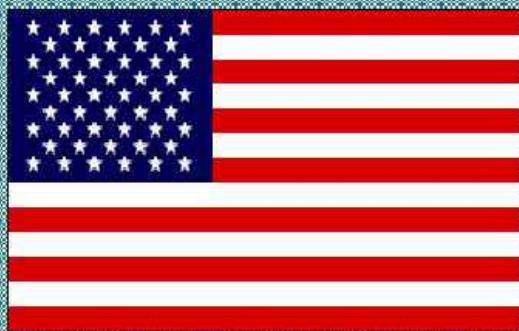


# **Fourth Quarterly Report of 2013 of the Independent Monitor for the Virgin Islands Police Department**



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# Executive Summary

This is the Fourth Quarterly Report of 2013 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on December 31, 2013.<sup>1</sup>

In the Fourth Quarter of 2013, the OIM’s Police Practices Experts conducted two week-long monitoring trips to the United States Virgin Islands (the “Territory”). During these trips, the Police Practices Experts spent time meeting with and providing technical assistance to VIPD personnel, observing Consent Decree related training, and reviewing closed investigation files and other police records. The assessments contained in this Report are primarily based on the Police Practices Experts’ observations and the Department’s quarterly Status Report, dated January 7, 2014 (“VIPD Report”). In addition, there were frequent communications and updates, telephonically and electronically, between the VIPD and the Police Practices Experts during the Fourth Quarter of 2013, as well as periodic telephone conferences among the VIPD, the Virgin Islands Attorney General’s Office (the “VIAG”), the Office of the Governor, the United States Department of Justice (the “DOJ”), the Police Practices Experts, and the Monitor to discuss the VIPD’s efforts towards substantial compliance with the Consent Decree.

On November 18, 2013 (the “November 18 Hearing”), the United States District Court for the District of the Virgin Islands (the “Court”) held a full day hearing to review a joint motion filed by the Parties to extend the Consent Decree’s October 31, 2013 substantial compliance deadline for another two years (the “Joint Motion”). As previously reported, the original deadline for substantial compliance was March 23, 2012, to be followed by two consecutive years of compliance, at which time the Consent Decree would terminate. After the VIPD failed to comply with the March 23, 2012 deadline, the Court approved the Parties’ Joint Action Plan in the Fourth Quarter of 2012, which eliminated the brightline termination date, extended the substantial compliance deadline to October 31, 2013, and detailed the VIPD’s obligations to achieve substantial compliance with each paragraph of the Consent Decree. Subsequently, the VIPD advised the Court that it would not meet the October 31, 2013 substantial compliance deadline.

At the November 18 Hearing, the Court heard testimony from two of the Police Practices Experts and several VIPD personnel on the status of the VIPD’s progress towards achieving substantial compliance, and whether the deadlines

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<sup>1</sup> This Report references a limited number of events that occurred after December 31, 2013 to provide a current assessment of the VIPD’s compliance status.

for achieving substantial compliance should be extended. The Court's decision regarding the extension is pending. Until the Court reaches a decision on the extension, the OIM will continue to reference the deadlines, all of which have passed, for the Joint Action Plan currently in place and approved by the Court.

The Court has scheduled a hearing for February 25, 2014 to address the Parties' Joint Motion, including "whether the proposed amended action plan is feasible at this juncture." In addition, the Court ordered the Parties to be "prepared to discuss what other remedies, if any, are appropriate given the status of the matter." The OIM will provide an update about the upcoming hearing in its First Quarterly Report of 2014.

A significant amount of work remains for the VIPD to achieve substantial compliance. To move towards substantial compliance and achieve the final phase of compliance, the VIPD must continue to audit its own compliance with the Consent Decree. VIPD audits should be performed by an independent Audit Unit and should document any instances where VIPD personnel did not comply with Department policies, including identifying, in detail, the problems or mistakes, the corrective action taken, and any discipline that was imposed. The VIPD should then report that information to the OIM and correct any problems identified by the audits.

The VIPD took a big step forward during the Fourth Quarter of 2013 when it completed an initial round of audits designed to assess the Department's compliance with various Consent Decree requirements. While there is substantial room for improvement and the quality of the audits varied considerably depending on which working group was responsible, the VIPD has demonstrated a good faith initial effort to conduct internal audits. The VIPD should conduct additional audits during the First Quarter of 2014 and promptly forward the results to the OIM.

Second, almost five years into the Consent Decree, the VIPD has made little progress implementing its Early Intervention Program ("EIP"). As discussed more fully below, the EIP is a cornerstone of the Consent Decree. It provides the Department, particularly managers, Supervisors, and the Internal Affairs Bureau (the "IAB"), which maintains and administers the EIP, a means to identify and address potentially problematic behavior at an early (and hopefully remediable) stage. When the EIP identifies potentially problematic behavior by an Officer, the Supervisor and his/her commanding Officer are required to meet and determine if corrective action is appropriate; the Department would follow a similar process for more senior personnel. The Department, however, has not demonstrated to the OIM that this is being done consistently across the Districts. For example, during the Fourth Quarter of 2013, the OIM learned about an Officer from the St. Thomas District who received 12 citizen complaints in the prior 12 months, accounting for approximately 60% of the citizen complaints in her unit. Based on the files

provided to the OIM, it does not appear that the Officer's Supervisor (or anyone else in the chain of command) intervened. The Director of the IAB ultimately sent a memorandum to the Officer's Commander highlighting this issue, but it is not clear to the OIM if anything was done in response. This demonstrates a lack of accountability at all levels of the Department.

We have also noted that senior managers appear reluctant to impose meaningful sanctions for misconduct, which further undermines accountability within the Department. For example, during the Fourth Quarter of 2013, the Police Practices Experts reviewed the proceedings of a disciplinary hearing in which the charges against the Officer were sustained, but the sanction was held in abeyance. To achieve substantial compliance and operate as a successful police department after the Consent Decree expires, the VIPD must embrace a culture of accountability—at all levels—and must overcome its current reluctance to hold personnel accountable for violations of Department policies.

Finally, as stated in the last Report, the OIM regularly provides recommendations to the VIPD in our Reports to help the Department move towards substantial compliance, or, if not specifically required by the Consent Decree, to bring the Department in line with generally accepted police practices. We note that the VIPD is just beginning to address the OIM's recommendations. The Department should continue to describe any efforts that it takes to implement the OIM's recommendations in future VIPD Reports.

Starting with this Report, the OIM will attach the VIPD Report as Appendix A. In prior quarters, the OIM summarized the VIPD's Report for each paragraph, but this new approach will give the VIPD the opportunity to directly communicate with the Court and the broader community about its Consent Decree Compliance efforts. In addition, this is the second quarter that the OIM is providing Appendix B, a status update on (1) a number of serious use of force, officer misconduct, and citizen complaint investigations, and (2) investigations with no dispositions. The OIM continues to monitor these cases to evaluate whether the investigations complied with the Department's policies and generally accepted police practices. The OIM will provide status updates about these investigations as additional information becomes available.

The Department achieved substantial compliance with two additional paragraphs, ¶¶ 57 and 66, during the Fourth Quarter of 2013. As previously reported in the First and Second Quarters of 2013, the VIPD has achieved substantial compliance with ¶¶ 31, 39, 40, 42, 47, 50, 52, 53, 62, 64, and 70, largely based on redefining the parameters of compliance so as to only require the development of policies or protocols for those paragraphs. The OIM will continue to evaluate the Department's consistent application of these provisions under ¶¶ 100 and 101 of the Consent Decree. In addition, the Department's obligation to provide training for the policies and protocols

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required by ¶¶ 31, 39, 40, 47, 50, 52, 53, 62, 64 and 70 will be assessed in connection with the specific training requirements contained throughout the Consent Decree and ¶ 75.

Finally, effective January 27, 2014, William F. Johnson resigned his position as Co-Independent Monitor because he joined a different law firm. We thank him for his hard work, dedication, and passion to the monitoring process, and wish him well.

# Introduction

This is the Fourth Quarterly Report of 2013 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on December 31, 2013.

The OIM was established in January 2010 to monitor compliance by the United States Virgin Islands (the “Territory”) and the VIPD with the Consent Decree entered by the United States District Court for the District of the Virgin Islands (the “Court”) on March 23, 2009. The Monitor is required by the Consent Decree to “issue quarterly written, public reports detailing the Territory’s compliance with and implementation of each substantive provision” of the Consent Decree.<sup>2</sup>

The Consent Decree reflects the agreement between the Territory, the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Territory and the VIPD violated 42 U.S.C. § 14141 by engaging “in a pattern or practice of excessive force by Officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline Officers.”<sup>3</sup>

The Parties entered into the Consent Decree “to promote police integrity and prevent conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States.”<sup>4</sup> The 104 paragraph Consent Decree contains a broad range of substantive requirements for reform in areas such as: (1) revising the VIPD’s force-related policies; (2) training Officers to properly use force in accordance with constitutional requirements, VIPD policy, and existing best practices in policing; (3) reporting and investigating use of force events; (4) documenting and investigating complaints alleging Officer misconduct; (5) developing systems for managing and supervising Officers; and (6) disciplining Officers found to have engaged in misconduct.

On October 1, 2010, the Court—charged with enforcing the VIPD’s obligations under the Consent Decree—ordered the Parties to jointly propose a timetable by which the VIPD would substantially comply with each substantive provision in the Consent Decree. The Parties subsequently filed a timetable on November 24, 2010 that set forth specific dates by which the VIPD would

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<sup>2</sup> CD ¶ 96. This Quarterly Report, along with the OIM’s prior reports, is available on the internet at <http://www.policemonitor.org/VI/VIindex.html>.

<sup>3</sup> CD ¶ 6; *see also* Complaint, *United States v. The Territory of the Virgin Islands*, No. 3:08-CV-00158-CVG-GWB (D.V.I. 2008).

<sup>4</sup> CD ¶ 3.



substantially comply with each substantive provision in the Consent Decree (the “Consent Decree Timetable”). The Consent Decree Timetable also created interim deadlines for the VIPD to submit force-related policies to the DOJ for approval. The VIPD successfully met nearly every policy submission deadline. However, by the end of the Third Quarter of 2011, the VIPD had missed all of the remaining deadlines for substantial compliance established by the Court-ordered Consent Decree Timetable (deadlines that the VIPD proposed and committed to meeting). For example, under the Consent Decree Timetable, the VIPD was required to substantially comply with Consent Decree ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011, and ¶¶ 49, 59, and 63-66 by September 15, 2011. To date, the VIPD has complied with ¶¶ 31, 39, 40, 42, 47, 50, 52, 53, 62, and 70.

In January 2011, to encourage compliance within the timeframe of the Consent Decree Timetable, the then Commissioner convened a Consent Decree Summit on St. Thomas on January 3 and 4, 2011 (the “Summit”).<sup>5</sup> At the Summit, the Commissioner appointed senior VIPD personnel to lead, and ultimately be held accountable for, different aspects of the Consent Decree—Use of Force (Chief of the St. Croix District),<sup>6</sup> Citizen Complaint Process (Chief of the St. Thomas/St. John District),<sup>7</sup> Management and Supervision (Deputy Chief of St. Thomas), and Training (Director of Training). The Commissioner explained that each working group leader was responsible for: (1) designating a “point person” and recruiting other working group members; (2) drafting an action plan; (3) interacting with other VIPD personnel on interrelated Consent Decree issues; and (4) monitoring the working group’s progress by attending and participating in as many meetings as schedules permit, but no less than twice a month.<sup>8</sup>

During the First Quarter of 2013, the OIM began assessing the VIPD’s compliance with the Consent Decree in 3 phases—Phase 1: Policy; Phase 2: Training; Phase 3: Consistent Application. Phase 1 assesses whether the VIPD

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<sup>5</sup> The OIM discussed the Summit in detail in the Fourth Quarterly Report of 2010 and the First Quarterly Report of 2011. For more information about the Summit, including objectives and participants, see the *Consent Decree Summit Appendix B* at the end of those Reports.

<sup>6</sup> Following on-duty injuries sustained by the Chief of the St. Croix District during the Third Quarter of 2012, the Deputy Chief of St. Croix assumed responsibility as Acting Chief of the St. Croix District and Acting Leader of the Use of Force working group. The Acting Chief appointed a Captain as his point person, and she has recruited new members and commenced regular meetings of the working group.

<sup>7</sup> The Citizen Complaint Process working group is now led by the Deputy Chief of St. John.

<sup>8</sup> Memorandum from the Commissioner to various VIPD personnel, titled “Meeting Current Standards of Policing,” dated January 19, 2011. The OIM’s Police Practices Experts also provided the working group leaders with a memorandum outlining their respective responsibilities. During the Fourth Quarter of 2013, the Police Practices experts regularly exchanged emails and telephone calls with their counterparts and met in person during the quarter’s monitoring trips.

has issued policies reflecting the Consent Decree requirements. Phase 2 assesses whether the VIPD has provided initial and ongoing training (e.g., annual in-service training, Roll and Commanders Call training) on these policies. Phase 3 assesses whether the VIPD demonstrates consistent application of the Department's policies in its everyday policing activities. Certain phases may not be applicable to all Consent Decree requirements. For example, the provisions relating to training (§§ 75-79) primarily concern the training process, rather than training on a particular policy. Therefore, Phase 1 will not be applicable to those provisions. Moreover, where Phase 1 is not applicable because there is no required policy, Phase 2 will focus on steps towards execution, including training. As previously reported, the VIPD achieved substantial compliance with § 42 of the Consent Decree during the First Quarter of 2013.

Beginning during the Second Quarter of 2013 and based on extensive discussions with and input from the VIPD, the Virgin Islands Attorney General's Office ("VIAG"), and the DOJ, the OIM modified its assessment criteria for the Consent Decree paragraphs that only require the Department to develop a policy or protocol. Under this approach, the VIPD has achieved substantial compliance with §§ 31, 39, 40, 47, 50, 52, 53, 62, 64, and 70 because it has adopted relevant policies or protocols. Because the Consent Decree requires the VIPD to "implement . . . all provisions of this Agreement that involve the continuation of current VIPD policies, procedures, and practices[,]" the OIM will evaluate the Department's consistent application of its policies and protocols (Phase 3, described above) under §§ 100 and 101 of the Consent Decree. In addition, the Department's obligation to provide training for its policies and protocols is addressed in connection with specific training requirements throughout the Consent Decree and § 75. The VIPD achieved substantial compliance with two additional paragraphs, §§ 57 and 66, during the Fourth Quarter of 2013.

## Status of Substantial Compliance

<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>31</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>32</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>33</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>34</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>35</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>36</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>37</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>38</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>39</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>40</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>41</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance



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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>42</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>43</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>44</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>45</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>46</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>47</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>48</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>49</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>50</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>51</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>52</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>53</b>	Satisfied	N/A	N/A	Substantial Compliance

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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>54</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>55</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>56</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>57</b>	Satisfied	Satisfied	Satisfied	Substantial Compliance
<b>58</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>59</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>60</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>61</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>62</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>63</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>64</b>	Satisfied	N/A	N/A	Substantial Compliance

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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>65</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>66</b>	Satisfied	Satisfied	Satisfied	Substantial Compliance
<b>67</b>	N/A	N/A	N/A	N/A
<b>68</b>	N/A	N/A	N/A	N/A
<b>69</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>70</b>	Satisfied	N/A	N/A	Substantial Compliance
<b>71</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>72</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>73</b>	N/A	Not Satisfied	Not Satisfied	Not in Substantial Compliance
<b>74</b>	N/A	Not Satisfied	Not Satisfied	Not in Substantial Compliance
<b>75</b>	N/A	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>76</b>	N/A	Satisfied	Not Satisfied	Not in Substantial Compliance



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<b><u>Consent Decree ¶</u></b>	<b><u>Phase 1</u></b>	<b><u>Phase 2</u></b>	<b><u>Phase 3</u></b>	<b><u>Compliance Status</u></b>
<b>77</b>	N/A	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>78</b>	N/A	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>79</b>	N/A	Not Satisfied	Not Satisfied	Not in Substantial Compliance
<b>80</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance
<b>81</b>	Satisfied	Satisfied	Not Satisfied	Not in Substantial Compliance

# Compliance Assessment

This section of the Report describes the VIPD's compliance efforts with respect to each of the substantive provisions of the Consent Decree,<sup>9</sup> as well as monitoring activities by the OIM's Police Practices Experts during the quarter. The organization of this section of the Report parallels the organization of the Consent Decree. Specifically, we provide a *status and assessment* discussion that describes and analyzes the VIPD's progress toward achieving substantial compliance with the Consent Decree's requirements.<sup>10</sup> We include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree's requirements.<sup>11</sup>

## Use of Force Policies

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test proficiency with the policies.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>November 30, 2012</b> , ensure that the Virgin Islands Attorney General's Office, the Training Working Group, and the Use of Force Working Group review all use of force policies.	<b>Not satisfied.</b> The Use of Force working group reported during the First Quarter of 2013 that it planned to review one use of force policy every two weeks. The working group repeatedly said that it would provide the OIM with completed review forms, but the OIM never received any. Later in the quarter, the Department determined that a review protocol was needed to establish a uniform procedure for reviewing policies before it could proceed further. The VIPD drafted a Standard Operating Procedure ("SOP") to "facilitate a systematic review process for the

<sup>9</sup> A summary of the Consent Decree requirements is excerpted at Appendix C. A copy of the full text of the Consent Decree is available at: [http://www.justice.gov/crt/about/spl/documents/VIPD\\_CD\\_03-23-09.pdf](http://www.justice.gov/crt/about/spl/documents/VIPD_CD_03-23-09.pdf).

<sup>10</sup> The Consent Decree provides that "[t]he Monitor shall issue quarterly written, public reports detailing the Territory of the Virgin Islands' compliance with and implementation of each substantive provision of [the] Agreement." CD ¶ 96.

<sup>11</sup> CD ¶ 85.

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	annual review of all department policies, and particularly use of force and other force related policies....” The Commissioner signed the SOP during the Fourth Quarter of 2013. The OIM understands that the Use of Force Policy is currently under review by VIPD counsel and the VIAG.
By <b>November 30, 2012</b> , conduct Use of Force reviews on a quarterly basis.	<b>Not satisfied.</b> The OIM has learned that the VIPD has a command level review process for individual force cases in each District. To date, we have not received documentation relating to that process. The quarterly use of force reviews should seek to identify any patterns of misconduct, weaknesses in training, or other issues related to use of force. The quarterly force reviews differ from the use of force audits that the VIPD initiated during the Fourth Quarter of 2013. The audits are generally narrower in scope and designed to test compliance with particular policies of Consent Decree provisions.
By <b>November 30, 2012</b> , VIPD will provide DOJ with an action plan for achieving sufficient numbers of supervisors or outlining how it intends to use existing supervisors to implement the policies and this action plan. The plan will include an implementation date subject to the agreement of the parties.	<b>Satisfied, but additional work needed.</b> On December 31, 2012, the DOJ provided comments on the VIPD’s action plan. Among other things, the DOJ sought clarification on what, if anything, the VIPD plans to do if there is a lack of funding for new Supervisors. Recognizing the Department’s fiscal constraints, the VIPD should address that possibility and plan accordingly. The VIPD reported during the Fourth Quarter of 2013 that it anticipates holding promotional exams in May and April 2014.
By <b>November 30, 2012</b> , conduct inspections of personnel with report on a quarterly basis.	<b>Not satisfied.</b> Documentation for inspections conducted in the St. Croix District following training was provided to the OIM during the Second Quarter of 2013. During the Fourth



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	Quarter of 2013, the VIPD revised its inspection form and conducted training on the St. Thomas/St. John District in January of 2014. Training is scheduled for the St. Croix District in February of 2014.
By <b>January 31, 2013</b> , competency-based training of officers and supervisors on remaining policies 3.8 Off-Duty Policy 3.9 Vehicle Pursuit Policy 3.10 Spike Strip 3.12 Tactical Operations 3.13 Sniper Operations	<b>Not satisfied.</b> The VIPD has provided training on the Off-Duty Policy and Sniper Operations and train-the-trainer training on the Vehicle Pursuit Policy and Spike Strip. The VIPD provided in-service training on additional policies during the Second and Third Quarters of 2013. The VIPD has not provided the OIM with a training report about these policies.
Refresher training on policies ongoing, through documented, periodic in-service and Roll Call/Commanders Call training. By <b>January 31, 2013</b> , incorporate competency-based training on policies into Police Academy.	<b>Not satisfied.</b> Although the VIPD has provided the OIM with attendance sheets and brief descriptions of Roll Call and Commanders Call training, the OIM needs more detailed information about the subject matter being covered. Likewise, the OIM cannot determine whether the VIPD has adequately incorporated competency-based training on policies into the Police Academy because the VIPD has not provided the OIM with a full set of lesson plans and related training materials for recruit training.
By <b>January 31, 2013</b> , execute any contract(s) necessary to train supervisors or others responsible for conducting ballistic or crime scene analyses. By <b>March 31, 2013</b> , conduct the training.	<b>Not satisfied.</b> The VIPD has a contract with a contractor to analyze ballistics, but there is currently a backlog. Because of the backlog, several investigations into police-involved fatal shootings remain open.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies (i.e., review of sample of 1As and arrest reports).	<b>Satisfied, but additional work needed.</b> The OIM received the VIPD's Audit Report on January 17, 2014, which demonstrates that the Department has taken steps to implement the audit tools. The OIM will report more fully on the VIPD's Audit Report in the next quarter.

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By <b>June 30, 2013</b> , develop and implement a process for identifying personnel who continually fail to report uses of force or otherwise fail to follow the policy and provide and document discipline and/or remedial training.	<b>Not satisfied.</b> The VIPD has started to conduct audits relating to the Department's use of force practices, but has not provided the OIM with documentation showing that it has consistently implemented such a process in both Districts.
By <b>June 30, 2013</b> , ensure that audits audit the timeliness of completion of use of force investigations.	<b>Satisfied, but additional work needed.</b> The VIPD conducted audits in both Districts during the Fourth Quarter of 2013 that addressed the timeliness of use of force investigations. The OIM will report more fully on the VIPD's Audit Report in the next quarter.
By <b>June 30, 2013</b> , in consultation with DOJ, develop and implement a process for identifying supervisors who neglect their responsibilities to investigate as required by policy and provide and document discipline and/or remedial training.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation showing that the Department has implemented such a process.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies (i.e., review of firearm discharge reporting).	<b>Satisfied, but additional work needed.</b> The OIM received the VIPD's Audit Report on January 17, 2014, which demonstrates that the Department has taken steps to implement the audit tools. The OIM will report more fully on the VIPD's Audit Report in the next quarter.

**31. The VIPD will review and revise its use of force policies as necessary to: a) define terms clearly; b) define force as that term is defined in this Agreement; c) incorporate a use of force model that teaches disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units as appropriate responses to a situation; d) advise that, whenever possible, individuals should be allowed to submit to arrest before force is used; e) reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and/or civil liability; f) ensure that sufficient less lethal alternatives are available to all patrol officers; and g) explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized. Once the DOJ has reviewed and approved these policies, the VIPD shall immediately implement any revisions.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued policies in compliance with ¶ 31 of the Consent Decree. Because ¶ 31 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 31 of the Consent Decree.

**32. The VIPD will require all uses of force to be documented in writing. The use of force report form will indicate each and every type of force that was used, and require the evaluation of each type of force. Use of force reports will include a narrative description of the events preceding the use of force, written by a supervisor or by the designated investigative unit. Use of force reports also will include the officer(s)' narrative description of events and the officer(s)' statement. Except in cases of use of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, the officer's statement shall be audio- or videotaped.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 32 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 32 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages vi-vii.

**OIM Report:**

The VIPD has issued the Use of Force Policy, Reportable Use of Force Policy, and the Reporting, Investigation and Review of Use of Force Policy in partial satisfaction of ¶ 32 of the Consent Decree.

During the Fourth Quarter of 2013, the VIPD provided the Police Practices Experts with 12 closed use of force investigations and 11 closed citizen complaint investigations for review. This is a substantial improvement from last quarter, when the VIPD provided 3 closed use of force investigations. Moreover, as previously reported, the Police Practices Experts have requested remote access to IAPro and Blue Team, which would provide the Police Practices Experts with real-time access to closed investigations. However, because of technological issues, the VIPD has not yet been able to provide the Police Practices Experts with remote access to IAPro and Blue Team.

Throughout the Report, certain statistics may be calculated from a number less than the total number of investigations received for the quarter (i.e. 12 closed use of force investigations and 11 closed citizen complaint investigations) because: (1) a Consent Decree requirement was not applicable to all investigations, in which case we used the total number of applicable investigations; or (2) the particular requirement was not assessed during the Fourth Quarter of 2013 by the Police Practices Experts. Because of the limited sample size, the statistics contained in this report may not ultimately prove to be representative of the VIPD's performance overall. Notwithstanding these limitations, the statistics contained in this Report still provide insight into the Department's progress.

For example, based on the Police Practices Experts' review of the closed use of force investigations, the OIM concluded that VIPD personnel reported force using an RRR in 91% (10 out of 11) of the closed investigations reviewed during the Fourth Quarter of 2013; Supervisors described the events preceding the use of force and evaluated the appropriateness of each type of force used in 100% (12 out of 12) of the investigation files; 100% (12 out of 12) of the investigation files included the Officer's description of events preceding the use of force; the RRRs in 100% (11 out of 11) of the investigation files indicated the type of force used; and 27% (3 out of 11) of the investigations were closed within the timeline required under Department policy. Based on the information provided in the investigation files, the Police Practices Experts determined that 80% (8 out of 10) of the uses of force were justified. For the uses of force that did not appear to be justified, one involved Officers that "drive stunned" (i.e., applied the TASER to the subject's skin) an emotionally disturbed individual while he was handcuffed.<sup>12</sup> In the second case, the OIM could not determine whether the use of force was justified because the VIPD did not interview all of the witnesses.

As we reported last quarter, the VIPD continues to struggle with completing investigations within the required timeline. During the Fourth Quarter of 2013, the Police Practices Experts reviewed several completed use of force investigations that were extremely delinquent. For example, in one investigation, Officers used a low level of force (a "forced take down") to gain compliance of an individual who had stolen a fire extinguisher and was spraying people. While the corresponding use of force investigation should have been completed in two or three days, the investigation dragged from June 16, 2013 (the date the incident occurred) to August 8, 2013 (when the investigation was finally completed).<sup>13</sup> Similarly, in another use of force investigation, Officers used O.C. Spray on a non-compliant individual (who was inebriated) at a bar. The incident took place on May 28, 2013, but the

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<sup>12</sup> See UOFT2013-0019.

<sup>13</sup> See UOFT2013-0034.



corresponding use of force investigation was not completed until July 24, 2013.<sup>14</sup>

As previously reported, the Police Practices Experts remain concerned about the VIPD's use of excessive force against individuals who are characterized by the VIPD as mentally or emotionally disturbed. Every quarter, the Police Practices Experts learn about new uses of force involving mentally or emotionally disturbed individuals. As discussed above, during the Fourth Quarter of 2013, the Police Practices Experts identified a use of force incident where Officers "drive stunned" an emotionally disturbed individual while he was handcuffed. Even if a subject is resisting arrest, there are very few circumstances where it would be appropriate (and constitutionally permissible) for law enforcement officers to use a TASER on a subject while in handcuffs. Based on the limited facts provided in the corresponding use of force investigation, it appears that the use of force was not justified. Despite previously raising our concerns about the VIPD's use of force against mentally or emotionally disturbed individuals (and acknowledgment by the VIPD that this is an ongoing concern), the VIPD does not appear to have made much progress in this regard.

This case also highlights several recurring deficiencies that we have seen in other use of force investigations. For example, the Supervisor never responded to the scene; the Supervisor reported that a "carotid restraint" was used on the subject, but none of the Officers reported using a "carotid restraint" in their respective RRRs; and relevant evidence (the electronic report generated by the TASER) was not collected and evaluated.

Finally, although the VIPD's force reporting practices have improved over the past several quarters, the Police Practices Experts reviewed an investigation during the Fourth Quarter of 2013 where none of the involved Officers completed an RRR or an incident report (Form 1A) documenting the incident.<sup>15</sup> According to the investigation file, VIPD Officers confronted a street peddler who was allegedly selling bottled water on the waterfront. The VIPD Officers then asked for an Officer from the Department of Licensing and Consumer Affairs ("DLCA") to assist. An Officer from the DLCA subsequently responded to the scene and approached the subject. The subject attempted to walk away by jumping onto a nearby ledge. According to the subject, the DLCA Officer followed the subject onto the ledge and threw him to the ground. The VIPD Officers then arrested the subject for disturbing the peace. Approximately one month later, the subject filed a citizen complaint alleging that he was beaten. The VIPD Officers never reported their interaction with the subject. In addition, the Police Practices Experts noted several problems with the VIPD's underlying investigation, including failing to obtain statements from the DLCA

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<sup>14</sup> See UOFT2013-0041.

<sup>15</sup> See CCT2013-0157.

Officer and one of the VIPD Officers; failing to resolve inconsistencies (or at least try to do so) between the Officers' statements and the subject's statement; not obtaining hospital records relating to the subject's injuries (he was taken to the hospital following the incident); and not adequately probing each of the witnesses. We also note that the underlying investigation was completed by the IAB. While IAB investigations are often well-done, we believe that the IAB is overburdened by tasks outside of its core areas of responsibility, including completing background investigations for new VIPD recruits and managing the Department's EIP.

### **Recommendations:**

In the last Quarterly Report, the OIM recommended that the VIPD examine its investigation of FX2013-0028 and use it as a learning opportunity to understand what went wrong and how to do better in the future. The VIPD should report on whether it followed that recommendation or plans to do so in the future. Similarly, the VIPD should examine each of the investigations identified above. The OIM is particularly concerned about the VIPD's use of force against mentally and emotionally disturbed individuals. The VIPD should provide additional training to VIPD personnel in this regard, including techniques that could be used to de-escalate volatile situations. The OIM understands that the Department has conducted training regarding the use of force against the mentally ill on the St. Thomas/St. John District and plans to conduct similar training on St. Croix.

