section, based on their decision to twice allow a seemingly impaired individual to drive away after making contact with him. The investigation determined that this allegation should be "sustained" for both officers.
- 2. General Order 103.17 Truthfulness:** This section imposes a formal requirement on employees to refrain from knowingly making false statements in an official context, and to "completely, honestly, and truthfully" report all facts in conjunction with a criminal investigation. The Department alleged a violation of

this policy against Officer 1, based on an initial representation to the supervisor in the field that the man had *not* acknowledged drug use in her earlier contacts with him (which went toward explaining why he had not been arrested earlier). This allegation was "not sustained," since the evidence was not conclusive that Officer 1's statement had been knowingly false.

Outcome: Discipline or Other Action

Officer 2 received a formal disciplinary consequence for his involvement in the two stops that preceded the man's ultimate arrest. He had a number of minor personnel issues in his employment history, though none overlapped directly with the shortcomings in this matter.

Officer 1 was a probationary employee, relatively new to the agency. She had several personnel issues in her brief history with the Department, and she was ultimately separated from service due to this case and other performance issues.

OIR Group Review

We received the body-worn camera recordings, documentation, and investigative interviews that comprised the record in this case. (This included interviews with the witness supervisor as well as the two subject officers.) We found the investigation to be effective in establishing that the officers' performance fell well short of expectations in terms of both the assessment of the situation and the decision-making that allowed the impaired driver to get back behind the wheel – twice.

Questions about violations of the truthfulness policy, which resulted here in a finding that the evidence was inconclusive, are often quite hard to answer definitively, in that so much depends on the subjective state of mind of the accused person. Here, the recordings of the relevant encounters do tend to corroborate the notion that Officer 1 was attentive to the alcohol issue to the exclusion of effective processing of the driver's other statements. Additionally, the driver's use of slang terminology created additional ambiguity that could have contributed to a misunderstanding.

Arguably, though, the investigation could have pursued this issue in greater detail (as by delving deeper into on-scene communications between Officer 1 and Officer 2 – who acknowledged hearing and understanding the drug-related remarks made by the driver.)

As we have in the past, we encourage LCPD to be rigorous in exploring truthfulness concerns when they arise.¹

Officer 2's involvement in the case was also noteworthy, and a seeming example of the tension experienced by backup officers between offering deferential support and ensuring that an enforcement stop has an appropriate outcome. The Department's appropriate accountability measures here will ideally reinforce the expectation that, when necessary, officers will respond to such situations with initiative and leadership.

LCPD Management Response

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

¹ See our discussion and recommendation related to this topic in case 2023EIC1-020. Interestingly, we found the interview of the Officer 2 to be quite effective with regard to follow-up questions that refined and clarified some of initial responses.



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TO: City of Las Cruces
FROM: OIR Group
DATE: November 22, 2024
RE: Review of Administrative Investigation#2024II-011 and Closed
Litigation

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 after a female civilian employee brought concerns about her workplace environment to the attention of LCPD and City officials. It was investigated by Internal Affairs.

The case, which we initially received in June of 2024, was also the subject of a civil claim for damages by the complainant – which brought it within our scope of work in a separate way. That case was recently resolved by a settlement between the parties.

Part of our role is to ensure the sufficiency of LCPD's internal response to matters involving civil liability. For different reasons, some of the incidents that give rise to litigation do not automatically or inherently have a disciplinary component in the eyes of the Department. We review these events with an eye toward potential accountability and other remedial steps that occurred or might be warranted. Here, to its credit, the Department moved swiftly to initiate administrative proceedings when the complainant brought her concerns to a supervisor's attention.

Case Summary

This administrative case was initiated by outreach from a Department employee, who alleged that she had been subjected to repeated instances of inappropriate workplace behavior by her former immediate supervisor – a sworn member of the LCPD executive team. The two parties worked together in an office setting for nearly two years. For several months, the woman had kept a personal log of sorts, itemizing the individual comments and behaviors (which at times had allegedly included unwelcome physical touching). Though she had eventually stopped doing this (because, she claimed, keeping the record had become too upsetting), the same pattern of behavior had allegedly persisted until the supervisor had moved to a different assignment.

