



Office of the City Manager

ACTION CALENDAR

January 29, 2008

To: Honorable Mayor and Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Douglas N. Hambleton, Chief of Police

Subject: Evidence Theft Issues within the Berkeley Police Department - City Manager Response to the Police Review Commission Policy Report

RECOMMENDATIONS

1. Approve the Police Department's response plan to the Police Review Commission's report on evidence theft issues as described in this report.
2. Request that the City Manger report back to council in September 2008 on the implementation of the response plan.

FISCAL IMPACTS OF RECOMMENDATION

The response plan can be implemented within the existing Police Department budget.

SUMMARY

In early January 2006 the Police Department discovered the theft of narcotics from the evidence room. A joint criminal investigation was initiated by the Police Department and the Alameda County District Attorney's Office. The criminal investigation resulted in the arrest and conviction of former Sergeant Cary Kent for felony narcotics possession and theft.

On May 24, 2006, the Police Review Commission established a subcommittee to investigate policy issues related to the theft of narcotics evidence. The subcommittee report, which was issued on October 16, 2007, contains 7 main findings and 27 individual recommendations. Staff concurs in whole or in part with 25 of these recommendations. Some of the recommendations have already been implemented and others are in progress with full implementation expected by June 30, 2007.

DISCUSSION

After the theft of narcotics evidence that was discovered in January 2006, the Department took steps to safeguard the evidence. These included:

- Moving the narcotics evidence out of the Special Enforcement Unit (SEU) offices.
- Insuring that alarm systems on the evidence storage rooms were functioning and recording the access of those who were authorized to make entry.
- Transferring an officer from outside the unit to have primary responsibility for handling the evidence.

- Increasing the frequency and comprehensiveness of inspections of the evidence by commanders from outside the SEU.
- Modifying the evidence destruction procedures to include more detailed inspections, random audits of the contents of evidence envelopes and oversight by commanders from outside the SEU.

As a result of an earlier staffing audit, there had been plans to hire a non-sworn manager to handle the Department's business affairs. Those plans included changing the Department's banking and seized cash asset handling procedures. A Public Safety Business Manager was hired and given the assignment to work with the Auditor's Office and the Finance Department to close police accounts at the credit union and transfer the funds into the City's regular banking process.

The PRC subcommittee had requested an audit of drug asset forfeiture accounts by the City Auditor. The Department had previously requested a similar audit of the funds. The audit was completed and the report was forwarded to the City Council on September 11, 2007. The audit findings showed that there had not been any theft of funds, but it did show a need for changing procedures and internal controls. The audit recommendations for the Police Department were fully implemented by the conclusion of the auditor's work. A new manual – Procedures for Handling Property Room and SEU Asset Seizure Funds dated August 24, 2007 was completed and staff transferred all funds from the old credit union accounts to the City's bank. All accounting for the police asset accounts is now handled through the City's FUND\$ finance accounting system.

### RESPONSE TO PRC SUBCOMMITTEE RECOMMENDATIONS

The subcommittee report contains seven findings followed by various recommendations. In some cases the recommendations do not relate specifically to the associated finding. For example, finding No.1 relates to drug evidence, but some of the recommendations that follow that finding address both drug evidence and cash assets. Finding No.3 relates to cash assets, but some of the recommendations that follow address both drug evidence and cash assets. Since there are different procedures for handling drug evidence and money it was difficult to blend the two subjects into a response to the individual recommendations.

For the sake of clarity, the drug/narcotic evidence issues are addressed below in the response to the Finding No.1 recommendations and cash handling issues are addressed in response to the Finding No.3 recommendations.

The PRC subcommittee findings and recommendations are listed below, followed by the staff response and proposed action plan which are in **bold** print.

Finding No. 1: Systems for auditing of drug evidence were not adequate to detect unauthorized removal of drugs from the evidence locker.

- a. Require that Chief of Police report to the City Council on the implementation of General Order P-65, recommendations from POST committee, newly drafted Property Room Procedures and an overall action plan to ensure that drug evidence and assets seized by the Berkeley Police department are secure. Chief of Police should also provide quarterly audit reports to the City Council and Police Review Commission for review. An interagency protocol for monitoring drug evidence and related assets (based on the Asset Management Manual, August 27, 2007) should be written and submitted to related agencies for comment and revision (including the Police Review Commission).