The Department should also seek to improve the timeliness of its use of force reporting. Under the Reporting, Investigation and Review of Use of Force Policy, VIPD personnel are required to report uses of force, to the extent practicable, before the end of the tour during which force was used. Although the VIPD has improved its use of force reporting, VIPD personnel continue to report force on a delayed basis. Delays in the reporting process frustrate use of force investigations by effectively shortening the 50-day statute of limitations period and potentially rendering evidence stale or unavailable. The OIM understands and appreciates that both the Use of Force and Citizen Complaint working groups have committed to completing investigations within the timelines required by Department policies.

As we have stated previously, the full and timely reporting of force is a cornerstone requirement of the Consent Decree. The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should continue to audit Arrest Reports and Form 1As to determine the extent to which force is being reported across the Districts. Based on those audits, the VIPD should develop a process for identifying personnel who continually fail to report the use of force. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training or other corrective action,

including disciplinary sanctions, as necessary. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**33. Officers shall notify their supervisors following any use of force [or]<sup>16</sup> upon the receipt of an allegation of excessive force. Except in uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, supervisors will respond to the scene, examine the subject for injury, interview the subject for complaints of pain, and ensure that the subject received needed medical attention.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 33 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 33 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages vii-viii.

**OIM Report:**

The Police Practices Experts reviewed 12 completed use of force investigation files during the Fourth Quarter of 2013 to evaluate the Department's use of force reporting practices. Among other things, that review showed that Officers timely notified Supervisors following a use of force in 63% (5 out of 8) of the investigations.

The VIPD reports that it anticipates holding promotional exams in April and May 2014. We are hopeful that the VIPD will be able to add a significant number of additional Supervisors to its ranks based on those examinations because the VIPD currently has too few Supervisors. The Territory (which is a party to the Consent Decree) and its governing authority (the legislature and the Governor) need to take responsibility for this issue and provide the VIPD with the funding necessary to provide adequate staffing and supervision. The Police Practices Experts have repeatedly advised the VIPD that when Supervisors assume command and control of an incident, there are typically fewer citizen complaints and less force is employed, yielding clear benefits to the VIPD and the public. Without additional qualified Supervisors, the OIM

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<sup>16</sup> During the First Quarter of 2013 the Parties jointly filed a motion to correct or amend the Court's Order, dated December 13, 2012, by inserting "or" into the first sentence of ¶ 33 of the Consent Decree. The Court granted the Parties' motion.

does not believe that the VIPD will be able to achieve and/or maintain substantial compliance.

### **Recommendations:**

The VIPD should proceed with its plan to hold promotional examinations in April and May 2014. In order to promote the best people, the Department should encourage high performing personnel who are eligible to take the promotional exams. Once the examinations are administered and the results determined, the VIPD should promptly proceed to promotions.

For the time being, however, the VIPD should do its best to ensure that Supervisors are responding to the scene of use of force incidents as required by VIPD policy. To the extent that a Supervisor is unable to respond to a particular use of force, the VIPD should document the circumstances that prevented a Supervisor from responding. That documentation will help the Department assess its supervisory needs and hold Supervisors accountable for their decisions. Responding to uses of force should be a high priority for Supervisors, and very few other duties will justify a Supervisor's absence. Moreover, even though a particular Supervisor's absence may be understandable under the circumstances, it will not excuse the Department from complying with this provision. It is the VIPD's and the Territory's obligation under the Consent Decree to provide adequate supervision, including allocating additional funding for that purpose.

Many of the deficiencies associated with the Department's use of force investigations could be addressed, at least in part, by Supervisors responding to the scene of use of force incidents to oversee the early stages of the investigation, including canvassing for witnesses, taking witness statements, and collecting relevant evidence. In addition, Supervisors will generally be better equipped to review the quality of investigations and suggest appropriate follow-up if they have personal knowledge of the underlying facts and were involved at an early stage of the investigation.

The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should continue to audit whether Officers are notifying their Supervisors following any use of force or allegation of excessive use of force. They should also continue to audit whether Supervisors are responding to the scene of a use of force in a timely manner, examining the subject for injury, interviewing the subject for complaints of pain, and ensuring that the subject receives needed medical attention. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**34. Supervisors, or designated investigating officers or units, will review, evaluate, and document each use of force, and will complete the**



**narrative description section of the use of force report. The narrative description will include a precise description of the facts and circumstances that either justify or fail to justify the officer's conduct. As part of this review, the supervisor or designated investigating officer/unit will evaluate the basis for the use of force, and determine whether the officer's actions were within VIPD policy. An officer who used force during the incident, whose conduct led to an injury, or who authorized conduct leading to the use of force or allegation of excessive force, or who was present during the incident, will not be eligible to review or investigate the incident.**

#### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 34 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 34 of the Consent Decree.

#### **VIPD Report:**

See VIPD Report at Appendix A at pages viii-ix.

#### **OIM Report:**

Based on the Police Practices Experts' review of completed use of force investigations during the Fourth Quarter of 2013, we concluded that Supervisors included a narrative describing the facts and circumstances that justified or failed to justify the Officer's conduct in 92% (11 out of 12) of the investigations. In 82% (9 out of 11) of the completed use of force investigations, Supervisors evaluated the basis for the use of force; in 91% (10 out of 11) of the investigations, Supervisors determined whether the Officer's actions were within VIPD policy; and 100% (11 out of 11) of the investigations were conducted by Supervisors who were not directly involved in the use of force incident.

Despite improvements in the VIPD's investigations of uses of force, the VIPD continues to commit certain errors, including failing to complete investigations in the timeframe required by Department policy, failing to collect all evidence, failing to interview all witnesses, or failing to report force. Currently, timeliness is the most common problem relating to the VIPD's use of force investigations. While a majority of IAB investigations are completed on time, only a minority of Zone investigations are completed on time.

In evaluating uses of force, Supervisors should explicitly examine whether the force was "objectively reasonable" in light of the relevant facts and circumstances, including the threat, if any, posed by the subject and the

various options that were available to the Officer, including containing the subject until backup arrives rather than engaging. The Supreme Court of the United States articulated that standard in *Graham v. Connor*, 490 U.S. 386 (1989). The VIPD has provided training on *Graham* and other relevant case law. For each use of force investigation, Supervisors should provide a detailed analysis about the facts and circumstances that either justify or fail to justify the Officer's conduct. Without that type of analysis, it is impossible for Commanders (or anyone else) to adequately review investigations (without reviewing the entire investigation file from scratch, which should not be necessary in most cases).

### **Recommendations:**

The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should continue to audit whether Supervisors are conducting adequate use of force investigations. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM. They should also continue to audit Form 1As and Arrest Reports to determine the extent to which force is being reported across the Districts. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to report uses of force. Once those individuals are identified, the working group should work in concert with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary. The Use of Force working group's audits should also include a review of investigations by Supervisors or Commanders whose force reviews have previously failed to meet the requirements of ¶ 34.

**35. The parties agree that it is improper interview procedure during use of force investigations to ask officers or other witnesses leading questions that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques. In each review/investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. The VIPD will make all reasonable efforts to resolve material inconsistencies between witness statements. The VIPD will train all of its supervisors and officers assigned to conduct use of force investigations in conducting use of force investigations, including in the factors to consider when evaluating credibility.**

### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 35 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as

discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 35 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages ix-x.

**OIM Report:**

The OIM was not able to assess the VIPD's compliance with ¶ 35 of the Consent Decree during the Fourth Quarter of 2013 because the VIPD did not provide the Police Practices Experts with recorded witness statements or interviews. Without those recordings, we cannot evaluate, among other things, whether investigators used leading questions, whether there were material inconsistencies between witness statements, and whether any such inconsistencies were resolved appropriately.

The VIPD also reports that it has started to issue hand held recording devices to personnel to facilitate recording witness statements, but the OIM did not observe any VIPD personnel carrying any such devices during the Fourth Quarter of 2013. The VIPD should provide the OIM with documentation showing how the hand held recording devices were distributed throughout the Department and whether they are serving their intended purpose.

**Recommendations:**

The VIPD should provide the OIM with copies of any recorded witness statements or interviews relating to use of force and citizen complaint investigations. During the Third Quarter of 2013, the VIPD began video recording certain training programs at the OIM's request. Given the size of those video recordings, the VIPD typically loads them onto an external hard drive to be delivered to the OIM (the external hard drive is then returned to the VIPD to be used again for the same purpose). The VIPD should use the same process to provide the OIM with recorded witness statements and interviews. In addition, the VIPD should clearly state on the investigative file whether video or audio witness statements were taken, and if so, who has custody of that material.

The VIPD should also require Supervisors to identify the universe of relevant evidence and document what each piece means to the case under review. We also recommend that the VIPD provide refresher training to Supervisors on making credibility determinations and drawing inferences from those determinations. It is also critical for the VIPD to follow-up with witnesses who may not initially be available because Supervisors cannot effectively evaluate uses of force without reviewing all of the relevant evidence.

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The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should continue to audit use of force investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 35 of the Consent Decree. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, the Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary.

**36. Supervisors, or designated investigating officers or units, shall conduct an investigation of all uses of force or injury resulting from a use of force by any officer under their command. This requirement does not apply to uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ. In an investigation, supervisors or designated investigating officers or units, shall interview all witnesses to a use of force or an injury resulting from a use of force. Consistent with the requirements of the collective bargaining agreement or other applicable law, VIPD supervisors or designated investigating officers or units shall ensure that all officer witnesses provide a statement regarding the incident. Supervisors, or designated investigating officers or units, shall ensure that all use of force reports for all levels of force identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors, or designated investigating officers or units, shall ensure that all reports for all levels of force indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors, or designated investigating officers or units, shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 36 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 36 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages x-xi.



**OIM Report:**

Based on the Police Practices Experts' review of completed use of force investigations during the Fourth Quarter of 2013, we concluded that Officers who witnessed a use of force provided written statements in 100% (6 out of 6) of the completed use of force investigations. Officers who were involved in the incident or were on the scene when it occurred were identified in 90% (9 out of 10) of the investigations. In 50% (3 out of 6) of the investigations where an Officer or citizen was injured, the investigation file contained photographs of the injuries. Although IAB-led use of force investigation files tend to contain photographs of injuries, Zone-led investigations rarely do. Very few investigation files (from either the IAB or the Zones) contain hospital records relating to injuries sustained from use of force incidents.

**Recommendations:**

We understand that it may be difficult to obtain hospital records because of patient confidentiality protections. To address that issue, some law enforcement agencies ask complainants to complete voluntary confidentiality waivers for hospital records relating to the complaint. The VIPD should consider developing a similar voluntary waiver form. However, to the extent that a complainant declines to complete a voluntary waiver form, the VIPD should memorialize that declination, continue to investigate the complaint, and should not draw any negative inferences from the fact that the complainant declined to release his/her records.

The Use of Force working group should continue to audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 36 of the Consent Decree. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**37. All investigations into use of force shall be reviewed by the Officer's Commander and/or Director, or by a Commander and/or Director in the designated investigative unit, who shall identify any deficiencies in those reviews, and shall require supervisors, or designated investigative officers or units, to correct any and all deficiencies. Supervisors, and designated investigative officers or units, will be held accountable for the quality of their reviews. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor, or designated investigative officer or unit, fails to conduct a timely and thorough review, or neglects to recommend appropriate corrective action, or**

**neglects to properly implement appropriate corrective action. As provided by VIPD policy and approved by DOJ, designated command staff shall further review the Commander and/or Director's reviews according to the level of force involved.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 37 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 37 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at page xi.

**OIM Report:**

Based on the Police Practices Experts' review of closed use of force investigations during the Fourth Quarter of 2013, we found that 58% (7 out of 12) of the use of force investigations reviewed were complete. A "complete" investigation file generally consists of the following (to the extent applicable): Form 1A; Arrest Report; completed RRR; video or audio statements from witnesses; photos of injuries, weapons, etc.; the Supervisor's investigative report with an analysis of the facts, evidence identified, and findings; evidence that the Department's chain of command reviewed and approved the completed investigation file; and a disposition letter.

In 100% (12 out of 12) of the investigations, a Deputy Chief reviewed the investigative report and supporting documents, and concurred with the investigative findings, and in 18% (2 out of 11) of the investigation files, underlying problems and training needs were identified.

Commanders are continuing to overlook deficiencies in the investigations that they are charged with reviewing. Moreover, even when Commanders identify deficiencies and return investigations for further work, they are sometimes failing to follow up regarding those investigations. For example, during the Fourth Quarter of 2013, the Police Practices Experts reviewed a completed use of force investigation in which Officers used "hand techniques" (which can refer to various techniques at different points on the use of force continuum) to gain compliance of a subject who was being arrested for smoking marijuana.<sup>17</sup> The Supervisor charged with investigating the use of force submitted an investigation report to the Commander within 48 hours, and the Commander subsequently returned the investigation to the Supervisor

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<sup>17</sup> See UOFT2013-0039.

for further work. Unfortunately, the Commander failed to follow up regarding the investigation. As a result, although the use of force incident occurred on July 18, 2013, the VIPD did not complete its investigation until October 17, 2013. That outcome underscores how important it is for Commanders to actively keep tabs on the investigations being conducted by Supervisors under their command. The Deputy Chief appropriately admonished the Commander and placed a Letter of Caution in the Commander's personnel file; we do not know if the Supervisor who allowed the investigation to linger was also disciplined.

### **Recommendations:**

The Chiefs and Deputy Chiefs need to hold Supervisors and Commanders accountable for the quality and timeliness of use of force investigations. The VIPD's efforts to implement a tracking form for Supervisors to follow the progress of the use of force investigations that are assigned to them is a step in the right direction. The form should identify everyone who worked on the investigation and specify the actions that they took. We previously requested that the VIPD keep the OIM updated about its experience using the new tracking form, but we have not yet received any reports from the VIPD.

The Use of Force working group, Commissioner, Assistant Commissioner, Chiefs, and Deputy Chiefs should continue to audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 37 of the Consent Decree. In particular, they should continue to audit whether Supervisors are conducting adequate use of force investigations, and whether the Chiefs/Deputy Chiefs are reviewing investigations, identifying deficiencies, and forwarding closed cases to the IAB and Training Division (for review and archiving). Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, the Deputy Chiefs, the IAB, and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions, as necessary. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**38. The VIPD will investigate all critical firearm discharges. The VIPD will ensure that the investigation accounts for all shots and locations of all officers who discharged their firearms. The VIPD will conduct ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests, as appropriate.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 38 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 38 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages xi-xii.

**OIM Report:**

During the Second Quarter of 2013, investigations into at least three critical firearms discharges, including two police-involved shootings, were unresolved due, in part, to outstanding ballistics reports.

During the Third Quarter of 2013, the OIM requested a status update from the VIPD about two police-involved shootings that occurred in 2011 and 2012, respectively. The VIPD did not complete those investigations during the Third Quarter of 2013.

During the Fourth Quarter of 2013, the VIPD provided the OIM with a ballistics report relating to the police-involved shootings involving Officers Colvin Georges and Aaron Hodge. It took the VIPD more than a year to complete the ballistics report. When the OIM asked the VIPD to explain the delay during a meeting in December 2013, the VIPD explained that the VIPD's firearm and tool mark examiner had started to review the case shortly after the shooting, but was told to stop his work because former-Commissioner White wanted to send the ballistics to the Federal Bureau of Investigation (the "FBI") for analysis. The FBI apparently declined to review the ballistics and Commissioner Querrard correctly told the firearm and tool mark examiner to resume his work. Now that the ballistics report is complete, the VIPD reports that the investigation file will be forwarded to the VIAG for a disposition.

The VIPD reports that its firearm and tool mark examiner recently completed the ballistics report for the second police-involved shooting referenced above, but acknowledges that it has not yet provided a copy to the OIM. The VIPD should promptly provide the OIM with a copy of the ballistics report.

**Recommendation:**

The VIPD must fully investigate all critical firearms discharges. This includes, as stated in the Consent Decree, "ballistic or crime analyses, including gunshot residue or bullet trajectory tests, as appropriate." The



VIPD's current system of relying on a single contractor for ballistics analysis is not working. The VIPD should identify additional outside resources and consider bolstering its in-house capabilities.

Once the VIPD clears the current backlog of investigations, the VIPD should provide the OIM with documentation that it is investigating all critical firearms discharges as required by ¶ 38 of the Consent Decree. In addition to the ballistics reports themselves (which are primarily inventories of the bullets that were recovered from the scene), the VIPD should provide the OIM with the corresponding investigative report detailing, among other things, the identity of each shooter, where each shooter was standing, the number of bullets that each shooter discharged, and where each bullet made impact. The VIPD should also provide the OIM with a status update about all of its outstanding investigations of critical firearms discharges. During the First Quarter of 2014, the Use of Force working group reported that it had inquired about the status of these cases and advised that they were close to completion.

**39. VIPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official VIPD channels, and shall specify the number of rounds VIPD authorizes its officers to carry. The policy will continue to require that all discharges of firearms by officers on- or off-duty, including unintentional discharges, be reported and investigated.**

#### **Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Firearms Policy. Because ¶ 39 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 39 of the Consent Decree.

**40. The VIPD shall revise its policies regarding off-duty officers taking police action to: a) provide that off-duty officers shall notify on-duty VIPD or local law enforcement officers before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem; b) provide that, if it appears the officer has consumed alcohol or is otherwise impaired, the officer shall submit to field sobriety, breathalyzer, and/or blood tests.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Off-Duty Official Action Policy. Because ¶ 40 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 40 of the Consent Decree.

**41. The VIPD shall continue to provide an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The VIPD shall continue its policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 41 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 41 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at page xiii.

**OIM Report:**

While monitoring during the Fourth Quarter of 2013, the OIM observed that Officers continue to carry their intermediate weapons. However, as described in ¶ 32, the OIM is concerned that Officers repeatedly “drive stunned” an emotionally disturbed individual who was already in handcuffs.<sup>18</sup> Based on the Police Practices Experts’ review of the investigation report, it appears that the Supervisor was disciplined for not responding to the scene, but the matter was not referred to the IAB or the VIAG for further review.

**Recommendations:**

With respect to UOFT-2013-0019, the VIPD should explain why it chose not to refer the matter to the IAB or the VIAG for further review. Based on the investigation file, it does not appear that the force was justified. The VIPD should consider providing additional training to all VIPD personnel on the

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<sup>18</sup> See UOFT-2013-0019.

appropriate use of the TASER, and in particular, the extent to which it may be used in response to active or passive resistance from a subject.<sup>19</sup>

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held on the Electronic Control Weapon ("ECW") Policy on an on-going basis so that all Officers will ultimately be trained and authorized to use TASERS in lieu of more lethal force tools. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of the ECW Policy or that the Department has fully implemented the policy. Additionally, the Use of Force working group should provide documentation to the OIM showing the extent to which VIPD personnel are trained to use and equipped with TASERS.

Finally, the VIPD should download an electronic report from each TASER every time one is used. Among other things, the report would detail the number of cycles of duration. That information should be considered as part of every use of force investigation relating to a TASER. The Police Practices Experts have noted that the VIPD rarely includes electronic reports in the investigative file.

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<sup>19</sup> During the First Quarter of 2014, the Use of Force working group advised that it plans to conduct further ECW training.

## Citizen Complaint Process

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test proficiency with the policies.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>November 30, 2012</b> , offer competency-based training to Officers and Supervisors.	<b>Not satisfied.</b> The VIPD provided in-service training during the Second Quarter of 2013. The VIPD has not provided the OIM with a report about the number of Officers and Supervisors that have been trained on the policies.
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system) and periodically test Supervisors' knowledge of the preponderance of the evidence standard.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>November 30, 2012</b> , offer competency-based training of all investigators.	<b>Not satisfied.</b> The VIPD provided in-service training during the Second Quarter of 2013. The VIPD has not provided the OIM with a report about the number of investigators that have been trained on the policies.
On <b>November 30, 2012</b> , commence quarterly review of files in IAU and Zones to ensure compliance.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has conducted these reviews.
By <b>November 30, 2012</b> , monthly review of files to determine whether complainants are being notified and implementation of timelines for notification and sample notification letter.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has conducted these reviews.
By <b>December 31, 2012</b> , implement tracking system to document 5-day requirement.	<b>Not satisfied.</b> Although the VIPD has reported that complaints are referred to the IAB within the required 5-day period because the IAB retrieves complaints from drop-boxes located in each Zone, the VIPD has not provided



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	any documentation demonstrating that the Department has such a tracking system.
By <b>December 31, 2012</b> , implement a tracking system for complaints referred to a Zone and a tracking system for notifying the Police Commissioner of complaints alleging excessive use of force.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system.
By <b>January 31, 2013</b> , offer refresher training on policies ongoing, through documented, periodic in-service and Roll Call/Commanders Call training. Incorporate competency-based training on policies into Police Academy.	<b>Not satisfied.</b> The VIPD provided in-service training during the Second Quarter of 2013. The VIPD has not provided the OIM with a report about the number of Officers and Supervisors that have been trained on the policies.
By <b>January 31, 2013</b> , execute any contract(s) necessary to train Supervisors or others responsible for conducting ballistic or crime scene analyses.	<b>Not satisfied.</b> The VIPD has not reported that the Department has executed any contracts for such training.
By <b>January 31, 2013</b> , all statements will be recorded. After January 31, 2013, bi-monthly review to ensure statements are being recorded.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has implemented such a review.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies (i.e., review of sample of citizen complaint investigation files). Also ensure that lapses in policy implementation are addressed by system of documented discipline and/or re-training.	<b>Satisfied, but additional work needed.</b> The OIM received the VIPD's Audit Report on January 17, 2014, which demonstrates that the Department has taken steps to implement the audit tools. The OIM will report more fully on the VIPD's Audit Report in the next quarter.
By <b>June 30, 2013</b> , in consultation with DOJ, create a periodic report that analyzes patterns of violations of VIPD policy. Using the information gathered in the report, evaluate areas for policy modification or appropriate remedial action (e.g., training).	<b>Satisfied, but additional work needed.</b> The OIM received the VIPD's Audit Report on January 17, 2014, which demonstrates that the Department has taken steps to analyze patterns of violations of VIPD policy. The OIM will report more fully on the VIPD's Audit Report in the next quarter.
By <b>June 30, 2013</b> , in consultation with DOJ, develop a process for	<b>Not satisfied.</b> The VIPD continued to develop a process for identifying

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identifying Supervisors who are not using the preponderance of the evidence standard and provide and document discipline and/or remedial training.	Supervisors who are not using the preponderance of the evidence standard during the Second and Third Quarters of 2013.
By <b>June 30, 2013</b> , in consultation with DOJ, develop a process for identifying supervisors who neglect their responsibilities to investigate as required by policy and provide and document discipline and/or remedial training.	<b>Not satisfied.</b> The VIPD continued to develop a process for identifying Supervisors who neglect their responsibilities to investigate during the Second and Third Quarters of 2013.
By <b>June 30, 2013</b> , monthly review of IAU files to ensure compliance.	<b>Not satisfied.</b> The VIPD continued to work on its audit tools during the Second and Third Quarters of 2013.
By <b>June 30, 2013</b> , in consultation with DOJ, audit timeliness of completion of citizen complaint investigations.	<b>Satisfied, but additional work needed.</b> The OIM received the VIPD's Audit Report on January 17, 2014, which demonstrates that the Department has taken steps to audit the timeliness of citizen complaint investigations. The OIM will report more fully on the VIPD's Audit Report in the next quarter.

**42. The VIPD will develop and implement a program to inform persons that they may file complaints regarding the performance of any officer. This program will include distribution of complaint forms, fact sheets, informational posters, and public service announcements that describe the citizen complaint process.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has developed and implemented a program to inform citizens that they may file a complaint/compliment regarding the performance of an Officer. The VIPD has provided extensive documentation about its efforts to inform the community about the citizen complains process. The Police Practices Experts have also observed these efforts first hand. Because ¶ 42 only requires the Department to develop a program, Phases 2 and 3 are not applicable. Therefore, the Department is in substantial compliance with ¶ 42. The OIM will continue to assess the Department's efforts to maintain compliance in future quarters.

**43. The VIPD will make complaint forms and informational materials available at government properties such as VIPD district stations,**

**substations, mobile substations, libraries, the Internet, and, upon request, to community groups and community centers. At each VIPD district station, substation, and mobile substation, the VIPD will permanently post a placard describing the complaint process and include the relevant phone numbers. These placards shall be displayed in both English and Spanish, and where deemed necessary, in French or French Patois, to account for diversity in the VI population. The VIPD will require all officers to carry informational brochures and complaint forms, in English and Spanish, and where deemed necessary, in French or French Patois, in their vehicles at all times while on duty. If a citizen objects to an officer's conduct, that officer will inform the citizen of his or her right to make a complaint. Officers will not discourage any person from making a complaint.**

#### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint process and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 43.

#### **VIPD Report:**

See VIPD Report at Appendix A at pages xiv-xv.

#### **OIM Report:**

During the Fourth Quarter of 2013, the VIPD provided the OIM with documentation showing that complaint forms and informational materials were generally available at VIPD offices and other government properties. However, the VIPD failed to provide documentation that the Department followed-up and replaced complaint forms and informational material at locations where they were missing.

#### **Recommendations:**

The Department should continue to periodically audit whether complaint forms and related informational materials are available at all required locations. Given the Department's progress implementing the citizen complaint process, it may not be necessary for the VIPD to conduct weekly or bi-weekly inspections, but the Department should do what it deems appropriate to ensure that complaint process materials remain available and well stocked at all required locations.

As previously reported, the Department has revised its complaint form for complainants to indicate whether an Officer has discouraged them from filing a complaint. To eliminate any confusion, the Department should discard

any remaining complaint forms that do not include this revision. In addition, future public information campaigns should inform citizens what they can do if they are discouraged from making a complaint, including directing them to the revised portion of the complaint form. The OIM expects that the VIPD will continue to conduct audits to assess this requirement. The VIPD should provide documentation of these audits to the Compliance Coordinator, the Compliance Manager, and the OIM.

**44. Complaints may be filed in writing or verbally, in person or by mail, telephone (or TDD), facsimile or electronic mail. The duty officer at the front desk of each district station will be authorized to take complaints, including third-party complaints, which persons may file at any district station. Complaint intake officers may describe facts that bear upon a complainant's demeanor and physical condition but may not express opinions regarding his/her mental competency or veracity. Each complaint will be resolved in writing. Upon receipt, each complaint will be assigned a unique identifier, which will be provided to the complainant. Each complaint will be tracked according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint process and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 44.

**VIPD Report:**

See VIPD Report at Appendix A at pages xv-xvi.

**OIM Report:**

The DOJ approved the Acceptance of Citizen Complaint Policy on August 2, 2011. The policy reflects the requirements in ¶ 44 of the Consent Decree. During the Third Quarter of 2013, the VIPD reported that discourtesy to citizens accounted for a significant number of citizen complaints in both Districts. As a result, the Commissioner authorized VIPD personnel to attend customer service training to ensure that VIPD personnel respond to citizen complaints in accordance with VIPD policy and generally interact with the community in a courteous and professional manner. In addition, the VIPD has indicated that it plans to develop a tracking system by January 31, 2014 to ensure that all personnel are trained on the citizen complaint policies. Once the VIPD has developed this tracking system, the OIM will assess whether it sufficiently tracks that all personnel are trained on the citizen complaint policies.

**Recommendations:**

The VIPD should continue to conduct audits to determine whether the required VIPD personnel are trained on the Department's policies, whether all complaints are being resolved in writing, and whether complaint numbers are being provided to complainants. The VIPD should then provide documentation relating to those audits to the Compliance Coordinator, the Compliance Manager, and the OIM. The VIPD should offer Commanders Call training to all Commanders on the Acceptance of Citizen Complaint Policy, and document such training and provide the results of examinations administered after training to the OIM. In addition, the VIPD should audit complaint forms to ensure that complaint in-take Officers are not expressing their opinions regarding a complainant's mental competency or veracity on the complaint forms. The VIPD should also develop a process for auditing that a complaint is forwarded to the IAB within the timeframe allotted under Department policy once it receives a VITEMA number.

**45. Copies of all allegations of misconduct against the VIPD filed with the Zone Commands will be referred to Internal Affairs Unit ("IAU") within five business days.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies pertaining to the citizen complaint policies and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 45.

**VIPD Report:**

See VIPD Report at Appendix A at page xvi.

**OIM Report:**

The DOJ approved the Acceptance of Citizen Complaint Policy on August 2, 2011. The policy reflects the requirements in ¶ 45 of the Consent Decree. The VIPD has reported that complaints are referred to the IAB within the required five-day period and that it has "initiated audits to gauge compliance with paragraph 45." The VIPD has not provided the OIM with any documentation regarding any such audits.

**Recommendations:**

The VIPD should continue to audit whether copies of all allegations of misconduct are retrieved from drop boxes in the Zones and referred to the IAB within 5 business days. This should include accessing information from VITEMA to ensure that all complaints are forwarded. The Department should



then include this documentation in future audits and provide the audits to the OIM.

**46. Complaints will be evaluated based on a preponderance of the evidence standard, for which the Territory will develop and implement appropriate training.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 46.

**VIPD Report:**

See VIPD Report at Appendix A at pages xvi-xvii.

**OIM Report:**

The VIPD has provided initial training on the preponderance of evidence standard. During the Second Quarter of 2013, the VIPD provided the OIM with documentation showing that Supervisors were tested on the preponderance of the evidence standard. According to the VIPD, a total of 45 Supervisors were tested on the preponderance of the evidence standard with a 67% passing rate (30 out of 45). Although initially requested in the Second Quarter of 2013, the VIPD still has not provided the OIM with any documentation demonstrating that the Supervisors who failed have been retrained, retested, and, if necessary, disciplined. This request remained outstanding during the Fourth Quarter of 2013.

**Recommendations:**

As stated during the Second Quarter of 2013, the OIM was disappointed that such a high percentage of Supervisors failed the VIPD's competency test. The VIPD should provide additional training to those Supervisors and then re-test their knowledge of the preponderance of the evidence standard using different test questions. In addition, the Training Division should re-examine its training relating to the preponderance of the evidence standard. The fact that so many Supervisors failed the Department's competency test strongly suggests that the underlying training was inadequate. Further, the VIPD must provide documentation of post-training examinations on the preponderance of the evidence standard and audits of Supervisors' compliance with the preponderance of the evidence standard should be forwarded to the Compliance Coordinator, the Compliance Manager, and the OIM.

