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September 24, 2012

Mr. Steve Stahl
City of Maricopa
Chief of Police
45145 West Madison Avenue
P.O. Box 610
Maricopa, AZ 85139

Ms. Brenda S. Fischer
City of Maricopa
City Manager
45145 West Madison Avenue
P.O. Box 610
Maricopa, AZ 85139

Re: Maricopa Police Department Professional Standards Case Review

Dear Chief Stahl and Manager Fischer:

Pursuant to Purchase Order 32264-00, the City of Maricopa hired the undersigned to review certain closed Maricopa Police Department internal affairs investigations reports. Please note that a revised version of the report is attached to this letter.

We thank you for the opportunity to provide this service.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

GALLAGHER & KENNEDY, P.A.


By:

Paul K. Charlton

PKC:gk
Enclosure

PROFESSIONAL STANDARDS CASE REVIEW

I. Introduction and Scope of Review

Pursuant to Purchase Order 32264-00, the City of Maricopa (the City) hired retired City of Phoenix Police Chief Jack Harris, and former U.S. Attorney Paul Charlton (“Consultants”) to review 192 closed Maricopa Police Department Internal Affairs investigations dating from November 2007 through August 2011. The City asked that Consultants review each file and answer the following three questions:

1. Were the complaints investigated utilizing generally accepted investigative standards (yes/no?).
2. Was the discipline rendered based on facts (yes/no?).
3. Was the discipline consistent with policy in effect at the time (yes/no?).

II. Methodology of the Investigation

Between June 28, 2012 and August 16, 2012 Jack Harris reviewed each of the 188 closed Internal Affairs files made available to him by the Maricopa Police Department. In conducting his review, Chief Harris reviewed the relevant internal affairs policies and procedures extant for the period of time covered in the review. Those policies and procedures included the following:

1. Maricopa Police Department (MPD), Operations Order 3.14 Discipline and Misconduct Investigations 10/24/2011.
2. MPD Operations Order 3.18 Discipline Procedures and Review Boards 8/15/2007.
3. MPD Operations Order 3.18 Discipline Procedures Matrix 9/4/2007.
4. MPD Operations Order 3.19 Misconduct Investigations 2/5/2009.

After his review of the material and files, Chief Harris drafted his findings and conclusion. Paul Charlton worked with Chief Harris to review and prepare this report.

III. Executive Summary

Chief Harris was provided and reviewed a total of one hundred eighty eight (188) reports that were provided to him by the MPD.¹ The majority of MPD Internal Affairs cases reviewed were investigated utilizing acceptable standards for investigations. Of the 188 cases reviewed by Chief Harris, he found that twenty one (21) cases were either not investigated appropriately, were misfiled, or lost completely. The twenty one cases represent an error rate of 11%. It is Chief Harris' opinion that the discipline imposed in the majority of the cases reviewed was consistent with MPD policy, based on facts, and discipline imposed was within the purview of the Maricopa Police Chief and his staff. However, Chief Harris' opinion is that although the discipline rendered in many of the cases falls within the discretion of the Police Chief and his staff, in many cases it appeared that MPD placed an over reliance on Coaching and Counseling when more severe discipline was warranted.

IV. Investigative Analysis

The first question to be answered about each investigation to be reviewed was "Were the complaints investigated utilizing generally accepted investigative standards?" In addressing this question there were several components to an investigation for which Chief Harris looked. Included in the investigation should be basic information on the complainant, witnesses and involved employees, a summary of the investigation, employee, complainant and witness statements, a synopsis of the allegations, details of the investigation, a list of attachments and the findings of the investigation. In reviewing this question Chief Harris also took into account that in the earlier investigations the MPD was in the formative stages of development. Chief Harris also noted that employees and supervisors came to the department from a wide variety of backgrounds and experience levels.

The second question to be answered for each investigation "Was the discipline rendered based on facts?" In reviewing each case for this question Chief Harris relied on his experience in reviewing similar cases to ensure that the investigator based his or her findings on the facts of the case as enumerated in the investigation and not on any other factors such as personality conflicts or other performance issues outside of the facts of this particular case.

