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2022 Use of Force Compliance Assessment - Quarter 2

Written by the Independent
Monitoring Team

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Background

Pursuant to the 2022 Monitoring Plan, the Monitoring Team is conducting quarterly compliance assessments of Section VI of the Consent Decree. This effort is to ensure that the intent of the specific reforms detailed in Paragraphs 46-83, 87-92, and 93-109 have been met by the Cleveland Division of Police (“CDP”). The report that follows details the methodology and findings of the second quarterly compliance assessment of 2022.

This assessment follows a preliminary review of use of force cases in which a select team of Monitoring Team members reviewed CDP use of force incidents that occurred between 2018 and 2019 to determine whether officers were applying force in a manner that complies with the Division’s new policies and terms of the Consent Decree. The findings from this assessment were summarized in a memorandum filed with the Court on March 22, 2022.

In the preliminary review, the Monitoring Team assessed a sample of 130 use of force incidents. The sample consisted of all Level 3 force cases, and a statistically representative sample of Level 1 and Level 2 cases from 2018 and 2019, with an oversample of non-firearm point Level 1 cases. Each of the Level 2 and Level 3 cases in the sample were assessed by two Monitoring Team reviewers, while the Level 1 cases were each assessed by one reviewer. The Monitoring Team created, tested, and refined a qualitative assessment instrument that was endorsed by the City and Department of Justice (“DOJ”).

The Monitoring Team found that the uses of force reviewed were generally within policy, in most cases the chain of command reviews appropriately identified and addressed problematic uses of force by referring cases to Internal Affairs or the Training Section, and supervisors on scene engaged with officers. That said, the Monitoring Team’s preliminary review revealed several deficiencies in tactics, and the ability to deescalate, both of which at times created the need for more force.¹ Further, the Monitoring Team concluded that the Division needed to create processes and structures to document, share, and track issues identified during use of force events, such as inadequate de-escalation or problematic tactics, to be addressed in training.

The Monitoring Team was also concerned by the duration of the use of force reviews by the chain of command, which could take several months. In the time since the review was conducted and filed, Policy 2.01.06, which dictates that “each level in the chain of command shall review the [use of force] report within three tours of duty” was enacted. As such, the current, and ongoing Monitoring Team compliance assessment will be reviewing adherence to this timeline.

During the preliminary review, the Monitoring Team found that due to the length of time between when uses of force took place and when the Monitoring Team reviews occurred, the value and utility of the feedback provided to CDP was limited. As such, the Monitoring Team has transitioned to a rolling, quarterly assessment model, reflected here, to ensure more timely feedback is provided to the Division. This ongoing approach also provides the Division with the opportunity to address issues raised by the Monitoring Team, and then be re-assessed soon after. Our hope is that this quarterly approach not only provides more actionably and useful feedback, but also streamlines the process for CDP to make changes necessary to reach full compliance in this area. While there are limitations to this approach as well, including limitations in Monitoring Team resources and review time by the City, the Monitoring Team still

¹ Cleveland Monitoring Team. (2022). *Monitor’s 2020-2021 Use of Force Review*.

believes this is a superior approach to providing timely and helpful feedback on this important area of the Consent Decree.

Methodology

To assess compliance with Section VI of the Consent Decree, the Monitoring Team commenced an ongoing review process, in which all reported Level 1 and Level 2 use of force incidents, as detailed in CDP reports, investigation documents, and wearable camera systems (“WCS”) footage, are reviewed on a quarterly basis using an assessment instrument standardized for all reviewers. The assessment instrument was developed for the preliminary use of force review conducted by the Monitoring Team and revised slightly to streamline questions. The methodology and review instrument were both reviewed and approved by the City and the DOJ (“the parties”) in advance of the assessment.

The sample for this assessment included all Level 1 and Level 2 use of force investigations that were completed between April 1 and June 30, 2022. Level 3 uses of force are not included in this assessment as the Monitoring Team is concurrently engaged in an ongoing review of Force Investigation Team (“FIT”) activity which reviews all Level 3 cases and reviewing them here would be duplicative. All uses of force were assessed by randomly assigned Monitoring Team subject matter experts (“SMEs”) each of whom have signification experience as sworn law enforcement officers or professionals in law enforcement oversight and accountability.

Most Level 1 uses of force were reviewed by a single SME. One case was reviewed by two SMEs but there were no major disagreements between reviewers on key indicators. Most Level 2 uses of force were reviewed separately by two randomly assigned SMEs. There were 19 Level 2 use of force cases reviewed for quarter two, and thirteen were reviewed by two reviewers, while six were reviewed by a single reviewer. Each pair of Level 2 assessments were compared to ensure that SMEs had no major disagreements on key indicators such as proportionality, necessity, objective reasonableness of the use of force and tactical issues. Reporting is at the incident or case level for Level 1 and at the reviewer level for Level 2 uses of force.

