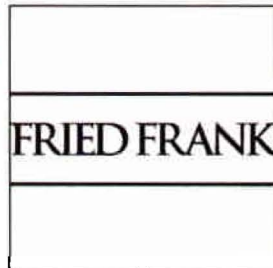
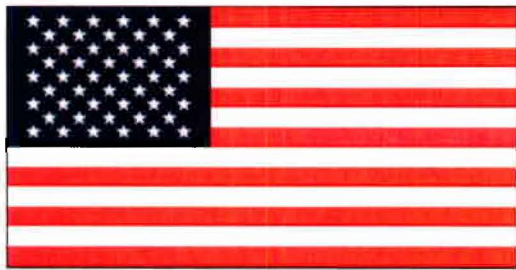


Eighth Quarterly Report of the Independent Monitor for the Metropolitan Police Department



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Executive Summary

OVERVIEW

This report is the eighth quarterly report of the Office of the Independent Monitor (“OIM”), which covers the first calendar quarter of 2004. The OIM has completed its second year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

This report summarizes the OIM’s monitoring activities undertaken from January 1, 2004 through March 31, 2004 and MPD’s and the City’s compliance activities undertaken during that same period, although, at times, we refer to activities outside that period if necessary to place events and developments in proper context.

This report focuses most specifically on MPD’s current state of compliance in the following areas:

Use of Force Policy and Use of Force Investigation Reports

This quarter, the OIM began reporting a second year of statistics reflecting uses of force by MPD officers on a citywide basis. MPD had fewer total uses of force as well as fewer serious uses of force in January 2004 as compared to January 2003. The statistics for February and March 2004, however, reflect a significantly larger number of total uses of force as compared to February and March 2003. While it remains too early to draw any conclusions regarding trends in MPD’s use of force based on these data, the OIM will continue to monitor the use of force statistics provided by MPD. With regard to the MPD’s Use of Force Incident Reports (“UFIRs”), last quarter we reported a significant and encouraging increase in the frequency with which MPD officers were completing UFIRs. Unfortunately, this quarter we observed a precipitous decline in UFIR completion rates: 75% in January 2004, 46% in

February 2004, and only 12% in March 2004 -- the worst month since MPD began providing UFIR completion statistics in October 2002.

Canine Deployments and "Bite" Incidents

The OIM conducted an extensive review of canine deployments and "bite" incidents in 2003, and we have concluded that, at this time, MPD's canine program is in substantial compliance with the requirements of the MOA relating to supervisor approval of canine deployments. Our review of a statistical sample of MPD's canine deployments in 2003 found that approximately 98% of such deployments either were approved by an appropriate supervisor or were made under exigent circumstances justifying the absence of supervisor approval. In 2003, MPD's Canine Unit reported 88 apprehensions, 16 of which involved a "bite" to the suspect. This "bite to apprehension ratio" of 18% in calendar year 2003 approximates the 15.5% ratio that we observed for the period October 2001 through March 2003 and is within the range that police experts generally agree is acceptable.

Non-FIT Use of Force and Misconduct Investigations

This quarter, we reviewed a third statistical sample of MPD use of force and misconduct investigations conducted by units other than MPD's Force Investigation Team ("FIT"). This third sample was comprised of 79 investigations opened during the period July 1, 2003 through September 30, 2003. We also performed additional analysis with respect to the sample of 80 investigations that we reviewed last quarter. With respect to the sample we reported on last quarter, 60.8% of the cases we reviewed complied with the MOA's timeliness provisions by either (i) being completed within 90 days or (ii) containing a documented explanation of the "special circumstances" justifying a delay beyond 90 days in the completion of the investigation. We found 57.0% of the investigations we reviewed this quarter complied with the MOA's timeliness provisions. Overall, our review of the 79 investigations in this quarter's sample found that 30.7% of the investigations were "complete" and only 57.0% of the investigations were "sufficient." This quarter, at Chief Charles H. Ramsey's request, the OIM provided MPD with technical assistance in the form of a lengthy memorandum describing 18 specific deficiencies we observed in MPD's non-FIT internal investigations and providing specific recommendations to address those deficiencies.

Auditing of the Office of Citizen Complaint Review's ("OCCR") Citizen Complaint Hotline

This quarter, the OIM completed its evaluation of OCCR's proposed modification to the requirement under paragraph 93 of the MOA that OCCR tape record all conversations placed to the citizen complaint hotline and develop an auditing procedure that includes monthly reviews of a random sample of tape recordings. In light of the infrequency with which the OCCR hotline is used and the availability of viable quality control alternatives, the OIM's report to DOJ and OCCR concluded that paragraph 93's current tape recording and auditing requirements place a burden on OCCR's financial and human resources that is disproportionate to the value, in terms of quality control and responsiveness to citizen concerns, generated by those procedures. The OIM also suggested, however, that DOJ and the City consider making survey-based audit procedures applicable to all complaints received by OCCR from the general public, regardless of the medium through which the complaints are made. DOJ currently is reviewing OCCR's request and the OIM's recommendation that paragraph 93 be modified.

OCCR Investigation of Citizen Complaints

The OIM conducted a significant review of the misconduct investigations performed by OCCR, including an analysis of the timeliness of 128 OCCR investigations closed from March 1, 2003 through February 29, 2004 as well as a review of a statistical sample of 30 of those investigations. Although the MOA does not define timeliness with respect to OCCR investigations, we found that, on average, the investigations closed by OCCR in 2003 took more than a year to complete. OCCR has acknowledged that the timeliness of its investigations must improve. To this end, OCCR reports that it has sought additional funds to increase its staff and, within the past nine months, has established goals for eliminating the backlog of cases that now exists. Although in many areas the quality of OCCR's investigations is quite good, there is room for improvement. Our review found that OCCR investigations generally are "sufficient" (85.7%), but we found that half (50.0%) of the OCCR investigations we reviewed were not "complete."

Personnel Performance Management System ("PPMS")

This quarter, MPD suffered a significant setback with respect to the development of PPMS. By teleconference on March 8, 2004, MPD notified DOJ that a loan for PPMS development that MPD expected to receive from the City's Office of the Chief Technology Officer would not be

forthcoming until MPD could establish that it would receive a sufficient budgetary allocation in fiscal year 2005 to re-pay the loan. Because the City's budget for fiscal year 2005 has not yet been approved and funding allocations with respect to PPMS have not yet been made, MPD was forced to suspend the PPMS development project when existing funds were exhausted as of the end of March 2004. Under the most recent timetable agreed upon between MPD and DOJ, a beta version of PPMS is to be available by June 25, 2004 and PPMS is to be fully implemented by February 25, 2005. The ultimate impact that the interruption in PPMS development will have on this timetable remains to be seen.

Training

Last quarter, the OIM reviewed MPD's Field Training Officer ("FTO") program and found that significant improvement in the FTO program is necessary, including completion of the Enhanced Field Training Officer Program Protocol and development of selection criteria for FTOs as required under the MOA. Our review this quarter found that MPD has not made any significant progress with respect to its FTO program. We also continued our review of the State of Maryland Police and Corrections Training Commission ("MPCTC") Enhanced Instructor Certification Course, which is the program MPD has selected to train its police instructors. We have found that the MPCTC program is comprehensive and satisfies the requirements of the MOA with respect to instructor training and certification.

Development of Substantial Compliance Standards

This quarter, the OIM circulated an initial draft of "substantial compliance" standards for each of the MOA's substantive provisions, and we participated in several discussions with MPD and DOJ regarding these draft standards. In the coming months, the OIM, in close consultation with DOJ and MPD, will continue formulating and refining the "substantial compliance" standards by which MPD's performance under the MOA will be measured.

CONCLUSION

MPD suffered a significant setback this quarter as a result of the PPMS funding crisis. Although the effect that the stalled PPMS development effort will have on MPD's ability to maintain the current schedule established for development and implementation of the PPMS is not yet known, this obviously is an area of significant concern for the parties and for the OIM. The OIM also is concerned about the significant

drop in UFIR completion rates that MPD experienced this quarter and the lack of observable progress with respect to MPD's FTO program.

Our observations this quarter again confirm our general experience that MPD is working in good faith to comply with the requirements of the MOA. Indeed, MPD has made significant progress toward MOA compliance in important areas. For example, our review this quarter of MPD's canine program has led the OIM to conclude that MPD is in substantial compliance with the MOA's provisions relating to canine policies and procedures.

Finally, this quarter for the first time, the OIM conducted a significant review of OCCR's investigations of citizen complaints lodged against MPD officers. The timeliness of these investigations is an area in which significant improvement is necessary, and OCCR has already taken steps to improve in this area. Although many of OCCR's investigations are of high quality, we found that nearly half of OCCR's investigations closed in 2003 were not complete. The OIM will revisit the subject of OCCR's misconduct investigations in a future quarter to assess OCCR's progress in improving the timeliness and completeness of that agency's misconduct investigations.

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Introduction

This report is the eighth quarterly report of the Office of the Independent Monitor (“OIM”), which covers the first calendar quarter of 2004. This is the final quarter of the OIM’s second year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion. This report covers the period January 1, 2004 through March 31, 2004.

This quarter, MPD experienced a significant setback in the development of its Personnel Performance Management System (“PPMS”) due to a funding crisis that has resulted in a major interruption in the progress of the project. The impact this interruption will have on the timetable DOJ and MPD have agreed upon for the development and implementation of PPMS remains to be seen. This is an area of significant concern for the parties and for the OIM.

Again this quarter, the OIM monitoring covered a wide range of activities, including our continuing review of all Use of Force Incident Reports (“UFIRs”) filed from January 2003 through February 2004; our continuing review of all investigations performed by MPD’s Force Investigation Team (“FIT”); a comprehensive review of MPD’s canine program, including canine deployments, “bite” incidents, in-service training, and compliance with the MOA’s requirement that all of MPD’s canines be “professionally bred”; review of a third large sample of non-FIT MPD use of force and misconduct investigations; preparation, at the request of Chief Ramsey, of a lengthy memorandum discussing specific deficiencies we have observed in MPD’s chain of command and Office of Professional Responsibility (“OPR”) investigations and recommending ways in which to improve those investigations; surveys of citizens who have lodged complaints against MPD officers with MPD; completion of our review, performed at the request of DOJ, of the Office of Citizen Complaint Review’s (“OCCR’s”) citizen complaint hotline; review of a statistical sample of OCCR investigations as well as data relating to the timeliness of OCCR investigations; a status review of MPD’s Field Training Officer (“FTO”) program; and an evaluation of the State of

Maryland Police and Corrections Training Commission (“MPCTC”) Enhanced Instructor Certification Course, which is the program MPD has selected to use to train its police instructors.

Finally, the OIM completed and circulated an initial draft of “substantial compliance” standards for each of the MOA’s substantive provisions. MPD, DOJ, OCCR, and the OIM also conducted a series of meetings to discuss these draft standards. This summer, MPD enters the two-year window during which it must achieve and maintain substantial compliance with the MOA in order to have satisfied its terms and no longer be subject to monitoring by the OIM beyond June 2006. In the coming months, we will continue to work with the parties to finalize these substantial compliance standards and, in light of these standards, to establish priorities for our monitoring activities best calculated to provide DOJ, MPD and the City with an accurate understanding of where the City and MPD stand in terms of substantially complying with their obligations under the MOA.

Compliance Assessment

This report is organized in a manner consistent with the structure of the MOA and our prior reports. We first summarize the requirements imposed by each section of the MOA; then we provide the current status of MPD's progress toward compliance with those requirements. We incorporate our analysis and assessment of factors that have impeded or advanced MPD's progress, along with additional information we believe relevant, into the "Status" sections. We then provide our "Recommendations," if any. Paragraph 166 of the MOA requires that the "Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement." The Recommendations sections of this report are designed to fulfill that responsibility. The recommendations do not and are not intended to impose additional obligations upon MPD or the City beyond those contained in the MOA.

Summarizing the requirements imposed by the MOA makes this report, like its predecessors, somewhat lengthy, but we feel the discussion is necessary in order to promote a full understanding of the requirements of the MOA and is consistent with the requirement that we monitor "each substantive provision" of the MOA.¹

I. General Use of Force Policy Requirements (MOA ¶¶ 36-52)

A. General Use of Force Policy (¶¶ 36-40)

1. Requirements

MPD is required to complete the development of an overall Use of Force Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the Use of Force Policy must include provisions that:

- Define and describe the different types of force and the circumstances under which the use of each type of force is appropriate;

¹ MOA at ¶ 169.

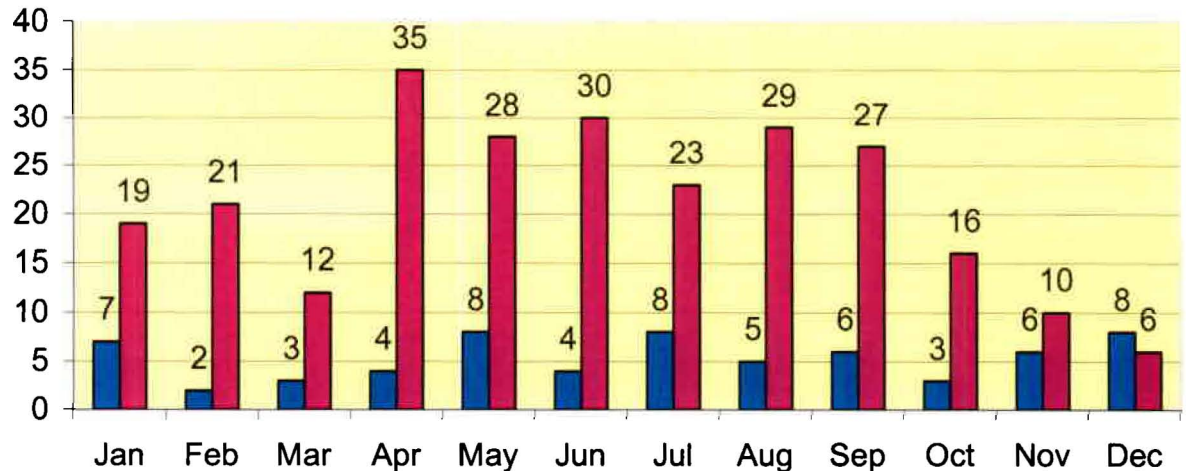
- Encourage officers to use advisements, warnings, and verbal persuasion when appropriate and in general seek the goal of de-escalation;
- Prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may develop such that the use of deadly force would be authorized;
- Establish that officers must, wherever feasible, identify themselves as police officers and issue a warning before discharging a firearm;
- Require that, immediately following the use of force, officers must examine persons who have been subjected to the use of force and obtain medical care for them, if necessary; and
- Provide specific advice to officers that the use of excessive force will subject them to MPD disciplinary action and potential civil liability and criminal prosecution.

2. Status And Assessment

The OIM reviews MPD's use of force statistics on a regular basis. While these statistics, alone, do not tell the whole story -- for example, to be put in context, they should be viewed in conjunction with crime data covering the same period -- they do provide relevant information that bears on the effectiveness of MPD's use of force policies and training. Accordingly, we have continued to review these statistics and to report on any apparent trends.

