



Assessment of Force Investigation Team (FIT) Investigations In Compliance With The Cleveland Consent Decree

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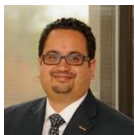
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1. Introduction

The Independent Monitoring Team is pleased to present this assessment into the quality and timeliness of the work of the Cleveland's Division of Police (CDP or "the Division") Force Investigation Team (FIT). Paragraphs 110 to 122 of the Consent Decree (Dkt. 413) describe the City's obligations related to the FIT. CDP created a FIT Manual in collaboration with the Department of Justice and the Monitoring Team to provide key guidance to CDP personnel on the implementation of the FIT's responsibilities and procedures. As described by the "Scope & Objectives" portion of CDP's FIT Manual,

FIT is responsible for conducting "administrative investigations of: (1) all Level 3 uses of force; (2) uses of force involving potential criminal conduct by an officer; (3) all instances in which an individual died while in, or as an apparent result of being in, CDP custody; and (4) any uses of force reassigned to FIT by the Chief or his or her designee. FIT shall also conduct criminal investigations of the above matters where appropriate and where not assigned to an outside agency. FIT is designed to ensure that the classes of incidents outlined above are investigated fully and fairly by individuals with appropriate expertise, independence, training, and investigative skills to ensure that uses of force that are contrary to law or this Division's policy are identified; that training, tactical, and equipment deficiencies related to the use of force are identified; and that investigations are of sufficient quality."¹

On April 22, 2020, the Monitor filed with the Court the FIT Manual, a General Police Order identifying how FIT would operate within the structure of CDP, as well as a related Memorandum of Understanding between the CDP and the Cuyahoga County Sheriff's Department, documenting the Sheriff Department's responsibility for conducting criminal investigations of fatal CDP officer-involved shootings (Dkt. #309). The Court approved these documents for use by CDP in an Order dated May 1, 2020 (Dkt. #311).

In order to ensure FIT investigators had the necessary training to competently conduct these important investigations in accordance with the requirements of the Consent Decree, the parties (the CDP and the U.S. Department of Justice (DOJ)) worked with the Monitoring Team to create a training curriculum for FIT investigators. A finalized training curriculum was submitted to the Court for approval on June 7, 2021 (Dkt. #361) and ultimately approved by the Court on June 9, 2021 (Dkt. #362).

This assessment was conducted to determine the Division's compliance with those portions of the Consent Decree that require CDP to conduct thorough, competent and

¹ See also, Consent Decree paragraph 111, upon which the FIT Manual "Scope & Objectives" were, in part, based.

timely investigations of CDP officer-involved critical incidents within the jurisdiction of FIT (to include officer-involved shootings and in-custody deaths).

The applicable sections of the Consent Decree, as considered during the course of this assessment, are as follows:

Table 1. Cleveland Consent Decree Section VI (E) (3):

¶	Requirement	Current Status of Compliance	Assessment Considered
110	“CDP may refer criminal investigations of uses of force to an independent and highly competent agency outside CDP.”	Operational Compliance (since 10 th Semi-Annual Report, October 2021)	Assessment evaluated to what extent the Cuyahoga County Sheriff Department’s investigations of uses of force resulting in death can be considered to be “independent and highly competent.”
111	The Internal Affairs Unit will include CDP’s Force Investigation Team (“FIT”). FIT will be a team comprised of personnel from various units ... The FIT will conduct [] investigations and [] will be designed to ensure that these incidents are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills to ensure that uses of force that are contrary to law or policy are identified; that training, tactical, and equipment deficiencies related to the use of force are identified; and that investigations are of sufficient quality.	Operational Compliance (since 10 th Semi-Annual Report, October 2021)	Assessment considered to what extent FIT investigations ensured that incidents were investigated “fully and fairly,” were of a high quality and sufficient to ensure identification of policy, training, tactical and equipment issues.
115	Response of FIT to use of force scenes. FIT notification of prosecutor’s office. Notification of designated outside agency to conduct criminal investigation if City elects to use external agency for such investigations.	Operational Compliance (since 10 th Semi-Annual Report, October 2021)	Assessment evaluated the timeliness of notifications and the extent to which FIT responded to the scene of cases falling within its jurisdiction.
116	CDP will develop and implement policies to ensure that, where an outside agency	Partial Compliance (since 7 th Semi-Annual Report, September 2019)	Assessment considered to what extent FIT policies have been implemented and concurrent and

¶	Requirement	Current Status of Compliance	Assessment Considered
	conducts the criminal investigation, FIT conducts a concurrent and thorough administrative investigation.		thorough administrative investigations have been conducted.
118	Setting forth various, specific, and expressly-listed responsibilities of FIT during its investigations.	Partial Compliance (since 7 th Semi-Annual Report, September 2019)	Assessment evaluated FIT compliance with its responsibilities under the Consent Decree and the FIT Manual of Operations.
120	Providing for delay of compelled interview if “case has the potential to proceed criminally” but otherwise requiring that “[n]o other part of the investigation . . . be held in abeyance” unless “specifically authorized by the Chief” in consultation with investigating agency and prosecutor’s office	Partial Compliance (since 7 th Semi-Annual Report, September 2019)	Assessment evaluated FIT timeliness in obtaining compelled interviews of subject officers, documenting prosecution concerns and documenting and justifying any investigative delays.
121	Requiring completion of preliminary report presented to Chief or Chief’s designee “as soon as possible, but absent exigent circumstances, no later than 24 hours after learning of the use of force.”	Partial Compliance (since 7 th Semi-Annual Report, September 2019)	Assessment attempted to evaluate timeliness of completion of preliminary reports (to the Chief and OPS and in compliance with FIT Manual Section VI.D.1.d). ²
122	Completion of investigation within 60 days. Preparation of FIT investigation report. Review of FIT investigative report by head of Internal Affairs who “will approve or disapprove FIT’s recommendations, or request . . . additional investigation.”	Partial Compliance (since 10 th Semi-Annual Report, October 2021)	Assessment evaluated the timeliness of FIT investigations and approvals by Internal Affairs chain-of-command.

