

## Audit Division Report Audit of BIA Investigative Files

22-010-CD-553

03 November 2022

The Audit Division conducted this audit—the third in a series of annual audits as required by consent decree paragraph 553—to assess whether the Bureau of Internal Affairs' (BIA) administrative investigative files are thorough and complete per the requirements of consent decree paragraph 486. The Audit Division assessed compliance by reviewing BIA investigative files stored in the Case Management System (CMS) that were closed in June 2022.<sup>1</sup> Of the 83 files,<sup>2</sup> 14 (16.9%) files conformed with all subsections of paragraph 486.<sup>3</sup>

### FINDING 1

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#### Standards

Consent decree paragraph 486: “The City, CPD, and COPA will ensure that CPD and COPA maintain thorough and complete administrative investigative files. Such administrative investigative files will include:

**a. documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the alleged misconduct. In situations in which there are no known witnesses, the file will specifically state this fact. In situations in which witnesses were present but circumstances prevented the investigator from collecting information from those witnesses, the investigative file will state the reasons why. The investigative file also will include all available identifying information for anyone who refuses to provide a statement”**

#### Current Practices

Of the 83 files reviewed, 15 (18.1%) met the witness information and completeness requirements listed in paragraph 486 subsection a.<sup>4</sup> The 68 files that did not meet the requirements were comprised of 44 (64.7%) BIA investigator files and 24 (35.3%) District accountability sergeant files.

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<sup>1</sup> As discussed in the Scope & Methodology section below, the Audit Division reviewed the 83 investigative files closed in June 2022 that were in closed final status (with no affidavit and administratively closed files removed) to evaluate the most recently closed investigative files. The Audit Division is unaware of any reason that file completion rates in June would differ from other months.

<sup>2</sup> 51 (61.4%) of these files were investigated by BIA investigators and 32 (38.6%) were investigated by District accountability sergeants.

<sup>3</sup> Of these 14, 6 were BIA investigator files and 8 were District accountability sergeant files.

<sup>4</sup> The Audit Division determined that it was not able to fully analyze if all evidence is documented in the investigative file due to the scope of this audit, the broad definition of all evidence, and the variety of evidence an investigation can require. However, CMS does have a checklist of evidence that can be reviewed in the ASR tab. The Audit Division focused its analysis on the completeness of witness information and identification.

- 4 (5.9%) were missing one or more pieces of witness identifying information (name, phone number and/or address)<sup>5</sup>
  - 1 District file was missing the last name of the witness, the address, and the phone number
  - 1 District file and 1 BIA file were missing one or more addresses
  - 1 BIA file was missing a phone number
- 64 (94.1%) did not document any non-CPD witnesses and did not specifically state this in the file.<sup>6</sup> 42 of these were BIA investigator files and 22 were District accountability sergeant files.

### Reasons Current Practices do not Meet Standards

BIA investigators and District accountability sergeants do not consistently document instances when there are no non-CPD witnesses associated with the investigation.

### Implications

When witness information is absent from an investigative file, it is unclear whether no witnesses were present at the incident or, alternatively, investigators failed to interview witnesses who were present. To minimize the risk that investigations are perceived as incomplete, files of investigations with no witnesses—or with unknown witnesses—should clearly state this fact.

### Recommendation 1

BIA should ensure that its supervisory review process of investigative files includes a check that files of investigations with no witnesses—or with unknown witnesses—clearly state this fact.

### Auditee Response

BIA Response: *BIA is in the process of developing a mandatory field for witnesses, specifically non-CPD witnesses. If a non-CPD witness is not identified, the "Investigative Closing Report" would automatically generate text stating "No witness identified in this case."*

## FINDING 2

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### Standards

Consent decree paragraph 486: "The City, CPD, and COPA will ensure that CPD and COPA maintain thorough and complete administrative investigative files. Such administrative investigative files will include: ...

**b. documentation of each interview conducted and the recording of those interviews, if available"**

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<sup>5</sup> The Audit Division analysis for missing witness information did not include witnesses who chose to remain anonymous.

<sup>6</sup> BIA unit-level directive 2021-U002 section III.A.2.v. states that complete witness information includes: "If there are no known witnesses, or no known witnesses except the complainant, an explanation that none exist or none could be identified and a description of the efforts undertaken to identify witnesses."

Current Practices

All 83 files met all requirements listed in paragraph 486 subsection b.<sup>7</sup>

Reasons Current Practices do not Meet Standards

Not applicable.