Last quarter, we reported on use of force statistics for calendar year 2003. As we have indicated in prior quarterly reports, although these statistics appear to indicate a seasonal variation in total uses of force, we have not yet accumulated sufficient data to reach any firm conclusions regarding trends in uses of force. This quarter, we began our analysis and reporting with respect to a second year of use of force statistics, which we anticipate will provide useful information regarding MPD's use of force and, over time, will allow for meaningful comparisons to be drawn between time periods.

**MPD Citywide Uses of Force January through December 2003
and January through March 2004**



FIT Investigations
 Chain of Command Investigations

As shown in the above charts, MPD had fewer total uses of force as well as fewer serious uses of force investigated by FIT in January 2004 as compared to January 2003. The statistics for February and March 2004, however, reflect a significantly larger number of total uses of force compared to February and March 2003. MPD reported a total of 30 use of force incidents in February 2004, which is an increase of approximately 30% over the 23 uses of force in February 2003. A comparison between March 2003 and March 2004 reflects an even more dramatic increase in total uses of force -- 17 incidents in March 2003 as compared to 32 in March 2004, which is an increase of approximately

88%. While it remains too early to draw any conclusions based on these data, the OIM will continue to monitor and review the citywide use of force statistics provided by MPD.²

In the coming quarter, the OIM intends to evaluate whether the use of force statistics reported by MPD are comparable to other departments of a similar size. This evaluation, where possible, will take advantage of use of force data maintained by the International Association of Chiefs of Police and the DOJ Bureau of Statistics.

3. Recommendations³

In previous quarterly reports, we have recommended that FIT incorporate arrest and crime rate data into its monthly use of force summary report. We continue to believe this recommendation has substantial merit because such information would help ensure that the statistics compiled by FIT are viewed in proper context. Although we have raised this suggestion with MPD in the past, we will continue to discuss with MPD the feasibility of providing such data along with the monthly use of force summary reports provided to the OIM. We also will request MPD to provide an explanation for the increase in use of force incidents in February and March 2004 as compared to those months in 2003.

B. Use of Firearms Policy (MOA ¶¶ 41-43)

1. Requirements

MPD is required to complete its development of a Use of Firearms Policy. The policy must comply with applicable law and be consistent with current standards in the law enforcement field. In particular, the Use of Firearms Policy must:

² The data reflected in the above charts were obtained from FIT; therefore, their accuracy depends upon the quality of MPD's use of force reporting practices. A use of force about which FIT is unaware will not be reflected in the tables shown above.

³ As discussed above, paragraph 166 of the MOA requires that the "Monitor shall offer the citizen MPD technical assistance regarding compliance with this Agreement." The Recommendations sections of OIM's quarterly reports are designed to fulfill that responsibility. The recommendations do not impose additional obligations upon MPD or the City beyond those contained in the MOA.

- Prohibit officers from possessing or using unauthorized ammunition and require officers to obtain service ammunition through official MPD channels;
- Specify the number of rounds that officers are authorized to carry;
- Establish a single, uniform reporting system for all firearms discharges;
- Require that, when a weapon is reported to have malfunctioned during an officer's attempt to fire, it promptly be taken out of service and an MPD armorer evaluate the functioning of the weapon;
- Require that MPD document in writing the cause of a weapon's malfunction -- *i.e.*, whether an inherent malfunction, a malfunction due to poor maintenance, or a malfunction caused by the officer's use of the weapon; and
- Provide that the possession or use of unauthorized firearms or ammunition may subject officers to disciplinary action.

In addition to these specific requirements relating to the Use of Firearms Policy, the MOA requires the Mayor to submit to the Council for the District of Columbia a request to permit MPD's Chief of Police to determine the policy for MPD officers to carry firearms when they are off duty while in the District of Columbia, including any appropriate restrictions applicable to situations in which an officer's performance may be impaired.

2. Status And Assessment

On June 4, 2002, the District of Columbia City Council approved an amendment, entitled the "Off-Duty Service Pistol Authorization Amendment Act of 2002," that permits MPD's Chief of Police to designate his own policy as to when off-duty officers are required to carry their service pistols in the City. This measure was signed into law and became effective on October 1, 2002.

Last quarter, we strongly encouraged MPD to issue in the near future a special order concerning the carrying of service pistols by off-duty officers. As of the end of this quarter, eighteen months had passed without MPD's issuing a special order implementing this policy.

Although it did not do so within the current reporting period, MPD issued a special order entitled Carrying Firearms While Off-Duty in the District of Columbia, effective April 1, 2004.

3. Recommendations

The OIM has no specific recommendations on this topic at this time.

C. Canine Policies and Procedures (¶¶ 44-46)

1. Requirements

The MOA requires MPD to develop a Canine Teams Policy that:

- Limits the high-risk deployment of canines -- off-leash deployments, use during searches, and other situations where there is a significant risk of a canine biting a suspect -- to cases where the suspect is either wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed;
- Requires supervisory approval for all canine deployments -- either a canine unit supervisor or a field supervisor;⁴
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect should surrender, and that the suspect should remain still when approached by a canine; and
- Ensures that, in all circumstances where a canine is permitted to bite or apprehend a suspect,
 - The handler calls the canine off as soon as the canine can be safely released, and
 - MPD ensures that any individual bitten by a canine receives immediate and appropriate medical treatment.

⁴ The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA at ¶ 45.

2. Status And Assessment

On June 4, 2003, MPD submitted a revised Canine Teams General Order to DOJ. On July 25, 2003, DOJ provided MPD comments on the revised order and, on September 30, 2003, also provided certain specific policy recommendations intended to provide additional guidance with respect to revision of the Canine Teams General Order. On December 31, 2003, MPD submitted to DOJ a revised Canine Teams General Order as well as specific responses to DOJ's policy recommendations for MPD's canine program. DOJ provided additional comments on the revised Canine Teams General Order on March 31, 2004, and MPD currently is reviewing those comments. Thus, MPD's revised Canine Teams General Order has not yet received final DOJ approval.

This quarter, the OIM conducted an extensive review of MPD's canine program by (1) monitoring canine team in-service training, (2) evaluating MPD's canine instructor certification process, (3) reviewing canine purchase records and other documentation to assess MPD's compliance with the MOA's "professionally-bred" requirement for the Unit's canines, (4) reviewing a statistical sample of 60 canine deployments made in 2003, and (5) reviewing the 13 final FIT investigation reports relating to canine bites that occurred in 2003.⁵ We discuss our findings with respect to canine in-service training, instructor certification, and the "professionally-bred" requirement below in Section VI.B.3.

Our review indicates that MPD's canine program currently is in substantial compliance with the requirements of the MOA relating to supervisor approval of canine deployments. Our review of a statistical sample of canine deployments found that approximately 98% of such deployments either were approved by an appropriate supervisor or were made under exigent circumstances justifying the absence of supervisor approval. Also, our review of FIT investigations of incidents where a canine came into contact with a suspect found that, although as discussed below certain of these incidents were problematic and indicate that there is room for improvement in the training of canine handlers, all

⁵ As discussed in detail later in this section, in 2003 there was a total of 16 incidents in which an MPD canine bit or otherwise came into contact with a suspect. As of the date of our review, FIT had completed investigations with respect to 13 of these 16 incidents.

of MPD's canine contacts in 2003 were within MPD's draft policy and consistent with the MOA.⁶

Finally, in 2003, MPD's Canine Unit reported 88 apprehensions, 16 of which involved a "bite" to the suspect. This "bite to apprehension ratio" of 18% in calendar year 2003 approximates the 15.5% ratio that we observed for the period October 2001 through March 2003 and is within the range that police experts generally agree is acceptable.⁷

a. Canine Deployments

Canine Unit data reflect that, in 2003, canine teams received 3,826 calls for service, which resulted in 952 deployments. This quarter, PwC selected a statistical sample of 60 canine deployments made in 2003, which the OIM reviewed to determine the frequency with which MPD complied with the requirement under paragraph 45 of the MOA that canine officers obtain the approval of an immediate supervisor prior to the deployment of a canine.⁸

We examined deployment reports related to all 60 of the canine deployments identified in the sample. Eleven of these canine deployment

⁶ As discussed in Section I.C.2 above, MPD's revised Canine Teams General Order has not been finalized.

⁷ In our Fourth Quarterly Report, we observed that "[p]olice experts generally agree that a bite/apprehension ratio of less than 30 percent is acceptable (although as DOJ has pointed out, many tightly run canine programs have a bite ratio of no more than 10 percent)." OIM Fourth Quarterly Report at 15. We also noted that comparisons of bite/apprehension ratios between jurisdictions, while providing context to MPD's statistics, cannot substitute for individualized analysis of the bite incidents that occur within MPD's canine program. *Id.* at 15 n. 21.

⁸ Paragraph 45 of the MOA does not expressly provide for an "exigent circumstances" exception to the supervisor deployment authorization requirement. MPD General Order RAR-306.01 Canine Teams, however, provides at Section IV.B.2 that "[t]he only exception to the requirement that an official authorize use of a canine is under exigent circumstances when the handler is unable to contact either a canine official (first) or a field supervisor and, using sound judgment, deems it necessary to deploy the canine to protect himself or herself, other police officers, or citizens, from an immediate threat of serious bodily injury." For purposes of evaluating MPD's canine deployments, the OIM's police practices experts have interpreted paragraph 45 of the MOA to include an "exigent circumstances" exception, which is consistent with the MPD general order described above and with generally accepted police practices.

reports did not identify a supervisor who had authorized the deployment. Of the 11 deployments for which no authorizing supervisor was identified, we determined that 8 did not involve canine deployments that would require supervisor authorization⁹ and that 2 involved “exigent circumstances” justifying deployment of a canine without prior supervisor authorization.

Therefore, only one of the 60 canine deployments in our statistical sample failed to comply with the supervisor authorization requirement under paragraph 45 of the MOA, which constitutes a compliance rate of approximately 98%. The single non-compliant canine deployment involved a building search conducted under circumstances that did not appear, based on information contained in the deployment report, to be exigent.

To further assess the adequacy of the documentation contained in canine deployment reports reflecting that supervisor approval was not obtained due to “exigent circumstances,” we conducted a non-scientific sampling of 4 additional deployment reports indicating the presence of exigent circumstances. The information contained in all 4 of these reports adequately supported the presence of exigent circumstances justifying the absence of supervisor approval.

In order to evaluate the accuracy and completeness of the canine deployment reports, the OIM requested all PD-251 incident reports related to each of the selected 60 canine deployments. Only 27 of the 60 canine deployment reports contained a tracking number that could be tied to a PD-251 incident report. Of these 27, MPD could not locate 4 of the PD-251s. Accordingly, we were able to review only 23 PD-251 incident reports related to the sample of 60 canine deployments. In 6 of these 23 cases, the CCN number entered on the canine deployment report appeared to be inaccurate because the PD-251s related to those numbers did not involve canine deployments.

Moreover, our review of the PD-251 incident reports found that officers in MPD’s districts frequently fail to record in such reports that a canine was requested and deployed at the scene. Eight of the 17 PD-251s that we were able to obtain and that actually related to a canine

⁹ Of these 8 deployments, 2 were not actual canine deployments, 3 were on-lead searches for drugs or weapons, 2 were on-lead cadaver searches, and 1 was a canine demonstration at a public school.

deployment failed to report that a canine was called to or was present at the scene.

Although MPD appears at this time to be in substantial compliance with the MOA's requirements relating to supervisor approval of canine deployments, the reporting deficiencies that the OIM's review has detected should be of significant concern to MPD. The lack of accurate and complete information in all deployment and incident reports related to canine deployments impairs the OIM's and MPD's ability to review and evaluate canine handler decisions and to evaluate compliance with MOA requirements and MPD policy.

b. FIT Investigations of Serious Canine Contacts With Suspects

As indicated above, in 2003 MPD canine units were involved in 16 "bite" incidents during canine deployments. At the time of our review, FIT had completed investigations related to only 13 of these incidents.¹⁰ This quarter, we reviewed all 13 of these investigations to evaluate whether, in each case, the canine "bite" was appropriate under the MOA and consistent with MPD policy.

Generally, we found the "bite" incidents we reviewed to involve uses of force consistent with the MOA and MPD policy. We identified, however, several points of concern that we recommend MPD address through the training of canines and handlers.

- Three of the 13 "bite" incidents involved juveniles suspected of criminal conduct. In one case, although the deployment of the canine was within MPD's draft policy, the canine failed to release the juvenile suspect upon command by the handler, and the handler was required to physically pull the animal off of the suspect.¹¹

¹⁰ Under paragraph 72 of the MOA, FIT is charged with investigating all "serious uses of force," which are defined at paragraph 33 of the MOA to include "all incidents where a person receives a bite from a canine."

¹¹ In the coming quarter, the OIM will review whether the canine involved in this incident received appropriate retraining to address the animal's failure to obey the handler's instruction to release the suspect.

- One case involved two burglary suspects who were Hispanic. The suspects failed to comply with the officer's order, issued in English, to show their hands, and the canine was released. The FIT report indicated that neither of the suspects understood English well.
- In one case, the canine was on-lead and presumably under the control of the handler when the bite occurred.¹²
- Finally, one of the cases we reviewed involved a canine that was off-lead and had a suspect cornered. Without first having adequate control over the canine, the handler ordered the suspect to show his hands. When the suspect attempted to comply with the officer's order, the canine reacted to the suspect's hand movement by lunging at the suspect. The suspect suffered a scratch to the abdomen.

3. Recommendations

We recommend that MPD continue working with DOJ to finalize the Canine Teams General Order. We also recommend that MPD's canine in-service training program emphasize: (1) the importance of accurate and complete canine deployment reports; (2) handler control over canines in confrontations with suspects; and (3) reasonable efforts to obtain a suspect's compliance -- including consideration of the possibility that a suspect may not understand English -- prior to the release of a canine.

D. Oleoresin Capsicum Spray Policy (¶¶ 47-50)

1. Requirements

The MOA requires MPD to develop an Oleoresin Capsicum ("OC") Spray Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the OC Spray Policy must:

- Prohibit officers from using OC spray unless the officer has legal cause to detain the suspect, take the suspect into custody,

¹² This on-lead bite occurred on February 4, 2003. This bite incident is among the cases that led MPD to increase its focus on improving the canine program over the past year.

or maintain the suspect in custody and unless the suspect is actively resisting the officer;

- Prohibit officers from using OC spray to disperse crowds or smaller groups of people, including its use to prevent property damage, unless the acts being committed endanger public safety and security;
- Prohibit the use of OC spray on children and the elderly, except in exceptional circumstances;
- Require that officers provide a verbal warning prior to the use of OC spray, unless such warning would endanger the officer or others, stating that its use is imminent unless the resistance ends; and, whenever feasible, permit a reasonable period for the warning to be heeded;
- Limit the use of OC spray to a person's head and torso; prohibit spraying from less than three feet away (except in exceptional circumstances); and limit the spray to two, one-second bursts; and
- Decontaminate persons sprayed with OC spray within twenty minutes after spraying, and transport them to a hospital for treatment if they complain of continuing adverse effects or state that they have a pre-existing medical condition that may be aggravated by the spray.