**Response:**

**Agree with respect to drug evidence. See No.3 below regarding cash assets. General Order P-65 will be revised and reissued by June 30, 2008 based on the recommendations from the study by the Commission on Peace Officer Standards and Training (POST).**

**The Police Department plans to implement the changes by June 30, 2008 and report back to the PRC and City Council by September 2008.**

**Inspection reports will be provided to the PRC for a period of one year at which point the PRC and the Department should determine the need for ongoing reporting.**

- b. BPD should hire an outside auditor to examine the CRIMES database and design a system for generating detailed accounts of the quantities of drugs and assets seized by police. Monthly asset reports should be made public. This database should be available for inspection by members of the public and Police Review Commissioners

**Response:**

**Partially Agree.**

**The Police Department and the IT Departments have hired outside experts who are working with City staff on an entirely new police computer hardware and software from New World Systems. The City Council has approved the purchase and implementation has started.**

**It does not make sense to spend money to customize the current CRIMES system that will be discontinued before long.**

**The Department will provide the PRC with the standard reports on drug evidence that are available from the current CRIMES system. The reports will be generated each quarter for the next year and sent along with the cash and bank statements. (See response to No.3 a and b). Due to the staff time needed to generate the reports, staff feels that quarterly reports are more reasonable. The first report for the quarter that ended December 31, 2007 will be submitted by the end of January 2008.**

**After one year the PRC and the Department should determine the need for ongoing reporting.**

- c. Train interagency group with members from Finance, Auditor, City Manager, Police Department and any other agencies or individuals involved in processing or accounting for evidence in drug and asset tracking procedures. These should include but not be limited to reconciling seized assets with deposits into police/city accounts, tracking the status of individual cases including the status of court proceedings to promote consistency and to enable members of the public whose assets have been wrongly seized to recover their assets with due process and efficiency. In addition, written criteria for seizures of cash in drug and non-drug related cases should be established along with procedures for distributing unclaimed assets and returning assets to arrested individuals shall be established and made public.

**Response:**

**This recommendation is primarily regarding cash and asset handling. Those issues will be addressed in the responses to finding #3.**

**The Department agrees that drug/narcotics evidence handling procedures needed improvement. Procedures have already been changed and final written guidelines will be modified based on the recommendations from POST. The procedures will include moving the responsibilities for storage of all narcotics evidence out of the Special Enforcement Unit. There will be scheduled and unscheduled inspections, inspections when there are changes in personnel assigned to handle or supervise this task, and inspections at the time of destruction.**

**The use of an interagency team to process and account for drug/narcotic evidence is not practical. Contact with the narcotic evidence by those from outside the normal chain of custody could create problems that may impact prosecutions. Handling narcotic**

**evidence is not part of the job responsibilities for employees from the Finance Department, the City Manager's Office or other City Departments. Accordingly, they will not be included in the routine processing and inspection procedures for narcotics evidence.**

**The City Auditor does have the authority to audit any city operation. The Department has invited the Auditor to conduct future audits of narcotic evidence.**

- d. Identify who is responsible for monitoring entry into secured drug storage areas and chain of command related to unauthorized entry into these areas. A hard copy verifying the amount of drugs and/or assets should be created and signed by the responsible officer at the time of booking evidence into custody.

**Response:**

**Agree. The alarm system for the current narcotics storage room and the main property room is functioning properly. The three employees who have access to the rooms have their own individual code for activating/deactivating the alarm and the system records the date/time and code/person making entry. City IT staff is able to access the system and produce records showing the alarm activity.**

**The current practice for booking narcotics evidence includes listing the amount of drugs on the evidence envelope. This same information is included in the police report. The evidence envelope is signed by the officer who books the evidence and by every other person who handles the envelope as part of the record for the chain of custody.**

- e. Require the Chief of Police and City Manager to create a timeline and action plan for implementing relevant policies and procedures and providing necessary training to involved staff.

**Response:**

**Agree. The Police Department plans to implement the changes listed in this response as soon as practicable and in no event later than by June 30, 2008 and report back to the PRC and City Council by September 2008. As noted in this report, some of the recommendations have already been implemented and others will be completed soon.**

Finding No. 2: The police investigation of the Kent case was insufficient.**Response:**

**Staff disagrees with this finding. The Berkeley Police Department and the Alameda County District Attorney handled the criminal investigation of the Kent case jointly. In addition, Chief Hambleton consulted with several other current and former police chiefs and the State Bureau of Narcotics Enforcement regarding the way the investigation was conducted. The DA was brought into the investigation at the very beginning to insure that it would be handled properly and that it would meet his criteria for prosecution. The investigation has been concluded; Kent has been prosecuted, plead guilty, has served his sentence and is now on probation. There is no need to reopen the investigation at this time.**

- a. Police Department should identify policies and training information related to securing crime scenes and evidence. Review these policies and provide to the PRC.