After leaving the position where he had seen her on a daily basis, the supervisor occasionally contacted the woman; some of these exchanges fell into the same category of conduct that had previously been problematic for the woman. She eventually decided to contact LCPD management and a City HR person to share her concerns. She explained that the prospect of further interaction with the supervisor was highly agitating, which was what had prompted her to finally come forward.

The supervisor who was the subject of the investigation was on the verge of retirement at the time the allegations emerged. He chose to use accumulated leave time for the last several weeks before his designated retirement date, and thus was not available to be interviewed as part of the review. Nonetheless, the Department moved forward with the investigation and reached formal findings as to the alleged misconduct.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

Upon learning of the woman's concerns, LCPD initiated an internal, administrative investigation of the matter (As we discuss later, the woman then also submitted a claim for damages with the City).

The investigative memo listed several different policies that were applicable. Some were specific to LCPD, while others related to potential violation of City personnel requirements regarding treatment of co-workers. Many were specifically recommended by the City's Compliance Director, who had conducted an initial intake interview.

General Order 103.04 – Standards of Conduct and 103.28 – Conduct Unbecoming:

These sections relate to the baseline expectations of behavior for Department employees, and provide a general prohibition against a range of behaviors that reflect poorly on the agency and treat others in a disrespectful, inappropriate manner. LCPD found that the supervisor had engaged in the conduct alleged by the reporting party, that it was inappropriate, and that these allegations should accordingly be "Sustained."

Personnel Manuel 2018 Section 1103 Discrimination and Harassment – Sexual

Harassment: Among the definitions of prohibited harassment listed in this section included "sex-oriented verbal kidding, teasing, jokes, comments..." The evidence in the case included one specific text message sent by the supervisor that, against the backdrop of other alleged interactions over the course of two years, was found to be in violation of this policy. It was accordingly "Sustained."

Personnel Manuel 2018, Work Rules 603.17: This specific section prohibits employees from interfering with the ability of co-workers to perform their duties. Because of instances in which the reporting party left work early or needed to meet with management in response to the pattern of behavior she alleged, LCPD found this policy to be applicable and "Sustained" the allegation.

Personnel Manuel 2018, Work Rules 603.20: This specific section prohibits employees from using their position to "coerce or abuse another person." The reporting party did not allege that the supervisor had engaged in this category of misconduct, but, nonetheless, the investigator framed the allegation because the subject employee was the woman's superior. The recommended finding was "Not sustained," since the subject employee had not been available for questioning about the charge, and LCPD could not establish if any coercion had occurred.

Personnel Manuel 2018, Work Rules 603.22: This section prohibits City employees from engaging during the workday in a range of listed behaviors, including fighting, abusive language, gambling, bullying, assault, or threatening. The reporting party's version of events did not include applicable allegations, and this violation was found to be "Not sustained."

Personnel Manuel 2018, Work Rules 603.32: This specific "work rule" prohibits City employees from acting in such a way as to "harass, discriminate, or retaliate" against a co-worker or member of the public. This was found to be relevant to the behavior at issue, and the allegation was "Sustained."

Outcome: Discipline or Other Action

While multiple policy violations were established in the investigation, the supervisor's retirement preempted the Department's need and/or ability to take disciplinary action. This case, and its findings, will remain in the employee's personnel file for future reference.

OIR Group Review

The Department was appropriately responsive to this employee's outreach about the alleged workplace misconduct by a supervisor. Inappropriate joking, teasing, and touching is inherently problematic in a work setting, and that dynamic is especially concerning in the context of a supervisor-subordinate relationship.

As for the investigation, we concur it produced sufficient evidence for the sustained findings that resulted. The reporting party was detailed and credible in recounting a number of incidents that showed a pattern of behavior that was unacceptable in its component parts and totality.¹ Although she only provided independent corroboration in the form of one text message from the supervisor, its tone was consistent with the repeated instances of "joking" she alleged. And the supervisor's decision to decline participation in an administrative interview is obviously significant in its own right.

Litigation Outcome and Demographics

As mentioned above, the complainant secured legal counsel and made a claim for damages soon after the administrative investigation began. The parties recently settled the claim.

The demographic summary of this case is:

- The Plaintiff is Hispanic.
- The only named employee was the supervisor. As discussed above, he retired during the pendency of this matter. He is Hispanic.

