



Miami Police Department
Independent Reviewer
Third Report
June-September 2017

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Introduction

This is the third assessment report, authored every four months, as a component of the Agreement entered into by the Department of Justice and the City of Miami in April of 2016. The Agreement is the result of a request, by the Miami Police Department and others, to have the Department of Justice review a series of police shootings that occurred between the years of 2008 and 2011. Not only were the uses of force examined, the associated investigations and relationships with the community were considered as well. The investigation resulted in the Agreement referenced above that mandates the Miami Police Department to satisfy clear and measurable requirements in a number of delineated areas within the organization and out in the community. While the obligations are clear, the Miami Police Department retained the flexibility to design, develop and implement solutions appropriate for the community they serve. The Miami Police Department took advantage of the time span between investigation and finalization of the agreement to begin implementing a number of changes that would begin to satisfy some of the requirements. The overarching goal of this Agreement is to ensure “that police services continue to be delivered to the people of the City in a manner that fully complies with the Constitution and laws of the United States, effectively ensuring public and officer safety, and promotes public confidence in the MPD”.¹

As the Independent Reviewer, I am tasked with overseeing the successful implementation of the Agreement. As stipulated in the Agreement, compliance with a material requirement mandates that the City has: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; (c) verified that the requirement is being carried out in actual practice. In the final analysis, MPD bears the burden of demonstrating compliance with the Agreement.

The Agreement also required the City to assemble a Community Advisory Board, consisting of Miami residents, to “provide oversight and feedback on policies and practices pertaining to use of deadly force to the MPD and to the Independent Reviewer”.²

¹ City of Miami Legislation; Resolution R-16-0206 Agreement Between DOJ/City of Miami

² Agreement United States Department of Justice and City of Miami

As a note, the City of Miami experienced the effects of Hurricane Irma in the beginning of September. While being spared a direct hit, attention and resources will be focused on recovery efforts for the immediate future.

This report contains progress made between June and September 2017 in the areas of Policy Review and Implementation, Officer Involved Shootings, Training, the Internal Affairs Bureau, and Community Oversight.

Compliance Ratings

The agreement mandates that the Independent Monitor provide a report every four months outlining MPD’s compliance with Agreement requirements. The ratings below represent the current assessment of compliance and are included to provide MPD and the citizens of Miami with a clear and accurate summary of the progress to date, as well as areas that remain in need of attention and action.

The definition of each rating is as follows:

- Substantial Compliance – indicates that most or all components of a specific category or requirement have been satisfied.
- Partial Compliance – indicates that compliance has been achieved on some components of the requirements or category, but significant work remains or extended time is needed for audits.
- Non-Compliance – indicates that most components of a requirement or category have not been met.
- Compliance Rating Pending – indicates that there is insufficient information or additional time is needed for assessment in the specific area.

<u>Settlement Agreement Area</u>	<u>Status of Compliance</u>
II. POLICY REVIEW/IMPLEMENTATION	Partial Compliance
a. Revision and Development	Substantial Compliance
b. Action Plan	Substantial Compliance

c. Training	Partial Compliance
III. OFFICER INVOLVED SHOOTINGS	Partial Compliance
a. Firearm Discharge Review	Substantial Compliance
b. Administrative Investigations	Partial Compliance
c. Incident Tracking System	Partial Compliance
d. High Liability Board	Substantial Compliance
IV. SUPERVISION	Partial Compliance
a. Accountability	Partial Compliance
b. Tactical Operations Section	Partial Compliance
c. Span of Control	Partial Compliance
V. SPECIALIZED UNITS	Partial Compliance
a. Assignment Criteria	Substantial Compliance
b. Documentation	Partial Compliance
c. Oversight	Partial Compliance
VI. TRAINING	Substantial Compliance
a. DOJ Training	Substantial Compliance
b. Firearms Training	Substantial Compliance
c. In Service Training	Substantial Compliance
VII. COMMUNITY OVERSIGHT	Partial Compliance
a. Create Community Advisory Board	Substantial Compliance
b. Facilitate Activities and Communication	Partial Compliance