**Response:**

**Agree. Policies regarding crime scenes are found in General Orders C-2, C-52, and I-4. The PRC has been given copies of these documents.**

- b. Preserve all documents related to the security and handling of drug evidence and seized assets and provide these to the PRC.

**Response:**

**Agree in part. These documents include General Order P-65, the Procedures for Handling Property Room and SEU Asset Seizure Funds dated August 24, 2007 and the policies listed in response to Finding No.2 (a) above have been given to the PRC.**

**The criminal investigation into the evidence theft case has been made public. Documents that are specific to the Kent case that have not already been released as part of that criminal investigation cannot be made available for a public personnel related investigation. Release of personnel records for a public personnel investigation is prohibited under Penal Code Section 832.7.**

- c. Identify the EXACT amount of drugs missing from the evidence locker.

**Response:**

**Disagree. Investigators determined that there were 286 evidence**

**envelopes that were suspicious and may have been tampered with. Due to the costs and limited resources at the crime lab a relatively small number of envelopes were tested in order to secure sufficient evidence for prosecution.**

**Police staff does not believe that the contents were removed from all of the suspicious envelopes. Since the contents of the envelopes could have been tampered with and cut/mixed with other substances, even a lab analysis at this time could not establish the exact amount of drugs that are missing.**

**Additional examination at this time would require reopening the investigation and the use of a crime lab at considerable time and expense, perhaps as much as \$20,000 in lab fees. Due to resource issues, the county crime lab generally will not become involved in an analysis that is not related to a pending prosecution. In this case, the prosecution has been completed.**

**The Police Department has examined records and has recently provided the PRC with the best possible accounting of the amount of drugs that were originally placed into the involved evidence envelopes.**

- d. Remove from the SEU and replace as soon as possible any officers who had access to the drug vault when Sergeant Kent was Administrative Narcotics Sergeant.

**Response:**

**Disagree. Several individuals who had responsibility for maintaining the drug evidence have been transferred as part of their normally scheduled rotations. Others still remain in the unit. Since there is no evidence of wrongdoing on the part of these employees, it is not appropriate to make transfers that could be viewed as punitive.**

**As noted above, all responsibility for narcotics evidence will be transferred out of the Special Enforcement Unit within the next few months.**

Finding No. 3: Systems for tracking and monitoring the movement of assets (cash evidence) seized by police in drug and non-drug related cases are inadequate.

**Response:**

**This finding covers cash assets, however; recommendation 3a and 3 d (4) seem to addresses both cash assets and narcotics evidence, which are handled using different procedures. Since other findings/recommendations seem to be more specific to narcotics issues, this response will only be regarding cash handling.**

- a. Chief of Police should ensure that monthly statements of drugs and assets seized by BPD officers be made available to the PRC each month. Prioritize this measure until processes for reporting are well established.

**Response:**

**Agree. The Department will provide the PRC with quarterly reports on cash assets forfeiture seizures along with the related bank statements. The reports will be generated each quarter for the next year and sent along with the drug evidence reports. (See response to No.1 (b). Due to the staff time needed to generate the reports, staff feels that quarterly reports are more reasonable.**

**The first report for the quarter that ended December 31, 2007 will be submitted by the end of January 2008.**

**After one year, the PRC and the Department should determine the need for ongoing reporting.**

- b. City Auditor should provide monthly bank statements to PRC regarding deposits made into police related accounts. These accounts must be reconciled with assets booked as evidence and monthly reconciliation of these accounts should take place.

**Response:**

**Agree, however; it is the Finance Department, not the Auditor that handles the City's banking and reconciling of accounts.**

**The Police Department receives copies of the bank statements and will provide the statements to the PRC quarterly for the next year.**

**After one year, the PRC and the Department should determine the need for ongoing reporting.**

- c. The Police Department should not be responsible for banking and should operate no accounts. All police spending must be approved and conducted through the office of the City Manager and the City Auditor. Expenditures beyond what has been allocated through the City's budgeting process should be authorized by the City Manager and the City Auditor. Release of assets should be documented and verified by the City Manager and City Auditor.

