To: Board of Fire Commissioners

From: Independent Assessor

Subject: AUDIT OF THE LOS ANGELES FIRE DEPARTMENT’S OUT OF STATUTE CASES

FINAL ACTION: ______ Approved ______ Approved w/Corrections ______ Withdrawn
              ______ Denied ______ Received & Filed ______ Other

SUMMARY

According to the Los Angeles City Charter ("Charter"), when the LAFD seeks to discipline a sworn member for misconduct, charges against that member must be filed with the Board of Fire Commissioners ("BOFC") within one year of discovery of the misconduct, and no more than two years from the date of the incident. If the statute of limitations expires before charges are filed, discipline is barred.

During a selected one-year period, August 1, 2012 through August 1, 2013 ("time period"), 584 entries were made into the Department’s Complaint Tracking System ("CTS"), which tracks complaints of misconduct. The Department determined that 30 of the 584 cases (5.14 percent) were closed and “out of statute” (“OOS”). The OIA determined that six of the 30 cases, were never assigned to an investigator and in more than half of the 30 cases (17), no investigative work was performed. 19 of the 30 OOS cases (63.3 percent) were assigned to the accused’s chain of command (“Field”) for investigation, including the 17 cases in which no investigative work was performed. Six (20.0 percent) of the OOS cases were assigned to Professional Standards Division and five (16.7 percent) were investigated through the Alternative Investigative Procedure.

In addition to determining the number of OOS cases, the OIA assessed whether these complaints were made by LAFD employees (internal) or members of the public (external), whether the Department correctly calculated the statute of limitations, how long it took to assign cases to an investigator, and the investigative effort in each case.
RECOMMENDATION
That the Board:
Approve the Office of the Independent Assessor’s (OIA) Audit of the Los Angeles Fire Department’s Out of Statute Cases.

I am available to provide any additional information the Commission may require.

Respectfully submitted,

SUE STENGEL
Independent Assessor
Board of Fire Commissioners

Attachment

c: Ralph Terrazas, Fire Chief
AUDIT OF THE
LOS ANGELES FIRE DEPARTMENT’S
OUT OF STATUTE CASES

OFFICE OF THE INDEPENDENT ASSESSOR

SUE STENGEL
Independent Assessor

May 2, 2016
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I. INTRODUCTION

This audit assessed information related to cases in which the Los Angeles Fire Department (“LAFD” or “Department”) determined that a complaint investigation had not been completed within the one-year statute of limitations (“SOL”).

According to the Los Angeles City Charter (“Charter”), when the LAFD seeks to discipline a sworn member for misconduct, charges against that member must be filed with the Board of Fire Commissioners (“BOFC”) within one year of discovery of the misconduct, and no more than two years from the date of the incident. If the statute of limitations expires before charges are filed, discipline is barred.

Statutes of limitations benefit the accused by freeing him/her from stale claims and protecting against fading memories, disappearing witnesses and lost evidence.

Conversely, adverse effects can result for an employer if employees are not held accountable for violating rules, policies or laws. For example, the Department may be put in the precarious position of continuing to employ members who commit serious misconduct. Additionally, if a member is not held accountable for a first transgression, progressive discipline cannot be used to impose a harsher penalty on that member for subsequent similar offenses. Finally, if prohibited acts which adversely affect other members are allowed to continue, legal liability may ensue.

In the book, Fire Service Administration, the authors explain the purposes of discipline:

Discipline is used to maintain appropriate conduct in the work environment. ... Discipline is also the way an officer can correct firefighters’ behavior to ensure they do not take the same action in the future. Discipline makes the individual a better employee and motivates other members of the department to work according to the rules and avoid the mistake their colleague has made. ... When a firefighter is not disciplined for an infraction of the rules, he or she quickly learns that this rule, and possibly others, are not important: there is no consequence for disobeying. This leads to flaunting authority and freelancing. Other firefighters who have continued to obey the rules begin to feel discriminated against, questioning whether they would have been disciplined in the same situation. In addition, they have been shown that following the rules doesn’t matter, and their motivation to continue to do so has been greatly decreased. Respect for rules — and for officers — begins to diminish. These departments develop low morale and low performance standards.

During a selected one-year period, August 1, 2012 through August 1, 2013 (“time period”), 584 entries were made into the Department’s Complaint Tracking System (“CTS”), which tracks complaints of misconduct. The

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1 Los Angeles City Charter Section 1060(a).
2 “Discipline” for a sworn member of the Department, pursuant to City Charter Section 1060(a) is suspension, removal, or other separation from the service of the Fire Department, other than resignation. The California Firefighter’s Bill of Rights, enacted in 2008, defines “punitive action” as “any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.” Government Code Section 3251(c).
3 The Supreme Court of the United States has spoken on the reasoning of why statutes of limitations exist. The Court in Order of Railroad Telegraphers v. Railway Express Agency ruled that “[s]tatutes of limitation . . . are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” 321 U.S. 342, 348-49 (1944). The Court went on to say, “[T]he theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.” Id. at 349.
4 Grant, Nancy, PhD and Hoover, David, PhD, Fire Service Administration, National Fire Protection Service (1994) 179-181.
Department determined that 30 of the 584 cases (5.14 percent) were closed and “out of statute” (“OOS”). Six of the 30 cases, were never assigned to an investigator and in more than half of the 30 cases (17), no investigative work was performed. 19 of the 30 OOS cases (63.3 percent) were assigned to the accused’s chain of command (“Field”) for investigation, including the 17 cases in which no investigative work was performed. Six (20.0 percent) of the OOS cases were assigned to Professional Standards Division and five (16.7 percent) were investigated through the Alternative Investigative Procedure (“Alternative Process”).