2. Status And Assessment

MPD's use of OC spray was the subject of detailed and specific monitoring by the OIM during the sixth quarter. We did not monitor activity specifically related to OC spray this quarter.

3. Recommendations

In our Sixth Quarterly Report, we recommended that MPD's in-service training provide more focused attention on the use of OC spray, including training on MPD policies regarding OC spray, appropriate techniques for deployment of the agent, and decontamination procedures. In the coming quarters, we will continue to monitor MPD's in-service training programs, including evaluating the extent to which modifications in training on the use of OC spray have been implemented.

E. Implementation Schedule (¶¶ 51-52)

MPD's implementation efforts relating to its use of force policies continue to appear to be on track.

II. Incident Documentation, Investigation, and Review (MOA ¶¶ 53-84)

A. Use of Force Reporting Policy and Use of Force Incident Report (¶¶ 53-55)

1. Requirements

The MOA requires MPD to develop a Use of Force Reporting Policy and a Use of Force Incident Report ("UFIR"). The MOA mandates that the reporting policy require:

- Notification of an officer's supervisor immediately following any use of force or after the lodging of any allegation of excessive use of force;
- An officer to fill out a UFIR immediately after he or she uses force, including the drawing and pointing of a firearm at another person or in such a person's direction;
- An officer's supervisor to respond to the scene upon receiving notification that force has been used or that an allegation of excessive force has been received;
- Immediate notification to FIT in every instance involving deadly force,¹³ the serious use of force,¹⁴ or any use of force potentially reflecting criminal conduct by an officer;¹⁵

¹³ "Deadly force" is defined in paragraph 15 of the MOA as "any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object."

¹⁴ "Serious use of force" is defined in paragraph 33 of the MOA as "lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or

- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on UFIRs into MPD's PPMS.

The precise language of the UFIR was the subject of substantial discussion and negotiation between MPD and DOJ subsequent to the execution of the MOA. As a result of this dialogue, the parties agreed upon the following language for inclusion in relevant force-related General Orders:

In all uses of force requiring a Use of Force Incident Report, the member shall immediately notify his/her supervisor of the use of force, intentional or unintentional, exercised by the member, any accusation of excessive force made against the member, or immediately following the drawing of and pointing a firearm at or in the direction of another person, and shall promptly complete the Use of Force Incident Report.¹⁶

The parties also agreed upon certain language regarding the process of compelling an officer to complete a UFIR following a declination by the United States Attorney's Office ("USAO") and/or issuance of an authorized Reverse-Garrity warning. A "Reverse-Garrity" warning is a statement given to an officer, typically following a declination to prosecute issued by the USAO, requiring the officer to answer questions relating to his or her official duties but precluding the use of statements made by the officer against him in any criminal prosecution.

Footnote continued from previous page

impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine."

¹⁵ "Use of force indicating potential criminal conduct by an officer" is defined in paragraph 35 of the MOA to include "strikes, blows, kicks or other similar uses of force against a handcuffed subject."

¹⁶ Memorandum of Agreement Progress Report, dated January 7, 2003, at 9.

2. Status And Assessment

a. Use of Force Incident Report (UFIR)

(1) UFIR Completion

In our Fifth Quarterly Report, we observed that there appeared to be lingering confusion among MPD officers and supervisors with respect to the UFIR. We also observed that one result of this confusion has been that officers have not completed UFIRs in circumstances where MPD policy provides that they should. In our Sixth Quarterly Report, we found that the UFIR completion rate, even after discounting uses of force still subject to pending review by the USAO,¹⁷ remained a problem.¹⁸ Last quarter, we reported the encouraging development that UFIR completion rates, after discounting uses of force still subject to pending review by the USAO, had improved significantly to approach or exceed 80% in each of the last three months of 2003.¹⁹

As reflected in the chart below, however, after months of gradual and steady improvement, UFIR completion rates declined precipitously this quarter. UFIR completion rates, after discounting uses of force still subject to pending review by the USAO, dropped to 75% in January 2004, 46% in February 2004, and 12% in March 2004 -- the worst month since MPD began providing UFIR completion statistics in October 2002.

¹⁷ Prior to July 2003, MPD's statistics regarding use of force incidents and UFIR completion did not take into account cases that were subject to pending reviews by the USAO. Because officers cannot be compelled to provide statements regarding a use of force prior to a written declination of prosecution by the USAO, UFIRs for those cases could not be completed. Accordingly, our chart regarding the percentage of use of force incidents resulting in a completed UFIR has been modified to subtract from the totals the cases that remain pending a prosecutorial decision by the USAO.

¹⁸ OIM Sixth Quarterly Report at 15.

¹⁹ OIM Seventh Quarterly Report at 13-14.

	Total uses of force investigated by FIT	Total uses of force investigated by chain of command	Total uses of force as reported by FIT	Total number of UFIRs completed as reported by FIT	Uses of force in which no UFIR completed due to pending AUSA review	Percentage of uses of force resulting in completion of UFIR	Percentage of UFIRs completed, not including uses of force in which USAO review is pending
Oct. 2002 - Dec. 15, 2002	12	57	69	14		20.29%	
Jan. 1, 2003 - Jan. 31, 2003	7	19	26	6		23.08%	
Feb. 1, 2003 - Feb. 28, 2003	2	21	23	7		30.43%	
Mar. 1, 2003 - Mar. 31, 2003	3	12	15	13		86.67%	
Apr. 1, 2003 - Apr. 30, 2003	4	35	39	11		28.21%	
May 1, 2003 - May 30, 2003	8	28	36	25		69.44%	
June 1, 2003 - June 30, 2003	4	30	34	14		41.18%	
July 1, 2003 - July 31, 2003	8	23	31	13	7	41.99%	54.17%
Aug. 1, 2003 - Aug. 31, 2003	5	29	34	15	6	44.12%	53.58%
Sept. 1, 2003 - Sept. 30, 2003	6	27	33	23	6	69.70%	79.31%
Oct. 1, 2003 - Oct. 31, 2003	3	16	19	15	0	78.95%	78.95%
Nov. 1, 2003 - Nov. 30, 2003	6	10	16	10	3	62.50%	76.92%
Dec. 1, 2003 - Dec. 31, 2003	8	6	14	9	3	64.29%	81.82%
Jan. 1, 2004 - Jan. 31, 2004	3	10	13	9	1	69.23%	75.00%
Feb. 1, 2004 - Feb. 29, 2004	3	27	30	13	2	43.33%	46.42%
Mar. 1, 2004 - Mar. 31, 2004	7	25	32	3	7	9.38%	12.00%

The reasons underlying the dramatic drop in UFIR completion rates MPD experienced this quarter are not clear. UFIR completion is a serious issue that the OIM will address with MPD in the coming quarter in an effort to determine the reasons for the decline in the rate of UFIR completion. It is our hope that MPD's extremely poor UFIR completion rates for February and March 2004 are aberrational.

In its Progress Report this quarter, MPD states that it is "work[ing] to ensure that all UFIRs are completed in a timely manner."²⁰ OPR recently began preparing reports for the Executive Assistant Chief of

²⁰ Memorandum of Agreement Progress Report, dated April 16, 2004 ("MPD April 2004 Progress Report"), at 11.

Police identifying all outstanding UFIRs by police district. These reports are being used to remind District Commanders of uncompleted UFIRs. In the coming quarter, the OIM will request access to these reports.

MPD has proposed a revised and simplified UFIR and has submitted the proposed revisions to DOJ. On March 19, 2003, DOJ provided written responses to MPD's proposal. On December 10, 2003, MPD submitted a revised UFIR that incorporated all of DOJ's recommendations. DOJ responded on February 27, 2004 with its remaining concerns regarding the revised UFIR, which MPD is currently considering.²¹

(2) Pointing a Weapon at or in the Direction of a Person

On December 10, 2003, MPD proposed to DOJ a modification to the MOA's requirement that officers complete a UFIR "immediately following the drawing and pointing of a firearm at, or in the direction of, another person"²² MPD believes that, because the MOA does not include the pointing of a weapon within its definition of "use of force," reporting such incidents through the UFIR is not appropriate and has caused substantial concern within the ranks of MPD officers.

Accordingly, MPD has developed a draft MPD Reportable Incident Form that would, if DOJ accepts its use, replace the UFIR as the mechanism for tracking "pointing" incidents.²³ DOJ responded to MPD's proposal on February 27, 2004 and raised several process concerns, including ensuring adequate supervisory review of the MPD Reportable Incident Form. MPD currently is preparing a response to DOJ.

(3) UFIR Quality

Last quarter, we began reporting statistics regarding the quality of UFIRs. As reflected in the updated chart below, the OIM's reviews of all UFIRs in MPD's central UFIR files, which are maintained at FIT's offices, for the months January 2003 through February 2004 have identified specific deficiencies in the thoroughness and completeness of a significant proportion of the UFIRs.

²¹ *Id.* at 12.

²² MOA at ¶ 53.

²³ MPD April 2004 Progress Report at 13.

Month	Total UFIRs in file	Missing Supervisor's Signature or Finding ¹	Missing Date/Time Notification to Supervisor ²	Missing CS Number ³	Missing Narrative	Missing Other Information	Reverse Garrity
Jan 03	26	19	11	8	5	0	2
Feb 03	17	13	6	3	5	0	2
Mar 03	15	9	8	3	2	0	2
Apr 03	20	13	7	2	4	1	4
May 03	21	12	7	7	1	2	0
June 03	19	9	5	7	1	1	2
July 03	17	9	7	2	1	2	2
Aug 03	34	17	9	10	2	1	1
Sept 03	20	11	4	7	0	1	0
Oct 03	7	4	1	1	2	0	1
Nov 03	12	10	3	5	1	2	0
Dec 03	9	8	2	3	1	0	0
Jan 04	9	4	0	5	0	3	2
Feb 04	10	4	1	1	1	2	0
Total	236	142 (60.17%)	71 (30.01%)	64 (27.12%)	26 (11.01%)	15 (6.36%)	18 (7.63%)

¹ The UFIR requires the reviewing supervisor to reach a finding on the use of force incident and to make a recommendation. There are spaces on the form for entering this information and for the supervisor's signature.

² The UFIR directs the reporting officer to indicate the date and time the officer notified his supervisor of the use of force incident.

³ There are two places on the UFIR for entering the CS number. The CS number is used to track reports generated in relation to the incident and links the UFIR to subsequent investigations of the underlying use of force incident.

For example, well over half (60.2%) of the completed UFIRs are missing the signature or findings of a reviewing supervisor. Slightly less than one third (30.0%) of the UFIRs on file do not reflect the time and date the reporting officer notified his supervisor of the use of force incident, as required by the form. Moreover, a significant proportion of the UFIRs do not identify CS tracking numbers (27.1%) or provide a narrative describing the incident (11.0%), information that also is required by the form.

(4) Specialized Mission Unit After-Action Report

On March 5, 2003, MPD sent a letter to DOJ proposing an amendment to the UFIR reporting requirement as it relates to certain incidents involving MPD's Specialized Mission Units ("SMUs") during which multiple officers point their service weapons. MPD believes that the UFIR requirement as it relates to such incidents may give rise to delays that adversely affect operational efficiency because it requires multiple officers each taking time to complete a UFIR. As an alternative to the requirement that each officer prepare a UFIR documenting the

pointing of a weapon, MPD proposed that the unit manager complete a single “After-Action Documentation Report.” DOJ responded to MPD’s proposal on August 25, 2003 by suggesting certain revisions to the draft After-Action Report. On December 31, 2003, MPD submitted to DOJ a revised draft “Specialized Mission Unit After-Action Report” incorporating DOJ’s comments and a revised Specialized Mission Unit General Order including policies and procedures related to the SMU After-Action Report.

On March 30, 2004, DOJ provided final approval of MPD’s Specialized Mission Unit General Order and outlined its remaining concerns with respect to the After-Action Report.²⁴ MPD requested a delay in the requirement that the Specialized Mission Unit General Order be implemented within 14 business days after DOJ’s approval of the order. This request arose from MPD’s concern that implementation of the Specialized Mission Unit General Order prior to the resolution of outstanding issues related to the Specialized Mission Unit After-Action Report might lead to confusion among officers in the field. Accordingly, MPD requested that implementation of both the Specialized Mission Unit General Order and Specialized Mission Unit After-Action Report be required to take place within 14 business days after DOJ’s approval of the Specialized Mission Unit After-Action Report.²⁵

b. AUSA Notification Log

Each quarter, the OIM reviews MPD’s AUSA Notification Log, which is maintained at FIT’s offices. This quarter, we again found that MPD is continuing to make timely notifications to the USAO within 24 hours of a deadly or serious use of force incident.²⁶

3. Recommendations

The data set forth above suggests that, despite the encouraging UFIR numbers from last quarter, MPD has slipped significantly with respect to the rate at which officers complete UFIRs. Moreover, serious deficiencies continue to exist with respect to the quality and completeness of the UFIRs. Although MPD has indicated that it has

²⁴ Letter from Tammie M. Gregg to Captain Matthew Klein (March 30, 2004).

²⁵ E-mail from Maureen O’Connell to Tammie Gregg, Lisa Graybill, and Sarah Gerhart (March 31, 2004).

²⁶ MOA at ¶ 54.

initiated internal controls with respect to the UFIR, we reiterate our strong recommendation that MPD devote significant attention, in terms of training and supervision, to improving the rate at which UFIRs are completed as well as to improving the quality of the information recorded on UFIRs.

**B. Investigating Use of Force and Misconduct Allegations
(MOA ¶¶ 56-84)**

1. Use of Force Investigations (¶¶ 56-67)

a. Requirements

(1) FIT Use of Force Investigations

The provisions of the MOA that address use of force investigations take as their point of departure the January 1999 creation of FIT as the entity within MPD charged with investigating all firearms discharges by MPD. The MOA creates a protocol for handling the investigation of use of force by MPD and the manner in which such investigations are to be coordinated. At the core of the protocol is the requirement to transfer responsibility for MPD criminal investigations involving officer use of force from MPD district violent crime units or other MPD district supervisors to FIT.²⁷

MPD is required to notify and consult with the USAO -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.²⁸

²⁷ Consistent with this approach, the MOA requires that MPD train and assign a sufficient number of personnel to FIT to fulfill the duties and responsibilities assigned to it by the MOA. MOA at ¶ 63.

²⁸ This deferral of the interview of subject officers is designed to avoid the risk that such compelled interviews might taint the criminal investigation. See *Garrity v. State of New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety days of a decision by the USAO not to prosecute, unless special circumstances prevent their timely completion.²⁹

The MOA contains various requirements governing FIT's investigation process and the preparation of an investigation report by FIT. For example, the report prepared by FIT must include:

- A description of the use of force incident and other uses of force identified during the investigation;
- A summary and analysis of all relevant evidence; and
- Proposed findings, which include:
 - A determination of whether the use of force under investigation was consistent with MPD policy and training;
 - A determination of whether proper tactics were used; and
 - A determination of whether alternatives requiring lesser uses of force were reasonably available.