Work Completed During Third Reporting Period

June - September 2017

Work completed by the Independent Reviewer includes the following:

- a. Participated in regular monthly conference calls with DOJ and MPD, allowing for regular updates on progress and issues concerning Agreement.
- b. Continued to work with Major Richard Perez as the Compliance Coordinator. He has gone above and beyond to provide information, reports, contact with appropriate personnel, meeting access and a myriad of other requests to move this endeavor forward.
- c. Completed a series of site visits.
- d. Continued to review updated policies and procedures.
- e. Met with command staff and others as necessary.
- f. Attended current training sessions and audited training records.
- g. Continued to meet with members of the Civilian Investigative Panel (CIP) and the Civilian Advisory Board (CAB), attended their meetings, and discussed changes in CAB structure.
- h. Reviewed Body Worn Camera project, including the policy and project progression.

The following site visits were completed during this review period;

June 5-8, 2017

June 18-21, 2017

July 17-19, 2017

August 15-17, 2017

August 28-30, 2017

A great deal of activity has transpired during the current reporting period, as will be discussed throughout this document. The MPD remains open and transparent, striving to satisfy all aspects of the Agreement. Major Perez, who heads the Professional Compliance Section,(PCS) continues to act as the Compliance Coordinator.

The DOJ continues to provide Agreement oversight through monthly conference calls with MPD, as well as frequent communication through email and phone conversations. Jude Volek and Patrick Kent remain consistent members of the DOJ team, with the addition of Cynthia Coe this reporting period. Patrick Kent conducted a site visit and we were able to arrange meetings with

several staff members and attend a Community Advisory Board Meeting.

Regular meetings and conversations continue to be conducted with Assistant City Attorney George Wysong and Major Richard Perez.

MPD underwent a “mock” assessment in preparation for their CALEA review scheduled for the near future. The assessors, who have participated in this process with MPD for a number of years, carved out time to meet and discuss their progress and findings. According to the assessors, there were no anticipated issues that would affect MPD’s re-accreditation, however the final report has not been reviewed.

Received an in depth briefing on the Body Worn Camera program implementation from Project Manager Orlando Aguilera. Grant progress, assignment timeline, data retention standards, officer training and auditing were a few of the topics discussed.

Time was spent with the Internal Affairs Section interviewing personnel, reviewing open officer involved shooting cases and becoming familiar with the Incident Tracking System and associated policies.

The second year of Miami Agreement Training (MAT) and Miami Agreement Supervisor Training (MAST) has been developed and is currently being implemented. Curriculum, lesson plans and instruction, both classroom and practical field segments, were reviewed and observed. MPD also brought the nationally recognized VALOR training to their campus. VALOR is a federally funded course that provides officers with the tools to enhance professionalism while utilizing techniques for preventing and de-escalating situations that may result in a violent encounter. This course contains excellent instruction by law enforcement practitioners and subject matter experts on officer safety and wellness, rightful policing, de-escalation and crisis intervention. Many of the topics were directly applicable to requirements contained within the Agreement.

MPD MAT/MAST attendance records were also audited to ensure department wide attendance.

There have been a number of retirements and promotions in the recent past, and a number of departures pending, including several staff members. This type of cycle is not unusual in law enforcement and is most often the result of hiring “pushes” decades earlier. There is always a concern that the leadership drain will negatively affect the organization, however the Miami Police Department appears to be handling this transition well as they are maintaining department staffing levels, conducting timely promotional examinations and training new supervisors to assume leadership positions.

Continuing issues include discussions on the Use of Force Policy, Response to Resistance triggering standards, the Body Worn Camera policy and program, and the Incident Tracking System. Updates will be provided in subsequent reports.