In addition to determining the number of OOS cases, the OIA assessed whether these complaints were made by LAFD employees (internal) or members of the public (external), whether the Department correctly calculated the statute of limitations, how long it took to assign cases to an investigator, and the investigative effort in each case.

**Prior Audits**
The OIA has conducted prior audits related to the Department’s discipline process. The statute of limitations was among several issues identified in those audits. This is the first audit focused solely on cases that were not investigated and adjudicated within the SOL.

**Acknowledgements**
The OIA thanks the Fire Department, especially personnel in the LAFD’s Professional Standards Division (PSD), for their assistance and cooperation in the research and writing of this report. The Office of the Independent Assessor is grateful to former Special Investigator II, Robert Leinweber and former Student Professional Workers, Ima Khodakaram, J. Andre Castellanos and Matthew Seipel for their invaluable assistance. Finally, the OIA thanks members of the Office of the City Attorney for their counsel throughout the writing of this report.

**Audit Contents**
Section II describes the purpose of this audit. Section III provides background related to laws and the investigative process. Section IV includes the OIA’s audit objectives and Section V discusses the Audit’s scope and methodology. Section VI explains the audit findings. The analysis is presented in Section VII. Section VIII is the OIA’s recommendations and Section IX is the conclusion.

**II. PURPOSE**
The OIA performed this audit to assess the LAFD’s compliance with the SOL and Department policies and procedures for conducting personnel investigations and imposing discipline on employees (when warranted) in a timely manner.

**III. BACKGROUND**

**Statute of Limitations**
Pursuant to Los Angeles City Charter Section 1060(a):

No member of the Fire Department shall be suspended, removed, or otherwise separated from the service of the Fire Department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges . . . The charges must be filed within one year of the department’s discovery of the act committed or omitted by a member and in no event later than two years from the date of the act or omission . . . (Emphasis added)
In other words, if the Department intends to discipline a sworn member, the investigation and adjudication must be completed and charges filed against the member within one year of the discovery of the misconduct, and no later than two years from the date the misconduct occurred. This provision applies to sworn members of the Department only.

Complaint Process
The Rules and Regulations of the Los Angeles Fire Department require Department members\(^5\) to promptly report any violation of policy, the Rules and Regulations, and practices and procedures of the Department.\(^6\) Reports of violations (complaints) are entered into the Department’s Complaint Tracking System (CTS) and are tracked through this system. A case is investigated when the allegations, if true, violate a rule, policy or regulation that can result in discipline. All allegations of misconduct are to be investigated “thoroughly and promptly, regardless of severity.”\(^7\)

**PROCESS FOR SUSTAINED COMPLAINTS\(^8\)**

1. **COMPLAINT MADE AND ENTERED INTO CTS**
2. **CASE ASSIGNED TO FIELD, PSD, OR ALTERNATIVE PROCESS FOR INVESTIGATION**
3. **COMPLAINT ASSIGNED TO INVESTIGATOR**
4. **INVESTIGATION**
5. **ADJUDICATION**
6. **SUSTAINED CHARGES/PROPOSED DISCIPLINE SERVED ON MEMBER**
7. **SKELLY HEARING\(^9\)**
8. **SUSTAINED CHARGES/DISCIPLINE SERVED ON MEMBER AND FILED WITH BOFC**

A case is investigated by the subject’s chain of command (“Field”), PSD, or through the Alternative Investigative Procedure.

The Alternative Process was created by the Department for investigations that might create a conflict of interest for PSD. These may include complaints against members of PSD, or complaints involving members of the Board of Directors of United Firefighters of Los Angeles City (UFLAC) or the Chief Officers Association, the

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\(^5\) The Rules and Regulations define “members” as sworn and civilian employees of the LAFD.

\(^6\) *Los Angeles Fire Department Rules and Regulations*, Section 17(c) (11/20/2012).

\(^7\) Complaint Record Form, CTS Help Section.

\(^8\) The process related to investigating and adjudicating a complaint is complex. Only the steps relevant to the topic of this audit are presented here.

\(^9\) In cases where the Department sustains allegation(s) of misconduct and proposes discipline, the subject (accused employee) is given the opportunity to be heard and the opportunity to present his/her side of the story. Before a non-probationary employee can be disciplined, he/she must be given due process. This due process consists of, at a minimum, “notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline.” *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215. This is known as a *Skelly* hearing.
bargaining units of sworn Department employees. The goal was to develop a procedure which maintained "an unbiased, objective, and transparent investigation." A chief deputy is assigned to manage the investigation and, if necessary, adjudicate the case and propose discipline.

Whether PSD or the Field investigates a case is determined by a 2008 agreement with UFLAC, and relates to the nature of the allegations.

Allegations typically investigated by the Field:
- Performance
- Behavior
- Punctuality/Absenteeism
- Driving/Parking Violations
- Lost Equipment

PSD investigates allegations of serious misconduct, such as off-duty criminal conduct, Equal Employment Opportunity complaints and extremely serious on-duty misconduct.11

The commanding officer of PSD determines the investigative path of a complaint – Field, PSD, or Alternative Process. Then, a designated person in the Field, PSD, or the Alternative Process assigns the case to an investigator responsible for conducting the investigation. The investigator is the neutral objective fact-finder who conducts interviews and gathers evidence. Upon completion of the investigation, the investigator writes a report summarizing the findings of the investigation.

