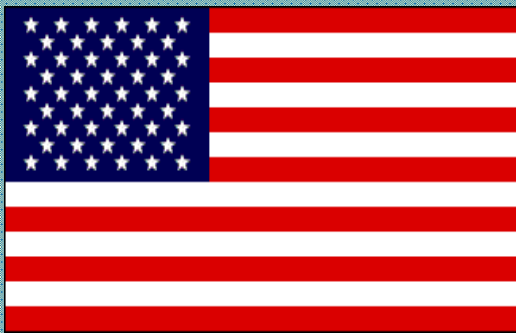


Third Quarterly Report of 2012 of the Independent Monitor for the Virgin Islands Police Department



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Executive Summary

This is the Third Quarterly Report of 2012 (the “Report”) from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on September 30, 2012.¹ The OIM notes that at the beginning of the First Quarter of 2013 prior to the publication of this Report, the Police Commissioner announced his resignation on January 14, 2013. The OIM will report on any developments concerning the appointment of a new Police Commissioner in coming quarters.

In the Third Quarter, the OIM’s Police Practices Experts conducted four week-long monitoring trips to the United States Virgin Islands (the “Territory”). During these trips, the Police Practices Experts spent time meeting with and providing technical assistance to VIPD personnel, observing Consent Decree related training, and reviewing closed investigation files and other police records. The Police Practices Experts reviewed 26 completed use of force investigations and 5 completed citizen complaint investigations. The assessments contained in this Report are primarily based on the Police Practices Experts’ observations and the Department’s quarterly Status Report, dated October 2, 2012 (“VIPD Report”).

The OIM’s Police Practices Experts reviewed a sample of Arrest Reports to determine whether VIPD personnel are reporting force as required by the Use of Force Policy and Reportable Use of Force Policy pursuant to ¶¶ 31-32 of the Consent Decree. Based on this review, it appears that VIPD personnel continue to underreport uses of force. The Police Practices Experts reviewed 243 Arrest Reports, and identified 18 Arrest Reports (7% of the total) where it appeared that force was used based on the Officer’s narrative or because the Arrest Report indicated that the subject resisted arrest. Of those 18 Arrest Reports, 61% (11 out of 18) did not have corresponding Response to Resistance Report forms (“RRR”) as required by the Reportable Use of Force Policy.

To further evaluate the Department’s use of force reporting practices, the OIM reviewed 26 completed use of force investigation files. Only 50% (12 out of 24) of the purportedly complete investigation files that we reviewed were in fact complete.² The VIPD also continues to allow the timeframe for completing use

¹ This Report references a limited number of events that occurred after September 30, 2012 to provide context for efforts made by the VIPD outside of the Third Quarter to satisfy its Consent Decree obligations.

² Some statistics are calculated from a total number less than 26 because: (1) the Police Practices Experts were unable to draw certain conclusions based on the information included in the investigative files; or (2) a Consent Decree requirement did not appear to be applicable based on the information included in the investigative files.

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of force investigations to expire before completing the required investigations.³ For the first nine months of 2012, 27% (20 out of 74) of use of force investigations on St. Thomas, and 33% (18 out of 55) of use of force investigations on St. Croix were completed on time. The remaining investigations are overdue.⁴ Force accountability, including fully reporting all uses of force, is a critical requirement of the Consent Decree. Without that, uses of force may never be investigated, training deficiencies may never be identified and addressed, and the Department's use of force statistics (which fuel much of the VIPD's risk management program) will be incomplete.

The Police Practices Experts' review of completed use of force investigations also demonstrated persistent deficiencies and areas for improvement. In particular, Supervisors failed to address all uses of force for a given incident (i.e., where multiple Officers use force on a single subject), Deputy Chiefs failed to indicate whether they concurred with the Commanding Officer's findings, Supervisors directly involved in a use of force continued improperly to oversee the corresponding investigations, and Supervisors failed to ensure that their Officers were timely recording uses of force according to the Use of Force Policy and the Reportable Use of Force Policy. Officers and Supervisors should be held accountable for not complying with the Department's policies, especially after having been trained, and if necessary, should be disciplined for continued non-compliance.

Despite the VIPD's efforts to conduct additional training on the Acceptance of Citizen Complaints Policy (§ 42) during Officer in-service training in the Second Quarter, the Police Practices Experts saw no improvement in Officers' knowledge of the complaint process during the Third Quarter. While monitoring on both Districts, the Police Practices Experts questioned Officers about their knowledge of the Acceptance of Citizen Complaints Policy and found that 40% (4 out of 10) of Officers on St. Thomas and 36% (4 out of 11) of Officers on St. Croix responded correctly when asked to explain the process for filing a citizen complaint.⁵ Officers' responses on both Districts omitted key aspects of the policy, including: (1) the Officer's obligations when a citizen

³ The Reportable Use of Force Policy requires that use of force investigations be completed within thirty calendar days. The Reportable Use of Force Policy also provides that the investigating Supervisor must submit a completed investigation file to the Commander within ten calendar days, the Commander must submit findings and conclusions to the Deputy Chief/Chief within five working days after receiving the investigation file, and the Deputy Chief/Chief then has five working days to forward a copy of the investigation file and his/her findings to the Internal Affairs Bureau ("IAB").

⁴ The total number of use of force investigations represents those investigations that were reported to IAB on St. Thomas and St. Croix.

⁵ We also note that an eleventh Officer on the St. Thomas District was asked about the Acceptance of Citizen Complaints Policy, but the Officer refused to respond.

wants to file a complaint; and (2) how citizens will be informed about the outcome of the complaint. Demonstrating improvement over prior quarters, however, 71% (5 out of 7) of Supervisors on St. Thomas and 60% (3 out of 5) of Supervisors on St. Croix correctly explained the preponderance of the evidence standard and how it differs from the beyond a reasonable doubt standard.

Although certain working groups (particularly the Complaint Process working group) are conducting audits relating to their areas of responsibility, other working groups have yet to audit the VIPD's compliance with relevant Consent Decree provisions. Additionally, although certain members of the Audit Team received audit training during the Third Quarter, it appears that the VIPD's Audit Team (which is responsible for auditing the Department's Consent Decree compliance efforts as a whole) is still not functional.

After nearly two years of work, the U.S. Department of Justice (the "DOJ") approved the VIPD's Risk Management System ("RMS") Protocol on October 2, 2012 pursuant to ¶ 62 of the Consent Decree. The RMS Protocol will dictate how the Department's RMS functions. The Department has not yet implemented the RMS Protocol by, among other things, conducting the required "beta test."

The VIPD conducted in-service training for Officers and Supervisors on several use of force policies that had not previously been the subject of training (e.g., the Off-Duty Official Action Policy and the Firearms Policy). The Police Practices Experts observed several in-service training sessions during the Third Quarter and noted that some VIPD personnel missed significant portions of the training, and that other VIPD personnel were "no shows." Additionally, the VIPD is only beginning to assess whether VIPD personnel are absorbing the information provided during training. The Department should use post-training reviews to assess whether VIPD personnel understand the information conveyed during training, and then schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) as needed.

The OIM is hopeful that a new joint action plan—proposed by the VIPD and the DOJ (collectively, "the Parties") and approved by the Court during the Fourth Quarter—will reinvigorate the VIPD's Consent Decree compliance efforts. We are mindful, however, that the Parties jointly agreed on and the Court approved a similar document on November 24, 2010. As we have previously reported, the VIPD failed to satisfy many of the interim deadlines set forth in that document and still has not substantially complied with a single substantive Consent Decree provision. In order for the joint action plan to succeed (when previous efforts have failed), the VIPD must commit substantially more effort to complying with the Consent Decree, and must adhere to the more specific interim steps for compliance provided in the new joint action plan. The Police Commissioner should hold every member of the

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VIPD (from the Chiefs to Patrol Officers) responsible for doing their part to advance the VIPD's Consent Decree compliance efforts.

After monitoring the VIPD for almost three years, we are certain that the VIPD will not achieve substantial compliance if the VIPD maintains the status quo. The OIM expects that the VIPD will strictly adhere to the new deadlines agreed to by the Parties and approved by the Court, and that the VIPD will explain in detail any missed deadlines in future Status Reports following a missed deadline.

Introduction

This is the Third Quarterly Report of 2012 from the Office of the Independent Monitor (the “OIM” or the “Monitor”) for the United States Virgin Islands Police Department (the “VIPD” or the “Department”), covering the quarter ending on September 30, 2012.

The OIM was established in January 2010 to monitor compliance by the United States Virgin Islands and the VIPD with the Consent Decree entered by the United States District Court for the Virgin Islands (the “Court”) on March 23, 2009. The Monitors are required by the Consent Decree to “issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision” of the Consent Decree.⁶

The Consent Decree reflects the agreement between the Virgin Islands, the VIPD, and the United States Department of Justice (the “DOJ”) (collectively, the “Parties”) to resolve a lawsuit brought by the United States alleging that the Virgin Islands and the VIPD violated 42 U.S.C. § 14141 by engaging “in a pattern or practice of excessive force by officers of the Virgin Islands Police Department and by the failure to adequately train, supervise, investigate, and discipline officers.”⁷

The Parties entered into the Consent Decree “to promote police integrity and prevent conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States.”⁸ The 104 paragraph Consent Decree contains a broad range of substantive requirements for reform in areas such as: (1) revising the VIPD’s force-related policies; (2) training Officers to properly use force in accordance with constitutional requirements, VIPD policy, and existing best practices in policing; (3) reporting and investigating use of force events; (4) documenting and investigating complaints alleging Officer misconduct; (5) developing systems for managing and supervising Officers; and (6) disciplining Officers found to have engaged in misconduct.

On October 1, 2010, the Court—charged with enforcing the VIPD’s obligations under the Consent Decree—ordered the Parties to jointly propose a timetable by which the VIPD would substantially comply with each substantive provision in the Consent Decree. The Court was concerned about the VIPD’s

⁶ Consent Decree (“CD”) ¶ 96. This Quarterly Report, along with the OIM’s prior reports, is available on the internet at <http://www.policemonitor.org/VI/VIindex.html>.

⁷ CD ¶ 6; see also Complaint, *United States v. The Territory of the Virgin Islands*, No. 3:08-CV-00158-CVG-GWB (D.V.I. 2008).

⁸ CD ¶ 3.

slow rate of progress and saw the timetable as a vehicle to help the Department move forward more quickly. The Parties subsequently filed a timetable on November 24, 2010 that set forth specific dates by which the VIPD would substantially comply with each substantive provision in the Consent Decree (the “Consent Decree Timetable”). The Consent Decree Timetable also created interim deadlines for the VIPD to submit force-related policies to the DOJ for approval. The VIPD successfully met nearly every policy submission deadline. However, by the end of the Third Quarter of 2011, the VIPD had missed all of the remaining deadlines for substantial compliance established by the Court-ordered Consent Decree Timetable (deadlines that the VIPD proposed and committed to meeting). For example, under the Consent Decree Timetable, the VIPD was required to substantially comply with Consent Decree ¶¶ 32-58, 70, and 72 by May 31, 2011, ¶¶ 60, 61, and 73-81 by June 30, 2011, and ¶¶ 49, 59, and 63-66 by September 15, 2011. To date, the VIPD has only complied with the following non-substantive provisions: ¶¶ 82-86, 88, and 98.

In January 2011, to reinvigorate the VIPD’s Consent Decree compliance process and encourage compliance within the timeframe of the Consent Decree Timetable, the then-Police Commissioner convened a Consent Decree Summit on St. Thomas on January 3 and 4, 2011 (the “Summit”).⁹ At the Summit, the then-Police Commissioner appointed senior VIPD personnel to lead, and ultimately be held accountable for, different aspects of the Consent Decree—Use of Force (Chief of the St. Croix District),¹⁰ Citizen Complaint Process (Chief of the St. Thomas District),¹¹ Management and Supervision (Deputy Chief of St. Thomas), and Training (Director of Training). The Police Commissioner explained that each working group leader was responsible for: (1) designating a “point person” and recruiting other working group members; (2) drafting an action plan; (3) interacting with other VIPD personnel on interrelated Consent Decree issues; and (4) monitoring the working group’s progress by attending and participating in as many meetings as schedules permit, but no less than twice a month.¹²

⁹ The OIM discussed the Summit in the Fourth Quarterly Report of 2010 and the First Quarterly Report of 2011. For more information about the Summit, including objectives and participants, see the *Consent Decree Summit Addendum* at the end of those Reports.

¹⁰ Following on-duty injuries sustained by the Chief of St. Croix during the Third Quarter, the Deputy Chief of St. Croix assumed responsibility as Acting Chief of St. Croix and Acting Leader of the Use of Force working group. The Acting Chief appointed a Captain as his point person, and she has recruited new members and commenced regular meetings of the working group.

¹¹ The Citizen Complaint Process working group is now led by the Deputy Chief of St. John.

¹² Memorandum from the Police Commissioner to various VIPD personnel, titled “Meeting Current Standards of Policing,” dated January 19, 2011. The OIM’s Police Practices Experts also provided the working group leaders with a memorandum outlining their respective responsibilities. Each of the OIM’s four Police Practices Experts is assigned to work with a particular working group leader. During the Second Quarter, the Police Practices experts

Compliance Assessment

This section of the Report describes the VIPD’s compliance efforts with respect to each of the substantive provisions of the Consent Decree,¹³ as well as monitoring activities by the OIM’s Police Practices Experts during the quarter. The organization of this section of the Report parallels the organization of the Consent Decree. Specifically, we provide a *status and assessment* discussion that describes and analyzes the VIPD’s progress toward achieving substantial compliance with the Consent Decree’s requirements.¹⁴ As part of this discussion, we provide an update about the progress of each of the working groups leading these efforts. We also include *recommendations* to assist the VIPD in achieving full and timely implementation of the Consent Decree’s requirements.¹⁵

Use of Force Policies

31. The VIPD will review and revise its use of force policies as necessary to: a) define terms clearly; b) define force as that term is defined in this Agreement; c) incorporate a use of force model that teaches disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units as appropriate responses to a situation; d) advise that, whenever possible, individuals should be allowed to submit to arrest before force is used; e) reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and/or civil liability; f) ensure that sufficient less lethal alternatives are available to all patrol officers; and g) explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized. Once the DOJ has reviewed and approved these policies, the VIPD shall immediately implement any revisions.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 31 of the Consent Decree.

regularly exchanged emails and telephone calls with their counterparts and met in person during the quarter’s monitoring trips.

¹³ A summary of the Consent Decree requirements is excerpted at Appendix A. A copy of the full text of the Consent Decree is available at:

http://www.justice.gov/crt/about/spl/documents/VIPD_CD_03-23-09.pdf.

¹⁴ The Consent Decree provides that “[t]he Monitor shall issue quarterly written, public reports detailing the Territory of the Virgin Islands’ compliance with and implementation of each substantive provision of [the] Agreement.” CD ¶ 96.

¹⁵ CD ¶ 85.

VIPD Status Report, dated October 2, 2012:

The VIPD reports that the Compliance Coordinator submitted the following policies to the leader of the Committee for annual review as required by the Consent Decree: Use of Force, Firearms, Impact Weapons, Electronic Control Weapon (“ECW”), O.C. Spray, Off Duty Official Action, Vehicle Pursuit, Spike Strip, Special Response Team (“SRT/HNT”), and SRT – Sniper (“Sniper”). The Chief of Police for the St. Thomas District and the Acting Chief of Police for the St. Croix District disseminated a memorandum to all sworn personnel requesting input on these policies.