¹ In our view, the legitimacy of her version of events was further enhanced by her acknowledgement that the supervisor had *not* engaged in "quid pro quo" behaviors or any off-duty contacts with her – testimony that favored him but that she provided without hesitation. The Department's decision to nonetheless characterize the related (and plainly unsupported) allegations as "Not sustained" rather than "Unfounded" was curious to us in light of this.

- The zip code where the alleged conduct occurred was 88011.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review conducted by the OIR Group. The department takes these types of allegations seriously, and there is zero tolerance for sexual harassment of any kind.



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TO: City of Las Cruces
FROM: OIR Group
DATE: October 26, 2024
RE: Review of Administrative Investigation – #2024II-014

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 Department management after an officer submitted a lengthy memorandum featuring allegations of misconduct within the special unit to which he was assigned. We received it on September 26, 2024.

Case Summary

A Department member ("Officer 1") was experiencing tension within the small specialized unit that he had been part of for more than a year. After a meeting within his chain of command about his attitude and performance, he was concerned that negative perceptions of him were both unfair and a sign that his place within the unit was tenuous. At that point, he decided to prepare a memorandum to address a number of concerns about how the unit was operating, with a particular focus on his immediate supervisor.

The memo itemized several perceived shortcomings in the supervisor's handling of the unit, from inadequate emphasis on training to favoritism to repeated instances of

shutting down officers' enforcement initiatives. The memo also described alleged deficiencies or irregularities in the handling of travel arrangements for two different trips that the unit made for training purposes.¹

Additionally, the Officer 1 listed specific examples of harassing behavior that he had recently experienced (including three different "photoshopped" images that were created and distributed with the intent to embarrass him)². Although the perpetrators were peers, he claimed that the supervisor had responded inadequately to this misconduct.

These different allegations became the basis for a formal administrative review, with LCPD putting particular emphasis on the harassment allegations. In his interview with Internal Affairs at the outset of the investigation, Officer 1 added an allegation that a peer officer had treated him in a derogatory manner shortly after the memo was submitted. Officer 1 believed that this was in response to his coming forward.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

Based on the details/allegations featured in the memorandum and intake interview of Officer 1, LCPD named the supervisor and three officers from the unit as subjects of the administrative investigation. An additional officer was added later in light of his own admissions while being interviewed as a witness.

The Department framed allegations based on a policy in the City's Personnel Manual relating to **"Discrimination and Harassment."** Part 1 of that policy prohibits a range of harassing behavior, and includes specific mention of language and jokes based on a number of identified categories. Importantly, the policy identifies such activity as prohibited, *"regardless of whether the conduct was intended or not intended to offend or intimidate."*

¹ This included a change of hotels that was initiated by the supervisor, and a different trip in which much of the planned itinerary did not come together as intended.

² One of these had been printed and posted in the locker room and purported to show the complainant posing in front of a strip club. Another, shared in the unit's group texting, had involved the digitally altering of a photo to feature a penis in place of the ice cream cone the complainant officer had been eating.

A total of three different officers within the specialized unit were charged with violation of this section, based on their alleged involvement with incidents cited by the complainant officer as harassing behavior. The evidence (which included acknowledgements by the participants) established that the policy had been violated, and the charges were accordingly "Sustained" for each person.

The supervisor of the unit was charged with another section of the "Discrimination and Harrssment" policy – specifically (2)(A)(6), which deals with supervisory responsibility to take pro-active steps to address the kind of conduct at issue here.³ The Department found that intervention should have occurred but did not, and the allegation was therefore "Sustained."

Additionally, three officers (but not the supervisor) were charged under the Department's own **General Order 103.04 Code of Conduct: General Standards of Conduct**. As the name suggests, this is a wide-ranging expectation that employees avoid "unbecoming" behavior and to treat the public and each other "with respect and courtesy."

The policy was applied to two officers on the basis of the allegations that the "banter" within the unit had constituted disrespectful mistreatment of the complaining officer. The evidence established that the off-color joking and image-sharing was widespread within the unit – and included the participation of Officer 1 himself. Based on this context, the Department determined that his charge should be "Not Sustained."

The same conduct policy was applied to a subject officer for the alleged antagonism directed at Officer 1 in the immediate aftermath of the memo's submission, which had included hostile gestures and name-calling. The accused officer's version of the relevant encounter differed from that of Officer 1.⁴ He also denied having had knowledge of the memo at that time– which meant his intentions would not have been retaliatory. In the absence of definitive evidence, the allegation was "Not Sustained."

