

# EXHIBIT 4

**CONFIDENTIAL DRAFT - CASE # 23-0459 INCIDENT ASSESSMENT AND RESPONSE**

OPD, in partnership with internal stakeholders, has analyzed the Department's handling of allegations brought to OPD by the District Attorney's Office (DA) that an OPD officer committed perjury and bribed a witness. While after-action reports typically address identified strengths as well as weaknesses, this assessment focuses on assessing failures that led to OPD failing to appropriately handle serious allegations of misconduct. We have carefully reviewed the investigative reports and analyzed identified failures to determine necessary improvements. While there is no way to completely prevent misconduct, the goal is to discourage misconduct by fostering a culture that prizes honesty and accountability and by creating a framework within which misconduct cannot be easily ignored or covered up.

We have concluded that numerous improvements to policy and training are necessary to reduce the likelihood of similar future misconduct, including supervisory failures in addressing misconduct, and ensure that when misconduct occurs it is promptly identified and appropriately handled. Importantly, aspects of this matter are still under investigation and the discipline process is not yet complete. Nonetheless, the issues uncovered by the completed investigations of the underlying administrative investigation and failure to criminally investigate are of a critical nature and must be addressed immediately.

OPD takes responsibility for what occurred and has taken the laboring oar in this assessment and response. However, it is essential that City leadership and civilian oversight are equal partners in moving forward. It is essential that the assessment of the incident as well as the response incorporate the City's civilian oversight, including the offices of the Mayor, City Administrator and City Attorney and critically, the community-mandated oversight entities: the Oakland Police Commission (OPC), Office of the Inspector General (OIG) and Community Police Review Agency (CPRA). Through this assessment and identified areas of improvement, the City will ensure OCA and CPRA, most critically as the subject matter expert in administrative accountability, are involved in not only the assessment of what occurred but also consulted in identifying appropriate remedial and proactive action and formally integrated into the resultant enhanced accountability structure. This will best ensure lessons learned result in permanent change.

**City Investigations Found Many Failures in the Handling of the DA's Complaint Against a Member**

The City conducted two independent administrative investigations to evaluate what occurred and determine whether failures were a result of misconduct. CPRA and OPD, using an outside investigator, each conducted an administrative investigation (IAB & CPRA case # 23-0459). [REDACTED]

Investigations uncovered troubling conduct by actors at all levels of the Department in the handling of the DA office's very serious criminal allegation(s) against an OPD officer. The following chart summarizes and responds to the issues identified, describing both actions already undertaken by the Department as well as additional planned and recommended actions the City will take to further enhance procedural barriers to such misconduct.

<b>IDENTIFIED FAILURES</b>	<p>[REDACTED] The DA informed OPD of evidence in the form of two sworn affidavits: (1) from the officer confirming that he lied under oath regarding his relationship with the sole eye witness, stating that he did not know her prior to the instant criminal investigation, when he knew her and had used her as an informant previously, and (2) from the witnesses, attesting that she received payments from the officer in relation to her testifying. The evidence of perjury and bribery led to the overturning a murder conviction, and the release of two men from prison.</p>
<b>RESPONSE</b>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

Issue	OPD actors did not find reasonable suspicion, triggering the initiation of a criminal investigation, despite evidence that a member officer engaged in criminal conduct.
Response	<p>DGO M-04.1 outlines the requirements for criminal investigations involving OPD members.</p> <p>[REDACTED]. It is critical to Community safety and the integrity of the Department that OPD apply the same standard and approach to assessing reasonable suspicion when assessing potentially criminal behavior of an OPD officer as when assessing potential criminal misconduct by a member of the Community.</p>
Action taken	<ul style="list-style-type: none"> <li>• The Chief (COP) has instituted regular M-04.1<sup>1</sup> meetings to discuss criminal investigations of OPD officers. Meetings include the COP, CID, IAB and OCA.</li> <li>• CPRA, the City's independent investigative body, is represented at the regular M-04.1 meetings. CPRA's presence enables input from a knowledgeable independent City stakeholder</li> </ul>

<sup>1</sup> Department General Order M-04.1: *Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel* is OPD's policy that outlines how the Department and its members report and investigate criminal misconduct of OPD members and other sworn law enforcement personnel.