2. Methodology

The Monitoring Team, in its role of assessing the status of Consent Decree reforms, developed an assessment tool and methodology for reviewing the quality and timeliness of FIT investigations. The assessment tool also evaluated the extent of FIT investigator

² FIT Manual paragraph VI.D.1.d reads as follows: “The IA Superintendent shall ensure the following actions are taken during the course of a FIT investigation: ... Provide a copy of the preliminary report to the OPS Administrator on a confidential basis.”

compliance with the Court-approved FIT Manual and the relevant provisions of the Consent Decree. The tool was reviewed and ultimately approved by the DOJ and the City.

The assessment consisted of a qualitative review of all FIT investigations opened and closed by the CDP from July 2020 through October 2022, involving CDP officer uses of force (n=28).³

Of the cases identified for this assessment, seven (7) were officer-involved shootings. These incidents included: one (1) fatality; three (3) “no hit” shootings with no injury to the subject; and three (3) subjects who were injured, but not killed. During the period of the review, there were four (4) non-CDP officer-involved shootings in the City of Cleveland with officers from neighboring agencies. These incidents are not included in our assessment as the investigations were solely criminal in nature and primarily conducted by Homicide Detectives rather than by the FIT.

Assessments were conducted by reviewing a wide variety of materials made available to the Monitoring Team, to include:

- FIT, Internal Affairs, and Homicide Division investigation reports and documentation;
- FIT, Internal Affairs, and Homicide Division recordings of interviews;
- Internal Affairs / Chain-of-command review of FIT investigations;
- “Blue Team” reports documenting the administrative chain-of-command review;
- Wearable Camera System (WCS) footage (when relevant to decision making and determinations of reasonableness); and
- Force Review Board presentations and documentation.

Case information was primarily accessed through the IA Pro and Evidence.com databases. Additional case information, such as pre-disciplinary hearing transcripts for investigations conducted following out-of-policy findings by command staff, were obtained from the Case Preparation Unit.⁴

The Review Process

³ The assessment included an evaluation of criminal investigations of all FIT cases, including one (1) criminal investigation of a fatal officer-involved incident conducted by the Cuyahoga County Sheriff's Department. The assessment did not include one (1) officer involved shooting that took place on July 20, 2020 wherein a CDP officer accidentally shot his Field Training Officer. The Monitoring Team evaluated issues presented by that incident in a separate evaluation and report that was filed with the court on April 14, 2023 (Dkt. #475). In addition, a fatal officer-involved shooting that took place on August 20, 2020 was not included in this assessment as it was part of an prior Monitoring Team assessment; the results of which were previously provided to the parties on July 9, 2021 (see, *infra*).

⁴ Four (4) cases involved one (1) or more “sustained” findings for a violation of CDP policies.

A team of seven (7) Monitoring Team members reviewed the selected cases. Each case was assigned, on a random basis, to two (2) reviewers using a qualitative template to evaluate Consent Decree compliance. An assessment lead reviewed all cases and completed assessment tools to ensure consistency and inter-rater reliability. The entire assessment team subsequently met to identify issues and concerns and to discuss relevant themes and recurring observations to ensure this assessment would be reflective of the Team's full breadth and depth of expertise.

This assessment has considered all parts of the FIT investigation and adjudication process, to include recommendations, findings, and rationale provided by the chain-of-command and information obtained during hearings conducted by the Force Review Board (FRB).

3. Background of FIT-related Compliance Issues

The DOJ's 2014 findings

On December 4, 2014, the DOJ's Civil Rights Division and the United States Attorney's Office for the Northern District of Ohio (hereinafter "DOJ") issued a report detailing their findings from a civil rights investigation into the Cleveland Division of Police. Amongst those findings, the DOJ detailed numerous deficiencies in the investigations of serious uses of force by CDP officers. As part of their investigation, the DOJ reported reviewing "60 reports produced by the Division's Use of Deadly Force Investigation Team ("UDFIT") between 2010 and 2013, including every deadly force incident that occurred between January 2012 and April 2013."⁵

Specifically, the DOJ made the following findings in its investigation report:

- "Our review found that several of CDP's systems for investigating and holding officers accountable for the use of excessive force are flawed, including Internal Affairs, the Use of Deadly Force Investigation Team, and the Tactical Review Committee."⁶
- "The Internal Affairs Unit and the Use of Deadly Force Investigation Team do not conduct thorough and objective investigations of alleged officer misconduct..."⁷
- "While the investigations conducted by the UDFIT team are more thorough than less lethal force investigations, we observed deficiencies in how detectives approached uses of deadly force that were not clearly justified. The reviews appeared to be biased in favor of clearing the officer as opposed to gaining a full and objective understanding of the incident. During officer interviews, for example, detectives asked leading

⁵ DOJ Investigation report, at p. 10.

⁶ DOJ Investigation report, at p. 34.

⁷ DOJ Investigation report, at p. 35.

questions, failed to ask important follow-up questions, and failed to resolve inconsistencies. In some instances, investigators failed to take basic investigatory steps. These failures resulted in determinations in favor of the officer that may not have been justified had an adequate investigation been conducted. Indeed, during our interviews with UDFIT investigators, one UDFIT investigator told us that he assumed the officer's use of force was reasonable in 98 percent of the cases. Other UDFIT investigators told us that they intentionally cast an officer in the best light possible when investigating the officer's use of deadly force.”⁸

The Monitoring Team's 2021 Preliminary Review of FIT investigations of 2 Fatal Officer-Involved Shootings

In 2021, after being informed of the completion of FIT investigations into two (2) fatal officer-involved shootings, the Monitoring Team reviewed and provided feedback to the CDP on the quality and timeliness of those investigations. This feedback was shared confidentially with the City on July 9, 2021, as technical assistance to prepare CDP for this compliance assessment.

