

**Annual Retaliation Policy Review
Conducted by
Office of the Inspector General**

February 10, 2006

I. Introduction

Paragraph 92 of the Consent Decree (Paragraph 92) requires the Police Commission to review the Department's anti-retaliation policy on a yearly basis.¹ In compliance with this requirement, the Office of the Inspector General (OIG) began issuing an annual report on the Department's Retaliation Policy in 2004. On February 12, 2004, the OIG submitted to the Police Commission its "Review of the Department's Retaliation Policy" (First Report). On February 11, 2005, the OIG submitted its "Annual Retaliation Policy Review Conducted by the Office of the Inspector General" (Second Report).

The First Report contained 12 recommendations that the OIG believed would assist the Department in better handling complaints of retaliation and better addressing and remediating problems in the workplace that might lead to perceptions of retaliation. The Second Report contained an additional four such recommendations, again aimed at better handling complaints of retaliation in the Department. In both reports, the anti-retaliation policy itself was reviewed, as well as the effectiveness of Department supervisors in addressing and preventing retaliation.

Although Paragraph 92 does not provide for a method by which the Police Commission or OIG must evaluate the Department's retaliation policy, in past years the OIG has chosen to conduct such evaluations by reviewing completed retaliation investigations completed by Internal Affairs Group (IAG). The OIG believes that conducting such case reviews is one of the more productive ways of evaluating the effectiveness or lack thereof of the Department's retaliation policy, given that such case reviews provide a snapshot into how the policy is being implemented and whether that implementation is successful.

Indeed, the First Report and Second Report were based almost entirely on such case reviews, although, again, case reviews are not required under Paragraph 92. This year, however, the OIG decided to take a different approach in reviewing the Department's retaliation policy on behalf of the Police Commission.

¹ Paragraph 92 provides, in full:

The City and the Department shall prohibit retaliation in any form against any employee for reporting possible misconduct by any other employee of the LAPD. Within six months of the effective date of this Agreement and annually thereafter, the Police Commission shall review the Department's anti-retaliation policy and its implementation and make modifications as appropriate to protect officers from reprisals for reporting misconduct. The Commission's review of such policy and its implementation shall consider the discipline imposed for retaliation and supervisors' performance in addressing and preventing retaliation.

On July 8, 2005, the Chief of Police signed Special Order Nos. 15² and 16³ (New Policy), which completely revamped the Department's anti-retaliation policy. As of February 9, 2006, IAG Analytical Audit Unit reports that there have been no retaliation investigations completed under the Department's New Policy.⁴

Thus, the only case reviews the OIG could conceivably conduct in this Third Report would be under the Department's now-defunct former retaliation policy (Old Policy).⁵ Upon studying this issue, the OIG determined that any results of such case reviews and any recommendations made therefrom would be moot, given that the Department's retaliation policy has since been revised. Therefore, conducting case reviews at this point would be futile.

As such, the OIG determined that for this year's Annual Retaliation Policy Review, OIG staff would conduct a review and analysis of the Department's New Policy and of the implementation of the policy thus far.

II. A Comparison of the New Policy and the Old Policy

Under the Old Policy, retaliation was defined as, but not limited to, "harassing language, behavior or conduct, unwarranted punitive action or acts of discrimination that are directed toward another employee, or such employee's family or friends, in response to such employee:"

1. Bringing a complaint or grievance alleging any type of misconduct;
2. Testifying in support of another employee who has brought a complaint or grievance alleging misconduct;
3. Advising another employee who has complained of any type of misconduct;
4. Assisting or participating in any investigation, proceeding, or hearing concerning the employee who complained of misconduct; or
5. Taking any other actions that are protected by law or LAPD policy.

Under the Old Policy, retaliatory acts included virtually any form of harassment, punitive action, or discrimination. Thus, virtually any act that could be taken in a negative light might constitute retaliation under the old policy, so long as there was a causal relationship between the negative act and some form of sheltered activity.

² See Addendum No. 1, Special Order No. 15 of 2005.

³ See Addendum No. 2, Special Order No. 16 of 2005.

⁴ According to IAG Analytical Audit Unit, there are 24 open investigations with an incident date of July 8, 2005 or later that include at least one allegation of retaliation. Given that the incident dates in these cases postdate the creation of the New Policy, all 24 investigations will likely be investigated and adjudicated under the New Policy.