Implications

Not applicable.

Recommendation 2

Not applicable.

Auditee Response

Not applicable.

FINDING 3

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Standards

Consent decree paragraph 486: "The City, CPD, and COPA will ensure that CPD and COPA maintain thorough and complete administrative investigative files. Such administrative investigative files will include: ...

**c. the names of all CPD members who have been identified as witnesses to the alleged misconduct"**

Current Practices

All 83 files met all requirements listed in paragraph 486 subsection c.<sup>8</sup>

Reasons Current Practices do not Meet Standards

Not applicable.

Implications

Not applicable.

Recommendation 3

Not applicable.

Auditee Response

Not applicable.

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<sup>7</sup> The Audit Division, with input from the Legal Affairs Division, interpreted an "interview" to be verbal testimony given by non-CPD members or CPD members. The Audit Division did not listen to full interview recordings; however, 3 files had interview attachments that were not named in a way that the Audit Division was able to determine who the interview belonged to, and it did listen to the beginning of these interviews to confirm they were the correct attachments.

<sup>8</sup> The Audit Division interpreted this subsection to require that CPD members who are witnesses be identified as such, by name, in the file.

## FINDING 4

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### Standards

Consent decree paragraph 486: "The City, CPD, and COPA will ensure that CPD and COPA maintain thorough and complete administrative investigative files. Such administrative investigative files will include: ...

**d. COPA's, BIA's, or the district's narrative description and evaluation of the alleged misconduct, based on its review of the evidence gathered, including a determination of whether the CPD member's actions appear to be within CPD policy, procedure, regulations, orders, or other standards of conduct required of CPD members"**

### Current Practices

Of the 83 files reviewed, 81 (97.6%) met all requirements listed in paragraph 486 subsection d.<sup>9</sup>

Of the 2 files that did not meet the requirements,

- 1 file included a narrative write-up that did not clearly explain the reasoning behind the investigator's finding. Specifically, the write-up did not clearly articulate why the accused member's tenure on the job factored into BIA's finding.
- 1 file had evidence that appeared to support a finding that differed from the investigator's conclusion. The Audit Division brought this file to the attention of the Legal Affairs Division and BIA. BIA concurred that this file was missing details that would support the finding, which should have been identified during BIA's review process. BIA reopened this file for further investigation.

### Reasons Current Practices do not Meet Standards

BIA's supervisory review process does not always identify when investigative files contain unclear and/or potentially unsupported findings.

### Implications

While almost all files the Audit Division reviewed met the requirement of paragraph 486 subsection d, the existence of even a couple investigative files with unclear support of findings—in fact or appearance—could undermine members' and the public's trust in the Department's internal investigations.

### Recommendation 4

BIA should ensure that its supervisory review process of investigative files includes a check that the file's findings are clearly articulated and include descriptions of all supporting evidence.

### Auditee Response

BIA Response: *BIA concurs with the Audit Division's findings of Recommendation 4 and will formalize specific criteria.*

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<sup>9</sup> The Audit Division interpreted this subsection to require a detailed writeup by the investigator which includes evidence reviewed during the investigation, how the evidence relates to the allegations and findings, and how the investigator determined if the actions were within CPD policy.

## FINDING 5

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### Standards

Consent decree paragraph 486: "The City, CPD, and COPA will ensure that CPD and COPA maintain thorough and complete administrative investigative files. Such administrative investigative files will include: ...

**e. in cases where material inconsistencies exist between complainant, CPD member, and witness statements, explicit identification of the inconsistencies, including a description of the evidence reviewed and written credibility findings"**

### Current Practices

All 83 files met all requirements listed in paragraph 486 subsection e.<sup>10</sup>

### Reasons Current Practices do not Meet Standards

Not applicable.

### Implications

Not applicable.

### Recommendation 5

Not applicable.

### Auditee Response

Not applicable.

## FINDING 6

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### Standards

Consent decree paragraph 486: "The City, CPD, and COPA will ensure that CPD and COPA maintain thorough and complete administrative investigative files. Such administrative investigative files will include: ...

**f. if a CPD member deployed a weapon, documentation of whether the CPD member's certification and training for the weapon were current"**

### Current Practices

None of the files completed in June 2022 involved deployment of a weapon. Therefore, the Audit Division did not evaluate this subsection.<sup>11</sup>

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<sup>10</sup> The Audit Division interpreted this subsection to require that investigators identify when inconsistencies exist between statements made by any party involved (including if a person gives two conflicting statements), a review of evidence related to the inconsistency, and a write-up of their determination of credibility.