Agreement Progress to Date

In this section the progression, setbacks and observations will be discussed for six of the areas covered in the agreement:

II. POLICY REVIEW AND IMPLEMENTATION:

MPD has endeavored to develop and implement policies on constitutional policing principles and best practices. As indicated in the previous report Major Perez has assumed responsibility of the Policy Review Committee, enhancing the process to include the Assistant Chief's participation along with subject matter experts, legal advisors, and PCS members. However, this process continues to be overly cumbersome and slow moving. Major Perez is currently assessing modifications or alternative methods to develop, update and implement policies in an effort to hasten the process without compromising quality.

The approval process for policies remains the same, with the exception of allowable review time by the CIP, which has been extended. Once policies are crafted they are sent to the Independent Reviewer and DOJ for awareness and input. Both have thirty days to respond with comment. The policies and procedures are then reviewed and finalized by the PRC. They are then forwarded to the CIP for review and comment. The Chief of Police then reviews the policy and associated recommendations from the CIP prior to signing. The policies are then returned to the PRC for publication and dissemination. The Chief has approved the posting of most MPD policies and procedures on the departmental website.

To date, the following policies have been revised or authored; Professional Compliance Section, Training, Tactical Robbery Unit, Felony Apprehension Teams, Special Threat Response Unit, Homicide, Internal Affairs Section, DOJ Agreement and Standards, and Incident Tracking. In addition, procedures (SOP's) addressing Homicide, Internal Affairs, Training, and Tactical Operations Section were revised.

MPD is still actively reviewing, updating and re-writing policies and procedures in accordance with the upcoming re-accreditation process through CALEA (Commission on Accreditation for Law Enforcement Agencies). As stated by CALEA, the accreditation program provides an agency

the opportunity to demonstrate that they meet an established set of professional standards which: require an agency to develop a comprehensive, well thought out, uniform set of directives; require preparedness programs to be put in place to address natural or man-made critical incidents; are a means for developing or improving upon an agency's relationship with the community; strengthen the agencies accountability, both within the organization and community, through a continuum of standards that clearly define authority, performance and responsibilities; and facilitates an agency's pursuit of professional excellence – just to mention a few. The process of accreditation is intense and the designation difficult to achieve. I spoke with the individuals conducting the “mock” assessment and they did not indicate any significant issues in their evaluation. A report was provided to the chief, which I have not reviewed. It is anticipated that MPD will be successfully re-accredited.

Until recently, training on new policies has been conducted at the different rolls calls throughout the department. In an effort to provide consistency and uniformity to the training, personnel from the PCS took on this responsibility. The first centralized training was conducted in August at the police academy. There were three mass roll calls over a three-day period for a total of nine sessions, where all personnel reporting for that shift were in attendance. Lieutenant Villeverde utilized a power point presentation to train officers on the updated Use of Force policy. For high liability and other significant policies, this training format is most appropriate as it allows for the information delivered to be consistent and memorialized through a power point, condenses instructors down to a few individuals who are very knowledgeable on the subject matter, and allows officers to ask questions and discuss concerns in a large open forum.

Special Projects Coordinator Orlando Aguilera provided an in-depth review of progress made on the Body Worn Camera project. MPD has 90 body worn cameras assigned to officers in a pilot program that has been in effect for approximately two years. These cameras were assigned to specialty units including motor and neighborhood liaison officers. Some of the lessons learned during this pilot program include a degree of difficulty in getting officers in the habit of activating the unit, understanding appropriate situational activation, and correctly categorizing the associated videos which dictate retention standards. In addition, MPD has instituted weekly audits of retained videos.

The Miami Police Department was awarded \$960,000 in federal grant funding towards outfitting the majority of uniform officers with a Body Worn Camera (BWC). The city has budgeted \$1,300,000 in matching program funding. This funding will be utilized for purchase of the cameras, video storage, implementation costs (electrical, routing, wifi bandwidth, switch upgrades, etc) and personnel to address the public records requests.

A robust awareness program has been developed by MPD. A video introducing and explaining the BWC program has been created and is available on the MPD website in English, Spanish and Creole. The BWC policy is also published on the MPD website. Presentations have been made by the program staff in Overtown, Coral Way, Little Haiti and Coconut Grove – with the intent to deliver to every neighborhood. This allows citizens to ask questions and provide input on the program and processes.