A total of thirty-seven Level 1 and nineteen Level 2 uses of force were closed in the second quarter of 2022, resulting in a total of 70 reviews for this report.

Results

Timeliness

The Division’s Chain of Command reviews for both Level 1 and Level 2 incidents continue to take too long for review and conclusion.² On average, Level 1 cases closed in the second quarter of 2022 took 33 days from incident to final closure. The range of days to closure was three days on the low end, to 124 days on the high end. While some of the investigations were still very lengthy, this is improvement over the first quarter of 2022. The force applied in all but one incident was deemed by the Monitoring Team to be necessary, proportional and objectively reasonable. In one case (discussed below) the Monitoring Team determined the force to be unnecessary. This is aligned with the Division’s chain of command conclusion in the same case that the force was unnecessary. Level 2 reviews completed in the second quarter of 2022, were, on average from incidents that were 86 days old. This includes one case that was open for over a year (2021-021967), a total of 453 days. This case was in the Commander’s review queue for

² The Monitoring Team utilized Cleveland’s calculations of time to closure for timeliness calculations.

nearly ten months. Without this extraordinarily long case, the average for case closure would have been 51 days, which is an improvement over the first quarter of 2022.

Duration (days)	Level 1 (n=37)	Level 2 (n=19)
Shortest	7	29
Longest	124	453
Average	33	86

Key Elements and Tactics

In nearly all cases reviewed, the Monitoring Team reviewers determined the use of force was necessary (98.5%, $n=69$). In addition, the Monitoring Team reviewers determined that all cases were proportional and objectively reasonable. In one case (2022-092277), the force was determined by the Monitoring Team and Chief Drummond to be unnecessary. Initially, this case was determined by the involved officers to be *de minimus*, and was not reported via Blue Team. After a complaint from one of the involved officers against the other involved officers was received and reviewed by IA, the chain of command identified the use of force, documented and investigated it, and responded in an appropriate manner. It is noteworthy that this relatively unremarkable incident was the only incident in the second quarter to be determined to be problematic, and that it was noted as such by both the chain of command and the Monitoring Team. The Monitoring Team finds this to be a positive outcome for use of force reviews. Learning about this case from an involved officer suggests it would have otherwise not been reported. Our review relies only on reported use of force.

Monitoring Team reviewers also assessed whether involved officers took reasonable efforts to deescalate prior to using force. In only 3% of Level 1 ($n = 1$) and 9% of Level 2 cases ($n = 3$) did Monitoring Team reviewers feel that reasonable efforts to deescalate were not taken. In 68% of Level 1 cases ($n=26$), and 22% ($n=7$) reviewers determined that efforts to de-escalate were either not feasible or safe under the circumstances.

Generally, Monitoring Team reviewers found officers acted appropriately in a very high percentage of the incidents reviewed (see Table below). In nearly all cases officers maintained sufficient distance, made safe approaches to the scene, used appropriate tactics and communicated well with each other. In the one Level 1 case where Monitoring Team reviewers indicated that the level of force was not reduced as the incident unfolded, the reviewer indicated that it could not be determined, rather than that the force was affirmatively not reduced.

Did the Officers:	Level 1 (n = 37)*	Level 2 (n = 32)		
		Yes	No	Unable to Determine
Conduct an appropriate threat assessment	81%	91%		9%
Maintain sufficient distance	92%	81%	9%	9%
Make a safe approach	89%	88%		13%
Employ clearly inappropriate tactics	0%	3%	97%	
Use profanity	24%	34%	56%	9%
Appear to use effective communications between officers	89%	81%	6%	13%
Reduce the level of force applied as the nature of the threat diminished	95%	100%		
<p>* One Level 1 case was reviewed by two separate reviewers. There are no material disagreements in the two reviews.</p> <p>* For Level 2 cases, <i>n</i>= the number of reviews rather than the number of cases.</p>				

General Requirements and Prohibited Force

Reviewers found that in most use of force cases, officers adhered to general requirements, including identifying themselves as police officers, providing verbal warnings, and avoiding unnecessary risks to others (see Table below). There were still numerous instances flagged in which these basic requirements were not met. In regards to the affirmative (yes) answer to whether officer provided a verbal warning, while it appears that in many cases they did not, the Monitoring Team reviewers found more often that they were unable to determine. Only 16% (n = 6) of Level 1 cases, and one Level 2 case indicate the officers expressly did *not* provide a verbal warning.