**Response:**

**Agree.**

**The City Auditor completed an audit of police asset accounts and reported her finding to Council on September 11, 2007. That audit was conducted at the request of the Police Chief and the PRC. The Auditors recommendations are sufficient to safeguard assets and the recommendations for the Police Department were fully implemented by the time the audit was complete. The Police Department produced the Procedures for Handling Property Room and SEU Asset Seizure Funds dated August 24, 2007 with input from the Auditor and the Finance Department. All banking related to the police asset accounts is now handled through the City's regular bank and tracked in the City's FUNDS\$ financial accounting system**

**The Credit Union accounts that had been handled by the Police Department have been closed. All banking now takes place using the City's regular bank and funds are processed by the Finance Department using procedures that have been approved by the City Auditor.**

**All expenditures of drug asset forfeiture funds are approved in writing and in advance by the City Manager and all purchases are handled using the City standard purchasing procedures. Generally the funds are used to cover some training costs for SEU members that are not covered by POST reimbursements and for major purchases that are not budgeted in the regular police budget. For example, last year, drug asset forfeiture funds were used to purchase new handguns, holsters and leather gear for all sworn officers. This large purchase was approved by the City Council and was completed using the City's competitive bid process.**

- d. The City Manager should be responsible for creating (interagency) procedures for processing assets including:
1. Criteria for confiscating assets.
  2. Standards for ensuring and crosschecking amounts seized.

3. Policies describing when and by what process assets shall be returned to members of the public.
4. Process for correlating cash and drug evidence with case numbers.
5. Descriptions of all assets forfeiture related accounts and criteria for making withdrawals from these accounts.

**Response:**

**Agree. Most of these items are already included in the Procedures for Handling Property Room and SEU Asset Seizure Funds dated August 24, 2007.**

**General Order P-65 will be revised to include more specific guidelines regarding the criteria for seizing evidence and assets. The revision will be completed by June 30, 2008. This will also address Recommendation No.1 (c).**

**Drug asset forfeiture is covered by state and federal law. Forfeiture cases are handled by the District Attorney's Office or by the US Attorney and approved by the courts.**

Recommendation For Finding No. 4: Systems for evaluating job performance by employees were unable to identify and correct the poor job performance of Sergeant Kent.

- a. Police supervisors should review existing personnel policies.

**Response:**

**Agree. The performance appraisal process and performance Improvement plans are covered by City Administrative Regulation 2.3 and General Order P-28. All command officers and supervisors have been instructed to review and follow these orders.**

- b. Supervisors should provide written performance reviews annually. If an employee is not satisfactory in any criteria, a written performance review will be created that identifies the area for improvement and a plan and timeline for gaining compliance with these standards.

**Response:**

**Agree. This is already part of the City formal performance appraisal process.**

- c. Supervisors who fail to produce written performance reviews of employees should be disciplined or reprimanded.

**Response:**

**Agree.**

- d. It should be the responsibility of the Chief of Police to ensure that supervisors are conducting performance reviews and addressing personnel matters in a timely fashion.

**Response:**

**Agree.**

- e. The current BPD Early Warning System needs major revisions. It is limited only to intervention when an employee receives three formal complaints. Therefore, someone who works inside the Department and has little contact with the public, like Sergeant Kent, would not be identified by the current Early Warning System and would not be provided with the necessary intervention.

In Oakland, by contrast, the early warning system is triggered by a combination of many factors including (but not limited to) uses of force, officer involved shootings, traffic violations, firearm discharges, citizen complaints, civil suits, in custody deaths or injuries, Penal Code 148, 69 and 243 citations, and sick leave usage. The use of these criteria is far more successful in identifying officers who may need intervention.

Finally, the existing BPD Early Warning System appears to include identifying problem officers on the basis of unfounded complaints. This is manifestly unfair to officers and is probably illegal under existing California law.

**Response:**

**Agree. The Early Warning System will be revised to include expanded criteria similar to those cited for Oakland such as attendance including sick leave usage, use of force incidents including firearm discharges and officer involved shootings, traffic collisions, sustained and not sustained internal and citizen personnel complaints, civil suits, and arrests for resisting and battery upon a officer (Penal Code sections 69, 148 and 243 b). The criteria will not include unfounded and exonerated complaints.**

**A new General Order on the Early Warning System is in the draft stage and should be issued by March 1, 2008.**

Recommendation For Finding No. 5: BPD supervisors were unable or unwilling to verify that Sergeant Kent was under the influence of narcotics while on duty at Berkeley Police Department.

- a. All BPD officers who take individuals into custody for violations related to the use of drugs should receive advanced training in detecting drug use.