Overall, the Monitoring Team classified the FIT administrative investigations as “poor” and not in compliance with the Consent Decree. Specifically, the Monitoring Team identified, in both cases, problematic investigative techniques that were used and documentation in support of investigations that appeared to be biased in favor of the subject officers.

The Monitoring Team noted that the issues identified indicated that the CDP had not yet come into compliance with the Consent Decree's requirements that FIT investigations be “fully and fairly investigated” as required by paragraph 111 and that “additional training and closer supervision would be required to bring FIT into compliance.”⁹ In addition, the Monitoring Team noted that although paragraph 122 of the Consent Decree anticipated that FIT administrative investigations would generally be completed within 60 days of each incident, it took the CDP more than one year to complete its investigation of both of the incidents.

Specifically, the Monitoring Team observed, with respect to those two (2) investigations, that the investigations did not comply with the timeliness requirements of the FIT

⁸ *Id.*

⁹ Nevertheless, based on representations made by CDP and Internal Affairs Command Staff, the Monitoring Team made a finding of “Operational Compliance” for paragraph 111 in our 10th Semi-Annual report (issued October 2021). This was based on the fact that the preliminary assessment involved “early” FIT investigations, and the Monitoring Team was assured by IA Command Staff that FIT training that took place in July 2021 would “help alleviate some of the identified issues” (10th semi-annual Report, at p. 23).

manual and the Consent Decree;¹⁰ that compelled interviews were either not completed at all, or were not completed within the required timeline;¹¹ once completed, the compelled interviews were conducted poorly; and, that FIT investigative reports contained pro-officer bias.

4. Current Assessment Findings

To achieve compliance with the Consent Decree, FIT investigations must be both competent (e.g., thorough and fair) and timely. Unless and until FIT is able to achieve both of these objectives, full and effective compliance with the Consent Decree will not be reached. In addition, the entirety of the chain-of-command adjudication process must be reliable in that it results in the timely imposition of fair and reasonable discipline when misconduct is, in fact, identified.

Table 2, provides the updated status of compliance for FIT investigations, as determined by this assessment.

¹⁰ Paragraph 122 reads in pertinent part: “With the exception of compelled interviews as described in paragraph 120, FIT will complete its administrative investigations within 60 days. Any request for an extension of time must be supported by a written justification and approved in writing by the Chief or the Chief’s designee. CDP’s inability to complete the investigation because it is awaiting information from an outside agency, such as the medical examiner’s officer, will constitute sufficient basis for such an extension for that portion of the investigation.”

¹¹ Section VI.B.1(o) of the FIT Manual reads: “Unless exceptional circumstances, such as extreme fatigue, an injury requiring immediate hospital treatment, lack of consciousness by the officer, or immediate and prolonged medical treatment, require an extension, FIT Investigators (administrative) will conduct the preliminary interview with involved officers before the end of the involved officer’s tour of duty.”

Table 2. Cleveland Consent Decree Section VI (E) (3):

	Requirement	Prior Status of Compliance	Status of Compliance Pursuant to Assessment Findings (as of May 2023)
110	“CDP may refer criminal investigations of uses of force to an independent and highly competent agency outside CDP where appropriate to ensure the fact and/or appearance of impartiality of investigations.”	Operational Compliance (since 10 th Semi-Annual Report, October 2021)	<p>Operational Compliance</p> <p>Only one (1) case reviewed in this assessment involved a deadly use of force that was investigated by the Cuyahoga County Sheriff as per a Memorandum of Understanding with the CDP. This assessment did not identify any specific issues or concerns regarding the conduct of that criminal investigation.</p>
111	The Internal Affairs Unit will include CDP’s Force Investigation Team (“FIT”). Each FIT will be a team comprised of personnel from various units and will not be a new unit to which officers are permanently assigned. The FIT will conduct administrative investigations in all of the following instances and, where appropriate and where not assigned to an outside agency as permitted above, will conduct criminal investigations of: (1) all Level 3 uses of force; (2) uses of force involving potential criminal conduct by an officer; (3) all instances in which an individual died while in, or as an apparent result of being in, CDP custody; and (4) any uses of force reassigned to FIT by the Chief or his or her designee. The FIT will be designed to ensure that these incidents are investigated fully and fairly by individuals with appropriate expertise, independence, and investigative skills to ensure that uses of force that are contrary to law or policy are identified; that training, tactical, and equipment deficiencies related to the use of force are identified; and that investigations are of sufficient quality.	Operational Compliance (since 10 th Semi-Annual Report, October 2021)	<p>Partial Compliance</p> <p>The FIT appears to be appropriately constituted and asserts its jurisdiction as per the expectations of the Consent Decree.</p> <p>However, the quality of FIT administrative investigations can be improved, and there were multiple instances where FIT either failed</p>

	Requirement	Prior Status of Compliance	Status of Compliance Pursuant to Assessment Findings (as of May 2023)
			<p>to identify tactical or policy issues and/or the CDP failed to follow-up on issues identified by FIT.</p> <p>As there were no criminal FIT investigations in the population reviewed, the Monitoring Team was unable to evaluate compliance in this area.</p>
115.	<p>“FIT will respond to the scene of every incident involving a use of force for which it is required to conduct an investigation. The FIT leader will immediately notify the appropriate prosecutor’s office. If the City elects to utilize an outside agency to conduct the criminal investigation, the FIT leader will notify the designated outside agency to respond to the scene to conduct the criminal investigation.”</p>	<p>Operational Compliance (since 10th Semi-Annual Report, October 2021)</p>	<p>Operational Compliance</p> <p>Although in four (4) of the cases reviewed, there was late notification provided to FIT, more recent cases indicate that notice appears to be being provided in a timely manner.</p> <p>Although a review of FIT notifications will be required for cases initiated from June 2022 through May 2023, the Monitoring Team is currently unaware of compliance issues in this area.</p>