(2) Other Use of Force Investigations

All use of force investigations, other than those specifically assigned to FIT, may be investigated by chain of command supervisors in MPD districts. In the alternative, the Chief of Police or his designee may assign investigations to chain of command supervisors from another district. In the absence of special circumstances, these use of force investigations, like FIT's investigations, must be completed within ninety days and must contain all of the elements prescribed above for FIT investigation reports. Once such investigations are complete, the investigation report must be submitted to the Unit Commander, who will review it to ensure completeness and to ensure that its findings are

²⁹ In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

supported by the evidence. The Unit Commander has the power to order additional investigation if necessary. Once the investigation is complete, the investigation file is forwarded to the Use of Force Review Board (“UFRB”).³⁰

(3) Use of Force Review Board

Subject to approval by DOJ, MPD is required by the MOA to develop and implement a policy to enhance the UFRB as the review body for use of force investigations. The policy developed by MPD must:

- Ensure that the UFRB conducts prompt reviews of all use of force investigations;³¹
- Establish the membership of the UFRB;
- Establish timeliness rules for the review of investigations;
- Authorize the UFRB to recommend discipline for violations of MPD policies, recommend further training where appropriate, and authorize the UFRB to direct City supervisors to take non-disciplinary action to encourage officers to modify their behavior;
- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

³⁰ In the event there is evidence of criminal misconduct, the Unit Commander must suspend the use of force investigation and notify FIT and the USAO.

³¹ Recognizing that the UFRB might be overwhelmed by reviewing all use of force investigations, DOJ and MPD agreed to modify the MOA to require the UFRB to conduct timely reviews only of use of force investigations investigated by FIT I or FIT II. Additionally, according to DOJ, it agreed to allow non-FIT force reviews, with some exceptions, to be conducted by chain of command officers (and conclude at the Assistant Chief level) so long as FIT continues to review all non-FIT use of force incidents in an effort to identify incidents that should be referred to the UFRB.

In addition to these requirements, the UFRB must conduct annual reviews of all use of force investigations to identify patterns and problems in such investigations. The UFRB must issue a report summarizing the findings of its review to the Chief of Police.

b. Status And Assessment

(1) FIT Manual

MPD submitted its FIT manual to DOJ on February 5, 2002. Following comments from DOJ, MPD submitted a revised FIT manual on November 1, 2002. Following additional comments from DOJ on March 26, 2003, MPD submitted a newly revised draft manual on April 21, 2003. DOJ provided comments on the revised FIT Manual on August 25, 2003, all of which MPD incorporated into the draft FIT Manual that was returned to DOJ for approval on September 29, 2003. On December 31, 2003, DOJ approved the revised Force Investigation Team Organizational Plan and Operations Manual.

(2) FIT Use of Force Investigations

This quarter, we continued our review of all preliminary and final use of force investigation reports prepared by FIT I since January 1, 2003. Again this quarter, we found the investigations performed by FIT to be timely, complete, and sufficient. Of the eight FIT I investigations we reviewed this quarter, all but one was completed within the 90-day window prescribed by the MOA.³²

Three of the eight FIT I investigations we reviewed this quarter included a recommendation that the subject officers receive additional training. During the next quarter, we will monitor MPD's systems and procedures to determine the degree to which FIT's recommendations regarding remedial training for subject officers reach the appropriate officials within MPD and are appropriately implemented.

In December 2003, DOJ specifically requested that we monitor FIT's investigation of a stabbing/shooting incident involving an MPD officer, which was reported in the Washington Post on November 30, 2003.³³ According to the newspaper account, the MPD officer was

³² MOA at ¶ 62.

³³ Clarence Williams and Martin Wall, *Two Assailants Slash, Shoot at D.C. Officer*, WASHINGTON POST, Nov. 30, 2003, at C3.

stabbed and slashed by one assailant and shot at by another in the Mt. Pleasant neighborhood of the City. The officer returned fire without hitting either suspect. FIT investigators found that the officer's weapon discharge was justified, but also expressed some concern that he engaged two suspects without obtaining back-up support. We found the FIT report to be both complete and sufficient.

(3) Other Use of Force Investigations

This quarter, we continued our review of chain of command and OPR use of force and misconduct investigations by selecting and reviewing a statistical sample composed of 80 such investigations opened between August 1, 2003 and October 31, 2003. The results of this quarter's review are discussed below in Section II.B.2.b(1).

(4) Use of Force Review Board

On January 31, 2003, DOJ approved the Use of Force Review Board General Order. The OIM intends to review a sample of UFRB cases in the coming quarter.

c. Recommendations

Our recommendations with respect to chain of command use of force investigations are reflected in Section II.B.2.c below regarding the OIM's review of a statistical sample of chain of command investigations.

2. Investigations of Misconduct Allegations (¶¶ 68-84)

a. Requirements

The MOA establishes a set of procedures for handling the following types of allegations of misconduct against MPD officers:

- Allegations for which an officer has been arrested or charged criminally;
- Allegations where an officer has been named as a party in a civil lawsuit
 - relating to the officer's conduct while on duty or otherwise acting in an official capacity; or

- relating to the officer's conduct while off duty, and otherwise not acting in an official capacity, where allegations against the officer involve physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
- Allegations of unlawful discrimination;
- Allegations of unlawful searches and stops;
- Allegations of unlawful seizures;
- Allegations of retaliation or retribution against officers or other persons; and
- Allegations of all uses of physical violence -- including but not limited to strikes, blows, and kicks -- that is engaged in for a punitive purpose or that is perpetrated against a subject who is not offering resistance.³⁴

With respect to allegations in the above categories that are criminal, MPD's Office of Professional Responsibility ("OPR") is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of cases, MPD is required to notify the USAO within twenty-four hours of the receipt of such allegations, and MPD and the USAO are required, in the absence of extraordinary circumstances, to consult with each other following such notification.³⁵ In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

1. Incidents where charges made by an officer for disorderly conduct, resisting arrest, or assault on a police officer are found by a prosecutor or a judge to be without merit; and
2. Incidents where evidence has been suppressed because of a constitutional violation involving potential misconduct by an

³⁴ The same procedures apply whatever the source of the information to MPD -- whether by self-referral from the officer, reporting by other MPD personnel, or complaint from a source outside MPD.

³⁵ The MOA makes clear that a key reason for this consultation requirement is to avoid potential complications for a criminal investigation and potential prosecution posed by administratively-compelled interviews of officers. MOA at ¶ 71.

MPD officer or where a judicial officer either has made a finding of misconduct against an officer or has requested MPD to conduct an investigation into such an allegation.

In addition to establishing protocols for the assignment of such investigations, the MOA establishes procedures that must be followed in the conduct of such investigations. These procedures for MPD internal investigations require that:

- Interviews of complainants, involved officers, and material witnesses be tape-recorded or videotaped whenever the investigation involves the serious use of force or a serious physical injury;
- Complainants and other witnesses be interviewed individually rather than in groups, and at locations and times convenient for them;
- All appropriate MPD officers and supervisors be interviewed;
- All necessary evidence be collected, analyzed, and preserved; and
- Inconsistencies in statements gathered from officers and other witnesses during the investigation be identified and reported.

Furthermore, the MOA sets forth a series of milestones for the implementation of this overhauled system for conducting misconduct investigations. These include the following:

- MPD must develop a plan (subject to approval by DOJ) under which OPR would become responsible for the *criminal misconduct* allegations described in the bulleted points listed at the beginning of this section, which would include provision for sufficient personnel and adequate procedures to implement this objective;
- MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint*

investigations from chain of command supervisors to MPD's OPR;³⁶

- The District of Columbia is required to provide the funds necessary to provide for the full implementation of these plans and sufficient resources for administrative complaint investigations to be completed within ninety days of the receipt of a complaint by MPD;³⁷
- MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;
- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

The foregoing plans must be implemented fully, with all necessary positions filled, by the various deadlines set forth in the MOA Modification.

b. Status And Assessment

(1) Investigation Reviews

This quarter, we reviewed a third statistical sample of non-FIT chain of command and OPR use of force and misconduct investigations. The first sample included 244 such investigations opened from June 13, 2001, the effective date of the MOA, through March 31, 2003, with at least 30 investigations drawn from each of the MPD districts. The second sample, which we reviewed last quarter, consisted of 80 investigations opened during the period April 1, 2003 through June 30, 2003 and included at least 10 investigations drawn from each of the MPD districts.

³⁶ See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

³⁷ In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

The sample of chain of command and OPR investigations that we reviewed this quarter consisted of 79 such investigations, again drawn proportionately from all of MPD's districts to enable us to draw conclusions with a high degree of statistical confidence on an MPD-wide basis, as well as derive useful information on a district-by-district basis. This quarter, we also provided, in response to a request from Chief Ramsey, technical assistance to MPD regarding the specific deficiencies we have identified in MPD's chain of command investigations. As has been the case in prior quarters, we received exceptional cooperation from MPD in facilitating our review of the 79 investigation files included in this quarter's database.

Preliminary Results of the OIM's Review of the Investigations Sample

As in our prior reports regarding the results of our reviews of samples on non-FIT use of force and misconduct investigations, the preliminary results of the OIM's review of chain of command investigations this quarter are divided into the following four categories: (1) administration and management of the investigations, (2) conduct of the investigations, (3) unit commander review of the investigations, and (4) the overall ratings regarding the completeness and sufficiency of the investigations. The OIM's specific findings with respect to each of these areas are discussed below.³⁸

1. Administration and Management of the Investigations

Consistent with our findings from the prior two samples, the OIM's review of this quarter's sample of 79 MPD investigations has found that, to a very high degree, the chain of command investigations are free of the types of conflicts of interest that would cast doubt on the integrity of the investigations. We identified only one case this quarter in which either the supervisor or the official responsible for the investigation was involved in the incident underlying the investigation. Moreover, we identified only one case involving an apparent or actual conflict of interest involving the supervisor or the official responsible for the investigation in any of the cases. Also, in all cases except for one, the proper authority investigated the allegations at issue. The consistency

³⁸ We have included at Appendix B detailed summaries of the reviewers' questions and the results generated by this quarter's review of 79 chain of command use of force and misconduct investigations. For ease of comparison, we have also included in Appendix B the results of the first sample of 244 investigations and the second sample of 80 investigations.

with which MPD observes these requirements reflects favorably on the institutional integrity of MPD's system of internal investigations.

We found again this quarter that the investigative reports for completed investigations consistently include the MOA-mandated elements, including (1) a description of the use of force incident or misconduct alleged (100.0%), (2) a summary of relevant evidence gathered (98.0%), and (3) proposed findings and supporting analysis (98.0%).³⁹

The timeliness of MPD investigations, however, remains an area of significant concern. Just over half (53.7%) of the cases reviewed this quarter were completed within the 90-day window required by the MOA.⁴⁰ The MOA specifically provides that chain of command investigations may be completed outside of the 90-day window where there exist documented "special circumstances" justifying the delay.⁴¹ Of the cases we reviewed this quarter that were not completed within 90 days, only 5.5% contained an explanation of the "special circumstances" that allegedly caused the delay.

MPD has requested that the OIM provide overall statistics reflecting the proportion of non-FIT use of force and misconduct investigations that satisfied the MOA's timeliness requirements by either (i) being completed within 90 days or (ii) containing a documented explanation of the "special circumstances" justifying a delay beyond 90 days in the completion of the investigation. With regard to the sample we reported on last quarter, 60.8% of the cases we reviewed complied the MOA's timeliness provisions. This quarter, we found that 57.0% of the investigations complied with MOA's timeliness provisions.

2. Conduct of the Investigations

We found again this quarter that MPD investigators generally conduct sound investigations. For example, investigators employed appropriate investigative techniques, such as avoiding group interviews

³⁹ MOA at ¶ 65.

⁴⁰ Our review of the first sample of 244 investigations found that 63.1% of those investigations were completed within 90 days, as were 48.4% of the investigations we reviewed in connection with the second sample of 80 investigations.

⁴¹ MOA at ¶¶ 65, 74.

(100.0%) and interviewing all appropriate MPD personnel (84.7%). Moreover, this quarter's results indicate that investigators properly documented and addressed inconsistencies among officers and witnesses (91.6%), addressed all apparent misconduct (85.28%), and avoided giving automatic preference to an officer's statement over a citizen's statement (94.5%). While the results in these areas, as reflected in Appendix B, have varied somewhat in each of the three samples, MPD's chain of command and OPR investigations have generally met these requirements across all three sample periods.

3. Unit Commander Review of Investigations

In 95.3% of the applicable chain of command investigations reviewed this quarter, the unit commander reviewed the investigation to ensure its completeness and that the findings were supported by the evidence. Although unit commanders appear to be consistently reviewing investigations, the data discussed below regarding the lack of completeness and sufficiency of many investigations suggest that unit commanders are not conducting sufficiently thorough reviews.

4. OIM Reviewers' Overall Ratings Regarding Completeness and Sufficiency

As we found in prior quarters, the OIM's overall evaluation with respect to the quality of MPD's chain of command investigations demonstrates that improvement is necessary. Of the cases reviewed this quarter, we found that only 30.4% of the investigations were complete⁴² and that a sufficient⁴³ investigation had been conducted in only 57.0% of the cases. As reflected in Appendix B, these figures are lower than those reported with respect to the OIM's review of each of the two prior samples. The figures for all three quarters indicate that there must be substantial improvement in the completeness and sufficiency of MPD's chain of command investigations.

⁴² Our police practices experts rated an investigation "complete" if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required by both the MOA and by generally accepted police practices.

⁴³ Our police practices experts rated an investigation "sufficient" if the evidence and analysis reflected in the investigation file were adequate to support a reasonable and defensible conclusion, even in cases where certain investigative procedures or analysis had not been completed.

Technical Assistance Regarding MPD's Chain of Command Investigations

At the request of Chief Ramsey, this quarter the OIM provided MPD technical assistance in the form of a lengthy memorandum detailing the 18 distinct deficiencies we have identified in MPD's chain of command investigations and making specific recommendations to address these deficiencies.⁴⁴ The above statistics, together with the findings and recommendations contained in the OIM's technical assistance memorandum summarizing the lessons of OIM's body of work on these investigations, provide MPD with specific information regarding the deficiencies in its internal investigations of use of force and officer misconduct. In future quarters, we will monitor MPD's implementation of the training, systems, and procedures that the OIM has recommended to improve the quality of these investigations.

(2) Serious Misconduct Investigations General Order

MPD submitted its Serious Misconduct Investigations General Order to DOJ on July 23, 2002. DOJ replied with detailed comments on September 13, 2002, to which MPD responded on November 22, 2002. On January 31, 2003, DOJ responded with a small number of additional comments and commended MPD "for its efforts to revise this MPD [General Order] consistent with the MOA and other applicable standards."⁴⁵ MPD submitted a revised draft to DOJ on March 7, 2003. DOJ responded to the revised draft order on August 25, 2003. MPD responded to DOJ's comments and submitted a further revised order on September 30, 2003. DOJ approved the Serious Misconduct General Order on December 31, 2003.