	<p>to ensure thoughtful decision-making in compliance with policy and procedure. Including CPRA as an attendee enhances sound decision-making, transparency and accountability regarding OPD criminal investigations of members.</p> <ul style="list-style-type: none"> <li>• Members of Executive Command, including the COP, members of CID and IAB received training and instruction regarding M-04.1 and “reasonable suspicion”. While more robust training(s) related the issued raised in this assessment will be developed (see “recommended/additional action sections), instruction was immediately given to ensure OPD actors were aware their individual responsibilities under M-04.1 and the serious consequences for other as well as the initial when each OPD actors does not fulfill their role with integrity.</li> <li>• OPD is currently working with OCA and CPRA on reviewing DGO M-4.1 to identify potential enhancements to the policy in addition to those specifically identified below. For example, institutionalizing actions taken such as the regular M-04.1 meetings and providing for civilian oversight weigh in on the initial assessment of reasonable suspicion, upon OPD learning of a criminal allegation against an officer.</li> <li>• M-4.01 meetings are being expanded to include a mandatory meeting in which the initial decision regarding reasonable suspicion is discussed. To enhance integrity, accountability and transparency, this meeting should include CPRA as well as OCA.</li> <li>• CID will be providing follow-up reports within 72 hours of sending M-04.1 notices to IAB, CAO, OCA and CPRA summarizing the information CID has regarding the matter.</li> </ul>
Additional action	<ul style="list-style-type: none"> <li>• OPD will work with OCA and CPRA to prepare and provide comprehensive retraining on M-04.1 to ensure all personnel understand both the specific obligations of the policy as well as its purpose and importance in ensuring the integrity of the Department as a crime-fighting institution.</li> </ul> <p>To accomplish this goal, training will be tailored to specific audiences to ensure City actors and stakeholders have an understanding of the policy appropriate to their particular role(s). Thus, training for OPC members and the City Administrator will be relatively general, while that for CID would be more comprehensive and targeted and that for CPRA/IAB targeted at their accountability role and the impact criminal investigations have on administrative investigations into the same conduct. The training for CID will be developed to be provided to new personnel upon assignment to CID. In addition, training focused on Command responsibility will be provided to personnel prior to being promoted or transferred into CID Command positions.</p> <ul style="list-style-type: none"> <li>• OPD will ensure the permanence of the above enhancements by incorporating them into its written policies. Written policy and related training also enhance transparency and accountability. Contemplated revisions to M-04.1 include requiring regular M-04.1 meetings, involving CPRA in the initial reasonable suspicion assessment and M-04.1 meetings, and prescribing the timing and content of M-04.1 follow-up reports.</li> </ul>
Issue	OPD Executive Command failed in their responsibility to ensure the allegations were criminally investigated.
Response	Executive Command is responsible for insuring both administrative and criminal accountability of members generally, as well as making sure that CID and IA specifically and independently