	Requirement	Prior Status of Compliance	Status of Compliance Pursuant to Assessment Findings (as of May 2023)
116	“CDP will develop and implement policies to ensure that, where an outside agency conducts the criminal investigation, FIT conducts a concurrent and thorough administrative investigation.”	Partial Compliance. (Since 7 th Semi-Annual Report, September 2019)	Partial Compliance The assessment only involved the review of one (1) fatal officer-involved shooting where an outside agency conducted the criminal investigation; another fatal shooting is still pending investigation and was not included in this assessment. FIT investigators conducted their compelled interview with the subject officer within 4 days of the incident, one day later than is required by Section IV.C.6.b of the manual which requires such interview be conducted within 48-72 hours of the incident. Although the FIT investigation was thorough, command staff failed to identify a potential issue relating to the subject officer securing the suspect’s firearm in his pants pocket.

	Requirement	Prior Status of Compliance	Status of Compliance Pursuant to Assessment Findings (as of May 2023)
118	<p>FIT will:</p> <ol style="list-style-type: none"> assume control of the use of force investigation upon their arrival, ... ensure that a canvass for, and interview of, civilian witnesses is conducted by FIT team members... arrange for photographing and processing of the scene; ensure that all evidence that could establish material facts related to the use of force, including audio and video recordings, photographs, and other documentation of injuries or the absence of injuries is collected; examine the subject for injury, photograph areas of injury or complaint of injury, interview the subject for complaints of pain after advising the subject that the interview pertains only to the use of force and not to any underlying alleged crime and that the subject need not answer questions, and ensure that the subject receives medical attention from an appropriate medical provider; ensure that all officers witnessing the use of force by another officer complete a use of force report regarding the incident; review all use of force reports to ensure that they include the information required by CDP policy; consistent with applicable law, interview all officers who witness or are otherwise involved in the incident. To the extent possible, officers will be separated until interviewed. Group interviews will be prohibited. FIT will not ask officers or other witnesses leading questions that suggest legal justifications for the officers' conduct, when such questions are contrary to appropriate law enforcement techniques. FIT will record all interviews. FIT will ensure that all FIT investigation reports identify all officers who were involved in the incident, witnessed the incident, or were on the scene when it occurred; arrange for body worn camera video downloads; provide an initial briefing to a training representative at the start of the investigation to ensure that any training issues that require immediate attention are identified, and continue to consult as appropriate with the training representative; and make all reasonable efforts through the investigation to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force claimed by the officer and the subject's injuries. 	Partial Compliance. (Since 7 th Semi-Annual Report, September 2019)	<p>Partial Compliance</p> <p>It was determined that multiple cases involved violations of requirements set forth in Paragraph 118, to include failure to respond to the incident scene; failure to ensure canvassing of scenes; failure to conduct compelled interviews of involved officers; failure to document the sequestration of officer witnesses or admonishment of officers not to speak to other officers prior to being interviewed by FIT; asking leading questions that were not consistent with appropriate law enforcement techniques; failure to follow-up on unanswered questions; and failure to document initial briefings with the Training Unit.</p>

	Requirement	Prior Status of Compliance	Status of Compliance Pursuant to Assessment Findings (as of May 2023)
120	“If the FIT leader determines that a case has the potential to proceed criminally, compelled interviews of the subject officer(s) will be delayed. No other part of the investigation will be held in abeyance unless specifically authorized by the Chief in consultation with the agency conducting the criminal investigation and the appropriate prosecutor’s office.”	Partial Compliance. (Since 7 th Semi-Annual Report, September 2019)	Non-Compliance In only 25% of cases were subject officers interviewed by FIT in a timely fashion and consistent with the standards created by the court-approved FIT manual.
121	“The FIT leader will complete a preliminary report that will be presented to the Chief of Police or the Chief’s designee as soon as possible, but absent exigent circumstances, no later than 24 hours after learning of the use of force”	Partial Compliance. (Since 7 th Semi-Annual Report, September 2019)	Partial-Compliance FIT files did not contain appropriate documentation to identify compliance. The CDP produced documentation after the assessment to support its position that the CDP complied with this provision.
122	“With the exception of compelled interviews as described in paragraph 120, FIT will complete its administrative investigation within 60 days. Any request for an extension of time must be supported by a written justification and approved in writing by the Chief or the Chief’s designee. CDP’s inability to complete the investigation because it is awaiting information from an outside agency, such as the medical examiner’s office, will constitute sufficient basis for such an extension for that portion of the investigation. Within seven days of the conclusion of each use of force investigation, FIT will prepare an investigation report and recommend whether the preponderance of the evidence establishes that the involved officer(s) violated CDP policy, and whether any training or policy concerns are presented. FIT’s investigative report and recommendations will be	Partial Compliance (since 10 th Semi-Annual Report, October 2021)	Non-Compliance FIT investigations regularly take more than 70 days to complete. Although this is a significant improvement over prior years, it is still not in compliance with the expectations of the Consent Decree.

	Requirement	Prior Status of Compliance	Status of Compliance Pursuant to Assessment Findings (as of May 2023)
	<p>reviewed by the head of Internal Affairs. Within three business days, the head of Internal Affairs will approve or disapprove FIT's recommendations, or request that FIT conduct additional investigation. Any request for additional investigation and the FIT's response will be documented and maintained in the investigatory file.</p> <p>Internal Affairs will forward the investigative report to the Chief of Police for review and approval."</p>		<p>Further, although the average time it took to complete 2022 FIT investigations was 69.8 days, the mean for completion of those investigations was 111 days.¹²</p> <ul style="list-style-type: none"> • In addition, eight (8) FIT cases involving CPD officers, initiated in 2022, were reported as still in active investigation as of the time that this assessment began. Of those eight (8) cases, six (6) of the cases were over sixty (60) days old as of that time. • Of those cases, as of the writing of this report, three (3) were still open, having been open for an average of 224 days (as of May 1, 2023). • For the five (5) cases which have since been completed but which were not included in the timeliness

¹² The "average" (also known as the "mean") number of days to complete a FIT investigation, as herein defined, was determined by adding up the number of days from the date of the incident to the date that the investigation was submitted for review by the assigned FIT investigator and then dividing the total number of days for all cases by the number of cases in the population. The median is the figure at which half of the data points fall above and half fall below.