⁴⁴ Memorandum from Michael R. Bronwich to Chief Charles H. Ramsey regarding Technical Assistance Related to MPD's Chain of Command Investigations (April 9, 2004). Although the final memorandum was not issued during this quarter, the analysis supporting the memorandum was conducted during this and prior quarters. Accordingly, we are including reference to the memorandum in this quarterly report.

⁴⁵ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

(3) Administrative Investigations Manual

Pursuant to paragraph 83 of the MOA, MPD submitted a draft Administrative Investigations Manual to DOJ on October 25, 2002. DOJ provided comments on the manual on March 26, 2003. Paragraph 83 requires that, among other things, the manual “provide investigative templates to assist investigators.” Because MPD wanted to include these investigative templates in the PPMS, final templates had to be submitted to PPMS development vendors by January 12, 2004. In order to facilitate the templates’ inclusion in the PPMS development process, DOJ agreed to provide an expedited review of the draft administrative investigative templates that MPD submitted on December 30, 2003. On January 7, 2004, DOJ provided its preliminary approval of the templates subject to MPD’s acceptance of certain suggested changes to the templates. On January 12, 2004, MPD provided the final revised templates to DOJ and the PPMS development contractor IBM/CRISNet. MPD submitted a final draft of the Administrative Investigations Manual to DOJ for approval on February 26, 2004.

(4) Chain of Command Misconduct Investigations General Order

Pursuant to paragraph 83 of the MOA, MPD submitted its draft Chain of Command Misconduct Investigations General Order to DOJ on November 1, 2002. DOJ responded with a number of substantive comments on January 31, 2003. MPD provided an updated draft of this general order to DOJ on December 31, 2003. MPD then submitted a revised version of the Chain of Command Misconduct Investigations General Order to DOJ on February 26, 2004.

(5) Corporation Counsel Notification to OPR of Civil Claims

Paragraph 75 of the MOA requires that “[t]he Corporation Counsel’s Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD.” According to the Office of Corporation Counsel (“OCC”), the OCC and MPD have met to draft a policy to facilitate such notification. Currently, no policy exists.

As discussed nine months ago in our Fifth Quarterly Report,⁴⁶ the implementation of this policy apparently has been delayed due to some confusion regarding the meaning of the term "claim" as it is used in the MOA. For the reasons discussed in our Fifth Quarterly Report, we do not fully understand the nature of the delay in drafting a policy that meets the requirements of the MOA and that is acceptable to both the OCC and MPD. It appears that this issue remains unresolved. In the coming quarter, the OIM will request that OCC and MPD provide a written status report concerning this policy, including an explanation of any reasons underlying the delay in its development.

c. Recommendations

We reiterate our recommendation that the OCC and MPD resolve any outstanding issues regarding the creation and implementation of a mutually acceptable notification policy as soon as possible.

We also recommend that MPD continue to work toward improving the timeliness and quality of chain of command investigations. In response to a request from Chief Ramsey, the OIM has provided MPD with detailed technical assistance and recommendations intended to assist MPD in improving the quality of chain of command investigations. We will monitor MPD's efforts to address the deficiencies we have identified in these investigations, including MPD's implementation of the OIM's recommendations set forth in the technical assistance memorandum.

III. Receipt, Investigation, and Review of Misconduct Allegations (MOA ¶¶ 85-104)

A. Requirements

This section of the MOA addresses the procedures designed to help members of the public aggrieved by the actions of MPD officers lodge complaints concerning officer conduct. It relates to MPD's role in facilitating the filing of such complaints and also to MPD's responsibility to coordinate with the Office of Citizen Complaint Review ("OCCR") to ensure that the respective roles and responsibilities of MPD and OCCR are clearly defined and that the agencies are working properly together.

⁴⁶ OIM Fifth Quarterly Report at 27.

More specifically, the MOA requires the following:

- The development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OCCR with regard to
 - Receiving, recording, investigating, and tracking complaints;
 - Conducting community outreach and education regarding making complaints against officers;
 - Exchanging information between MPD and OCCR; and
 - Defining the responsibilities of the MPD official who serves on the Citizen Complaint Review Board (“CCRB”).
- The provision of adequate funding and resources for OCCR to carry out its responsibilities as defined both by the MOA and the law creating OCCR;⁴⁷
- The development of a plan to ensure that the investigative staff of OCCR is adequately trained, including training in a wide range of MPD policies and procedures;
- The development of a manual, in consultation with DOJ, for conducting OCCR complaint investigations, which should include timelines and investigative templates;
- The development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, facts sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OCCR complaint processes;
- The broad availability of complaint forms and informational materials at OCCR, MPD headquarters, and various other MPD locations; through the Internet; and to community groups and community centers; and

⁴⁷ District of Columbia Law 12-208.

- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.⁴⁸

The MOA also sets forth various methods designed to facilitate the filing of complaints against officers. These methods include:

- Requiring officers to provide their names and identification numbers to any person who requests them;
- Requiring that MPD provide the means for citizens to file complaints by all available methods, including in person, in writing, or by telephone, facsimile, or electronic mail;
- Requiring the establishment of a hotline, operated by OCCR, that will be appropriately publicized by the City and MPD and that will be audited to ensure its proper operation; and
- Ensuring that responsibility for receiving all complaints filed directly with MPD belongs to MPD's OPR, which must establish filing and tracking systems and coordinate with OCCR.

In addition, the MOA sets forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These include establishing that a preponderance of the evidence standard should be applied in such investigations; that all relevant evidence should be considered and weighed, including the credibility of

⁴⁸ The program must include at least the following elements: one open meeting per quarter in each of the patrol service areas for the first year of the MOA and one meeting in each patrol service area semi-annually in subsequent years. The purpose of these meetings is to inform the public about the provisions of the MOA and the various methods of filing a complaint against an officer. At least one week before such meetings, the City shall publish notice of the meeting as follows: (i) in public areas, including libraries, schools, grocery stores, and community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD Web sites; and (iv) in the primary languages spoken by the communities located in such areas. In order to enhance interaction between officers and community members in daily policing activities, the open public meetings must include presentations and information on MPD and its operations.

various witnesses;⁴⁹ and that the cases be resolved in one of several prescribed ways. Based on the investigation, the possible dispositions are “unfounded,” “sustained,” “insufficient facts,” or “exonerated.”⁵⁰ Misconduct investigations require the preparation of a written report, which should include a description of the alleged misconduct, summary and analysis of all relevant evidence, and proposed findings and analysis. Except in cases of unusual complexity, such investigations must be completed within ninety days after the allegations have been received. Each investigation should be reviewed by Unit Commanders to determine the existence of any underlying problems and training needs, and the Unit Commanders shall implement any appropriate non-disciplinary actions.

B. Status And Assessment

1. Coordination and Cooperation Between MPD and OCCR Generally (¶ 85)

MPD and OCCR continue to work to resolve certain MOA-related conflicts regarding the Memorandum of Understanding (“MOU”) previously signed by the two agencies on September 28, 2002. In April 2003, MPD advised the OIM that it would issue a revised MOU by June 30, 2003. MPD and OCCR did not meet this deadline. On October 7, 2003, MPD and OCCR submitted a revised draft MOU to DOJ. This draft did not resolve the outstanding issue between MPD and OCCR related to the duties of the MPD member of the CCRB. On December 3, 2003, DOJ advised MPD and OCCR of its concern regarding the delay in finalizing the MOU. On December 31, 2003, MPD requested that DOJ proceed with its review of the draft MOU prior to the resolution of this outstanding issue. During this quarter, MPD and OCCR requested and received input from the City’s Mayor’s Office regarding procedures for the “recusal” of the MPD member of the CCRB under certain circumstances.

⁴⁹ The MOA makes clear that there should be no presumption that an officer’s statement is entitled to greater weight than the statement of a civilian. MOA at ¶ 99.

⁵⁰ Although the meanings of “sustained” and “insufficient facts” are self-evident, the other dispositions may not be. “Unfounded” refers to cases in which the investigation found no facts to support the allegation; “exonerated” refers to cases where the conduct alleged took place but did not violate MPD policies, procedures, or training.

MPD reports that it and OCCR “hope to agree to revised language during the next quarter.”⁵¹

a. Complaints Filed with MPD on MPD Forms Involving OCCR Subject Matter

The OIM did not perform specific monitoring in this area this quarter.

b. Complaints Filed with OCCR that Exceed OCCR's Jurisdiction

This quarter, OCCR referred 16 citizen complaints to MPD that did not fall within OCCR’s investigative jurisdiction. Of these 16 complaints, OCCR failed to satisfy the 10-business-day referral requirement in 6 instances.⁵² This is a 63% compliance rate, as compared to last quarter’s compliance rate of 80%. OCCR explains that, during the agency’s implementation of new complaint management software in January 2004 and a related review of open complaints, it identified complaints that should have been referred to MPD earlier but had not been. Those untimely referrals were made this quarter, which contributed to the decline in the rate of timely referral of complaints by OCCR to MPD.

c. Weekly Notice to MPD of Formal OCCR Complaints

The MOU requires OCCR to notify MPD on a weekly basis of formal citizen complaints filed with OCCR.⁵³ We reviewed 34 formal complaints lodged with OCCR this quarter to assess OCCR’s compliance with this requirement. OCCR met the weekly notification requirement in 26 of the 34 cases, which is a compliance rate of 76%. This is a drop from the compliance rates of 86% and 88% observed in each of the prior two quarters.

⁵¹ MPD April 2004 Progress Report at 17.

⁵² MOU at ¶ 3.C.

⁵³ *Id.*

d. Interviews of Witness Police Officers

This quarter, the OIM reviewed data relating to 90 scheduled interviews of MPD officers. In 8 of these 90 cases, OCCR did not provide the officer with at least one week's advance notice of his or her required appearance.⁵⁴ This 89% compliance rate is down from 93.5% last quarter. This quarter, we found no instances in OCCR's records in which an MPD officer missed a scheduled interview.

e. MPD Documents Requested by OCCR

Under the MOU, MPD must respond to an OCCR document request within ten business days.⁵⁵ This quarter, we reviewed data related to 25 formal complaint cases involving a total of 50 document requests directed by OCCR to MPD. MPD failed to produce the requested documents within ten business days in connection with 21 of the 50 requests, which is a compliance rate of 58%.

2. Public Information and Outreach (¶¶ 87-91)

This quarter, the OIM continued to conduct telephonic surveys of citizens who had filed complaints with MPD to assess their satisfaction with the manner in which MPD investigated their complaints. This quarter, we selected 45 cases involving complaints of officer misconduct and attempted to survey the complainants in each of these cases. Of the 45 selected cases, only 19 cases were potentially candidates for the citizen survey because 7 involved complaints lodged by MPD personnel, 2 were anonymous complaints, 10 did not include telephone contact information for the complainant, and 7 included telephone numbers that had been disconnected at the time of our call.

We successfully contacted and surveyed 7 of these 19 potentially accessible and eligible complainants. We received the following responses to the questions contained in the OIM's Citizen Complaint Interview Questionnaire:

⁵⁴ MOU at ¶ 3.D

⁵⁵ MOU at ¶ 3.E.

- *How did you file your complaint?*

In person	2
Telephone	2
Email	1
Facsimile	1
By letter	1

- *Were you required to submit your complaint either in writing or on an official complaint form?*

Yes	3
No	3
Unknown	1

- *Were you asked to give your name when you filed your complaint?*

Yes	4
No	3

- *Did you feel pressured to furnish your name even though you did not feel comfortable doing so?*

Yes	0
No	7

- *Did anyone try to discourage you from filing your complaint?*

Yes	1
No	6

- *At any time did you voluntarily withdraw your complaint?*

Yes	1
No	6

- *Were you contacted by MPD in response to your complaint?*

Yes	6
No	1 ⁵⁶

- *Were you interviewed either in person or by telephone?*

Yes	7
No	0

- *If yes, was the interview recorded?*

Yes	3 (all audio)
No	3
Unknown	1

- *Was the interview conducted at a time and place that was convenient to you?*

Yes	6
No	1

- *Did MPD inform you of the results of your complaint?*

Yes	3
No	4

- *Has your address changed since the filing of your complaint?⁵⁷*

Yes	1
No	6

The results of this quarter's survey are not scientific and cannot be extrapolated to assess the level of citizen satisfaction with MPD's complaint investigation process on the whole. Based on the results of our citizen surveys in this and prior quarters, however, there appears to be significant room for improvement, particularly with respect to MPD's

⁵⁶ This response appears to be inconsistent with the responses below, which indicate that each of the 7 citizens surveyed was interviewed by MPD.

⁵⁷ The individual who responded that she had changed her address since the time her complaint was filed also was among those citizens surveyed who indicated that they had not been advised of the results of their complaint.

notification of complainants of the outcome of MPD's investigation of their complaints against officers. We recommend that MPD implement a practice of notifying citizen complainants of the outcome of investigations by sending notification letters via registered mail. MPD also should document the cases in which it was unable to reach citizen complainants to provide them with such notice.

3. Receipt of Complaints by OCCR (¶¶ 92-95)

As noted in our Third and Fourth Quarterly Reports, on or about December 11, 2002, the OCCR hotline required by paragraph 93 of the MOA became operational. We noted in our Fourth Quarterly Report that, while OCCR recorded calls as required by the MOA, it had not yet developed the necessary auditing procedures to ensure "that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained, although OCCR does check this last requirement through its general auditing of all complaints it receives."⁵⁸

In July 2003, OCCR proposed a modification to the requirement under paragraph 93 of the MOA that OCCR tape record all conversations on the hotline and develop an auditing procedure that includes monthly reviews of a random sample of tape recordings.⁵⁹ Citing a combination of personnel shortages and limitations in the equipment's recording capacity, OCCR proposed the elimination of the tape-recording requirement of paragraph 93.⁶⁰ As an alternative, OCCR proposed that its Chief Investigator or Assistant Chief Investigator audit the program by making follow-up calls to a random sample of citizen complainants in order to assess compliance with the mandates of paragraph 93. The OIM would then monitor OCCR's compliance with these provisions of the MOA by reviewing OCCR's written reports of the follow-up calls.

In response to OCCR's proposal, DOJ expressed its concern that the proposed plan may not adequately accomplish the objectives of paragraph 93 because of the variety of problems that may arise in

⁵⁸ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

⁵⁹ Letter from Tammie M. Gregg to Deputy Director Thomas Sharp (August 25, 2003).