The roll out of the body worn camera program will continue to be monitored.

There are continuing discussions between MPD, DOJ and myself concerning certain elements of the Use of Force policy, the Incident Tracking System and Body Worn Camera policy with the expectation of adjustments.

III. OFFICER INVOLVED SHOOTINGS:

On May 23, 2017 officers responded to a domestic violence incident in which the suspect stabbed the victim several times prior to fleeing the scene. The suspect returned sometime later, running his car into an officer's marked patrol unit and then approached the officer with a knife. Based on the suspects actions and failure to follow lawful orders, the officer shot and wounded the suspect before taking him into custody. The Florida Department of Law Enforcement (FDLE) conducted the criminal portion of the investigation, which to date has not been finalized and shared with MPD, nor has the State Attorney's Office (SAO) authored a closeout memo. The department did conduct the Discharge of Firearm "72- hour brief", with a comprehensive staff presentation of all known incident details, which I attended. The briefing included information on the original incident and subsequent assault on the officer, information from witnesses, still photos of scene, partial video of the confrontation, and supervisory response.

The Inter Office Memorandum releasing the officer, involved in the shooting, back to duty was approved by the chief on June 29, 2017. The memo indicates that the officer cleared the Psychological Evaluation on May 25, 2017; completing all refresher training mandated for return, the referenced post shooting brief was completed, and the review of existing evidence supported a return to duty.

A review of all open officer involved shootings was conducted during this evaluation period. There is a total of twelve cases dating back to a March 2012 incident that involved the non-fatal shooting of an individual and a May 2012 case involving a fatal shooting. The former case has been reassigned and is being reviewed, while the latter is pending completion of a summary.

There are two shootings that involved multiple agencies and are being investigated by FDLE. One in December of 2013 was fatal and is pending the FDLE report and SAO closeout memo, the other was non-fatal in April of 2015 and is pending the suspect's trial. Five of the seven investigations including and following the April 2015 case are all led by FDLE. The sixth case involved officers who fired at a suspect but missed. The seventh case involved a dog that was shot. Three non-fatal shootings are pending SAO closeout memos. The September 2015 and April 2016 fatal shooting of domestic violence suspects, both armed with a knife, are pending FDLE reports and SAO closeout memos. A shooting that occurred in August 2017 occurred in Miami Dade County and is being investigated by FDLE. Officer involved shooting investigations and associated processes will continue to be a core focus.

A High Liability Board (HLB) incident review was held on June 13, 2017 covering a violent resist arrest incident. The HLB is a function of the Policy Compliance Unit (PCU) and is tasked with reviewing, investigating and addressing potential department deficiencies in a number of areas using real facts and circumstances. Chosen incidents are reviewed for potential training, tactics, policy or procedural implications and concerns. Issues identified during the HLB are addressed through the appropriate avenue (training, equipment, policy, tactic, etc). HLB members consist of commanders from the Professional Compliance Unit, Training and Personnel Development Section, the Legal Advisor and a rotational supervisor. Personnel associated with the incident are also in attendance, most often with the exception of the actual officers involved.

In the incident referenced above, an MPD officer spotted a suspicious individual driving along a roadway. When the officer turned his vehicle around to investigate, the suspicious individual fled, subsequently crashing his car into several others. The officer advised that he was never close enough to the suspect vehicle to activate his lights and siren, however he was able to provide a tag number to the dispatcher. Once the suspect crashed he fled the scene on foot, with the officer in close pursuit. When contact was made a short distance from the crash, a violent resist ensued during which the officer's Electronic Control Device (ECD) was discharged nine times. The officer indicated that all but two of the ECD discharges were a result of the suspect activating the weapon while attempting to take it from the officer. The suspect was ultimately placed under arrest.