	Requirement	Prior Status of Compliance	Status of Compliance Pursuant to Assessment Findings (as of May 2023)
			<p>calculations for this report, the cases were open for an average of 126.8 days for investigation.</p> <ul style="list-style-type: none"> As such, upon completion of all 2022 initiated FIT cases, the average days for completion will be substantially greater than the data indicates herein. <p>FIT does not systemically document when FIT is unable “to complete the investigation because it is awaiting information from an outside agency, such as the medical examiner’s office,” as permitted by the Consent Decree.</p> <p>Although the current Internal Affairs Superintendent is approving FIT investigations within “three business days” as required by the Consent Decree, the average number of days for case investigations to be reviewed and approved by the Internal Affairs</p>

	Requirement	Prior Status of Compliance	Status of Compliance Pursuant to Assessment Findings (as of May 2023)
			Superintendent, through the Internal Affairs officer-in-charge, is 11.4 days for 2022-initiated FIT cases.

A. FIT Investigation Timeliness:

Finding No. 1: CDP failed to conduct timely FIT interviews of involved-officers. The FIT manual calls for involved officers to be interviewed by FIT investigators “within 48-72 hours unless the appropriate prosecuting attorney requests that the interview be delayed.” CDP followed this requirement in only seven (7) of the twenty-eight (28) cases reviewed (25.0%).¹³ Instead, FIT investigators regularly delayed these interviews for weeks, if not months, until after the local prosecuting attorney declined to file criminal charges against the involved officers.¹⁴

Finding No. 2: Even though timeliness of FIT investigations appears to be improving over the course of time, significant improvements in this area are needed to come into compliance with the Consent Decree’s requirement that administrative investigations of these cases be completed within 60 days. In addition, FIT investigators need to more clearly document when a case is considered “suspended” because the investigator is waiting for information from an outside agency.

Average dates for completion of stages of FIT investigations

	2020 cases (n=11)	2021 cases (n=12)	2022 cases (n=5)
Average days to complete criminal investigation. (From date of incident to review by District Attorney)	118-day average 71-day median	112-day average 10-day median	53-day average 64-day median
Average days to complete administrative interviews of subject officers.	77-day average 75-day median	69.5-day average 36-day median	61-day average 74-day median
Average days to complete administrative investigations. (From date of incident to date IA report submitted to Internal Affairs command staff)	167.7-day average 149-day median	147.4-day average 141-day median	69.8-day average 111-day median
Average days from date of incident to date of review and approval by IA Superintendent.	191-day average 168-day median	160.7-day average 139-day median	83.2-day average 106-day median

Although the above chart indicates dramatic improvements in timelines for cases initiated in 2022 when compared with cases initiated in 2020 and 2021, these

¹³ See FIT Manual, Section IV. OPERATIONS- INTEGRITY PROTOCOLS, paragraph C.6.b. This section also requires that any prosecution request to delay involved officer interviews be “memorialized in writing.” No such documentation was found in any of the FIT investigations that were reviewed.

¹⁴ For 2020-initiated incidents, three (3) of eleven (11) cases involved FIT interviews that were conducted shortly after the incident (27.3%). For 2021-initiated incidents, only four (4) of seventeen (17) cases involved FIT interviews that were conducted shortly after the incident (23.5%). For 2022-initiated incidents, all FIT interviews were postponed until after the criminal case was presented to the local prosecutor for a filing decision (n=5).

numbers are misleading. This is because this assessment involved only 2022-initiated cases closed prior to October 2022. As such, one (1) 2021-initiated and nine (9) 2022-initiated FIT investigations were not included in this assessment, nor are their closing dates reflected in the above chart.

As of May 2023, the one 2021-initiated FIT investigation and six (6) of the 2022-initiated FIT investigations not included in this assessment, have been closed. The 2021-initiated FIT investigation took 465 days to complete, well above the reported average of 160.7 days for that year. For the six (6) 2022-initiated FIT investigations completed up to May 1, 2023, it took an average of 132.6 days for the Internal Affairs Superintendent to make findings on the investigations. This average is well above the average it took to review and approve the 2022 cases assessed herein, but below the average for 2021 cases. Unfortunately, however, the average number of days open for the three (3) 2022-initiated FIT investigations that have not been completed, is 224 days (as of May 1, 2023). As such, it is anticipated that the average number of days to adjudicate 2022 cases will ultimately be well in excess of 134 days.

Finding No. 3: Consent Decree paragraph 122 requires that FIT cases be reviewed and approved by the Internal Affairs Superintendent within 3 business days of the completion of the FIT investigation.¹⁵ The current Internal Affairs Superintendent has greatly improved upon the timeliness of the process, approving all cases on the same day that the investigation has been deemed complete by Internal Affairs command staff (n=5). However, it still took, on average, 11.4 days for Internal Affairs command staff to review and approve or disapprove 2022-initiated FIT cases, after they have first been submitted for his review. This was still an improvement when looking at 2021-initiated FIT cases, which took 13.2 days to review.

B. FIT Investigation Quality:

The most significant concerns identified by the assessment reviewers are as follows:

1. The FIT investigation reports that were reviewed as part of this assessment were deemed to be lacking in a number of ways:¹⁶
 - a. Investigation reports lacked consistency amongst and between investigators. Specifically, there was a wide disparity in the format and content of FIT investigation reports. As such, reviewers often had to

¹⁵ Paragraph 122 reads in pertinent part: “...Within three business days, the head of Internal Affairs will approve or disapprove FIT’s recommendations, or request that FIT conduct additional investigation...”