⁶⁰ *Id.*

conducting audits based on follow-up telephone calls to citizen complainants (*i.e.*, complainants may have changed addresses or phone numbers, may be difficult to reach, may not remember details about their calls, etc.). DOJ also expressed the concern that the OIM's monitoring may be less accurate if it reviews OCCR's written reports as opposed to auditing tape recordings of calls or conducting the telephone audit itself.⁶¹ To furnish adequate time to evaluate OCCR's proposed auditing procedures in light of DOJ's concerns, DOJ granted provisional approval of OCCR's proposed plan for a six-month period, beginning on August 29, 2003. DOJ also requested that the OIM review OCCR's proposed hotline auditing procedures. If OCCR's proposed hotline auditing procedures were found to operate satisfactorily, DOJ stated that it would consider a formal modification to paragraph 93 of the MOA.⁶²

On March 31, 2004, the OIM issued a memorandum to DOJ and OCCR regarding OCCR's proposed modification to paragraph 93 of the MOA as that provision relates to the tape-recording and auditing of calls placed to OCCR's citizen complaint hotline.⁶³

As discussed in the OIM's memorandum, our review of OCCR's processes for receiving citizen complaints found that only approximately 5.3% of the complaints received by OCCR in 2003 were lodged through the hotline. OCCR received an average of only 2.58 calls per month to the hotline in 2003. By comparison, 289 -- approximately half (49.7%) -- of the complaints OCCR received in 2003 were placed through OCCR's regular business telephone lines, which are not subject to any tape recording or auditing procedures under the MOA. The chart below summarizes the sources of all citizen complaints placed with OCCR during calendar year 2003.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Memorandum from Michael R. Bromwich to Philip K. Eure, Thomas Sharp, and Tammie M. Gregg regarding Office of Citizen Complaint Review's Proposed Modification of MOA ¶ 93 (March 31, 2004).

	Hotline	Fax	Phone	Mail	Walk In	MPD	Other	N/A	Total
Jan '03	2	3	24	6	9	1	0	0	45
Feb '03	0	4	19	6	2	0	0	0	31
Mar '03	2	4	32	15	2	2	0	0	57
Apr '03	10	7	39	9	10	1	1	1	78
May '03	6	1	12	5	17	0	0	0	41
Jun '03	2	1	25	9	10	0	0	0	47
Jul '03	3	7	25	8	8	0	0	0	51
Aug '03	3	6	23	10	6	0	1	0	49
Sep '03	2	4	18	14	12	1	0	4	55
Oct '03	0	1	21	6	10	1	0	1	40
Nov '03	1	1	30	15	3	1	0	2	53
Dec '03	0	2	21	8	1	2	0	1	35
Total	31	41	289	111	90	9	2	9	582
Percent of total	5.3%	7.0%	49.7%	19.1%	15.5%	1.5%	0.3%	1.5%	

In light of the infrequency with which the OCCR hotline is used and the availability of viable quality control alternatives, the OIM concluded that paragraph 93's current tape recording and auditing requirements place a burden on OCCR's financial and human resources that is disproportionate to the value, in terms of quality control and responsiveness to citizen concerns, advanced by those procedures.

Our memorandum also explained that the OIM does not discern a practical distinction between citizen complaints lodged with OCCR via the hotline and those placed with OCCR by various other means, including the significant number of complaints made over OCCR's regular business telephone lines. Accordingly, we have recommended that DOJ and the City agree to amend paragraph 93 of the MOA to replace that provision's hotline-specific tape recording and auditing requirements with a citizen complainant survey procedure. In addition, we have suggested that DOJ and the District consider making survey-based audit procedures applicable to all complaints received by OCCR from the general public, regardless of the medium through which the complaints are made.⁶⁴

⁶⁴ As discussed in Section III.B.2 above, the OIM has experienced a low response rate in connection with our efforts to survey citizen complainants regarding their experiences with MPD misconduct investigations. We believe that several factors increase the likelihood that survey-based audit procedures may be effective in assessing the OCCR complaint and investigation process, including (1) OCCR is required under the D.C. Code to obtain the complainant contact

Footnote continued

4. OCCR Investigation of Complaints

This quarter, for the first time, the OIM reviewed investigations performed by OCCR of citizen complaints alleging misconduct on the part of MPD officers. OCCR provided information relating to 128 investigations that it closed during the period March 1, 2003 through February 29, 2004. In this report, we provide statistics with respect to the timeliness of all of the cases OCCR closed during that period. The OIM also selected for substantive review a statistical sample of 30 of the OCCR investigations from the group of 128, and those findings are discussed below.

a. Timeliness of OCCR Investigations

The MOA provides that “[t]he City shall provide OCCR sufficient qualified staff, funds, and resources to perform the functions required by this Agreement and by District of Columbia Law 12-208 creating OCCR, including the conduct of timely, thorough, and independent investigations of alleged police misconduct”⁶⁵ Unlike the MOA’s treatment of FIT, chain of command, and OPR investigations, the MOA does not specifically define the time period in which an OCCR investigation must be completed in order to be “timely.”⁶⁶

Our analysis of the timeliness of all 128 OCCR investigations closed in 2003 found that OCCR’s investigation of 119 of these cases in which the citizen complainant identified the subject MPD officer took, on average, approximately 428 days to complete. The 9 remaining cases, in which the citizen complainant was unable to identify the subject officer, took OCCR, on average, approximately 511 days to complete. As reflected in the chart below, we also analyzed the average number of days OCCR took to close the 128 cases according to the ultimate disposition of the complaint.

Footnote continued from previous page

information that would facilitate survey-based audit procedures; (2) OCCR, as an independent agency, should be able to obtain a reasonably high degree of citizen cooperation in the audit process; and (3) OCCR should be able to conduct its citizen surveys on a timely basis while citizen contact information is most likely to be current and reliable.

⁶⁵ MOA at ¶ 86.

⁶⁶ MOA at ¶¶ 62, 65, 74.

**OCCR Investigations
Average Number of Days to Complete by Disposition⁶⁷**

Disposition	Number of Cases	Average Number of Days to Close
Dismissed	58	336.1
Dismissed: Merits	38	493.7
Dismissed: Non-Cooperation in Mediation	1	383.0
Dismissed: Non-Cooperation in Investigation	2	270.0
Exonerated	4	509.5
Insufficient Facts	2	663.0
Sustained	21	559.2
Withdrawn	2	602.0

The 128 investigations closed by OCCR during the period March 1, 2003 through February 29, 2004 relate to complaints received by the agency from shortly after the agency opened to the public in January 2001 through October 2003. OCCR reports that it has undergone significant development during this time. For example, OCCR currently employs eight full-time investigators, four of whom (including the Chief Investigator) were hired only within the past nine months. As a new agency, it has been necessary for OCCR to establish internal procedures related to the receipt, investigation, and resolution of citizen complaints. Accordingly, OCCR attributes some portion of the delays it has experienced in completing investigations to the time it has taken to establish the agency and to develop procedures for the scheduling of

⁶⁷ OCCR's governing statute, D.C. Code § 45-1108, provides three grounds on which OCCR may dismiss a citizen complaint: (1) lack of merit, (2) the complainant's failure to cooperate with OCCR's investigation, and (3) the complainant's failure to participate in the mediation process in good faith. OCCR only recently began tracking dismissed cases by type of dismissal. Accordingly, the first row of the table below, entitled "Dismissed" is a general category of dismissals that may include cases dismissed on all three of these grounds.

interviews with MPD officers, obtain documents from MPD, and complete other investigative steps.⁶⁸

OCCR recognizes that the timeliness of its investigations must improve. To this end, OCCR reports that it has sought additional funds to increase its staff and, within the past nine months, has established goals for eliminating the backlog of cases that now exists. With the exception of certain complaints currently being reviewed by the USAO and certain complaints involving subject officers who are unavailable due to long-term absences, OCCR established the goal of completing all investigations relating to complaints lodged in 2001 by the end of March 2004. OCCR intends to complete all 2002 complaint investigations by June 1, 2004, and all 2003 cases are targeted for completion by October 1, 2004.

The OIM will revisit the timeliness of OCCR investigations in coming quarters to evaluate OCCR's success in clearing the backlog of investigations that currently exists and in completing the investigations of recently filed complaints. Specifically, the OIM will be evaluating whether OCCR's current investigative staffing levels and other resources are adequate to permit the agency to perform high quality investigations in a timely manner.

b. Quality of OCCR Investigations

This quarter, the OIM reviewed a statistical sample of 30 OCCR investigations drawn from a group of 128 investigations that were closed between March 1, 2003 and February 29, 2004. We analyzed these investigations in a manner similar to that used for our review of the statistical samples of MPD non-FIT internal investigations. Our review found that OCCR investigations generally are sufficient (85.7%), but we found half (50.0%) of the investigations we reviewed not to be complete.⁶⁹ As discussed further below, deficiencies in the completeness of OCCR investigations are related to the collection and analysis of evidence.

⁶⁸ As reflected in this quarterly report at Section III.B.1.d and in each of our reports since we began reporting statistics on this subject in our Third Quarterly Report, we have found that MPD officers have maintained a consistently high rate of attendance at OCCR interviews in the range of 90% to 100%.

⁶⁹ The terms "sufficient" and "complete" as used in the context of evaluating investigations of officer misconduct are defined above in footnotes 42 and 43.

All of the OCCR investigation files we reviewed contained a report prepared by the investigator, and 96.3% of those reports contained an appropriate description of the alleged misconduct. OCCR investigation reports also, with a high rate of consistency (91.7%), contained a summary of all relevant evidence gathered.

With respect to the conduct of the investigations reviewed, OCCR investigators generally avoid group interviews (96.0%) and conduct interviews at times and locations convenient to witnesses (96.2%). The OCCR investigations also did well in documenting and addressing inconsistencies among officers and witnesses (94.7%) and avoiding giving preferences to officer statements over citizen statements.

There is room for improvement, however, in certain aspects of OCCR's investigations. We found that OCCR interviewed all appropriate MPD personnel, including supervisors, in only 80.8% of the cases we reviewed. OCCR investigators adequately addressed all apparent misconduct in 79.1% of the cases and adequately addressed the conduct of each officer involved in the underlying conduct in 80.8% of the cases. Finally, we found that, in a significant number of investigations, OCCR investigators did not adequately preserve (34.6%), collect (34.6%) or analyze (23.1%) all relevant evidence.

C. Recommendations

The OIM's recommendations with respect to OCCR's review and auditing of citizen complainants' satisfaction with the investigative process are discussed above and in the OIM's March 31, 2004 memorandum. We encourage OCCR to achieve the targets it has established for clearing the backlog of investigations that exists and for achieving the more timely completion of new investigations, and we will continue to assess whether OCCR has sufficient qualified staff, funds, and resources to fulfill its functions under the MOA.⁷⁰ Finally, we invite OCCR to take advantage of any technical assistance our police practices experts may be able to provide with respect to the conduct of OCCR's investigations.

⁷⁰ MOA at ¶ 86.

IV. Discipline and Non-Disciplinary Action (MOA ¶ 105)

A. Requirements

The MOA, as modified by the MOA Modification, requires that, by the week of November 17, 2002, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.⁷¹ Specifically, the policy must:

- Prescribe when non-disciplinary action is appropriate;
- Prescribe when district-level discipline or corrective action is appropriate;
- Establish a formal and centralized system for documenting and tracking discipline and corrective action; and
- Develop a procedure for providing written notice to complainants regarding the most significant aspects of the handling of their complaints, including but not limited to disposition.

B. Status And Assessment

On May 19, 2003, MPD submitted its draft Disciplinary Policy to DOJ. The submission of this policy followed a lengthy delay on the part of MPD. As originally negotiated by MPD and DOJ, MPD's Disciplinary General Order was due to be completed by October 11, 2001. On September 30, 2002, as part of a major renegotiation of MOA deadlines, MPD and DOJ revised the due date of this General Order to November 22, 2002. On November 22, 2002, MPD notified DOJ that it would not be able to meet the revised deadline and committed to submit the General Order by December 31, 2002 -- the end of that quarter. On December 31, 2002, however, MPD notified DOJ that it would not meet that deadline either. MPD stated that the reason for this missed deadline was its desire to engage the Fraternal Order of Police ("FOP") in a dialogue regarding the draft order before it is submitted to DOJ.

On August 25, 2003, DOJ provided MPD with comments on the draft Disciplinary General Order. DOJ noted that, "[a]lthough the

⁷¹ MPD disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

[General Order] was not timely submitted pursuant to the renegotiated deadline contained in the parties' September 30, 2002 Joint Modification to the MOA, we appreciate and commend the efforts of MPD and the local FOP in working collaboratively to resolve their differences and to identify issues for collective bargaining."⁷² In its August 25, 2003 letter to MPD, DOJ also noted that the draft Disciplinary General Order "does not specifically 'establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action' as required by MOA paragraph 105."⁷³ MPD has not yet responded to DOJ's letter or finalized the Disciplinary General Order. MPD reports that it currently is reviewing DOJ's comments in consultation with the FOP.⁷⁴

In addition to further monitoring of the systems for the documentation and tracking of disciplinary actions, in the coming quarters the OIM will be reviewing the administration of recommended discipline. For example, in disciplinary cases involving recommendations of remedial training, we will continue our monitoring to determine the promptness and frequency with which such remedial training occurs and to evaluate the MPD-wide and district-level systems in place to ensure that such forms of corrective action are administered.

C. Recommendations

As discussed in our Seventh Quarterly Report, by reissuing the January 18, 2002 directive, MPD has taken an initial step toward establishing a centralized system for documenting and tracking all forms of disciplinary and corrective actions, as required under the MOA.⁷⁵ We encourage MPD to move quickly to establish a reliable, centralized disciplinary tracking system with adequate staffing and resources. We also recommend that MPD finalize the Disciplinary General Order as soon as possible.

⁷² Letter from Tammie Gregg to Captain Matthew Klein regarding "Disciplinary General Order" (August 25, 2003).

⁷³ *Id.*

⁷⁴ Memorandum of Agreement Progress Report, dated January 12, 2004, at 8.

⁷⁵ OIM Seventh Quarterly Report at 40-41.

**V. Personnel Performance Management System
(MOA ¶¶ 106-118)**

A. Requirements

Under the MOA, MPD is committed to developing and implementing a computer database that will facilitate the management and supervision of MPD personnel. The computer database, referred to in the MOA as the Personnel Performance Management System, or PPMS, is intended to:

- Promote civil rights integrity and best professional police practices;
- Manage the risks of police misconduct;
- Evaluate and audit the performance of MPD officers, units, and groups;
- Promote accountability and proactive management; and
- Identify, manage, and control at-risk officers, conduct, and situations.

In addition to describing the objectives PPMS shall achieve, the MOA specifies the information that must be captured to ensure that PPMS achieves these objectives. This information includes the following:

- All uses of force that must be reported on MPD's UFIR forms or that are the subject of an MPD criminal or administrative investigation;
- All police canine deployments;
- All officer-involved shootings and firearms discharges, whether on or off duty, and all other lethal uses of force;
- All reviews of use of force, including all decisions on whether the use of force was within MPD policy;
- All vehicle pursuits and traffic collisions;
- All complaints regarding MPD officers, whether made to MPD or OCCR;

- Chronologies and results of investigations, adjudications, and discipline relating to any of these matters;
- All commendations received by MPD about an officer's performance;
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel; and
- With respect to each MPD officer, that officer's:
 - Educational history,
 - Military service and discharge status,
 - Assignment and rank history,
 - Training history,
 - All management and supervisory actions taken pursuant to review of PPMS information, and
 - All instances in which a prosecution declination or a motion to suppress was based upon concerns about the officer's credibility or on evidence of a Constitutional violation by the officer.

The MOA also requires MPD to develop, subject to DOJ approval, a "Data Input Plan" to facilitate the entry of historical data into PPMS, as well as detailed requirements for how the information -- historical and contemporary -- must be put into the system and the ways in which it must be retrievable. Furthermore, the MOA requires MPD to develop a detailed protocol for the use of the computerized management system.