³ Interestingly, the relevant standard is that the supervisor "knew or should have known" – a reflection of the significant expectation to monitor subordinates that the City policy imposes in this area.

⁴ While the accused officer's explanation was, in our view, less than completely convincing, the Department's assessment was

Outcome: Discipline or Other Action

The first cadet resigned from the program within two days of participating in an administrative interview. The other two cadets were terminated from employment as a result of the finding that they had violated Academy rules

The officer, who had no disciplinary history, received a formal consequence for his violation of policy.

OIR Group Review

We received and reviewed the evidence in the case, which included interviews with the named subjects and several witnesses, and copies of the communications and photos that were at issue. We found the Department's outcomes to be reasonable.

Although the memorandum that initially prompted the case was focused on different aspects of the unit supervisor's leadership, those issues (with the exception of possible responsibility for failing to control the harassing behavior) were largely diverted from the disciplinary context. Any substantive, "bigger picture" shortcomings in management approach were considered best addressed in another arena. This made sense to us: criticisms about leadership and decision-making, even if valid, are not intrinsically issues of formal "misconduct." Moreover, our understanding is that constructive interventions did occur.

As for the specific allegations about mishandling aspects of the unit's travel for training, the Department researched the issues and found no impropriety in the supervisor's actions. Though this was covered substantively in the investigative memo, LCPD did not specifically frame the issues as matters of policy. In our view (and as we have said before), such a format would have been cleaner and more definitive – and suitable to the relatively concrete nature of the disputed conduct in this category.

Turning to the harassment allegations, the dynamic that emerged in the investigation is a disappointing if familiar one. We have seen it played out in multiple agencies, and with varying degrees of detriment to operations, reputations, and public legitimacy. Apart from clashing with policy, the unprofessional "joking" at issue here lends itself all too well to the internal discord reflected in this case. And when such behavior becomes a matter of public record (as happens at times during discovery in civil or criminal litigation), it undermines community perception of agency culture.

One saving grace here (which has not always been true in comparable scenarios we have encountered) is that the problematic written communications and photos were not transmitted through work phones or other LCPD equipment. This showed some level of restraint. But the interactions did make their way into the workplace in different forms (including one of the relevant photos that was posted in the locker room), and obviously had a corrosive effect on the unit's functioning.

The Department's investigation was effective overall in identifying and addressing the concerns. They even went so far as to introduce an allegation against a previously unidentified officer when his administrative interview acknowledged involvement in relevant activity.

By holding participants accountable for their actions, and the supervisor accountable for his failure to address the situation, LCPD responded appropriately to unprofessional behavior that came to its attention.

LCPD Management Response

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



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TO: City of Las Cruces
FROM: OIR Group
DATE: July 17, 2024
RE: Review of Administrative Investigation – #2023EIC1-009

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 investigated by Internal Affairs.

OIR Group received the case file on June 12, 2024.

Case Summary

This investigation originated with a written complaint submitted by a woman who had accompanied her sister and injured young nephew to the hospital. Police presence had initially been requested at the scene by a security guard, who reported concerns about how the complainant's sister seemed to be handling her son's situation. The boy's eye had been injured a couple of days earlier, and its condition had deteriorated. There was tension over treatment options, along with uncertainty over whether the family's story (that he had been struck accidentally by a projectile while with a friend) was accurate.

LCPD personnel, including Officers 1, 2, and a supervisor, responded to the scene at various times. They left the hospital after about an hour, only to be re-summoned soon thereafter. This time, the initiating party was a representative of the Children Youth and

Families Department ("CYFD"). She was concerned because the mother seemed to be defying medical advice regarding the need to transport the boy with some urgency to a hospital in Albuquerque that could perform a specific procedure. The mother's stated preference, for various reasons, was to take her son to a facility in El Paso instead.

Officer 2 and the supervisor (along with another higher-ranking member of the Department) returned, and sought to mediate the ongoing discussion – while simultaneously assessing the potential relevance of different criminal statutes relating to child abuse. The CYFD worker took the lead role in attempting to convince the mother about the need to accept the Albuquerque recommendation. The mother was, by her own admission, exhausted and frustrated with the course of events, and the interactions were tense at times.