**47. The VIPD will explicitly prohibit from investigating an incident any officer who used force during the incident, whose conduct led to the injury to a person, or who authorized the conduct that led to these reportable incidents.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy. Because ¶ 47 only requires the Department to develop a policy, Phases 2 and 3 are not applicable. Therefore, the Department has achieved substantial compliance with ¶ 47.

**48. The VIPD will investigate every citizen complaint. The VIPD will establish a clear policy and procedure regarding the intake of any complaint, including anonymous and confidential complaints, against a VIPD officer. This policy and these procedures will include instructions to an officer for taking a complaint and prompt delivery to a supervisor.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 48.

**VIPD Report:**

See VIPD Report at Appendix A at page xvii.

**OIM Report:**

The VIPD issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy on August 2, 2011. The IAB has conducted in-service and Roll Call and Commanders Call training addressing common mistakes made by Supervisors in citizen complaint investigations. The Police Practices Experts will continue to assess the quality of investigations completed in the Zones in subsequent quarters.

The VIPD has provided verbal updates about the status of overdue investigations and whether the two-week deadline to complete investigations was met, but has not provided documentation showing that all overdue investigations have been completed or whether disciplinary action was taken against all Officers who failed to meet the two-week deadline. The VIPD, however, provided documentation during the Fourth Quarter of 2013 demonstrating that the Deputy Chief for St. John issued a Letter of Caution to a Zone Commander who, among other things, failed to ensure that the

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investigation file contained all required documents, including a Form 1A, Arrest Report, and a summary of all witness statements in the investigative report.<sup>20</sup> In addition, the Deputy Chief noted that the Commander failed to concur (or not concur) with the findings of the investigating Supervisor to approve the use of force.

**Recommendations:**

The VIPD should continue to audit whether complaints are being adequately investigated within the allotted time period. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**49. The VIPD will institute a centralized numbering and tracking system for all complaints and each complaint will receive a tracking number as quickly as possible. The IAU will be designated as the primary and centralized agency to determine whether the investigation will be assigned to zone (one of the seven zones located throughout the Virgin Islands), retained by the IAU, or referred for possible criminal investigation. If the IAU refers a complaint to a zone, copies of all documents, findings, and recommendations should be immediately forwarded to the IAU for tracking and monitoring. For complaints alleging the excessive use of force or violation of a person's constitutional rights, the Police Commissioner should be notified no less than twenty-four hours after receipt of a complaint.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 49.

**VIPD Report:**

See VIPD Report at Appendix A at pages xvii-xviii.

**OIM Report:**

The VIPD issued the Acceptance of Citizen Complaints Policy on August 2, 2011. That policy reflects the requirements of ¶ 49 of the Consent Decree. The VIPD currently relies on VITEMA to assign tracking numbers for each complaint when a complaint is filed at a Zone. The VIPD should ensure that each complaint (once assigned a complaint number by VITEMA) is entered into

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<sup>20</sup> See UOFT2013-0039.

IAPro and forwarded to the IAB for investigation or referral to the Zones. The VIPD reports that it created a form to document when the Commissioner is notified about complaints pertaining to excessive use of force or violations of constitutional rights. The OIM has received limited documentation of these completed forms.

### **Recommendations:**

As the OIM has recommended for several quarters, Chiefs and Deputy Chiefs should ensure that cases referred to the Zones for investigation by the IAB are investigated thoroughly in the time period required by Department policy, and that recommendations are immediately forwarded to the IAB for tracking and monitoring. Any deficiencies in investigations must also be corrected. The Department must train, and if necessary, discipline, managers and Supervisors who fail to satisfy these requirements. The VIPD should audit whether the Department has complied with the requirements of ¶ 49 of the Consent Decree, and, in particular, provide the OIM with documentation showing that the Commissioner was notified about complaints alleging excessive force or violations of constitutional rights. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**50. The VIPD will adopt a single policy concerning the investigation of misconduct complaints, regardless of whether the investigation is conducted by the IAU or a zone.**

### **Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy. Because ¶ 50 only requires the Department to develop a policy, Phases 2 and 3 are not applicable. Therefore, the Department has achieved substantial compliance with ¶ 50.

**51. The VIPD will establish policies and procedures and train all of its investigators on the factors to consider when evaluating complainant or witness credibility; examination and interrogation of accused officers and other witnesses; identifying misconduct even if it is not specifically named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof. VIPD investigators will ensure that all officers on the scene of an incident provide a statement regarding the incident. The policy will require that all interviews be mechanically recorded using an audio or video tape.**

### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and

provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 51.

**VIPD Report:**

See VIPD Report at Appendix A at page xix.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 51 of the Consent Decree. The VIPD has provided initial training on the preponderance of evidence standard, but the VIPD has not provided documentation reflecting that VIPD personnel are proficient in the requirements of ¶ 51.

During the Fourth Quarter of 2013, the Police Practices Experts reviewed 11 closed citizen complaint investigations and concluded that Officers on the scene of an incident provided a statement regarding the incident in 88% (7 out of 8) of the investigations. In addition, 45% (5 out of 11) of the investigations included audio recorded witness statements.

**Recommendations:**

As previously recommended, the Citizen Complaint Process working group should continue to test whether VIPD personnel adequately understand the citizen complaint process. The VIPD should provide VIPD personnel with additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training as appropriate.

Specifically, the VIPD should audit whether investigators correctly: 1) evaluate complainant or witness credibility; 2) examine and interrogate accused Officers and other witnesses; and 3) identify misconduct. The audits should also evaluate whether VIPD investigators take statements from all Officers on the scene of an incident. Based on its audits, the VIPD should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**52. The policy will require that the investigative findings include whether: 1) the police action was in compliance with policy, training and legal standards, regardless of whether the complainant suffered harm; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or could have been employed; 4) the incident indicates a**



**need for additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy. Because ¶ 52 only requires the Department to develop a policy, Phases 2 and 3 are not applicable. Therefore, the Department has achieved substantial compliance with ¶ 52.

**53. The policy will provide clear guidance to all investigators regarding the procedures for handling criminal misconduct allegations, referring them to the Virgin Islands Attorney General's Office or other appropriate agency for possible criminal prosecution, and the entity or individual who should make the determination of whether the complaint should be investigated criminally. The policy shall continue to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy. Because ¶ 53 only requires the Department to develop a policy, Phases 2 and 3 are not applicable. Therefore, the Department has achieved substantial compliance with ¶ 53.

**54. In each investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the VIPD completely disregard a witness' statement merely because the witness has some connection to the complainant. The VIPD will make efforts to resolve material inconsistencies between witness statements.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 54.

**VIPD Report:**

See VIPD Report at Appendix A at pages xx-xxi.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 54 of the Consent Decree. The Department has conducted initial training on this policy, and conducted in-service training during the Second Quarter of 2013. The VIPD, however, has not provided full documentation for this training, including a schedule of remedial training for Supervisors who failed the proficiency examination.

During the Fourth Quarter of 2013, the Police Practices Experts reviewed 11 closed citizen complaint investigations and concluded that evidence was preserved in 50% (2 out of 4) of the investigations; relevant evidence (including circumstantial, direct, and physical evidence) was taken into consideration in 67% (4 out of 6) of the investigations; witness credibility determinations were made in 78% (7 out of 9) of the investigations; the officer did not give preference to an Officer's statement in 82% (9 out of 11) of the investigations; a witness statement was not disregarded merely because the witness had some connection to the complainant in 90% (9 out of 10) of the investigations; and inconsistencies in witness statements were documented and addressed in 60% (3 out of 5) of the investigations.

**Recommendations:**

The VIPD should audit whether VIPD personnel consider all relevant evidence, including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible, in all investigations. Audits should also evaluate whether preference is given to an Officer's statement over a non-Officer's, and whether the VIPD makes efforts to resolve material inconsistencies between witness statements. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**55. During an investigation, all relevant police activity, including each use of force (i.e., not just the type of force complained about) will continue to be investigated. The investigation will also evaluate any searches or seizures that occurred during the incident. The VIPD will not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements; rather, the investigating agency will continue its investigation as necessary to determine whether the original allegation(s) can be resolved based on the information, evidence, and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be**

**considered as evidence of whether a VIPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 55.

**VIPD Report:**

See VIPD Report at Appendix A at pages xxi-xxii.

**OIM Report:**

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements of ¶ 55 of the Consent Decree. The Department has conducted initial training on this policy and on-going in-service training, but it has not provided documentation demonstrating that Supervisors are proficient in the requirements of the policy.

During the Fourth Quarter of 2013, the Police Practices Experts reviewed 11 closed citizen complaint investigations and concluded that 100% (4 out of 4) of the investigations were closed for reasons other than: the complainant withdrew the complaint; the complainant was uncooperative; the complainant was unwilling or unable to provide medical records or proof of injury; and the complainant pled or was found guilty of an offense. In addition, the Police Practices Experts concluded that apparent misconduct was adequately addressed in 75% (6 out of 8) of the investigations; and that the appropriateness of any searches or seizures was not evaluated in 100% (2 out of 2) of the investigations. The OIM will continue to assess this requirement in future quarters.

**Recommendations:**

The VIPD should audit whether VIPD personnel comply with ¶ 55 of the Consent Decree. The VIPD should also develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**56. The complainant will be periodically kept informed regarding the status of the investigation. Upon completion of the investigation, the complainant will be notified of its outcome, including an appropriate**

**statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 56.

**VIPD Report:**

See VIPD Report at Appendix A at page xxii.

**OIM Report:**

The VIPD has made progress towards compliance with the requirements of ¶ 56. During the Fourth Quarter of 2013, the Police Practices Experts reviewed 11 closed citizen complaint investigations and concluded that in 25% (1 out of 4) of the investigations the complainant was periodically informed about the status of the investigation. In addition, the complainant was notified of the outcome of the investigation in 75% (6 out of 8) of the investigations. The OIM will continue to assess this requirement in future quarters.

**Recommendations:**

The Citizen Complaint Process working group should continue to audit whether VIPD personnel adequately understand and comply with the complaint process. The Citizen Complaint Process working group should also evaluate whether complainants are kept informed about the status of their complaints and notified about the outcome. Based on its audits, the Citizen Complaint Process working group should identify any trends or areas for improvement, and develop a process for identifying personnel who continually fail to comply with these requirements, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

**57. Each allegation in an investigation will be resolved by making one of the following dispositions: a) “Unfounded,” where the investigation determines, by a preponderance of the evidence, that no facts to support that the incident complained of actually occurred; b) “Sustained,” where the investigation determines, by a preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper; c) “Not Sustained,” where the investigation determines, by a preponderance of the evidence, that there are insufficient facts to decide whether the**

**alleged misconduct occurred; and d) “Exonerated,” where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate VIPD policies, procedures, or training.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training. The VIPD has also achieved Phase 3 compliance because the Police Practices Experts have observed that investigations are increasingly resolved with one of the four required findings. During the Fourth Quarter of 2013, the Police Practices Experts reviewed 11 closed citizen complaint investigations and concluded that each investigation was resolved with one of the four required findings.

**58. Unit commanders will evaluate each investigation of an incident under their command to identify underlying problems and training needs. Any such problems or needs will be relayed in the form of a recommendation to the appropriate VIPD entity.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued the Investigating Misconduct and Citizen Complaints Policy and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 58.

**VIPD Report:**

See VIPD Report at Appendix A at page xxiii.

**OIM Report:**

The OIM has seen little progress towards compliance with the requirements of ¶ 58. During the Fourth Quarter of 2013, the Police Practices Experts reviewed 11 closed citizen complaint investigations and unit Commanders identified underlying problems and training needs in 18% (2 out of 11) of those investigations. There was no evidence, however, that these problems or training needs were relayed to the appropriate VIPD entity, or that any recommended corrective action was taken.

An investigation provided by the VIPD during the Fourth Quarter of 2013 underscores the importance of identifying underlying problems as areas for further training. In that investigation, Officers confronted a potential wanted



subject at a bar, and transported him to his home to retrieve identification.<sup>21</sup> Once the Officers concluded that the complainant was not the wanted subject, they transported him back to his original location. The complainant subsequently filed a complaint in hopes of receiving an apology. The investigation file, however, was incomplete because the Officers never filed the required Form 1As to document the police activity (i.e., asking the subject for his identification, detaining the subject, and transporting him to and from his home), and this deficiency was completely overlooked by the investigating Supervisor because only the alleged misconduct was evaluated.

**Recommendations:**

The Department should audit whether VIPD personnel comply with ¶ 58. Unit Commanders must evaluate investigations to identify underlying problems and training needs. Commanders must then relay any problems or training needs to the appropriate VIPD entity. The VIPD should also develop a process for identifying personnel who continually fail to comply with requirements and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

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<sup>21</sup> See CCT-2013-0094.

## Management and Supervision

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
Revisions to Disciplinary [Matrix] will be forwarded to DOJ <b>by November 1, 2012</b> .	<b>Satisfied.</b> After receiving DOJ approval, the VIPD issued a revised version of the Disciplinary Policy and Matrix during the Third Quarter of 2013.
<b>Beginning on November 30, 2012</b> , at least once per month, the Deputy Chief during Commanders Call, will address Decree compliance issues, including timely completion of use of force reports.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
<b>Beginning on November 30, 2012</b> , working group members will conduct regular reviews, but no less frequently than weekly, to ensure that all Blue Team programs are installed on all Zone Command computers and are also fully functioning.	<b>Satisfied, but additional work needed.</b> The VIPD has provided the OIM with documentation demonstrating that Blue Team is installed and functional throughout the Zones. However, the OIM has not received evidence of any follow-up when problems are identified.
<b>By November 30, 2012</b> , VIPD will provide DOJ with an action plan for achieving sufficient numbers of staff to input current and historic data or outlining how it intends to use existing staff to accomplish this task. The plan will include an implementation date subject to the agreement of the parties.	<b>Satisfied, but additional work needed.</b> On December 31, 2012, the DOJ provided comments on the VIPD's action plan. Among other things, the DOJ sought clarification on what, if anything, the VIPD plans to do if there is a lack of funding for new Supervisors. The OIM has not received evidence that the VIPD has adequately addressed the DOJ's concerns.
Working group members will conduct bi-monthly reviews <b>commencing November 30, 2012</b> to ensure compliance with A through K [of Consent Decree ¶ 60].	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
Quarterly review <b>commencing November 30, 2012</b> will be conducted to ensure compliance [with Consent Decree ¶ 65].	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.

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Working group members will conduct bi-monthly reviews <b>commencing November 30, 2012</b> to ensure compliance with a through g [of Consent Decree ¶ 66].	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
VIPD will maintain documentation of how it identified and addressed patterns of officer conduct based on existing databases and resources and provide this documentation on a quarterly basis to the Monitor, <b>starting in the 3rd quarter of 2012.</b>	<b>Not Applicable.</b> Because the Department appears to be relying solely on IAPro for risk management, this requirement is no longer applicable.
Finalize Audit Protocol and submit to DOJ <b>by November 30, 2012.</b>	<b>Satisfied.</b> The VIPD issued the Audit and Inspection Policy during the Third Quarter of 2013.
Blue Team technical issues will be resolved, training will be ongoing, and all districts will receive a round of training <b>by January 31, 2013.</b>	<b>Satisfied.</b> The VIPD provided the OIM with documentation regarding Blue Team training on the St. Thomas/St. John District during the First Quarter of 2013, and provided similar documentation for the St. Croix District in the Second Quarter of 2013. Based on documentation provided during the Fourth Quarter of 2013 and the First Quarter of 2014, the VIPD appears to have addressed the technical issues that previously hampered Blue Team.
Competency-based training of all staff <b>by Feb. 15, 2013</b> and ongoing documented refresher training through in-services and Roll Call/Commanders Call.	<b>Not Satisfied.</b> The VIPD did not provide the OIM with documentation demonstrating compliance with this requirement.
Auditors to attend training re: conducting audits by <b>April 30, 2013.</b>	<b>Satisfied.</b> Audit Training was held for both Districts during the Third Quarter of 2013.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies. This ensures periodic quality checks on data entered. Also ensure that lapses in policy implementation are addressed by system of documented discipline and/or re-training.	<b>Satisfied, but additional work needed.</b> The OIM received the VIPD's Audit Report on January 17, 2014, which demonstrates that the Department has taken steps to implement the audit tools. The OIM will report more fully on the VIPD's Audit Report in the next quarter.

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Train staff regarding Audit Protocol by <b>June 30, 2013</b> .	<b>Satisfied.</b> Audit Training was held on both Districts during the Third Quarter of 2013. That training covered the Audit and Inspection Policy.
Audit will commence by <b>June 30, 2013</b> .	<b>Satisfied.</b> The VIPD conducted audits during the Fourth Quarter of 2013 and submitted its Audit Report to the OIM on January 17, 2014.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies, including (but not limited to) review for inclusion of written Police Commissioner extension approval in investigatory files. Also ensure that lapses in policy implementation are addressed by system of documented discipline and/or re-training.	<b>Satisfied, but additional work needed.</b> The OIM received the VIPD's Audit Report on January 17, 2014, which demonstrates that the Department has taken steps to implement the audit tools. The OIM will report more fully on the VIPD's Audit Report in the next quarter.

**59. The VIPD will develop and implement a risk management system to include a new computerized relational database or paper system for maintaining, integrating, and retrieving information necessary for supervision and management of the VIPD. Priority will be given to the VIPD obtaining any established program and system. The VIPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of VIPD officers across all ranks, units and shifts.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 59 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 59 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages xxiii-xxiv.

**OIM Report:**

As previously reported, the Department has made substantial progress implementing IAPro. The Joint Action Plan requires members of the

Management and Supervision working group to “conduct regular reviews . . . to ensure that all Blue Team programs are installed on all Zone Command computers and are also fully functioning.” The Chairperson of the Management and Supervision working group initiated a process during the First Quarter of 2013 for the Department’s Management and Information Systems Unit (“MIS”) and the Zones to submit biweekly reports documenting the required reviews. Also during the First Quarter of 2013, the Management and Supervision working group issued a memorandum entitled “Blue Team Inspection Territory Wide,” which requires all Commanders to submit weekly Blue Team functionality reports. The VIPD provided documentation during the Third and Fourth Quarters of 2013 demonstrating that Commanders are generally submitting Blue Team functionality reports. Based on those reports, it appears that Blue Team is installed and generally functional throughout the Zones.

During the First Quarter of 2013, the VIPD provided the OIM with records for Blue Team and EIP training that took place in the St. Thomas/St. John District; the VIPD provided records for the same training in the St. Croix District during the Second Quarter of 2013. The records for the training conducted on St. Thomas contained, for the first time, a breakdown of the personnel who attended the training and those who did not. The VIPD provided follow-up training on the EIP during the Fourth Quarter of 2013.

The EIP is a cornerstone of the Consent Decree. When used properly, it provides Supervisors (and the rest of the VIPD’s leadership team) with the means to identify potentially problematic behavior and promptly intervene to address, and if necessary, correct, the behavior before any harm results from the behavior. The IAB is responsible for maintaining and administering the EIP. Among other things, the IAB generates reports on a regular basis, identifying potentially problematic conduct. Managers and Supervisors are also required to monitor the behavior of their subordinates on a daily basis using the “dashboard” feature in Blue Team.

When the EIP identifies potentially problematic behavior, the EIP coordinator notifies the employee’s immediate Supervisor and provide a Summary of Employee Performance Report (“SEPR”). After conducting an initial review, the Supervisor and his/her commanding Officer are required to meet to discuss the report and other relevant information, and determine if corrective action is appropriate. Corrective action can include reviewing the SEPR with the employee, requiring the employee to participate in Department-authorized training, referring the employee to various professionals for assistance (e.g., Department psychologist or counselor), or supervising the employee more closely in the future. After the Supervisor and his/her commanding Officer meet to discuss the SEPR, the Supervisor is required to complete a “Report of Action Recommendations” detailing the corrective action, if any, that must be undertaken.



As reported, the EIP appears to be progressing at different rates across the Districts. While Supervisors on the St. Croix District made a good faith effort to implement the EIP during the Third Quarter of 2013, the Police Practices Experts have seen very limited effort by Supervisors on the St. Thomas/St. John District. During the Fourth Quarter of 2013, there was no documented activity on St. Croix.

During the Fourth Quarter of 2013, the OIM learned of an Officer on St. Thomas who received 12 citizen complaints in the prior 12 months; the average number of complaints for the same time period in the St. Thomas/St. John District was 1-3 complaints. That Officer accounts for 60% of the citizen complaints involving her unit. Notwithstanding those dramatic statistics, it does not appear that the Officer's Supervisor (or anyone else in the chain of command) ever attempted to intervene. That fact demonstrates a complete failure of accountability by everyone involved. Unfortunately, that failure of accountability is not an isolated occurrence. The Police Practices Experts reviewed two other EIP cases from the St. Thomas/St. John District where potentially problematic behavior triggered an EIP review. Rather than trying to learn about the Officers' underlying conduct (which is what a Supervisor is supposed to do), the Supervisor who reviewed both alerts stated that she had no knowledge of the underlying conduct and signed the SEPR without conducting any further investigation. The Supervisor's Commander then signed the SEPR as well.

Based on the examples described above, there appears to be a systemic failure by the Department to hold Supervisors, Commanders, Deputy Chiefs, and Chiefs accountable for supporting the EIP. The Commissioner has correctly indicated on multiple occasions that accountability is important to him. This is an area in which accountability is especially wanting, and the Commissioner needs to make good on his promise.

### **Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, providing on-going training on the Department's EIP. The VIPD should also use the Blue Team and EIP training records described above as a model for how to present training records to the OIM going forward. The VIPD should also consider modifying the PowerPoint presentation that it previously provided regarding the EIP program for use during Roll Call and Commanders Call training.

The VIPD also needs to document every step that it takes relating to the EIP process, including when IAPro first generated an alert, what the Department did in response to the alert (counseling, remedial training, discipline, etc.), and the outcome of the Department's response. The St.

Thomas/St. John District, in particular, needs to start documenting the EIP process. The OIM will continue to review the EIP process in future quarters, including EIP assessment and audit forms.

The OIM understands that the initial process of establishing and properly implementing the EIP is difficult. Once established and implemented, the EIP will play an integral role in making the VIPD a better department. The Commissioner, Chiefs, and Deputy Chiefs must acknowledge and embrace their roles in managing the EIP system.

**60. The new risk management system will collect and record the following information: a) all uses of force; b) canine bite ratios; c) the number of canisters of chemical spray used by officers; d) all injuries to prisoners; e) all instances in which force is used and a subject is charged with “resisting arrest,” “assault on a police officer,” “disorderly conduct,” or “obstruction of official business;” f) all critical firearm discharges, both on-duty and off-duty; g) all complaints (and their dispositions); h) all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel; i) all vehicle pursuits; j) all incidents involving the pointing of a firearm (if any such reporting is required); and k) all disciplinary action taken against officers.**

#### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 60 of the Consent Decree and provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 60 of the Consent Decree.

#### **VIPD Report:**

See VIPD Report at Appendix A at pages xxiv-xxv.

#### **OIM Report:**

The VIPD’s Data Input Plan requires the Department to collect the data specified in ¶ 60 of the Consent Decree. The Management and Supervision working group reported at the end of the Fourth Quarter of 2012 that it was creating forms, drafting procedures, and developing a system to verify the accuracy of the data collected under subparagraphs a through k. The OIM has not received any documentation relating to those efforts.

During the First Quarter of 2013, the OIM learned that the VIPD continued to have problems accessing required information that was

maintained by other government agencies. For example, the VIPD reported that it had limited access to information from the VIAG regarding court proceedings (criminal and civil) involving VIPD personnel and from VITEMA regarding vehicle pursuits.<sup>22</sup> The VIPD's Data Input Plan requires that such information be collected and entered into the RMS. During the Fourth Quarter of 2013, the VIPD made progress collecting information from the VIAG about court proceedings. The VIPD also drafted a new Motor Vehicle Accident Policy during the Fourth Quarter of 2013, which mandates that information regarding motor vehicle accidents be collected and entered into the RMS.

The OIM learned during the Second Quarter of 2013 that a Department audit of the RMS revealed that certain data sources were not being collected as required by the Data Input Plan. Specifically, the VIPD was not collecting information about canine bite ratios or the number of canisters of O.C. Spray being used by VIPD personnel. The OIM applauds the VIPD for identifying these deficiencies. Moreover, the fact that an internal VIPD audit identified these deficiencies underscores the important role that the Audit Unit can play in helping the VIPD achieve and maintain substantial compliance.

During the Fourth Quarter of 2013, the VIPD reported that it has started to collect information about canine bite ratios. Although the OIM has not received any such documentation, it is our understanding that canine deployments are being recorded in Form 1As and canine bites are being recorded in IAPro. We look forward to receiving documentation relating to the Department's efforts to generate bite ratios in upcoming quarters.

The VIPD previously reported that it held training on the Data Input Plan during the Second Quarter of 2013 on both Districts. The VIPD provided training on the Department's RMS Protocol and EIP at the same time. The VIPD provided the OIM with lesson plans for the EIP training, but has not provided complete documentation (similar to what the Department provided for Blue Team training) detailing who was eligible/should have attended the training, who attended the training, who passed any post-training competency tests, or who participated in any related re-training or was disciplined for not doing so or for not attending the original training.

During the Third Quarter of 2013, the VIPD provided the OIM with a document titled "Quarterly Patterns and Trending Data: 3rd Qtr 2013." As its title suggests, the document provides various statistics relating to the Department's use of force and citizen complaints. Going forward, VIPD managers and Supervisors should analyze patterns and trends by the Department. Generating documents like this and forwarding them to the OIM (while appreciated) is not enough. For example, during the Third Quarter of

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<sup>22</sup> In relevant part, subparagraph (h) requires the VIPD's RMS system to record "all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel."

2013, one-third of all complaints from the St. Thomas/St. John District involved discourtesy. As a result, the Commissioner authorized VIPD personnel to attend customer service training to ensure that VIPD personnel respond to citizen complaints in accordance with VIPD policy and generally interact with the community in a courteous and professional manner.

Similarly, a high percentage of arrests in both Districts during the Third Quarter of 2013 were so called “discretionary arrests” for offenses such as disobeying police orders, disturbing the peace, and interfering with an officer. While those arrests may have been appropriate under the circumstances, the VIPD should consider whether similar behavior can be addressed without resorting to an arrest. The Department’s senior managers, including the Commissioner, should utilize the EIP and review the Department’s patterns and trends relating to uses of force and citizen complaints.

### **Recommendations:**

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, collecting all of the information required by the Data Input Plan. The VIPD should also provide the OIM with documentation regarding its efforts to collect all of the information required by the Data Input Plan. Once the VIPD comes into compliance with the Data Input Plan, the Department should generate quarterly IAPro reports demonstrating that data from subparagraphs a through k are captured in the Department’s RMS.

The VIPD should continue to provide the OIM with pattern and trend data relating to uses of force and citizen complaints. The Department should also analyze that data and provide a summary of its conclusions and proposed remedial actions, if any, to the OIM.

With respect to complaints of discourtesy and “discretionary arrests,” the Department should determine whether such conduct is attributable to a concentrated group of personnel. To the extent that it is, the Department should try to correct that behavior through the EIP. The EIP is programmed to generate alerts when personnel receive 4 or more complaints in a twelve month period. We do not believe that the EIP is currently programmed to generate alerts regarding “discretionary arrests,” but the VIPD should consider adding excessive “discretionary arrests” as an alert.

**61. The new risk management system will include, for the incidents included in the database, appropriate identifying information for each involved officer (e.g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin, if available).**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 61 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 61 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages xxv-xxvi.

**OIM Report:**

To help track VIPD personnel (who may change job functions, names, etc.), the Commissioner issued a directive during the Fourth Quarter of 2011 ordering that a permanent designator number ("PDN") be assigned to all sworn personnel, including designated civilian personnel with assignments as agents, auxiliaries, and forensic technicians. The PDN is a four digit number assigned by VITEMA. Officers are required to use their PDNs (which they keep for their entire career) on all police reports, rather than their badge numbers as was the previous practice.

During the Fourth Quarter of 2013, the VIPD conducted limited audits to determine whether VIPD personnel had been assigned PDNs, and if so, whether they were including their PDNs on all VIPD reports. Based on those audits, the VIPD determined that one Officer did not have a PDN assigned. That deficiency was subsequently corrected.

We also understand that thirteen Police Academy cadets did not have PDNs in the weeks leading up to graduation. The VIPD should ensure that they have all been issued PDNs.

**Recommendations:**

The Department should audit whether Officers are using their PDNs on all police reports. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM. In addition, the VIPD should provide the OIM with quarterly IAPro reports demonstrating that appropriate identifying information for each involved Officer and civilian is captured by the Department's RMS, and a list of the PDNs assigned to all VIPD personnel.

**62. Within 120 days of the implementation of the new risk management system, or later with the agreement of DOJ, the VIPD will prepare, for the review and approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the**



**"Data Input Plan"). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will include historical data that is up-to-date and complete in the risk management system. The VIPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Data Input Plan in compliance with ¶ 62 of the Consent Decree. Because ¶ 62 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 62 of the Consent Decree.

**63. The VIPD will, within 120 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using the risk management system. The VIPD will submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 63 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 63 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at page xxvi.

**OIM Report:**

After several years of work, the DOJ approved the Department's RMS Protocol on October 2, 2012. As previously reported, the RMS Protocol provides various thresholds that trigger supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. When reporting arrest and use of force data, the Consent Decree requires that the VIPD use ratios based on the conduct of VIPD personnel (the number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior.

The VIPD is not currently capable of providing these ratios because its arrest records are not uniform or reliable. For several quarters, the VIPD has been working to consolidate all of its arrest records into a single database. The VIPD installed arrest database terminals in both Districts during the Fourth Quarter of 2013, but the Director of MIS still needs to test the databases. The Parties agree that the Department will not be in compliance with ¶ 63 until it implements a ratio-based RMS Protocol.

### **Recommendations:**

Once the Department can rely on its arrest records, the VIPD should begin to use ratios, rather than numerical thresholds, as triggers for supervisory review of Officers' conduct. The Department should also consider whether it needs to revise its RMS Protocol to rely on ratios going forward. The VIPD should also provide the OIM with audits documenting the Department's compliance with ¶ 63 of the Consent Decree.