¹⁶ Significantly, the IA Superintendent reported that as of December 1, 2022 (two months after the last FIT case to be reviewed in this assessment was closed), a new “IA Final Report Template” was created for IA and FIT investigators. That template, however, did not address many of the issues identified in this report, specifically to include the need to regularly include the information indicated in paragraphs 1.b and 1.c., herein.

search through FIT investigation files to determine where, or if, information was documented in the reports.

- b. Investigation reports lack the existence of any record keeping that would identify the dates and times of completion of essential FIT-related tasks.
 - i. For example, in 53.5% (n=15) of the cases, reviewers reported being unable to identify if or when a 24-hour report was sent to the Chief of Police, as required by Consent Decree paragraph 121. Even more frequently, in 71.4% (n=20) of the cases, reviewers were unable to determine whether a similar report was sent to the Office of Professional Standards, also as required by Consent Decree paragraph 121.
 - ii. Similarly, in 35.7% (n=10) of the cases, reviewers reported an inability to determine whether officers were sequestered, as required by the FIT Manual (See FIT policy, Section IV.C.1).¹⁷
 - iii. In one (1) officer-involved shooting investigation, the reviewers were unable to determine if preliminary interviews were conducted with the subject officers prior to the end of their tour of duty. In another case, a reviewer was unable to determine the time of a preliminary interview of an involved officer.
 - iv. In a number of cases (n=4), reviewers were unable to verify that officers had been given orders not to discuss the incident with any other officers prior to providing a compelled interview to FIT.¹⁸
 - v. In the majority of cases (n=15), reviewers were unable to identify any attempt by FIT investigators to conduct or document an initial debrief with the Training Unit as required by Consent Decree paragraph 118(j)¹⁹ and FIT Policy Manual Section VI.A.²⁰
 - vi. Current FIT report templates do not require investigators to identify dates and times of interviews, nor who was present at the interviews, making it difficult for reviewers and Internal Affairs command staff to easily identify the extent to which investigations were conducted in a logical or timely manner.

¹⁷ Which reads as follows: “After an incident occurs within the scope of FIT, and after the scene is secured, the involved and witness officers will be separated by the first non-involved supervisors who respond to the scene and directed not to speak to each other about the incident. They shall not be permitted to review video or audio of the incident, including from any WCS (Wearable Camera System), or any data in the possession of the CCS or MDT data, prior to their initial FIT interview without the approval of either FIT OIC. This protocol is intended to ensure a preliminary interview untainted by the review of any external evidence.”

¹⁸ As required by CDP General Police Order 2.01.07

¹⁹ Paragraph 118(j) reads: “FIT will... provide an initial briefing to a training representative at the start of the investigation to ensure that any training issues that require immediate attention are identified, and continue to consult as appropriate with the training representative...”

²⁰ FIT Policy Manual Section VI.A. reads in pertinent part, “The FIT OIC (criminal) is responsible for providing an initial briefing to the training representative at the start of the investigation to ensure that any training issues that require immediate attention are identified, and continuing to consult as appropriate with the training representative.”

- c. Overall, reviewers identified a need for investigative record keeping to identify key actions taken by FIT investigators, supervisors, and command staff – to include the date & time FIT was notified and responded to the scene; the date and time preliminary questions were asked of involved officers; the date and time of on-scene canvasses for witnesses and evidence; the date and time of officer interviews; the dates of prosecutorial review; the dates of suspension of any investigation while waiting on the receipt of important third-party information (such as autopsy reports); the date of completion of the FIT investigation report and submittal to Internal Affairs command staff; and the dates of review by the Internal Affairs Lieutenant and Superintendent.²¹ The date and time that 24-hour reports were forwarded to OPS and the Chief of Police were not included in the materials reviewed. After the assessment, the CDP produced emails to the Monitoring Team to support its position that the Department complied with the notice period for each of the cases assessed.
2. In many of the early cases reviewed, the Internal Affairs Lieutenant, who was responsible for the first-line command review of FIT investigations and making recommendations for in and out-of-policy findings, consistently failed to evaluate the cases under CDP's current use-of-force policy; instead evaluating the cases under CDP's former use-of-force policy. This inappropriate standard was explicitly used in ten (10) of the cases that were reviewed (37.5%). More recent cases have, however, documented the use of force standard as required by CDP policy.
3. In four (4) of the cases reviewed, there was late notification to the FIT and/or a FIT failure to respond to the scene either in a timely fashion, or at all. In an additional two (2) cases, there was a failure on the part of the FIT investigator to document an on-scene canvass, as required by paragraph 118 of the Consent Decree.²² In that case, however, the FIT investigator did document the failure and acknowledged that the investigation did not meet FIT standards.
4. Investigator bias was identified in 28.6% of the cases reviewed (n=8). Specifically, reviewers identified language in these FIT investigation reports that was not objective and was instead laudatory of officer actions and/or critical of subject actions. The officer conduct was often described in positive ways, with officer actions described as doing "an exceptional job under stress," being "forced to strike" an individual, showing "great restraint," or "act[ing] in an exemplary manner." In one case, the investigator offered their subjective belief as to the subject officers' statements, reporting that: "I believe the statements given [by

²¹ In early cases, the IA Lieutenant and Superintendent regularly documented their dates of review and the date of prosecutorial review. In later cases, this documentation became sporadic.

²² Paragraph 118.b, reads, in pertinent part, as follows: "FIT will... ensure that a canvass for, and interview of, civilian witnesses is conducted by FIT team members."