	<p>carry out their accountability roles by investigating misconduct allegations in compliance with policy and procedure. Executive Command must be held ultimately responsible for incorrect and/or inappropriate decisions they participate in. Commanders are ultimately accountable for decisions as appropriate in a top-down organization within which respect for chain-of command is mandated. The culpability of commanders does not absolve their subordinates. Instead, each involved member must be looked at individually to assess their level of culpability.</p>
Action taken	<p>Several of the actions mentioned above enhance transparency regarding the involvement of top leadership in decisions and the ability of the City to hold Executive Command appropriately responsible, including M-04.1 meetings, follow-up reports.</p>
Additional action	<p>Similarly, additional planned actions mentioned above will assist in ensuring members of Executive Command are held to account for critical decisions and thus incentivized to give them serious consideration including considering impacts on the Department's integrity.</p>
Issue	<p>[REDACTED]</p>
Response	<p>The idea that OPD relies on the DA to direct OPD in criminal investigations directly conflicts with OPD's obligation to independently conduct criminal investigations when warranted. Most criminal investigations are not directed by the DA but are initiated by OPD upon the finding of either reasonable suspicion or probable cause. DGO M-04.1 requires OPD to act in the presence of reasonable suspicion. When there is evidence that a member has committed a crime, declining to investigate unless explicitly asked to by the DA is both unreasonable and counter to policy.</p> <p>[REDACTED]</p> <p>[REDACTED] Policy and common-sense dictate that when OPD is in receipt of evidence of a serious crime, it must investigate. This requirement becomes more, not less, critical when the evidence is that an OPD officer committed a crime.</p> <p>[REDACTED]</p> <p>[REDACTED] OPD does not rely on the DA's office to protect its integrity that is OPD's job in the first instance. There is a role for civilian oversight partners in the decision-making process to protect the Department and City from bias or inappropriate motives undermining the work that has been done and that we continue to do to build trust with the Community and ensure we are policing the Community with integrity.</p>
Action taken	<p>When policy is clear, but is violated, it undermines accountability to assume there is a policy problem instead of an officer misconduct problem. Often, the strongest accountability stance is standing behind policy and holding the officer accountable.</p> <p>That said, the following actions have been taken to ensure OPD's independent obligation to criminally investigate all allegations of criminal activity with the same earnestness and without bias, regardless of the identity of the subject is clear to all.</p>



Additional action	<ul style="list-style-type: none"> <li>Revise M-04.1 to make explicit the mandate to initiate criminal investigations when "reasonable suspicion" is present and apply reasonable suspicion standards equally to all criminal subjects.</li> <li>Provide additional training to reinforce CID's responsibilities under DGO M-04.1, especially with regard to criminal investigations of its own officers, where OPD's integrity is at stake. The training would include case studies highlighting scenarios where independent investigation is mandated and incorporate specific examples to guide decision-making.</li> </ul>
Issue	[REDACTED]
Response	Critical decisions and the basis for them should be documented. Not doing so creates an opportunity for unreasoned, bias, or otherwise inappropriate decisions. Documentation requirements both ensure some level of consideration in the decision-making process and allow for greater transparency and accountability (whether for criminal or administrative investigation or both). In addition, CID's failure to adequately document its initial assessment of criminal allegations against member officers hinders and delays the City in investigating misconduct allegations administratively.
Additional action	<ul style="list-style-type: none"> <li>OPD should revise M-04.1 to require a reasonable suspicion assessment and documentation of the same. This would be the functional equivalent of the preliminary investigation in the handling of misconduct complaints.</li> </ul>
Issue	[REDACTED]
Response	OPD expediting the completion of the investigation compromised its integrity and led to an incomplete, insufficient investigation. When OPD decides not to criminally investigate, administrative investigation becomes the sole avenue for understanding what occurred and ensuring accountability. It is imperative that investigations not be rushed, and instead, are thorough and comply with City and OPD training, policies and procedures. These provide the baseline foundation for an effective investigation. [REDACTED]
Action taken	<ul style="list-style-type: none"> <li>OPD establishing IAB as a distinct bureau with a Deputy Chief residing over it and reporting directly to the Chief provides focused executive-level attention and resources to IA.</li> </ul> <p>It prevents the possibility of an IAD Captain, or their subordinates feeling pressured or outranked by a Deputy Chief or others in Executive Command who may want the case resolved quickly for operational reasons.</p> <ul style="list-style-type: none"> <li>The new IAB DC has been and continues to actively re-enforce various OPD policies that ensure thorough investigations. This counterbalances the pressure to focus solely on timelines.</li> </ul>