⁵ See Addendum No. 3, Section 1/272 of the Department's 2002 Manual.

The New Policy, outlined in Special Order No. 16 of 2005, is more consistent with current retaliation law and succinctly states: “Retaliation is defined as an **adverse employment action** taken against an employee for engaging in protected activity.” (Emphasis added.)

The New Policy states that an adverse employment action may be “an action that would cause a reasonable employee to be deterred from engaging in a protected activity or an action in direct response to an employee engaging in a protected activity.” Under the New Policy, examples of an adverse employment action include:

1. Negative performance evaluations;
2. Negative Employee Comment Sheets;
3. Imposition of discipline;
4. Denial of paygrade advancement;
5. Denial of coveted assignment or promotional opportunity; and
6. Change of assignment.

Under the New Policy, protected activities include:

1. Opposing, reporting, or participating in any claim, lawsuit, or investigation concerning unlawful discrimination or sexual harassment;
2. Filing a grievance or participating in any unfair labor complaint;
3. Taking advantage of any labor right or benefit such as using sick or family leave, seeking compensation for overtime worked, or filing an objectively valid work-related claim for damages;
4. Reporting misconduct of another Department or City employee to the OIG, or any Department or governmental entity; or
5. Supporting, assisting or cooperating in a misconduct investigation.

Thus, the Old Policy was overly broad and ambiguous in that virtually any form of harassment, punitive action, or discrimination could constitute retaliation. The New Policy resolves this problem by providing a more succinct definition of retaliation that is less ambiguous and falls in line with the law.

Moreover, due to the aforementioned ambiguity, the Old Policy provided an opportunity for confusion on the part of alleged victims of retaliation, the varied entities (both inside and outside of the Department) that investigate such claims, and those who are accused of retaliation. The new policy, with roots in the law, is much more precise as to what conduct is required for retaliation to occur. Additionally, under the New Policy, not every act that may be taken in a negative light would form the basis for retaliation. Instead, the negative act must constitute an “adverse employment action.”

The OIG believes that these distinctions—the elimination of ambiguity and conformity to the law—are perhaps the most important changes from the Old Policy to the New Policy.

However, in its analysis of the policies, the OIG also noted the following distinguishing features:⁶

- The New Policy emphasizes that the Department will not tolerate any employee supporting or sanctioning retaliation. The Old Policy included similar language, but targeted the warning to supervisors that directed or encouraged retaliation.
- The New Policy holds managers and supervisors accountable if the manager or supervisor knew or should have known that the behavior of subordinates constituted retaliation. The Old Policy imposed an express duty on supervisors to simply ensure that retaliation does not occur, whether by subordinates or not. Although a subtle distinction, the New Policy appears to place more responsibility on the shoulders of supervisors if they should have known that the behavior of subordinates was retaliatory.
- The New Policy includes a definition of retaliation based upon whether a “reasonable employee” would be deterred from engaging in a protected act. Under the Old Policy, there was no such guideline as to what the standard was for evaluating whether retaliation occurred (e.g., an objective or subjective analysis of the situation).
- The New Policy does not include “harassing language” as a prohibited act, bringing it more in line with the legal definition of retaliation. Under the Old Policy, “harassing language” could be a retaliatory act.
- The New Policy protects any employee that suffers an adverse employment action as a result of engaging in a protected act. Under the Old Policy, friends and family of the employee would also be protected, even if no adverse employment actions were taken against them or the employee.
- The New Policy ridded itself of most of the Old Policy’s ambiguous wording. Under the Old Policy, ambiguity was prevalent. For example, the Old Policy prohibited “[u]njustifiably refusing to assist or cooperate with the performance of work related activities.”
- The New Policy mirrors the law insofar as it prohibits “adverse employment actions.” Thus, whatever is considered an “adverse employment action” under the law would appear to be a prohibited act under the New Policy. The Old Policy prohibited additional acts such as repeatedly ignoring, shunning, or excluding another employee from work related activities. However, it provided no definition for “repeatedly” and the number of actions required is

⁶ See also Addendum No. 4, which is an illustration of the Old Policy and the New Policy and their most significant differences.

ambiguous. Thus, the Old Policy left too much room for interpretation unlike the New Policy, which is more closely tailored to the law.