SOs] to be truthful and accurate...Both officers were cooperative and their statements shows no signs of evasiveness.” In addition, in two (2) different cases, FIT investigators stepped outside of their role as objective fact finders to specifically identify factors in mitigation after officer misconduct was established. Individuals involved in interactions with police, on the other hand, were described as “highly irate,” “clearly resisting,” or, in one case, having a “temper tantrum.” In one case, the Internal Affairs Sergeant included video of a crime that did not appear to have any actual relevance to the use-of-force being investigated. In general, the FIT investigators included language in their reports that would have been more appropriately suited to language to be used by a case adjudicator and, thereby, indicated a lack of objectivity in the investigation. As noted by one reviewer: “the [FIT investigator] should provide a report of facts but should not adjudicate incidents...The recommendations should be by the reviewing Lt or above to the FRB (or Chief) for their formal adjudication. There must be an ethical wall between the factual investigation - and formal adjudication/ findings in order to preserve the integrity of this process.”

Although the Monitoring Team recognizes that it may be appropriate for FIT investigators to make a credibility assessment of interviewees, the descriptors identified herein tended to be conclusory as opposed to descriptive in nature. The Monitoring Team recommends that when providing reviewers with opinions regarding credibility, investigators point to specific factual information that would tend to either enhance or detract from the credibility of material witnesses.

5. In 35.7% of the cases (n=10) reviewers identified that FIT investigator descriptions of Wearable Camera System (WCS) video contained conclusory or biased descriptions of the footage. Similar to the overall descriptors that need to be used in the FIT reports, the review of the WCS is an objective responsibility. In many of the cases identified here, the FIT investigator used the word “clearly” to provide their subjective interpretation of what could be seen during a review of the WCS. The word “clearly” is an opinion. The FIT investigator should simply state what the investigator is observing in the review of the WCS footage. In an additional case, a reviewer noted an inadequate summary of the content of the WCS which lacked sufficient relevant detail to assist a reviewer in adjudicating the case.
6. In four (4) cases, reviewers noted that WCS footage of FIT interviews was missing from Evidence.com, making a complete review of the investigation impossible.
7. The Monitoring Team’s review of the files established that in a majority of cases 67.8% (n=19), FIT investigators did not confer with the Training Unit prior to making recommendations relating to their investigations. In at least six (6) cases, reviewers identified failures wherein the FIT investigators failed to identify significant policy and/or training issues, such as failing to discuss an officer’s

backdrop in an investigation of an officer-involved shooting; failing to identify lack of de-escalation;²³ failing to address a shooting officer securing a firearm seized at the scene in the officer's pants pocket after an officer-involved shooting; and failing to identify a policy issue regarding the use of hand strikes, which was later identified by the Force Review Board (FRB).

- a. In those cases where there was documentation that the FIT investigators conferred with the Training Division, most of the cases (n=5) involved the FIT investigator simply summarizing the nature of their conferral with a Training expert. In only three (3) cases, was a formal assessment by the Training Unit located in the file. For two (2) those cases, the Training Unit reported that their assessment was limited to a review of a segment of the Officer WCS; for unknown reasons the Training Unit was specifically advised not to review officer interviews, even though those interviews had taken place prior to the Training Unit review.
8. In three (3) cases (10.7%), the FIT investigator failed to conduct compelled interviews of one or more subject officers. In one (1) case, the investigator, after receiving permission from the Internal Affairs Lieutenant, chose not to conduct any full interviews of the subject officers due to scheduling difficulties.²⁴ In another case, the investigator merely emailed the involved officers and asked if they "had anything to add." The subject officers replied in the negative and the investigation was completed and approved nonetheless. In a third case, there was no documentation or evidence of full interviews conducted of two (2) of the three (3) involved officers. Given that FIT investigations are administrative investigations that do not look just at misconduct, but also training, policy, tactics, and equipment issues, full interviews of involved employees should take place in all instances. Such a practice is consistent with the requirements of paragraph 118(h) of the Consent Decree.²⁵
 9. In 42.9% of the cases (n=12), reviewers identified inadequacies with respect to interviews conducted by FIT investigators. For four (4) cases initiated in 2020, reviewers identified the failure to follow up on relevant questions; a lack of detail obtained to include superficial questioning;²⁶ the use of leading questions (that

²³ Including one (1) case where an officer called the individual a "motherfucker" while engaged in the use-of-force that was under investigation.

²⁴ This issue was appropriately identified by the Force Review Board during its review of the FIT investigation.

²⁵ Paragraph 118.h reads in pertinent part: "Consistent with applicable law, [FIT will] interview all officers who witness or are otherwise involved in the incident..." [emphasis added]

²⁶ As described by one reviewer: "While the interviews were broadly sufficient, in that they covered the required topics to be investigated, they were somewhat superficial and lacked detailed questioning. In particular, the officers' observations of the suspect being armed with a gun were only lightly probed. Additionally, the officers' assessment of the threat as each of the three shooters fired their multiple rounds was not broken down, and it was difficult to determine how their stated perception of a deadly threat evolved and when they perceived that the suspect was no longer in possession of a gun. The investigation

was, in fact in one case, identified by the Internal Affairs Superintendent for training purposes); and the failure to follow-up with a necessary witness. For five (5) cases initiated in 2021, reviewers identified failures to ask follow-up questions or conduct necessary follow-up interviews, poor interview techniques which denied officers the opportunity to provide a narrative of their observations, and the use of leading questions. And for three (3) cases initiated in 2022, reviewers identified problems with leading questions and the failure to ask follow-up questions.