Cases investigated by the Field or PSD are returned to PSD for adjudication by a supervisor other than the investigator. As noted above, the assigned chief deputy adjudicates Alternative Process cases.

When allegations are sustained, the case is reviewed by the PSD Commander who makes a penalty recommendation. The charges and proposed discipline are served on the accused member who is given the opportunity to attend a Skelly hearing. Depending on the outcome of the Skelly hearing, the Fire Chief determines the final discipline which is served on the accused member and filed with the BOFC. Charges must be filed with the BOFC within one year of the Department’s discovery of the misconduct and not later than two years from the date of the act or omission.12

IV. AUDIT OBJECTIVES

From information found in CTS for the designated time period:

1) Determine the number of CTS entries made.
   a. Determine the number of cases assigned to PSD, Field, and the Alternative Process.
   b. Determine the number of cases the Department identified as closed and OOS.
   c. Determine the number of OOS cases assigned to the Field.
   d. Determine the number of OOS cases assigned to PSD.
   e. Determine the number of OOS cases assigned to the Alternative Process.

10 Memo to Commander, Professional Standards Division from Commander, Internal Affairs Section, Regarding Alternative Investigative Procedure (October 28, 2009); Memo to Commander, Professional Standards Division, from Commander, Internal Affairs Section, Regarding Alternative Investigative Procedure (July 15, 2010). Although slightly different, these two memos suggest the same procedures. Neither appeared to have been approved by the Board of Fire Commissioners or the Fire Chief. However, the Department indicated that it adheres to the process outlined in these memos.

11 Professional Standards Division OCEP 2008 “PSD 101” PowerPoint presentation.

12 Charter Section 1060(a).
2) Determine the number of OOS cases in which the Department correctly calculated the statute of limitations date.

3) Determine whether the complainant was an LAFD employee or someone from outside the Department.

4) Assess the investigative efforts.
   a. Determine the number of OOS cases in which no investigative work was completed.
   b. Determine the number of OOS cases in which some investigative work was completed.
   c. Determine the number of OOS cases in which the investigation was completed within the one-year statute of limitations.
   d. In each OOS case, determine whether the complainant was interviewed.
   e. In each OOS case, determine whether the subject was interviewed.
   f. Determine the amount of time it took to assign an investigator to each of the 30 OOS cases.

V. AUDIT SCOPE AND METHODOLOGY

The OIA chose cases in which the date of the alleged incident was between August 1, 2012 and August 1, 2013 with a statute of limitations date no later than August 1, 2014. The OIA used statistics obtained from CTS on August 14, 2014.

CTS statistics revealed 622 entries in CTS. A separate list of case numbers investigated through the Alternative Process yielded seven entries in CTS during the time period, bringing the total number of entries to 629. CTS statistics showed that 45 of the 629 entries were closed as “duplicate” or “entry error,” bringing the actual number of new entries to 584. 30 (5.14 percent) were designated as closed and out of statute. Rather than conducting a random sample audit, the OIA chose to consider all 30 cases.

The OIA reviewed CTS entries, and relevant policies, procedures, and laws. Additionally, the OIA gave drafts of this report to the LAFD and met with Department personnel to discuss the contents prior to publication.

VI. AUDIT FINDINGS

Objective No. 1:
Determine the number of CTS entries made in the time period.

Objective No. 1(a):
Determine the number of cases assigned to PSD, Field, and the Alternative Process (see Chart 1).

584 entries were made in CTS during the time period.
- 211 were assigned to PSD for investigation (36.13 percent).
- 366 were assigned to the Field for investigation (62.7 percent).
- Seven were assigned to the Alternative Process (1.2 percent).
Objective No. 1(b):
Determine the number of cases in the time period that the Department identified as closed and out of statute.\textsuperscript{13}

Statistics gathered from CTS showed 30 (5.14 percent) cases were closed and out of statute.

Objective No. 1(c):
Determine the number of OOS cases assigned to the Field.

Objective No. 1(d):
Determine the number of OOS cases assigned to PSD.

Objective No. 1(e):
Determine the number of OOS cases assigned to the Alternative Process.

The 30 OOS cases were assigned for investigation as follows (see Chart 2):
- Six were assigned to PSD (20.0 percent).\textsuperscript{14}
- 19 were assigned to the Field (63.3 percent).\textsuperscript{15}
- Five were assigned to the Alternative Process (16.7 percent).

\textsuperscript{13} Although the City Charter requires charges be filed within one year of the date of discovery, the OIA reviewed CTS entries related to cases which were not completed within the statute of limitations, regardless of whether charges were filed.

\textsuperscript{14} The statistics gathered from CTS showed seven PSD cases and 18 Field cases that were beyond the one-year statute of limitations. However, upon further examination, the OIA determined that one of the cases listed as a PSD case was actually assigned to the Field for investigation.

\textsuperscript{15} Id.
**Field Statistics**
- 19 were closed and out of statute.
- This represents 5.2 percent of the 366 cases assigned to the Field.

**PSD Statistics**
- Six cases were closed and out of statute.
- This represents 2.8 percent of the 211 cases assigned to PSD during the time period.  