During the Third Quarter the VIPD reports that the Department’s Policy Consultant continued work on the Reporting, Investigation and Review of Use of Force Policy, the Arrest Policy, the Officer Involved Shooting Policy, and the Audit Policy. The VIPD also reports that the Audit Policy and the Reporting, Investigation and Review of Use of Force Policy were submitted to the Policy Committee for review during the Third Quarter, and that the Policy Consultant continues to work on the Officer Involved Shooting Policy. The Arrest Policy is under review by the U.S. Virgin Islands Attorney General’s Office (the “VIAG”).

OIM Report:

As previously reported, the VIPD has received DOJ approval for twelve force-related policies through the end of the Third Quarter: (1) Use of Force; (2) Reportable Use of Force; (3) Impact Weapons; (4) ECW; (5) O.C. Spray; (6) Vehicle Pursuit; (7) Spike Strip; (8) Off-Duty Official Action; (9) Firearms; (10) Field Training Officer Program (“FTO”); (11) SRT/HNT; and (12) Sniper. The VIPD adopted these policies in partial satisfaction of ¶¶ 31 to 41 of the Consent Decree. The Department’s Use of Force Policy incorporates all of the elements set forth in subparts a-g of ¶ 31. In addition, the Department has created and put into place the Response to Resistance Reporting Forms (“RRR”) (formerly known as Use of Force Reports) for VIPD personnel to document use of force events pursuant to the Reportable Use of Force Policy (which should be completed whenever force is used). During the Third Quarter, however, the VIPD did not provide the OIM with documentation that VIPD personnel are proficient in the requirements of the Department’s use of force policies or that the Department has fully implemented the policies. The Consent Decree defines implementation as “the development or putting into place of a policy or procedure, including the appropriate training of personnel.”

During the Third Quarter, the Department announced an annual review of its use of force policies. As part of this process, in his role as the acting leader of the Use of Force working group, the Acting Chief of the St. Croix District asked all Commanders to comment on the policies.

The Department has also identified the need for several additional force-related policies, including the: (1) Use of Force Review Board Policy; (2) Arrest Policy; (3) Post Shooting Incident and Procedures Policy; and (4) Officer Involved Shooting Investigating Procedures. During the Third Quarter, the Use of Force working group reported that the Department has stopped work on the Use of Force Review Board Policy because it is not mandated by the Consent Decree “and may be burdensome at this stage of our compliance efforts.”¹⁶ Instead, the VIPD will rely on the review mechanism included in the Use of Force Policy and Reportable Use of Force Policy (discussed below at ¶ 32).¹⁷

During the Third Quarter, the Policy Committee (the “Committee”) reported that it continues to work on the Arrest Policy, and that the policy is under review by the VIAG. The underreporting of arrests and uses of force has a negative impact on the Department’s RMS.¹⁸ Without complete arrest and use of force information, the RMS (which, as discussed below, currently alerts Supervisors and Commanders when VIPD personnel surpass a specified number of uses of force within a particular period) will not be able to as effectively identify potential issues at an early and remedial stage. The VIPD will not be able to comply with important aspects of the Consent Decree relating to use of force and risk management until it rectifies this problem.

The Department reported during the Third Quarter that it will combine the Post Shooting Incident and Procedures Policy and the Officer Involved Shooting Investigating Procedures and that the VIPD’s Policy Consultant will draft the policy.

Although the Department has made strides developing and/or revising force-related policies, the Department has not complied with ¶ 31 because it has not adequately implemented all of those policies. Under ¶ 31, the VIPD is required to “implement” its Use of Force Policies.

¹⁶ The VIPD should consider whether a Use of Force Review Board would be helpful in the future to review patterns of force that are not readily discernible from a single use of force incident. In order for a Use of Force Review Board to be effective, the VIPD must seek assistance and participation from Supervisors with robust backgrounds in reviewing force, tactical, and training force practices.

¹⁷ The Use of Force working group recommended to the Police Commissioner that the Department reserve consideration of a Use of Force Review Board until a later time, and also recommended that the Training Division establish a “Training Committee” to review uses of force and use of force training.

¹⁸ The OIM has reviewed use of force investigation files in which Officers have used force when taking a subject into custody (i.e., arresting the subject), but the Officer then released the subject without charging the subject, preparing an arrest report, or completing a RRR to document a use of force.

Recommendations:

Under the direction of the Acting Chief of the St. Croix District and his appointed point person, the Use of Force working group provided the OIM with meeting minutes during the Third Quarter. While this is a step in the right direction, the biweekly reports submitted by the Use of Force working group should provide more detail about the specific actions taken by the working group and the challenges the VIPD faces achieving compliance with the use of force provisions of the Consent Decree. This information will help the Police Practices Experts evaluate the Use of Force working group's efforts each quarter, and allow them to make appropriate recommendations going forward.

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held for all of the Department's force-related policies on an on-going basis and that relevant VIPD personnel are attending those programs. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy.

The Department should also explain the process for its annual review of VIPD policies and the extent of the VIAG's involvement in the review. The VIPD should document the results of this review and provide them to the OIM. As the Consent Decree makes clear (§ 103), it is the VIPD's burden to demonstrate compliance with the Consent Decree. In addition, the Department should resolve any outstanding concerns, disseminate the Arrest Policy promptly, and implement the policy by providing training to VIPD personnel. As previously reported, until the Department finalizes and provides adequate training on the Arrest Policy, it will continue to underreport arrests and possible uses of force.

32. The VIPD will require all uses of force to be documented in writing. The use of force report form will indicate each and every type of force that was used, and require the evaluation of each use of force. Use of force reports will include a supervisor's narrative description of the events preceding the use of force, and include the officer(s)' narrative description of events and the officer(s)' audiotaped statement.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 32 of the Consent Decree.

VIPD Status Report:

The VIPD reports that the requirements of ¶ 32 are included in the Reportable Use of Force Policy. The Reporting, Investigation and Review of Use of Force Policy will eventually supersede the Use of Force policy if it is approved by the DOJ.

The VIPD claims to have complied with ¶ 32 because it has developed, disseminated, and trained on the Reportable Use of Force Policy. The VIPD also reports that it has created a form to document all uses of force, that all uses of force are capable of being entered on Blue Team, and that statements from officers can be video and audio recorded.

OIM Report:

The VIPD has issued the Use of Force Policy and Reportable Use of Force Policy in response to the requirements of ¶ 32. The Department continues to work on the Reporting, Investigation and Review of Use of Force Policy. The Reporting, Investigation and Review of Use of Force Policy is intended to address concerns among some VIPD personnel that the existing Use of Force Policy and Reportable Use of Force Policy impose too great a burden on Supervisors by requiring “all inclusive” force reviews for comparatively “minor” force incidents. Under the new policy, the VIPD would adjust the extent of its investigation of use of force events in proportion to the type of force used, meaning that comparatively “minor” force events would typically require less exhaustive investigations than more severe force events. The DOJ conditionally approved the Reporting, Investigation and Review of Use of Force Policy on November 3, 2011, subject to agreeing on and receiving court approval for corresponding revisions to the Consent Decree that would permit “tiered” force investigations. In the process of reviewing the proposed revisions to the Consent Decree, however, the DOJ discovered internal inconsistencies with the Reporting, Investigation and Review of Use of Force Policy and revoked its conditional approval during the First Quarter. The Parties continued to work on revising the policy. During the Third Quarter, the Parties submitted revised Consent Decree language to the Court, which the Court approved during the Fourth Quarter.

Although the VIPD reported that it complied with ¶ 32, the Department continues to underreport force. The Department will not be in compliance with ¶ 32 until its members substantially comply with the reporting and investigating requirements contained in the Department’s policies.

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During the Third Quarter, the OIM's Police Practices Experts continued to review a sample of Arrest Reports to determine whether VIPD personnel are reporting force as required by the Use of Force Policy and Reportable Use of Force Policy. The Police Practices Experts reviewed a total of 243 Arrest Reports on St. Thomas and St. Croix, and identified that force was likely used in 7% (18 out of 243) of the Arrest Reports because the Officer's narrative suggested that force was used or the Officer indicated that the subject resisted arrest. Based on this review, it appears that VIPD personnel are underreporting the use of force because 61% (11 out of 18) of those Arrest Reports did not have corresponding RRRs (documenting the force that was used) as required by the Reportable Use of Force Policy.

To further evaluate the Department's use of force reporting practices, the OIM reviewed 26 completed use of force investigation files on St. Thomas and St. Croix. Throughout the Report, certain statistics may be calculated from a total number less than 26 because: (1) the Police Practices Experts were unable to draw certain conclusions based on the information included in the investigative files; or (2) a Consent Decree requirement did not appear to be applicable based on the information included in the investigative files.

For example, only 50% (12 out of 24) of the investigation files purporting to be complete were actually complete. A "complete" investigations file generally consists of the following (to the extent applicable): Form 1A; Arrest Report; completed RRR; video or audiotaped statements from witnesses; photos of injuries, weapons, etc.; the Supervisor's investigative report with an analysis of the facts, evidence identified, and findings; evidence that the Department's chain of command reviewed and approved the completed investigation file; and a disposition letter.

With respect to the other requirements of this provision, Supervisors described the events preceding the use of force in 71% (17 out of 24) of the investigation files, 96% (24 out of 25) of the investigation files included the Officer's description of events, and the use of force report in 92% (23 out of 25) of the investigation files indicated the type of force used. Only 46% (11 out of 24) of the investigative files, however, included audiotaped statements from the involved Officers.

In addition, only 50% (13 out of 26) of the investigations were completed within the timeline required under the Reportable Use of Force Policy. The Reportable Use of Force Policy requires that use of force investigations be completed within thirty calendar days. The Reportable Use of Force Policy also provides that the investigating Supervisor must submit a completed investigation file to the Commander within ten calendar days, the Commander must submit findings and conclusions to the Deputy Chief/Chief within five working days after receiving the investigation file, and the Deputy Chief/Chief

then has five working days to forward a copy of the investigation file and his/her findings to IAB.

Department records also indicate that Zones on both Districts have not completed investigations for a significant number of the uses of force reported to IAB (by forwarding RRRs to IAB) for the first nine months of 2012. Only 27% (20 out of 74) of use of force investigations on St. Thomas, and only 29% (15 out of 52) of use of force investigations on St. Croix have been completed. The remaining investigations are overdue.

Recommendations:

As the OIM's Police Practices Experts have done, the Use of Force working group and Supervisors should audit Form 1As and Arrest Reports to determine the extent to which force is being recorded on RRRs and reported across the Districts. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to report uses of force. Once those individuals are identified, the working group should work in concert with the Chiefs, Deputy Chiefs, IAB and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.¹⁹

33. Officers shall notify their supervisors following any use of force or upon the receipt of an allegation of excessive force. Supervisors will respond to the scene, examine the subject for injury, interview the subject for complaints of pain, and ensure that the subject receives needed medical attention.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 33 of the Consent Decree.

VIPD Report:

The VIPD reports that the requirements of ¶ 33 are incorporated into the Reportable Use of Force Policy, and that the Department will monitor to ensure continued compliance.

¹⁹ Generally, the Police Practices Experts review use of force investigations that do not have a large number of witnesses or evidence. Under these circumstances, most use of force investigations should be completed within the required 30 days. When circumstances arise that make it impossible to complete an investigation within this time period, the Department should include in the investigation file a statement explaining the delay and evidence that an extension has been requested and granted.

OIM Report:

As discussed in connection with Consent Decree ¶ 32, the Police Practices Experts reviewed 26 complete investigation files during the Third Quarter to evaluate the Department's use of force reporting practices. Among other things, that review showed that Officers timely notified Supervisors following a use of force 50% (12 out of 24) of the time. The review also showed that Supervisors responded to the scene and conducted an investigation in 35% (8 out of 23) of the investigations. In 55% (6 out of 11) of the investigations where injuries were sustained, the Supervisor described the injuries.

Recommendations:

The Use of Force working group should audit whether Officers are notifying their Supervisors following any use of force or allegation of excessive use of force. The Use of Force Work Group should also audit whether Supervisors are responding to the scene of a use of force, examining the subject for injury, interviewing the subject for complaints of pain, and ensuring that the subject receives needed medical attention. All audits should be documented and shared with the Compliance Coordinator and the OIM.

34. Supervisors will review, evaluate, and document each use of force, and will complete the supervisor's narrative description section of the use of force report. The supervisor's narrative description will include a precise description of the facts and circumstances that either justify or fail to justify the officer's conduct. As part of this review, the supervisor will evaluate the basis for the use of force, and determine whether the officer's actions were within VIPD policy. An officer who used force during the incident, or whose conduct led to an injury, or who authorized conduct leading to the use of force or allegation of excessive force, will not be eligible to review the incident.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 34 of the Consent Decree.

VIPD Report:

The VIPD reports that the requirements of ¶ 34 are incorporated into policy "already in effect department wide." The Department states that it will monitor conduct to ensure continued compliance.

OIM Report:

As discussed in connection with Consent Decree ¶ 32, to evaluate the Department's use of force reporting practices, the Police Practices Experts reviewed 26 complete investigation files during the Third Quarter. In 54% (13 out of 24) of the completed use of force investigations reviewed, Supervisors included narratives describing the facts and circumstances that justified or failed to justify the Officer's conduct. In 58% (14 out of 24) of the completed use of force investigations, the Supervisor evaluated the basis for the use of force; in 83% (20 out of 24) of the investigations the Supervisor determined whether the Officer's actions were within VIPD policy; and 67% (14 out of 21) of the investigations were conducted by Supervisors who were not directly involved in the use of force incident.

Recommendations:

The Use of Force working group should audit whether Supervisors are conducting adequate use of force investigations. All audits should be documented and shared with the Compliance Coordinator and the OIM. The Use of Force working group should also audit Form 1As and Arrest Reports to determine the extent to which force is being recorded on RRRs and reported across the Districts. The Use of Force working group's audits should also include a review of investigations by specific Supervisors or Commanders whose force reviews repeatedly fail to meet the requirements of ¶ 34. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to report uses of force. Once those individuals are identified, the working group should work in concert with the Chiefs, IAB and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary.

35. The parties agree that it is improper interview procedure during use of force reviews to ask officers or other witnesses leading questions that improperly suggest legal justifications for the officer's conduct when such questions are contrary to appropriate law enforcement techniques. In each review, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. The VIPD will make all reasonable efforts to resolve material inconsistencies between witness statements. The VIPD will train all of its supervisors on the factors to consider when valuating credibility.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 35 of the Consent Decree.

VIPD Report:

The VIPD reports that its Policy Consultant conducted Use of Force training for Supervisors on both Districts during the Third Quarter. Following training, the Training Director submitted a memorandum to the Chief of the St. Croix District reporting the names of Supervisors who were “no shows” at the Investigating Use of Force training held on St. Croix in July. The Training Director did not receive a response, but informed the Compliance Coordinator that he would resubmit his memorandum to the Acting Chief of the St. Croix District.

OIM Report:

As discussed in connection with Consent Decree ¶ 32, to evaluate the Department’s use of force reporting practices, the Police Practices Experts reviewed 26 complete investigation files during the Third Quarter. Among other things, that review showed that Supervisors used leading questions in 18% (2 out of 11) of the completed use of force investigations for which formal statements were taken.

In addition, a Police Practices Expert observed a training for Supervisors on investigating uses of force during the Third Quarter. The VIPD’s Policy Consultant conducted the training over a two-day period, and covered the proper practices and techniques for investigating uses of force. During the first day, the Policy Consultant reviewed the Consent Decree provisions relating to use of force and the Department’s corresponding use of force policies. The Policy Consultant also instructed Supervisors on how to evaluate, document, and report uses of force. Training during the second day emphasized Supervisors’ responsibilities at the scene of an incident, techniques for collecting and analyzing evidence, techniques for conducting and recording witness and Officer interviews, techniques for assessing witness credibility, and best practices for writing supervisory reports, including assessing the level of force used, recording the injuries sustained at the scene and whether medical attention was provided, and photographing or videotaping all injuries.