**64. The protocol for using the risk management system will include the following provisions and elements: a) The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit; b) The protocol will require the automated system to analyze the data according to the following criteria: (i) number of incidents for each data category by individual officer and by all officers in a unit; (ii) average level of activity for each data category by individual officer and by all officers in a unit; and (iii) identification of patterns of activity for each data category by individual officer and by all officers in a unit; c) The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns; d) The protocol will require that VIPD deputy chiefs, managers, and supervisors will review, on a regular basis but not less than quarterly, system reports, and will evaluate individual officer, supervisor, and unit activity; e) The protocol will require that VIM deputy chiefs, managers, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system; f) The protocol will require that intervention options include discussion by deputy chiefs, managers, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system (appropriate intervention options will be employed based on the evaluation described in subsection (e) above); g) The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer's assignment, crime trends and crime**

problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system; h) The protocol will require that VIPD deputy chiefs, managers, and supervisors will promptly review the risk management system records of all officers recently transferred to their sections and units; i) The protocol will require that VIPD deputy chiefs, managers, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk; (j) The protocol will require that the system be managed and administered by the Internal Affairs Unit of the VIPD. The IAU of the VIPD will conduct quarterly audits of the system to ensure action is taken according to the process described above; k) The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to evaluate officer performance territory-wide, and to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify any significant patterns or series of incidents.

#### **Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the RMS Protocol in compliance with ¶ 64 of the Consent Decree. Because ¶ 64 of the Consent Decree only requires the Department to develop a policy Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 64 of the Consent Decree.

**65. The VIPD will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the VIPD for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. On an ongoing basis, the VIPD will enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.**

#### **Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 65 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 65 of the Consent Decree.

#### **VIPD Report:**

See VIPD Report at Appendix A at page xxviii.

**OIM Report:**

The OIM did not assess the VIPD's compliance with ¶ 65 of the Consent Decree during the Fourth Quarter of 2013. We will assess it during the First Quarter of 2014.

**Recommendations:**

The Department should continue to forward completed audits to the OIM.

**66. The new risk management system will be purchased off the shelf and customized by VIPD. Alternatively, the new risk management system may be developed and implemented according to the following schedule: a) Within 150 days of the effective date of this Agreement, subject to the review and approval of DOJ, the VIPD will issue a Request for Proposal (RFP); b) Within 270 days of the issuance of the RFP, or later with the agreement of DOJ, the VIPD will select the contractor to create the risk management system; c) Within 150 days of the effective date of this Agreement, the VIPD will submit the protocol for using the risk management system to DOJ for review and approval. The VIPD will share drafts of this document with DOJ and the Monitor (a position described in Section VII) to allow DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The VIPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval; d) Within 14 months of selecting the contractor, the VIPD will have ready for testing a beta version of the risk management system consisting of (i) server hardware and operating systems installed, configured and integrated with the VIPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. DOJ and the Monitor will have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the risk management system; e) The risk management system computer program and computer hardware will be operational and fully implemented within 20 months of the selection of the risk management system contractor.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 66 of the Consent Decree and has provided related training. The VIPD has also achieved Phase 3 compliance because the Department relies on IAPro for risk management. Although the

VIPD never conducted a formal “beta test” for IAPro (which is required by the Consent Decree), that requirement is now moot. “Beta tests” are supposed to be conducted around the time that a new system is made operational. IAPro has already been in use by the VIPD for several years. While we are reluctant to excuse the VIPD’s failure to conduct a formal “beta test,” we believe that the VIPD is in substantial compliance with ¶ 66 of the Consent Decree.

**67. Prior to implementation of the new risk management system, the VIPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by VIPD officers or groups of officers.**

**Compliance Assessment:**

Because the Department appears to rely on IAPro for risk management, this requirement is no longer applicable.

**68. Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, the VIPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. The VIPD will submit all such proposals for review and approval by DOJ before implementation.**

**Compliance Assessment:**

Because the Department has not yet proposed any changes to the RMS, this requirement is not yet applicable.

**69. The VIPD will develop a protocol for conducting audits. The protocol will be used by each officer or supervisor charged with conducting audits. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all VIPD zones.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 69 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 69 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at page xxxi.



**OIM Report:**

The VIPD issued the Audit and Inspection Policy in September 2013, and provided related training in October 2013. Under the Territorial Audit Agenda, each working group was charged with conducting audits relating to their respective area of responsibility. While the working groups should have a role in audits, the VIPD's current audit process is deficient because no single authority (unit or person) is responsible for managing the audit process and ensuring that audits comply with the VIPD's Audit and Inspection Policy and audit tools.

Under the parties' proposed Joint Action Plan, the VIPD committed to completing an initial round of audits by December 27, 2013. The VIPD reaffirmed its commitment to meeting that deadline when the Parties were in Court on November 18, 2013. The VIPD provided the OIM with a detailed report summarizing the Department's audits on January 17, 2014. We will report on the Department's audits in the First Quarterly Report of 2014, but we note that the Department has made a good faith initial effort to conduct internal audits relating to the Consent Decree.

**Recommendations:**

The VIPD should continue to conduct audits according to its approved audit protocol, including establishing a regular Territory-wide schedule of audits.

**70. The VIPD will continue to utilize a disciplinary matrix to take into account an officer's violations of different rules, rather than just repeated violations of the same rule. The VIPD will further revise this matrix to increase the penalties for uses of excessive force, improper searches and seizures, discrimination, or dishonesty, to reflect the seriousness of those infractions. The revised disciplinary matrix will provide the VIPD with the discretion to impose any appropriate punishment when the VIPD believes the officer's misconduct exhibits a lack of fitness for duty. This revised matrix will be subject to the review and approval of DOJ.**

**Compliance Assessment:**

The Department has achieved Phase 1 compliance because it has issued the Disciplinary Matrix in compliance with ¶ 70 of the Consent Decree. Because ¶ 70 of the Consent Decree only requires the Department to develop a policy, Phase 2 and 3 are not applicable. Therefore, the VIPD is in substantial compliance with ¶ 70 of the Consent Decree.

**71. VIPD policy will continue to identify clear time periods by which the various steps of a complaint adjudication process should be completed, from complaint receipt to the imposition of discipline, if any. Absent**

**exigent circumstances, extensions will not be granted without the Police Commissioner's written approval and notice to the complainant. In the limited circumstances when an extension is necessary, appropriate tolling provisions will be outlined in the policy.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 71 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 71 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at page xxxii.

**OIM Report:**

Although the Investigating Misconduct and Citizen Complaint Policy sets forth “clear time periods by which the various steps of a complaint adjudication process should be completed[,]” many of the Department’s citizen complaint investigations are overdue. Moreover, even when the investigation file indicates that a stay was granted, there is often too little information in the file to determine whether the stay was justified. Of the 11 closed citizen complaint investigations reviewed during the Fourth Quarter of 2013, the Police Practices Experts determined that 64% (7 out of 11) were completed on a timely basis.

In connection with this provision, the VIPD reported that it is working with the Police Benevolent Association (“PBA”) and the Law Enforcement Supervisors Union (“LESU”) to try to extend the 50-day statute of limitations during which the VIPD can impose discipline on VIPD personnel in violation of Department policy. While we encourage the VIPD to push to extend the statute of limitations, the outcome of those negotiations has no bearing on the Department’s ability to comply with internal investigative deadlines (though extending the 50-day statute of limitations would make it easier for the VIPD to hold personnel accountable for misconduct in light of the delays that often characterize the Department’s investigative process).

The OIM agrees with the Chairperson of the Management and Supervision working group and the IAB that the statute of limitations should be extended. While we favor the longer 120 working day period advocated by the IAB, a 90 working day period would be a vast improvement from the status quo. The VIPD should make this issue a priority in negotiating new contracts with the PBA and the LESU.

**Recommendations:**

The Management and Supervision working group, together with the Citizen Complaint Process working group and the IAB, should continue to audit and document compliance by Department personnel with the relevant time periods. The VIPD should also hold Officers accountable for violating deadlines concerning the adjudication of investigations. The VIPD should provide the OIM with quarterly IAPro reports reflecting the status of all pending citizen complaint investigations so we can monitor the Department's compliance with the required deadlines on a regular basis.

**72. Absent exceptional circumstances, the VIPD will not take only non-disciplinary corrective action in cases in which the disciplinary matrix indicates the imposition of discipline. In a case where discipline has been imposed on an officer, the VIPD must also consider whether non-disciplinary corrective action is required.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies in compliance with ¶ 72 of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the VIPD is not yet in substantial compliance with ¶ 72 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages xxxii-xxxiii.

**OIM Report:**

The OIM did not assess the VIPD's compliance with ¶ 72 of the Consent Decree during the Fourth Quarter of 2013, but will do so in 2014. While the VIPD has provided the Police Practices Experts with the opportunity to observe disciplinary hearings, the VIPD has not regularly provided the OIM with written disciplinary decisions. Moreover, for the limited number of written disciplinary decisions that the Police Practices Experts have reviewed, there was often very little analysis explaining why a certain sanction (or no sanction at all) was imposed. This is particularly problematic where a Chief or Deputy Chief overrides the IAB's recommendation, but does not explain his or her reasoning.

**Recommendations:**

The Management and Supervision working group should promptly implement the Disciplinary Matrix by providing corresponding training. In order to help the OIM evaluate the Department's compliance with ¶ 72 of the Consent Decree, the VIPD should provide the OIM with documentation from

disciplinary hearings, including the charges, findings, and any discipline and/or non-disciplinary corrective action that was taken. Moreover, the Chiefs and Deputy Chiefs should describe in writing the bases for their decisions. Documenting that process will help the OIM better evaluate the Department's compliance with the Disciplinary Matrix and lend greater transparency to the disciplinary process.

## Training

### Joint Action Plan Requirements

Joint Action Plan Requirements	Status
By <b>November 30, 2012</b> , finalize Audit Protocol and submit to the DOJ and the Monitors' subject matter experts.	<b>Satisfied.</b> On November 30, 2012, the VIPD submitted a final Audit and Inspection Policy to the DOJ for review. That policy was signed by the Commissioner during the Third Quarter of 2013.
By <b>November 30, 2012</b> , the Director of Training will develop and implement a tracking system to track training attendance and shall periodically test for proficiency on the policies.	<b>Satisfied, but additional work needed.</b> The VIPD has a rudimentary system for tracking attendance and whether participants passed post-training proficiency examinations. However, the Department is not readily able to generate comprehensive training reports for all training.
By <b>November 30, 2012</b> , implement system to ensure all staff are trained on policies (i.e., a tracking system).	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that the Department has such a tracking system. For example, the VIPD has not provided documentation showing that the VIPD has a systematic process for providing follow-up or remedial training to ensure that all VIPD personnel are adequately trained.
By <b>November 30, 2012</b> , and on an ongoing basis, provide Monitors' subject matter experts with training curricula and schedules at least 15 days in advance of training, but preferably 30 days in advance.	<p><b>Not satisfied.</b> The VIPD has generally complied with this requirement for vendor-led training. For VIPD-led training, the VIPD typically does not provide lesson plans or curricula in advance of training.</p> <p>Moreover, on at least two occasions, the VIPD made last minute changes to training schedules while the Police Practices Experts were monitoring without providing any advance notice. In both cases, the Police Practices Experts missed training that they specifically planned to observe.</p>



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By <b>November 30, 2012</b> , and on an ongoing basis, VIPD shall consult with VIAG to ensure that all use of force training and use of force policies are in compliance with applicable laws and VIPD policy.	<b>Satisfied.</b> The VIPD has developed a protocol for cooperation between the VIPD's Training Director and the VIAG. The Police Practices Experts have also indicated that representatives from the VIAG are now signing force-related lesson plans after reviewing them.
By <b>January 31, 2013</b> , provide competency-based training of officers and supervisors on remaining policies.	<b>Satisfied, but additional work needed.</b> The VIPD has conducted training that satisfies the most basic elements of this requirement. However, the VIPD should further develop its lesson plans, encourage more class participation, and include more practical exercises.
By <b>January 31, 2013</b> , provide ongoing refresher training on policies through documented, periodic in-service and Roll Call training. Incorporate competency-based training on policies into Police Academy.	<b>Not satisfied.</b> Although the VIPD has provided the OIM with attendance sheets and brief descriptions of Roll Call and Commanders Call training, the OIM needs more detailed information about the subject matter being covered.
By <b>January 31, 2013</b> , provide competency-based training of supervisors on remaining policies (i.e. Investigating Misconduct and Citizen Complaints Policy).	<b>Satisfied, but additional work needed.</b> The VIPD has conducted training that satisfies the most basic elements of this requirement. However, the VIPD should further develop its lesson plans, encourage more class participation, and include more practical exercises.
By <b>April 30, 2013</b> , auditors will attend outside training regarding conducting audits.	<b>Satisfied.</b> The VIPD provided audit training in the Fourth Quarter of 2013.
By <b>June 30, 2013</b> , VIPD will implement systems to ensure that lapses in policy implementation are addressed by system of documented discipline and/or re-training.	<b>Not satisfied.</b> The VIPD did not provide the OIM with documentation that such systems exist. However, the VIPD received DOJ approval for its audit tools during the Fourth Quarter of 2013, which is the first step towards implementing such a system.
By <b>June 30, 2013</b> , in consultation with DOJ, implement audit tools to ensure staff are complying with the policies. Also ensure that lapses in	<b>Satisfied, but additional work needed.</b> The OIM received the VIPD's Audit Report on January 17, 2014, which demonstrates that the

policy implementation are addressed by system of documented discipline and/or re-training.	Department has taken steps to implement the audit tools. The OIM will report more fully on the VIPD's Audit Report in the next quarter.
By <b>June 30, 2013</b> , train staff regarding Audit Protocol.	<b>Satisfied.</b> The VIPD conducted audit training in the Fourth Quarter of 2013.

**73. The VIPD will continue to coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with applicable law and VIPD policy. The VIPD will conduct regular subsequent reviews, at least semi-annually.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 73 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages xxxiii-xxxiv.

**OIM Report:**

The VIPD first reported during the Third Quarter of 2012 that it would periodically review its use of force policies in consultation with the VIAG. The Use of Force working group reported during the First Quarter of 2013 that it planned to review one use of force policy every two weeks. The VIPD stopped that process because it determined that a Standard Operating Procedure ("SOP") was needed to guide the Department's review. The Committee approved the SOP during the Third Quarter of 2013, and it was signed by the Commissioner during the Fourth Quarter of 2013. Also, during the Fourth Quarter of 2013, the Commissioner issued a directive setting deadlines for the review process and prioritizing the order in which the Department's policies will be reviewed.

While the Department has developed a process to review its use of force policies, it has not developed a similar process to review use of force training. The VIPD reports that the Training Division and the VIAG review use of force lesson plans before the execution of related training. While those are positive steps, they are not sufficient. For example, the VIPD does not have a process in place to review and document the delivery of training.

During the Fourth Quarter of 2013, one of the Police Practices Experts reviewed training documentation for the St. Thomas District. Based on her review, she identified training records indicating that an instructor had been replaced after leading the training. The Police Practices Expert also reviewed a separate set of documents indicating that the instructor received very poor reviews from participants at the training. When the Police Practices Expert asked the Training Director what happened, he confirmed that the instructor had been replaced because of poor performance. The OIM is pleased that the VIPD was monitoring that training and reacted appropriately; however, the VIPD should have documented what happened and its decision to remove the instructor.

### **Recommendations:**

The VIPD must provide documentation to the OIM demonstrating that the VIPD has coordinated and reviewed all use of force policies at least annually, and that the VIPD has reviewed all training at least semi-annually.

**74. The Director of Training, either directly or through his/her designee(s), consistent with applicable law and VIPD policy will: a) ensure the quality of all use of force training; b) develop and implement use of force training curricula; c) select and train VIPD officer trainers; d) develop, implement, approve, and oversee all in-service training; e) in conjunction with the Chiefs, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures; f) establish procedures for evaluating all training curricula and procedures; and g) conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.**

### **Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 74 of the Consent Decree.

### **VIPD Report:**

See VIPD Report at Appendix A at pages xxxiv-xxxv.

### **OIM Report:**

Progress in achieving substantial compliance with ¶ 74 continues to be slow.

74 a) Not satisfied. The VIPD previously reported that the Training Director reviews evaluations completed by Supervisors and Officers at the conclusion of training. Ensuring the quality of use of force training, however, requires more than just reviewing student evaluations. The Training Director must elicit feedback from instructors and the Training working group, aggregate and file all reviews and comments received, and implement any improvements prior to in-service and other training. The VIPD must document that it includes the VIAG in its systematic evaluation of use of force training. While the OIM is aware that the VIPD completes evaluation forms following each training, the VIPD has not demonstrated that it analyzes the comments received or reports any significant conclusions (e.g., need to revise course material) from those evaluations. As discussed in connection with ¶ 73, the Training Director should ensure that his staff is observing instructors first-hand to evaluate their effectiveness. In addition, training participants should be asked to evaluate the quality of their instructors. Instructor evaluations should be kept in each instructor's training file; currently, each instructor's folder only contains certifications relating to training that he or she has taken.

74 b) Satisfied, but additional work is required. The VIPD reports that the Department initially developed its use of force training curricula in March of 2011. That curricula needs to be reviewed for possible revisions in light of intervening legal developments or the Department's identification of particular deficiencies. For example, the Police Practices Experts have noted that VIPD personnel frequently use "pattern language" when completing reports; "pattern language" refers to conclusory language that does not describe the underlying facts.<sup>23</sup>

74 c) Not satisfied. Although the VIPD provided some instructor training classes primarily focused on specific use of force skills, it has not provided the OIM with information about its instructor selection process. For two years, the VIPD has told the OIM that the selection process was being developed. We do not understand this delay. Appropriately vetting instructor candidates is a critical component of providing quality training.

74 d) Satisfied. The VIPD has complied with this requirement by taking steps to develop, implement, approve, and oversee in-service training. The VIPD conducted two separate in-service training sessions in 2013. The first was "regular" in-service training conducted during the Second Quarter of 2013. The second was a Peace Officer Standards and Training ("POST") Council training session for multiple Virgin Islands law enforcement agencies and POST Council members. Consent Decree related training was covered in both

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<sup>23</sup> For example, the statement that a suspect was "acting aggressive" is pattern language. Instead of writing that a suspect was "acting aggressive," VIPD personnel should describe the suspect's behavior (e.g., "he ran towards me with clenched fists," "he threw a punch," etc.).

sessions. It appears that the VIPD has established and implemented an in-service training protocol that provides training opportunities to the entire force.

74 e) Not satisfied. The OIM is aware that the VIPD is conducting Roll Call and Commanders Call training on a regular basis, but our concern is that the training is completely decentralized. The OIM has seen no coordination between the Training Director and the Chiefs or other command Officers on the development, improvement, or conduct of Roll Call training. Although the Training Director has a record of Roll Call and Commanders Call training sign-in sheets, it is unclear what, if anything, the Training Director does with those records. This is a critical step in the development of a modern police training program and is necessary to achieve substantial compliance.

74 f) Not satisfied. The VIPD reported to the OIM that it has created a "Training Division Course Evaluation" form to evaluate all training. The Police Practices Experts have seen some completed evaluation forms. The Department, however, has not provided the Police Practices Experts with completed forms or any report summarizing the Department's analysis of these evaluations.

74 g) Not satisfied. The VIPD reports that it maintains training folders for Officers, which include questionnaires that Officers complete after attending training to assess their understanding of the material presented. The VIPD, however, has not developed a process for reviewing and analyzing this information. A proper review process must analyze this information, in concert with other training data, so that the VIPD (and the OIM) can determine where improvements in training are required. In addition, the VIPD has limited any review of these evaluations to staff in the Training Division. The Department would benefit from including Supervisors and other managers and trainers in this review process.

### **Recommendations:**

The VIPD needs to substantially improve the way in which it provides and evaluates the quality of the Department's training. For example, the Department does not appear to have a system in place for selecting suitable candidates to serve as instructors. For the past two years, the OIM has requested a policy or procedure detailing how the Department selects instructor candidates, but the Department has not provided a substantive response. Previously, the OIM worked with the VIPD to develop a process for selecting suitable Field Training Officer candidates. We have recommended that the Department adopt that process to identify instructor candidates more broadly, but the Department has not implemented that recommendation.

The VIPD has reported (verbally) that members of the Training Division periodically observe training programs, but it needs to better document that



process. In addition to documenting the fact that an instructor was observed, the observer should also document any comments or suggestions relating to the training and then provide that feedback to the instructor. We have not received any documentation indicating that the Department follows this procedure. Finally, the Department should promptly forward any completed audits to the OIM because they will help to assess the VIPD's compliance efforts.

**75. The VIPD will continue to provide training consistent with VIPD policy, law, and proper police practices, and will ensure that only mandated objectives and approved lesson plans are taught by instructors. The VIPD will make best efforts to train each work shift as a team in their use of force training.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance because it has provided training on Department policies, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 75 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at page xxxv.

**OIM Report:**

The OIM has received lesson plans for Consent Decree related training, and applauds the VIPD on doing a much better job of including the VIAG in the lesson plan development process. However, the Police Practices Experts have noted that some "lesson plans" are little more than coversheets stapled to the relevant policy. For example, the lesson plans for the Impact Weapon Policy and the Disciplinary Policy and Matrix contain essentially the same content as their underlying policies, with only superficial changes. Lesson plans should contain information about training methodologies, practical exercises, and discussion topics, but very few of the Department's lesson plans do.

The OIM reported in the Third Quarterly Report of 2013 that there was marked improvement in the quality of training by the VIPD. There remains, however, a distinct difference in the quality of training provided by training vendors and VIPD instructors. Generally, the VIPD's training vendors (third parties hired on a contract basis to lead particular training programs) are very good. They have provided the OIM with fully developed lesson plans with multiple objectives, PowerPoint presentations, practical exercises, and participant quizzes and evaluations. The VIPD's in-house instructors are much

less consistent and typically do not provide similar documentation for each training to the OIM.

### **Recommendations:**

The OIM continues to recommend that the Training Division work in concert with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies where compliance has been problematic, including the Use of Force Policy, Acceptance of Citizen Complaint Policy, Investigating Misconduct and Citizen Complaints Policy, and Off-Duty Official Action Policy. To ensure that post-training examinations serve their intended purpose, the OIM has recommended repeatedly that the VIPD develop multiple versions of the post-training examination for each training so that VIPD personnel cannot memorize the questions and answers. Although having multiple versions of an exam is a standard police practice, the VIPD has not adopted this recommendation. The Training Division also should work closely with the Use of Force, Citizen Complaint Process, and Management and Supervision working groups to identify areas that require additional training, either through additional in-service training or Roll Call and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations. Lesson plans for all training programs should be vetted and approved by Department management and the VIAG in advance of training, and should be provided to the OIM with documentation sufficient to show that the lesson plans were reviewed by the VIAG.

**76. The VIPD shall continue to keep adequate records of lesson plans and other training materials, such that the most current training documents are maintained in a central, commonly accessible file, and are clearly dated.**

### **Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance because the VIPD currently maintains training records, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 76 of the Consent Decree.

### **VIPD Report:**

See VIPD Report at Appendix A at pages xxxv-xxxvi.

### **OIM Report:**

The VIPD has indicated for almost a year its intent to acquire software capable of producing the kind of information required by the Consent Decree. This area of compliance languishes behind other areas of the Consent Decree.

Although the VIPD has indicated that a new system (Power DMS) will be functional in the First Quarter of 2014, the OIM nevertheless expects that additional effort and resources will need to be devoted to installation and data transfer.

Under the Joint Action Plan, the VIPD is required to provide “training curricula and schedules at least 15 days in advance of training, but preferably 30 days in advance.” The Training Division, however, often provides notice of any upcoming Consent Decree training with only 15 days notice. This practice makes it difficult for the OIM to make proper arrangements to monitor training in-person. The Department should provide the OIM with as much notice about upcoming training as possible. Once the Department has scheduled training, there is no reason to wait to notify the OIM. Moreover, with respect to training curricula, the Department’s efforts are mixed. For training led by third-party vendors, the Department generally provides training curricula well in advance of the minimum 15-day requirement. However, for training led by in-house training personnel, the Department rarely provides training curricula in advance of the training. It is in the VIPD’s best interest to provide as much notice as possible so that the OIM can have every opportunity to evaluate the VIPD’s progress towards substantial compliance with ¶ 76.

Similarly, the VIPD does not provide training curricula within the required timeframe. During the Third Quarter of 2013, the OIM attended audit training, but did not receive the training curricula as required until arriving in the Territory and specifically requesting such material.

### **Recommendations:**

The OIM is hopeful, but concerned, about the VIPD’s ability to make Power DMS functional in the First Quarter of 2014. The Police Practices Experts are familiar with Power DMS and believe that it will greatly help the Training Division better organize its training infrastructure. The VIPD should use Power DMS to its maximum, including using the system to publish directives, conduct training, and maintain training records.

While not required by the Consent Decree, the OIM continues to believe that the VIPD should take the lead in making the Territory’s POST Council a fully functioning entity. POST should develop minimum standards for all peace officers in the Territory, including, but not limited to, the VIPD. We are encouraged that the VIPD has taken positive steps in this regard. The VIPD should consult with other law enforcement agencies that have extensive experience with Power DMS. This collaboration should help the VIPD customize the software in a way that best suits the Department.

**77. The VIPD shall continue to maintain training records regarding every VIPD officer that reliably indicate the training each officer has**

**received. The training records shall, at a minimum, include the course description and duration, curriculum, and instructor for each officer.**

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance since the VIPD reports that it maintains training records, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 77 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at page xxxvi.

**OIM Report:**

The VIPD's training records do not currently capture the course description, length of training, curricula, or instructor information in a single consolidated format. During the Fourth Quarter of 2013, the VIPD reported that training attendance is documented on paper; the Department, however, acknowledged that "this system is currently not working as an appropriate measure of tracking [an] Officer's attendance."<sup>24</sup> While the VIPD may be able to cobble together that information from different sources, it is not readily accessible. Power DMS should help the VIPD comply with this requirement.

**Recommendations:**

As discussed above, the VIPD should seek to promptly implement Power DMS and consult with other law enforcement agencies about its capabilities. Until that occurs, the Training Division should ensure that Officers and Supervisors are signing in and out of trainings, and notations should be made in the event that an Officer or Supervisor leaves the training early and does not return. Additionally, individuals who hold positions in specialized units outside the VIPD (such as High Intensity Drug Trafficking Area and Dignitary Protection) should be scheduled for the appropriate required training. The Training Division should also promptly reschedule Officers and Supervisors who were excused from training.

**78. The Training Director will review all use of force training and use of force policies on a regular basis to ensure compliance with applicable laws and Virgin Islands Police Department policy. The Training Director will consult with the Attorney General's Office on any additions, changes and/or modifications regarding use of force training or policies to ensure compliance with applicable laws.**

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<sup>24</sup> See VIPD Audit Report at page 38.

**Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has achieved Phase 2 compliance since the VIPD reports that the Training Director reviews all training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 78 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages xxxvi-xxxvii.

**OIM Report:**

As described above, the VIPD has a process in place to facilitate the periodic review of use of force policies, including a schedule for when various policies will be reviewed. However, we have not received documentation indicating that the VIPD has a similar process in place for the review of use of force training. While we have received documentation that the VIAG revised and approved use of force training, that is not enough. In addition to addressing any legal developments and/or changes to the relevant policies, the Training Division should use the review process to identify training deficiencies and make corresponding revisions to use of force training.

**Recommendations:**

The Department should develop a systematic process for the periodic review of use of force training and then share that process with the OIM. The VIPD should also provide the OIM with a status update regarding its use of force policy review process.

As with the critical review of use of force policies, the Training working group should solicit feedback about the quality of training and instructors. The results should be reviewed by a high-level committee that will subsequently suggest improvements. In addition, personnel from the Training Division should observe each instructor the first time that he or she leads a training and then periodically afterward to ensure that each instructor is following the lesson plan and holding the participants' attention.

**79. The VIPD will continue to provide all recruits, officers, supervisors, and managers with annual training on use of force. Such training will include and address the following topics: a) the VIPD's use of force model, as described in this Agreement; b) proper use of force decision making; c) the VIPD's use of force reporting requirements; d) the Fourth Amendment and other constitutional requirements; e) examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making; f) interactive exercises that emphasize proper use of force decision-**



**making; g) de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest maybe the appropriate response to a situation even when the use of force would be legally justified; h) threat assessment; i) appropriate training on conflict management.**

### **Compliance Assessment:**

Phase 1 is inapplicable to this Consent Decree requirement. The Department has not achieved Phase 2 or Phase 3 compliance as discussed below. Therefore, the Department is not in substantial compliance with ¶ 79 of the Consent Decree.

### **VIPD Report:**

See VIPD Report at Appendix A at pages xxxvii-xxxviii.

### **OIM Report:**

a) Satisfied, but additional work is required. The VIPD has incorporated a use of force model into its Use of Force Policy and has provided corresponding training. Given the importance of the use of force model, the VIPD should seek to reinforce it through further in-service, Roll Call, and Commanders Call training.

b) Satisfied. The VIPD has conducted training on proper use of force decision making. During the Fourth Quarter of 2013, the VIPD used simulators in each District to teach use of force decision making. The VIPD should provide the OIM with a report describing that experience, including any common issues or deficiencies.

c) Satisfied, but additional work is required. The VIPD has provided in-service, Roll Call, and Commanders Call training on use of force reporting. The VIPD has improved its use of force reporting since the inception of the Consent Decree. However, there are persistent issues with timeliness and the use of pattern language in RRRs.

d) Satisfied, but additional work is required. Topics including the Fourth Amendment and other constitutional requirements have been addressed in previous training provided by the Department. However, the OIM has not received any evidence that the VIPD evaluates whether its personnel complies with the Fourth Amendment or other constitutional protections.

e) Satisfied. The Police Practices Experts have observed that the VIPD has started to place more emphasis on scenario-based training. This is a

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positive development since much of the training previously observed by the Police Practices Experts was a recitation of the policy. However, instructors should detail each scenario that they plan to discuss during training in their lesson plans so they can be reviewed by other instructors (and subsequently incorporated into similar trainings).

f) Satisfied, but additional work is required. One of the Police Practices Experts observed training during the Fourth Quarter of 2013 that utilized the Department's new simulator on St. Croix. The OIM was impressed by the VIPD's initial steps to simulate proper use of force decision making. The simulators created the proper amount of stress and realism. The OIM particularly applauds the VIPD on having each participant take part in a debriefing exercise relating to his or her scenario; these debriefing exercises appeared to be of great value. The OIM would like to see the Department utilize its training simulators with greater frequency.

g) Not satisfied. As of the Fourth Quarter of 2013, the OIM has seen very limited scenario-based training on de-escalation techniques, including encouraging officers to make arrests without using force, or instructing on disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest. We encourage the VIPD to implement scenario-based training more widely.

h) Not satisfied. Although the VIPD is aware that the VIPD's SWAT team has received threat assessment training, the VIPD has not provided the OIM with documentation showing that it has provided threat assessment training to all VIPD personnel.

i) Not satisfied. The VIPD has not provided the OIM with lesson plans that focus specifically on conflict management. We are aware that the VIPD plans to conduct Crisis Intervention Training in 2014.