- The New Policy does not include abuse of military endorsement as a potential retaliatory act, unlike the Old Policy.
- The New Policy includes any “protected activity” and emphasizes some of the most important protected activities, such as participation in a claim of sexual harassment or discrimination, or participating in an unfair labor complaint. The Old Policy included a catch all provision stating that retaliation could arise following an employee “taking other actions which are legally protected by federal, state, local or constitutional laws, or any LAPD policy.”
- The New Policy requires Professional Standards Bureau (PSB) and Risk Management Group (RMG) to monitor Compliance with Special Order Nos. 15 and 16. The Old Policy provided no direction for any Department entity to monitor compliance with the Old Policy.

Although the effectiveness of the New Policy cannot fully be determined until such time as it is put into action via internal misconduct investigations into alleged violations of the policy (case reviews), the OIG believes that the New Policy is a significant improvement over the Old Policy, if only because it brings the Department more in line with the law and eliminates the ambiguities of the Old Policy.

III. The Department's Efforts to Implement the New Policy

As with any new procedure, the Department's efforts to implement the New Policy are critical. In a Department with over 13,000 employees, the task of informing all employees about the New Policy is daunting. Nevertheless, the issues surrounding retaliation are of critical importance, requiring Department leaders to ensure that the message of non-tolerance of retaliation is delivered to all employees. To this end, the Department formed a plan to implement the New Policy and to educate all Department employees about the New Policy and the importance thereof. Critical steps in this plan are outlined below.

A. Distribution of the New Policy to All Department Employees

The first step in the plan was to deliver a copy of the New Policy (Special Order Nos. 15 and 16) to all employees. All Department employees were required to sign an acknowledgement confirming that they received copies of the Special Orders. Moreover, Special Order Nos. 15 and 16 are published on the Department's Local Area Network (LAN) for access by any Department employee at any time. As such, all Department employees were aware of the existence of the New Policy as of Summer 2005, when the Special Orders were distributed.

B. Training Division Training Bulletin Regarding Retaliation

Simply signing an acknowledgement of receipt of the Special Orders does not ensure that all employees understand and/or appreciate the significance of the New Policy. As such, the Department has undertaken an effort to educate employees about the New Policy and about retaliation in general.

In November 2005, the Department's Training Division published an eight-page informative Training Bulletin entitled "Anti-Discrimination and Retaliation" (Volume XXXVII, Issue 3).⁷ In this Training Bulletin, the Department educates its employees regarding the definition of retaliation, the prevention and identification of retaliation, and what an employee should do if he or she suspects retaliation has occurred.

The Training Bulletin reinforces the responsibility of each and every Department employee to report misconduct in any form, including retaliation. The Bulletin clearly states that "[e]very employee has the responsibility to stop unprofessional behavior in the workplace." Also included is a listing of the various Department entities that can assist an employee with issues concerning retaliation, including a reference to the OIG.

The Training Bulletin also emphasizes the responsibility of supervisors and managers to enforce and maintain a professional work environment by monitoring the workplace and taking prompt action to investigate complaints of misconduct. Specifically, Department management, Command Staff, and supervisors are informed of their responsibility to:

1. Stop the behavior;
2. Conduct an initial investigation;
3. Seek the advice of legal counsel if necessary;
4. Reassure concerned individuals that the behavior will cease and if it does not, to seek assistance immediately; and
5. Monitor the situation to make sure no reprisals are taken against the person who complained. Supervisors are also advised to maintain continuous monitoring of what is occurring within their span of control.

An overview of state and federal law along with a list of Department Manual Sections that govern issues concerning retaliation and discrimination are also provided in the Bulletin. Additionally, a list of federal, state, city, and Department entities to which an employee may turn concerning issues of retaliation or discrimination is provided.

The OIG believes that this Training Bulletin does a superb job of educating employees not only on what Department policies dictate, but on ways to combat retaliation, ways to handle concerns of retaliation should they arise, and on resources available to all employees when they feel retaliation has occurred. Underscoring all of the above is a section in the Training Bulletin that emphasizes the absolute responsibility of all employees to take action when retaliation is suspected.