**Alternative Investigative Procedure Statistics**
- Five cases were closed and out of statute.
- This represents 71.4 percent of the seven cases assigned to the Alternative Process during the time period.

**Objective No. 2:**
**Determine the number of cases in which the Department correctly calculated the statute of limitations date.**

The Department records the statute of limitations date for each case in a designated location in CTS. The OIA found that LAFD correctly calculated the statute of limitations date in 25 of 30 cases. This represents 83.33 percent of the cases.

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16 In one of the six PSD cases identified as out of statute, the investigation was completed within the one-year time frame and a note in CTS indicated that the case was adjudicated as “Not Sustained.” However, during the internal review process, PSD personnel determined that the final report was missing, therefore warranting a designation that the case was closed and out of statute. The OIA was informed that the Department did not attempt to locate the electronic file.
Based on the information available in CTS, the OIA identified the following issues in the remaining five cases.

In one case, the complainant sent an email to the Fire Chief who forwarded the email to PSD eleven days later. CTS reflected the statute of limitations date as one year from the date the email was received by PSD. The OIA believes the statute date should be one year from the date the Fire Chief received the complaint.

In a second case, the complainant mentions three incident dates. The date of the incident listed in CTS is the latest of those dates, and the SOL date was calculated as one year from the date of that incident. It is unclear whether the earlier incident dates were considered when the statute of limitations date was determined.\(^{17}\)

In a third case, the Department did not enter the complaint into CTS until two days after the complaint was made. To calculate the one-year time limit, the Department used the date the case was entered into CTS rather than the date the complaint was made.

In a fourth case, the complainant indicated in a letter to the Fire Chief that he had attempted to contact the Fire Chief on prior occasions about his complaint, but those attempts were ignored. If the Fire Chief had been contacted on earlier dates, the statute of limitations could have been earlier than what appeared in CTS. However, the OIA was unable to determine from the available information if the SOL date in CTS was correct.

In the fifth case, the complainant mentions two incidents, one earlier than the other. CTS showed the SOL date as one year from the date of the latest incident. It is unclear from the available information if an earlier SOL date should have been calculated to account for the earlier incident.

**Objective No. 3:**
Determine whether the complainant was an LAFD employee or someone from outside the Department.

Of the thirty OOS cases:
- 18 Complainants were LAFD employees (internal).
- 12 Complainants were not LAFD employees (external).\(^{18}\)

**Objective No. 4**
Assess the investigative efforts in each of the 30 cases (see Chart 3).

**Objective No. 4(a)**
Determine the number of OOS cases in which no investigative work was completed.

- In 17 of the 30 cases (56.67 percent), no investigative work was conducted. All were assigned to the Field.
  - Five were never assigned to an investigator.
  - 11 were assigned to an investigator; however, the investigator did not perform any work on the investigation.
  - One case was assigned to an investigator on the last day of the statute of limitations and no investigative work was performed.

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\(^{17}\) Each incident has a discrete statute of limitations date associated with it. However, the technical limitations of CTS prevent entry of more than one SOL date per CTS record.

\(^{18}\) One complainant was anonymous, but from the complaint, it appeared it was made by a resident and not an employee.
Objective No. 4(b)

Determine the number of OOS cases in which some investigative work was performed.¹⁹

- Some investigation was completed in nine of the 30 OOS cases (30 percent).
  - In one case, assigned to PSD, no investigator was assigned. However, a note in CTS said “[c]ase out of statute. However, this incident was addressed in [a different case]. There are several cases involving the above member and many of the incidents overlap.”
  - In four of the nine cases, the investigator attempted to interview the complainant, but an interview was not conducted. In all but one of these cases, the investigation did not proceed any further.
    - In one case (assigned to PSD), the investigator made several attempts to interview the complainant (an LAFD employee), but to no avail. Within one month of the investigator’s initial attempts to interview the complainant, the complainant was off-duty, “not injured on-duty” (“NIOD”), until the statute of limitations ran. During this time, the investigator attempted to contact the complainant; however, the complainant did not respond.
  - In another case (assigned to the Alternative Process), one of two subjects was interviewed. The complainant was not interviewed. All were LAFD employees. A notation in CTS says, “FF/PM [name of complainant] is currently off [sick].”
  - In a third case (assigned to the Field), the investigator scheduled an interview with the complainant (external). However, there is no documentation of an interview or any further contact with the complainant.
  - In a fourth case (assigned to the Field), the investigator, a battalion chief (“BC”), was assigned to the case eight months after the complaint was filed. The investigator called the complainant (external) at that time and scheduled an interview. Two days before the scheduled interview, the complainant called a different BC (in the same battalion as the investigator) and told that BC that she wanted to file a complaint – the same one she had already filed – and that she had not been contacted by anyone on the Department about her original complaint. Two days later, the complainant did not show up for the interview. The investigator noted in CTS that he left a message for the complainant who “refuses to return messages left for her at [the phone number the investigator called].” In the 10th month of the one-year statute of limitations, the investigator also made a note that one of the subjects (there were three subjects in this case) was “off duty long term NIOD.”

Objective No. 4(c)

Determine the number of OOS cases in which the Department completed the investigation within the one-year statute of limitations.

In four cases (13.33 percent), the investigative report was submitted within the one-year statute of limitations, but the case was not adjudicated/completed in a timely manner.