<sup>11</sup> The Audit Division reached out to the Training and Support Group (TSG) to ask how the Department would ensure that documentation of certification and training for weapons are current. For firearms, a member is required to complete an e-Learning module prior to qualification and once qualification with a weapon is complete it is entered into the CLEAR system by the rangemaster. Members are required to qualify each calendar year with their firearm(s);

Reasons Current Practices do not Meet Standards

Not applicable.

Implications

Not applicable.

Recommendation 6

Not applicable.

Auditee Response

Not applicable.

FINDING 7

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Standards

Consent decree paragraph 486: "The City, CPD, and COPA will ensure that CPD and COPA maintain thorough and complete administrative investigative files. Such administrative investigative files will include: ...

**g. all CPD member original statements, as well as any amendments or clarifications to the original statement, and any subsequent statements"**

Current Practices

Of the 83 files reviewed, 81 (97.6%) met all requirements listed in paragraph 486 subsection g.<sup>12</sup> The 2 files that did not meet the requirements each had a statement that was missing a signature.<sup>13</sup>

Reasons Current Practices do not Meet Standards

Copies of signed statements were either not uploaded or did not exist.

Implications

A small number of investigative findings may be based on statements that were summarized and not approved by the member giving the statement.

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however, refresher training is currently only offered to Department members who failed to meet the standard for qualification. OC spray and impact weapon training are built into recruit training and there is no annual qualification or refresher training (unless refreshing training is specifically requested by a Department entity). Not all sworn members are certified to carry an expandable baton because the recruit training for this started on 27 September 2004. Members hired before that date are offered opportunities to be trained voluntarily at the academy.

<sup>12</sup> The Audit Division, with input from the Legal Affairs Division, interpreted a "statement" to be written and/or signed testimony by the person giving the statement. BIA informed the Audit Division that investigators may write-up summaries for themselves in To-From Subject format; however, these are not signed by the member giving the statement and were not considered statements. This subsection is specific to CPD member statements only.

<sup>13</sup> These 2 files did not have signed copies of CPD form CPD-44.261 (Receipt of Formal Statement - Department Members) or CPD-44.140 Audio Recorded Statement Instructions/Guidelines (Department Member).

### Recommendation 7

Investigators and reviewers should ensure that copies of signed statements are uploaded into CMS.

### Auditee Response

BIA Response: *BIA concurs with the Audit Division's findings of Recommendation 7 and has created a template to be utilized by investigators as the To-From-Subject Report "Cover Page" of a Log Number's Investigative Closing Report.*<sup>14</sup>

## FINDING 8

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### Standards

Consent decree paragraph 486: "The City, CPD, and COPA will ensure that CPD and COPA maintain thorough and complete administrative investigative files. Such administrative investigative files will include: ...

**h. an explicit identification of each allegation and the recommended finding for each allegation of misconduct in an investigation."**

### Current Practices

All 83 files met all requirements listed in paragraph 486 subsection h.<sup>15</sup>

### Reasons Current Practices do not Meet Standards

Not applicable.

### Implications

Not applicable.

### Recommendation 8

Not applicable.

### Auditee Response

Not applicable.

## OBSERVATION 1

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### Current Practices

The Audit Division identified nonuniform usage of CMS. Specifically, the roles listed in the Involved Parties and Quick View tabs were not always consistent with the initiation reports or narrative

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<sup>14</sup> Following receipt of this response, the Audit Division spoke with BIA to clarify that this recommendation pertains to analyzing signatures on CPD-44.261, CPD-44.140, and written testimony given by the member. BIA responded that ensuring there are signatures for these statements is important. The recommendation action plan, completed after the finalization of an Audit Division report, will specify the steps to implement the recommendation.

<sup>15</sup> The Audit Division interpreted this subsection to require that investigators clearly show each allegation for each Department member in the file and that each allegation corresponds to a finding as defined in consent decree paragraph 467.

write-ups. In addition, the BIA investigators that walked through CMS with the Audit Division noted that the names of Attachments should be spelled out in their entirety and should not include shortened descriptions; however, this is not uniformly enforced.

#### Suggestions

BIA should ensure that the review process includes consistency between CMS tabs and incident information and that all Attachments are spelled out completely. To the extent possible, BIA supervisors should ensure that investigative files are uniformly documented.