**Recommendations:**

We previously recommended that the Training Division work closely with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies for which compliance has been problematic based on the results of post-training examinations, Department audits, and OIM audits. The Training Division also should work closely with the Use of Force, Citizen Complaint Process, and Management and Supervision working groups to identify areas that require additional training, either through additional in-service training or Roll Call and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations. VIPD management needs to use information attained from the EIP to identify training needs. The VIPD has not provided the OIM with any indication that the Training Division has formalized or documented its relationship with the Chiefs

in both Districts to coordinate Roll Call training. To the extent that the VIPD has undertaken such a process, it should explain what training has been held as a result of this joint effort.

The OIM strongly believes that the VIPD's management team, including the Training Director, would benefit from forging a closer relationship with other comparably-sized law enforcement agencies. We especially recommend that the VIPD contact departments that (1) have successfully complied with a consent decree, memorandum of understanding, or similar agreement, and (2) have been accredited by the Commission on Accreditation for Law Enforcement Agencies.

**80. The VIPD will continue to provide training to all its officers on the VIPD citizen complaint process. The VIPD will develop a protocol for all its officers on appropriate conduct and responses in handling citizens' complaints and will train officers in the protocol.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies consistent with the citizen complaint process requirements of the Consent Decree and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 80 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at page xxxviii.

**OIM Report:**

During the Fourth Quarter of 2013, the VIPD conducted in-service training regarding the Citizen Complaint process. However, the VIPD has not provided documentation confirming that all required personnel attended the trainings, and if not, that corrective action was taken.

The Department has also conducted a number of Roll Call and Commanders Call trainings relating to the citizen complaint process. Records for Roll Call and Commanders Call training, like all Department training, should document which Officers attended training, which Officers did not attend, and what efforts the Department has undertaken to train any "no shows." The Training Division, in coordination with the Chiefs from both Districts, must ensure that Roll Call and Commanders Call training is implemented and documented systematically.

**Recommendations:**

The VIPD has made significant progress issuing the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizens Policy. The VIPD should continue to provide Officers and Supervisors with additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. The Training Division also should document training and testing in connection with Roll Call and Commanders Call training.

**81. The VIPD will provide training on appropriate burdens of proof to all supervisors, as well as the factors to consider when evaluating complainant or witness credibility (to ensure that their recommendations regarding dispositions are unbiased, uniform, and legally appropriate). The VIPD will also continue to provide training to supervisors on leadership and command accountability, including techniques designed to promote proper police practices. This training will be provided to all officers promoted to supervisory rank within 90 days of assuming supervisory responsibilities, and will be made part of annual in-service training.**

**Compliance Assessment:**

The Department has achieved Phase 1 and 2 compliance because it has issued policies consistent the requirements of ¶ 81 and has provided related training, but it has not achieved Phase 3 compliance as discussed below. Therefore, the Department is not yet in substantial compliance with ¶ 81 of the Consent Decree.

**VIPD Report:**

See VIPD Report at Appendix A at pages xxxviii-xxxix.

**OIM Report:**

The VIPD has provided training on the appropriate burdens of proof; however, it has not provided documentation confirming that all Supervisors have been trained.

The VIPD also reports that it anticipates conducting promotional exams in April and May 2014. In preparation for these promotions, the VIPD has contracted with a third-party vendor to hold leadership training in March and June 2014. The OIM was pleased to learn that the Chiefs and Deputy Chiefs

attended a leadership training program in Sturbridge, Massachusetts for police executives during the Fourth Quarter of 2013.

**Recommendations:**

The Training Division should work with the Chiefs and Deputy Chiefs to conduct Commanders Call training on the preponderance of the evidence standard, document such training and attendance by Supervisors, and record the results of any examinations administered following training. Additionally, the VIPD should develop a process for identifying personnel who continually fail to comply with Department policy. Once those individuals are identified, the working group should work with the Chiefs, Deputy Chiefs, the IAB, and the Training Division to provide remedial training or other corrective action. All audits should be documented and shared with the Compliance Coordinator, the Compliance Manager, and the OIM.

The VIPD should also consider providing additional training to senior personnel (e.g. directors, captains, Deputy Chiefs, and Chiefs) regarding command accountability. Many of the deficiencies noted in this Report could (and should) have been identified as part of the Command review process. In addition to identifying deficiencies, senior personnel must feel empowered and comfortable to take corrective action, including discipline, as appropriate. This should be a priority for the VIPD.

**100. The Territory of the Virgin Islands and the VIPD shall implement each and every provision of this Agreement as that term defined in Paragraph 30 of this Agreement.**

**101. The VIPD shall implement immediately all provisions of this Agreement that involve the continuation of current VIPD policies, procedures, and practices. The remaining provisions shall be implemented either by the specified implementation date or, for those provisions that have no specified implementation date, as soon as is reasonably practicable and no later than 150 days after this Agreement's effective date.**

**OIM Report:**

As explained earlier in the Report, the OIM will assess whether the Department is consistently applying the policies and protocols required by ¶¶ 31, 39, 40, 47, 50, 52, 53, 62, 64 and 70 in connection with ¶¶ 100 and 101. The VIPD has not achieved substantial compliance with the implementation requirement of ¶¶ 100 and 101 because, among other things, the Department has not provided documentation demonstrating that VIPD personnel are proficient with the Department's policies.

On November 14, 2013, the OIM provided the VIPD with a chart that identifies the materials that the Department and the Territory should produce to the OIM to help demonstrate substantial compliance with the Consent Decree (the “Data Sources Chart”). Under the Data Sources Chart (which has been substantially incorporated into the Joint Action Plan), to demonstrate substantial compliance with the Consent Decree, the VIPD should provide the OIM with audits that demonstrate that:

- All uses of force comply with VIPD policies and applicable law.
- As appropriate, Officers disengaged, contained the area, conducted surveillance, waited out the subject, and/or called in specialized units.
- When feasible, an individual is allowed to submit to arrest before force is used.
- In use of force incidents, the use of force review concludes that sufficient less lethal alternatives were used where appropriate based on the totality of circumstances.
- Patrol and other applicable officers carry less lethal alternatives at all times.
- In use of force incidents, choke holds and similar carotid holds were not used, except where deadly force was authorized.
- In use of force incidents where the use of force review concluded that the use of choke holds or similar carotid holds were not authorized, the VIPD took corrective and/or disciplinary action against the Officer who used a choke hold or other carotid hold.
- Sworn personnel do not possess or use unauthorized firearms or ammunition.
- In cases where an officer is found to be in possession of unauthorized firearms or ammunition, there is evidence that an investigation was conducted and appropriate corrective action was taken.
- Critical Firearm Discharges are documented in an RRR.
- In reported incidents involving off-duty Officers taking police action, the off-duty Officer’s conduct comports with policies regarding off-duty Officers taking police action and ¶¶31 (a) – (g) of the Consent Decree.
- Off-duty Officers notified on-duty sworn personnel or local law enforcement Officers before taking police actions, except in exigent circumstances.
- In incidents where an off-duty Officer taking police action appeared to have consumed alcohol, the off-duty Officer submitted to field sobriety, breathalyzer, and/or blood tests.



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- In reportable use of force incidents, the investigating Supervisor had no involvement in the incident (i.e., he/she was not involved in the use of force incident, his/her conduct did not lead to an injury, and he/she did not authorize conduct leading to the use of force incident).
- Use of force investigations include documented findings of all of the considerations required by ¶ 52.
- When administrative investigations are referred to the VIAG or other appropriate agency, the VIPD has documentation that it has completed, to the extent possible, its own administrative investigation.
- RMS reports are generated and distributed to appropriate sworn personnel (e.g., Chiefs, Deputy Chiefs, and supervisors) on a monthly basis.
- The VIPD is utilizing the EIP. Underlying documentation should include documentation of EIP meetings, the Early Intervention Unit Action Plan and Early Intervention Unit Assessment, attendance records of VIPD personnel and all follow-up documentation for completed intervention.
- Deputy Chiefs, managers and Supervisors have initiated EIP interventions based on activity and pattern assessment contained in the RMS.
- EIP interventions are based on all relevant and appropriate information, including the nature of the Officer's assignment, crime trends and crime problems, and not solely the number or percentages of incidents in any category of information recorded in the risk management system.
- In instances when Officers are transferred to a new section or unit, Deputy Chiefs, managers and Supervisors for the relevant section or unit promptly review the RMS records of such officers.
- The VIPD has established a protocol for evaluating whether Deputy Chiefs, managers and Supervisors are able to use the RMS effectively.
- Disciplinary penalty decisions are consistent with the penalties set forth in the Disciplinary Matrix.

In the next Report, the OIM hopes to provide a more detailed analysis of the steps that the VIPD has taken towards implementing each applicable provision of the Consent Decree based on its responses to the Data Sources Chart.

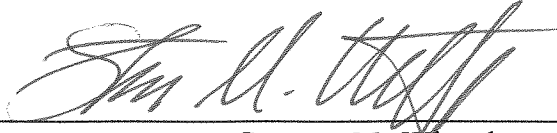
## Conclusion

While the VIPD continues to make progress in certain areas, work remains, particularly with respect to the Department's use, reporting, and investigation of force. The Department should conduct further training to emphasize the requirements of its revised use of force policies, which are at the heart of the Consent Decree.

In order to achieve substantial compliance (and demonstrate substantial compliance to the OIM), the Department must (among other things) put in place a rigorous audit process to determine whether VIPD personnel are complying with the Department's policies, and to memorialize the VIPD's progress towards substantial compliance. This will require the Audit Unit to be fully functional and to work with the Training Division, the IAB, and the working groups. As we have previously reported, a robust auditing function is essential to the Department's ability to ensure that policies are implemented, that personnel understand and comply with Department policies, and that remedial training or other required action is taken to ensure that VIPD personnel are equipped to carry out Department policies and procedures in their daily policing activities. While audits conducted by the working groups can supplement the Audit Unit's work, they will generally be more narrowly tailored than audits conducted by the Audit Unit and not a substitute for the Audit Unit's work.

The VIPD has the opportunity in 2014 to achieve substantial compliance with a number of Consent Decree paragraphs. The path forward requires a strong commitment from the top (especially with respect to accountability by Supervisors), an active review and precise response by the working groups to the issues and recommendations raised in the OIM's Reports, and a robust audit function to confirm substantial compliance or direct the VIPD to the specific issues it needs to surmount to get there.

With a concerted, multi-dimensional effort by the VIPD, continued active involvement by the Court, and financial support by the Territory, we are cautiously hopeful that substantial progress can be made in 2014. However, it will require a serious and sustained effort as a significant amount of work remains for the VIPD to achieve substantial compliance.

A handwritten signature in black ink, appearing to read "Steven M. Witzel", is positioned above a horizontal line.

Steven M. Witzel  
Independent Monitor  
Fried, Frank, Harris, Shriver & Jacobson LLP

February 19, 2014

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**Appendix A**  
**VIPD Report for the Fourth Quarter of 2013**

*CONSENT DECREE  
BETWEEN  
THE UNITED STATES DEPARTMENT OF JUSTICE,  
THE TERRITORY OF THE VIRGIN ISLANDS AND THE  
VIRGIN ISLANDS POLICE DEPARTMENT*



*STATUS REPORT*  
*Issued January 7, 2014*

*Virgin Islands Police Department*  
*Status Report*

## ***Introduction***

*In March 2004, the Department of Justice (“DOJ”) initiated an investigation of an alleged pattern or practice of excessive force throughout the Virgin Islands Police Department (“VIPD”) under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”). Virgin Islands officials met with DOJ officials to facilitate the Virgin Islands’ cooperation with the Department of Justice investigation and craft a consent decree addressing all the parties’ concerns. The consent decree (“CD”) is the result of a cooperative effort that evinces a commitment to constitutional policing on the part of the Department of Justice; the Territory of the Virgin Islands; and the Virgin Islands Police Department.*

*This progress report is the seventeenth submitted by the Virgin Islands Police Department’s (VIPD) Compliance Monitoring Team (CMT). The CMT was created to ensure the timely implementation of and compliance with the Consent Decree (CD) [United States of America v. The Territory of the Virgin Islands; and the Virgin Islands Police Department; 08-CV-00158; dated March 24, 2009].*

*This report focuses on the work completed this quarter, and on the paragraphs of the CD which have “substantive” requirements that either VIPD or the Virgin Islands Government is responsible for complying with. A status is provided for each of these provisions as well as a summary of the steps taken by VIPD during this quarter in order to comply with the Agreement.*

## **EXECUTIVE SUMMARY**

### **TRAINING**

*The Training Bureau conducted in service trainings for Officers and Supervisors in both Districts October-November 2013, which included trainings in the following specific areas: Defensive Tactics and scenario based trainings with the use of the Simulator, Constitutional Law Update, TASER, OC Spray, Disciplinary Matrix, Domestic Violence, Roll Call Policy, Preponderance of the Evidence Standard and Dealing with the Mentally ill.*

*OIM was provided a listing of all Officers in the St. Thomas/St. John District scheduled to attend in-service trainings during this reporting quarter. Use of force and force related lesson plans were reviewed by the VIAG prior to the execution of in- service trainings and copies of lesson plans were also submitted to OIM. Additional trainings coordinated during this reporting quarter by the Training Bureau included Law Enforcement Audit and Inspection, conducted October 14- 18 and 21-25, 2013 respectively in both Districts by MTAG (Marine Tactical Applications Global). Participants in this training in both Districts included Sworn and Civilian personnel in capacities of Managers, Directors, Deputy Chiefs and members of the respective working groups. Competency test was administered and a mock audit was done in both Districts, a copy of which was*

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*submitted to OIM to include an After Action Report by MTAG Instructors, which included the test scores of each class participant.*

*The Training Bureau also coordinated Integrated Use of Force Instructor training that was delivered by an outside vendor namely MTAG during this reporting quarter. A copy of the course outline for this training was submitted to OIM October 17, 2013. Also, a hard drive containing video footage of the Integrated Use of Force training was provided to a members of OIM during a site visit October 2013, to include Instructor certifications. Other trainings conducted during this reporting quarter specifically are Tactical Communication & Debriefing November 4-5 (St. Croix District) and 11-12 (St. Thomas/St. John District) and Patrol Response to Hostage & Barricaded situations ( St. Croix District) November 6-7 and (St. Thomas/St. John District) 13-14, 2013.*

*Also, efforts continue during this reporting quarter to implement Power DMS to facilitate the VIPD's training data base discussed previously and as a follow-up, communication meetings were held between representatives of Power DMS, Training Bureau and MIS. Since Power DMS is web base there isn't an actual physical software to install, so the communication meetings were more about procedural steps towards accessibility to the Power DMS site. The projected date for the actual implementation of Power DMS is the end of January 2014 and more will be reported in future quarterly reports concerning Power DMS's implementation.*

**CITIZEN COMPLAINT PROCESS**

*Informational materials on the complaint and compliment process continue to be available in both Districts at designated locations as required by the consent decree. Documented inspections for the availability of informational materials were submitted to OIM for the months of September, October, November and December for both Districts during this reporting period. Hand held audio recorders were procured and disseminated to Commanders in both Districts to facilitate the recording of statements as part of the complaint investigation process and reports continue to be generated and disseminated by IAB providing information on completed and outstanding complaint investigations.*

*Annual in-service trainings conducted in both Districts October-November 2013, included among other disciplines, training on Investigating Misconduct and Citizen Complaints as well as the Preponderance of the Evidence Standard taught by an Attorney in each District from the VIAG. Copies of the training schedules for this in-service training were provided to OIM.*



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*Additionally, audits were initiated by working groups of their respective areas of the consent decree and completed audit reports are expected by December 27, 2013. A copy of the Territorial Audit agenda identifying areas to be audited by each working group was submitted to OIM during this reporting period. Going forward audits will be conducted on a quarterly basis and copies of all audit reports will be shared with OIM.*

*The Police Commissioner authorized the attendance and participation of Sworn and Civilian employees in both Districts in Customer Service training coordinated through the local USVI Office of Tourism during the month of November 2013, and copies of the attendance sheets for both Districts were provided to OIM. This decision was made in response to the incidence of discourtesy complaints evident in reports generated by IAB regarding complaints received, and further establishes an example of reviews of reports generated and acted upon or responded to by providing appropriate training where deemed necessary.*

**RISK MANAGEMENT SYSTEM**

*The MIS Bureau completed the arrest data base installation during the latter part of December 2013, and has configured same so that Officer's name and PDN will automatically be included on the arrest report generated. More will be reported in future quarterly reports concerning the arrest data base as it is being implemented.*

*The IAB conducted an EIP PowerPoint presentation on November 4, 2013 that included both Districts via video conference and was given to Directors, Managers, Chiefs and Deputy Chiefs in both Districts. The presentation outlined the steps of the EIP process and the role of the Chain of Command specific to actions necessary pursuant to the EIP process. Also, during in-service trainings October-November 2013, among other trainings conducted, training was also conducted on the Disciplinary Matrix and policy which included the administering of a post competency exam a copy of which including the lesson plan was submitted to OIM.*

*Additionally, in order to facilitate an easier and more user friendly means of completing the required Blue Team Weekly Inspection reports regarding the operation of Blue team, the Blue Team Inspection Report form was revised to include check boxes and the form was also produced in an electronic format. A copy of the revised form was submitted to OIM to include a listing that identifies all the locations where the Blue Team software is installed in both Districts.*

*As it relates to the consent decree requirement specific to the collection and recording of all civil suits against the VIPD and the Government of the USVI, the VIAG submitted during this reporting period to the IAB civil suit cases from 2009 to present for both Districts. These cases are currently being reviewed, sorted and entered into IAPRO by IAB. Also, included among the civil suit cases were also vehicle accidents. Once IAB has*

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*completed their review and sorting of the submitted cases OIM and USDOJ will be afforded copies.*

**Use of Force**

*The Police Commissioner approved the SOP (Standard Operating Procedures) for the critical review of policies, which became effective November 25, 2013. This SOP delineates the procedural steps in the policy review process to ensure a consistently implemented process for each annual review of policies. Following the approval of this SOP, the Commissioner also issued a Commissioner's directive dated December 18, 2013, that directed the initiation of the policy review process by first identifying all the use of force policies for review and providing due dates for department wide input in both Districts regarding each use of force and force related policy up for review. At the end of the review process OIM and USDOJ will be afforded copies of any revised Use of Force, force related or any other consent decree policy revised during this review process.*

*The IAB continues during this reporting quarter to generate and disseminate to the Chain of Command reports that identifies active and completed use of force cases, which is particularly significant as the department is preparing for the completion of the annual Use of Force report for the year 2013.*

*Also, during this reporting quarter, in-service trainings conducted October –November 2013, in both Districts included Defensive Tactics, Scenario based trainings utilizing the Simulator, Constitutional Law Update, TASER and OC Spray.*

*Additionally, audits are currently ongoing by working group of their respectively assigned areas to include the use of force working group as it relates to the use of force mandates of the consent. Completed audit reports are expected December 27, 2013 and will be shared with OIM and USDOJ as requested. The Police Commissioner has indicated that copies of audit reports could be shared with OIM and USDOJ as early as January 2014.*

***1. Compliance Summary***

***CD Paragraphs***

***I. INTRODUCTION***

***II. USE OF FORCE POLICIES***

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*Paragraph 31- The VIPD will review and revise its use of force policies as necessary to:*

*a. define terms clearly;*

*b. define force as that term is defined in this Agreement;*

*c. incorporate a use of force model that teaches disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units as appropriate responses to a situation;*

*d. advise that, whenever possible, individuals should be allowed to submit to arrest before force is used;*

*e. reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and/or civil liability;*

*f. ensure that sufficient less lethal alternatives are available to all patrol officers; and*

*g. explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.*

*Once the DOJ has reviewed and approved these policies, the VIPD shall immediately implement any revisions.*

\*

The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 31 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph. The VIPD is currently preparing for the annual review of all Use of Force and force related policies. Thus far, the Police Commissioner has issued in both Districts, a directive identifying the policies for annual review and specific timelines for department personnel to submit their feedback concerning the identified policies for review. More will be reported in future quarterly reports as the annual reviews are initiated and progresses.

**II. EVALUATION, DOCUMENTATION, AND REVIEW OF USE OF FORCE**

**A. General Use of Force Incidents**

*(AMENDED)Paragraph 32 – The VIPD will require all uses of force to be documented in writing. The use of force report form will indicate each and every type of force that was used, and require the evaluation of each use of force. Use of force reports will include a supervisor’s narrative description of the events preceding the use of force, written by a supervisor or by the designated investigative unit. Use of force reports also will include the officer(s)narrative description of events and the officer(s) statement. Except in cases of use of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, the officer’s statement shall be audio or videotaped.*

\*As part of the implementation phase towards compliance with paragraph 32 of the consent decree, the VIPD during this reporting quarter has authorized and initiated audits by working groups of their respective areas. After having completed a weeklong onsite training by MTAG (Marine Tactical Application Global) in both Districts during the month of October 2013, in conducting audits,

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*the working groups are now equipped with the basics of conducting an audit and have begun during this reporting quarter to conduct the necessary audits of their respective areas.*

*In a memo dated November 16, 2013, and subsequently submitted to OIM 11/21/13 via email, the Chair person of the Audit Group secured the Police Commissioner's approval of the "Territorial Audit Agenda" that delineated areas to be audited by the respective working groups. The audits will span the third quarter of 2013 and completed audit reports are expected by December 27, 2013 to the Chair person of the Audit Group, who will review and compile the reports for submission to the Police Commissioner.*

*As it relates to the use of force working group, the areas to be audited as outlined in the Territorial Audit Agenda are as follows: Assess whether Officers who failed to follow policy or who used force receive remedial training; Assess whether Officers who fail to follow policy or who used force incorrectly are disciplined; Determine whether supervisors are investigating use of force as required by policy; Determine whether use of force investigations are being completed in a timely manner; Verify whether supervisors who neglect to perform their responsibilities to investigate have been disciplined and or received remedial training; Ensure that vipd has developed and implemented a process for identifying personnel who continually fail to report uses of force or otherwise fail to follow the policy and provide and document discipline and /or remedial training; Ensure that the VIPD conducts use of force review on a quarterly basis; Verify that audit tools are implemented to ensure staff are complying with policies(i.e, review of sample 1A's and arrest reports to ensure RRR's are completed); timeliness of completion of use of force investigations audits; Ensure that vipd has developed and implemented a process for identifying supervisors who neglect their responsibilities to investigate as required by policy and provide and document discipline and/or remedial training; Conduct equipment inspections of personnel for less lethal weapons with report on quarterly basis ; and Ensure that arrest reports and use of force reports are properly completed by those Officers involved in the arrest/force incidents and reviewed by Supervisors who were not involved in the arrest/force incidents.*

*These audits will follow the procedures as set forth in the Audit Action Plan developed in collaboration with the USDOJ and VIAG. Copies of all completed audit reports will be shared with OIM to include USDOJ as requested.*

**(AMENDED)Paragraph 33 – Officers shall notify their supervisors following any use of force upon the receipt of an allegation of excessive force. Except in uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ, Supervisors will respond to the scene, examine the subject for**

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***injury, interview the subject for complaints of pain, and ensure that the subject receives needed medical attention.***

*\*The VIPD during this reporting quarter has initiated audits that are anticipated to gauge the department's compliance or non compliance with established policies and procedures related to use of force reporting and other areas of the consent decree. As part of phase 3 or the implementation phase, these audits and or inspections will be conducted on a quarterly basis to ensure consistency in the implementation of the department's policies and procedures in both Districts. As these audits are completed to include the requirements of paragraph 33 of the consent decree, the audit reports will be shared with OIM and USDOJ.*

*The VIPD expects all of its' first line Supervisors in particular and the Chain of Command in general to be keen in their review of all documents submitted to them for review on a daily basis, as this will undoubtedly ensure that deficiencies are identified and corrected at the first line level prior to audits being conducted.*

*While on the subject of first line Supervisors, the VIPD has initiated steps which include the ordering of test materials necessary to administer promotional exams anticipated to take place in the first quarter of 2014. Promotional exams will be initiated for the ranks of lieutenant and captain on tentatively scheduled dates of April 7 through April 11, 2014 according to a memorandum from the Director of Personnel, Government of the Virgin Islands dated December 20, 2013, a copy of which was submitted to OIM December 27, 2013. Also, promotional exam for Police Sergeant have been tentatively scheduled for the week of May 19-23, 2013 and sign up for this exam begins on Monday, February 3, 2014. A copy of the memorandum from the Division of Personnel dated December 24, 2013, announcing this promotional exam was also forwarded to OIM.*

*The Supervisory ranks within the VIPD requires bolstering, so as to facilitate the execution of Supervisory rank specific functions particularly those mandated by the consent decree; further it has been established that Supervisory ranks in the VIPD has depleted over the years attributable to attrition and other factors, as such adequate levels of Supervision are essential to achieving compliance with paragraph 33, as well as all the other mandates of the consent decree and for normal police operations in general.*

***(AMENDED)Paragraph 34 – Supervisors, or designated investigating officers or units, will review, evaluate, and document each use of force, and will complete the narrative description section of the use of force report. The narrative description will include a precise description of the facts and circumstances that either justify or fail to justify the officer's conduct. As part***

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of this review, the supervisor or designated investigating officer/unit will evaluate the basis for the use of force, and determine whether the officer's actions were within VIPD policy. An officer who used force during the incident, whose conduct led to an injury, or who authorized conduct leading to the use of force or allegation of excessive force, or who was present during the incident will not be eligible to review or investigate the incident.

\*The VIPD during this reporting quarter has initiated audits that will gauge the department's compliance or non compliance with established policies and procedures related to use of force reporting and other areas of the consent decree. As part of phase 3 or the implementation phase, these audits and or inspections will be conducted on a quarterly basis to ensure consistency in the implementation of the department's policies and procedures in both Districts. Also, as these audits are completed to include specific requirements of paragraph 34 of the consent decree as indicated above, the audit reports will be shared with OIM and USDOJ.

The VIPD expects all of its first line Supervisors in particular and the Chain of Command in general to be keen in their review of all documents submitted to them for review by Officers, so as to ensure that deficiencies are identified and corrected at the first line level, thus overall enabling the department to maintain a standard consistent with best police practices. These anticipated ongoing audits will help in identifying among other things, Supervisors who are performing below par in their daily Supervisory roles.

(AMENDED)Paragraph 35 – The parties agree that it is improper interview procedure during use of force reviews to ask officers or other witnesses leading questions that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques. In each review/investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. The VIPD will make all reasonable efforts to resolve material inconsistencies between witness statements. The VIPD will train all of its supervisors and officers assigned to conduct use of force investigations, including in the factors to consider when evaluating credibility.

\*As have been established, Use of Force and force related policies have been developed, approved, disseminated and trained on and continues to be trained on during ongoing annual in-service trainings. Select personnel in each District have received Use of Force Instructor Certification training at FLETC, Glenco Georgia and the VIPD during this reporting quarter has initiated audits that is expected to gauge the department's compliance or non compliance with established policies and procedures related to Use of Force reporting and other



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areas of the consent decree. As part of phase 3 or the implementation phase, these audits and or inspections will be conducted on a quarterly basis to ensure consistency in application of department's policies and procedures in both Districts. As these audits are completed to include specific requirements of paragraph 35 of the consent decree, the audit reports will be shared with OIM and USDOJ.

(AMENDED)Paragraph 36 – Supervisors, or designated investigating officers or units, shall conduct an investigation of all uses of force or an injury resulting from a use of force by any officer under their command. This requirement does not apply to uses of force involving the lowest level of force as defined in VIPD policy as approved by DOJ. In an investigation, supervisors or designated investigating officers or units, shall interview all witnesses to a use of force or an injury resulting from a use of force. Consistent with the requirements of the collective bargaining agreement or other applicable law, VIPD supervisors or designated investigating officers or units shall ensure that all officer witnesses provide a statement regarding the incident. Supervisors, or designated investigating officers or units, shall ensure that all use of force reports for all levels of force identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors, or designated investigating officers or units, shall ensure that all reports for all levels of force indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors, or designated investigating officers or units, shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.

\*The VIPD continues to investigate use of force as mandated by paragraph 36 of the consent decree, and as established by department approved force policies i.e Use of Force and Reporting Review and Investigation of Use of Force. Completed investigations are submitted through the Chain of Command to IAB for review and any investigation that does not meet established policy standards are returned. The IAB further generates through the use of IAPRO reports at varying intervals specifically on a weekly, monthly and quarterly basis listing active and completed Use of Force cases in both Districts. Among the information listed in these reports are the IA case number, date incident occurred, Supervisor or Investigative Unit assigned to investigate the case, when the case was received by IAB, when the completed investigation is due for submission to IAB and case status. The IAB also continues to provide OIM a listing of Use of Force and case summaries, affording them the opportunity to determine which completed investigations to review.

Also, during this reporting quarter the VIPD has initiated audits to gauge the department's compliance or non compliance with established policies and

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procedures related to use of force reporting and other areas of the consent decree. As these audits are completed to include specific requirements of paragraph 36 of the consent decree, the audit reports will be shared with OIM and USDOJ.