The Police Practices Expert concluded that the training held during the Third Quarter was an improvement over similar earlier training. Notably, the class was interactive and instructors relied on real life situations to reinforce the material that was taught.

As a result of this training, the OIM expects to see considerable improvement in the quality of Supervisors’ investigations in the Fourth Quarter in all Zones and Districts.

Recommendations:

The Use of Force working group should audit whether Supervisors are conducting adequate use of force investigations. All audits should be documented and shared with the Compliance Coordinator and the OIM.

The Use of Force working group should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 35. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, IAB and the Training Division to provide remedial training, or other corrective action, including disciplinary sanctions if necessary.

36. Supervisors shall conduct a performance review of all uses of force or an injury resulting from a use of force by any officer under their command. In a performance review, supervisors shall interview all witnesses to a use of force or an injury resulting from a use of force. Consistent with the requirements of the collective bargaining agreement or other applicable law, VIPD supervisors shall ensure that all officer witnesses provide a statement regarding the incident. Supervisors shall ensure that all use of force reports identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors shall ensure that all reports indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 36 of the Consent Decree.

VIPD Report:

The VIPD reports that the requirements of this provision are covered by policy “already in place department wide.” The Department states that it will monitor conduct to ensure continued compliance.

The VIPD also reports that an instructors training course for the Vehicle Pursuit Policy and the Spike Strip Policy was held on St. Croix for selected Officers from both Districts.²⁰

OIM Report:

As discussed in connection with Consent Decree ¶ 32, to evaluate the Department's use of force reporting practices, the Police Practices Experts reviewed 26 complete investigation files during the Third Quarter. Among other things, that review showed that all witnesses to a use of force or an injury resulting from a use of force were interviewed in 67% (12 out of 18) of the completed use of force investigations reviewed. All Officers who were involved in the incident or were on the scene when it occurred were identified in 79% (19 out of 24) of the investigations. In 55% (6 out of 11) of the investigations where injuries were sustained, the Supervisor described the injuries.

A Police Practices Expert also observed a Supervisor's training on investigating uses of force during the Third Quarter. The VIPD's Policy Consultant conducted the training over a two-day period, and covered the proper practices and techniques for investigating use of force incidents. During the first day, the VIPD's Policy Consultant reviewed the use of force related Consent Decree provisions and the Department's policies developed to address these requirements. The Policy Consultant also instructed Supervisors on how to evaluate, document, and report on uses of force. Training during the second day emphasized Supervisors' responsibilities at the scene of an incident, proper techniques for collecting and analyzing evidence, proper techniques for conducting and recording witness and Officer interviews, techniques for assessing witness credibility, and best practices for writing supervisory reports, including assessing the level of force used, recording the injuries sustained at the scene and whether medical attention was provided, and photographing or videotaping all injuries.

The Police Practices Expert concluded that the training held during the Third Quarter was an improvement over similar training conducted previously by the Department. In particular, the class was interactive and engaged in the instruction by asking and responding to questions posed to reinforce understanding of the proper practices for investigating uses of force.

As a result of training, the OIM is encouraged that it will discover improvements in Supervisors' investigations as early as the Fourth Quarter.

²⁰ It is not clear how the Vehicle Pursuit Police or the Spike Strip Policy are related to performance reviews, which is the focus of ¶ 36. Going forward, the VIPD should tailor its report to address the requirements of each paragraph in the Consent Decree.

Recommendations:

The Use of Force working group should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 36. Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, Deputy Chiefs, IAB and the Training Division to provide remedial training (including administering pre- and post-examinations at training), or other corrective action, including disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

37. A Deputy Chief will evaluate each performance review conducted by supervisors, identify any deficiencies in those reviews, and require supervisors to correct any deficiencies. Supervisors will be held accountable for the quality of their reviews. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough review, or neglects to recommend appropriate corrective action, or neglects to properly implement appropriate corrective action.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 37 of the Consent Decree.

VIPD Report:

The VIPD acknowledges that “there is room for improvement in the quality of use of force reviews” by the Department. The VIPD is hopeful that improvement will follow revisions to the Consent Decree that permit Zone Commanders (rather than Deputy Chiefs) to review use of force investigations, leaving Deputy Chiefs “more time to deal with operational matters.”²¹

At the Commissioner’s direction, the VIPD reports that it abandoned developing a Use of Force Review Board Policy. The Committee, however, continues to work on the Disciplinary Matrix, Blue Team Protocol, and the Reporting, Investigation and Review Use of Force Policy.

OIM Report:

For several quarters, the OIM has reminded the VIPD that the Reportable Use of Force Policy requires that use of force investigations be completed within thirty calendar days. The Reportable Use of Force Policy also provides that the

²¹ The Court approved the Parties’ proposed revisions to the Consent Decree on December 13, 2012.

investigating Supervisor must submit a completed investigation file to the Commander within ten calendar days, the Commander must submit findings and conclusions to the Deputy Chief/Chief within five working days after receiving the investigation file, and the Deputy Chief/Chief then has five working days to forward a copy of the investigation file and his/her findings to IAB. In an effort to improve compliance with these requirements, the Deputy Chief of St. Thomas issued a memorandum in May of 2012 requiring all Commanders to complete any delinquent use of force investigations by the end of May (the deadline was later extended to the end of June). According to the memorandum, any Commanders who failed to comply would receive a letter of reprimand.

After repeated attempts by the OIM since May to obtain a report on the outcome of this memorandum, the VIPD provided the OIM in the Third Quarter with copies of letters of reprimand issued to a Sergeant and a Lieutenant on St. Thomas for failing to correct deficiencies in their use of force investigations. The VIPD has not indicated whether other Supervisors received similar letters of reprimand. On a visit to the St. Thomas District, one of the Police Practices Experts learned that the Department delayed providing the OIM with the memorandum because only a small percentage of use of force investigations were completed on time, and the Department wanted an opportunity to investigate the issue and resolve any deficiencies with IAB.

As discussed in connection with Consent Decree ¶ 32, to evaluate the Department's use of force reporting practices, the Police Practices Experts reviewed 26 complete investigation files during the Third Quarter. In 72% (18 out of 25) of the investigations reviewed, a Deputy Chief reviewed the Supervisor's investigation report. The Deputy Chief identified deficiencies with the Supervisor's investigation and required that the Supervisor correct the deficiencies in 14% (3 out of 22) of the completed use of force investigations. Additionally, 23% (3 out of 13) of the completed use of force investigations indicated that corrective action was taken against a Supervisor who failed to conduct a timely and thorough review.

Recommendations:

The Use of Force working group should audit investigations to determine the extent to which Supervisors are complying with the requirements of ¶ 37. In particular, the Use of Force working group should audit whether Supervisors conduct adequate use of force investigations, and whether the Chiefs/Deputy Chiefs are reviewing investigations, identifying deficiencies, and forwarding closed cases to the IAB and Training Division (for review and archiving). Based on these audits, the VIPD should develop a process for identifying personnel who continually fail to comply. Once those individuals are identified, the working group should work in concert with the Chiefs, IAB and the Training Division to provide remedial training, or other corrective action, including

disciplinary sanctions if necessary. All audits should be documented and shared with the Compliance Coordinator and the OIM.

38. The VIPD will investigate or review as appropriate all critical firearm discharges. The VIPD will ensure that the investigation or review accounts for all shots and the locations of all officers who discharged their firearms. The VIPD will conduct all ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests, as appropriate.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 38 of the Consent Decree.

VIPD Report:

The VIPD reports that all critical firearm discharges continue to be investigated by the IAB.

OIM Report:

During the Third Quarter the VIPD did not provide the OIM with any documentation showing that the IAB is in fact investigating critical firearms discharges.²² Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendation:

The VIPD must provide the OIM with documentation that IAB is investigating critical firearms as required by ¶ 38 of the Consent Decree.

39. VIPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official VIPD channels, and shall specify the number of rounds VIPD authorizes its officers to carry. The policy will continue to require that all discharges of firearms by officers on- or off-duty, including unintentional discharges, be reported and investigated.

²² The VIPD reported during the First Quarter of 2013 that there were no critical firearm discharges during the Third Quarter of 2012.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 39 of the Consent Decree.

VIPD Report:

The VIPD reports that it has developed and disseminated a Firearms Policy, and conducted in-service training on the policy during the Third Quarter. The Firearms Policy is currently under annual review.

OIM Report:

The VIPD issued its Firearms Policy on May 3, 2011. The Firearms Policy addresses all of the requirements set forth in ¶ 39. During the Third Quarter, however, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy.

The Department announced during the Third Quarter that the Firearms Policy will be among the policies reviewed as part of an annual review. As part of this process, the Acting Chief of Police of the St. Croix District (in his role as the acting leader of the Use of Force working group) asked all Commanders to provide comments about the Department's use of force policies. The VIPD did not provide any information during the Third Quarter about the commanders' responses and what action, if anything, the Department has taken as a result.

Recommendations:

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held for the Firearms Policy on an on-going basis and that relevant VIPD personnel are attending those programs. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Department also should conduct routine inspections to determine that VIPD personnel are carrying only authorized ammunition, as required by the Firearms Policy. Officers found to be carrying unauthorized ammunition should be disciplined. The results of these inspections and any resulting

discipline should be documented and shared with the Compliance Coordinator and the OIM.

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of ¶ 39 and that the Department has fully implemented the Off-Duty Official Action Policy. As the Consent Decree makes clear (¶ 103), it is the VIPD's burden to demonstrate compliance with the Consent Decree.

Finally, the Department should explain the process for its annual review of VIPD policies and the extent of the VIAG's involvement in the review. The VIAG's legal review is critical and required. The VIPD should document the results of this review and provide them to the Compliance Coordinator and the OIM during the Fourth Quarter. The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy.

40. The VIPD shall revise its policies regarding off-duty officers taking police action to: a) provide that off-duty officers shall notify on-duty VIPD or local law enforcement officers before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem; b) provide that, if it appears the officer has consumed alcohol or is otherwise impaired, the officer shall submit to field sobriety, breathalyser, and/or blood tests.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 40 of the Consent Decree.

VIPD Report:

During the Third Quarter, VIPD instructors conducted in-service training on the Off-Duty Official Action Policy on both Districts. The policy is currently under annual review.

OIM Report:

The VIPD issued its Off-Duty Official Action Policy on March 20, 2011. The policy addresses all of the requirements set forth in subparts a-b of ¶ 40. During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held on the Off-Duty Official Action Policy on an on-going basis and that relevant VIPD personnel are attending those programs. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of ¶ 40 and that the Department has fully implemented the Off-Duty Official Action Policy. As the Consent Decree makes clear (¶ 103), it is the VIPD's burden to demonstrate compliance with the Consent Decree.

41. The VIPD shall continue to provide an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The VIPD shall continue its policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 41 of the Consent Decree.

VIPD Report:

The VIPD reports that it has developed, received DOJ approval for, and disseminated the ECW Policy. The VIPD contends that it has complied with the requirements of ¶ 41 because certain Officers have been trained to use and have been issued a TASER.

OIM Report:

The VIPD issued the ECW Policy on March 30, 2011. The policy addresses all of the requirements set forth in ¶ 41. During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully

implemented the policy. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Use of Force working group should continue to work with the Training Division to ensure that training programs are held on the ECW Policy on an on-going basis and that relevant VIPD personnel are attending those programs. The Use of Force working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Use of Force working group and Director of Training should then schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Use of Force working group should also provide the OIM with documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. As the Consent Decree makes clear (¶ 103), it is the VIPD's burden to demonstrate compliance with the Consent Decree.

Citizen Complaint Process

42. The VIPD will develop and implement a program to inform persons that they may file complaints regarding the performance of any officer. This program will include distribution of complaint forms, fact sheets, informational posters, and public service announcements that describe the citizen complaint process.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 42 of the Consent Decree.

VIPD Report:

The VIPD reports that it has substantially complied with the requirements of ¶ 42 because it has developed and implemented a program to educate the public on the VIPD's complaint and compliment process through Public Service Announcements, brochures, posters, and compliment/complaint forms in various languages as required.

The VIPD states that it is conducting and documenting inspections in the Zones, substations, and police vehicles to ensure that all compliment/complaint materials are available.

OIM Report:

The VIPD issued the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizen Complaint Policy on August 2, 2012 pursuant to ¶¶ 42-58 of the Consent Decree. Despite providing additional training on the Acceptance of Citizen Complaints Policy during the Second Quarter, the Police Practices Experts saw no improvement in Officers' knowledge of the complaint process in the Third Quarter. During the Third quarter, Police Practices Experts questioned Officers about their knowledge of the Acceptance of Citizen Complaints Policy and found that 40% (4 out of 10) of Officers on St. Thomas and 36% (4 out of 11) of Officers on St. Croix responded correctly when asked to explain the process for filing a citizen complaint.²³ Officers' responses on both Districts omitted key aspects of the policy, including: (1) the Officer's obligations when a citizen wants to file a complaint; and (2) how citizens will be informed about the outcome of a complaint. The Complaint Process working group, however, did not provide the OIM with any

²³ We also note that an eleventh Officer on the St. Thomas District was asked about the Acceptance of Citizen Complaints Policy, but refused to respond.

documentation that it conducted similar audits to assess the proficiency of VIPD personnel with the citizen complaint process.

Recommendations:

The VIPD has made significant progress issuing the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizens Policy, and developing and disseminating promotional material concerning the Department's citizen complaint process. However, as the OIM's audits make clear, the VIPD must provide Officers with additional training on the complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The Complaint Process working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which VIPD personnel understand the policies and the lessons conveyed during training. The Complaint Process working group and Director of Training should then schedule follow-up training (continuing in-service or Roll Call or Commanders Call training) based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

43. The VIPD will make complaint forms and informational materials available at appropriate government properties such as VIPD district stations, substations, and mobile substations, libraries, the Internet, and, upon request, to community groups and community centers. At each VIPD district station, substation, and mobile substation, the VIPD will permanently post a placard describing the complaint process and include the relevant phone numbers. These placards shall be displayed in both English and Spanish and where deemed necessary in French or French Patois to account for diversity in the VI population. The VIPD will require all officers to carry informational brochures and complaint forms, in English, Spanish, and French Patois translation, in their vehicles at all times while on duty. If a citizen objects to an officer's conduct, that officer will inform the citizen of his or her right to make a complaint. Officers will not discourage any person from making a complaint.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 43 of the Consent Decree.

VIPD Report:

The VIPD reports that it has complied with the mandates of ¶ 43 because it has made the required compliment/complaint materials available at the locations required by the Consent Decree. In particular, VIPD policy requires

Officers to carry compliment/complaint materials at all times while on duty, and the materials must also be available at designated locations.

OIM Report:

The VIPD generally made compliant forms and informational materials available at VIPD offices, but the VIPD has not provided any documentation showing that those materials are available at other government properties, such as libraries. Additionally, the VIPD has not provided any documentation showing that officers inform citizens of their right to file a complaint and that officers do not discourage citizens from doing so.

Recommendations:

The VIPD should expand the scope of its ongoing audits to determine whether complaint forms and related informational materials are all available at all required locations. The VIPD should also audit whether Officers are informing citizens of their right to file a complaint and that Officers are not discouraging citizens from doing so. One way to do that is to ask members of the community to serve as “testers” to report on Officers’ responses in relevant scenarios. Through the Department’s information campaign, the VIPD should also inform citizens that they may contact the Department if an Officer refuses to take their complaint or attempts to discourage them from filing a complaint. The VIPD should then provide documentation of these audits to the Compliance Coordinator and the OIM.

44. Complaints may be filed in writing or verbally, in person or by mail, telephone (or TDD), facsimile or electronic mail. The duty officer at the front desk of each district station will be authorized to take complaints, including third-party complaints, which persons may file at any district station. Complaint intake officers may describe facts that bear upon a complainant’s demeanor and physical condition but may not express opinions regarding his/her mental competency or veracity. Each complaint will be resolved in writing. Upon receipt, each complaint will be assigned a unique identifier, which will be provided to the complainant. Each complaint will be tracked according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).