#### Auditee Response

BIA Response: *BIA concurs with Audit Division Observation 1 and will formalize specific criteria.*

### OBSERVATION 2

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#### Current Practices

The identification of witnesses (both non-CPD and CPD) differed between files. Some investigators identified a member with BWC footage to be a witness while other investigators did not. Some investigators did not explicitly identify a non-CPD person as a witness despite the person being present at the incident.<sup>16</sup>

#### Suggestions

BIA should ensure that witness identification is uniform across investigative files.

#### Auditee Response

BIA Response: *As stated in BIA's response in Recommendation 1, BIA is in the process of developing a mandatory field for witnesses, specifically non-CPD witnesses. If a non-CPD witness is not identified, the "Investigative Closing Report" would automatically generate text stating "No witness identified in this case."*

### OBSERVATION 3

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#### Current Practices

The Audit Division identified 4 files where a supervisor from BIA was involved as a complainant or witness and the review was then completed within the BIA chain of command. In one separate instance, the file identified a BIA supervisor's involvement as a potential conflict of interest and a supervisor outside of the BIA chain of command reviewed the investigation.

While BIA investigative files include a signed conflict of interest form by investigators stating that the investigator is free from conflict, instances where a BIA supervisor served as a complainant or witness to an investigation could raise the potential for a conflict of interest—either in fact or appearance.

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<sup>16</sup> The Audit Division notes that investigators may be unable to contact a witness if the original members responding to the event did not collect identifying information.

### Suggestions

BIA should consider developing procedures ensuring that investigations involving BIA supervisors are reviewed in a manner that avoids potential conflicts of interest (in fact or appearance).

### Auditee Response

BIA Response: *BIA concurs with Audit Division Observation 3 and will formalize specific criteria.*

## OBSERVATION 4

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### Current Practices

The Audit Division used BIA SOP 2022-001 “Investigative Closing Format” to ensure that all closing packets contained the three required parts: a cover letter in To-From-Subject format, the Investigative Closing Report (ICR), and the ICR continued (a narrative form).

Of the 83 files reviewed, 67 (80.7%) had all three parts. Cover letters in To-From-Subject format were missing from 15 files and the ICR was missing from 1 file. The Audit Division also checked if signatures were on the 68 files that had cover letters and found that 34 of the 68 files (50%) had all signatures.

### Suggestions

Reviewers should ensure that all required parts of the closing packet are included and that all cover letters have signatures.

### Auditee Response

BIA Response: *BIA concurs with Audit Division Observation 4. As stated in BIA’s response to Recommendation 7, BIA has created a template to be utilized by investigators as the To-From-Subject Report “Cover Page” of a Log Number’s Investigative Closing Report.*

## SCOPE & METHODOLOGY

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The Audit Division reviewed data supplied by Column and BIA for CMS files closed in the month of June 2022. The Audit Division chose to review the 83 investigative files closed in June 2022 that were in closed final status (with no affidavit and administratively closed files removed) to evaluate the most recently closed investigative files. The Audit Division is unaware of any reason that file completion rates in June would differ from other months.

The Audit Division utilized CMS to determine compliance with paragraph 486. Prior to starting the analysis, the Audit Division met with 2 BIA investigators to discuss CMS usage. From this meeting and a meeting with the Legal Affairs Division and City legal representatives, the Audit Division created a checklist to use for the analysis. This checklist included the areas in CMS that were used to determine compliance, the criteria the auditors used, and any additional comments the auditors felt were necessary.

The 83 sampled files consisted of 117 accused members and 167 allegations.<sup>17</sup>

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<sup>17</sup> 8 of the 117 accused Department members remained unidentified.  
Audit of BIA Investigative Files

The Audit Division conducted this analysis between June 2022 and September 2022.

## THE AUDIT DIVISION

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The mission of the Audit Division is to provide quality, independent, and objective assessments of the operations, processes, and internal controls in support of the Chicago Police Department. All audits, reviews, and advisements are intended to provide objective information to inform decision-making and to help improve the internal transparency and accountability of the Department's operations.

The Audit Division recognizes the standards and guidance contained in the Institute of Internal Auditor's *International Standards of the Professional Practice of Internal Auditing*. The Audit Division strives to comply with these standards in order to maintain the highest caliber of professionalism in conducting its audits and reviews.

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