	Enforcement of existing policy and procedure will ensure that investigations follow the appropriate steps.
Additional action	<ul style="list-style-type: none"> <li>• Ultimately, CPRA as the independent City-investigative body, taking over the investigation of such serious misconduct allegations is the best way to ensure fair, thorough investigations in which operational concerns, personal relationships, supervisory intimidation, etc. cannot improperly influence investigations.</li> <li>• OPD, CPRA and OCA are working together and in consultation with other stakeholders as appropriate to create robust training regarding administrative misconduct investigations. Such trainings will clearly articulate investigative standards in more detail than is feasible in policy. The training will be provided to administrative investigators in IAB and CPRA and also be made available to other stakeholders, including internal civilian oversight, plaintiffs' counsel and members of the public. This will enhance transparency and accountability in the investigative process. Training will include Community perspectives and emphasize the need for impartiality and procedural integrity in internal investigations.</li> </ul>
Issue	[REDACTED]
Response	<p>[REDACTED] Supervisors are responsible for ensuring subordinates investigate thoroughly and in compliance with training, policy and procedure, as well as carry-out their own supervisory duties in reviewing and approving investigative steps and ultimately the investigative report [REDACTED]</p> <p>[REDACTED]</p>
Action taken	<ul style="list-style-type: none"> <li>• IAB has been created as a distinct bureau with a Deputy Chief residing over the Bureau and reporting directly to the Chief. This provides for more focused executive-level attention to internal affairs. It prevents the possibility of an IAD Captain, or their subordinates feeling pressured or outranked by a Deputy Chief or others in Executive Command who may want the case resolved quickly for operational reasons.</li> <li>• The new IAB DC has been and continues to actively re-enforce various different OPD policies that ensure thorough investigations. This counterbalances the pressure to focus solely on timelines and enforcement of the same will ensure that such an investigation gets the appropriate attention.</li> </ul>
Additional action	<ul style="list-style-type: none"> <li>• CPRA playing the primary investigative role as discussed above would address the issue not only of OPD holding itself accountable for misconduct in the first instant but also ensuring that those who failed to hold the original actors accountable are held accountable.</li> <li>• Training: Emphasize impartiality and procedural integrity in internal investigations.</li> </ul>
Issue	[REDACTED]

Response	<p>Command is responsible for ensuring administrative accountability. Executive Command is uniquely situated with insight and decision-making power as to both internal and criminal investigations. It was imperative that Executive Command ensure the integrity and independence of the administrative investigation, demanding that it be conducted in earnest. [REDACTED]</p> <p>[REDACTED]</p>
Action taken	<ul style="list-style-type: none"> <li>• Regular M-04.1 and Bi-weekly important case update meetings create documented awareness, involvement and decision-making by leadership.</li> <li>• City civilian oversight leadership, including the City Administrator, Mayor and OPC, CPRA leadership are kept informed of the progress of serious investigations through bi-weekly serious case update meetings. The Chief is responsible for identifying cases to be included in the updates.</li> </ul>
Additional action	<ul style="list-style-type: none"> <li>• OPD, in partnership with OCA and CPRA will create and provide training on supervisor and command accountability. The training will focus on assigning and assessing culpability amongst numerous involved actors.</li> <li>• OPD and oversight partners will review the MOR sections regarding Command responsibilities and responsibility for particular members of executive Command for potential enhancements in clarity of duties and responsibilities. This review should focus on verbiage from the accountability perspective, addressing the persistent difficulty the Department has had in assigning Command appropriate responsibility given their leadership role and their position as ultimate deciders.</li> <li>• OPD and oversight partners will develop more detailed standards for IAB's supervisor accountability assessments. This would include both more comprehensive and targeted training for OPD and CPRA investigators as well as written guidelines.</li> <li>• Request assignment of a CPRA liaison investigator to work with outside investigators when there is no independent CPRA investigation</li> </ul>
Issue	[REDACTED]
Response	<p>[REDACTED] IA policy provides the minimum required OCA involvement; IA should work as closely as possible with OCA, respecting their input, in serious cases.</p>
Action taken	<ul style="list-style-type: none"> <li>• IAB has implemented weekly meetings with OCA to discuss cases and allow for feedback regarding investigations or investigators</li> </ul>