Compliance Assessment:

The VIPD has not substantially complied with ¶ 44 of the Consent Decree.

VIPD Report:

The VIPD reports that it continues to accept citizen complaints at the various locations required by ¶ 44. The VIPD has made complaint/compliment

“drop boxes” available at the Zones and substations. All complaints are assigned a complaint number, and any complaints investigated by IAB are resolved in writing. The VIPD acknowledges that more work is needed to ensure that complaints investigated in the Zones are resolved in writing.

OIM Report:

The DOJ approved the Acceptance of Citizen Complaint Policy on August 2, 2011. The VIPD, however, has not provided any documentation during the Third Quarter showing that complaints are resolved in writing, that complaint numbers are being provided to complainants or that complaints are being tracked. Generally, the Police Practices Experts have found that IAB routinely tracks complaints and sends out delinquency notices to the Zones when they are past due. Nevertheless, it is the VIPD’s responsibility to audit the Department’s compliance with this provision and to provide documentation evidencing compliance to the OIM. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The VIPD should conduct audits to determine whether all complaints are being resolved in writing, whether complaint numbers are being provided to complainants, and whether complaints are being tracked. The VIPD should then provide documentation relating to those audits to the Compliance Coordinator and the OIM.

45. Copies of all allegations of misconduct against the VIPD filed with the Zone Commands will be referred to Internal Affairs Unit (“IAU”) within five business days.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 45 of the Consent Decree.

VIPD Report:

During the Third Quarter, the VIPD made efforts to assess whether complaints were referred to IAB within five business days. In July, however, the VIPD conducted an inspection of complaints received in the St. Thomas/St. John District, and reported that all of the complaints were received by IAB within five business days. The VIPD indicates that it will continue to monitor this requirement on both Districts.

OIM Report:

The VIPD did not provide the OIM with any documentation relating to the audits referenced above. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

The Police Practices Experts, however, reviewed 5 completed citizen complaint investigations while monitoring during the Third Quarter and all investigations (5 out of 5) were referred to IAB within five business days.

Recommendations:

The Complaint Process working group should develop a process for auditing whether copies of all allegations of misconduct are referred to the IAB within five business days. The Department should then provide documentation relating to those audits to the OIM.

46. Complaints will be evaluated based on a preponderance of the evidence standard, for which the Territory will develop and implement appropriate training.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 46 of the Consent Decree.

VIPD Report:

The VIPD reports that the preponderance of the evidence standard was reviewed during a two-day training on the Investigating Misconduct and the Citizen Complaint Policy during the Third Quarter. Questions testing Supervisors' knowledge of the preponderance of the evidence standard were reportedly included in a post-training examination, but the VIPD has not provided the results of those examinations. The VIPD recognizes that "ongoing training on the preponderance of [the] evidence standard will be beneficial to Supervisors helping them to competently and confidently apply this standard in the investigation of complaints." The Compliance Coordinator recommended that the Director of Training include preponderance of the evidence training in in-service training schedules in the future.

During the Second Quarter, the Compliance Coordinator also requested the VIAG's help to design test questions on the preponderance of the evidence standard to be used during in-service and Roll Call trainings. The VIAG supplied such questions during the Fourth Quarter.

OIM Report:

The Police Practices Experts asked Supervisors on both Districts about their understanding of the preponderance of the evidence standard. Demonstrating improvement over prior quarters, 71% (5 out of 7) of the Supervisors on St. Thomas and 60% (3 out of 5) of Supervisors on St. Croix correctly explained the preponderance of the evidence standard and how it differs from the beyond a reasonable doubt standard.

Recommendations:

The Complaint Process working group should coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence standard on an ongoing basis and to ensure that relevant VIPD personnel are attending those programs. The Complaint Process working group should also work with the Director of Training to evaluate post-training examinations to help assess the degree to which Supervisors understand the preponderance of the evidence standard and the lessons conveyed during training. The Complaint Process working group and Director of Training should then schedule follow-up training based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. The Complaint Process working group should provide the OIM with any documentation that it conducted such audits during the Third Quarter.

47. The VIPD will explicitly prohibit from investigating an incident any officer who used force during the incident, whose conduct led to the injury to a person, or who authorized the conduct that led to these reportable incidents.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 47 of the Consent Decree.

VIPD Report:

The VIPD reports that it has incorporated the requirements of ¶ 47 into the Investigating Misconduct and Citizen Complaints Policy, which is “in effect.” The VIPD, however, recognizes that more work is required because “[c]ontinued training on the policy coupled with inspections and or audits of complaint files are essential to ensuring adherence.”

OIM Report:

In 10% (2 out of 21) of the completed use of force investigations reviewed by the Police Practices Experts during the Third Quarter, Supervisors who were involved in the use of force incident were also responsible for investigating that same incident. During the Third Quarter, the VIPD did not provide the OIM with any documentation that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should conduct and document periodic audits of investigation files to ensure that Officers directly involved with a use of force incident are not investigating such incidents. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. The Complaint Process working group should provide documentation of its audits to the Compliance Coordinator and the OIM.

48. The VIPD will investigate every citizen complaint. The VIPD will establish a clear policy and procedure regarding the intake of any complaint, including anonymous and confidential complaints, against a VIPD officer. This policy and these procedures will include instructions to an officer for taking a complaint and prompt delivery to a supervisor.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 48 of the Consent Decree.

VIPD Report:

According to the VIPD, “[t]he investigation of complaints is one area that the VIPD realizes that need improvement as evidence[d] by the number of complaints that remain[] uninvestigated during this quarter.” The Deputy Chief of St. John in her role as leader of the Complaint Process working group, together with the Director of IAB, continue to review outstanding complaints and coordinate with the Chiefs on both Districts to inform Commanders of their delinquency in completing complaint investigations.

OIM Report:

The VIPD issued the Acceptance of Citizen Complaints Policy on August 2, 2011. Despite repeated training on the policy, the Department has not provided any documentation to the OIM demonstrating that Officers are

proficient in the citizen complaint process. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

The VIPD reported that the Department received more complaints about Officer discourtesy and Officers' failure to take action than any other category of complaint.²⁴ The VIPD explained that discourtesy continues to be the leading basis for citizen complaints. According to the VIPD, this trend is potentially attributable to "the public's perception of the quality[,] or lack thereof, of service being provided by our members." As a result, many VIPD personnel received customer service training.

While monitoring during the Third Quarter, the Police Practices Experts saw no improvement in Officer's knowledge of the complaint process this quarter. The Police Practices Experts questioned Officers about their knowledge of the Acceptance of Citizen Complaints Policy and found that 40% (4 out of 10) of Officers on St. Thomas and 36% (4 out of 11) of Officers on St. Croix responded correctly when asked to explain the process for filing a citizen complaint.²⁵ Officers' responses on both Districts omitted key aspects of the policy, including: (1) the Officer's obligations when a citizen wants to file a complaint; and (2) how citizens will be informed about the outcome of the complaint.

Recommendations:

The VIPD should develop a process to audit whether complaints are being adequately investigated within the allotted time period. The Complaint Process working group should also consider drafting a policy/directive for the Police Commissioner's signature that requires the Chiefs and Deputy Chiefs to monitor the progress and due dates for completing the complaint investigations that are assigned to their Districts by the IAB, and to hold their subordinates accountable for completing investigations in a timely manner. All audits should be documented and shared with the Compliance Coordinator and the OIM. In addition, the VIPD should evaluate whether the number of complaints for Officer discourtesy decrease during future quarters as a result of many VIPD personnel receiving customer service training.

²⁴ Other categories include: absence from assignment without authorization; abuse of process – conflict of interest; abuse of process – personal interest; assault; citizen contact; defamation of character; excessive use of force – close hand; extortion; failure to comply with rules and procedures; failure to submit RRR; harassment; oppression; received traffic ticket wrongfully; refusal to take police report from citizen; unlawful search – warrantless vehicle search; unnecessary use of force; unprofessional conduct; unsatisfactory performance – department policies.

²⁵ We also note that an eleventh Officer on the St. Thomas District was asked about the Acceptance of Citizen Complaints Policy, but the Officer refused to respond.

49. The VIPD will institute a centralized numbering and tracking system for all complaints and each complaint will receive a tracking number as quickly as possible. The IAU will be designated as the primary and centralized agency to determine whether the investigation will be assigned to zone (one of the seven zones located throughout the Virgin Islands), retained by the IAU, or referred for possible criminal investigation. If the IAU refers a complaint to a zone, copies of all documents, findings, and recommendations should be immediately forwarded to the IAU for tracking and monitoring. For complaints alleging the excessive use of force or violation of a person's constitutional rights, the Police Commissioner should be notified no less than twenty-four hours after receipt of a complaint.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 49 of the Consent Decree.

VIPD Report:

The VIPD reports that it continues to use a centralized numbering and tracking system for all complaints.

OIM Report:

The VIPD issued the Acceptance of Citizen Complaints Policy on August 2, 2011. That policy addresses the requirements of ¶ 49. The VIPD has not, however, provided documentation showing that the policy is being properly executed. For example, the VIPD has not demonstrated that the Police Commissioner is being notified of complaints regarding the excessive use of force or violations of constitutional rights within 24 hours. Though OIM is aware of individual cases where the Police Commissioner was notified of such complaints, we have not routinely been provided with reports of all such notifications. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should develop a process for auditing whether the Department has complied with the requirements of ¶ 49. All audits should be documented and shared with the Compliance Coordinator and the OIM.

50. The VIPD will adopt a single policy concerning the investigation of misconduct complaints, regardless of whether the investigation is conducted by the IAU or a zone.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 50 of the Consent Decree.

VIPD Report:

The VIPD contends that it has complied with ¶ 50 because it developed and trained on the Investigating Misconduct and Citizen Complaints Policy.

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy specifies a uniform process for investigating complaints, whether by the Zones or IAB. During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should continue to test whether VIPD personnel adequately understand and comply with the Investigating Misconduct and Citizen Complaint Policy. The VIPD must provide VIPD personnel with additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Complaint Process working group should coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence on an ongoing basis. The Complaint Process working group should also evaluate whether: (1) Supervisors use proper interview techniques (i.e., they are not asking leading questions) during an investigation; (2) complainants are informed about the outcome of their complaint; (3) the preponderance of the evidence standard is properly applied; and (4) investigations are completed and returned to IAB within the timeframe specified in the policies. Based on its audits, the Complaint Process working group should identify any trends or areas for improvement.

51. The VIPD will establish policies and procedures and train all of its investigators on the factors to consider when evaluating complainant or witness credibility; examination and interrogation of accused officers and other witnesses; identifying misconduct even if it is not specifically

named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof. VIPD investigators will ensure that all officers on the scene of an incident provide a statement regarding the incident. The policy will require that all interviews be mechanically recorded using an audio or video tape.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 51 of the Consent Decree.

VIPD Report:

In compliance with ¶ 51, the VIPD says that it continued to train on the Investigating Misconduct and Citizen Complaints Policy.

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy addresses the requirements of ¶ 51. During the Third Quarter, however, the VIPD did not provide the OIM with any documentation showing that Officers are abiding by the policy. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

While monitoring on both Districts during the Third Quarter, the Police Practices Experts asked Supervisors about their understanding of the preponderance of the evidence standard. Demonstrating improvement over prior quarters, 71% (5 out of 7) of the Supervisors on St. Thomas and 60% (3 out of 5) of Supervisors on St. Croix correctly explained the preponderance of the evidence standard and how it differs from the beyond a reasonable doubt standard. The OIM also requests that the VIPD provide the number of VIPD personnel who have received training, and the number of VIPD personnel who have yet to receive training.

Recommendations:

The Complaint Process working group should continue to test whether VIPD personnel adequately understand and comply with the complaint process. The VIPD must provide VIPD personnel with additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Complaint Process working group should coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence standard on an ongoing basis. The Complaint Process working group should also evaluate whether investigators correctly: evaluate complainant or witness credibility; examine and interrogate accused Officers and other witnesses; and identify misconduct. The audits should also evaluate whether VIPD investigators take statements from all Officers on the scene of an incident. Based on its audits, the Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

52. The policy will require that the investigative findings include whether: 1) the police action was in compliance with policy, training and legal standards, regardless of whether the complainant suffered harm; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or could have been employed; 4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 52 of the Consent Decree.

VIPD Report:

According to the VIPD, it realizes that “improvement is necessary in the quality of investigations as well as the quality and completeness of reviews of investigative files. This is an ongoing process that requires continued training and internal monitoring or inspections.” The VIPD notes that inspections by the Complaint Process working group are particularly important since the Audit Team is not yet functioning.

OIM Report:

During the Third Quarter, the Police Practices Experts reviewed 5 completed citizen complaint investigations. Some statistics are calculated from a total number less than 5 because: (1) the Police Practices Experts were unable to draw certain conclusions based on the information included in the investigative files; or (2) a Consent Decree requirement did not appear to be applicable based on the information included in the investigative files. All of the investigations (4 out of 4) noted whether the police action complied with Department policy, training and legal standards. But, 50% (2 out of 4) of the investigations recorded whether the incident indicated a need for additional training, counseling or other non-disciplinary corrective measures. Also, 25% (1 out of 4) of the investigations included a recommendation as to whether the

VIPD should revise its policies, training, or tactics in light of the conduct. In addition, 75% (3 out of 4) of the investigations indicated whether the incident involved Officer misconduct. Finally, none of the investigations (0 out of 2), stated whether different tactics should or could have been employed.

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. That policy reflects the requirements contained in ¶ 52. During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should continue to test whether VIPD personnel adequately understand and comply with Investigating Misconduct and Citizen Complaint Policy. The VIPD must provide additional training on the citizen complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

The Complaint Process working group should coordinate with the Training Division to offer training to Supervisors on the preponderance of the evidence on an ongoing basis. The Complaint Process working group should also evaluate whether Supervisors' investigations make determinations as to whether: 1) the police action was in compliance with policy, training and legal standards; 2) the incident involved misconduct by any officer; 3) the use of different tactics should or could have been employed; 4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and 5) the incident suggests that the VIPD should revise its policies, training, or tactics. Based on its audits, the Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

53. The policy will provide clear guidance to all investigators regarding the procedures for handling criminal misconduct allegations, referring them to the Virgin Islands Attorney General's Office or other appropriate agency for possible criminal prosecution, and the entity or individual who should make the determination of whether the complaint should be investigated criminally. The policy shall continue to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 53 of the Consent Decree.

VIPD Report:

The VIPD reports that it has “established [and] implemented” the Investigating Misconduct and Citizen Complaint Policy, and that continued inspections are required to ensure compliance with this provision.

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should develop a process to audit whether allegations of criminal misconduct are referred to the VIAG or other appropriate agency for possible criminal prosecution, and whether administrative investigations progress in a timely manner and are completed, irrespective of the initiation or outcome of criminal proceedings. Based on its audits, the Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

54. In each investigation, the VIPD will consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will the VIPD completely disregard a witness' statement merely because the witness has some connection to the complainant. The VIPD will make efforts to resolve material inconsistencies between witness statements.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 54 of the Consent Decree.

VIPD Report:

The VIPD reports that it has “established [and] implemented” the Investigating Misconduct and Citizen Complaint Policy, and that continued inspections are required to ensure compliance with this provision.

OIM Report:

During the Third Quarter, the Police Practices Experts reviewed 5 completed citizen complaint investigations. In 75% (3 out of 4) of the applicable investigations, the VIPD considered all relevant evidence, including circumstantial, direct and physical evidence. Additionally, for complaints where there were witnesses, 50% (1 out of 2) of the investigations included credibility determinations of witnesses. For all of the investigations reviewed (5 out of 5), an Officer’s statement was not given automatic preference over a non-Officer’s statement. Additionally, material inconsistencies between witness statements were relevant and documented in one case.