The third question "Was the discipline consistent with policy in effect at that time" was answered based on policy in effect at the time of that particular investigation. Although MPD policy in reference to discipline changed over several years, one factor that remained consistent was that the Police Chief had the ability to impose discipline at his discretion based on individual investigation factors, as well as past performance of the employee. This type of discretion is common in police agencies and is necessary to allow the Chief to tailor discipline to the level of

¹ While Consultants were retained to review 192 closed MPD Internal Affairs files, only 188 were presented to Chief Harris for review.

misconduct exhibited as well as to utilize discipline to the best interest of the community, employee and the police department.

By Maricopa Police Department policy, discipline up to a one (1) day suspension can be imposed by the employees' Chain of Command with the approval of the Police Chief. Although a Discipline Matrix is in place in policy, the Police Chief has the discretion to go outside the Matrix in cases of repeat violations. The Police Chief also has the discretion to impose up to an eighty (80) hour suspension, demotion or dismissal. The Police Chief, by policy, is also allowed to deviate from the Matrix based on mitigating or aggravating circumstances. Discipline for employees of the rank of Lieutenant or higher is referred directly to the Police Chief for disposition.

V. Range of Findings

Per Maricopa Police Department Policy, allegations of misconduct can result in a classification of one of four finding categories. MPD policy 3.19 5.B (3) states that the investigating supervisor will list one of the following findings at the conclusion of the report:

- **Unfounded.** It is found that the reported misconduct did not occur or did not occur as alleged.
- **Exonerated.** The incident occurred, but the conduct was lawful and proper.
- **Unresolved.** There is insufficient evidence to either prove or disprove the allegation. The inquiry into this allegation is inactivated pending development of further information.
- **Sustained.** The allegation is supported by sufficient evidence to justify a reasonable conclusion that the alleged misconduct occurred.

VI. Review Summary

Chief Harris found the vast majority of the cases reviewed have an affirmative response to all three questions under consideration. That is to say that the complaints investigated utilized generally accepted investigative standards, the discipline rendered was based on facts, and the discipline imposed was consistent with policy in effect at the time. In the cases in which the findings were unfounded or exonerated no discipline was imposed. This is also the case when training or coaching was utilized to correct the behavior instead of formal discipline.

A. Affirmative Responses

The following cases were found to have an affirmative response to all three questions:

SI-07-01	SI-08-16	CC-09-08
SI-07-02	SI-08-17	CC-09-09 (1)
SI-08-01	SI-08-22	CC-09-09-(2)
SI-08-03	SI-08-23	CC-09-11 (1)
SI-08-04 (1)	SI-08-24	CC-09-11 (2)
CC-08-06	SI-08-25	CC-09-12 (1)
CC-08-07	SI-08-26	CC-09-12 (2)
CC-08-08	SI-08-27	CC-09-13
CC-08-09 (1)	SI-08-28	SI-09-15
CC-08-09 (2)	SI-08-29	SI-09-16
SI-08-11	SI-08-30	SI-09-17
SI-08-12	SI-08-31	CC-09-18 (1)
CC-08-13	SI-09-04	CC-09-18 (2)
CC-08-14	SI-09-05	CC-09-19
SI-08-15	CC-09-07	SI-09-20
CC-09-21 (1)	CC-09-38 (1)	CC-10-13
CC-09-21 (2)	CC-09-38 (2)	SI-10-14
CC-09-22	CC-09-38 (3)	SI-10-16
SI-09-23	CC-09-40	SI-10-17
SI-09-24	CC-09-41 (1)	SI-10-18
SI-09-25	CC-09-41 (2)	SI-10-19
CI-09-26 (1)	CC-09-42	CI-10-21
CI-09-26 (2)	CC-09-43	CC-168
CI-09-26 (3)	CC-09-44	SI-117
CI-09-27	CC-09-45	SI-118
CC-09-28	CC-09-46	SI-120
SI-09-01	CC-09-47 (1)	SI-94
SI-09-02	CC-09-47 (2)	SI-98
SI-09-03	CC-09-48	CI-161
CC-09-06	CC-09-49	CC-162
CC-09-30	SI-09-51	SI-163
CC-09-31	SI-09-52	SI-164
SI-09-32	SI-10-01	SI-165
SI-09-33	SI-10-03	SI-166
CC-09-34	SI-10-04	SI-171
CC-09-35 (1)	SI-10-06	SI-177
CC-09-35 (2)	SI-10-09	SI-179
SI-09-36	SI-10-10	IA-181
CC-09-37	SI-10-11	SI-182