	<ul style="list-style-type: none"> <li>The COP is kept better informed of serious cases as a result of having IA designated as its own Bureau and the IAB DC report to him. This and OCA's participation in M-04.1 meetings creates more direct discussion especially for the most serious cases.</li> </ul>
Issue	
Response	<p>Public trust is eroded when allegations conclude with an unfounded finding without the necessary evidentiary basis or analysis. An unfounded finding signifies an allegation is demonstrably false, meaning the complainant's allegation is false or not factual. Although this finding may be due to the complainant mishearing or misunderstanding the conduct, an unfounded finding may impliedly or explicitly state that the complainant has made a baseless allegation or is lying.</p> <p>If there is insufficient proof that the misconduct occurred, the allegation is "Not Sustained." If the investigation uncovers sufficient evidence to prove the conduct did not occur, the allegation is "Unfounded." In coming to an unfounded finding, an investigation must clearly articulate the evidence proving the allegation false as well as addressing any and all evidence that misconduct occurred.</p> <p>The IA DC has reviewed the underlying investigation as well as the study on Unfounded findings conducted for the Department by Stanford with the support of OCA in order to ensure that the Department's response to the issue directly addresses the problem as it arose here as well as ensuring the Department has sufficient guidance and training regarding investigative findings in general, and coming to an Unfounded finding specifically.</p>
Action taken	<ul style="list-style-type: none"> <li>OPD, with the assistance of OCA and CPRA, is working to sure best practices in clarity and uniformity of findings in the City's police misconduct investigations. This includes reviewing other jurisdictions' investigative practices involving unfounded findings.</li> <li>OPD is working with OCA and CPRA to develop training targeted to address the issue of "unfounded findings." The training will include investigative guidance as well and discussion of the impact of such findings from the Community perspective, including understanding the damage inappropriate use of Unfounded findings can have on the Department's integrity and Community trust. For cases that are investigated by CPRA, any non-concurrence in finding, including those for which neither entity has come to a sustained finding, will be submitted to the OPC Discipline Committee.</li> </ul>
Additional action	<ul style="list-style-type: none"> <li>The format of reports of investigation can be altered to focus on the analysis of the facts and determinations. Instead, currently, ROIs lead with pages summarizing evidence, with the allegation questions and analysis at the end. A change in format would appropriately emphasize the key facts and analysis and how the investigation has come to it's finding. By forcing a focus on factual analysis, it also makes it easier for reviewers of the investigation to do their assessment of the allegation and finding.</li> <li>OPD with the input of CPRA and OCA can enumerate certain categories of serious cases for which Unfounded findings (as well as Exonerated and Not Sustained should require review and</li> </ul>

	<p>approval by the Chief. Currently, cases that do not have a sustained finding receive final approval by the IA Captain.</p> <ul style="list-style-type: none"> <li>• Robust training on the definitions and resultant investigative and evidentiary requirements will be included for CPRA and IA personnel and all Sergeants and supervisory/Command staff, including Executive Command, responsible for IA investigations. Information training will be provided to all OPD staff and City staff with civilian oversight responsibility, including OPC, OIG, and Employee Relations. Training will be incorporated into IAB on-boarding training for investigators and supervisors as well as in regular CPT training.</li> </ul>
Issue	<p>The Chief and Executive Command must stay focused on ensuring that Department members follow policy and best practices to ensure consistent, quality investigations. Beyond simply requiring adherence to rules, however, the Department appreciates that it must address cultural aspects of the Department's internal investigation system that have enabled or fostered a pattern of high-level failures in the past several years.</p> <p>The Court in April 2023 highlighted this particular issue when it observed “a cultural inability of OPD to police itself, to hold itself and its officers accountable without fear or favor; a culture that lacks integrity; a culture that plays favorites and protects wrongdoers that undercuts the foundations of constitutional policing.”</p>
Response	<p>Culture change is the process of changing or adopting values, beliefs, and behaviors. Department leadership starting with the Chief of Police must address these issues head-on by consistently messaging cultural values and expectations that echoes down to officers through the executive team and Department supervisors. But messaging is not enough. The values and expectations must also be modeled by supervisors at all levels of the Department, starting with the Chief and his executive team. The Department must not only clearly understand <i>what</i> policy requires but <i>why</i> those policy requirements are important—to the Department and the community it serves. The result should be that members not only better adhere to policy but that members appreciate that accountability for failures to adhere to policy is not simply a punishment but a necessary consequence to improving community trust and, ultimately, increasing public safety.</p>