⁷ See Addendum No. 5, Anti-Discrimination and Retaliation Training Bulletin Volume XXXVII, Issue 3.

The Training Bulletin, in addition to being distributed to the various Department entities, is published on the Department's LAN.

C. Standardized Roll Call Training

As part of the Department's continuing education efforts, standardized training is provided to officers during roll call. Each Deployment Period (DP), the Department organizes a lesson plan including various topics ranging from arrest procedures to human relations. In DP 12 of 2005,⁸ the Department published a Lesson Plan concerning the subject of retaliation.⁹ In this Lesson Plan, attendees at roll calls throughout the Department were provided with the definition of retaliation and a listing of employees' responsibilities as they relate to the New Policy. Moreover, the attendees were given two scenarios that may depict retaliation occurring in the workplace. Roll call attendees were then asked whether retaliation had occurred in each scenario and why. These scenarios provide an excellent method of showing how the policy comes into play in real-life situations, assisting employees in better understanding the policy itself.

The OIG believes that the Standardized Roll Call Training Program is an effective way to re-emphasize the importance of the Department's retaliation policy to all roll call attendees. As with any other policy or procedure, an employee's knowledge of the Department's retaliation policy is perishable, and efforts should be made on a continuous basis to reinforce the goals and objectives of the New Policy. The OIG hopes that the Department will continue to provide training on retaliation in its Standardized Roll Call Training Program.

D. Command Staff Update Training

In November 2005, the Department held a training day for Command Staff members.¹⁰ A make up session was held on February 6, 2006 for those who could not attend the first meeting. During the Command Staff Update Training meetings, a one and one-half hour long presentation was provided to the Department's highest-ranking officers regarding the issue of retaliation. Included in the training were the definitions of retaliation, adverse employment action, and protected activities under the New Policy; what actions are not classified as retaliation (if based upon merit versus improper motive); prevention of retaliation (including recognizing early warning signs); responding to retaliation when it occurs; and the Department entities available to Command Staff members to assist with retaliation concerns.

⁸ November 13, 2005 – December 10, 2005.

⁹ See Addendum No. 6, Standardized Roll Call Training Program Lesson Plan for Deployment Period 12-05: Retaliation Policy.

¹⁰ Command Staff includes sworn and civilian employees with the rank of Captain (or civilian equivalent) and above.

1. The Cost of Retaliation

During the Command Staff Update Training, a PowerPoint presentation was used to facilitate training in the area of retaliation. In addition to discussing what the New Policy mandates, the presentation attempted to emphasize the importance of the Department's anti-retaliation policy both in terms of numbers and real-life examples.

For instance, the Department's Command Staff was informed that since 1995, 158 lawsuits involving 164 plaintiffs have been filed against the City involving at least one claim of retaliation. The cost over the last 5 years for this litigation has averaged approximately \$4,000,000 annually. In the top four cases during that period, judgments were awarded in the amounts of \$3.7 million, \$3.6 million, \$3.5 million, and \$2.3 million. These figures, combined with the total number of lawsuits filed, ensured that the audience present during the training realized the impact that issues relating to retaliation are having on the City and the Department. The OIG believes that the use of these statistics was beneficial in getting the anti-retaliation message across to the audience by putting the problem of retaliation into the context of dollar figures.

2. Retaliation Case Studies

Also during the Command Staff training, three case studies were used to illustrate the issue of retaliation.¹¹ These scenarios were based upon actual retaliation cases faced by the Department. In each of the scenarios, the Department's Command Staff was presented with a set of facts, followed by questions regarding what potential liabilities the Department may face in the case, what specific behaviors or violations occurred, what supervisory responsibilities are invoked, and what the responsibilities are of supervisors, managers, victims of retaliation, and witnesses of retaliation. These real-life scenarios enabled the Command Staff to put the New Policy into context with the facts of real retaliation cases. All too often, the implications of a very important policy are lost due to the sterile and legalistic wording of the policy. As such, presenting the New Policy in terms of how it would apply to actual retaliation cases is perhaps one of the best ways to effectively communicate the New Policy.

The OIG hopes that by stressing the importance of the New Policy to Command Staff members, they will, in turn, stress its importance to their respective commands. The OIG further hopes future Command Staff training meetings include additional instructive material on the Department's anti-retaliation policy.