Meanwhile, the boy's aunt (who would go on to be the complainant) was also at the scene and expressing her own views. She occasionally had contentious exchanges with LCPD personnel and interjected herself repeatedly into the ongoing dialogue in order to provide support for her sister.

She submitted a written complaint three days later. She accused the supervisor and Officer 2 of being unprofessional in their reaction to her own involvement. She did not appreciate the supervisor's response to her efforts at recording the encounter, and considered it inappropriate for the two to interfere with her efforts at having a private conversation with her attorney as events were playing out in the hospital.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The Department framed allegations against the supervisor and Officer 2, based on the specific concerns cited by the complainant in her written submission. Additionally, and on its own initiative, the Department framed allegations against Officers 1 and 2 regarding the sufficiency of their investigative efforts into possible child abuse.

General Order 103.05 (A)(B) – Code of Conduct: Conduct Toward the Public.

These sections provide general expectations of Department employees to be respectful, patient, attentive and responsive to members of the public in performing their duties. This is the policy issue most directly related to the particulars of the complainant's unhappiness with how she was treated. Both of the issues specifically cited by the complainant were assessed, and the Department found that neither the supervisor nor Officer 2 had violated policy in the context of the disputed interactions. These allegations were resolved as "Exonerated."

General Order 150.03 (A) – Rights of Onlookers: Audio/Visual Recordings. This policy makes clear the rights of the media and public to record officers as they perform their duties – a notion consistent with the First Amendment but that law enforcement nationally has been slow to embrace as technology made recording capability more pervasive. The complainant asserted that her choice to record had been the provocation that prompted a deterioration of the supervisor's treatment of her. However, she didn't allege that they had prevented her from recording, and this allegation was resolved as "Exonerated."

General Order 215.01 (A)(C) – Investigation: Preliminary Investigations. The Department introduced this allegation into the case as the administrative review of the incident unfolded. This policy establishes expectations for the steps that the first responding officers to an incident should take at a call for service requiring police intervention. Officers 1 and 2 who first came to the hospital at request of staff were found to have done an inadequate job of fact-finding, which kept the issue of possible child abuse from being pursued appropriately at the outset of the case. Their reports were also found to have been insufficient in terms of the level of detail provided. The allegation was "Sustained" for both officers.

General Order 222.03 (A)(7) – CIS Call-Out Procedures: This section was invoked to address the question of whether the supervisor should have called a detective to the scene to initiate a criminal investigation into possible child abuse, neglect, or endangerment. It was decided that the supervisor (to whom the policy specifically applied) exercised reasonable discretion in not requesting the call-out, given the limited facts that he knew and his stated prioritization of medical care for the child. The allegation was therefore "Exonerated" for the supervisor and both officers.¹

General Order 243.09 (A) (D) – Juveniles: Investigating Abused or Neglected Children: This section states a specific protocol that officers are expected to follow when dealing with potential child abuse issues: namely, the immediate referral of known facts to CYFD. This did not initially occur, and one of the two initially responding officers was found to have been solely responsible. Accordingly, the allegation was "Sustained" for him, and "Exonerated" for the other officer who came to the scene.

¹ It is unclear why the allegation was applied to the officers at all, since the policy specifically addresses only a supervisor's authorization/responsibility for summoning a detective. We talk below about our different qualms as to the several policy sections listed.

Outcome: Discipline or Other Action

LCPD management evaluated the past history of both officers who were found to have fallen short of expectations in terms of their initial investigatory response and reporting. They both received a low-level disciplinary consequence, with one being slightly more severe based on a prior sustained case for similar (though not identical) misconduct. The less-experienced officer was also assigned relevant training on the investigation of child abuse cases.

OIR Group Review

LCPD provided OIR Group with the case file for review of the available evidence, which included several body-worn camera recordings as well as administrative interviews of the two officers and the supervisor who were named as subjects in the case.

In terms of the issues that generated the initial complaint from the aunt of the boy at the hospital, we concurred with the findings that the behavior at issue had not risen to the level of a policy violation. While the situation was mildly strained, the disputed actions of the supervisor and the named officer were understandable in the context, and none of the interactions devolved into discourtesy or a lack of professionalism.