- In one case (assigned to the Alternative Process), the investigation was completed and an investigative report was written, however, the case was never adjudicated.
- In another case (assigned to PSD), the investigator conducted an investigation and wrote an investigative report which was reviewed by a PSD supervisor. The report was subsequently given to another PSD supervisor. According to a notation in CTS, the case was adjudicated as “Not Sustained.” However, the LAFD later determined the investigative report was missing. A CTS entry noted that because the report could not be found within the statute of limitations, the case was considered to be out of statute.

¹⁹“Some investigation” means that the investigator conducted one or more interviews for the case or the investigator gathered some information to advance the investigation, but the investigation was never completed.
In a third case (assigned to PSD), a supervisor complained of discrimination and retaliation by members. Among other things, the supervisor alleged that a subordinate filed a fabricated anonymous complaint against the supervisor because the supervisor had previously reprimanded/disciplined the subordinate. CTS indicated the case was “Not Sustained” and “out of statute.” The Department explained that the case had not been reviewed by a PSD supervisor within the SOL and was therefore considered OOS.

In another case, (assigned to the Alternative Process), the complainant and witnesses were interviewed however an investigative report was not written and the case was not adjudicated.

CHART 3 – INVESTIGATIVE EFFORT

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Inves. completed</td>
<td>4</td>
<td>13%</td>
</tr>
<tr>
<td>Some inves.</td>
<td>9</td>
<td>30%</td>
</tr>
<tr>
<td>No inves.</td>
<td>17</td>
<td>57%</td>
</tr>
</tbody>
</table>

Objective No. 4(d)
In each OOS case, determine whether the complainant was interviewed.

- In seven of the 30 cases, the complainant was interviewed.
- In 20 of the 30 cases, the complainant was known to the Department, but not interviewed.
  - As noted in Objective 4(b) above, in four cases the Department attempted to interview the complainant but to no avail.
- One case was filed by an anonymous complainant.
- In another case, the complainant was listed as “Battalion [the number].”
- In a third case, the OIA was unable to determine the identity of the initial complainant. A discrepancy was discovered in paperwork related to a worker’s compensation claim, leading to allegations of dishonesty and worker’s compensation fraud. It is unclear from CTS who on the Department first discovered the discrepancy.

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20 According to the Firefighter’s Bill of Rights, California Government Code Section 3251(c), “Punitive Action” includes written reprimands.
Objective No. 4(e)
In each OOS case, determine whether the subject was interviewed.

- In five of 30 OOS cases, the subject was interviewed.
- In 23 of 30 OOS cases, the subject was not interviewed. In eight of these cases, the Department never determined the identity of the subject.
- In one case, there were two subjects. One was interviewed and the other was not.
- The final case was previously mentioned in the section above which highlighted OOS cases in which some investigative work was performed. Again, a note in CTS acknowledged that the case was OOS but, a note states, “…this incident was addressed in [a different case].”

Objective No. 4(f)
Determine the amount of time it took to assign an investigator to each of the 30 OOS cases (see Chart 4).

- In eight cases, an investigator was assigned to the case within 30 days after the complaint was filed.
- In three cases, the investigator was assigned within 60 days after the complaint was filed.
- In two cases, the investigator was assigned within 90 days after the complaint was filed.
- One case was initially assigned to the Field and an investigator was assigned within 30 days. The case was later reassigned to PSD and the PSD investigator was assigned within 90 days.
- In three cases, the investigator was assigned approximately six months after the complaint was filed.
- One case was assigned approximately eight months after the complaint was filed.
- In five cases, the investigator was assigned nine or more months after the complaint was filed. This included one case in which the investigator was assigned on the last day of the statute of limitations.
- In one case, investigators were assigned within 60 days after the complaint was filed. However, a new investigator was assigned in the last 30 days of the statute of limitations.
- Six cases were never assigned.

**CHART 4 – LENGTH OF TIME UNTIL INVESTIGATOR ASSIGNED**
VII. ANALYSIS

A. Timely Completion of Thorough Investigations
19 of the 30 OOS cases were assigned to the Field. In 17 of the 19 cases, no investigative work was performed. Five cases were never assigned to an investigator.

Benchmarks/Milestones
In 2010, the Office of the Independent Assessor recommended the Department establish benchmarks or timeframes to track each step of the disciplinary process and ensure timely completion of investigations.\(^{21}\)

In December 2013, the Department responded that 1) timeframes for contacting the complainant and victims and for completing the investigations are needed; 2) attempts are made to interview the complainant within two weeks of the assignment of the complaint to an advocate [investigator]; 3) attempts are made to complete complex investigations by the 10th month; and 4) the Department completes the disciplinary process within 30 days of the member’s service of the proposed penalty.\(^{22}\)

The OIA commends the Department for its efforts to conduct investigations in a timely manner; however, as revealed in this audit, some cases are not being completed within the one-year statute of limitations and the Department has not developed protocols for completion of milestones. The Department reported that it makes an effort to complete cases within 10 months, but other benchmarks have not been set.