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should develop a process to audit whether the VIPD personnel consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and makes credibility determinations, if feasible, in all investigations. Audits should also evaluate whether preference is given to an Officer's statement over a non-Officer's, and whether the VIPD makes efforts to resolve material inconsistencies between witness statements. Based on its audits, the Complaint Process working group should identify any trends or areas for improvement. All audits should be documented and shared with the Compliance Coordinator and the OIM.

55. During an investigation, all relevant police activity, including each use of force (i.e., not just the type of force complained about) will continue to be investigated. The investigation will also evaluate any searches or seizures that occurred during the incident. The VIPD will not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements; rather, the investigating agency will continue its investigation as necessary to determine whether the original allegation(s)

can be resolved based on the information, evidence, and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence of whether a VIPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 55 of the Consent Decree.

VIPD Report:

The VIPD reports that it has “established [and] implemented” the Investigating Misconduct and Citizen Complaint Policy, and that continued inspections are required to ensure compliance with this provision.

OIM Report:

During the Third Quarter, the Police Practices Experts reviewed 5 completed citizen complaint investigations. Only one of the investigations required the Department to evaluate any searches or seizures (which the Department did). Additionally, only 2 investigations required the VIPD to assess whether an investigation was closed because the complainant was unwilling or unable to provide medical records, or because the complainant pled or was found guilty. The Police Practices Experts’ review determined that the investigations were not closed for these reasons.

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should develop a process for auditing whether VIPD personnel comply with ¶ 55. The VIPD should also develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM.

56. The complainant will be periodically kept informed regarding the status of the investigation. Upon completion of the investigation, the complainant will be notified of its outcome, including an appropriate

statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 56 of the Consent Decree.

VIPD Report:

The VIPD reports that IAB is complying with ¶ 56, but that there is “need for improvement” at the Zones.

OIM Report:

During the Third Quarter, the Police Practices Experts reviewed 5 completed citizen complaint investigations. In 25% (1 out of 4) of the investigations, the Police Practices Experts confirmed that the complainant was periodically kept informed regarding the status of the investigation. In 75% (3 out of 4) of the investigations the complainant was notified upon completion of the investigation about the outcome of the investigation, including an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.

The VIPD issued the Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should continue to audit whether VIPD personnel adequately understand and comply with the complaint process. The Complaint Process working group should evaluate whether the complainant is periodically kept informed about the status of the investigation, and notified about its outcome. Based on its audits, the Complaint Process working group should identify any trends or areas for improvement, and develop a process for identifying personnel who continually fail to comply with these requirements, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM. Additionally, the Department should ensure that it is notifying citizens of the final disposition of any complaints.

57. Each allegation in an investigation will be resolved by making one of the following dispositions: a) "Unfounded," where the investigation

determines, by a preponderance of the evidence, that no facts to support that the incident complained of actually occurred; b) “Sustained,” where the investigation determines, by a preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper; c) “Not Sustained,” where the investigation determines, by a preponderance of the evidence, that there are insufficient facts to decide whether the alleged misconduct occurred; and d) “Exonerated,” where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate VIPD policies, procedures, or training.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 57 of the Consent Decree.

VIPD Report:

The VIPD reports that IAB is complying with ¶ 57, but that there is “need for improvement” at the Zones.

OIM Report:

The VIPD issued its Investigating Misconduct and Citizen Complaint Policy on August 2, 2011. Among other things, that policy requires the Department to resolve all allegations with one of four findings: “unfounded;” “sustained;” “not sustained;” and “exonerated.” Based on the Police Practices Experts’ review of closed investigations, it appears that there is some confusion about the meaning of and differences between these terms, and, in particular, the difference between “exonerated” and “unfounded.” “Exonerated” should be used when the investigation reveals that the alleged conduct occurred, but did not violate Department policy or generally accepted police practices. On the other hand, “unfounded” should be used when the investigation reveals that conduct complained of never occurred.

During the Third Quarter, the VIPD did not provide the OIM with any documentation that VIPD personnel are proficient in the requirements of the policy or that the Department has fully implemented the policy. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Complaint Process working group should develop a process for auditing whether VIPD personnel comply with ¶ 57. The VIPD should develop a process for identifying personnel who continually fail to comply with these

requirements, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM. The VIPD should also provide further training to reinforce the meaning of and differences between the four disposition findings.

58. Unit commanders will evaluate each investigation of an incident under their command to identify underlying problems and training needs. Any such problems or needs will be relayed in the form of a recommendation to the appropriate VIPD entity.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 58 of the Consent Decree.

VIPD Report:

The VIPD reports that the Citizen Complaint Process working group is working to reinforce the requirements of ¶ 58 with all Zone Commanders since investigations of citizen complaints continue to be completed outside the time frame required by policy. Although IAB reports that the number of outstanding reports has decreased in September, the VIPD has issued letters of reprimand to certain Commanders in the St. Thomas District. Because incomplete investigations continue to be submitted to IAB, the VIPD recognizes that “the Chain of Command beginning with the first line Supervisor to the Office of the Chief has to commit to improving the quality of their reviews and working groups also must intensify and increase random inspections of these files.” The VIPD’s report did not specifically address the requirements of ¶ 58.

OIM Report:

During the Third Quarter, the Police Practices Experts reviewed 26 completed use of force investigations. Unit commanders identified underlying problems and training needs in 31% (8 out of 26) of the completed use of force investigations reviewed by the Police Practices Experts during the Third Quarter. There was evidence that these problems or needs were relayed to the appropriate VIPD entity in 38% (3 out of 8) of the completed use of force investigations. Only 29% (5 out of 17) of the completed use of force investigations included evidence that the recommended corrective action was taken.

During the Third Quarter the Police Practices Experts reviewed 5 completed citizen complaint investigations. Unit commanders identified underlying problems and training needs in 50% (2 out of 4) of those investigations. Evidence that these problems or needs were relayed to the appropriate VIPD entity existed in 33% (1 out of 3) of the completed citizen

complaint investigations. There was no evidence in the completed citizen complaint investigations that the recommended corrective action was taken.

Recommendations:

The Complaint Process working group should develop a process for auditing whether VIPD personnel comply with ¶ 58. The VIPD should develop a process for identifying personnel who continually fail to comply with the requirements, and provide remedial training or discipline as appropriate. All audits should be documented and shared with the Compliance Coordinator and the OIM.

Management and Supervision

59. The VIPD will develop and implement a risk management system to include a new computerized relational database or paper system for maintaining, integrating, and retrieving information necessary for supervision and management of the VIPD. Priority will be given to the VIPD obtaining any established program and system. The VIPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of VIPD officers across all ranks, units and shifts.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 59 of the Consent Decree.

VIPD Report:

The VIPD reports that it continues to work on an arrest database. To that end, the Compliance Coordinator led efforts to revise the Arrest/Detention Form, which will be used to collect information that will be entered into the arrest database. The revised form was submitted to the Planning and Research Bureau in May 2012 to be assigned a policy number and submitted to the Police Commissioner for review and approval. However, by the end of the Third Quarter, the Planning and Research Committee had yet to review the form and submit it to the Police Commissioner. Although the arrest database is a component of the Department's Risk Management System ("RMS"), the VIPD should report on its efforts to comply with the requirements of ¶ 59.

OIM Report:

As previously reported, the VIPD has chosen the computer program IAPro as its RMS. The RMS will help the Department to track incidents and identify patterns relating to potentially problematic behavior by VIPD personnel. VIPD personnel use Blue Team—a companion computer program to IAPro—to enter force data, including RRRs, directly into IAPro. Blue Team also allows Supervisors and Commanders to review and sign-off on use of force investigations, and to monitor use of force patterns. During the Third Quarter, the Department again reported that it is working to finalize an arrest database on both Districts to track key information about arrests. The VIPD, however, did not provide the OIM with any documentation that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix.

60. The new risk management system will collect and record the following information: a) all uses of force; b) canine bite ratios; c) the number of canisters of chemical spray used by officers; d) all injuries to prisoners; e) all instances in which force is used and a subject is charged with “resisting arrest,” “assault on a police officer,” “disorderly conduct,” or “obstruction of official business;” f) all critical firearm discharges, both on-duty and off-duty; g) all complaints (and their dispositions); h) all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the Territory and its officers, or agents, resulting from VIPD operations or the actions of VIPD personnel; i) all vehicle pursuits; j) all incidents involving the pointing of a firearm (if any such reporting is required); and k) all disciplinary action taken against officers.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 60 of the Consent Decree.

VIPD Report:

The VIPD reports that it has developed force-related policies, forms to document uses of force, and installed Blue Team to allow electronic entry of all use of force incidents.

The VIPD also reports that the Management and Information Systems Bureau (“MIS”) configured copy machines in the Zones on both Districts to function as scanners. Supervisors, however, still need to be trained on the scanning function of the copiers. The VIPD says that enabling the scanning function in the Zones in order to load documents directly into Blue Team is a requirement in the Blue Team Protocol.

OIM Report:

As previously reported, the VIPD has chosen the computer program IAPro as its RMS. The RMS will help the Department to track incidents and identify patterns relating to potentially problematic behavior or deviations from Department policy by VIPD personnel. VIPD personnel use Blue Team—a companion computer program to IAPro—to enter force data, including RRRs,

directly into IAPro. Blue Team also allows Supervisors and Commanders to review and sign off on use of force investigations, and to monitor use of force patterns. Although the Department held Blue Team training on St. Thomas during the First Quarter, by the end of the Third Quarter, Blue Team training had not been provided on St. Croix.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS to ensure that the data required by ¶ 60 is entered. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix.

61. The new risk management system will include, for the incidents included in the database, appropriate identifying information for each involved officer (e.g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin, if available).

Compliance Assessment:

The VIPD has not substantially complied with ¶ 61 of the Consent Decree.

VIPD Report:

The VIPD reports that there has been improvement during the Third Quarter with VIPD personnel in the St. Thomas District using their Permanent Designator Number (“PDN”) on police reports. The VIPD also reported that the Police Commissioner signed a purchase order in excess of \$37,000 for 400 new badges with PDNs imprinted on them.

OIM Report:

To help track VIPD personnel (who may change job functions, names, etc.) the Police Commissioner issued a directive during the Fourth Quarter of 2011 ordering that a PDN be assigned to all sworn personnel, including designated civilian personnel with assignments as agents, auxiliaries, and forensic technicians. The PDN is a four digit number assigned by the Virgin Islands Territorial Emergency Management Agency (“VITEMA”). Officers are required to use their PDN (which personnel will have for their entire career) on all police reports, rather than their badge numbers as was the previous practice. According to the Department, all VIPD personnel on both Districts have received PDNs. The VIPD, however, did not provide the OIM with documentation that the Department is in full compliance with this Consent

Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix. The Department should also audit whether Officers are using their PDNs on all police reports, rather than their badge numbers as was the previous practice. These audits should be documented and shared with the Compliance Coordinator and the OIM.

62. Within 120 days of the implementation of the new risk management system, or later with the agreement of DOJ, the VIPD will prepare, for the review and approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the "Data Input Plan"). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will include historical data that is up-to-date and complete in the risk management system. The VIPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 62 of the Consent Decree.

VIPD Report:

The VIPD reports that, although the IAB planned to hold training on the Data Input Plan, the VIPD has decided to contract with an outside vendor to provide the training. The VIPD is also researching vendors to conduct Risk Management/Early Intervention Program training. The VIPD has had discussions with one vendor and intends to contact others. Once a vendor is selected, a training schedule will be established and shared with the OIM.

OIM Report:

The DOJ approved the VIPD's Data Input Plan on March 22, 2011, but the Department had not provided training on the plan as of the end of the

Third Quarter. The Data Input Plan identifies information about VIPD personnel (including, but not limited to, uses of force, disciplinary issues, motor vehicle accidents, and sick days) that the Department is required to enter into IAPro to facilitate its risk management function.

While the VIPD has made progress implementing certain aspects of IAPro, the Data Input Plan needs to be fully implemented. The VIPD has not provided the OIM with any documentation that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The VIPD should provide the OIM with documentation that the Data Input Plan is fully implemented and that the specific fields of information and other data required by the Plan are entered into IAPro.

63. The VIPD will, within 120 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using the risk management system. The VIPD will submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 63 of the Consent Decree.

VIPD Report:

The VIPD reports that it held four meetings in September to discuss revisions to the RMS Protocol prior to submitting another draft to the DOJ for final approval.

OIM Report:

After several years of work, the VIPD submitted its final version of the RMS Protocol to DOJ during the Third Quarter; DOJ approved it on October 2. As previously reported, the RMS Protocol provides various thresholds that trigger supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. When reporting arrest and use of force data, the Consent Decree requires that the VIPD use ratios based on the conduct of VIPD personnel (the total number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior. The VIPD, however,

currently uses numerical thresholds based on historic norms (X number of uses of force within a twelve month period). The DOJ and VIPD have agreed that, for the time being, the VIPD may continue to use thresholds rather than ratios until such time when the VIPD can rely on its arrest and force records. For now, IAPro will notify an Officer's Supervisor when the Officer reaches two uses of force within a six-month period. The Early Intervention Program ("EIP") Coordinator will then conduct a review and determine if further action is required. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix. Once the Department can rely on its arrest and force records, the VIPD must begin to use ratios, rather than numerical thresholds, as triggers for supervisory review of Officers' conduct.

64. The protocol for using the risk management system will include the following provisions and elements: a) The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit; b) The protocol will require the automated system to analyze the data according to the following criteria: (i) number of incidents for each data category by individual officer and by all officers in a unit; (ii) average level of activity for each data category by individual officer and by all officers in a unit; and (iii) identification of patterns of activity for each data category by individual officer and by all officers in a unit; c) The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns; d) The protocol will require that VIPD deputy chiefs, managers, and supervisors will review, on a regular basis but not less than quarterly, system reports, and will evaluate individual officer, supervisor, and unit activity; e) The protocol will require that VIPD deputy chiefs, managers, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system; f) The protocol will require that intervention options include discussion by deputy chiefs, managers, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system (appropriate intervention options will be employed

based on the evaluation described in subsection (e) above; g) The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer's assignment, crime trends and crime problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system; h) The protocol will require that VIPD deputy chiefs, managers, and supervisors will promptly review the risk management system records of all officers recently transferred to their sections and units; i) The protocol will require that VIPD deputy chiefs, managers, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk; j) The protocol will require that the system be managed and administered by the Internal Affairs Unit of the VIPD. The IAU of the VIPD will conduct quarterly audits of the system to ensure action is taken according to the process described above; k) The protocol will require regular reviews, at no less than quarterly intervals by appropriate managers of all relevant risk management system information to evaluate officer performance territory-wide, and to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify any significant patterns or series of incidents.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 64 of the Consent Decree.

VIPD Report:

The VIPD reports that it submitted a revised draft of the RMS Protocol to the DOJ on September 24, 2012. The DOJ returned the draft to the VIPD on September 26, 2012 with limited comments. The VIPD addressed the DOJ's comments and submitted a further revised draft the same day.