As for the particular allegations generated by the Department, our views were mixed. We have previously affirmed LCPD's willingness to go beyond the specifics of a citizen complaint to address policy and performance concerns that emerge during the investigation, and appreciate the extent to which that happened here. Concerns about child welfare and safety are of paramount importance, and the acknowledged shortcomings in documentation and required notification by Officers 1 and 2 were deserving of the attention they received in terms of formal accountability. But our sense was that the officers' *fact-gathering* at the scene, if imperfect, was at least adequate in terms of framing the basic issues that were involved and the relevant enforcement priorities that were called for.

Accordingly, it was not clear why the officers were singled out for accountability while the supervisor was exempted from not only a sustained finding but also a relevant allegation. In our view, it should have been all or none, at least for the policy sections about proper investigative thoroughness that were chosen.

Along with our concerns about the accuracy of some charges (and the absence of others), we take this opportunity to note that the policy violations in this and other cases from this time period are occasionally framed in overlapping if not duplicative ways. It is obviously necessary to be able to cite specific policy as a basis for accountability. But a streamlined, "pick one" approach when the same conduct is at issue often makes for a cleaner, clearer, more effective process. Here, it might well have reduced some of the muddle that hampered the overall effectiveness of the investigation and outcomes.

We have recently discussed this issue with the newly established leadership in Internal Affairs, and our sense is that the currently preferred philosophy in the unit aligns more with this perspective.

RECOMMENDATION 1

LCPD should strive for greater precision and clarity when choosing the specific policy sections that frame allegations of misconduct in administrative cases.

Lastly, several months passed between the submission of the complaint and the interviews of involved personnel. As we have said before, long delays in the process are sub-optimal for a number of reasons. One of those is that the recollection of participants can be understandably compromised by the passage of time. This appears to have happened here in ways that created minor gaps and uncertainties in the evidence.

We are aware of staffing and workload challenges that contributed to a backlog in the Internal Affairs unit in 2023. And we are encouraged by the Department's recognition of the problem and recent efforts to rectify it. We hope and anticipate that upcoming cases in our "queue" will reflect this initiative.

LCPD Management Response

The Las Cruces Police Department appreciates the thorough review completed by the OIR Group. We agree with the recommendation, and the Internal Affairs lieutenant is addressing it.



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

TO: City of Las Cruces
FROM: OIR Group
DATE: September 20, 2024
RE: Review of Administrative Investigation – #2024EIC1-005

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 to a Department supervisor regarding an officer's unsatisfactory response to a call involving a domestic disturbance and was investigated by Internal Affairs.

OIR Group received the case file on August 27, 2024.

Case Summary

An LCPD officer responded to a call for service involving a domestic disturbance: witnesses observed a male and female arguing, and then saw the male forcefully shove the female into his vehicle and drive away. The reporting parties provided detailed information about the vehicle, including the license plate number, and stated that they had video evidence of the incident. The officer spent approximately ten minutes on scene. He then deactivated his body-worn camera. According to his report, he attempted to find the vehicle at the registered address but could not locate it. The officer closed the call and took no further action.

In the following days, one witness to the event contacted LCPD and reported that the officer had not appropriately investigated the incident on scene; this witness reported that the officer had not formally interviewed anyone on scene, did not review available video footage of the incident, and did not take any notes of evidence provided. Another witness contacted an LCPD supervisor and reported the same unsatisfactory performance.

The supervisor, who was a member of the Domestic Violence Unit, reviewed the call and found that the officer had not taken the expected actions for proper handling of a domestic disturbance call. She contacted the officer's supervisor for permission to work directly with the officer to resolve the incident appropriately; the officer's supervisor agreed. The Domestic Violence Unit supervisor contacted the officer, advised him of his performance failures, provided a checklist of required actions that he should take, and requested that the officer conduct a welfare check at the address.

The officer conducted the welfare check, which included his interviewing the male and female at the same time. The male and female reported that they had a verbal argument and nothing more. The officer took no further action.

When the supervisor followed-up, she again found his performance to be unsatisfactory. Among other issues, she noted that the officer had interviewed the male and female together (in contravention of trained best practices for investigating domestic disturbances), did not complete a report, and did not conduct any further investigation to determine what had occurred. The supervisor forwarded her concerns to command staff and Internal Affairs.