Literature on the issue of time limits suggests, “[C]reating timelines and milestones provides a framework for the investigation and a goal for the investigator . . . . Milestones and timelines should be reasonable and based on an objective assessment of how long each element of an investigation will probably take.”\(^{23}\)

Another source suggests,

Statutory time limits on investigative duration should be the minimum standard. Consideration should be given to the broader principles of the policy. It is valuable for example to complete investigations promptly out of respect to employees, recognizing that they suffer stress awaiting the disposition of their case . . . . There is value in taking swift corrective action to help a wayward employee avoid further problems.\(^{24}\)

Further, “[h]aving a time frame established enhances accountability for a timely response to both the complainant and the officer.”\(^{25}\)

LAFD concurred with the recommendation to define timelines however; a formal policy was not adopted.

\(^{21}\) Office of the Independent Assessor, Assessment of the Department’s Disciplinary Process and Professional Standards Division, 60. March 27, 2010. (BFC # 10-027)


Adjudicating all cases

The OIA found that of the 30 OOS cases, four were fully investigated before the SOL date. However, of these four, three were not adjudicated within the SOL date.\(^{26}\) Authorities on this issue have written about the importance of adjudicating all cases. Provision 85 of the Consent Decree between the Los Angeles Police Department and the Federal Government mandated, “[I]n no case may a Complaint . . . investigation be closed without a final adjudication.”\(^{27}\) Further, the International Association of Chiefs of Police encourages, “[A]ll cases must have a disposition . . . Even though we sometimes take these things for granted, officers will lose a lot of sleep until the case is closed.”\(^{28}\) In addition, an article on the website CommunityPolicing.com regarding internal affairs investigations states, “[E]ach police agency should require that every complaint from the public be received, evaluated and given a final disposition.”\(^{29}\) The Fire Department should ensure that cases are not only investigated, but also adjudicated before the SOL runs.

CTS Automatic Notifications

CTS automatically alerts a member when he/she is assigned to investigate a complaint. It also alerts the investigator’s chain of command.

The Workflow feature lists and tracks all employees assigned to supervise, monitor, investigate, or actively assist in the administration of the case. In addition to tracking all involved employees and their duties, the system automatically sends an e-mail to all involved employees (based on the information in Workflow) advising them of their responsibility and/or duties related to completion of the case.

In 28 of 30 OOS cases, the investigator and his/her chain of command were notified of their responsibility for the case.\(^{30}\) In the majority of Field cases, four or five members of the chain of command were notified about each case.

Additionally, an investigator and his/her chain of command, if properly identified in the Workflow,\(^{31}\) received emails alerting them to the running statute of limitations or their responsibility to submit a completed investigative report by a certain date. When CTS was created, PSD and the City’s Information Technology Agency created an algorithm for who receives these emails and when. Generally, these emails are sent at 30-day intervals.\(^{32}\) When an investigator and his/her chain of command are properly identified in CTS and are entered in a timely manner, all of them receive the automatic email notifications. However, if entries are not done correctly, then only some of those people will get emails.

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\(^{26}\) The fourth case was adjudicated, but because the report was misplaced, the Department considered the case OOS.

\(^{27}\) United States of America v. City of Los Angeles, California, Board of Police Commissioners of the City of Los Angeles, and the Los Angeles Police Department, Consent Decree, available at http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf.


\(^{30}\) In one PSD case, the Workflow showed the chain of command in the Field knew of this case, however, the case was ultimately assigned to PSD, but Workflow did not reflect this change. In one Field case, the assigned investigator was a Deputy Chief and no others in his chain of command were notified.

\(^{31}\) The names of the investigators responsible for investigating Alternative Process cases were not entered into the system properly so those investigators were not notified of the running statute or that their reports were due on a certain date. Additionally, when investigators were not assigned or not assigned within a certain time frame, the automatic notifications were not sent.

\(^{32}\) 30 days after a Field investigator is assigned a case, the investigator begins to receive emails alerting him/her that the report is “overdue.” PSD investigators begin receiving emails about the running statute of limitations when the case is 180 days from the SOL if the investigative report has not been submitted.
The OIA found that in 20 of 30 cases, investigators and/or the chain of command received at least one email notification.\textsuperscript{33} In one case, supervisors in the chain of command received eight email notifications.

Despite these emails, cases were not completed within the time limit. The OIA applauds the Department for building the notification system into CTS. However, recipients were not required to acknowledge or submit work product in response to the emails, and, as noted above, no investigative work was completed in more than half the OOS cases.

\textbf{Accountability}

The Department explained that in addition to the expectation that investigators complete their work in a timely manner, supervisors in the chain of command were responsible for ensuring cases were completed on time. The Department could not demonstrate that investigators or their supervisors were held accountable for this responsibility. However, the Department said that the commanding officers of the geographic bureaus are now reporting the progress of their assigned caseloads at FireStatLA meetings.\textsuperscript{34} In addition to FireStatLA, the Department should develop a mechanism and a written policy for holding investigators and supervisors accountable for the thorough investigation and adjudication of cases within the statutory time limit.

\textbf{B. Training}

In 17 of the 30 OOS cases, there is no evidence in CTS that any investigative effort was made. All of these cases were assigned to the Field. In 2013, the Office of the Independent Assessor recommended the chain of command place a greater priority on conducting thorough and complete investigations in a timely manner. This included recommending the Field place an emphasis on training investigators and their supervisors, and using the evaluation process to encourage accountability.\textsuperscript{35} The Department responded that its ability to do this was dependent on the “appointment of Chief Deputy (sic) and PSD staffing for field/support function.”\textsuperscript{36} During the writing of this report, the Department informed the OIA that training about the investigative process had begun for the four geographic bureau commanders and their staff and at officer and chief officer training programs. However, the Department also said that this does not include training about conducting investigations. Additionally, PSD staff is now mentoring members assigned to conduct investigations.