Did the Officers:	Level 1 (n = 37)*	Level 2 (n = 32)			
		Yes	No	Unable to Determine	Not Applicable
Identify themselves as police officers and advise of their intent	57%	56%	6%	6%	31%
Provide a verbal warning	38%	47%	3%	9%	41%
Avoid unnecessary risk to others	89%	88%	6%	3%	3%

* One Level 1 case was reviewed by two separate reviewers. There are no material disagreements in the two reviews.

* For Level 2 cases, n= the number of reviews rather than the number of cases.

Reviewers also assessed whether any of the cases reviewed included prohibited uses of force. In two cases, both Level 1, Monitoring Team reviewers determined that officers used force against subjects who were already placed in handcuffs. The Monitoring Team reviewers determined that one of those cases constituted unnecessary force (2022-092277). In this case, officers were waiting to be seen at the hospital when the previously handcuffed subject became agitated, and an officer moved to escort the subject to a patrol car. The officer applied joint manipulation to the fingers and wrist of the subject to gain compliance. The Monitoring Team determined that the force was minimal and not concerning but was also not necessary. The Chief also determined it was unnecessary and referred the involved officer for additional training (see discussion of this case on page 4). In an additional Level 1 case reviewed by the Monitoring Team (2022-076445), it was determined that a subject that was previously handcuffed resisted officers placing him in the car for transport and an officer leaned his full body weight on the subject to gain compliance and place the subject in the transport vehicle. The Monitoring Team reviewer determined that the force was minimal given the circumstances and was not outside of policy. There were no other instances of prohibited uses of force in this quarterly review.

Chain of Command Review

In addition to the concerns regarding timeliness of the review process described earlier, the Monitoring Team also found on several occasions that the chain of command review either did not proceed as expected or was not as thorough in scope as expected. In a number of cases, investigations were forwarded from the sergeant to lieutenant with perfunctory comments such as “I agree with the Detective’s Findings”, or “For your review and forwarding”, neither of which indicate a full and complete review by the sergeant. In the latter case, the lieutenant did receive verbal corrective counseling for lack of a proper investigation. There were also a number of cases where the Monitoring Team reviewers indicated that officer and supervisor statements, or

officer statements and video were contradictory in nature and not addressed by the chain of command.

While concerns remain, the Monitoring Team reviewers also noted a number of occasions where reviewers in the chain of command did identify missing or contradictory statements, and promptly returned the cases to previous levels of review for resolution. In addition, on a number of occasions, the chain of command identified tactical and training issues that were addressed with the review, or referred to training for incorporation in continuous improvement efforts which are to be commended.

Select Cases for Review

There are cases in which Monitoring Team reviewers indicated that officer's efforts were particularly commendable and should be recognized:

- Incident number 2022-083678 is a great example of how to be prepared for a lethal encounter while still using minimal force, staying calm and professional in the giving of orders, and deescalating immediately.
- The Monitoring Team reviewers specifically called out Incident numbers 2022-070627, 2022-095179, and 2022-114051 as having particularly thorough reviews and Blue Team reports.

Reviewers also identified cases where the reviews were particularly troublesome and while the force used was not exceptional, the reviews should be noted for discussion.

- In the review of this incident, witness and supervisor reports provide conflicting information. In one instance, the officer indicates that they did not witness the use of force, yet the supervisor report indicates that the officer did. In another officer entry on the same use of force incident, a second officer indicates that they witnessed the first officer take down of the suspect. The conflicts in statements are never addressed or corrected in the Blue Team reporting (Incident # 2022-067771).
- In another incident, two officers that were on scene indicated that they did not witness the firearm pointing that was the use of force in this case. However, their body worn videos are marked showing the use of force taking place. The Monitoring Team reviewer was unable to determine if the officers did or did not see the pointing. However, when the supervisor reviewed this case, he/she should have noted this discrepancy, reviewed the video and described why there was a difference (Incident # 2022-147501).

Conclusion

Overall, this quarterly review pertaining to use of force determined that CDP and its officers are operating in a manner consistent with policy and the requirements of the Consent Decree the majority of the time. The tactics and force used are reasonable, and for the most part documented and reviewed well. However, the Monitoring Team remains concerned with the timeliness and adherence to the administrative processes involved. While the time to close cases was on the whole shorter in the second quarter of 2022, they still take much longer than expected, with at least one case being a far outlier without explanation. It is not acceptable for a case being stranded in Blue Team for nearly 10 months without administrative oversight or concern.

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