E. Risk Management and Police Integrity Training for Sworn Personnel in Administrative Assignments and Personnel Assigned to Specialized Details

Pursuant to the requirements of Paragraph 117 of the Consent Decree, the Department has initiated training on the topic of retaliation for all sworn personnel assigned to

¹¹ See Addendum No. 7, Risk Management Training – Police Integrity Case Studies.

administrative assignments throughout the Department, as well as for personnel assigned to specialized details. This training, which covers risk management and police integrity issues, will include one hour of training in the area of retaliation. On January 25, 2006, the Department held a course in this area designed to instruct Department supervisors on the subject matter so that they, in turn, may instruct other officers in the Department.

The Risk Management and Police Integrity Training is broken up in to three parts, with one hour dedicated to the recognition and prevention of retaliation. During this one hour session, retaliation will be discussed with Department recruits, officers, supervisors, and managers. The training will be based, in large part, on the case studies discussed above.¹² These three case studies, which have been reviewed by the Independent Monitor for substance, are geared toward recognizing retaliation under the New Policy, illustrating the impact retaliation has, and determining what potential liabilities the Department may face in the case, what specific behaviors or violations occurred, what supervisory responsibilities are invoked, and what the responsibilities are of supervisors, managers, victims of retaliation, and witnesses of retaliation.

Finally, during the one-hour training session, a 13 minute video will be played wherein issues concerning retaliation will be discussed.

F. Electronic Learning (E-Learning) Course

Employees at the rank of Police Officer III/Detective I and below have or will soon participate in an e-learning course, which will address the issue of retaliation. This course began on February 2, 2006 and ensures that employees of a non-supervisory rank are included in retaliation training.

The OIG commends the Department for continuing to train all employees on this very important topic of retaliation. Taken together, the various methods of training mentioned above are sure to reach most if not all employees. The OIG is also pleased with the varied techniques used by the Department to train its employees, such as Training Bulletins, live training sessions, video instruction, and e-learning.

The OIG hopes that the Department will continue these training efforts on a routine basis to highlight the importance of its New Policy and to ensure that all Department employees understand what the New Policy mandates concerning retaliation.

IV. Investigating and Monitoring Claims of Retaliation Under the New Retaliation Policy

In recognizing that the issue of retaliation is a major concern, the Department has sought to clarify the responsibilities of various entities in the organization with regard to handling issues of retaliation. Specifically, in the year 2005, the Department created the Workplace Investigations Unit (WIU) and launched the Retaliation Prevention Program.

¹² See Addendum No. 7, Risk Management Training – Police Integrity Case Studies.

Additionally, the Ombuds Office remains available to deal with issues relating to perceived retaliation that do not rise to the level of misconduct.

A. Internal Affairs Group Workplace Investigations Unit

In April 2005, PSB/IAG created its WIU. At the onset, the WIU was staffed with three IAG investigators. By October 2005, the WIU had grown to a total of eight IAG investigators. One of the original goals of the WIU was to create a team of specialized IAG investigators with the requisite knowledge and experience necessary to excel in sensitive and complex investigations involving workplace issues, including retaliation.

The goal of the WIU is to handle all investigations of misconduct that involve workplace issues. Such issues may include, but are not limited to, claims of harassment, discrimination, hostile work environment, disparate treatment of employees, and retaliation. Unfortunately, due to the limited staffing at WIU combined with the complexity and tremendous amount of time it takes to complete such cases, the goal of handling all workplace-issue cases is not yet attainable by the WIU.¹³ As such, the WIU currently evaluates all workplace issue cases at their inception and selects the most critical cases to handle in the WIU. More straightforward cases are assigned to other investigative entities within the Department. Additionally, a commanding officer may request that a certain case be assigned to WIU given the nature of the case, and the WIU will attempt to accommodate that request.

According to the WIU Officer-in-Charge, the current caseload of the WIU is between 65 and 70 cases. Of these cases, 22 include claims of retaliation. Another 49 cases in which there is at least one allegation of retaliation are currently being handled by other Department entities.