The Department has repeatedly reported to the OIA that training for supervisors (especially Field supervisors) has not been provided since 2008 and is a vital component of a well-functioning investigative process. In 2008, the Department was able to train successfully all Department supervisors. Within the last two years, the Department has promoted more than 200 members to captain, the Department’s first level supervisors. This in itself evidences the need to conduct training for Field supervisors related to personnel investigations as soon as possible. The Department should be able to build upon its previous success and develop a sustainable training program presented to supervisors who conduct investigations.

\textsuperscript{33} Email notifications were not sent in the remaining cases because the entries in the Workflow did not meet the algorithm criteria for notification. This could be that an entry was made in error, an entry was not made in a timely manner, or the entry was never made, such as when the case was never assigned to an investigator.

\textsuperscript{34} According to the LAFC, the overall goal of FireStatLA is performance based improvements in all aspects of fire and emergency medical services delivery to the citizens of Los Angeles. FireStatLA creates opportunities for dialogue, engagement, and innovation through the sharing of data and the creation of performance based metrics - coupled with relentless follow up and accountability.

\textsuperscript{35} FireStatLA also collects, analyzes and publishes data and statistics related to fire and emergency medical services in the City of Los Angeles - as part of the open data efforts in the City.

C. Alternative Process
The Department reported that complaints that might create a conflict for PSD continue to be investigated through the Alternative Process. The Alternative Process is described in two internal Department memos, however it does not appear the process was approved through the chain of command or ultimately by the Fire Chief or Fire Commission. One written procedure should be drafted and approved through proper channels.

While not explicitly stated in the memos, complaints against the Fire Chief were also investigated through the Alternative Process. The Department reported the procedure for investigating complaints against the Fire Chief has changed. Investigations are now conducted by the City Personnel Department and adjudicated by the Mayor’s Office. The OIA recommends the Department write a formal procedure for these investigations.

D. Chronological Logs
In six cases, the investigator maintained a chronological log. These logs varied in the amount and type of information logged. For example, one chronological log had two entries. One entry explained a modification to the complaint category label in CTS and the other documented a conversation the investigator had regarding the case investigation. A second chronological log was comprehensive and included information such as conversations related to the case investigation, phone calls and attempts to contact the complainant by phone and mail.

Chronological logs are “organized note keeping maintained during an investigation.”37 The log serves several purposes. It is an accurate accounting of the investigator’s activities in a particular case, an outline of the investigator’s efforts at each point during the investigation, forms the basis for the investigator’s notes, and is used to refresh the investigator’s recollection when the report is prepared or testimony is prepared for court.38

Further, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice discusses other purposes of a chronological log:

Logs allow supervisors to determine the effectiveness of their investigators and also helps (sic) other investigators take over a case when the original investigator is on leave or is removed from the case. Whether to exhibit and track due diligence or to ensure investigative quality and continuity, a chronological log is a simple, effective investigation management tool that takes little time but offers great benefits.39

In Conducting Administrative, Oversight & Ombudsman Investigations, author Gareth Jones wrote that documenting investigative work is “absolutely necessary.” Mr. Jones also stated, “Such systems can be a very useful management tool, enabling a supervisor to keep watch over a large number of ongoing investigations at the push of a button. They are also handy performance management tools.”40

Investigative progress and deliberations can be documented in at least two places in CTS: the “Comments” section and the “Log.” However, except for the cases noted above, investigators were not utilizing these options. The presence of comprehensive chronological logs may have given the OIA the ability to determine why cases were not completed within the SOL.

38 Id.
39 USDJ, supra at 38.
40 Jones, supra at 311.
The Department recently indicated that PSD investigators have been directed and trained to use the “Comments” section in CTS to log their work. The OIA commends the Department on this step forward. The Department should notify and train everyone on the Department who is responsible for doing investigations that they are expected to use the “Comments” section in CTS to log their investigative progress.

E. CTS Entries
The Department reported that CTS does not provide accurate aggregated information. As a result, the Department cannot extrapolate useful data. The OIA found that one reason for this might be that information is not uniformly entered into the system. For example, a supervisor reported a complaint on behalf of a subordinate. In CTS, the supervisor was identified as the complainant rather than the subordinate.41 CTS contains a screen where the “Person Completing this form” can enter his/her information (see below). This section of CTS should be used whenever the complainant is not the person completing the entry.

![Person Completing this form](image)

Also, in the five Alternative Process cases, the wrong person was input into the system as the investigator. The member assigned to investigate a case was not always appropriately reflected in the system as the investigator.

A reliable complaint tracking system is a means of not only managing cases but of providing public accountability for the follow-through on intake complaints. Absent a tracking system, an agency has no way of efficiently verifying that its cases are properly assigned, that investigators are providing due diligence or that cases have been completed.42

The Department represented to the OIA that CTS was never intended to be a case management system, only a case tracking system. The OIA also recognizes that CTS has its limitations and the Department would benefit from upgrading to a system that better suits their needs. However, for the foreseeable future, CTS is the system the Department uses. Until the Department is able to introduce a more robust case management system, it should implement written protocols for ensuring that information is uniformly and accurately entered into the system.