*\* (AMENDED)Paragraph 37 – All investigations into use of force shall be reviewed by the Officer’s Commander and /or Director, or by a Commander and /or Director in the designated investigative unit, who shall identify any deficiencies in those reviews, and shall require supervisors, or designated investigative Officers or units, to correct any and all deficiencies. Supervisors, and designated investigative Officers or units, will be held accountable for the quality of their reviews. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a Supervisor , or designated investigative Officer or unit, fails to conduct a timely and thorough review, or neglects to recommend appropriate corrective action, or neglects to properly implement appropriate corrective action. As provided by VIPD policy and approved by DOJ designated command staff shall further review the commander and/or Director’s reviews according to the level of force involved.*

\* The VIPD during this reporting quarter has initiated audits that are expected to gauge the department’s compliance or non compliance with established policies and procedures related to use of force reporting and other areas of the consent decree. As part of phase 3 or the implementation phase, these audits and or inspections will be conducted on a quarterly basis to ensure consistency in the application of department’s policies and procedures in both Districts. As these audits are completed to include specific requirements of paragraph 37 of the consent decree, the audit reports will be shared with OIM and USDOJ.

The VIPD However, expects all of its first line Supervisors including Commanders and Directors in particular as specified in paragraph 37 and the Chain of Command in general to be keen in their review of all documents submitted to them for review, so as to ensure that deficiencies are identified and corrected before submission to the next level of review. As audits are executed on an ongoing basis, the VIPD will be able to identify areas of strength and weaknesses and implement the appropriate corrective measures as necessary.

*(AMENDED)Paragraph 38 – The VIPD will investigate all critical firearm discharges. The VIPD will ensure that the investigation accounts for all shots and the locations of all officers who discharged their firearms. The VIPD will conduct all ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests, as appropriate.*

\*As reported prior, the VIPD continues to maintain a contract with an outside vendor located in the St. Croix District, to provide Ballistic services related to firearms discharges and during this reporting quarter the VIPD is pleased to

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report that the Ballistic report for the two Officer involved shootings have been completed. Also, during this reporting period and specifically on Wednesday December 11, 2013, one of the two Ballistic reports requested by OIM for Police involved shootings was submitted via email to OIM. The other Ballistic report requested by OIM is being finalized and will be submitted likewise at the end of this reporting quarter or January 2014.

The VIPD's IAB also continues as required by paragraph 38 of the consent decree to investigate all critical firearms discharges and the department also continues to provide training in Crime Scene Investigations as was evident in the first quarter of 2013 and also evident in the 2014 training calendar that has identified Crime Scene Investigation training in both Districts scheduled for July 2014. There were however, no critical firearms discharges for this reporting period.

The initiation of audits during the 4<sup>th</sup> quarter of 2013 and the expected periodic execution of audits henceforth on a quarterly basis is anticipated to establish the extent of compliance or non-compliance with paragraph 38 as well as other areas of the consent decree and as these audits are completed OIM and USDOJ will be afforded the opportunity to review the audit reports.

**Specific Force Policies**

**Paragraph 39 – VIPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official VIPD channels, and shall specify the number of rounds VIPD authorizes its officers to carry. The policy will continue to require that all discharges of firearms by officers on or off-duty, including unintentional discharges, be reported and investigated.**

\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 39 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph. The VIPD continues however, to provide training in both Districts on an ongoing basis, particularly during annual in-service trainings and roll call training sessions on the firearms policy as well as other disciplines.

**Paragraph 40 – The VIPD shall revise its policies regarding off-duty officers taking police action to:**

**a. provide that off-duty officers shall notify on-duty VIPD or local law enforcement officers before taking police action, absent exigent**

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circumstances, so that they may respond with appropriate personnel and resources to handle the problem;

b. provide that, if it appears the officer has consumed alcohol or is otherwise impaired, the officer shall submit to field sobriety, breathalyzer, and/or blood tests.

\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 40 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph. The VIPD's Off Duty Official Action policy continues to be in effect and training continues on this as well as other consent decree policies during annual in- service trainings and roll call training sessions.

Paragraph 41 – The VIPD shall continue to provide an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The VIPD shall continue its policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.

\* Consistent with the requirement to provide training, the VIPD conducted training during in-service trainings in both Districts October –November 2013, of this reporting period on TASER and the TASER policy by certified VIPD TASER Instructors.

The VIPD also, during this reporting quarter has initiated audits that are expected to gauge the department's compliance or non compliance with established policies and procedures related to use of force reporting and other areas of the consent decree. As part of phase 3 or the implementation phase, these audits and or inspections will be conducted on a quarterly basis to ensure consistency in application of department's policies and procedures in both Districts. As these audits are completed to include specific requirements of paragraph 41 of the consent decree, the audit reports will be shared with OIM and USDOJ.

#### **IV. CITIZEN COMPLAINT PROCESS**

##### **A. Public Information**

Paragraph 42 - The VIPD will develop and implement a program to inform persons that they may file complaints regarding the performance of any officer. This program will include distribution of complaint forms, fact sheets, informational posters, and public service announcements that describe the citizen complaint process.

\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 42 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph. However, the VIPD continues to promote the complaint

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and compliment public information program through various means as identified in paragraph 42. Radio and television commercials on the complaint and compliment process continues on several local TV and Radio Stations, printed informational materials including Brochures, compliment and complaint forms in English, French and Spanish continue to be made available at Zones, Substations Libraries, Internet, in all marked and unmarked Police vehicles and inspections continue to take place to ensure the continued availability of the informational materials consistent with consent decree requirements, as specified pertaining to paragraph 42.

(AMENDED)paragraph 43 – The VIPD will make complaint forms and informational materials available at government properties such as VIPD district stations, substations, and mobile substations, libraries, the Internet, and, upon request, to community groups and community centers. At each VIPD district station, substation, and mobile substation, the VIPD will permanently post a placard describing the complaint process and include the relevant phone numbers. These placards shall be displayed in both English and Spanish, and where deemed necessary, in French or French Patois, to account for diversity in the VI population. The VIPD will require all officers to carry informational brochures and complaint forms in English and Spanish, and where deemed necessary, in French or French Patois, in their vehicles at all times while on duty. If a citizen objects to an officer's conduct, that officer will inform the citizen of his or her right to make a complaint. Officers will not discourage any person from making a complaint.

\*The VIPD continue during this reporting quarter to ensure that the required informational materials on the complaint and compliment process are available at all locations as required. The required documented inspections continues to be submitted to OIM as was evident during the months of September, October, November and December of this quarter, when copies of documented inspections (both Districts) for informational materials at designated locations as mandated were emailed to OIM.

The VIPD revised the inspection form to include check boxes making it easier and less time consuming to complete as the OIM will notice going forward as the inspection forms continue to be submitted. The form is also in an electronic format so that it could be completed on the computer and emailed, eliminating the need to fax or scan the completed forms. The VIPD also, although not a consent decree requirement translated the compliment form into Spanish and now the compliment form like the complaint form is also available in all three languages, English, French and Spanish. The department has already received the revised version of completed complaint forms where complainants answered the questions relative to Officers advising them of their right to make a complaint



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*and whether or not Officers discouraged them from filing a complaint. This information will aid the VIPD in assessing to what extent Officers are complying with those specific requirements of the consent decree.*

*As stated earlier in this report, the VIPD has initiated audits by working groups of their respective areas and as these audits are completed and reported, the VIPD will have a much clearer picture of strengths and weaknesses and the steps necessary to remediate identified deficiencies.*

**Means of Filing and Tracking Complaints**

**Paragraph 44 - Complaints may be filed in writing or verbally, in person or by mail, telephone (or TDD), facsimile or electronic mail. The duty officer at the front desk of each district station will be authorized to take complaints, including third-party complaints, which persons may file at any district station. Complaint intake officers may describe facts that bear upon a complainant's demeanor and physical condition but May not express opinions regarding his/her mental competency or veracity. Each complaint will be resolved in writing. Upon receipt, each complaint will be assigned a unique identifier, which will be provided to the complainant. Each complaint will be tracked according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).**

*\*The VIPD continues this reporting quarter to comply with the requirements of paragraph 44 ensuring that complaints could be received in the various means as identified in paragraph 44, that each complaint continues to be resolved in writing, and is assigned a complaint number which is provided to the complainant. The VIPD has provided OIM with sample letters of complainant update on investigation as well as complaint disposition, as was acknowledged by OIM in their third quarter report for 2013 and these letters are also included in investigative files reviewed by OIM.*

*The VIPD during this quarter has implemented the audit phase where all areas of the consent decree to include the requirements of paragraph 44 will be audited and OIM as well as USDOJ will be afforded copies of all audit reports.*

*The citizen complaint process working group has identified audit items in the Territorial Audit Agenda approved by the Police Commissioner including the following: Assess whether Officers are familiar with the citizen complaint process and are complying with policy, Determine whether there are patterns of violation*



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*of policy, Determine whether citizen complaints investigations are being completed in a timely manner and Determine whether each complaint was assigned a unique identifier upon receipt, and whether the identifier was provided to the complainant.*

*These audits are expected to be completed by December 27, 2013 and forwarded to the Chairperson of the Audit group for review, compilation and submission to the Police Commissioner.*

***Paragraph 45- Copies of all allegations of misconduct against the VIPD filed with the Zone Commands will be referred to Internal Affairs Unit ("IAU") within five business days.***

*\*Through policies developed (Acceptance and Processing Citizen Complaints/ Investigating Misconduct) and approved, the requirements of paragraph 45 have been established and these policies as reported prior have been trained on department wide in both Districts during annual in-service, roll call and Commander's call trainings. As part of the implementation phase or phase 3 of a three phase process, the VIPD has initiated audits to gauge compliance with paragraph 45 as well as other consent decree requirements. These audits going forward will be conducted on a quarterly basis and the audit reports will be shared with OIM and USDOJ starting with the first audit representing the third quarter of 2013, that is expected to be completed by December 27, 2013.*

***Investigation of Complaints***

***Paragraph 46 - Complaints will be evaluated based on a preponderance of the evidence standard, for which the Territory will develop and implement appropriate training.***

*\* The VIPD continues to provide training on the Preponderance of Evidence Standard on an ongoing basis, as was evident during in- service trainings in both Districts October –November 2013, in which Supervisors in both Districts received instructions on the Preponderance of Evidence Standard by Attorneys assigned to the Attorney General's Office. During that same in-service training period Supervisors as well as Officers, also received training on Investigating Misconduct and Citizen Complaint policy. Copies of lesson plans for this period of in-service trainings were provided to OIM during this reporting period. All participants in department authorized trainings are required to sign an attendance sheet indicating time arrived and time left. Through this attendance sheet the department is able to track who attended the training and who did not. The*

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department will continue to utilize multiple approaches to provide training including roll call /Commander's call sessions, and in-service training sessions.

Audits are currently in progress by the respective working groups and OIM will be afforded copies of the audit reports that will reflect the degree of compliance with paragraph 46, as well as other areas of the citizen complaint process.

**Paragraph 47 - The VIPD will explicitly prohibit from investigating an incident any officer who used force during the incident, whose conduct led to the injury to a person, or who authorized the conduct that led to these reportable incidents.**

\*The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 47 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph.

**Paragraph 48 - The VIPD will investigate every citizen complaint. The VIPD will establish a clear policy and procedure regarding the intake of any complaint, including anonymous and confidential complaints, against a VIPD officer. This policy and these procedures will include instructions to an officer for taking a complaint and prompt delivery to a supervisor.**

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\* Working groups have begun to audit their respective areas and their audit report is expected by December 27, 2013 to the Chair person of the Audit Group. The IAB however, continues to generate reports of complaints received and complaint investigation status as far as complaint investigations completed and outstanding. These reports are forwarded to the Chain of Command weekly, monthly and quarterly, so appropriate actions could be initiated by Zone Commanders in cases where investigations may be outstanding in their respective Zone.

**Paragraph 49 - The VIPD will institute a centralized numbering and tracking system for all complaints, and each complaint will receive a tracking number as quickly as possible. The IAU will be designated as the primary and centralized agency to determine whether the investigation will be assigned to zone (one of the seven zones located throughout the Virgin Islands), retained by the IAU, or referred for possible criminal investigation. If the IAU refers a complaint to a zone, copies of all documents, findings, and recommendations should be immediately forwarded to the IAU for tracking and monitoring. For complaints alleging the excessive use of force or violation of a person's constitutional rights, the Police Commissioner should be notified no less than twenty-four hours after receipt of a complaint.**

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*\*The VIPD continues to implement the requirements of paragraph 49 to include in particular the numbering and tracking of all complaints received and notification to the Police Commissioner within twenty four hours or less for specific violations. The VIPD has provided OIM with complaints with assigned complaint numbers, copy of investigative check sheet utilized by IAB to indicate date and time of notification to the Police Commissioner for cases of excessive force or allegations of constitutional rights violations and this practice of documentation continues.*

*The IAPRO software that has been purchased and installed and that continues to be utilized by the VIPD, generates complaint numbers for each complaint entered, therefore, the VIPD does not “rely on VITEMA to assign tracking numbers for each complaint”. Infact, the only scenario under which the VIPD relies on VITEMA to assign a complaint number is one where a complainant files a complaint at a Zone or Substation, in which case the Officer and or Supervisor taking the complaint is required to contact VITEMA, provide a brief synopsis of the complaint before receiving a complaint number; thus allowing the complainant to leave with a copy of their complaint with a complaint number, as required by the consent decree. The complaint then could either be forwarded manually to IAB in cases where Blue Team is not operational to be entered into IAPRO or entered into Blue Team at the Zone or Substation where it is uploaded to IAPRO and assigned a number in IAPRO that is further linked with the VITEMA assigned number, thus enabling the complaint to be tracked by either number in IAPRO. As already established, complaints received in either of the means identified by the consent decree are assigned a complaint number once entered into IAPRO.*

*During this reporting period the following case(s) were provided to a member of OIM during a site visit to the St.Thomas/St. John District October 15, 2013 and were also sent electronically to OIM October 16, 2013; case # 2013-0094, which included among other documents in the investigative case file, the complaint, complaint Disposition, Investigative check sheet, letter to the complainant, receipt of complaint letter and referral to Command.*

*The initiation of audits during this reporting quarter and going forward on a quarterly basis by working groups of their respective areas of responsibility is an essential and required step in determining the extent of compliance or non compliance with paragraph 49 and other areas of the consent decree. Any deficiencies disclosed as a result of these audits will be addressed to ensure that established policies and procedures are consistently being adhered to and further to ensure that the VIPD maintains standards consistent with best police practices.*

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**Paragraph 50 - The VIPD will adopt a single policy concerning the investigation of misconduct complaints, regardless of whether the investigation is conducted by the IAU or a zone.**

\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 50 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph. The Acceptance and Processing of Citizen Complaints and the Investigating Misconduct policies continues to be trained on and efforts are ongoing to fully implement both policies.

**Paragraph 51 - The VIPD will establish policies and procedures and train all of its investigators on the factors to consider when evaluating complainant or witness credibility; examination and interrogation of accused officers and other witnesses; identifying misconduct even if it is not specifically named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof. VIPD investigators will ensure that all officers on the scene of an incident provide a statement regarding the incident. The policy will require that all interviews be mechanically recorded using an audio or video tape.**

\* As stated earlier in this report on a continuing basis, the VIPD has provided training on the Citizen Complaint Process and Investigating misconduct as well as the Preponderance of Evidence Standard instructed by the VIAG in both Districts during in- service trainings, which was again conducted October-November 2013 of this reporting quarter. Attendance sheets are maintained for all of these trainings and competency exams are administered at the end of each in- service training class.

As was previously reported, the VIPD in addition to the installation of web based video/audio cameras on desk top computers at all Zones and Substations in both Districts, also has purchased and disseminated during this reporting quarter, hand held audio recorders for recording interviews.

The VIPD is currently conducting audits to gauge compliance with paragraph 51 as well as other applicable areas of the consent decree and audit reports are expected to be completed and submitted December 27, 2013 to the Chair person of the Audit Group.

**Paragraph 52 - The policy will require that the investigative findings include whether: 1) the police action was in compliance with policy, training and legal standards, regardless of whether the complainant suffered harm; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or**

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could have been employed; 4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics.

\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 52 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph.

Paragraph 53 - The policy will provide clear guidance to all investigators regarding the procedures for handling criminal misconduct allegations, referring them to the Virgin Islands Attorney General's Office or other appropriate agency for possible criminal prosecution, and the entity or individual who should make the determination of whether the complaint should be investigated criminally. The policy will be revised to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings.

\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 53 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph.

Paragraph 54 - In each investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the VIPD completely disregard a witness' statement merely because the witness has some connection to the complainant. The VIPD will make efforts to resolve material inconsistencies between witness statements.

\* As have been established through policy for which training have been and continues to be provided and as determined by OIM that phase 1 and 2 have been satisfied, VIPD's phase 3 efforts includes ongoing audits to assess substantial compliance with paragraph 54, as well as other areas of the consent decree.

Through policies developed (Acceptance and Processing Citizen Complaints/ Investigating Misconduct) and approved, the requirements of paragraph 54 have been established and these policies as reported prior have been trained on department wide in both districts during annual in-service, roll call and commander's call trainings. As part of the implementation phase or phase 3 of a three phase process, the vipd has initiated audits to gauge compliance with

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paragraph 54, as well as other consent decree requirements. These audits will be conducted periodically on a quarterly basis and the audit reports will be shared with oim starting with the first audit representing the third quarter of 2013 that is expected to be completed by December 27, 2013.

**Paragraph 55 - During an investigation, all relevant police activity, including each use of force (i.e., not just the type of force complained about) will be investigated. The investigation will also evaluate any searches or seizures that occurred during the incident. The VIPD will not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements; rather, the investigating agency will continue its investigation as necessary to determine whether the original allegation(s) can be resolved based on the information, evidence, and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence of whether a VIPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.**

*\*Through policies developed (Acceptance and Processing Citizen Complaints/ Investigating Misconduct) and approved, the requirements of paragraph 55 have been established and these policies as reported prior have been trained on department wide in both districts during annual in-service, roll call and commander's call trainings. As part of the implementation phase or phase 3 of a three phase process, the vipd has initiated audits to gauge compliance with paragraph 55 as well as other consent decree requirements. These audits will be conducted on a quarterly basis and the audit reports will be shared with oim starting with the first audit representing the third quarter of 2013 that is expected to be completed by December 27, 2013.*

*As have been reported, the IAB continues to be the "clearing house" for all complaints received and their review includes checking for adherence in particular to consent decree mandates to include the mandates as represented in paragraph 55. The IAB continues to generate reports periodically that among other things identifies active and completed investigations, identifies the types of complaints received and the percentage of each complaint type, thus enabling the VIPD to make decisions based upon analysis of these reports as was evident during this reporting quarter where reports generated disclosed that most complaints received were associated with discourtesy. As a result of this disclosure, select personnel of the VIPD were assigned to participate in Customer Service trainings hosted by the USVI Department of Tourism, which took place during the month of November 2013, in both Districts. A listing of the Officers*



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*and Civilian employees in both Districts that participated in this training was submitted to OIM during this reporting quarter.*

**Paragraph 56 - The complainant will be periodically kept informed regarding the status of the investigation. Upon completion of the investigation, the complainant will be notified of its outcome, including an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.**

*\*Although the VIPD continues to comply with the requirements of paragraph 56, an essential part of this process is the audit function that requires a systematic review and analysis of department activities to determine to what extent established policies and or procedures are consistently being followed. This audit function was initiated during this reporting quarter in both Districts and included several areas of the consent decree. The VIPD will forward to OIM and USDOJ, copies of completed audit reports that are expected to reflect in both Districts the departments' status as it relates to substantially complying with the mandates of paragraph 56.*

**Paragraph 57 - Each allegation in an investigation will be resolved by making one of the following dispositions:**

**"Unfounded," where the investigation determines, by a preponderance of the evidence, that no facts to support that the incident complained of actually occurred;**

**"Sustained," where the investigation determines, by a preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;**

**"Not Sustained," where the investigation determines, by a preponderance of the evidence, that there are insufficient facts to decide whether the alleged misconduct occurred; and**

**"Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate VIPD policies, procedures, or training.**

*\* The requirements of paragraph 57 are established in Department approved policy and training continues on said policy in both Districts satisfying phase 1 and 2 as determined by the OIM. However, the VIPD has advanced towards phase 3 or the implementation phase and as part of the implementation phase the department has initiated audits during this reporting quarter to assess compliance not limited just to paragraph 57, but to the other areas of the consent decree as represented by the Territorial Audit Agenda that was approved by the Police Commissioner and was submitted to OIM identifying all the*

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*mandates being audited. After the completion of these audits, copies of the various audit reports from the respective working groups will be submitted to OIM and USDOJ.*

**Paragraph 58- Unit Commanders will evaluate each investigation of an incident under their command to identify underlying problems or training needs. Any such problems will be relayed in the form of a recommendation to the appropriate VIPD entity.**

*\* The requirements of paragraph 58 are established in Department approved policy and training continues on said policy in both Districts satisfying phase 1 and 2 as determined by the OIM. However, the VIPD has advanced towards phase 3 or the implementation phase and as part of the implementation phase the department has initiated audits during this reporting quarter to assess compliance not limited just to paragraph 58, but to the other areas of the consent decree as represented by the territorial audit agenda that was submitted to oim identifying all the mandates being audited. After the completion of these audits, copies of the various audit reports from the respective working groups will be submitted to OIM and USDOJ.*

**MANAGEMENT AND SUPERVISION**

**A. Risk Management system**

**Paragraph 59 - The VIPD will develop and implement a risk management system to include a new computerized relational database or paper system for maintaining, integrating, and retrieving information necessary for supervision and management of the VIPD. Priority will be given to the VIPD obtaining any established program and system. The VIPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of VIPD officers across all ranks, units and shifts.**

*\* During this reporting quarter, as a follow up to previously reported EIP training in June, 2013, IAB further conducted involving both Districts via video conference, an EIP power point presentation for Chiefs, Deputy Chiefs, overall Managers and Directors within the department on November 4, 2013. This power point presentation provided a step by step review of the entire EIP process and was developed by the IAB to further aid Managers, Directors etc in their understanding and implementation of the EIP process. A copy of the memorandum dated October 23, 2013 mandating this training and identifying intended participants was submitted to OIM October 31, 2013.*

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The IAB continues this quarter to generate and disseminate to the Chain of Command in both Districts reports for review and analysis as part of the EIP process. As evidence of this during this reporting period and specifically on December 24, 2013, documentation was submitted to OIM representing the initiation of steps by IAB consistent with the EIP policy pursuant to alerts triggered by complaints in excess of the threshold amount. These documentations included a summary of complaints, non disclosure document, Action Plan forms, EIP flow chart and a memorandum to the Officer's Supervisor regarding the alerts. Consistent with the EIP policy the Deputy Chief, Commander or Bureau Head and the Officer's Supervisor have to meet to review and discuss the information received from IAB and determine if corrective actions are warranted, hence the purpose of the Action Plan Form.

**Paragraph 60 – The new risk management system will collect and record the following information:**

- a. all uses of force;**
- b. canine bite ratios;**
- c. the number of canisters of chemical spray used by officers;**
- d. all injuries to prisoners;**
- e. all instances in which force is used and a subject is charged with “resisting arrest,” “assault on a police officer,” “disorderly conduct,” or “obstruction of official business;”**
- f. all critical firearm discharges, both on-duty and off-duty;**
- g. all complaints (and their dispositions);**
- h. all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel;**
- i. all vehicle pursuits;**
- j. all incidents involving the pointing of a firearm (if any such reporting is required); and**
- k. all disciplinary action taken against officers.**

\* During this reporting quarter, the VIPD continues to collect and record into IAPRO as part of its Risk Management System, all reportable uses of force, all reported injuries to prisoners, instances in which force is used resulting in charges as specified in subsection (e) of paragraph 60, as was evident in the Discretionary Arrest report that was produced by IAB through IAPRO for the St. Thomas/St. John District , a copy of which was submitted to OIM November 25, 2013. This list was for the period of January 2013 to November 22, 2013 for the St. Thomas/St. John

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*District and was also forwarded to the Chain of Command for review and analysis for possible trends and patterns.*

*The VIPD also collects information on (f) all critical firearms discharges and none were reported during this quarter, (g) all complaints and their disposition: the department has and continues to generate reports that identifies all complaints received and their disposition and copies of these reports continue to be forwarded to OIM, (j) All incidents involving the pointing of firearms and (k) all disciplinary actions taken against Officers. Additionally, as it relates to requirement (h) the IAB during this reporting quarter received from VIAG copies of cases pursuant to Civil or Administrative claims filed against the VIPD and or its personnel for review and entry into IAPRO as part of RMS. Pursuant to subsection(c) (b) and (l) efforts are ongoing. As it relates specifically to subsection (c) the VIPD is revising the current OC spray listing and a comprehensive listing representing both Districts will be generated. Subsection (l) is addressed through the Vehicle Pursuit policy; however a recommendation has been forwarded from IAB to include in the policy during the annual policy review process specific language requiring reporting vehicle pursuits to IAB either directly or through Blue Team. More will be reported on this as the annual policy review process is initiated. Finally, subsections (b) Canine Bite ratios: Canine policy has been approved, implemented and deployments have been received during this reporting period from the St. Croix District. Canine deployment information from both Districts will be used to compute canine bite ratios for the respective Districts and will be reported further in future quarterly status reports.*

*Additionally, the Blue Team operation form used to document on a weekly basis, the operational status of Blue Team was revised to a more user friendly format that included check boxes and a copy of this form was submitted to OIM November 27, 2013. During this reporting quarter completed Blue Team operation forms for the St. Thomas/St. John District were submitted to OIM.*

**Paragraph 61 – The new risk management system will include, for the incidents included in the database, appropriate identifying information for each involved officer (e.g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin, if available).**

*\* As evident in reports generated through IAPRO by IAB periodically on a weekly, monthly and quarterly basis, the specific fields of information as required in paragraph 61 continues to be captured. Additionally, audits that are currently ongoing by working groups will further establish the degree of compliance with the consent decree and in particular paragraph 61. Going forward these audits will be conducted on a quarterly basis and the audit report will be shared with OIM as well as USDOJ.*

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*Additionally, to be able to track movement or assignment of Officers from Squad to Squad, a new form appropriately identified as “Internal Squad Assignment Order” has been developed and submitted during November of this reporting quarter to the Police Commissioner for review and approval. A copy of this form was submitted to OIM during this reporting quarter. As with Officer transfers that continue to be documented, Officer Squad Assignments will also be documented and a copy provided to the Chain of Command to include IAB, so as to also facilitate the tracking of Officer Squad Assignments in IAPRO.*

**Paragraph 62 – Within 120 days of the implementation of the new risk management system, or later with the agreement of DOJ, the VIPD will prepare, for the review and approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the “Data Input Plan”). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will include historical data that is up-to-date and complete in the risk management system. The VIPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.**

*\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 62 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph.*

**Paragraph 63 – The VIPD will, within 120 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using the risk management system. The VIPD will submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.**

*\* As established prior, a protocol for the Risk Management System has been developed, approved, trained on and currently being implemented. During this reporting quarter and as a follow-up to EIP training conducted during the second quarter 2013, the IAB conducted a PowerPoint presentation concerning the EIP process as the department’s Risk Management System (RMS). This presentation was given to Chiefs, Deputy Chiefs, Managers and Directors in both Districts via video conference on November 4, 2013. This presentation in particular outlined the steps involved in the EIP process, identified the roles of the Chain of Command as it relates to the EIP and re-emphasized the importance of completing the required Action Plans. To date four completed action plans were received from the St. Thomas/St. John District during this reporting quarter.*



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Paragraph 64 – The protocol for using the risk management system will include the following provisions and elements:

a. The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit.

b. The protocol will require the automated system to analyze the data according to the following criteria: i) number of incidents for each data category by individual officer and by all officers in a unit; ii) average level of activity for each data category by individual officer and by all officers in a unit; and iii) identification of patterns of activity for each data category by individual officer and by all officers in a unit.

c. The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.

d. The protocol will require that VIPD deputy chiefs, managers, and supervisors will review, on a regular basis but not less than quarterly, system reports, and will evaluate individual officer, supervisor, and unit activity.

e. The protocol will require that VIPD deputy chiefs, managers, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system.

f. The protocol will require that intervention options include discussion by deputy chiefs, managers, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system (appropriate intervention options will be employed based on the evaluation described in subsection (e) above).

g. The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer's assignment, crime trends and crime problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system.

h. The protocol will require that VIPD deputy chiefs, managers, and supervisors will promptly review the risk management system records of all officers recently transferred to their sections and units.

i. The protocol will require that VIPD deputy chiefs, managers, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk.

j. The protocol will require that the system be managed and administered by the Internal Affairs Unit of the VIPD. The IAU of the VIPD will conduct quarterly audits of the system to ensure action is taken according to the process described above.

k. The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to



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*evaluate officer performance territory-wide, and to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify any significant patterns or series of incidents.*

\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 64 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph. Efforts continue to fully implement the EIP policy.

*Paragraph 65- The VIPD will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the VIPD for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. On an ongoing basis, the VIPD will enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.*

\*The Internal Affairs Bureau (IAB) continues to be the sole Administrator of the VIPD's Risk Management Software namely IAPRO entering information on an ongoing basis. Information is stored on department servers as well as in locked safes located within IAB and access to information in IAPRO is restricted according to authorized access levels. Further, as it relates to OIM's concern relative to the feature in IAPRO that allows data for specific incidents from being purged or deleted, only the IAB Director as the system Administrator and IAB Supervisors are permitted to delete information and a delete log is also maintained by the IAPRO system. This feature is also time sensitive so if certain information is not to be purged or deleted for a specific period of time such as, for example five years, the activation of this feature with respect to the specified information would prevent the information from being accidentally deleted before the specified time period and as stated , a delete log is automatically maintained by the system.

As a follow up to the previous quarterly report concerning efforts to explore the feasibility of utilizing personnel in other Government Agencies with skills specific to analyzing data, that effort unfortunately was unsuccessful as no affirmative response was received. The VIPD nonetheless is moving forward with its' plan to hire individuals for both Districts, which included as previously reported including two analyst positions in the 2014 budget. More will be reported in future quarterly reports regarding efforts to hire additional personnel for the Analyst position(s).