CI-147	SI-186	
CI-112	SI-187	
CI-107	SI-188	
CI-149	SI-190	
CI-150	SI-191	
CI-109	SI-192	
CI-158	SI-193	
CI-139	SI-194	
CI-140{Same as 141}	SI-195	
CI-141	SI-196	
SI-125	SI-197	
CI-142	SI-198	
CI-144	CI-201	
CI-136	IA-202	
CI-137	CI-203	
CI-138	IA-204	
CI-167	SI-205	
SI-173	CI-207	
CI-151	CI-208	
SI-119	SI-209	
CI-156	SI-212	
SI-183	IA-214	
SI-184	SI-215	
SI-185	CC-218	

B. Failed to Meet Acceptable Standards

Chief Harris' review discovered a number of cases that do not meet acceptable investigative standards for a variety of reasons. Listed are the report numbers that Chief Harris found to be problematic and his reasons for that determination.

CC-08-02. This case involves a complaint being made to an on-scene supervisor by a complainant. The supervisor discusses the complaint with the officer without the issuance of a notice of investigation and the officer admits to the misconduct. The supervisor issues a Supervisor Counseling to the officer without the benefit of an investigation. Several days later a formal investigation is initiated and conducted. No discipline was imposed. If further discipline or more severe discipline had been warranted it may have been compromised on appeal due to the actions of the sergeant when he imposed Supervisor Counseling on the night of the incident.

CC-08-05. This case involves the arrest of a subject for driving while impaired. This report indicates that the complainant attempted several times to initiate a complaint against the arresting officer. He apparently attempted to file a complaint with several supervisors and later

sent a letter of complaint to the Mayor of the City of Maricopa. The complainant alleges several serious allegations including perjury, use of profanity and an allegation that he was served with a notice of suspension for his driver's license because he refused to take the breathalyzer test. In the officer's memorandum he states "at that point Michael agreed to take the intoxylizer exam." In the next sentence he states "at 0035 hours I served Michael with the order of suspension pursuant to ARS 28-1385." It appears that a formal investigation should have been initiated and was not.

SI-08-10. This case is a shooting incident involving an officer using deadly force. The criminal investigation is conducted by the office of the Pinal County Sherriff. The criminal investigation exonerates the actions of the officer. A letter from the office of the Pinal County Prosecutor's office declining prosecution is included in the investigation. Upon receiving the findings of these two agencies the MPD investigator exonerates the officer of any policy violations in the administrative investigation based totally on the findings of the Pinal County conclusions. In Chief Harris' opinion a thorough administrative investigation by MPD should have been conducted to determine if policy violations occurred or if proper tactics were used.

CC-09-10. In this case a formal complaint is made alleging misconduct by an officer. An Administrative Complaint Control Form is completed and assigned a control number. A letter dated 5-6-09 is sent to the complainant noting that an investigation has been initiated and that she would be advised of the outcome upon completion of the investigation. Two months elapse and the investigation is not completed. The investigation is passed on to a different investigator with the direction to "clean it up." This investigator conducts what is termed a "fact finding" investigation. It does not appear that the involved officer was given a Notice of Investigation. Apparently the officer is terminated and then a full investigation is concluded with a finding of Unresolved. In Chief Harris' opinion a full investigation should have been conducted in a timely manner or more details given in the report as to why there was a delay.

CC-09-14. This is another investigation that was not conducted in a timely manner. There was a two month delay from the time the complaint was taken to the time an investigation was initiated. The complaint alleged that the officer conducted an unlawful records check. During the two month delay the complainant moved and was no longer able to be located. A finding of Unresolved resulted. It also appears that a records check was not conducted to determine if the officer inappropriately conducted a records check on the complainant or her vehicle.

SI-09-47. Although this investigation appears to have been conducted using proper investigative standards the conclusion of the investigator is that the finding is "Not Sustained." No such finding category exists in policy. The facts appear to support a finding of Exonerated.

SI-10-02 (1) & Si-10-02 (2). No investigation could be located to support these two assigned numbers.