OIM Report:

On October 2, 2012, the DOJ approved the RMS Protocol. As previously reported, the RMS Protocol provides various thresholds that trigger supervisory review. For example, if an Officer receives more than X number of complaints within Y period of time, IAPro will alert the Officer's Supervisor (and other appropriate personnel) to the potential issue and need for review. When reporting arrest and use of force data, the Consent Decree requires that the VIPD use ratios based on the conduct of VIPD personnel (the total number of arrests where force was used divided by the total number of arrests) to identify potentially problematic behavior. The VIPD, however, currently uses numerical thresholds based on historic norms (X number of uses of force within a twelve month period). The DOJ and VIPD have agreed that, for the time being, the

VIPD may continue to use thresholds rather than ratios until such time when the VIPD can rely on its arrest and force records. For now, IAPro will notify an Officer's Supervisor when the Officer reaches two uses of force within a six-month period. The EIP Coordinator will then conduct a review and determine if further action is required. The Parties agree that the Department will not be in compliance with the Consent Decree until it implements a ratio-based RMS Protocol.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS. The Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix. Once the Department can rely on its arrest and force records, the VIPD must begin to use ratios, rather than numerical thresholds, as triggers for supervisory review of Officers' conduct.

65. The VIPD will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the VIPD for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. On an ongoing basis, the VIPD will enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 65 of the Consent Decree.

VIPD Report:

The VIPD reports during the Third Quarter, as it has previously, that the VIPD has selected IAPro software to record the information required by ¶ 65. The VIPD also reports that IAB is responsible for recording and entering this data into IAPro, and that data entry is ongoing. Consequently, IAB has begun to generate reports with certain statistics relating to uses of force and citizen complaints. MIS, however, must develop a system for "backing up" the information stored in IAPro.

OIM Report:

During the Third Quarter, the VIPD did not provide the OIM with any documentation that the Department is in compliance with this Consent Decree

provision. According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol (approved by the DOJ on October 2, 2012), and the Data Input Plan need to be fully implemented. The Department should demonstrate for the Police Practices Experts during an upcoming monitoring trip that the Department maintains personally identifiable information about an Officer for at least five years in IAPro, and that information necessary for aggregate statistical analysis is maintained indefinitely. The Department should enter information into IAPro in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.

66. The new risk management system will be purchased off the shelf and customized by VIPD. Alternatively, the new risk management system may be developed and implemented according to the following schedule: a) Within 150 days of the effective date of this Agreement, subject to the review and approval of DOJ, the VIPD will issue a Request for Proposal (RFP); b) Within 270 days of the issuance of the RFP, or later with the agreement of DOJ, the VIPD will select the contractor to create the risk management system; c) Within 150 days of the effective date of this Agreement, the VIPD will submit the protocol for using the risk management system to DOJ for review and approval. The VIPD will share drafts of this document with DOJ and the Monitor (a position described in Section VII) to allow DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The VIPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval; d) Within 14 months of selecting the contractor, the VIPD will have ready for testing a beta version of the risk management system consisting of: (i) server hardware and operating systems installed, configured and integrated with the VIPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. DOJ and the Monitor will have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the risk management system; e) The risk management system computer program and computer hardware will be operational and fully implemented within 20 months of the selection of the risk management system contractor.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 66 of the Consent Decree.

VIPD Report:

The VIPD reports during the Third Quarter, as it has previously, that the VIPD has selected IAPro software for the VIPD’s RMS, and that IAPro is operable in both Districts. The VIPD also reports that the large capacity servers purchased to accommodate large data and video storage for IAPro and other programs were finally installed during the Third Quarter on both Districts. However, MIS noted that four hard drives were missing from the servers and need to be replaced. The Department was scheduled to transfer information to the new servers at the end of the Third Quarter.

Technical difficulties caused the VIPD to cancel follow-up Blue Team training scheduled for the St. Thomas District the week of September 10, 2012. The Department has not yet offered Blue Team training for the St. Croix District, but expected to do so in October of 2012.²⁶

OIM Report:

As previously reported, the VIPD has chosen the computer program IAPro as its RMS. The RMS will help the Department to track incidents and identify patterns relating to potentially problematic behavior by VIPD personnel. VIPD personnel use Blue Team—a companion computer program to IAPro—to enter force data, including RRRs, directly into IAPro. Blue Team also allows Supervisors and Commanders to review and sign off on use of force investigations, and to monitor use of force patterns. Although the Department held Blue Team training on St. Thomas during the First Quarter, by the end of the Third Quarter Blue Team training was not yet offered on St. Croix.

During the Third Quarter, the VIPD did not provide the OIM with any documentation that the Department is in full compliance with this Consent Decree provision. For example, the OIM does not believe that the Department has complied with the required “beta test.” According to ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

Even though the Department has implemented certain aspects of IAPro, the RMS Protocol needs to be fully implemented by, among other things, conducting the required beta test (i.e., an initial full scale test) of the RMS. The

²⁶ That training was not held in October 2012.

Department must also remedy any outstanding technical issues relating to IAPro and Blue Team, including conducting Blue Team training for St. Croix. Once the Department can rely on its arrest and force records, the VIPD must begin to use ratios, rather than numerical thresholds, as triggers for supervisory review of Officers' conduct.

67. Prior to implementation of the new risk management system, the VIPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by VIPD officers or groups of officers.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 67 of the Consent Decree.

VIPD Report:

The VIPD reports that since purchasing IAPro, the VIPD has entered Risk Management information dating back to 2009.

OIM Report:

During the Third Quarter, the VIPD did not provide the OIM with any documentation that the Department is in full compliance with this Consent Decree provision. For example, the VIPD has never explained the extent to which it relied on existing databases and other resources while the Department works to fully implement the new RMS. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The OIM requests that the VIPD provide information regarding the system, if any, that existed prior to IAPro, and to what extent that system is still operational.

68. Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, the VIPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. The VIPD will submit all such proposals for review and approval by DOJ before implementation.

Compliance Assessment: N/A

VIPD Report:

The VIPD reports that it submitted a revised draft of the RMS Protocol to the DOJ on September 24, 2012. The DOJ returned the draft to the VIPD on September 26, 2012 with limited comments. The VIPD addressed the DOJ's comments and submitted a further revised draft the same day.

OIM Report:

Because the VIPD's RMS Protocol was only approved by the DOJ at the beginning of the Fourth Quarter, this provision is not yet applicable.

Recommendations:

Once the RMS Protocol is fully implemented, the VIPD should submit to the DOJ for approval any proposals to add, subtract, or modify data tables and fields, standardized reports and queries, or the list of documents scanned or electronically attached.

69. The VIPD will develop a protocol for conducting audits. The protocol will be used by each officer or supervisor charged with conducting audits. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all VIPD zones.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 69 of the Consent Decree.

VIPD Report:

The Deputy Chief of St. John, the Consent Decree Compliance Manager and the Training Coordinator attended a three-day audit protocol training in Arizona in September. The training was the first in a three-part series. The VIPD plans to hold the next two sessions in the Territory, but must obtain approval through the appropriate governmental channels.

OIM Report:

The VIPD has not finalized and implemented an Audit Protocol for the RMS or other areas of the Consent Decree (e.g., use of force citizen complaints). The VIPD will not be able to ensure that it has substantially complied with the Consent Decree's substantive provisions until it finalizes the Audit Protocol. During the Third Quarter, the VIPD did not provide the OIM with any documentation that the Department has finalized and implemented an Audit in

compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The VIPD should finalize and implement an Audit Protocol so that the Audit Team has the appropriate tools to become fully functional and to monitor the Department's compliance with the Consent Decree. Documentation of VIPD audits is the best way for the Department to demonstrate compliance with each Consent Decree paragraph. In addition, the Department should also provide additional audit-related training (parts two and three of the three-part series referenced above, or some other similarly comprehensive training) to relevant personnel.

70. The VIPD will continue to utilize a disciplinary matrix to take into account an officer's violations of different rules, rather than just repeated violations of the same rule. The VIPD will further revise this matrix to increase the penalties for uses of excessive force, improper searches and seizures, discrimination, or dishonesty, to reflect the seriousness of those infractions. The revised disciplinary matrix will provide the VIPD with the discretion to impose any appropriate punishment when the VIPD believes the officer's misconduct exhibits a lack of fitness for duty. This revised matrix will be subject to the review and approval of DOJ.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 70 of the Consent Decree.

VIPD Report:

The VIPD reports that it continues to work on the Disciplinary Matrix, and that it submitted a revised draft to the DOJ on November 1, 2012 for approval. The DOJ provided comments on the VIPD's revised Disciplinary Matrix during the Fourth Quarter, and the VIPD subsequently submitted a further revised draft on January 18, 2013, which is currently under consideration by the DOJ.

OIM Report:

As previously reported, the DOJ approved the Disciplinary Policy and Matrix, which provides disciplinary guidelines for different types of misconduct. Nevertheless, the VIPD subsequently decided to further revise the "charge and penalty section" of the Disciplinary Matrix; any such revisions will require DOJ approval. The Management and Supervision working group, however, reports that the VIPD continues to work on the Disciplinary Matrix. Because the OIM

has observed first-hand that the Department inconsistently applies disciplinary sanctions, the absence of a finalized Disciplinary Matrix is negatively impacting the Department's efforts to comply with the Consent Decree.

Recommendations:

The Management and Supervision working group should finalize any revisions to the Disciplinary Matrix and submit it to the DOJ for final approval.

71. VIPD policy will continue to identify clear time periods by which the various steps of a complaint adjudication process should be completed, from complaint receipt to the imposition of discipline, if any. Absent exigent circumstances, extensions will not be granted without the Police Commissioner's written approval and notice to the complainant. In the limited circumstances when an extension is necessary, appropriate tolling provisions will be outlined in the policy.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 71 of the Consent Decree.

VIPD Report:

The VIPD reports that the 50-day statute of limitations set by the Police Union's Collective Bargaining Agreement continues to be in effect. Despite VIPD efforts to extend the time, the Union continues to oppose these efforts.

OIM Report:

As an initial matter, the VIPD appears to be confusing the time period in which the Department can initiate administrative charges against an Officer with the timelines set forth in the Investigating Misconduct and Citizen Complaint Policy. The Union's reported refusal to extend the 50-day statute of limitations has no bearing on the Department's ability to comply with internal investigative deadlines. During the Third Quarter, the Police Practices Experts reviewed 5 completed citizen complaint investigations. The Police Practices Experts found that 80% (4 out of 5) of the investigations were completed within the 50-day statute of limitations. The VIPD, however, reports that 67% of the complaints received by the Department during the Third Quarter were not fully investigated and resolved as of December 18, 2012.

Recommendations:

The Management and Supervision working group, together with the Citizen Complaint working group and IAB, should audit and document the Department's compliance with the 50-day statute of limitations. As the OIM

has previously cautioned, the Department cannot afford to let complaints of potential misconduct linger in light of this statute of limitations.

72. Absent exceptional circumstances, the VIPD will not take only non-disciplinary corrective action in cases in which the disciplinary matrix indicates the imposition of discipline. In a case where discipline has been imposed on an officer, the VIPD must also consider whether non-disciplinary corrective action is required.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 72 of the Consent Decree.

VIPD Report:

The VIPD reports that it continues to work on the Disciplinary Matrix, and is scheduled to submit a revised draft to DOJ on November 1, 2012 for approval.

OIM Report:

In the absence of a final Disciplinary Matrix, the Police Practices Experts continue to observe that the Department inconsistently applies disciplinary sanctions. In addition, there appears to be some disagreement within the Department about whether and when to order remedial training as a possible sanction. For example, during the Third Quarter, an Officer was the subject of a misconduct investigation for alleged harassment. The allegation was not sustained, but the investigation uncovered that the Officer threatened to arrest a citizen without proper cause. In an effort to avoid future liability (e.g., false arrest claims; improper use of force etc.), IAB recommended that the Officer receive remedial training. The Training Division, however, has requested that IAB discontinue its practice of recommending remedial training when the outcome of an investigation determines that an Officer has not violated any Department policies or procedures. The VIPD should finalize its Disciplinary Matrix and the OIM encourages IAB and the Training Division to agree on the appropriate resolution of these investigations.

Recommendations:

The Management and Supervision working group should finalize any revisions to the Disciplinary Matrix and submit it to the DOJ for final approval.

Training

73. The VIPD will continue to coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with applicable law and VIPD policy. The VIPD will conduct regular subsequent reviews, at least semi-annually.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 73 of the Consent Decree.

VIPD Report:

The VIPD reports that its Policy Consultant reviews all use of force policies and lesson plans; however, the VIPD acknowledged that it did not provide any documentation to substantiate this claim. During the Third Quarter, the VIPD held the following training on both Districts: Use of Force, Basic SWAT Certification, Advanced SWAT Certification, Pursuit Driving and Spike Strip instructor training, and in service training. The VIPD also provided the OIM with an updated training schedule dated September 17, 2012.

OIM Report:

As acknowledged by the Department, the VIPD did not provide the OIM with any documentation during the Third Quarter that the Department is in compliance with this Consent Decree provision. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The Department should develop a process for reviewing all use of force policies and training to ensure quality, consistency, and compliance with applicable law and VIPD policy. This process should include consultation with the VIAG to the extent necessary. The Department should also explain the scope of the Policy Consultant's review and whether it includes reviewing for legal adequacy. The VIPD should also conduct at least semi-annual reviews going forward. These reviews should be documented, become part of the training records file for that lesson plan, and be shared with the Compliance Coordinator and the OIM. In addition, now that the VIPD has retained its own counsel, the OIM is hopeful that she will play a role in this process.

74. The Director of Training, either directly or through his/her designee(s), consistent with applicable law and VIPD policy will: a) ensure the quality of all use of force training; b) develop and implement use of force training curricula; c) select and train VIPD officer trainers; d)

develop, implement, approve, and oversee all in-service training; e) in conjunction with the Chiefs, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures; f) establish procedures for evaluating all training curricula and procedures; and g) conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 74 of the Consent Decree.

VIPD Report:

The VIPD reports that it has not fully implemented the Roll Call Policy because the Department has not selected Training Coordinators in the Zones (who are responsible for overseeing all Roll Call training in a particular Zone). The VIPD explains that this requirement is difficult to comply with because of the limited number of Supervisors in the Department, and in the St. Thomas District in particular.

The Acting Training Director indicated that he would meet with the Police Chiefs on both Districts to discuss possible solutions, but as of the end of the Third Quarter, no meeting had been scheduled.

OIM Report:

The Department did not provide the OIM with any documentation during the Third Quarter that the Department is in compliance with this Consent Decree provision since, as the VIPD acknowledges, it has not selected Training Coordinators. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

The VIPD should develop a procedure to ensure that the Director of Training, in consultation with the VIAG if necessary, is: a) ensuring the quality of all use of force training; b) developing and implementing use of force training curricula; c) selecting and training VIPD officer trainers; d) developing, implementing, approving, and overseeing all in-service training; e) in conjunction with the Chiefs, developing, implementing, approving, and overseeing a patrol division Roll Call protocol designed to effectively inform officers of relevant changes in policies and procedures; f) establishing procedures for evaluating all training curricula and procedures; and g) conducting regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.

Such reviews should be documented and shared with the Compliance Coordinator and the OIM. The VIPD should ensure that the Department has an adequate number of Supervisors so that the Department can, among other things, fully implement its Roll Call Policy by selecting Training Coordinators in the Zones. Additionally, the Training working group (which has historically not included members from outside the Training Division) should expand its membership to include VIPD personnel from other parts of the VIPD given the vital role that training plays throughout the VIPD.

75. The VIPD will continue to provide training consistent with VIPD policy, law, and proper police practices, and will ensure that only mandated objectives and approved lesson plans are taught by instructors. The VIPD will make best efforts to train each work shift as a team in their use of force training.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 75 of the Consent Decree.

VIPD Report:

The VIPD reports that instructors are required to submit lesson plans for review and approval before conducting training. During the Third Quarter, the VIPD provided lessons plans to the OIM for Impact Weapon, Electronic Control Weapon Policy, Use of Force Policy, Off-Duty Official Action Policy, Firearms Policy, and OC Spray Policy training.