*Paragraph 66 - The new risk management system will be purchased off the shelf and customized by VIPD. Alternatively, the new risk management system may be developed and implemented according to the following schedule:*  
*a. Within 150 days of the effective date of this Agreement, subject to the review and approval of DOJ, the VIPD will issue a Request for Proposal (RFP).*

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b. Within 270 days of the issuance of the RFP, or later with the agreement of DOJ, the VIPD will select the contractor to create the risk management system.

c. Within 150 days of the effective date of this Agreement, the VIPD will submit the protocol for using the risk management system to DOJ for review and approval. The VIPD will share drafts of this document with DOJ and the Monitor (a position described in Section VII) to allow DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The VIPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval.

d. Within 14 months of selecting the contractor, the VIPD will have ready for testing a beta version of the risk management system consisting of: i) server hardware and operating systems installed, configured and integrated with the VIPD's existing automated systems; ii) necessary data base software installed and configured; iii) data structures created, including interfaces to source data; and iv) the use of force information system completed, including historic data. DOJ and the Monitor will have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the risk management system.

e. The risk management system computer program and computer hardware will be operational and fully implemented within 20 months of the selection of the risk management system contractor.

\*The VIPD has not yet initiated a Beta test of the RMS but has made progress towards this end as reported prior relative to the acquisition and installation of software and hardware which has been configured and integrated with existing automated systems for this purpose. The VIPD has established through policies, procedures for use of force reporting and investigation, revised its arrest form to include specific fields necessary to compute use of force ratios as required by the consent decree and has installed in the St. Croix District within Booking Stations computers and printers that will allow Supervisors to input arrest information from arrest reports as part of the arrest data base being established. The same has been initiated in the St. Thomas District, during the latter part of November 2013, as MIS (Management and Information System) personnel travelled to St. Thomas and installed computer(s) in the Booking Station at the Zone 'A' Command for the same purpose. The next step is to manually input the PDN number assigned to each Officer; so that once an Officer enters his or her name their PDN is already attached. As reported prior, this is a temporary set up until the Smart COP Record Management system (RMS) is implemented. However, the arrest data base in the St. Thomas District is projected to be ready for use by the end of December 2013, following roll call and Commander's call training sessions on the revised arrest form.

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An electronic copy of the revised arrest form was submitted to USDOJ and OIM earlier during this reporting period.

**Paragraph 67 – Prior to implementation of the new risk management system, the VIPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by VIPD officers or groups of officers.**

\* OIM has determined that the implementation of the software IAPRO for Risk Management by the VIPD makes the requirements of paragraph 67 no longer applicable. The VIPD reports during this reporting quarter that IAPRO continues to be utilized in both Districts for said purpose.

**Paragraph 68 – Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, the VIPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. The VIPD will submit all such proposals for review and approval by DOJ before implementation.**

\*During this reporting quarter efforts continue to finalize the arrest data base in the St. Thomas/ St. John District. All necessary hard ware are already in place in the St. Croix District for the arrest data base and MIS personnel recently completed similar hardware installation at the Zone 'A' Command specifically in the Booking Station in the St. Thomas/ St. John District. The next step is to enter all department assigned PDNs and the implementation of the revised arrest form that includes roll call training sessions to familiarize Officers regarding the revisions to the form.

Currently, there is no necessity to make any changes as delineated in paragraph 68, further; the VIPD's implementation of the Risk Management System (RMS) is ongoing. To date the RMS software (IAPRO/Blue Team) are installed in both Districts and continues to function, reports are generated periodically as mandated, EIP alerts are communicated to the Chain of Command, efforts are ongoing to stimulate the completion of Action Plans in both Districts as necessary as well as documented reviews by specific personnel within the Chain of Command and follow up EIP training was conducted on November 4, 2013 via video conference in both Districts by IAB to further enhance individual's comprehension of the EIP Process.

**Oversight**

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**Paragraph 69 – The VIPD will develop a protocol for conducting audits. The protocol will be used by each officer or supervisor charged with conducting audits. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all VIPD zones.**

\*Following the Approval of the Audit Policy, a weeklong Audit Training was conducted by MTAG during the month of October and specifically October 14-18 in the St. Thomas/St. John District and October 21-25, 2013 in the St. Croix District. This training was observed by a member of the OIM Team during a site visit to the St. Thomas/St. John District. Participants of this training included Chiefs, Deputy Chiefs, Managers, Supervisors, Directors, Civilian personnel in Managerial positions and working group members. A copy of the listing of personnel both Sworn and Civilian scheduled to participate in the training was submitted to OIM for both Districts. Also, an electronic copy of the course outline for this training to include an After Action Report submitted by the MTAG Instructors that included test scores of each class participant in both Districts were submitted to OIM. The OIM was also provided with an electronic copy of a sample audit done in the St. Croix District during this audit training.

Audits were completed during this reporting period by working groups of their respective areas of the consent decree and as an interim procedure until the Audit Unit is established, working groups will submit their completed audit reports to the Chairperson of the Audit group, who will review and compile the reports for submission to the Police Commissioner.

The Chairperson of the Audit group conducted meetings on November 27 and December 13, 2013, with working groups to obtain feedback on the progress of their audits and a deadline date of December 27, 2013 was established for working groups to submit their audit reports to the Chairperson of the Audit Group. As stated earlier in this report, an electronic copy of the Territorial Audit agenda approved by the Police Commissioner was submitted to OIM specifically on November 21, 2013. This agenda identified the areas to be audited by the respective working groups.

**\* Discipline**

**Paragraph 70 - The VIPD will develop a disciplinary matrix to take into account an officer's violations of different rules, rather than just repeated violations of the same rule. The VIPD will further revise this matrix to increase the penalties for uses of excessive force, improper searches and seizures, discrimination, or dishonesty, to reflect the seriousness of those infractions. The revised disciplinary matrix will provide the VIPD with the discretion to impose any appropriate punishment when the VIPD believes the officer's misconduct**

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*exhibits a lack of fitness for duty. This revised matrix will be subject to the review and approval of DOJ.*

\* The OIM has determined that the VIPD has achieved phase 1 compliance with paragraph 70 of the consent decree and that phase 2 and 3 are not applicable to this specific paragraph. However, the Disciplinary Matrix as stated in this report has been approved, trained on during in-service trainings during this reporting period and is also currently being implemented.

*Paragraph 71 - The VIPD will extend its statute of limitations for instituting disciplinary action from 50 days to 90 days. VIPD policy will identify clear time periods by which the various steps of a complaint adjudication process should be completed, from complaint receipt to the imposition of discipline, if any. Absent exigent circumstances, extensions will not be granted without the Police Commissioner's written approval and notice to the complainant. In the limited circumstances when an extension is necessary, appropriate tolling provisions will be outlined in the policy.*

\* As stated in the previous quarterly report, the Chair Person of the Management and Supervision group submitted memorandum to the Police Commissioner pursuant to efforts to extend the statute of limitations beyond 50 days as stipulated in paragraph 71. The plan as reported prior is to address this matter during LESU negotiations and more will be reported during future quarterly reports as negotiations get started and progresses.

*Paragraph 72 - Absent exceptional circumstances, the VIPD will not take only non-disciplinary corrective action in cases in which the disciplinary matrix indicates the imposition of discipline. The VIPD will not fail to consider whether non-disciplinary corrective action is required in a case because discipline has been imposed on the officer.*

\*The VIPD's Disciplinary Matrix and policy has been approved as previously reported and training was initiated in both Districts on the Disciplinary Matrix and policy during in-service trainings conducted October-November 2013. The OIM was provided with an electronic copy of the lesson plan and test questions for the Disciplinary Matrix and policy training during this reporting quarter. The in- service training on the Disciplinary Matrix and policy was done by VIPD Instructors.

The OIM in their third quarterly report for 2013 stated the following: "In order to help the OIM evaluate the department's compliance with paragraph 72 of the

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*consent decree, it should provide the OIM with documentation from Disciplinary Hearings, including the charges, findings, and any discipline and /or non-disciplinary corrective action that were taken". The VIPD however, in the past has afforded OIM the opportunity to sit in during Disciplinary Hearings in both Districts, and going forward the Compliance Coordinator has recommended to Chiefs in both Districts to advise OIM of scheduled Hearings in advance, so as to afford them the opportunity to determine which hearings to observe and or which cases to review during their site visit to either District.*

*Based upon the Territorial Audit Plan approved by the Police Commissioner, which was also forwarded to OIM, the following are some areas identified under the Management and Supervision section of the consent decree to be audited: Ensure that Blue Team programs are installed in all Zone Commands and that computers are all fully functioning, Determine whether the VIPD is collecting data consistent with the Data input Plan, Determine whether VIPD is correctly analyzing data to identify positive or negative performance issues and Ascertain whether VIPD is following up with discipline, remedial training and rewarding positive performance. The completed audit report is expected December 27, 2013 and will be shared with OIM and USDOJ.*

*Additionally, audits conducted during this reporting quarter are expected to aid the department in determining the degree to which paragraph 72 is being substantially complied with as well as other mandates pursuant to the Management and Supervision section of the consent decree and OIM and USDOJ will be afforded copies of all audit reports.*

**TRAINING****A.****Management Oversight**

**Paragraph 73 – The VIPD will continue to coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with applicable law and VIPD policy. The VIPD will conduct regular subsequent reviews, at least semi-annually.**

*\*The VIPD has and continues to provide OIM with lesson plans, training schedules and other training information as evidence of the ongoing coordination of trainings by the Training Bureau inclusive of use of force and other force related trainings. Use of force and force related lesson plans are reviewed prior to the execution of any use of force or force related training and the signature of the*



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*VIAG is affixed to the lesson plans as evidence of VIAG's review. OIM has been provided with lesson plans reviewed and signed by the VIAG.*

*As reported prior, a "Critical Policy Review" SOP has been drafted and was approved during this reporting quarter by the Police Commissioner and the effective date of this SOP was November 25, 2013. This SOP delineates the procedural steps to be followed during the policy review process inclusive of use of force and force related policies. The established Policy Committee is the lead entity as it relates to spearheading the annual review and or revision of all policies and or SOP's. Based upon this SOP, annual review are to be initiated during the month of January of each year. An electronic copy of the approved SOP was submitted to OIM December 19, 2013.*

*Additionally, to get the annual review process started the Police Commissioner issued a Commissioner's directive dated December 18, 2013 that listed the use of force and force related policies for annual review and further established due dates for the submission of comments pursuant to each policy, as part of the initial phase of the policy review process. An electronic copy of this directive was submitted to OIM December 19, 2013. An additional directive dated December 23, 2013, regarding the annual review of the Citizen Complaint Process and Investigating Misconduct policies was also issued and disseminated department wide in both Districts, a copy of which was also provided to OIM December 24, 2013.*

**Paragraph 74 – The Director of Training, either directly or through his/her designee(s), consistent with applicable law and VIPD policy will:**

- a. ensure the quality of all use of force training;**
- b. develop and implement use of force training curricula;**
- c. select and train VIPD officer trainers;**
- d. develop, implement, approve, and oversee all in-service training;**
- e. in conjunction with the Chiefs, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures;**
- f. establish procedures for evaluating all training curricula and procedures;**
- and**
- g. conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.**

*\*As it relates to Subsection (d), the OIM has determined that the VIPD has satisfied this requirement. However, the VIPD continues its efforts to implement the roll call policy applicable to subsection (e) and all use of force lesson plans continues to be reviewed by the VIAG prior to the execution of use of force and force related trainings. Also, the VIPD on an ongoing basis or as necessary continues to select Officers as Officer trainers and provide the appropriate*

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training qualifying them as Certified Instructors in several disciplines, such as Use of Force, Defensive Tactics, TASER, OC Spray and Asp Baton.

**Paragraph 75 – The VIPD will continue to provide training consistent with VIPD policy, law, and proper police practices, and will ensure that only mandated objectives and approved lesson plans are taught by instructors. The VIPD will make best efforts to train each work shift as a Team in their use of force training.**

*\* All trainings coordinated by the VIPDs' Training Bureau is accompanied with a requisite lesson plan that is reviewed and approved by the Training Director and all use of force and force related policies are also submitted to the VIAG for review prior to the execution of said training. The lesson plans provide information including but not limited to the Course, Lesson Title, Duration, Trainee level, identifies the person that prepared the lesson plan, Instructor, Objectives, training aid, and method of presentation.*

*Additionally, following a weeklong training in October in both Districts by MTAG on conducting audits, working groups have begun during this reporting quarter to conduct audits of their respectively assigned areas of the consent decree. As it relates to the Training working group the following audits as identified in the Territorial Audit agenda were conducted to assess the following : Determine whether training is being conducted on a regular basis and Officers are being tested for proficiency on the policies, whether Officers are gaining knowledge of the subject matter tested, Assess whether training has an appropriate tracking system to track training attendance and Determine whether training maintains appropriate training records.*

*Completed audit reports are expected to be submitted to the Chair person of the Audit Group December 27, 2013.*

**Paragraph 76 – The VIPD shall continue to keep adequate records of lesson plans and other training materials, such that the most current training documents are maintained in a central, commonly accessible file, and are clearly dated.**

*\* The VIPD continues to keep adequate records of lesson plans and other training materials consistent with the requirements of paragraph 76 and during this reporting period the VIPD provided OIM lesson plans of trainings conducted during in-service trainings October–November 2013 and also included Law Enforcement Audit training conducted during the month of October in both Districts by MTAG. Some of the lesson plans provided to OIM includes, OC spray, Impact Weapons, Investigating Misconduct and Citizen Complaint and Reporting, Investigation and Review of Use of force. As the VIPD has reported in prior*

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*reports, each District maintains their own training records of lesson plans and other training materials and records for either District is accessible.*

*Additionally, the VIPD continues to strive to implement a comprehensive training data base through the acquisition and implementation of Power DMS that is expected to facilitate expeditious and convenient access and retrieval of all training information. Power DMS is a secure web- based application that is available from anywhere, any time and from any device. During this reporting period communication meetings were held between representatives of Power DMS , Training Bureau and MIS, as the initial testing phase of Power DMS continues in an effort to meet the projected January 2014 target date for implementation. More will be reported in future quarterly reports concerning the implementation of Power DMS.*

***\* Paragraph 77 – The VIPD shall continue to maintain training records regarding every VIPD officer that reliably indicate the training each officer has received. The training records shall, at a minimum, include the course description and duration, curriculum, and instructor for each officer.***

*\* The VIPD continues to maintain training records in its current training data base reflective of all information as delineated in paragraph 77. This information has been made available to OIM particularly during site visits where OIM has reviewed the information maintained electronically as well as in hard copy format. The VIPD however, in an effort to achieve increased efficiency in record maintenance, management and accessibility has invested in a new and improved software namely Power DMS as previously reported. In the interim, however, the VIPD through its Training Bureau has the capability of generating and producing training information as required in paragraph 77.*

**Curriculum**

***Paragraph 78 – The Training Director, in consultation with the Attorney General's Office, will review all use of force training and use of force policies on a regular basis to ensure compliance with applicable laws and VIPD policy.***

*\* Annual in-service training took place October-November 2013 in both Districts and lesson plans for these trainings were submitted by the Training Bureau to the VIAG for review prior to the execution of in-service training. The signature of the VIAG on said lesson plans is evident of the review at the VIAG level. Copies of said in-service training lesson plans were submitted to OIM during this reporting quarter.*

*A listing of some of the information provided to OIM this reporting quarter includes the following: lesson plans for the following trainings; Police ethics,*

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*Integrated Use of force Instructor, Acceptance of Citizen Complaints and Investigating Misconduct, Impact Weapons, Law Enforcement Audit, Use of force, Off Duty Official Action , FTO train the trainer, Disciplinary matrix/test ,and OC spray. Also, EIP (Early Intervention Program) training report for both Districts, training report for audit training conducted October 2013 in both Districts, EIP sign in sheet for St. Thomas/St. Croix, list of Consent Decree policies trained on to date, Instructor certifications & an external hard drive containing integrated use of force training videos (sent via FedEx mail), memo notification of the following scheduled trainings: Customer Service, , Patrol Response to Hostage & Barricaded situations Instructor training, Tactical Debriefing and Communication Instructor training, Case listings from IAB, Attendance listings (both Districts) for Customer Service training in November , listing of Blue Team location in each District and In-service training schedules October- November 2013 for both Districts.*

**Paragraph 79 – The VIPD will continue to provide all recruits, officers,**

**supervisors, and managers with annual training on use of force. Such training will include and address the following topics:**

**a. the VIPD's use of force model, as described in this Agreement;**

**b. proper use of force decision-making;**

**c. the VIPD's use of force reporting requirements;**

**d. the Fourth Amendment and other constitutional requirements;**

**e. examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making;**

**f. interactive exercises that emphasize proper use of force decision-making;**

**g. de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest may be the appropriate response to a situation even when the use of force would be legally justified;**

**h. threat assessment;**

**i. appropriate training on conflict management.**

*\*Consistent with the requirement for annual training, the VIPD conducted annual in-service trainings October-November 2013, of this reporting quarter in both Districts. Trainings were conducted in the following disciplines: Domestic Violence, Preponderance of the Evidence Standard, TASER, OC spray, Disciplinary Matrix/Policy, Defensive Tactics, Scenario based trainings with the Simulator (TI Lab), Impact Weapon, Constitutional law update, Roll call policy and Investigating Misconduct. These in-service trainings were conducted by VIPD's Instructors as well as legal representatives of the VIAG's Office (Virgin Islands Attorney General).*

*The OIM was provided with a copy of the in-service training schedule for both Districts to include associated lesson plans. Upcoming trainings are listed in the*

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*Training Bureau's 2014 Training Calendar, a copy of which was provided to OIM during this reporting quarter.*

*The use of two recently acquired new Simulators, one per District afforded the opportunity during in-service trainings October – November 2013, to implement scenario based trainings where Officers were presented with various use of force situations that tested their ability to make use of force decisions. This training was also observed by a member of OIM during a site visit to the St. Croix District, during this reporting period. Additionally, as reported prior, the Training Bureau has secured closed use of force cases for review to determine their use as examples of scenarios faced by VIPD Officers that illustrate proper use of force decision making, which will also be incorporated into the overall use of force trainings.*

***Paragraph 80 – The VIPD will continue to provide training to all its officers on the VIPD citizen complaint process. The VIPD will develop a protocol for all its officers on appropriate conduct and responses in handling citizens' complaints and will train officers in the protocol.***

*\*As stated earlier in this report the VIPD has recently completed training on the Citizen Complaint Process and the Preponderance of the Evidence Standard during in-service trainings in both Districts October –November 2013. In- service trainings are repeated on an annual basis and are also followed up or reinforced during Roll Call and Commander's Call trainings. These trainings are documented by the Training Bureau, using attendance sheets, approved lesson plans and the Training Bureau also generates a training report that identifies among other things, the percentage of the department that completed each training.*

***Paragraph 81 – The VIPD will provide training on appropriate burdens of proof to all supervisors, as well as the factors to consider when evaluating complainant or witness credibility (to ensure that their recommendations regarding dispositions are unbiased, uniform, and legally appropriate). The VIPD will also continue to provide training to supervisors on leadership and command accountability, including techniques designed to promote proper police practices. This training will be provided to all officers promoted to supervisory rank within 90 days of assuming supervisory responsibilities, and will be made part of annual in-service training.***

*\*During this reporting quarter, the VIPD continued to provide training on the Citizen Complaint Process policy and the Preponderance of Evidence Standard during in-service trainings October-November 2013. Trainings on the Preponderance of Evidence Standard were done by the VIAG in both Districts.*

*Additionally, as it relates to the subject of leadership, the Chiefs in both Districts during this reporting quarter and specifically November 11-15, 2013 attended*



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*training in Sturbridge Massachusetts hosted by the Sturbridge Police Department, the title of which was "Chief Executive Leadership". This was a 40 hour training course that included the following topics: Legal Issues in Law enforcement, Effective Risk Management Techniques, Importance of conducting effective internal investigations, Getting the most out of employees, Dealing with elected Officials, Performance evaluations-why they are important, Leadership in the 21<sup>st</sup> century, Effective Media relations, Managing Organizational Change, Dealing with generational issues, Journey of a police executive, Developing subordinates by setting expectations, Mitigating disasters, Effective leadership tools-situational leadership, Police effectiveness: community, innovation and technology, Budgetary Techniques, Marketing your department and A simple Guide to strategic Planning.*

*Also, consistent with the requirement of paragraph 81 specifically relating to leadership training, the revised training calendar dated December 9, 2013, which was submitted to OIM during this reporting period also reflects upcoming leadership trainings scheduled to take place March and June 2014, by an outside vendor namely, MTAG (Marine Tactical Applications Global). More will be reported in future quarterly reports as these trainings takes place and efforts will be made to ensure that OIM receives all pertinent training information and materials reasonably in advance of the scheduled trainings.*

*The VIPD also continue efforts during this reporting period to address its Supervisory short fall and increase Supervisory levels inclusive of Sergeants, Lieutenants and Captains through the administration of promotional exams anticipated to take place May and April 2014. Towards this end, study materials have been ordered and advertisement for the promotional test for Lieutenants and Captains started December 24, 2013, in a memorandum dated December 20, 2013, from the Director of the Government of the Virgin Island's Personnel Division. According to this memorandum, sign-up for the promotional exam for Lieutenants and Captains begin Monday December 30, 2013 and terminates on Friday January 31, 2014. Also, exam dates are tentatively established for the week of April 7<sup>TH</sup> through April 11<sup>th</sup>, 2014. Also, a memorandum from the Division of Personnel, dated December 24, 2013, also publicized the tentative promotional exam dates for Sergeants as May 19-23, 2014 and sign up dates as Monday February 3, 2014 through Friday March 7, 2014.*

## **V. MONITORING, REPORTING, AND IMPLEMENTATION**

### *B. Independent Monitor*

**Paragraph 82 – By 150 days from the date of this Agreement, the Territory and the DOJ shall together select an Independent Monitor, acceptable to both, who**



shall monitor and report on the VIPD's implementation of this Agreement. The parties recognize that one person, or team of people, may be selected to fulfill the role of Monitor. The selection of the Monitor shall be pursuant to a method jointly established by the DOJ and the Territory. If the DOJ and Territory are unable to agree on a Monitor or an alternative method of selection within 150 days from the date of this Agreement, the DOJ and the Territory each shall submit two candidates who have experience as a law enforcement practices expert or monitor, or as a Federal, state or local prosecutor or judge, along with résumés and cost proposals, to the Court. The Court shall then appoint the Monitor from among the names of qualified persons submitted. The selection of the Monitor shall be conducted solely pursuant to the procedures set forth in this Agreement, and will not be governed by any formal or legal procurement requirements.

No report required

Paragraph 83 – 87 –

83. The Monitor, at any time after the initial selection of the person or team of persons as the Monitor, may request to be allowed to hire or employ such additional persons or entities as are reasonably necessary to perform the tasks assigned to him or her by this Agreement. Any person or entity hired or otherwise retained by the Monitor to assist in furthering any provisions of this Agreement shall be subject to the provisions of paragraphs 94, 96, and 97, governing testifying, conflicting employment and confidentiality. The Monitor shall notify the Territory and the DOJ in writing if the Monitor wishes to select such additional persons or entities. The notice shall identify and describe the qualifications of the person or entity to be hired or employed and the monitoring task to be performed. If the Territory, through its Department of Justice, and the DOJ agree to the Monitor's proposal, the Monitor shall be authorized to hire or employ such additional persons or entities. The Territory or the DOJ have ten days to disagree with the proposal. If the Territory and the DOJ are unable to reach agreement within ten days of receiving notice of the disagreement, the Court shall resolve the dispute. The Monitor and any person he or she retains to assist in furthering any provisions of this Agreement must successfully pass a background check in order to be eligible to carry out his or her role under this Agreement.

No report required

84. The Territory shall bear all reasonable fees and costs of the Monitor. In selecting the Monitor, DOJ and the Territory recognize the importance of ensuring that the fees and costs borne by the Territory are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Monitor. In the event that any dispute arises regarding the reasonableness or payment of the Monitor's fees and costs, the Territory, DOJ and the Monitor

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shall attempt to resolve such dispute cooperatively prior to seeking the assistance of the Court to resolve such dispute.

No report required

85. The Monitor shall only have the duties, responsibilities and authority conferred by this Agreement. The Monitor shall not, and is not intended to, replace or take over the role and duties of the Governor of the Territory or the Police Commissioner. In order to monitor and report on the VIPD's implementation of each substantive provision of this Agreement, the Monitor shall conduct the reviews specified in paragraph 86, infra, and such additional reviews regarding the implementation of this Agreement as the Monitor deems appropriate. At the request of the DOJ or the Territory, based on the Monitor's reviews, the Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of this Agreement.

86. In order to monitor and report on the VIPD's implementation of this Agreement, the Monitor shall regularly conduct compliance reviews to ensure that the VIPD has implemented and continues to implement all measures required by this Agreement. The Monitor shall provide reasonable notice to VIPD prior to conducting any on-site compliance reviews.

No report required

87. Subject to the limitations set forth in this paragraph and applicable collective bargaining agreements, the VIPD will reopen for further investigation any use of force or citizen complaint investigations the Monitor determines to be incomplete. The Monitor will provide written instructions for completing any investigation determined to be incomplete. The Monitor will provide these recommendations so that the directive given by the Police Commissioner to implement the Monitor's instructions is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this option concerning any investigation the disposition of which has been officially communicated to the officer who is the subject of the investigation.

No report required

Paragraph 88 – The parties agree that the VIPD will hire and retain, or reassign a current VIPD employee for the duration of this Agreement, to serve as a full-time VIPD Compliance Coordinator. The Compliance Coordinator will serve as a liaison between the Virgin Islands Attorney General's Office, the VIPD, the Monitor and DOJ, and will assist with the VIPD's compliance with this Agreement. At a minimum, the Compliance Coordinator will: coordinate the VIPD's compliance and implementation activities; facilitate the provision of data, documents and other access to VIPD employees and material to the Monitor and DOJ as needed; ensure that all documents and records are

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*maintained as provided in this Agreement; and assist in assigning compliance tasks to VIPD personnel, as directed by the Police Commissioner or his designee. The VIPD Compliance Coordinator will take primary responsibility for collecting the information the Monitor requires to carry out the terms of this Agreement.*

Currently executed

Paragraph 89 – 95 –

*89. In monitoring the implementation of this Agreement, the Monitor shall maintain regular contact with the Police Commissioner and Virgin Islands Attorney General's Office, as well as the DOJ.*

*90. The Monitor shall have reasonable access to all VIPD employees and facilities that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement. The Monitor shall cooperate with the VIPD to access people and facilities in a reasonable manner that, consistent with the Monitor's responsibilities, minimizes interference with daily operations.*

*91. The Monitor shall have reasonable access to all Territory and VIPD documents for monitoring purposes only that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Agreement, except any documents protected by the attorney-client privilege. Should the Territory or the VIPD decline to provide the Monitor with access to a document based on attorney-client privilege, the Territory shall provide the Monitor and DOJ with a log describing the document.*

*92. For the purpose of implementing this Agreement, the DOJ and its consultative experts and agents shall have reasonable access to all VIPD employees, facilities, and VIPD documents, to the extent permitted by law. The DOJ and its consultative experts and agents shall cooperate with the Territory and the VIPD to access involved personnel, VIPD facilities, and documents in a reasonable manner that minimizes interference with daily operations. Should the Territory and the VIPD decline to provide the DOJ with access to a document based on attorney-client privilege, the Territory shall provide the DOJ with a log describing the document.*

*93. The Monitor and DOJ shall provide the Territory, the Virgin Islands Attorney General's Office, or the VIPD with reasonable notice of a request for copies of documents. Upon such request, the Territory and the VIPD shall*

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provide the Monitor and DOJ with copies (electronic, where readily available) of any documents that the Monitor and DOJ are entitled to access under this Agreement.

94. All non-public information provided to the Monitor or DOJ, whether by the Territory or the VIPD, shall be maintained in a confidential manner. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right the Territory or the VIPD may assert, including those recognized at common law or created by statute, rule or regulation, against any other person or entity with respect to the disclosure of any document.

95. For the purpose of implementing this Agreement, the Monitor shall have reasonable access to all documents in criminal investigation files that have been closed by the VIPD. The Monitor shall also have reasonable access to all arrest reports, warrants, and warrant applications whether or not contained in open criminal investigation files; where practicable arrest reports, warrants and warrant applications shall be obtained from sources other than open criminal investigation files

**C. Independent Monitor Reports**

Paragraph 96 – 97 –

96. The Monitor shall issue quarterly written, public reports detailing the Territory of the Virgin Islands' compliance with and implementation of each substantive provision of this Agreement. These reports shall be written with due regard for the privacy interests of individual officers and the interest of the Territory and the VIPD in protecting against disclosure of non-public information. At least 16 business days before filing a report, the Monitor shall provide a copy of the draft to the parties for input as to whether any factual errors were made or whether any sensitive data or non-public information is disclosed. The Monitor shall consider the parties' responses and make appropriate changes, if any, before issuing the report. The Monitor may testify in this case regarding any matter relating to the implementation, enforcement or dissolution of this Agreement.

97. Except as required or authorized by the terms of this Agreement or the parties acting together: neither the Monitor, nor any member of their staff, shall make any public statements or issue findings with regard to any act or omission of the Territory, or its agents, representatives, or employees; or disclose non-public information provided to the Monitor pursuant to the Agreement. Any press statement made by the Monitor or any member of the

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Monitor's staff regarding their employment must first be approved by DOJ, the Virgin Islands Attorney General's Office, and VIPD. Neither the Monitor nor any member of its staff shall testify in any other litigation or proceeding with regard to any act or omission of the Territory, the VIPD, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor or their staff may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's

responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the Territory or its departments, officers, agents or employees. The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

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**D. Virgin Islands Police Department Reports and Records**

Paragraph 98 – Within 90 days following entry of this Agreement and no later than every three months thereafter until this Agreement is terminated, the VIPD shall file with the Monitor and Virgin Islands Attorney General's Office, with a copy to the DOJ, a status report delineating the steps taken by the VIPD during the reporting period to comply with each provision of this Agreement. The VIPD shall also file such a report documenting the steps taken to comply with each provision of this Agreement during the term of this Agreement 120 days before the end of the Agreement's term.