SI-10-05, SI-10-07 & SI-10-08. These three numbers indicate Supervisor initiated investigations. They appear however to involve Taser deployments, or in the case of SI-10-08, a Drive Stun Taser deployment. It appears that the deployments are possibly out of policy and the

numbers were assigned to begin the related investigations, however, no investigations can be located corresponding to the investigation numbers.

CC-10-12. No investigation could be located for this complaint number.

ASI-10-15. A Department Report is completed as well as a Use of Force report but no investigation is completed.

SI-170. MPD Inquiry form included and a Citizen Inquiry form included on the attached disc but is not completed.

SI-174. This is assigned a Supervisor Initiated investigation number but appears to be only a memorandum from a Sergeant to a Lieutenant about not obtaining prior authorization for overtime work. A coaching is administered but no investigation is included.

SI-175. This is similar to SI-174. This time an Inquiry form is attached but not completed. Another Coaching is administered to the same employee.

SI-178. An MPD Inquiry form is attached and one memorandum from an officer is included but an investigation is not included nor any conclusions or findings.

CI-180. A voicemail complaint is included in the file from the complainant to the Police Chief complaining of unprofessional conduct by an officer. No investigation is included.

SI-115. No information or complaint form or disposition in file.

SI-157. Note in file states "This investigation never completed by Lt. Willie Payne prior to his separation from the department." This report is shown as missing but is possibly cross referenced to SI-173.

SI-199. No investigation located for this number. In the file is a letter to the complainant and a Department Report but no investigation.

VII. Recommendations

Based on his training and experience and review of the above-referenced files, Chief Harris makes the follow recommendations:

1. The acquisition of a computer program designed for tracking internal affairs investigations such as IAPRO. This would help alleviate lost reports, failure to investigate in a timely manner and other related issues. This type of program is also useful in providing a wide spectrum of information about demographics and logistics related to internal investigations.

2. Continued training for all supervisors on the basics of conducting thorough investigations related to internal complaints and supervisor initiated complaints.

3. Greater adherence to the concept of progressive discipline when employees continue to commit infractions due to misconduct. For example, progressive discipline would move from one end of the spectrum to another; coaching/training, written reprimand, suspension, demotion or dismissal. These options are all available without an over reliance on any one category.

4. If an early warning system for employees is not already in place one should be considered to give supervisors the ability to recognize problem behavior in employees and correct the behavior before it becomes a discipline issue.

5. MPD policy states that if the alleged misconduct involves an employee of equal or higher rank a superior officer will be called to investigate the matter. This would require that supervisors of all ranks should be capable of conducting an internal investigation. Training should be provided to all ranks in investigative techniques for these types of investigations should the need arise.

6. All interviews with complainants, witnesses and employees should be electronically recorded and transcribed for inclusion in the investigation.

7. Chief Harris' review of the listed cases also reveals discrepancies in findings listed in several of the investigations between findings of "Unfounded" and "Exonerated." There seems to be confusion between some investigators about the definition of these two findings. This issue could easily be rectified through training.

VIII. Conclusion

Chief Harris concluded that the majority of cases reviewed were investigated utilizing acceptable standards for investigations. The discipline rendered in the cases where discipline was warranted was based on the facts outlined in the investigation relevant to that particular case. It is Chief Harris' opinion that the discipline imposed in the cases reviewed was consistent with MPD policy and within the purview of the Police Chief and his staff. However, Chief Harris' opinion is that although the discipline rendered in many of the cases falls within the discretion of the Police Chief and his staff, in many cases it appears that they placed an over reliance on Coaching and Counseling when more severe discipline was warranted. More severe discipline may have prevented further occurrences of unwanted behavior.

A number of cases reviewed were not conducted in an appropriate manner as discussed in the body of this report and a number do not appear to have had an investigation conducted when it would have been appropriate to do so. Some of these incidents may in fact have been investigated but the investigations are missing. If they were properly conducted and lost, or not conducted at all, is unknown.

Chief Harris reviewed a total of one hundred eighty eight (188) reports. Of that number he found that twenty one (21) cases were either not investigated appropriately or they have been misfiled or lost completely. The twenty-one cases represent an error rate of 11%.