

MEMORANDUM



POLICE DEPARTMENT

DATE: September 27, 2022

TO: Justin Hess, City Manager

FROM: Michael Albanese, Chief of Police
BY: Denis Cremins, Police Captain – Administration

SUBJECT: Response to the Office of Independent Review Recommendations for the 2020-2021 Report of the Burbank Police Department

Pursuant to the Independent Monitor agreement with the City of Burbank, the Office of Independent Review (OIR) Group conducted an audit of the internal investigations and administrative reviews conducted by the Burbank Police Department (BPD) in years 2020 and 2021. The OIR’s annual review and analysis of the BPD’s work product is welcomed to ensure that the BPD is on a path to ongoing improvement and professionalism in the delivery of all police services. Below is the BPD’s response to the OIR Group’s findings:

Recommendation 1

BPD should commit to its initial standard of addressing its mandatory critical incident releases in a way that informs and explains, beyond the minimal requirements of the statute. Page 6

The BPD agrees with this recommendation. The BPD has taken the position to an explanatory approach to critical events, which truly informs the community, serves the public interest, and enhances both trust and transparency.

Recommendation 2

BPD should re-examine its policy on administrative interviews after an officer-involved shooting (and/or its interpretation thereof) to promote more definitively the “same day” acquisition of a statement from involved personnel. Page 12

The BPD agrees to re-examine Department Policy 310 – *Officer-Involved Shootings and Deaths*, section 6.2 *Criminal Investigation* pertaining to administrative interviews. It must be noted, however, that the totality of circumstances in any given OIS situation will ultimately dictate the timeliness of any type of interview - criminal or administrative. Given that reality, the BPD will always endeavor to conduct interviews of the involved personnel as soon as possible.

The BPD would respectfully take exception to the wording associated with Recommendation No. 2. Although the wording in Recommendation No. 2 factually summarizes the situation relative to interviews of the involved officer, the BPD believes that the inclusion of more details would provide greater context and clarity for the reader.

The OIS occurred in the last two hours of the officer's fourth consecutive 12-hour shift. For reasons of fatigue and officer wellness, the officer was allowed to go home without providing a criminal interview. All further delays were the result of negotiations with his legal representatives. The only reason he was not interviewed administratively on Day 2 was the BPD's adherence to the policy of giving precedence to the criminal interview.

The BPD wholeheartedly agrees with OIR that "with very rare exceptions, a 'before end of shift' statement is important to investigative integrity." This officer-involved shooting surely fell into the "rare exception" category for the reasons previously mentioned.

Despite the unique circumstances in this case, the BPD will re-examine the policy to account for reasonable exceptions that would be spawned by extraordinary circumstances.

Recommendation 3

BPD should consider working with the labor association and reviewing the approach of other agencies in considering a possible revision to its "view first" approach to allowing officers to watch BWC recordings prior to being questioned about their involvement in a deadly force incident. Page 12

The BPD remains open to revisiting its existing policy in this regard. A preliminary survey of other Los Angeles County law enforcement agencies has already been undertaken by Department staff to determine policy positions on this subject.

Recommendation 4

BPD should reconsider its practice of inviting involved officers to attend Critical Incident Review briefings, so as not to complicate the candid presentation of facts and/or the panel analysis and instead instituting a process whereby a CIRB attendee is tasked with providing involved officers feedback after the meeting. Page 14

The BPD respectfully disagrees with OIR's position as articulated in Recommendation No. 4. The OIR correctly states that officers usually do not attend "regular" Critical Incident Review Board (CIRB) meetings. However, this does not negate the fact that officers (involved or not) are welcome and have attended CIRB sessions. The reason for allowing, and even encouraging, the attendance of officers at CIRB sessions is to enhance transparency in BPD processes and to use CIRB sessions as a training vehicle to those who wish to attend. It is the BPD's position that the transparency provided by the opportunity to attend CIRB sessions is an important factor for ensuring the confidence of the BPD's internal audience concerning the CIRB process.

The OIR acknowledges that the officers' presence in the referenced CIRB session did not have an apparent effect on the presentation or subsequent analytical discussion. The idea that the officers' presence could have the potential to be awkward or constraining, may be true, but neither awkwardness nor constraint have been observed in any of the sessions where officers have been in attendance. CIRB sessions are conducted in a straightforward, professional manner. The expectation of BPD management is that all facets of a UOF, pursuit, etc., will be presented and discussed in a frank, forthright manner during the CIRB session.

All in attendance can see first-hand, how each member of the command staff views a critical incident, pursuit, or use-of-force. As OIR is aware, each impaneled CIRB contains a peer member, who votes. It is the BPD's position that, lacking any evidence to the contrary, the practice of encouraging the attendance of involved officers at CIRB sessions enhances both confidence and morale. It also reinforces performance expectations.