10. In two (2) cases (7.1%), the subject officers were permitted to have inappropriate contact with the person on whom force was used. In one case, the officer who used force actually responded to the hospital and conducted his own interview with the individual. In the second case, an officer who used force was assigned to ride in the ambulance with the arrested individual on the way to the hospital. Best practices in investigations of serious uses of force suggest that officers who did not use force against an individual should be assigned to have contact with that person as soon as sufficient police resources can be obtained.
11. In one officer-involved shooting investigation, it was noted that there were approximately 74 law enforcement-related individuals and numerous civilians within the crime scene during the three hours it was active. There was no indication that CDP utilized a controlled crime scene with inner and outer perimeters. In addition, the Homicide Log in the case was sparse, containing eight (8) entries total for an officer-involved shooting involving an injury and the investigation checklist was blank. No Public Safety Statement²⁷ appeared to have been taken, nor was the shooting officer admonished not to discuss the incident. No one was assigned to monitor the officer who walked away into a crowd of other officers. Finally, there was no evidence that an Incident Command Post was established with crime scene entry points controlled and documented.
12. Finally, in eight (8) different cases (28.6%), reviewers identified instances where there was a failure to follow-up and/or failures to document investigative challenges, failures, and training needs:

was extensive and appears to have reached appropriate conclusions. However, more detailed interviewing could have improved the overall quality of the investigation.

²⁷ A "Public Safety Statement" is defined in the FIT manual as: "A statement, subject to the protections of *Garrity v. New Jersey*, taken from an involved officer by a supervisor (typically the first responding non-involved supervisor) where inquiries are made to ensure that urgent police matters are handled. This includes the identity of involved officers, whether there are known outstanding suspects and the probable cause in support of believing criminal acts were committed by those suspects, the location of potentially dangerous weapons, whether there are injured persons who may need medical attention, any immediate dangers to the public and identifying the area needed to be secured in support of a thorough and complete investigation" (Paragraph II.A.14).

- a. In one 2020-initiated incident, there was no record of CDP command staff following up in any way with hospital administration after hospital staff failed to cooperate in a FIT investigation;²⁸
- b. In another 2020-initiated incident, FIT failed to conduct an adequate investigation to determine whether there was any misconduct or training deficiencies involved in the late reporting of the incident to FIT. In the same case, there was no documentation that CDP administration followed up on a recommendation from FIT for training for officers on the definition of “obstruction of official business.” The investigation identified ongoing issues and concerns regarding patrol officer understanding of the circumstances under which arrests for that charge should be made;
- c. In another 2020-initiated case, there was no documentation of any follow-up regarding a FIT investigator recommendation for training regarding the un-holstering of a firearm while responding to a call;
- d. In a 2021-initiated case, there was no documentation that FIT investigator concerns regarding officers bringing weapons into a mental health facility were addressed. Further, there were multiple additional recommendations made regarding obtaining hospital assistance in restraining patients, updating the use-of-force policy on shackled prisoners and classifying future uses-of-force on shackled prisoners for future FIT investigations. There was no documentation available to the Monitoring Team indicating any chain-of-command consideration of those recommendations;
- e. In another two (2) 2021-initiated cases, there was no record of the Division providing timely training to officers as recommended by FIT;²⁹
- f. With respect to a 2021-initiated case involving an officer-involved shooting by an officer working “secondary employment:” FIT chain-of-command failed to address the negative impact of the subject officer not being required to wear a WCS. Although this issue was eventually addressed by the Force Review Board, some comment by FIT chain-of-command, recognizing this as an issue, is expected.
- g. Internal Affairs and CDP command staff failed to recognize or take any action on a 2021-initiated case wherein the involved officer conducted her own “round count,” while on scene, prior to the arrival of FIT.³⁰

²⁸ Hospital staff who witness police uses of force can be essential witnesses. As such, police command staff should have a strong interest in ensuring that hospital administration is prepared to order their staff to cooperate with police use-of-force investigations, as necessary.

²⁹ In one case, the FRB recommended training regarding multiple topics to include “strategic communications between partners,” “advising radio of urgency for additional assistance,” “handcuffing techniques,” “subject control,” and “taser retraining for cartridge exchange.” In another case, the FIT investigator and a Training member recommended training “in proper techniques for assisting handcuffed persons to their feet.” The incident took place on June 21, 2021, and retraining was ordered on February 9, 2022. The officer resigned on May 22, 2022, without the training having been conducted.

³⁰ As per FIT Manual Section VI.B.1.m: “FIT criminal members shall ensure the collection and processing of all evidence consistent with Homicide investigation protocols, related to the use of force incident to include conducting round counts and accounting for all shots fired.”

5. Conclusions & Recommendations

The CDP has not conclusively established its ability to sustainably conduct competent and timely critical incident investigations as per the expectations of the Consent Decree. Much of this may be attributed to leadership challenges which were previously faced by Internal Affairs and a significant period in which Internal Affairs was supervised by interim leadership.³¹

Moving forward, it is important for Internal Affairs and FIT leadership to create a comprehensive template for investigations, ensuring documentation of key Consent Decree requirements. In addition, CDP leadership must ensure adequate resources are provided to enhance the opportunities for FIT and Internal Affairs to succeed. Additional training will be needed to ensure that investigation reports are presented in an unbiased way and that summaries are devoid of personal opinions and bias. Continued interview training is essential to ensure that leading questions are avoided and robust interviews are conducted.

FIT must also begin a practice of completing administratively compelled interviews in a timely manner, and completing concurrent FIT investigations, also consistent with the FIT Manual. The CDP has informed the Monitoring Team that the Superintendent for Internal Affairs has implemented a change to ensure that full compelled interviews are conducted within 72 hours. That change was not implemented in time to affect this Assessment. The Monitoring commends the change and looks forward to independently assessing Consent Decree compliance with this requirement moving forward.

The Monitoring Team, by identifying the above-noted areas of concern, endeavors to provide the FIT command staff with insight to improve future critical incident investigations and achieve Consent Decree compliance in this important area of accountability in the near future.

³¹ The first civilian Internal Affairs Superintendent, Ronald Bakeman, resigned from that position as of June 13, 2021. The current Internal Affairs Superintendent, Christopher Viland, was not hired into that position until May 31, 2022. This gap in permanent leadership left Internal Affairs to be supervised by three different Interim Superintendents over a period of almost one year.

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