**Response:**

**During discussions with the subcommittee, it was clarified that their intent was that officers should not make arrests for 11550 H&S, being under the influence of a controlled substance, unless they have had advanced training in the recognition and detection of drug influence.**

**Staff agrees with this recommendation and this has been the longstanding practice of the Department.**

- b. BPD officers should not be supervised by family members or personal friends when it is possible to find another officer to conduct this task. Conflict of interest should be avoided to the greatest extent possible. Under no circumstances should a police officer suspected of misconduct be investigated by a family member or personal friend. All investigators should sign a statement or form verifying that they are not related to or personal friends with the subjects of their investigations.

**Response:**

**Partially agree. This recommendation is covered in part by the City's Administrative Regulation 2.12 Near Relative Policy, which prohibits employees being supervised by family members. The Police Department has always complied with this City regulation.**

**It is not practical or realistic to restrict personal friendship within the City's workforce. General Order P-26, which provides guidelines for the investigation of personnel complaints, will be revised and reissued by March 1, 2008 to restrict investigations of complaints by near relatives and close personal friends.**

- c. BPD should develop training procedures that clarify policy and require that officers who suspect another of drug use become mandated reporters and report to the officer's supervisor as well as the Chief of Police.

**Response:**

**Agree. The new Police Regulations discussed in section 6 (a) and (b) (below) will also cover this issue.**

- d. The development and implementation of drug testing policies and procedures subject to review by the Police Review Commission prior to implementation.

**Response:**

**Partially Agree. On June 26, 2007 Council adopted Resolution No. 63,761–N.S. that rescinded a portion of Resolution No. 54,533–N.S. that had prohibited drug and alcohol testing for sworn police officers. Since testing is no longer prohibited, the Police Department, Human Resources Department and the City Attorney are working on the implementation of testing procedures. Since the impact of this change in policy will require that the City meet and confer with the Berkeley Police Association it is not practical to involve the PRC in the development of the procedures.**

Recommendation For Finding No. 6: Policies do not currently exist to require that BPD officers report misconduct, report officers who are unfit for duty, receive training in drug detection:

- a. The BPD should create a policy that requires officers to report misconduct by other officers.

**Response:**

**Agree. There are current policies that require officers to report misconduct (General Order P-26 sections 18 and 19) This order does not stand out in comparison to many other Police Department personnel rules. These sections will be rewritten in stronger terms and moved to the Police Regulations so that they are more prominently displayed and given greater importance. The new regulation is in draft form and will be issued by March 1, 2008.**

- b. The BPD should create a policy to require officers to report when they suspect that an officer is under the influence of drugs or alcohol (see RECOMMENDATION 5c).

**Response:**

**Agree. The new Police Regulations discussed in section 6 a (above) will also cover this issue.**

- c. Require that officers receive advanced training in detecting individuals who are under the influence of drugs as a prerequisite to transfer into the Special Enforcement Unit (Drug Task Force).

**Response:**

**Agree in principle. However, it is usually not possible to schedule this training prior to an officer's assignment to SEU due to the limited availability of this advanced training and the timeline for making special assignment decisions. Once they are assigned to the SEU, officers receive drug influence recognition and other advanced training.**

Recommendation For Finding No. 7: The current systems of accountability for the conduct of police have been reduced/compromised.

- a. Direct City Manager to make information public and direct city staff (and the Police Department) to assist the public in accessing documents.

**Response:**

**Agree. General Order R-23 covers the release of police records. This policy provides for a much more liberal release policy than what is required by the California Public Records Act.**

- b. Work with the Police Review Commission to review updated models of civilian review measures, including provisions of Oakland Police Department's consent decree ("Negotiated Settlement Agreement" United States District Court Northern District of California, Delphine Allen, et al., Plaintiffs, v. City of Oakland, et al., Defendants.) to increase the strength and ability of the Police Review Commission to fulfill its mission and responsibility to provide meaningful oversight of the police for the people of Berkeley.

**Response:**

**Staff will continue to work with the PRC, however; this issue is impacted by recent court rulings and the City's pending appeal of the BPA's lawsuit concerning the PRC Board of Inquiry procedures.**

RATIONALE FOR RECOMMENDATION

Staff agrees that there has been a need to improve evidence and cash handling procedures. To the extent that is practical, the Police Department will implement the PRC's recommendations. These changes will improve operations, limit the possibility of future improprieties and maintain the public's trust and confidence.

CONTACT PERSON

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