In addition to the specialized knowledge and expertise WIU investigators apply to these cases by virtue of the fact that they focus on such cases regularly, WIU investigators at times contact the City Attorney's office for legal advice concerning the investigations. Moreover, WIU investigators work with employees of the Behavioral Science Services Section (BSS) to ensure that any interpersonal needs are met during and after the investigations.

Because the WIU is still a relatively new Unit, the Officer in Charge continues to seek opportunities for the Unit to grow both in numbers and in knowledge. The WIU hopes to attend outside training in the near future in the areas of discrimination and retaliation to better enhance investigators' knowledge base in those areas. The WIU staff meets twice a month to discuss their cases, establish a common ground in their investigations, and to learn from one another. Moreover, WIU staff provided training at the latest quarterly PSB meeting (held January 25, 2006) regarding retaliation to ensure that all PSB/IAG investigators are knowledgeable with regard to investigating cases of retaliation, should

¹³ The Officer in Charge of the WIU indicates that a total of 12 investigators assigned full time to the WIU would be needed to attain the goal of handling all workplace investigations.

they be assigned such an investigation. The WIU plans to enhance this skill base by providing extensive additional training at the next PSB quarterly meeting.

In addition to having an increased skill set and knowledge base in the area of retaliation, WIU investigators are able to focus more attention on these specialized cases. For example, WIU investigators often spend much more time with the complainant in these sensitive cases to make certain that the complainant feels assured that their allegations will be treated seriously and appropriately. Moreover, when it comes time to send the complainant a letter with the findings of the investigation, the WIU at times departs from the Department's boilerplate closeout letter and instead drafts a more personalized letter to the complainant. Additionally, the WIU is often in the best position to conduct a full and fair investigation into the issues of retaliation, given the dedication of the WIU to workplace issues.

Although the WIU is still in its infancy (relatively speaking), the WIU appears to be well on its way to making a positive impact in the investigation of specialized workplace issue cases, including those that involve retaliation. A Special Order is currently being drafted to clearly define the role and obligations of the WIU. The OIG believes that the creation of the WIU is a big step in the right direction of handling these very important, sensitive cases.

B. Risk Management Group Retaliation Prevention Program

On November 18, 2005, the Chief of Police established the Retaliation Prevention Program (RPP), which will be implemented by the Retaliation Prevention Unit (RPU), Risk Analysis Section (RAS), RMG. The mission of the RPP is to prevent retaliation by monitoring employees who have engaged in protected activities (as defined by the New Policy). In so doing, RPU will maintain a database of reporting and supporting witness employees in cases alleging retaliation. This database will then track these employees to ensure that no adverse employment actions are taken against them by any members of the Department as a result of the protected activity.

Because this program is so new, its effectiveness cannot yet be determined. However, the goal of the program—to monitor employees who have engaged in protected activities to ensure that no adverse employment actions are taken against them as a result of doing so—is commendable. The OIG will continue to monitor the RPP in order to determine its level of effectiveness.

C. Ombuds Office Responsibilities

The Ombuds Office was formally established on October 14, 1999 by Special Order No. 24. The office was created to provide a confidential, neutral resource for Department personnel to use to resolve a variety of internal personnel issues and disputes. The Ombuds Office is available to all Department personnel, on a voluntary basis, to attempt to resolve interpersonal conflicts in the workplace.

There are two main avenues of assistance available to employees via the Ombuds Office. First, the Ombuds Office provides mediation and conciliation services to employees to informally resolve problems from the perspective of a third-party neutral observer. Second, the Ombuds Office Workplace Assessment Team is available to conduct an analysis of issues occurring in the workplace. The Team conducts voluntary interviews of employees in the workplace, analyzes the situation, and then drafts a report to be sent through the local chain-of-command, including recommendations as to how to resolve the workplace issues.

The Ombuds Office will not accept a case where misconduct is alleged or where another formal process is underway on behalf of the employee (such as filing a claim with the EEOC, a grievance, or a lawsuit). Indeed, one of the first questions asked of an employee seeking the assistance of the Ombuds Office is what other entities are involved in the issue being raised.