The associated HLB was a very in-depth look at the incident, from supervisory oversight to dispatcher actions and crime scene investigator response, however there were basic investigative elements missing. There were no interviews of the other drivers involved to determine the officer's proximity to the suspect vehicle at the time of the crash and no one interviewed the suspect concerning the incident. The officer was wearing a body worn camera, but failed to activate it, which was attributed to the newness of the process and excitement of the situation. This HLB seemed to overlook some obvious issues pertinent to the incident.

Time and effort were spent with Major Jose Rodriguez and his team in the Internal Affairs Section (IAS). They provided an overview of MPD's Internal Tracking System (ITS) and how the process works. The system is triggered when an officer: has two or more complaints, with a finding of "Substantiated" or "Inconclusive", within a twelve month period; been involved in two or more Response To Resistance incidents within twelve months; has two or more reprimands within a twelve month period; two or more firearm discharges within a twenty-four month period; K9 officer with four or more dog bites within a twelve month period; or any officer with three of the combined (ITS I, II, III, IV, V, "Substantiated" or Inconclusive") during a twelve month period. A quarterly ITS report of all officers meeting this threshold is sent to the chief and division chiefs for review. The officer's immediate supervisor is responsible for investigating the incidents and completing a response detailing the review and corrective action recommendations, if any. IAS personnel are responsible for tracking these reports to ensure they are on time and appropriately completed.

There has been discussion about widening the activities or actions that trigger the ITS. Personnel are currently researching other agency's policies and looking for best practices in the field.

As with most law enforcement agencies, there are a myriad of ways to lodge a complaint against an MPD officer, and policy requires that all complaints are sent through IAS where they will be logged and tracked. Currently complaints of minor infractions, such as discourtesy, are forwarded to the individual's immediate supervisor for review. By policy, the supervisor has 30 days to investigate and submit their written findings through the chain of command back to IAS. This 30-day deadline is not often met and a great deal of effort on the part of IAS is spent trying to get the reports appropriately completed. IAS is currently exploring the possibility of taking on the responsibility of completing these investigations. This approach would add consistency to the investigations and it is anticipated that it would save time.

IV. SUPERVISION:

Supervisory responsibilities are spelled out in general and specific terms throughout written orders and policies. Initial background work has been accomplished, however the majority of effort to ensure this requirement is successfully accomplished lies ahead in observation of first line functionality. This area will be a main point of focus in the next assessment period.

As a point of reference, MPD does not have any patrol officers in plain clothes assignments.

Span of control reports for the TOS have been provided as required and satisfy the agreement.

V. SPECIALIZED UNITS:

This June the Tactical Robbery Unit and the Felony Apprehension Team opened the application process in anticipation of slots becoming available. The notice includes standards that must be met and skills demonstrated to be a part of either unit.

The yearly K9 report for 2016 was reviewed. The Unit was budgeted for 21 handlers and was no more than two handlers down throughout the year. The annual report logged officer hours for training, In Service and time away from work. Officer activities were logged as well, including directed patrol, calls for service, reports written, arrests, quality of life activities, etc. Lastly, documentation of K9 searches, presentations, apprehensions, bites and seizures were included. K9 officers apprehended 53 individuals in 2016 with 7 bites, for a 13.21% ratio – well within accepted standards. After reviewing monthly K9 reports for May, June and July 2017 it was observed that the unit is very consistent in the number of apprehensions and bites. Further observation and analysis will be conducted on the K9 Unit and other specialty units in the coming months.

VI. TRAINING:

An extensive audit of training records was conducted to ensure that all personnel attended the required MAT (Miami Agreement Training) and MAST (Miami Agreement Supervisor's Training). Training personnel maintain records of each MAT/MAST session, which covers a variety of instruction over a multi-day period. These folders contained instructor information, course outline, associated tests, officer evaluations concerning content and delivery, and sign in/out sheets. If an officer missed any portion of the training, for court or other assignment, the time and date of make-up was recorded. Records indicated that all but a very few attended the training and those who did not had legitimate reasons, such as military deployment. Several individuals attended both the MAT and MAST in short order, as they were promoted while the training was being delivered.