Either a CIRB member in the officer's chain of command, or the BPD Training Coordinator, is routinely tasked with providing detailed feedback and/or training to officers. The feedback is based upon the unique circumstances of each CIRB incident, and it is documented in the Guardian Tracking System as well as on the CIRB worksheets, which are personally completed by the Chief of Police. Finally, it is worth noting that the BPD command staff has never received (or been made

aware of) any complaints about the officers' presence in CIRB sessions from individual officers or through the labor association.

Recommendation 5

BPD should evaluate its current physical force options training with an eye toward increasing the frequency and time spent on hands-on tactical practice, incorporating de-escalation techniques and non-force options into any curricula. Page 29

The BPD agrees with this recommendation. Considering a nearly two-year lockdown, training opportunities were limited that would have been available to the BPD under normal circumstances. The BPD is acutely aware of the need to make up for lost time in the training realm. The BPD is currently "fast-tracking" much of this type of training and increasing the number of scenarios which incorporate de-escalation techniques and non-force options.

Recommendation 6

BPD should consult with other agencies, both locally and nationwide, to explore and potentially pursue new models of training for physical force options, especially those that effectively incorporate de-escalation techniques. Page 29

The BPD agrees with this recommendation. The BPD is engaged in an ongoing quest to identify and incorporate best practices wherever they may be found.

Recommendation 7

When officers reach into vehicles, in addition to determining whether the force was within policy, BPD should determine whether the tactic conformed with its "Reaching Into Vehicles" policy. Page 31

The BPD agrees with this recommendation. This is a practice in which the BPD already engages. For example, in the past year two use of force incidents (UOF) were closely examined for officers reaching into vehicles. The CIRB addressed instances of officers reaching into vehicles in UOF 2022-012 and UOF 2022-14. The CIRB addressed policy implications (Department Policy 470 – *Reaching Into Vehicles*, Section 2 *Policy*) prior to the publication of OIR's recommendations.

Recommendation 8

BPD should regularly train to its policy on "Reaching Into Vehicles" and develop tactical scenarios designed to demonstrate to officers the potential danger of the tactic to officers and civilians. Page 31

The BPD agrees with this recommendation and will develop tactical scenarios to specifically address this policy requirement.

Recommendation 9

BPD should develop new scenario-based training on the new state law relevant to prevent positional asphyxia. Page 34

The BPD agrees with this recommendation. Although positional asphyxia is addressed on a recurrent basis in roll call briefings and annual use of force training, scenario-based training will be developed to provide a more realistic approach to situations involving potential positional asphyxia.

Recommendation 10

BPD should train officers to explicitly articulate any rationale for keeping the subject in the prone position in their Incident Reports, and expressly address their considerations of positional asphyxia. Page 34

The BPD agrees in principle with this recommendation and agrees to implementation. However, there needs to be a cognizance that positional asphyxia and associated sudden death are complex topics. The key in any assessment concerning potential positional asphyxia is the amount of time a subject is kept in a prone position. Achieving control of resistant/combatative subjects is a dynamic, and often challenging process. With this understanding, keeping a subject in a prone position should be brief and resistive subjects may have to be repositioned, to the extent practicable, despite the subject not being under complete control in order to avoid positional asphyxia.

This dilemma is best captured in a Department of Justice, National Law Enforcement Technology Center bulletin from June 1995:

“A person lying on his stomach has trouble breathing when pressure is applied to his back. The remedy seems relatively simple: get the pressure off of his back. However, during a violent struggle between an officer or officers and a suspect, the solution is not as simple as it may sound. Often, the situation is compounded by a vicious cycle of suspect resistance and officer restraint.”

It is worthy of note that the BPD does not authorize any techniques or transport methods that unreasonably involve a substantial risk of asphyxia.

Recommendation 11

BPD should ensure that the force review and CIRB process expressly consider in relevant cases whether officers' actions were in compliance with new law and policy relating to cautions against positional asphyxia for restrained subjects. Page 34

The BPD agrees with this recommendation. All instances will be critically evaluated by the CIRB.

Recommendation 12

BPD should remain focused on promoting professional language and providing briefing, training, and counseling that will encourage officers to remain conscious of the very limited instances in which profanity should be considered tolerable. Page 37

The BPD agrees with this recommendation. This is an ongoing organizational priority. The BPD understands how heightened emotions in dynamic situations can result in provocative or unprofessional language. In addition to addressing the need for professional language in daily roll call briefings, the BPD has proactively facilitated training for all patrol personnel in the "Why'd You Stop Me?" law enforcement training program, with a focus on strategic communication to preserve safety and human dignity during police contacts with community members.