LAFD personnel reported that long-term plans include replacing CTS with a new system, but no timeline for this has been determined. The OIA recommends that the system be replaced as soon as possible. In the meantime, the current system can become more reliable if entries are accurate and uniform.

F. Multiple Complaints Involving a Small Number of Members
While reviewing CTS entries for this audit, the OIA identified several instances in which multiple complaints were filed by one member against another, and where cross complaints were filed among and between a few

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41 This is not relevant for cases in which the complainant wishes to remain anonymous.
42 USDJoJ, supra at 17,
members. For instance, a member complained against another member. Later, the accused member filed a separate complaint against the complainant in the first case. In some situations, this practice continued to go back and forth resulting in many cases generated by a few people. Some of these cases were among the population captured for this audit. Others were identified through OIA research in CTS. The OIA discovered one situation in which approximately fifteen cross complaints were filed involving seven members.

When multiple complaints involve a small number of members, tools from outside the discipline system may be useful. Mediation can be an effective way to address workplace conflicts. "As employers are realizing, mediation can turn conflict into an occasion for generating positive change in workplace relationships, increasing productivity and creativity, and shifting employees' views of themselves from victims locked into adversarial relationships with management to responsible, powerful participants in the company's goals."

The article continues, "[E]arly intervention by a mediator can turn these problem situations around, helping the parties not only to mend but also to strengthen their relationships and to create other positive changes." Mediation can also be used for other types of conflict including discourtesy complaints from the public. According to Standards and Guidelines for Internal Affairs,

Voluntary mediation conducted by a neutral facilitator, in lieu of investigation and adjudication, permits resolution of minor complaints that are usually not easily resolved through investigation . . . . Mediation engages the community by giving individual members of the public who make a complaint the opportunity to have their concerns heard and considered in a way that might not otherwise occur if the complaint was investigated and adjudicated through the formal Internal Affairs process . . . . Complaints best resolved through mediation are complaints of officer discourtesy or rudeness and others that involve minor "one-on-one" interactions between officers and members of the community.

Mediation must be voluntary and confidential. Further, "[t]he types of complaints that can be mediated should be described in clear written policy. The determination whether a given complaint is eligible for mediation should be made according to guidelines established by the agency, including the rank or positions authorized to permit mediation."

In a 2012 report to the Board of Fire Commissioners, LAFD presented mediation as an alternative strategy used in public sector discipline. The OIA believes the Department would benefit from implementing a mediation program.

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44 Id.
45 The Los Angeles Police Department is currently running a mediation pilot program for some bias policing complaints.
46 USDoJ, supra at 54.
47 Id.
48 Los Angeles Fire Department, Discipline Philosophy; Consideration of Alternative Discipline Resolution Strategies to Modify or Correct Behavior In Lieu of Punitive Action 10. September 24, 2012 (BFC# 12-145).
VIII. RECOMMENDATIONS

The OIA recommends that the Board of Fire Commissioners adopt the following recommendations and require the Department to coordinate with the OIA and provide progress reports to the BOFC at regular intervals on the implementation of the adopted recommendations.

1. Create a system of accountability for investigators and supervisors that will ensure all cases are thoroughly investigated and adjudicated within the statute of limitations. FireStatLA is a good foundation, but accountability measures should also include, but not be limited to:
   
a. Drafting procedures outlining reasonable timelines for achieving investigative milestones, including:
      • Assignment of an investigator to a case investigation
      • Interviewing the complainant
      • Completion of the investigation
      • Adjudication
      • Filing charges with the Board of Fire Commissioners (when necessary)
      • Closure
   
b. Evaluating and enhancing the effectiveness of the e-mail notification system.
   
c. Using chronological logs to document the progress of all investigations.

2. Create a training curriculum related to conducting personnel investigations. Ensure that all members who conduct investigations are trained.

3. Develop a written policy, approved by the Fire Chief and BOFC, which outlines the formal process for investigating and adjudicating complaints which pose a conflict or the appearance of a conflict of interest for PSD, or those members assigned to carry out the responsibilities of PSD.

4. Create written procedures for investigating complaints against the Fire Chief. If necessary, execute Memoranda of Agreement with other City departments outlining the responsibilities of each department related to these investigations. The Fire Commission should approve these procedures.

5. Install a new case management system. In the meantime, develop a method, accompanied by a written policy or manual, for ensuring that entries into CTS are uniform and accurate.

6. Develop a mediation pilot program, for specifically defined complaints, which is voluntary, confidential and utilizes neutral, external mediators. The program should have an evaluation component to assist the Department in determining the program’s effectiveness.

IX. CONCLUSION

The OIA determined that, according to CTS, of 584 entries, 30 (5.14 percent) cases were not completed within the statutorily mandated time limit. Of those, six were never assigned to an investigator. In 17 (more than half) no investigative efforts were made. All of those cases were assigned to the Field for investigation. Further, even in situations where supervisors and investigators were emailed about the time limits, cases were not completed. In some cases, the investigation was completed but the case was never adjudicated.

Accused members deserve to have their case investigated and concluded within the statute of limitations. Adverse effects can result for an employer when employees are not held accountable for not following rules,
policies or laws. If the proposed recommendations are implemented, the combination of accountability measures, enhanced tracking systems, training and mediation will reduce the chance that a complaint of misconduct will not be investigated and adjudicated within the required time period. This will contribute to an effective system of discipline and assist in maintaining excellence in the Fire Department.