The second segment of MAT/MAST is currently being presented department wide. I was able to attend a segment of the MAT practical exercises which included high-risk traffic stops and several de-escalation scenarios including response to a suicidal individual and a domestic violence incident. All included a strong focus on officer safety, crisis intervention, effective communication, and de-escalation. In addition, 2017/2018 MAT includes ECD (Electronic Conducted Device) training to include weapon qualification and review of all associated policies

and procedures. MPD is focused and on track to continue providing all training required through the DOJ Agreement.

Observations and discussions with those attending training continue to indicate agreement that the courses are relevant, informative and delivered in a way that was very engaging. The only element remaining is to gauge the effectiveness of this training out on the streets.

There has been a number of recent promotions at MPD and all new supervisors are slated to receive the 80-hour Line Supervisors Course provided by FDLE. In addition, MPD provides an additional 40 hours of supervisory instruction. See addendum for associated training details.³

MPD hosted a session of VALOR For Blue, presented by IIR in August. This three-day training session was well attended and focused on preparing law enforcement professionals for success. The course included elements germane to the Agreement; including crisis intervention, de-escalation techniques, learning how words and actions can affect an encounter, as well as a variety of concepts aimed at preparing officers mentally and physically for duty. Attendees were engaged and the training was well received.

Major Perez and his team in the PSC have developed an E-book containing all departmental orders, which is to be disseminated to all personnel. Officers can download this user-friendly application onto any mobile device. It permits access to all policies, the ability to text search any word or phrase, in addition to allowing highlights and annotations along with read aloud capabilities. There is a great deal of value in the project, from allowing officers easy and consistent access to policies, to enhancing the preparation for promotional exercises.

Training continues to do a stellar job in designing instruction that is relevant, thoughtful and delivered in ways that intertwine the principles and policies of the MPD along with the philosophy of rightful policing.

VII. COMMUNITY OVERSIGHT:

As required by the Agreement, MPD created a Community Advisory Board (CAB) which consists of thirteen citizen members from throughout the community. Their monthly meetings are held on the first Thursday of the month in easily accessed locations in alternating districts throughout the city and are well publicized to encourage attendance.

³ See attached training documents.

The CAB is broken down into four committees, with a member of the board heading each; Training, Policy, and Procedures - Chair Maithe Gonzalez, Community Policing - Chair Lorena Ramos, Community Outreach - Chair Agatha Caraballo, Compliance and Implementation - Chair Barbara Ibarra.

Initially there was a great deal of frustration on the part of the CAB, surrounding the level of clerical support, timely response to public records requests, scheduling delays, and general communication issues. As a result, the City of Miami placed Cristina Beamud, Executive Director of the Civilian Investigative Panel (CIP), in a position of oversight for the CAB. She in turn assigned Rodney Jacobs, Assistant Director of the CIP, to be the liaison between the CAB and city. He has done an outstanding job of organizing the group, setting agendas, providing training, keeping them informed, and addressing any issues that arise. An educational element, presented by MPD, has been added to each CAB meeting. Topics to date have included officer training, the body worn camera program, field operations and shot spotter. Myself and Patrick Kent attended the CAB meeting covering the body worn camera program. The meeting was well attended and included robust discussion about the program.

The Community Advisory Board has made great strides during this assessment period. However, the CIP still encounters difficulty obtaining requested reports from MPD. Ms. Beamud recently sent a letter to the chief outlining all report requests and associated delays. It is expected that this issue will be addressed in the near future.

Conclusion

MPD continues to be open, transparent and accommodating, fully understanding the significance and obligations of the Agreement. All staff members that I have encountered are committed to improvements that will allow them to better serve their community. In addition, the MPD appears fully engaged and committed to the successful implementation of the Agreement.

Next steps in the assessment process will include a focus on Supervision, along with continued attention towards Policy Review and Implementation, and Specialty Teams. I anticipate most of my time will be spent out in the various districts and divisions examining a range of functions and interviewing personnel. In addition, there will be a continued focus on open officer shooting investigations, as well as administrative investigations and the disciplinary processes.