Approximately one week later, the Department issued a "Be on the Lookout" for the male for various felony charges related to a significant incident of domestic violence against the female and her minor child that had occurred in the days following the officer's poor investigation. The supervisor reported that, in her experience, this situation might have been avoided if the officer had followed Department training, policy, and procedures that might have resulted in arrest of the male before his actions escalated.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The Department framed six allegations against the officer. Three of these related to his failure to follow specific subsections of **General Order 208: Domestic Disturbances** related to Information Gathering, Enforcement Action, and Reports. The Department

sustained these three allegations after reviewing all the available evidence, including the officer's admissions in his administrative interview and the supervisor's accounts of Department training, expectations, and direct coaching of the officer, which she had documented.

The Department also framed three additional allegations for violations of **General Orders 103: Code of Conduct, 141: Reporting, and 151: Recording Devices**. The Department also sustained these three based on the available evidence and the officer's administrative interview, in which he admitted that he should have kept his body-worn camera on and should have completed a police report. The Department found the officer's response to be entirely unsatisfactory in this case.

Outcome: Discipline or Other Action

LCPD management evaluated the officer's personnel history. The Department issued progressive discipline commensurate with the officer's history of similar misconduct. The Department also issued directed training for the officer in all the areas noted.

OIR Group Review

LCPD provided OIR Group with the case file for review of the available evidence, which included the supervisor's detailed documentation of the coaching she had provided the officer. We found the investigation to be thorough and complete and the outcomes to be appropriate.

We have commented in the past on the importance of effective line-level supervisors, and this case exemplifies the type of strong supervisor intervention that LCPD is committed to. In this case, the supervisor, an expert in domestic violence, proactively intervened when she learned of the officer's investigative failures, provided coaching and written guidance, and followed up several times to ensure that the officer was taking action. When the officer did not complete her instructions to Department standards, she appropriately notified Internal Affairs. This type of supervisor intervention is commendable.

In our last several reports involving incidents of domestic disturbances -- a category of complaint that has been prominent since early in our engagement -- we reported that Department employees seemed to show a better understanding of the Department's policies and procedures regarding these difficult calls for service, and that these

outcomes reflected well on the Department's continued training and accountability. Against that backdrop, this case seems noteworthy for both negative and positive reasons. The officer's shortcomings here were egregious – and even more glaring in light of the subsequent harms experienced by victims in this family. More encouragingly, though, the supervisor's strong (if unsuccessful) attempts at "course correction" and the Department's appropriately severe response to the misconduct are signs that the agency's leadership continues to prioritize this area of officer performance.

LCPD Management Response

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



6510 Spring Street #613
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TO: City of Las Cruces
FROM: OIR Group
DATE: July 25, 2024
RE: Review of Administrative Investigation – #2024EIC1-004

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 investigated by Internal Affairs.

OIR Group received the case file on July 1, 2024.

Case Summary

An LCPD officer arrested a subject who had a backpack. While transporting the subject to jail, the officer advised the subject to pick up the backpack and its few contents from the police station. The subject agreed.

In the following weeks, the subject visited the station to pick up his backpack but was told that it could not be located. He contacted a supervisor, who filed a complaint about the missing property.

The supervisor and an evidence technician followed up with the officer, who admitted that he never booked the backpack and, in fact, had thrown it away four days after the

arrest. During his administrative interview, the officer took full responsibility for his failure to properly book the backpack into evidence.

LCPD's Investigation and Analysis

Applicable General Orders, Training, or Other City Policies

The Department framed one allegation against the officer for **General Order 300: Evidence / Property**, which details how officers should handle any property collected, including the procedures for booking and the direction that officers shall not keep property in their own possession. The officer readily admitted that he had not followed this policy and had made a bad choice in keeping the backpack in his possession and then throwing it away. The allegation was "Sustained."

Outcome: Discipline or Other Action

LCPD management evaluated the officer's disciplinary history and issued a low-level disciplinary consequence and remedial training on evidence and property policies.

The Department also informed the subject how to file a claim for his mishandled property.

OIR Group Review

LCPD provided OIR Group with the case file for review of the available evidence, which included body-worn camera recordings, administrative interviews of the subject and witness officers, and emails from evidence personnel. Although the property did not have significant monetary value, it did have value to the arrestee. As such, the importance of following procedure and respecting the legal possessions of arrestees certainly merited this intervention.

We found the investigation and related outcomes to be thorough, complete, and appropriate.

LCPD Management Response

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