When an employee approaches the Ombuds Office for assistance, the Ombuds Office first determines whether misconduct is alleged by the employee. If misconduct is alleged, the Ombuds Office refers the employee to IAG to initiate a complaint of misconduct, and the Ombuds Office does not open a file on the matter. In the case of retaliation, the Ombuds Office attempts to determine if retaliation has been alleged pursuant to the New Policy, i.e., whether the employee engaged in a protected activity and was thereafter subjected to an adverse employment action as a result of the protected activity. Often times, an employee will believe that retaliation has taken place, but the conduct will not amount to retaliation under the New Policy and therefore may not constitute misconduct. In such cases, the Ombuds Office will attempt to assist the involved employee.

In any case where the Ombuds Office becomes involved, the employee must sign the Ombuds Office Alternative Dispute Resolution (ADR) Program Confidentiality Policy, which includes a statement that any misconduct will be reported to IAG. Thus, in the context of retaliation, if an employee first brings the issue to the Ombuds Office and the issue does constitute an allegation of retaliation under the New Policy, the Ombuds Office will refer the case to IAG in order to ensure that a formal investigation is conducted into the allegation of misconduct. In cases of perceived retaliation where no misconduct has occurred, the Ombuds Office provides an excellent method by which employees can attempt to resolve any interpersonal issues that arise in the workplace.

Thus, the Department has successfully implemented a two-tiered system, one formal and one informal, to deal with workplace issues. If misconduct is alleged in the form of retaliation, the case will be formally investigated by IAG. If, however, retaliation is alleged but does not meet the definition of retaliation under the New Policy, the involved employee may nevertheless seek assistance in an informal manner through the Ombuds Office. The OIG is pleased to report that regardless of whether the concern requires a formal or informal approach and resolution, employees have resources to rely upon to assist them in resolving any such interpersonal issues.

V. Status of Past OIG Recommendations Regarding the Department's Retaliation Policy

As noted above, in its First Report and Second Report, the OIG made numerous recommendations to the Department aimed at increasing the effectiveness of its anti-retaliation policy. In all, 12 recommendations were made in the First Report and four recommendations were made in the Second Report. The Department's Civil Rights Integrity Division (CRID) is responsible for tracking the progress of the Department's response to these recommendations. As of February 2, 2006, CRID reports that of the 16 recommendations made in the past, 10 have been implemented in whole or in part, three are in the process of being implemented by the Department, two are delayed, and the last one was rejected by the Department due to confidentiality concerns.

The three recommendations that are still in progress are as follows.

- Recommendation No. 4 in the Second Report suggested that the Department should work with the OIG to develop protocols for the referral of retaliation cases to the Ombuds Office. CRID reports that PSB is in the process of producing written documentation of such protocols.
- Recommendation No. 6 in the First Report requested that the Department develop a formal retaliation curriculum for every Department manager and supervisor. As noted above, training for Command Staff was provided on November 22, 2005 and again on January 25, 2006. Moreover, Risk Management and Police Integrity Training for Sworn Personnel in Administrative Assignments and Personnel Assigned to Specialized Details will be provided to other managers and supervisors during the Third Quarter of Fiscal Year 2005/2006. Assuming this training reaches all Department supervisors, the OIG expects this recommendation to be fully implemented soon.
- Recommendation No. 12 in the First Report suggested that prior to referring cases to the Ombuds Office or the Police Commission Discrimination Unit, PSB should forward the complaint to the OIG along with justification for the referral so that the OIG can ensure that all issues have been addressed, and that the referral is appropriate. According to CRID, PSB is in the process of preparing such protocols.

The two recommendations that have been delayed are as follows.

- Recommendation No. 1 in the Second Report suggested that the Department re-evaluate the use of the Non-Disciplinary classification to close retaliation complaint investigations with related litigation if the only reason for closing the investigation is that the litigation was settled or dismissed. According to CRID, the status of this recommendation is "delayed pending clarification of verbiage."

- Recommendation No. 10 in the First Report suggested that PSB should investigate every claim for damages, lawsuit, and complaint filed with another agency that includes an allegation of retaliation, regardless of any action the other agency might take with respect to the case. According to CRID, the “final determination [of this recommendation is] delayed due to protocol agreements.”

As for the 10 recommendations that have been fully or partially implemented by the Department, any evaluation of the effectiveness of the implementation at this time would be premature, given that the Department recently revamped its anti-retaliation policy, recently created the WIU to investigate claims of retaliation, and recently developed training to educate all employees about the New Policy.