OIM Report:

A Police Practices Expert reviewed the Lesson Plans provided by the Department and concluded that the lesson plans are deficient and, in many cases, little more than a copy of VIPD policy. That finding calls into question the adequacy of the Department's current review process (see ¶¶ 73, 74). Rather, comprehensive and compliant lesson plans should include multiple learning objectives, a section that references any applicable case law, and an explanation about how the training relates to the Consent Decree. Additionally, the lesson plans fail to indicate whether they have been reviewed by the Director of Training, or if necessary, the VIAG. Generally, pre- and post-examinations are also not included with lesson plans, and no exercises or scenarios are included to promote practical learning. Furthermore, there is no evidence that command personnel or training Supervisors audit sessions to determine if instructors follow the prescribed lesson plan and present the subject in a manner consistent with VIPD policy.

Recommendations:

As we have emphasized in previous reports, the VIPD should continue to develop lesson plans for all training programs in advance of the corresponding training (and in most cases while the policy is being finalized) so they can be vetted appropriately, including review of all lesson plans by the Director of Training and the VIAG, if necessary, without delaying training. The Training Division should work closely with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies for which compliance has been problematic, including among others, the Use of Force Policy, Acceptance of Citizen Complaint Policy, and Investigating Misconduct and Citizen Complaints Police. The Training Division also should work closely with the Use of Force, Complaint Process, and Management and Supervision working groups to identify areas that require additional training, either through additional in-service training or Roll Call and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations. Moreover, the VIPD should obtain sample lesson plans from other well-respected law enforcement agencies (the Police Practices Experts have previously provided recommendations), and should develop a standardized format for instructors and lesson plan developers to follow.

76. The VIPD shall continue to keep adequate records of lesson plans and other training materials, such that the most current training documents are maintained in a central, commonly accessible file, and are clearly dated.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 76 of the Consent Decree.

VIPD Report:

The VIPD reports that the Training Bureau on both Districts maintains records of all training, lesson plans, instructor certifications, and other training related information.

OIM Report:

During the Third Quarter, the OIM did not review the manner in which the Department maintains its training records. However, as noted in ¶ 75, a Police Practices Expert reviewed lesson plans provided by the VIPD during the Third Quarter. In addition, the OIM intends in future quarters to review how the Department maintains its records, particularly as the Department transitions to storing its training records electronically.

Recommendations:

As we have emphasized in previous reports, the VIPD should continue to develop lesson plans for all training programs in advance of the corresponding training (and in most cases while the policy is being finalized) so they can be vetted appropriately, including review of all lesson plans by the Director of Training and the VIAG, if necessary, without delaying training. VIPD should demonstrate to the Police Practices Experts during future monitoring trips that the Department maintains adequate records of lesson plans and other training materials, and that the most current training documents are maintained in a central location and clearly dated.

77. The VIPD shall continue to maintain training records regarding every VIPD officer that reliably indicate the training each officer has received. The training records shall, at a minimum, include the course description and duration, curriculum, and instructor for each officer.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 77 of the Consent Decree.

VIPD Report:

The VIPD reports that the Training Bureau on both Districts continues to maintain an electronic database of training records. The VIPD anticipates that the recently installed storage servers will enhance the capacity for storing this information.

OIM Report:

During the Third Quarter, the OIM did not review the Department's training records. As reported during the Second Quarter, however, training records on both Districts were incomplete. While monitoring in-service training, the Police Practices Experts frequently observed VIPD personnel failing to attend the training when they were scheduled, arriving late, frequently absenting themselves for long periods during the training session, and leaving early. Until the VIPD establishes better control of officer attendance, the reliability of officer training records will remain suspect. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

Recommendations:

VIPD should demonstrate to the Police Practices Experts during future monitoring trips that the Department maintains records for every Officer

detailing the training received, including a course description and duration, curriculum, and course instructor for each training.

78. The Training Director will review all use of force training and use of force policies on a regular basis to ensure compliance with applicable laws and Virgin Islands Police Department policy. The Training Director will consult with the Attorney General's Office on any additions, changes and/or modifications regarding use of force training or policies to ensure compliance with applicable laws.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 78 of the Consent Decree.

VIPD Report:

The VIPD reports that it has abandoned pursuing a memorandum of understanding (“MOU”) with the VIAG because the VIAG has determined that the mandates are provided for within ¶ 78 and that a separate agreement is not necessary.²⁷

OIM Report:

During the Third Quarter, the Department announced an annual review of its use of force policies. As part of this process, the Acting Chief of the St. Croix District (in his role as the acting leader of the Use of Force working group) asked all Commanders to comment on the policies. The VIPD did not provide any information during the Third Quarter about the Commanders’ responses and what action, if anything, the Department as taken as a result.

Recommendations:

The Department should explain the process for its annual review of VIPD policies and the extent of the VIAG’s involvement in the review. The VIPD should document the results of this review and provide them to the OIM during the Fourth Quarter. The VIPD and VIAG should also explain any changes that are made to the Department’s use of force policies or training as a result of the annual review process described above. Under ¶ 103 of the Consent Decree, the burden is on the Territory and the VIPD to demonstrate compliance.

79. The VIPD will continue to provide all recruits, officers, supervisors, and managers with annual training on use of force. Such training will include and address the following topics: a) the VIPD 's use of force model,

²⁷ Based on the OIM’s understanding, the MOU would have created a formal arrangement for the VIAG to work with the VIPD in this regard.

as described in this Agreement; b) proper use of force decision-making; c) the VIPD's use of force reporting requirements; d) the Fourth Amendment and other constitutional requirements; e) examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making; f) interactive exercises that emphasize proper use of force decision-making; g) de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest may be the appropriate response to a situation even when the use of force would be legally justified; h) threat assessment; i) appropriate training on conflict management.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 79 of the Consent Decree.

VIPD Report:

The VIPD reports that it conducted training on several use of force related policies, including the Canine Policy, Impact Weapon Policy, and the Firearms Policy during the Third Quarter. The firearms simulator, which the VIPD states it purchased to conduct interactive training scenarios, continued to sit idle because the Department had not finalized a standard operating procedure for the simulator during the Third Quarter.

OIM Report:

The Police Practices Experts observed some of the training conducted by the VIPD during the Third Quarter. In August, a Police Practices Expert observed SWAT training held on St. Thomas. Overall, the training was well done, and incorporated classroom and practical exercises to emphasize the basic tenets of SWAT (i.e., plan, brief, execute, and debrief). The Police Practices Expert was pleased that the instructors addressed several important points, including the importance of mastering the Department's use of force policies, keeping current on the law and commonly accepted police practices, and the importance of having a plan and debriefing. The Police Practices Expert, however, noticed and discussed with the instructors that some of the VIPD personnel attending the training either missed the second day of training or left the classroom for prolonged periods. The instructor informed the class that attendance was mandatory in order to receive a certificate of completion. The Police Practices Expert also observed some VIPD personnel did not agree with the instructors technique, but was pleased to hear at least one Sergeant encourage his fellow Officers to remain open-minded and consider the instructors' lessons.

Another Police Practices Expert observed instructor training on the Spike Strip Policy and Vehicle Pursuit Policy held on St. Croix. The Police Practices Expert reported that the classroom portions of the training included information about commonly accepted practices for pursuit driving and the use of spike strips. The instructors devoted considerable time to the VIPD's policies and noted areas where the policies would need to be amended due to the nature of Virgin Islands streets and highways. While attending that training, the Police Practices Expert also learned that the Department has no formal criteria for selecting the Officers to receive instructor certification.

Recommendations:

The Training Division should work closely with the Chiefs and Deputy Chiefs to arrange further training (in-service, Roll Call, and Commanders Call) on certain policies for which compliance has been problematic based on the results of post-training examinations, Department audits, and OIM audits. The Training Division also should work closely with the Use of Force, Complaint Process, and Management and Supervision working groups to identify areas that require additional training, either through additional in-service training or Roll Call and Commanders Call training, to ensure that VIPD personnel adequately understand their obligations. In light of the Department's limited financial resources, every Officer who attends instructor certification training should intend to serve as an instructor. To date, that has not always been the case. More generally, the Department should also ensure that all instructor candidates have exemplary disciplinary records and performance evaluations. Finally, the OIM recommends that the VIPD develop formal criteria for selecting instructor candidates, including reviewing an Officer's disciplinary background and performance evaluations to ensure that appropriate candidates are selected.

80. The VIPD will continue to provide training to all its officers on the VIPD citizen complaint process. The VIPD will develop a protocol for all its officers on appropriate conduct and responses in handling citizens' complaints and will train officers in the protocol.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 80 of the Consent Decree.

VIPD Report:

The VIPD reports that the Department conducted further in-service training on the citizen complaint process during the Third Quarter. The VIPD provided the OIM with copy of the training lesson plans and post-training examination questions.

OIM Report:

The VIPD has issued the Acceptance of Citizen Complaints Policy pursuant to ¶ 42 of the Consent Decree. Despite providing additional training on the Acceptance of Citizen Complaints Policy during Officer in-service training in the Second Quarter, the Police Practices Experts saw no improvement in Officer's knowledge of the complaint process. While monitoring during the Third quarter, Police Practices Experts questioned Officers about their knowledge of the Acceptance of Citizen Complaints Policy and found that 40% (4 out of 10) of Officers on St. Thomas and 36% (4 out of 11) of Officers on St. Croix responded correctly when asked to explain the process for filing a citizen complaint.²⁸ Officers' responses on both Districts omitted key aspects of the policy, including: (1) the Officer's obligations when a citizen wants to file a complaint; and (2) how citizens will be informed about the outcome of the complaint.

Recommendations:

The VIPD has made significant progress issuing the Acceptance of Citizen Complaints Policy and the Investigating Misconduct and Citizens Policy. However, as the OIM's audits make clear, the VIPD must provide Officers with additional training on the complaint process and then conduct and document periodic audits to ensure that VIPD personnel are complying with the relevant policies. The VIPD should develop a process for identifying personnel who continually fail to demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

81. The VIPD will provide training on appropriate burdens of proof to all supervisors, as well as the factors to consider when evaluating complainant or witness credibility (to ensure that their recommendations regarding dispositions are unbiased, uniform, and legally appropriate). The VIPD will also continue to provide training to supervisors on leadership and command accountability, including techniques designed to promote proper police practices. This training will be provided to all officers promoted to supervisory rank within 90 days of assuming supervisory responsibilities, and will be made part of annual in-service training.

²⁸ We also note that an eleventh Officer on the St. Thomas District was asked about the Acceptance of Citizen Complaints Policy, but the Officer refused to respond.

Compliance Assessment:

The VIPD has not substantially complied with ¶ 81 of the Consent Decree.

VIPD Report:

The VIPD reports that the preponderance of the evidence standard was reviewed during a two-day training on the Investigating Misconduct and the Citizen Complaint Policy conducted during the Third Quarter. Questions testing Supervisors' knowledge were included in post-training examination, but the Compliance Coordinator has not received the results from the Citizen Complaint Process working group leader. The VIPD recognized that "ongoing training on the preponderance of [the] evidence standard will be beneficial to Supervisors helping them to competently and confidently apply this standard in the investigation of complaints." The Compliance Coordinator has recommended that the Director of Training include preponderance of the evidence training in in-service training schedules in the future.

The Compliance Coordinator's request that the VIAG help design test questions on the preponderance of the evidence standard to be used during in-service and Roll Call trainings continued to go unanswered during the Third Quarter.

OIM Report:

While monitoring on both Districts during the Third Quarter, the Police Practices Experts asked Supervisors about their understanding of the preponderance of the evidence standard. Demonstrating improvement over prior quarters, 71% (5 out of 7) of the Supervisors on St. Thomas and 60% (3 out of 5) of Supervisors on St. Croix correctly explained the preponderance of the evidence standard and how it differs from the beyond a reasonable doubt standard. The Complaint Process working group, however, did not provide the OIM with any documentation that it conducted similar audits to assess the proficiency of Supervisors with the preponderance of the evidence standard.

Recommendations:

The Training Division should offer training to Supervisors on the preponderance of the evidence and other responsibilities within 90 days of Supervisors assuming supervisory responsibilities (and on an ongoing basis thereafter). The Director of Training should evaluate post-training examinations to help assess the degree to which Supervisors understand the preponderance of the evidence standard and the lessons conveyed during training. The Director of Training should then schedule follow-up training based on the results of those post-training examinations. In addition, the VIPD should develop a process for identifying personnel who continually fail to

demonstrate knowledge of the policy, and provide remedial training or discipline as appropriate.

Conclusion

While the VIPD continues to make progress in certain areas, particularly in connection with the citizen complaint process, a tremendous amount of work remains. Completing timely and adequate use of force and complaint investigations is paramount for the Department to assess whether VIPD personnel are following Department policies, and for the Department to evaluate the need for further training and, if necessary, discipline personnel who consistently fail to comply with Department policies.

In order to achieve substantial compliance (and demonstrate substantial compliance to the OIM), the Department must (among other things) more rigorously audit whether VIPD personnel are complying with Department policies. This will require the Audit Team to be fully functional and to work with the Training Division, IAB, and the working groups. As we have previously, reported, a robust auditing function is essential to the Department's ability to ensure that policies are implemented, that personnel understand and comply with Department policies, and that remedial training or other required action is taken to ensure that VIPD personnel are equipped to carry out Department policies and procedures in their daily policing activities.

Finally, the Police Commissioner should hold every member of the VIPD responsible for doing their part to advance the VIPD's Consent Decree compliance efforts. After monitoring the VIPD for almost three years, we are certain that the VIPD will not achieve substantial compliance if the VIPD maintains the status quo.



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Appendix A

Summary of Consent Decree Requirements

Below is a summary of the requirements imposed by each substantive section of the Consent Decree. Because these summaries of the substantive requirements significantly lengthen our reports, we include them in this Appendix to provide the reader with context concerning the VIPD's progress in implementing the broad range of reforms required under each section of the Consent Decree.

I. Use of Force Policies (CD ¶ 31)

A. Requirements

Under paragraph 31 of the Consent Decree, the VIPD is required to review and revise its use of force policies as necessary to:

- Define terms clearly, including establishing a definition of force that is consistent with the definition of force under the Consent Decree;¹
- Incorporate a use of force model that teaches officers to use, as appropriate, strategies such as disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units to assist with a situation;
- Advise VIPD officers that, whenever possible, individuals should be allowed to submit voluntarily to arrest before force is used;
- Reinforce that the use of excessive force will subject officers to discipline, possible criminal prosecution, and potential civil liability;
- Ensure that sufficient less lethal force alternatives are available to all VIPD officers; and
- Explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.²

¹ Under the Consent Decree, “[t]he term ‘force’ means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include ordinary, unresisted handcuffing. The term shall include the use of chemical irritant and the deployment of a canine and/or pointing a firearm at or in the direction of a human being.” CD ¶ 21.

This provision requires that the VIPD implement its revised use of force policies immediately after the DOJ has reviewed and approved finalized versions of the policies.

II. Evaluation, Documentation, and Review of Uses of Force (CD ¶¶ 32-41)

A. General Use of Force Events (CD ¶¶ 32-38)

1. Requirements

The Consent Decree requires that the VIPD document in writing all uses of force and develop a use of force reporting form on which officers are required to record each and every type of force used in an incident. The use of force reports must include: (1) a narrative description, prepared by a supervisor, of the events preceding the use of force; (2) a narrative description, prepared by the involved officer, of the event relating to the use of force incident; and, (3) audiotaped statements, as appropriate, from those officers.³

The Consent Decree requires officers to notify their supervisors following any use of force or allegation of excessive force. The supervisor must respond to the scene, examine the person who was subjected to the use of force for injury, interview him or her to determine the extent of any injuries, and ensure that the person receives medical attention, if necessary.

A supervisor must conduct a review and evaluation of each use of force by a VIPD officer. The Consent Decree contains the following requirements relating to these evaluations of uses of force:

- The supervisor must prepare a detailed narrative description of the incident that includes all of the facts and circumstances relevant to determining whether or not the involved officers' conduct was justified.