*\*This report is filed this 7<sup>th</sup> day of January 2014, in compliance with the Consent Decree.*

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Case Tracking List<sup>1</sup>**

<b><u>Case Number</u></b>	<b><u>District</u></b>	<b><u>Summary of Allegations</u></b>
AIX2010-0091	St. Croix	Use of force involving a firearm during a vehicle pursuit.
FAX2010-0014	St. Croix	Use of force in responding to a burglary. Suspect died.
UOFX2011-0050	St. Croix	Incomplete case.
CCX2012-0073	St. Croix	Citizen complaint about Officer's alleged use of force.
UOFX2012-0005	St. Croix	Use of force involving a firearm while Officer executed a warrant. Suspect died.
UOFX2012-0066	St. Croix	Use of force involving a firearm in responding to a burglary. Suspect was wounded.
UOFX2012-0065	St. Croix	Use of force involving a firearm in responding to a burglary.
AIX2013-0001	St. Croix	Incomplete case.
CCX2013-0003	St. Croix	Incomplete case.
CCX2013-0007	St. Croix	Citizen complaint about Officer's threatened use of force.
CCX2013-0016	St. Croix	Citizen complaint about Officer's use of force during an arrest.
UOFX2013-0004	St. Croix	Use of force in responding to a burglary. Suspect was bitten by police dog.
UOFX2013-0005	St. Croix	Use of force involving a TASER in arresting an armed suspect.

<sup>1</sup> Cases that are identified as "incomplete" are missing important information that is required to complete the investigation.



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<b><u>Case Number</u></b>	<b><u>District</u></b>	<b><u>Summary of Allegations</u></b>
UOFX2013-0007	St. Croix	Incomplete case.
UOFX2013-0008	St. Croix	Use of force in making an arrest.
UOFX2013-0018	St. Croix	Use of force during a vehicle pursuit.
UOFX2013-0024	St. Croix	Incomplete case.
AIT2010-0019	St. Thomas	Officers arrested on 33 counts of federal indictment.
AIT2011-0031	St. Thomas	Officer allegedly committed assault.
AIT2011-0034	St. Thomas	Officer allegedly made a false statement.
AIT2011-0047	St. Thomas	Sergeant allegedly made fraudulent claims to the government.
AIT2011-0050	St. Thomas	Use of force involving a firearm.
AIT2011-0054	St. Thomas	Use of force involving a firearm in responding to a robbery. Suspect was killed.
AIT2011-0065	St. Thomas	Officers arrested for allegedly committing crimes.
AIT2011-0071	St. Thomas	Officer allegedly failed to fill out RRR.
AIT2011-0074	St. Thomas	Officer allegedly served alcohol in the presence of minors.
AIT2011-0122	St. Thomas	Alleged discrepancy about overtime.
AIT2012-0015	St. Thomas	Officers allegedly assaulted and false imprisoned each other.
AIT2012-0029	St. Thomas	Officer testified as a character witness for the defense without first notifying the VIPD.
AIT2012-0061	St. Thomas	Use of force on a disturbed individual.
AIT2013-0012	St. Thomas	Verbal and sexual harassment between

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<b><u>Case Number</u></b>	<b><u>District</u></b>	<b><u>Summary of Allegations</u></b>
		Officer and Supervisor.
AIT2013-0014	St. Thomas	Alleged failure to file Form 1A on a timely basis and to notify VIPD personnel of crime.
CCT2009-0003	St. Thomas	Alleged criminal conduct by Officer.
CCT2010-0015	St. Thomas	Citizen complaint about Officer's alleged use of force.
CCT2011-0206	St. Thomas	Alleged criminal conduct by Officer.
CCT2012-0090	St. Thomas	Citizen complaint about alleged use of force.
CCT2013-0009	St. Thomas	Citizen complaint about alleged interrogation.
CCT2013-0010	St. Thomas	Citizen complaint about Officer's alleged inaction.
CCT2013-0011	St. Thomas	Citizen complaint about alleged interrogation.
CCT2013-0020	St. Thomas	Citizen complaint about alleged detention.
CCT2013-0023	St. Thomas	Citizen complaint about Officer's alleged inaction.
CCT2013-0024	St. Thomas	Citizen complaint about alleged harassment and threats by Officer.
CCT2013-0042	St. Thomas	Citizen complaint about alleged brandishing of a firearm by an Officer.
CT-0001-09	St. Thomas	Use of force involving a firearm.
CT-0012-09	St. Thomas	Officer arrested for alleged crimes.
CT-0024-11	St. Thomas	Officer investigated for alleged crimes.
CCT2013-0035	St. Thomas	Citizen complaint about alleged warrantless search of home.

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<b><u>Case Number</u></b>	<b><u>District</u></b>	<b><u>Summary of Allegations</u></b>
CCT2013-0044	St. Thomas	Citizen complaint about alleged Officer misconduct
FAT2009-0001	St. Thomas	Use of force involving a firearm.
FAT2010-0001	St. Thomas	Use of force involving a firearm.
FAT2011-0014	St. Thomas	Use of force involving a firearm.
FAT2011-0016	St. Thomas	Use of force involving a firearm.
FAT2011-0018	St. Thomas	Use of force involving a firearm.
FAT2011-0019	St. Thomas	Use of force involving a firearm. Suspect was wounded.
FAT2011-0020	St. Thomas	Use of force in responding to a robbery. Suspect was wounded.
FAT2011-0021	St. Thomas	Use of force involving a firearm.
FAT2012-0002	St. Thomas	Use of force involving a firearm.
FAT2013-0001	St. Thomas	Use of force involving a firearm.
UOFT2011-0084	St. Thomas	Citizen complaint about alleged use of force.
UOFT2011-0140	St. Thomas	Use of force involving firearms while executing an arrest warrant. Suspect died.
UOFT2012-0031	St. Thomas	Use of force involving firearms. Suspect and one Officer died.

## **Appendix C**

### **Summary of Consent Decree Requirements**

Below is a summary of the requirements imposed by each substantive section of the Consent Decree. Because these summaries of the substantive requirements significantly lengthen our reports, we include them in this Appendix to provide the reader with context concerning the VIPD's progress in implementing the broad range of reforms required under each section of the Consent Decree.

#### **I. Use of Force Policies (CD ¶ 31)**

##### **A. Requirements**

Under paragraph 31 of the Consent Decree, the VIPD is required to review and revise its use of force policies as necessary to:

- Define terms clearly, including establishing a definition of force that is consistent with the definition of force under the Consent Decree;<sup>2</sup>
- Incorporate a use of force model that teaches officers to use, as appropriate, strategies such as disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units to assist with a situation;
- Advise VIPD officers that, whenever possible, individuals should be allowed to submit voluntarily to arrest before force is used;
- Reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and potential civil liability;
- Ensure that sufficient less lethal force alternatives are available to all VIPD officers; and
- Explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.<sup>3</sup>

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<sup>2</sup> Under the Consent Decree, "[t]he term 'force' means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include ordinary, unresisted handcuffing. The term shall include the use of chemical irritant and the deployment of a canine and/or pointing a firearm at or in the direction of a human being." CD ¶ 21.

This provision requires that the VIPD implement its revised use of force policies immediately after the DOJ has reviewed and approved finalized versions of the policies.

## **II. Evaluation, Documentation, and Review of Uses of Force (CD ¶¶ 32-41)**

### **A. General Use of Force Events (CD ¶¶ 32-38)**

#### **1. Requirements**

The Consent Decree requires that the VIPD document in writing all uses of force and develop a use of force reporting form on which officers are required to record each and every type of force used in an incident. The use of force reports must include: (1) a narrative description, prepared by a supervisor, of the events preceding the use of force; (2) a narrative description, prepared by the involved officer, of the event relating to the use of force incident; and, (3) audiotaped statements, as appropriate, from those officers.<sup>4</sup>

The Consent Decree requires officers to notify their supervisors following any use of force or allegation of excessive force. The supervisor must respond to the scene, examine the person who was subjected to the use of force for injury, interview him or her to determine the extent of any injuries, and ensure that the person receives medical attention, if necessary.

A supervisor must conduct a review and evaluation of each use of force by a VIPD officer. The Consent Decree contains the following requirements relating to these evaluations of uses of force:

- The supervisor must prepare a detailed narrative description of the incident that includes all of the facts and circumstances relevant to determining whether or not the involved officers' conduct was justified.

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<sup>3</sup> The Consent Decree defines "deadly force" as "any use of force likely to cause death or serious physical injury, including, but not limited to, the discharge of a firearm." CD ¶ 20.

<sup>4</sup> The Consent Decree defines "supervisor" as a "sworn VIPD employee at the rank of corporal or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers." CD ¶ 27.

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- The supervisor must evaluate the grounds for the use of force and determine whether the involved officers' actions were consistent with VIPD policy.
- To filter out potential bias, reviews of use of force incidents may not be conducted by any officer who used force during the incident, whose conduct led to an injury, or who authorized action that led to a use of force or allegation of excessive force.
- Supervisors are required to interview all witnesses of a use of force, as well as all witnesses of any incident in which an injury results from a use of force. Supervisors must ensure that all officer witnesses provide a statement regarding the incident, subject to any limitations imposed by any applicable provision of collective bargaining agreements or law.
- Supervisors are not permitted to ask officers or other witnesses leading questions that might, for example, suggest legal justifications for the officers' conduct.
- Supervisors must consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate. Supervisors are required to make reasonable efforts to resolve material inconsistencies between statements provided by witnesses and make determinations with respect to the credibility of witnesses when feasible. The VIPD is required to train all of its supervisors on methods and factors for evaluating the credibility of a witness.
- Supervisors are responsible for ensuring that use of force reports identify every officer who was involved in a use of force incident or was on the scene when the incident occurred. Supervisors must ensure that use of force reports reflect whether an injury occurred, whether medical care was provided to an injured person, and, if not, whether the person refused medical treatment. Supervisors also must ensure that use of force reports include contemporaneous photographs or video of all injuries resulting from the underlying incident. These images must be taken both before and after any treatment of the injuries, including the cleansing of wounds.
- Supervisors are required to evaluate the performance of all officers under their command who use force or were involved in



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an incident that resulted in a subject being injured due to a use of force by an officer.

- Finally, the Consent Decree requires a Deputy Chief to review and evaluate every use of force performance review prepared by a VIPD supervisor. The Deputy Chief's review must include the identification of any deficiencies in the supervisors' reviews and must require supervisors to correct any such deficiencies. The Consent Decree requires the Department to hold supervisors accountable for the quality of their use of force reviews, including subjecting a supervisor to appropriate corrective or disciplinary action in cases where the supervisor failed to conduct a timely and thorough review, or failed to recommend or implement appropriate corrective action with respect to a subject officer.

The VIPD also must investigate all critical firearm discharges.<sup>5</sup> These reviews must account for all shots fired and the locations of all officers who discharged their weapons. In connection with the investigation of all critical firearm discharges, the VIPD is required to conduct, as appropriate, ballistic or crime scene analyses, including gunshot residue and bullet trajectory tests.

**B. Specific Force Policies (CD ¶¶ 39-41)**

**1. Requirements**

The Consent Decree requires the VIPD to develop a Use of Firearms Policy that is consistent with applicable law and current professional standards. This policy must:

- Prohibit officers from possessing or using unauthorized firearms or ammunition and inform officers that any such use may subject them to disciplinary action;
- Establish a single, uniform system for reporting all firearm discharges;
- Prohibit officers from obtaining service ammunition from any source other than official VIPD channels;

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<sup>5</sup> The Consent Decree defines the term "critical firearm discharge" as "each discharge of a firearm by a VIPD officer with the exception of range and training discharges and discharges at animals." CD ¶ 22.

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- Specify the number of rounds VIPD officers are authorized to carry; and,
- Require that all discharges of firearms by officers, including unintentional discharges, whether on duty or off-duty at the time of the discharge, are reported and investigated.

The VIPD also must develop a revised policy regarding officers' off-duty conduct that:

- Provides that, absent exigent circumstances, off-duty officers must notify the VIPD or the relevant local law enforcement agency before taking police action; and
- Requires that an officer who responds to an incident while off-duty must submit to field sobriety, breathalyzer, and/or blood tests if it appears that the officer had consumed alcohol or was otherwise impaired at the time of the incident.

Finally, the VIPD is required to implement a policy that provides for an intermediate force device that falls between the use of chemical spray and the use of a firearm on the use of force continuum. This intermediate force device must be one that can be carried by officers at all times while on-duty. The VIPD must incorporate the use of this intermediate force device into its use of force continuum and train officers in the device's use on an annual basis.

**III. Citizen Complaint Process (CD ¶¶ 42-58)**

**A. Public Information (CD ¶¶ 42-43) & Means of Filing and Tracking Complaints (CD ¶¶ 44-45)**

**1. Requirements**

The Consent Decree requires the VIPD to develop and implement a program to inform members of the public that they may file complaints regarding the performance of any VIPD officer. The Consent Decree contains the following requirements with respect to this public information program:

- The VIPD must develop and distribute complaint forms, fact sheets, informational posters, and public service announcements that describe its citizen complaint process.
- The VIPD must make complaint forms and informational materials available at government facilities, including VIPD

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stations, substations, mobile substations, and libraries. These forms and materials also must be available on the Internet and, upon request, with community groups and at community centers.

- Each VIPD station, substation, and mobile substation must permanently post a placard that describes the complaint process and includes relevant contact information, including telephone numbers. These placards must be displayed in English, Spanish, and, where necessary in light of the local community, in French or French Patois.
- VIPD officers are required to carry English, Spanish, French, and French Patois<sup>6</sup> versions of complaint forms and informational brochures in their vehicles at all times while on duty.
- If a citizen objects to an officer's conduct, the officer is required to inform the citizen of his or her right to make a complaint.
- Officers are prohibited from discouraging any person from making a complaint concerning an officer's conduct.

The Consent Decree imposes the following requirements relating to the availability of means by which members of the public may lodge complaints against VIPD officers and the tracking of such complaints:

- The VIPD must be able to receive complaints filed in writing or orally, in person or by mail, and by telephone (or TDD), facsimile, or electronic mail.
- The duty officer at the front desk of each District station shall be authorized to take complaints, including third-party complaints. At the intake stage, an officer taking a complaint is permitted to describe facts that relate to a complainant's demeanor and physical conditions but may not express

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<sup>6</sup> The OIM notes that paragraph 43 of the Consent Decree does not expressly require VIPD officers to carry French language complaint forms and informational brochures in addition to French Patois. However, in light of the third sentence in paragraph 43 (which requires French language placards describing the complaint process), the OIM believes that this was an inadvertent omission. For future printings of brochures and other similar promotional information, the OIM suggests that the VIPD create versions in English, Spanish, French, and French Patois to satisfy the intent of the Consent Decree.

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opinions regarding the complainant's mental competency or veracity.

- Upon receipt, the VIPD is required to assign each complaint a unique identifier number, which must be provided to the complainant.
- The VIPD must track each complaint according to the type of misconduct alleged in the complaint (e.g., excessive force, discourtesy, and improper search).
- Copies of all allegations of misconduct against a VIPD officer that are filed with the Zone Commands shall be referred to the IAB within five business days.

**B. Investigation of Complaints (CD ¶¶ 46-58)**

**1. Requirements**

The Consent Decree establishes numerous specific requirements relating to the investigation of complaints against VIPD officers, including the following:

- Complaints must be evaluated based on a preponderance of the evidence standard. The VIPD is required to develop and implement appropriate training regarding application of the preponderance of the evidence standard in internal investigations of allegations of officer misconduct.
- The VIPD must explicitly prohibit an officer from being involved in the investigation of a complaint or incident if the officer used force during the underlying incident, was involved in conduct that led to the injury of a person during the incident, or authorized the conduct that led to the reported incident.
- The VIPD must investigate every citizen complaint and the resolution of each complaint shall be documented in writing.
- The VIPD must develop a clear policy and procedure regarding the intake of complaints, including anonymous and confidential complaints, against VIPD officers.
- The Department must implement a centralized system for numbering and tracking all complaints.

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- IAB is responsible for determining whether each individual investigation of a complaint will be assigned to a Zone, retained by IAB, or referred for possible criminal investigation.
- If IAB refers a complaint to one of the Zones for investigation, the Zone must immediately forward to IAB copies of all documents, findings, and recommendations so that IAB is able to track and monitor the investigation.
- The Police Commissioner must be notified of all complaints alleging excessive force or violation of a person's Constitutional rights within twenty-four hours of the VIPD's receipt of the complaint.

The VIPD also is required to develop a single policy governing the investigation of misconduct complaints, regardless of whether the investigation of such complaints is conducted by IAB or a Zone command. This policy must:

- Provide guidance concerning factors for investigators to consider in evaluating the credibility of the complainant and other witnesses, examining and interrogating accused officers and other witnesses, identifying potential misconduct that is not specifically referred to in the complaint, and applying the preponderance of the evidence standard. The VIPD also must train all officers who perform internal investigations on these issues.
- Require that VIPD investigators ensure that all officers present at the scene of the underlying incident provide a statement and that all interviews be recorded, as appropriate, on audio or video.
- Require that investigation findings include conclusions regarding whether:
  - The police action was in compliance with policy, training, and legal standards, regardless of whether the complainant suffered harm;
  - The incident involved misconduct by any officer;
  - The use of different tactics could have, or should have, been employed;

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- The underlying incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures; and
- The incident suggests that the VIPD should revise its policy, training, or tactics.
- Establish that each allegation investigated must be resolved by a finding of either “unfounded,” “sustained,” “not sustained,” or “exonerated.”<sup>7</sup>
- Provide guidance to all investigators regarding procedures for handling allegations of potential criminal misconduct, including the referral of such allegations to the Virgin Islands Attorney General’s Office or other appropriate agency for possible criminal prosecution. The policy must establish the entity or individual responsible for making the determination as to whether a matter should be investigated criminally. The policy also must require the completion of the VIPD’s administrative investigations of potentially criminal misconduct, regardless of the initiation or outcome of any criminal proceedings.
- Require that all relevant police activity, including each use of force, be investigated, even if the activity or force was not specifically complained about.
- Require that investigations evaluate any searches or seizures that occurred during the underlying incident.
- Prohibit investigators from closing an investigation solely because a complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of an injury, or the complainant will not provide additional statements or written statements. The policy shall require that, under such circumstances, investigators must continue the investigation as necessary to determine whether the allegations

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<sup>7</sup> Under the Consent Decree, a finding of “unfounded” means that there are insufficient facts establishing that the alleged incident actually occurred. A finding of “sustained” means that there is sufficient evidence to determine that the alleged incident occurred and that the officer’s actions were improper. A finding of “not sustained” means that there is insufficient evidence that the alleged misconduct occurred. Finally, a finding of “exonerated” means that the alleged conduct occurred but that the conduct did not violate VIPD policies, procedures, or training. Each of these findings must be based on a preponderance of the evidence standard. CD ¶ 57.



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can be resolved based on available information, evidence, and investigative techniques.

- Prohibit investigators from considering the fact that a complainant pleaded guilty to, or was found guilty of, an offense as evidence of whether or not an officer used a type of force or as a justification for the investigator to close the investigation.

The VIPD must keep complainants periodically informed of the status of the investigation of their complaints. Upon the completion of each investigation, the VIPD must notify the complainant of the outcome of the investigation, including an appropriate statement regarding whether any disciplinary action or non-disciplinary corrective action was taken against any officer.

Finally, the Consent Decree requires that Unit Commanders evaluate each investigation of an incident under their command in order to identify potential problems or training needs. Unit Commanders must report any such issues to the appropriate VIPD entity in the form of a recommendation that appropriate action in response to the identified issues be taken.

**IV. Management and Supervision (CD ¶¶ 59-72)**

**A. Risk Management System (CD ¶¶ 59-68)**

**1. Requirements**

The Consent Decree requires the VIPD to develop and implement a Risk Management System (“RMS”) that includes a computerized relational database or a paper system for maintaining, integrating, and retrieving information necessary for the supervision and management of VIPD personnel. The VIPD is required to use this data regularly to promote respect for civil rights and the employment of best police practices, manage risks, and potential liability for the Department, and evaluate the performance of VIPD officers and personnel across all ranks, units, and shifts.

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The Consent Decree specifically requires the VIPD to collect and record the following information in its new RMS:

- All uses of force;
- Canine bite ratios;<sup>8</sup>
- The number of canisters of chemical spray used by officers;
- All injuries to prisoners;
- All instances in which a VIPD officer used force and the subject was charged with resisting arrest, assault on a police officer, disorderly conduct, or obstruction of official or police business;
- All critical firearm discharges, whether they took place on duty or off-duty;
- All complaints against officers and the dispositions of those complaints;
- All criminal proceedings, civil or administrative claims, and civil lawsuits resulting from VIPD operations or the actions of VIPD personnel;
- All vehicle pursuits;
- All incidents involving the pointing of a firearm;
- All disciplinary action taken against VIPD officers; and
- For incidents included in the database, appropriate identifying information for each involved officer (e.g., the officer's name, badge number, shift, and supervisor) and member of the public (including race and ethnicity or national origin, if such information is available).

The VIPD has the option either to purchase the RMS "off the shelf" and customize the system to VIPD's requirements or to develop and

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<sup>8</sup> A canine bite ratio relates to apprehensions in which a canine unit participated. It is the ratio of incidents that involved the canine biting or otherwise coming into physical contact with the suspect compared to the overall number of such apprehensions in which a canine unit participated.

implement the RMS pursuant to a contracting schedule set forth in the Consent Decree.<sup>9</sup>

Within 120 days of the effective date of the Consent Decree, the VIPD is required to prepare a protocol for the use of the RMS, which must be submitted to DOJ for review and approval. Any proposed modifications to the RMS protocol also must be submitted to DOJ for review and approval prior to the implementation of the proposed modifications. The RMS protocol must contain:

- Provisions regarding data storage, data retrieval, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit;
- Requirements that the automated system be able to analyze data according to the following criteria:
  - The number of incidents for each data category by individual officer and by all officers in a unit;
  - The average level of activity for each data category by individual officer and by all officers in a unit; and
  - The identification of patterns of activity for each data category by individual officer and by all officers in a unit.
- Requirements relating to the generation of reports on a monthly basis that describe data contained in the RMS and identify patterns of conduct by individual officers and units;
- Requirements that VIPD Deputy Chiefs, managers, and supervisors initiate appropriate interventions with individual officers, supervisors, and units based on activity and pattern assessments derived from the information contained in the RMS and that the VIPD has the following intervention options available:
  - Discussions among Deputy Chiefs, managers, supervisors, and officers;
  - Counseling;
  - Training; and,

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See CD ¶ 66.

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- Documented action plans and strategies designed to modify officer conduct and activity.
- A requirement that all interventions be documented in writing and entered into the RMS;
- A provision that actions taken as a result of information derived from the RMS be based on all relevant and appropriate information—including the nature of the officer’s assignment, crime trends, and crime problems—and not solely on the number or percentage of incidents in any category of information recorded in the RMS;
- A requirement that VIPD Deputy Chiefs, managers, and supervisors promptly review the RMS records of all officers who transfer into their sections or units;
- A requirement that VIPD Deputy Chiefs, managers, and supervisors be evaluated based on their ability to use RMS to enhance the effectiveness of their units and to reduce risks associated with officer conduct;
- Provisions that IAB shall manage and administer the RMS and that IAB shall conduct quarterly audits of RMS to ensure compliance with the RMS protocol; and
- A requirement that appropriate managers conduct regular reviews, at least quarterly, of relevant RMS information to evaluate officer performance across the Virgin Islands. The purpose of such reviews is to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify significant patterns or series of incidents.

Within 120 days of the implementation of the RMS (or later with the agreement of DOJ), the VIPD must prepare, for the DOJ’s review and approval, a Data Input Plan for including appropriate fields and values for new and historical data entered into the RMS.

- The Data Input Plan must identify the data to be included in the RMS and the means for inputting the data, the specific fields of information to be included in the RMS, the historical time periods for which information will be inputted into the system, deadlines for inputting data, and the persons responsible for the input of data.

- The Data Input Plan must provide for the input of historical data that is up to date and complete into the RMS.
- Once the RMS is operational, the VIPD is required to enter information into the RMS in a timely, accurate, and complete manner and to maintain the RMS data in a secure and confidential manner.

The VIPD must maintain all personally identifiable information about individual officers that is contained in RMS for at least five years. The VIPD shall maintain information necessary for aggregate statistical analysis in the RMS indefinitely.

The Consent Decree requires the VIPD, even prior to the implementation of the RMS, to use existing databases and resources to the fullest extent possible to identify patterns of conduct by individual VIPD officers or groups of officers.

Following the initial implementation of the RMS, the VIPD may propose to add, subtract, or modify data tables and fields in the system, modify the types of documents entered into the RMS, or modify the standardized reports generated by the RMS. The VIPD is required to submit all such proposals to the DOJ for review and approval prior to implementing the proposed changes.

## **B. Oversight (CD ¶ 69)**

### **1. Requirements**

The Consent Decree requires the VIPD to develop a protocol for conducting audits within the RMS, which must be followed by the VIPD personnel responsible for conducting audits. The protocol must establish a regular and fixed audit schedule to ensure that such audits occur with sufficient frequency and cover all VIPD Zones.

## **C. Discipline (CD ¶¶ 70-72)**

### **1. Requirements**

The VIPD is required to use a disciplinary matrix to take into account a subject officer's violations of various rules, as opposed to considering only repeated violations of the same rule. The VIPD must revise its disciplinary matrix to increase penalties for uses of excessive force, improper searches and seizures, discrimination, and dishonesty. The revised disciplinary matrix, which must be reviewed and approved by DOJ, is required to provide the VIPD with the discretion to impose any

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appropriate punishment when the VIPD believes an officer's misconduct reflects a lack of fitness for duty.

- Absent exceptional circumstances, the VIPD is not permitted to take mere non-disciplinary corrective action against an officer in cases in which the revised disciplinary matrix indicates that the imposition of discipline is appropriate.
- In cases in which disciplinary action is imposed on an officer, the VIPD is required to also consider whether non-disciplinary corrective action is necessary.

The VIPD's policy must identify clear time periods by which each step—from the receipt of a complaint through the imposition of discipline, if any—of the complaint adjudication process should be completed. Absent exigent circumstances, extensions of these deadlines must not be granted without the Police Commissioner's written approval and notice to the complainant. The policy must outline appropriate tolling provisions in the limited circumstances when an extension of these deadlines is necessary.

**V. Training (CD ¶¶ 73-81)**

**A. Management Oversight (CD ¶¶ 73-77)**

**1. Requirements**

The Consent Decree requires the VIPD to provide training to its officers that is consistent with VIPD policy, the law, and proper police practices. Accordingly, the Consent Decree requires that:

- The VIPD review all use of force policies and training to ensure quality, consistency, and compliance with applicable law and VIPD policy;
  - After completing its initial review of its force-related policies and training programs, the VIPD must conduct regular reviews of its use of force training program at least semi-annually.
- The VIPD must ensure that only mandated objectives and approved lesson plans are taught by training instructors; and,
- The VIPD must make best efforts to train each work shift as a team in its use of force training.



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Under the Consent Decree, the VIPD's Director of Training, either directly or through his or her designees, is responsible for:

- Ensuring the quality of all use of force training;
- Developing and implementing use of force training curricula;
- Selecting and training VIPD officer instructors;
- Developing, implementing, approving, and overseeing all in-service training;
- In conjunction with the District Chiefs, developing, implementing, approving, and overseeing a protocol for patrol division roll calls that is designed to effectively inform officers of relevant changes in law, policies, and procedures;
- Establishing procedures for evaluating all training curricula and procedures; and
- Conducting regular training needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.

The VIPD must keep complete and accurate records of force-related lesson plans and other training materials. These lesson plans must be maintained in a central, commonly accessible file and must be clearly dated.

The VIPD also must maintain training records for every VIPD officer. These records must reliably reflect the training that each officer has received. These records must include, at a minimum, the course description, duration, curriculum, and instructor for each training program in which each individual officer participated.

**B. Curriculum (CD ¶¶ 78-81)**

**1. Requirements**

The Consent Decree requires the VIPD's Director of Training to review all use of force training and use of force policies on a regular basis to ensure that the training program complies with applicable laws and VIPD policy. Moreover, the Director of Training must consult with the Virgin Island Attorney General's Office concerning any additions, changes, or modifications regarding use of force training or policies to ensure compliance with applicable laws.

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The VIPD must provide all recruits, officers, supervisors, and managers with annual training on the use of force. This use of force training must address the following topics:

- The VIPD's use of force model;
- Proper use of force decision-making;
- The VIPD's use of force reporting requirements;
- The Fourth Amendment and other Constitutional requirements;
- Examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making;
- De-escalation techniques that encourage officers to make arrests without using force;
- Instruction that disengagement, area containment, surveillance, waiting out a suspect, summoning reinforcements, calling in specialized units, or delaying an arrest may be appropriate responses to a situation even when the use of force would be legally justified;
- Threat assessment; and
- Appropriate training regarding conflict management.

The VIPD also is required to provide training to all officers regarding the citizen complaint process. The VIPD must develop a protocol, to be used by all VIPD officers, that sets forth an appropriate process for handling and responding to complaints by members of the public. The VIPD must train officers regarding this protocol.

- The VIPD also is required to train all supervisors with respect to appropriate burdens of proof in conducting misconduct investigations. This training also must include a discussion of the factors investigators should consider in evaluating complainant or witness credibility.

Finally, the VIPD must provide training to all supervisors regarding leadership and command accountability, including techniques designed to promote proper police practices.

- This training must be provided to all officers promoted to supervisory rank within 90 days of the officer's assumption of

supervisory responsibilities. This training also must be made a part of the annual in-service training of supervisors.

**IV. Monitoring, Reporting, and Implementation  
(CD ¶¶ 82-102)**

**1. Requirements**

The Consent Decree requires the VIPD to appoint a full-time Compliance Coordinator to serve as a liaison among the Virgin Islands Attorney General's Office, VIPD, the OIM, and DOJ. The Compliance Coordinator's responsibilities include:

- Coordinating the VIPD's compliance and implementation activity relating to the Consent Decree;
- Facilitating the provision of data and documents and access to VIPD employees and materials to the Monitor and DOJ as needed;
- Ensuring the proper maintenance of relevant documents and records relating to the Consent Decree; and
- Assisting the Police Commissioner and his designees in assigning compliance-related tasks to appropriate VIPD personnel.

In addition to fulfilling these functions, the VIPD must file with the Monitor and the Virgin Islands Attorney General's Office, with a copy to DOJ, quarterly status reports describing the steps taken during the reporting period to comply with each provision of the Consent Decree.

Finally, the Virgin Islands and the VIPD are required to implement the provisions of the Consent Decree "as soon as reasonably practicable" and, in any event, no later than 150 days after the March 23, 2009 effective date of the Consent Decree.