The OIG will continue to track the progress of its recommendations from past reports and work with CRID to determine the best methods to implement the recommendations.

VI. Discipline Imposed for Retaliation in Past Cases

According to IAG's Analytical Audit Unit, only one allegation of employee vs. employee retaliation has been sustained by the Department since January 2003. This low rate of sustained allegations of retaliation may be the result of a number of problems, including but not limited to deficiencies in the Old Policy, the fact that retaliation as an issue of misconduct may be difficult to prove insofar as a connection must be shown between some type of protected activity and a subsequent related retaliatory act, and possibly the fact that employees do not always bring the issue of retaliation to the Department's attention.

Despite the many reasons that may exist why only one allegation of retaliation has been sustained by the Department, it is clear that in an organization of over 13,000 employees, retaliation does in fact occur. This has been repeatedly proven by the statistics and figures noted above, wherein numerous, large monetary judgments have been awarded to employees or former employees claiming retaliation in civil lawsuits. Payouts for allegations of retaliation have averaged \$4,000,000 per year in the last five years.

Thus, it is clear that retaliation is occurring but is not being rooted out in the disciplinary system. This was one of the main motives behind abandoning the Old Policy in favor of the revised New Policy. Hopefully, with the implementation of the New Policy, increased training on the issue of retaliation, an emphasis on reporting acts of retaliation by all employees, and the specialized WIU focusing on retaliation matters, more cases of retaliation will be brought to the Department's attention and will be more effectively handled and investigated by Department supervisors.

Given the indisputable discrepancy between civil judgments and the Department's low sustained rate of retaliation allegations, the OIG will continue to monitor the progress of the New Policy and the Department's efforts to recognize, investigate, combat, and root out retaliation. Only time will tell if the Department's New Policy will be an effective tool in this endeavor. However, the fact that the New Policy is so closely aligned with

the legal definition of retaliation should, in theory, create more congruity between the findings in litigation and the findings in internal investigations relating to retaliation.

VII. Case Reviews Completed by the OIG Under the Old Policy

In the OIG's Complaint Investigations Audit for Fiscal Year 2005/2006, two internal investigations that included claims of retaliation under the Old Policy that were initially selected for review, were deselected from the sample population. At the time of the selection of cases for this Audit, the OIG expected that staff would review retaliation cases as part of the OIG Annual Retaliation Policy Review. As such, OIG staff deselected these cases from the Audit given that they were to be reviewed at a later time (in this report). However, as noted above, the OIG subsequently determined that conducting case reviews in this Third Report would be futile given the recent implementation of the New Policy.

Nevertheless, because the OIG deselected these two cases in the Audit, OIG staff felt that it was important to review them in this Third Report. As such, the Department's investigations in Complaint Form (CF) Nos. 04-2014 and 04-6144 (consolidated with CF No. 04-6144) were reviewed.

During the review of these completed complaint investigations, the OIG noted several concerns with the investigation in CF No. 04-2014. However, the allegations of misconduct in that case were raised on April 29, 2004. As such, the case is now "out of statute" insofar as the law prohibits the Department from imposing discipline in the case given that the allegations in the case were brought to the Department's attention more than one year ago.

As such, the OIG will draft correspondence to the Commanding Officer of IAG regarding these concerns, but it appears that no further punitive action may be taken in that individual case.

VIII. Conclusion

Overall, the OIG believes that the Department is doing an excellent job in the way it is implementing the New Policy. Prior to July 2005 when the New Policy was implemented, there were few efforts by the Department to address concerns relating to the Department's anti-retaliation policy. However, since the implementation of the New Policy, the Department has made strides in areas such as training all employees with regard to what the policy requires of them and providing Department resources such as the WIU and RPP to better handle issues of retaliation when they arise.

As for the policy itself, it is difficult to determine its effectiveness until such time as internal investigations into misconduct relating to retaliation have been completed. Nevertheless, based upon its review of the New Policy, the OIG is pleased that the vast ambiguities in the Old Policy have been virtually eliminated and that the New Policy is

more in line with the current status of the law, thereby avoiding any confusion resulting from discrepancies between the law and the Department's policy.