While PPMS is under development, MPD is required to utilize existing information and databases to achieve the purposes established for PPMS. In addition, OPR is charged with the responsibility of operating PPMS, as well as for developing and overseeing MPD-wide risk assessments.

Related to, but separate from, the development of PPMS, MPD is required to enhance its new Performance Evaluation System. This enhancement must ensure that each sworn MPD employee's performance be evaluated, at a minimum, according to certain specified criteria.

These criteria include civil rights integrity and community policing; adherence to law, including civil rights laws and laws designed to protect the rights of suspects; and the performance of supervisors in identifying at-risk behavior among their subordinates.

B. Status And Assessment

1. PPMS

This quarter, MPD suffered a significant setback with respect to the development of PPMS. By teleconference on March 8, 2004, MPD notified DOJ that a loan for PPMS development that MPD expected to receive from the City's Office of the Chief Technology Officer would not be forthcoming until MPD could establish that it would receive a sufficient budgetary allocation in fiscal year 2005 to re-pay the loan.⁷⁶ Because the City's budget for fiscal year 2005 has not yet been approved and funding allocations with respect to PPMS have not yet been made, MPD was forced to suspend the PPMS development project when existing funds were exhausted as of the end of March 2004.⁷⁷

MPD, the City, and DOJ have been actively attempting develop solutions to the PPMS funding crisis. The current PPMS situation is exacerbated by the potential that, under the City's procurement rules, an extended interruption may trigger the need for a re-procurement of the IBM/CRISNet contract, which, in turn, will lead to further delays in the development and implementation of PPMS. Under the most recent timetable agreed to by MPD and DOJ, a beta version of PPMS is to be available by June 25, 2004 and PPMS is to be fully implemented by February 25, 2005. The ultimate impact that the interruption in PPMS development will have on this timetable remains to be seen.

MPD reports that, despite the funding crisis, it has continued work in areas of PPMS development not affected by the lapse in funding.⁷⁸ MPD has assembled a team comprised of MPD members, including FOP

⁷⁶ Letter from Captain Matthew Klein to Chief Shanetta Cutlar (March 15, 2004).

⁷⁷ On two occasions, DOJ expressed in writing its concerns relating to the possibility that MPD would experience a funding shortfall that would impact the development of PPMS. Letter from Shanetta Y. Brown Cutlar to Chief Charles Ramsey (March 26, 2003); Letter from Tammie M. Gregg to Captain Matthew Klein (August 21, 2003).

⁷⁸ MPD April 2004 Progress Report at 26-27.

representatives, to develop an Early Intervention Program (“EIP”), which will be incorporated as a component of PPMS. The EIP is intended to establish a fair and consistent process for identifying and assisting MPD employees who are engaged in a pattern of behavior that is inconsistent with MPD policies or standards. During this quarter, the EIP team focused on defining the indicators that will be used to identify problematic patterns of behavior exhibited by individual MPD officers. Representatives from MPD also participated in a conference held in Austin, Texas regarding EIPs, which was chaired by Dr. Samuel Walker of the University of Nebraska, a nationally recognized expert in police early warning and intervention systems.

On November 18, 2003, MPD submitted a draft PPMS Protocol to DOJ for technical assistance review.⁷⁹ At the request of MPD, on December 3, 2003, DOJ extended the due date of MPD’s plan for compliance with paragraph 113 of the MOA from November 14, 2003 to January 5, 2004. MPD submitted its plan for compliance with paragraph 113 of the MOA on January 5, 2004, and DOJ provided comments to MPD’s draft PPMS Protocol on March 31, 2004.

2. Performance Evaluation System

On May 2, 2003, DOJ provided comments on MPD’s Enhanced Performance Evaluation System Protocol. On September 30, 2003, MPD provided DOJ with a “status report” concerning DOJ’s comments, to which DOJ responded on October 6, 2003. On March 5, 2004, MPD provided DOJ with another update regarding the Department’s efforts to revise the Personnel Evaluation System. MPD reports that the primary outstanding tasks related to the Performance Evaluation System are (1) staffing of the Performance Management System pursuant to the Sworn Members Serving in the Ranks/Positions of Officer, Agent, and Sergeant General Order and (2) revision of the manuals containing officer and sergeant performance evaluation standards.

C. Recommendations

The OIM is obviously concerned about the funding-related stoppage in PPMS development that MPD experienced this quarter and the ripple effect this stoppage will have on the deadlines that MPD and DOJ have agreed upon with respect to the implementation of PPMS. In

⁷⁹ MOA at ¶¶ 11, 112, and 114.c.

prior quarters, we have recognized MPD's commitment to the PPMS development effort. PPMS is a critical aspect of the MOA that deserves substantial attention from MPD as well as from the City. We will continue to monitor closely the development of the PPMS in the coming months.

VI. Training (MOA ¶¶ 119-148)

A. Requirements

The training provisions in the MOA specifically address management oversight, curriculum development, instructor training, firearms training, and canine training.

1. Management Oversight

Regarding management oversight, MPD is required to centrally coordinate the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.⁸⁰ MPD's Director of Training is responsible for overseeing the full scope of MPD's training program as it relates to the terms of the MOA, including:

- Ensuring the quality of all use of force training across MPD;
- Developing and implementing appropriate use of force training curricula;
- Selecting and training MPD trainers;
- Developing and implementing all in-service training and roll call curricula;
- Developing tools to evaluate all training;
- Developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;⁸¹ and

⁸⁰ To ensure compliance with applicable law, training materials are to be reviewed by MPD's General Counsel or some other appropriate legal advisor. MOA at ¶ 120.

⁸¹ The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

In addition, MPD's Curriculum Development Specialist ("CDS") is required to review, revise, and implement, subject to DOJ approval, all use of force-related training material to ensure that the materials are consistent (as to content and format), properly to incorporate applicable law and policy into such training materials, to incorporate specific training objectives and suggestions on how most effectively to present use of force training materials, and to determine whether training aids are being used appropriately. The CDS' responsibilities also extend to reviewing, at least on a quarterly basis, all force-related training for quality assurance and consistency. More generally, MPD is required to keep its updated training materials in a central, commonly accessible file and to maintain updated and complete training records as to every MPD officer.

2. Curriculum

The MOA prescribes various features of MPD's training programs that address the content of MPD training. First, all force-related training must incorporate critical thinking and decision-making skills and must include training in cultural diversity and community policing. More specifically with respect to use of force training, MPD's use of force training must contain training on the following elements:

- MPD's use of force continuum;
- MPD's use of force reporting requirements;
- The Fourth Amendment and other constitutional requirements applicable to police officers; and
- Examples of use of force and ethical dilemmas, with a preference for interactive exercises for resolving them.

Training on these topics should involve concrete use of force experiences and examples, and dialogue on these issues with trainees is to be encouraged.

Supervisory and leadership training must focus not only on these elements, but also on command accountability and responsibility, interpersonal skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity.

Priority in supervisory and leadership training must be accorded to MPD's new policies on use of force, use of canines, the UFRB, and the revised policies and practices relating to administrative misconduct investigations. Supervisory and leadership training on these issues is required, with re-training to take place on an annual basis.

The training provisions of the MOA specifically address two aspects of existing MPD training -- Role Play and Range 2000 training. Training materials relating to these aspects of MPD must be reviewed to ensure their consistency with law and MPD policy. In addition to other specific requirements, the MOA requires that a standardized curriculum, lesson plan, and instructional guidelines for these aspects of MPD training be developed. MPD is required to videotape student officers during Role Play training exercises to better focus discussions during the critique portion of the course.

Finally, the MOA sets forth specific requirements regarding training with respect to aspects of the MOA itself. MPD is required to distribute copies of the MOA to all officers and employees and explain its terms. Further, as MPD adopts new policies and procedures mandated by the MOA, it must incorporate them into in-service and new recruit training.

3. Instructors

The MOA establishes various requirements relating to the training and competence of instructors. First, MPD was required to conduct an assessment to determine the sufficiency, competence, and standards for evaluating training personnel and, on the basis of that assessment, to develop a plan for addressing training instructor needs to DOJ for its approval.

Second, subject to DOJ's approval, MPD was required to develop and implement eligibility and selection criteria for all training positions, including Academy, Field Training, and formal training. These criteria are equally applicable to existing personnel in training positions and to candidates for training positions. MPD also was required to develop an instructor certification program relating to the competency of its instructors. Further, MPD was required to create and implement a formal instructor training course and to provide regular retraining on subjects including adult learning skills, leadership, and teaching and evaluation, among others. Consistent with its focus, the MOA specifically requires MPD to ensure adequate management supervision of

use of force training instructors to ensure the training they provide is consistent with MPD policy, law, and proper police practices.

4. Firearms Training

The MOA requires mandatory semi-annual firearms training and re-qualification, including the successful completion of the Range 2000 and Role Play courses. MPD must revoke the police powers of all officers who do not properly re-qualify. MPD was required to create and implement, subject to DOJ approval, a checklist containing prescribed elements that must be completed for each student officer by a firearms instructor. In addition, firearms training materials must be reviewed and integrated into an overall training curriculum. Finally, MPD must, at least every three months, consult with Glock, the manufacturer of MPD officer service weapons, to obtain the most current information on cleaning, maintenance, and other factors that may affect the proper use of the weapon.

5. Canine Training

The MOA requires MPD to develop and implement a comprehensive canine training curriculum, which includes the identification of the mission, goals, and objectives of the Canine Unit. MPD was required to have all its canines certified in the “new handler-controlled alert methodology” and to ensure that the canines are re-certified on an annual basis and receive refresher training. MPD must monitor and oversee its canine handlers to ensure they are capable of implementing the canine policies that have been adopted by MPD.

B. Status And Assessment

1. Sergeants and Above Training

We did not monitor activity related to sergeants and above training this quarter.

2. In-Service Training

The OIM’s monitoring activity this quarter related to in-service training is discussed the following section regarding MPD’s Canine Unit training program.

3. Canine Training (MOA ¶¶ 145-148)

In prior quarters, the OIM has reviewed MPD's canine training curriculum and lesson plans and observed the training of the Department's canines. This quarter, our review focused on in-service training for canine teams and the Canine Unit's training records.

MPD's canine teams are scheduled to undergo in-service training on a six-week cycle, which involves one day of in-service training for every canine team every six weeks. The Canine Unit's in-service training records are maintained in a written report and on a marker board on the wall of the Canine Unit supervisor's office. According to the Canine Unit's records, all but 4 of MPD's 34 canine teams successfully completed the latest in-service training cycle. Of those 4 teams, 3 of the canine handlers missed the in-service training due to being absent from work as a result of emergency leave, sickness, or injury. The remaining handler currently is not assigned a canine. Therefore, it appears that, for the most recent cycle, MPD's attendance and completion rates for canine in-service training, given the availability of MPD Canine Unit members and canines, were quite good.

This quarter, we also reviewed the written examination that the Canine Unit implemented within the past year to test canine handlers' knowledge of the handler-controlled alert methodology and MPD's policies with respect to canine use and deployment approval. All current handlers have taken and passed this examination, and it is administered to all new handlers during the basic handler certification training process. The Canine Unit supervisor reports that the canine instructor reviews with the handler all questions on the examination that the handler answered incorrectly in an effort to ensure that the handler clearly understands MPD policy.

The OIM also conducted a review of the Canine Unit's instructor certification process. The process for obtaining certification as a canine instructor takes approximately two years, and a qualified applicant is required to have been a canine handler for at least five years. Instructor candidates must conduct at least six re-certification training sessions under the direct supervision of the Canine Unit supervisor and deliver a full basic canine certification training that results in 70% of the handlers becoming certified. MPD canine instructor candidates are evaluated by canine experts from MPD and other policing agencies, including the United States Park Police and the United States Secret Service. Several MPD Canine Unit members currently are undergoing the instructor

certification process, which they are expected to complete within the next twelve months. The OIM will continue to monitor this process.

Finally, the OIM monitored MPD's compliance with the MOA's "professionally-bred" requirement⁸² by reviewing the "personnel" file for each of MPD's canines, which contains information on the date and place the canine was purchased, the canine's medical records, and other documentation. We also reviewed the invoices related to MPD's most recent canine purchases. On September 21, 2003, MPD purchased eleven canines from Orchard Knoll Kennels located in Angier, North Carolina, which is a reputable supplier of professionally bred canines. Based on our review of these records and discussions with the Canine Unit's supervisor, it appears that MPD is in compliance with the MOA's "professionally-bred" requirement.

4. Lesson Plans

On December 31, 2003, MPD issued its Semi-Annual Review of the Use of Force Curriculum, which was prepared by the CDS.⁸³ On March 30, 2004, DOJ returned comments on the review, which MPD is currently considering.⁸⁴ DOJ also requested that the OIM conduct its own evaluation of MPD's most recent Semi-Annual Review, which we will do in the coming quarter.

This quarter, MPD submitted for DOJ approval the following five lesson plans: (1) Arrest, Custody, and Restraint Procedures; (2) Interview and Interrogation; (3) OC Spray; (4) Officer Street Survival; and (5) Use of Force Continuum (with Manual). DOJ currently is reviewing these lesson plans. In January 2004, MPD's CDS completed his review of use of force curricula and lesson plans related to Marksmanship Live Fire, Range 2000/Electronic Simulator, and Simunitions Training. Although the CDS approved each lesson plan, it does not appear that the plans were submitted for review by the City's General Counsel, as required under paragraph 120 MOA of the MOA. The OIM will continue to monitor the CDS's activity with respect to MPD's use of force training program.

⁸² MOA at ¶ 146.

⁸³ MOA at ¶ 119.

⁸⁴ MPD April 2004 Progress Report at 23.

5. Personnel Training Records

The OIM did not monitor activities related to personnel training records this quarter. Officer training records, along with officer disciplinary records, will be a focus of our monitoring activity in the coming quarter.

6. Instructors

Last quarter, the OIM performed a detailed review of the Field Training Officer (“FTO”) program. We found that significant improvement in the FTO program is necessary, including finalization of the Enhanced Field Training Officer Program Protocol and establishment and application of formal selection criteria for FTOs.⁸⁵ In particular, we found that the existing protocol being used by FTOs in the field training program to train Probationary Police Officers is disjointed and out of date.

We also found that MPD does not appear to have established selection criteria for FTOs as required under paragraphs 121.f and 135 of the MOA and that Master Patrol Officers designated to serve as FTOs generally are selected based on interviews conducted and controlled at the district level. Accordingly, we concluded that, without formal criteria governing the selection of FTOs, the qualifications of personnel selected to be FTOs risked significant variation by district and would be inconsistent with the substantive requirements of paragraph 135 of the MOA.⁸⁶

MPD has not made any significant progress with respect to its FTO program this quarter. Although DOJ returned comments on the draft Enhanced Field Training Officer Program Protocol on September 30, 2003, MPD has not yet submitted a revised protocol for DOJ’s

⁸⁵ OIM Seventh Quarterly Report at 50-51.