Recommendation 13

BPD should instruct supervisors to return any report for correction that uses the phrase "tactical language." Page 37

The BPD agrees with this recommendation.

Recommendation 14

BPD should continue to evaluate its force review process and specifically consider more frequent use of the option of finding tactics to be out of policy where relevant. Page 40

The BPD agrees with this recommendation and is committed to holding its officers accountable and to finding tactics to be out of policy when appropriate.

Recommendation 15

BPD should amend policy to require that all officers detail in writing the circumstances surrounding their use(s) of force to include any efforts to de-escalate prior to the use of force; and if no de-escalation techniques were deployed, an explanation for why none were deployed. Page 42

Officers detailing the circumstances surrounding UOF incidents is a required practice and is also a function of competent report writing. This OIR recommendation aims at revising policy; however, the BPD's position is that accurate reporting of UOF incidents, which includes either the use or lack of de-escalation techniques, is an integral component of line supervision and leadership. In the overwhelming majority of cases, UOF situations are recorded by body worn and/or in-car cameras. The BPD's position is that the involved officer's account should always include all relevant circumstances surrounding a use of force, including those specific events that necessitated the decision to use force. The BPD's expectation is that each report should be self-explanatory in terms of what reasonable efforts at de-escalation were utilized.

The BPD takes the position that, despite the good intentions underlying this recommendation, it would be impractical to mandate, via policy, why no de-escalation techniques were deployed in each UOF situation.

The BPD's position is that a properly written report will include all circumstances surrounding any UOF, so that the context of the situation is clear to the reader as to the reasons de-escalation techniques were or were not employed. Consider the following hypothetical example: Officers are called to the location of a disturbance. As officers get out of their police vehicle, an enraged suspect jumps out of a bush from two feet away and immediately charges at the officers with a knife. In this hypothetical situation, the reason should be obvious to the reader why no de-escalation techniques were employed. The proposed requirement via policy fiat that officers detail in writing de-escalation techniques in every UOF incident is unnecessary.

If this recommendation was to be made a policy mandate, then failure to articulate de-escalation techniques would be a policy violation. Policy violations are considered misconduct. The BPD's position is that a more constructive approach would be to train officers and supervisors to the appropriate standard. They will be held accountable through the CIRB process, rather than the disciplinary process.

Recommendation 16

BPD should revise its CIRB force review policy to require the Board to consider whether de-escalation techniques were deployed prior to moving to force options and if not, whether it would have been appropriate to consider them. Page 42

As with the previous response, this can be accomplished without revising the BPD policy manual.

Recommendation 17

BPD should remain vigilant during this transitional period as to the use of “Tracking Mode,” in terms of both volume and individual episodes, to ensure that the spirit of the new approach is understood and followed by officers utilizing this option. Page 47

The BPD agrees with this recommendation.

Recommendation 18

Apart from its individual documentation of unintentional lapses related to BWC use, BPD should supplement its semi-annual audit program by tracking the number of otherwise identified failures to properly engage the recordings as required by policy, with the goal of ensuring that overall compliance levels remain high. Page 54

The BPD agrees with this recommendation.

Recommendation 19

BPD should reinforce its policy expectations regarding the muting of microphones during recorded encounters, and direct training as needed regarding the circumstances in which muting is considered appropriate, focusing on the need per policy to document the reason for the decision to mute. Page 57

The BPD agrees with this recommendation.

Recommendation 20

BPD should continue to evaluate its existing camera mount equipment and pursue alternatives that would lower the rate at which cameras are dislodged in a physical encounter. Page 58

The BPD agrees with this recommendation. It is worth noting that the exterior uniform vests in use by officers are Modular Lightweight Load-carrying Equipment (MOLLE) vests. Body worn cameras remain secure when attached to a MOLLE vest. Despite this advancement, the BPD will continue to evaluate camera mount equipment to alleviate the problem of BWC dislodgement during physical encounters.

Recommendation 21

BPD should consider sharing the stories and related video footage of “everyday policing” in the City as a way to educate and inform its community. Page 59

The BPD agrees in principle with this recommendation; however, it presents several practical challenges. The primary challenges arise concerning the need for staff resources to view, evaluate, edit, and post video footage. Currently, the BPD does share via social media selected stories that will resonate with the public. The BPD’s Community Outreach and Personnel Bureau plans to increase stories and examples of “everyday policing” with members of the community. Ideally, these stories will be presented with narration by a sworn member of the BPD. Such video footage has previously been shared as instructional aids during the course of the BPD’s Community and Youth Academies.