⁸⁶ Paragraph 135 of the MOA requires that the FTO selection criteria “address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid to allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity.”

approval.⁸⁷ Moreover, MPD still has not established selection criteria for FTOs as required under paragraphs 121.f and 135 of the MOA.

This quarter, the OIM continued monitoring MPD's program for training instructors and certifying their competency.⁸⁸ On December 31, 2002, MPD advised DOJ that MPD's Institute of Police Science ("IPS") had selected the State of Maryland Police and Corrections Training Commission ("MPCTC") Enhanced Instructor Certification Course to train MPD police instructors. On September 30, 2003, DOJ notified MPD that it was requesting that the OIM observe and evaluate the MPCTC instructor training program.⁸⁹

The OIM has completed its review of the MPCTC instructor training program by conducting interviews with IPS staff and reviewing MPCTC's program curriculum and lesson plans. The MPCTC's Enhanced Instructor Certification program is a comprehensive instructor training program that is divided into sixteen segments⁹⁰, which are covered in two training phases. Phase I of MPCTC's instructor training program lasts seven days, during which time students receive instruction on adult learning methodology, curriculum and lesson plan development, and teaching methods. Phase II of the program involves a professional internship during which students are required to prepare actual lesson plans, which are reviewed by MPCTC instructors, and conduct 36 hours of supervised instruction.

The MPCTC program is comprehensive and comports with paragraphs 136 and 137 of the MOA. We believe that MPD's use of the MPCTC instructor certification program is sufficient to comply with these requirements and that instructors who have successfully completed this program should be eligible to be certified as qualified instructors under the MOA.

⁸⁷ MPD April 2004 Progress Report at 10.

⁸⁸ MOA at ¶¶ 136-137.

⁸⁹ MPD April 2004 Progress Report at 24.

⁹⁰ These segments include: Role of the Instructor, Principles of Adult Learning, Adult Learning Styles, Objectives, Instructional Methods I, Facilitation of Discussion, Lesson Plans, Communication/Presentation, Coaching, Instructional Methods II, Training Aids, Assess Group/Individual Learning, Classroom Control Issues, and Evaluation Methods.

According to IPS's February 9, 2004 Instructor Certification Report, 66 MPD instructors have attended the MPCTC instructor certification program, and 10 of the MPD members have satisfied all of the program requirements and received general certifications. Twenty-two of these instructors currently have the status of "provisional instructors" pending their completion of the Phase II instruction evaluations. The remaining 34 MPD instructor candidates have completed the Phase I training program, but are pending lesson plan approval and instruction evaluation.

C. Recommendations

Again this quarter, we strongly encourage MPD to finalize the Enhanced Field Training Officer Program Protocol and to develop and apply formal criteria for the selection of FTOs.

VII. Specialized Mission Units (MOA ¶¶ 149-159)

A. Requirements

The MOA recognizes that, from time to time, MPD may use both temporary and permanent specialized mission units ("SMUs") to achieve various legitimate law enforcement objectives. As to such SMUs, the MOA establishes the following requirements:

- Pre-screening procedures must be employed to ensure that only officers suited to participate in such SMUs are permitted to participate. Participating officers must
 - o be current on firearms certification and training, and
 - o have a satisfactory record relating to the use of force, be adequately trained, be generally fit for service in a patrol unit, and match the needs of the SMU.
- MPD must disqualify from participation in such SMUs (i) officers against whom there have been filed numerous credible complaints for excessive use of force and (ii) officers who are otherwise known to have used questionable force frequently in the past;
- Advance notice of which officers will be participating in such SMUs must be provided to unit supervisors to permit enhanced supervision or tailoring of activities;

- MPD must establish adequate supervision and clear lines of supervision and accountability for such SMUs and must ensure that supervisory officers who volunteer for such units maintain their other supervisory responsibilities;
- Adequate specialized training (including training in relevant legal issues) must be provided to officers serving in such units; and
- All SMU participants must be closely and continually monitored. Such monitoring must encompass a review of any complaints filed against officers participating in SMU activities.

Further, the MOA requires that MPD develop a plan, subject to approval of DOJ, to limit the total number of hours that may be worked by a participating officer during any twenty-four-hour period and during any seven-day period. These limitations are designed to prevent officer fatigue.

B. Status And Assessment

As discussed above, on March 30, 2004, DOJ approved MPD's revised Specialized Mission Unit General Order.⁹¹ MPD, however, requested and received leave to delay implementation of the approved policy to allow time for outstanding issues related to the Specialized Mission Unit After Action Report to be resolved.

We remind MPD that the OIM has an outstanding request to MPD that we receive a list of all officers assigned to all SMUs within one week of DOJ's final approval of the Specialized Mission Unit General Order.⁹² This list will be useful in facilitating our further review of MPD's compliance with paragraphs 149 through 159 of the MOA.

C. Recommendations

The OIM has no recommendations with respect to Specialized Mission Units this quarter.

⁹¹ MPD April 2004 Progress Report at 8.

⁹² OIM Fourth Quarterly Report at 75.

VIII. Public Information (MOA ¶ 160)

A. Requirements

The MOA requires MPD to prepare quarterly reports, to be issued publicly, that include statistics relating to the use of force by MPD officers. The aggregate statistics must be broken down:

- By geographic areas of the City;
- By race-ethnicity of the subject of the use of force;
- By weapon used; and
- By enforcement action taken in conjunction with the use of force.

In addition, these public reports must include information about use of force investigations that have been conducted and information regarding the disposition of excessive use of force allegations.

B. Status And Assessment

The OIM did not monitor MOA activity related to public information this quarter.

C. Recommendations

The OIM has no specific recommendations on this topic at this time.

IX. Monitoring, Reporting, and Implementation (MOA ¶¶ 161-193)

A. Requirements

The MOA requires MPD to designate an MPD Compliance Coordinator whose responsibility is to serve as the liaison among MPD, the Independent Monitor, and DOJ. The Compliance Coordinator's responsibilities include:

- Coordinating MPD compliance and implementation activities relating to the MOA;

- Facilitating the provision of data, documents and access to other MPD personnel for both the Independent Monitor and DOJ;
- Ensuring the proper maintenance of relevant documents and records relating to the MOA; and
- Working with the leadership of MPD to delegate compliance tasks to appropriate MPD personnel.

In addition to fulfilling these functions, the City and MPD are required to file with DOJ and the Independent Monitor a status report describing all steps taken during the reporting period designed to comply with each provision of the MOA.

B. Status And Assessment

1. Compliance Monitoring Team (“CMT”)

As in the past, we remain very impressed by the professionalism, efficiency, and responsiveness of MPD’s CMT. In particular, the CMT continues to be helpful in facilitating our review of the MPD chain of command use of force and misconduct investigations.

2. Full and Unrestricted Access to Staff, Facilities, and Documents

As we have reported previously, MPD continues to provide us with full and unrestricted access to MPD staff, facilities, and documents. Among other groups, MPD’s CMT, Office of Internal Affairs, FIT, IPS, and OPR deserve particular recognition in this regard.

3. MPD Quarterly MOA Progress Reports

MPD published its quarterly MOA Progress Report on April 16, 2004, which was somewhat later than these reports usually are issued. The earlier these reports can be circulated, the greater the OIM’s ability to ensure that our quarterly reports are complete and are published as promptly as possible. As in the past, the report is well written, well organized, and generally informative. Once again, we found MPD’s Progress Report to be extremely useful in preparing this quarterly report.

C. Recommendations

We offer no specific recommendations at this time. As noted above, we continue to find the work of MPD's CMT to be fully consistent with the requirements of the MOA. The quantity and quality of the CMT's compliance-related efforts have served to foster a constructive and productive relationship among MPD, DOJ, and the OIM.

Conclusion

During this quarter, MPD suffered a significant setback as a result of the PPMS funding crisis. Although the impact of the stalled PPMS development effort on MPD's ability to maintain the current schedule established for PPMS's development and implementation is not yet known, this obviously is an area of significant concern for the parties and for the OIM. The OIM also is concerned about the significant drop in UFIR completion rates that MPD experienced this quarter and the lack of observable progress with respect to MPD's FTO program.

Our observations this quarter again confirm our general experience that MPD is working in good faith to comply with the requirements of the MOA. Indeed, MPD has made significant progress toward MOA compliance in important areas. For example, our review this quarter of MPD's canine program has led the OIM to conclude that MPD is in substantial compliance with the MOA's provisions related to canine policies and procedures.

Finally, this quarter for the first time, the OIM conducted a significant review of OCCR's investigations of citizen complaints lodged against MPD officers. The timeliness of these investigations is an area in which significant improvement is necessary, and OCCR has already taken steps to improve in this area. Although in many areas the quality of OCCR's investigations is quite good, we found that nearly half of OCCR's investigations we reviewed this quarter were not complete. The OIM will revisit the subject of OCCR's misconduct investigations in a future quarter to assess OCCR's progress in improving the timeliness and completeness of its misconduct investigations.



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May 13, 2004

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Appendix A (Acronyms)

AUSA	Assistant United States Attorney
CCRB	Citizen Complaint Review Board
CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
DOJ	Department of Justice
EIP	Early Intervention Program
FIT	Force Investigation Team
FOP	Fraternal Order of Police
FTO	Field Training Officer
IPS	Institute of Police Science
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding between MPD and OCCR
MPCTC	Maryland Police and Corrections Training Commission
MPD	Metropolitan Police Department
OC	Oleoresin Capsicum
OCC	Office of Corporation Counsel
OCCR	Office of Citizen Complaint Review
OIM	Office of the Independent Monitor
OPR	Office of Professional Responsibility
PPMS	Personnel Performance Management System
SMU	specialized mission unit
UFIR	Use of Force Incident Report

UFRB Use of Force Review Board

USAO United States Attorney's Office

Appendix B

Summary of Results of the OIM's Review of the Investigations Samples

1. Specific questions and results related to the administration and oversight of MPD investigations are summarized below.

- *Did the proper authority investigate the allegation? [MOA ¶¶ 57, 61, 64, 68, 72, 79, 80]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	95.9%	100.0%	96.6%
NO:	4.1%	0.0%	3.4%

- *Was the supervisor/official responsible for the investigation involved in the incident? [MOA ¶ 80]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	0.9%	0.0%	3.4%
NO:	99.1%	100.0%	96.6%

- *Did the supervisor/official responsible for the investigation have an apparent or potential conflict of interest related to the misconduct investigation? [MOA ¶ 80]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	2.2%	0.0%	3.4%
NO:	97.8%	100.0%	96.6%

- *Were any compelled statements taken before a written criminal declination was obtained from the USAO? [MOA ¶¶ 60, 71]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	2.8%	0.0%	0.0%
NO:	97.2%	100.0%	100.0%

- Does the file include a report prepared by the investigator? [MOA §§ 62, 65, 74, 102]

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	88.3%	64.9%	69.4%
NO:	11.7%	35.1%	30.6%

- Does the investigator's report include [MOA §§ 62, 65, 74, 102]:
 - A description of the use of force incident or misconduct alleged?

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	95.3%	100.0%	100.0%
NO:	4.7%	0.0%	0.0%

- A summary of relevant evidence gathered?

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	91.4%	100.0%	98.0%
NO:	8.6%	0.0%	2.0%

- Proposed findings and analysis supporting findings?

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	90.2%	100.0%	98.0%
NO:	9.8%	0.0%	2.0%

- If the complaint was made at a location other than OPR, was it received by OPR within 24 hours or the next business day? [MOA § 94]

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	25.6%	38.9%	61.6%
NO:	74.4%	61.1%	38.4%

- Was the investigation completed within 90 days? [MOA §§ 62, 65, 74, 103]

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	63.1%	48.4%	53.7%
NO:	36.9%	51.6%	46.3%

- *If not completed within 90 days, were special circumstances for the delay explained? [MOA ¶¶ 62, 65, 74]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	10.9%	32.0%	5.5%
NO:	89.1%	68.0%	94.5%

2. Specific questions and results related to the conduct of MPD investigations are summarized below.

- *Were group interviews avoided? [MOA ¶ 81.c]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	98.1%	96.3%	100.0%
NO:	1.9%	3.7%	0.0%

- *Were all appropriate MPD officers, including supervisors, interviewed? [MOA ¶ 81.e]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	84.6%	98.0%	84.7%
NO:	15.4%	2.0%	15.3%

- *If practicable and appropriate, were interviews of complainants and witnesses conducted at sites and times convenient to them? [MOA ¶ 81.b]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	94.4%	96.6%	100.0%
NO:	5.6%	3.4%	0.0%

- *Were inconsistencies among officers and/or witnesses documented and addressed? [MOA ¶ 81.g]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	84.3%	100.0%	91.6%
NO:	15.7%	0.0%	8.4%

- *Was the conduct of each officer involved in the event adequately addressed for its propriety? [MOA ¶ 82]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	89.6%	93.9%	93.7%
NO:	10.4%	6.1%	6.3%

- *Was all apparent misconduct adequately addressed? [MOA ¶ 82]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	88.7%	94.5%	85.3%
NO:	11.3%	5.5%	14.7%

- *Did the investigator avoid giving automatic preference to an officer's statement over a citizen's statement? [MOA ¶ 99]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	62.8%	98.0%	94.5%
NO:	37.2%	2.0%	5.5%

- *Was the basis for closing the investigation without further investigation something other than the withdrawal of the complaint or the unavailability of the complainant? [MOA ¶ 101]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	80.9%	100.0%	100.0%
NO:	19.1%	0.0%	0.0%

- *Were the findings based upon a preponderance of the documented evidence? [MOA ¶ 98]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	97.0%	98.6%	100.0%
NO:	3.0%	1.4%	0.0%

- *Did all allegations of misconduct addressed by the investigation result in a finding of either unfounded, sustained, insufficient facts, or exonerated? [MOA ¶ 100]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	59.3%	98.0%	87.0%
NO:	40.7%	2.0%	13.0%

3. Specific questions and results related the unit commanders' review of MPD investigations are summarized below.⁹³

- *Did the unit commander review the investigation to ensure its completeness and that the findings are supported by the evidence? [MOA ¶ 66]*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	99.4%	100.0%	95.3%
NO:	0.6%	0.0%	4.7%

4. Below is a summary of the OIM reviewers' overall findings with respect to the completeness and sufficiency of MPD investigations.

- *Was the investigation complete?*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	60.7%	52.0%	30.4%
NO:	39.3%	48.0%	69.6%

- *Was the investigation sufficient?*

	<u>Quarter 6</u>	<u>Quarter 7</u>	<u>Quarter 8</u>
YES:	77.6%	66.3%	57.0%
NO:	22.4%	33.7%	43.0%

⁹³ In our Sixth and Seventh Quarterly Reports, the OIM reported statistics related to the questions “*If the investigation revealed evidence of criminal wrongdoing, did the unit commander notify FIT and the USAO?*” [MOA at ¶ 66] and “*Was the notification timely (no later than the next business day)?*” [MOA at ¶ 69]. This quarter, after further analysis, PwC determined that the response rates in all three of our samples for these two questions were too low to support statistical analysis. Accordingly, we have removed the statistics related to those questions from Appendix B.