² The Consent Decree defines “deadly force” as “any use of force likely to cause death or serious physical injury, including, but not limited to, the discharge of a firearm.” CD ¶ 20.

³ The Consent Decree defines “supervisor” as a “sworn VIPD employee at the rank of corporal or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers.” CD ¶ 27.

- The supervisor must evaluate the grounds for the use of force and determine whether the involved officers' actions were consistent with VIPD policy.
- To filter out potential bias, reviews of use of force incidents may not be conducted by any officer who used force during the incident, whose conduct led to an injury, or who authorized action that led to a use of force or allegation of excessive force.
- Supervisors are required to interview all witnesses of a use of force, as well as all witnesses of any incident in which an injury results from a use of force. Supervisors must ensure that all officer witnesses provide a statement regarding the incident, subject to any limitations imposed by any applicable provision of collective bargaining agreements or law.
- Supervisors are not permitted to ask officers or other witnesses leading questions that might, for example, suggest legal justifications for the officers' conduct.
- Supervisors must consider all relevant evidence, including circumstantial, direct, and physical evidence, as appropriate. Supervisors are required to make reasonable efforts to resolve material inconsistencies between statements provided by witnesses and make determinations with respect to the credibility of witnesses when feasible. The VIPD is required to train all of its supervisors on methods and factors for evaluating the credibility of a witness.
- Supervisors are responsible for ensuring that use of force reports identify every officer who was involved in a use of force incident or was on the scene when the incident occurred. Supervisors must ensure that use of force reports reflect whether an injury occurred, whether medical care was provided to an injured person, and, if not, whether the person refused medical treatment. Supervisors also must ensure that use of force reports include contemporaneous photographs or video of all injuries resulting from the underlying incident. These images must be taken both before and after any treatment of the injuries, including the cleansing of wounds.
- Supervisors are required to evaluate the performance of all officers under their command who use force or were involved in

an incident that resulted in a subject being injured due to a use of force by an officer.

- Finally, the Consent Decree requires a Deputy Chief to review and evaluate every use of force performance review prepared by a VIPD supervisor. The Deputy Chief's review must include the identification of any deficiencies in the supervisors' reviews and must require supervisors to correct any such deficiencies. The Consent Decree requires the Department to hold supervisors accountable for the quality of their use of force reviews, including subjecting a supervisor to appropriate corrective or disciplinary action in cases where the supervisor failed to conduct a timely and thorough review, or failed to recommend or implement appropriate corrective action with respect to a subject officer.

The VIPD also must investigate all critical firearm discharges.⁴ These reviews must account for all shots fired and the locations of all officers who discharged their weapons. In connection with the investigation of all critical firearm discharges, the VIPD is required to conduct, as appropriate, ballistic or crime scene analyses, including gunshot residue and bullet trajectory tests.

B. Specific Force Policies (CD ¶¶ 39-41)

1. Requirements

The Consent Decree requires the VIPD to develop a Use of Firearms Policy that is consistent with applicable law and current professional standards. This policy must:

- Prohibit officers from possessing or using unauthorized firearms or ammunition and inform officers that any such use may subject them to disciplinary action;
- Establish a single, uniform system for reporting all firearm discharges;
- Prohibit officers from obtaining service ammunition from any source other than official VIPD channels;

⁴ The Consent Decree defines the term "critical firearm discharge" as "each discharge of a firearm by a VIPD officer with the exception of range and training discharges and discharges at animals." CD ¶ 22.

- Specify the number of rounds VIPD officers are authorized to carry; and,
- Require that all discharges of firearms by officers, including unintentional discharges, whether on duty or off-duty at the time of the discharge, are reported and investigated.

The VIPD also must develop a revised policy regarding officers' off-duty conduct that:

- Provides that, absent exigent circumstances, off-duty officers must notify the VIPD or the relevant local law enforcement agency before taking police action; and
- Requires that an officer who responds to an incident while off-duty must submit to field sobriety, breathalyzer, and/or blood tests if it appears that the officer had consumed alcohol or was otherwise impaired at the time of the incident.

Finally, the VIPD is required to implement a policy that provides for an intermediate force device that falls between the use of chemical spray and the use of a firearm on the use of force continuum. This intermediate force device must be one that can be carried by officers at all times while on-duty. The VIPD must incorporate the use of this intermediate force device into its use of force continuum and train officers in the device's use on an annual basis.

III. Citizen Complaint Process (CD ¶¶ 42-58)

A. Public Information (CD ¶¶ 42-43) & Means of Filing and Tracking Complaints (CD ¶¶ 44-45)

1. Requirements

The Consent Decree requires the VIPD to develop and implement a program to inform members of the public that they may file complaints regarding the performance of any VIPD officer. The Consent Decree contains the following requirements with respect to this public information program:

- The VIPD must develop and distribute complaint forms, fact sheets, informational posters, and public service announcements that describe its citizen complaint process.
- The VIPD must make complaint forms and informational materials available at government facilities, including VIPD

stations, substations, mobile substations, and libraries. These forms and materials also must be available on the Internet and, upon request, with community groups and at community centers.

- Each VIPD station, substation, and mobile substation must permanently post a placard that describes the complaint process and includes relevant contact information, including telephone numbers. These placards must be displayed in English, Spanish, and, where necessary in light of the local community, in French or French Patois.
- VIPD officers are required to carry English, Spanish, French, and French Patois⁵ versions of complaint forms and informational brochures in their vehicles at all times while on duty.
- If a citizen objects to an officer's conduct, the officer is required to inform the citizen of his or her right to make a complaint.
- Officers are prohibited from discouraging any person from making a complaint concerning an officer's conduct.

The Consent Decree imposes the following requirements relating to the availability of means by which members of the public may lodge complaints against VIPD officers and the tracking of such complaints:

- The VIPD must be able to receive complaints filed in writing or orally, in person or by mail, and by telephone (or TDD), facsimile, or electronic mail.
- The duty officer at the front desk of each District station shall be authorized to take complaints, including third-party complaints. At the intake stage, an officer taking a complaint is permitted to describe facts that relate to a complainant's demeanor and physical conditions but may not express

⁵ The OIM notes that paragraph 43 of the Consent Decree does not expressly require VIPD officers to carry French language complaint forms and informational brochures in addition to French Patois. However, in light of the third sentence in paragraph 43 (which requires French language placards describing the complaint process), the OIM believes that this was an inadvertent omission. For future printings of brochures and other similar promotional information, the OIM suggests that the VIPD create versions in English, Spanish, French, and French Patois to satisfy the intent of the Consent Decree.

opinions regarding the complainant's mental competency or veracity.

- Upon receipt, the VIPD is required to assign each complaint a unique identifier number, which must be provided to the complainant.
- The VIPD must track each complaint according to the type of misconduct alleged in the complaint (e.g., excessive force, discourtesy, and improper search).
- Copies of all allegations of misconduct against a VIPD officer that are filed with the Zone Commands shall be referred to the IAB within five business days.

B. Investigation of Complaints (CD ¶¶ 46-58)

1. Requirements

The Consent Decree establishes numerous specific requirements relating to the investigation of complaints against VIPD officers, including the following:

- Complaints must be evaluated based on a preponderance of the evidence standard. The VIPD is required to develop and implement appropriate training regarding application of the preponderance of the evidence standard in internal investigations of allegations of officer misconduct.
- The VIPD must explicitly prohibit an officer from being involved in the investigation of a complaint or incident if the officer used force during the underlying incident, was involved in conduct that led to the injury of a person during the incident, or authorized the conduct that led to the reported incident.
- The VIPD must investigate every citizen complaint and the resolution of each complaint shall be documented in writing.
- The VIPD must develop a clear policy and procedure regarding the intake of complaints, including anonymous and confidential complaints, against VIPD officers.
- The Department must implement a centralized system for numbering and tracking all complaints.

- IAB is responsible for determining whether each individual investigation of a complaint will be assigned to a Zone, retained by IAB, or referred for possible criminal investigation.
- If IAB refers a complaint to one of the Zones for investigation, the Zone must immediately forward to IAB copies of all documents, findings, and recommendations so that IAB is able to track and monitor the investigation.
- The Police Commissioner must be notified of all complaints alleging excessive force or violation of a person's Constitutional rights within twenty-four hours of the VIPD's receipt of the complaint.

The VIPD also is required to develop a single policy governing the investigation of misconduct complaints, regardless of whether the investigation of such complaints is conducted by IAB or a Zone command. This policy must:

- Provide guidance concerning factors for investigators to consider in evaluating the credibility of the complainant and other witnesses, examining and interrogating accused officers and other witnesses, identifying potential misconduct that is not specifically referred to in the complaint, and applying the preponderance of the evidence standard. The VIPD also must train all officers who perform internal investigations on these issues.
- Require that VIPD investigators ensure that all officers present at the scene of the underlying incident provide a statement and that all interviews be recorded, as appropriate, on audio or video.
- Require that investigation findings include conclusions regarding whether:
 - The police action was in compliance with policy, training, and legal standards, regardless of whether the complainant suffered harm;
 - The incident involved misconduct by any officer;
 - The use of different tactics could have, or should have, been employed;

- The underlying incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures; and
 - The incident suggests that the VIPD should revise its policy, training, or tactics.
- Establish that each allegation investigated must be resolved by a finding of either “unfounded,” “sustained,” “not sustained,” or “exonerated.”⁶
 - Provide guidance to all investigators regarding procedures for handling allegations of potential criminal misconduct, including the referral of such allegations to the Virgin Islands Attorney General’s Office or other appropriate agency for possible criminal prosecution. The policy must establish the entity or individual responsible for making the determination as to whether a matter should be investigated criminally. The policy also must require the completion of the VIPD’s administrative investigations of potentially criminal misconduct, regardless of the initiation or outcome of any criminal proceedings.
 - Require that all relevant police activity, including each use of force, be investigated, even if the activity or force was not specifically complained about.
 - Require that investigations evaluate any searches or seizures that occurred during the underlying incident.
 - Prohibit investigators from closing an investigation solely because a complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of an injury, or the complainant will not provide additional statements or written statements. The policy shall require that, under such circumstances, investigators must continue the investigation as necessary to determine whether the allegations

⁶ Under the Consent Decree, a finding of “unfounded” means that there are insufficient facts establishing that the alleged incident actually occurred. A finding of “sustained” means that there is sufficient evidence to determine that the alleged incident occurred and that the officer’s actions were improper. A finding of “not sustained” means that there is insufficient evidence that the alleged misconduct occurred. Finally, a finding of “exonerated” means that the alleged conduct occurred but that the conduct did not violate VIPD policies, procedures, or training. Each of these findings must be based on a preponderance of the evidence standard. CD ¶ 57.

can be resolved based on available information, evidence, and investigative techniques.

- Prohibit investigators from considering the fact that a complainant pleaded guilty to, or was found guilty of, an offense as evidence of whether or not an officer used a type of force or as a justification for the investigator to close the investigation.

The VIPD must keep complainants periodically informed of the status of the investigation of their complaints. Upon the completion of each investigation, the VIPD must notify the complainant of the outcome of the investigation, including an appropriate statement regarding whether any disciplinary action or non-disciplinary corrective action was taken against any officer.

Finally, the Consent Decree requires that unit commanders evaluate each investigation of an incident under their command in order to identify potential problems or training needs. Unit commanders must report any such issues to the appropriate VIPD entity in the form of a recommendation that appropriate action in response to the identified issues be taken.

IV. Management and Supervision (CD ¶¶ 59-72)

A. Risk Management System (CD ¶¶ 59-68)

1. Requirements

The Consent Decree requires the VIPD to develop and implement a Risk Management System (“RMS”) that includes a computerized relational database or a paper system for maintaining, integrating, and retrieving information necessary for the supervision and management of VIPD personnel. The VIPD is required to use this data regularly to promote respect for civil rights and the employment of best police practices, manage risks, and potential liability for the Department, and evaluate the performance of VIPD officers and personnel across all ranks, units, and shifts.

The Consent Decree specifically requires the VIPD to collect and record the following information in its new RMS:

- All uses of force;
- Canine bite ratios;⁷
- The number of canisters of chemical spray used by officers;
- All injuries to prisoners;
- All instances in which a VIPD officer used force and the subject was charged with resisting arrest, assault on a police officer, disorderly conduct, or obstruction of official or police business;
- All critical firearm discharges, whether they took place on duty or off-duty;
- All complaints against officers and the dispositions of those complaints;
- All criminal proceedings, civil or administrative claims, and civil lawsuits resulting from VIPD operations or the actions of VIPD personnel;
- All vehicle pursuits;
- All incidents involving the pointing of a firearm;
- All disciplinary action taken against VIPD officers; and
- For incidents included in the database, appropriate identifying information for each involved officer (e.g., the officer's name, badge number, shift, and supervisor) and member of the public (including race and ethnicity or national origin, if such information is available).

The VIPD has the option either to purchase the RMS “off the shelf” and customize the system to VIPD’s requirements or to develop and

⁷ A canine bite ratio relates to apprehensions in which a canine unit participated. It is the ratio of incidents that involved the canine biting or otherwise coming into physical contact with the suspect compared to the overall number of such apprehensions in which a canine unit participated.

implement the RMS pursuant to a contracting schedule set forth in the Consent Decree.⁸

Within 120 days of the effective date of the Consent Decree, the VIPD is required to prepare a protocol for the use of the RMS, which must be submitted to DOJ for review and approval. Any proposed modifications to the RMS protocol also must be submitted to DOJ for review and approval prior to the implementation of the proposed modifications. The RMS protocol must contain:

- Provisions regarding data storage, data retrieval, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit;
- Requirements that the automated system be able to analyze data according to the following criteria:
 - The number of incidents for each data category by individual officer and by all officers in a unit;
 - The average level of activity for each data category by individual officer and by all officers in a unit; and
 - The identification of patterns of activity for each data category by individual officer and by all officers in a unit.
- Requirements relating to the generation of reports on a monthly basis that describe data contained in the RMS and identify patterns of conduct by individual officers and units;
- Requirements that VIPD Deputy Chiefs, managers, and supervisors initiate appropriate interventions with individual officers, supervisors, and units based on activity and pattern assessments derived from the information contained in the RMS and that the VIPD has the following intervention options available:
 - Discussions among Deputy Chiefs, managers, supervisors, and officers;
 - Counseling;
 - Training; and,

⁸ See CD ¶ 66.

- Documented action plans and strategies designed to modify officer conduct and activity.
- A requirement that all interventions be documented in writing and entered into the RMS;
- A provision that actions taken as a result of information derived from the RMS be based on all relevant and appropriate information—including the nature of the officer’s assignment, crime trends, and crime problems—and not solely on the number or percentage of incidents in any category of information recorded in the RMS;
- A requirement that VIPD Deputy Chiefs, managers, and supervisors promptly review the RMS records of all officers who transfer into their sections or units;
- A requirement that VIPD Deputy Chiefs, managers, and supervisors be evaluated based on their ability to use RMS to enhance the effectiveness of their units and to reduce risks associated with officer conduct;
- Provisions that IAB shall manage and administer the RMS and that IAB shall conduct quarterly audits of RMS to ensure compliance with the RMS protocol; and
- A requirement that appropriate managers conduct regular reviews, at least quarterly, of relevant RMS information to evaluate officer performance across the Virgin Islands. The purpose of such reviews is to evaluate and make appropriate comparisons regarding the performance of all VIPD units in order to identify significant patterns or series of incidents.

Within 120 days of the implementation of the RMS (or later with the agreement of DOJ), the VIPD must prepare, for the DOJ’s review and approval, a Data Input Plan for including appropriate fields and values for new and historical data entered into the RMS.

- The Data Input Plan must identify the data to be included in the RMS and the means for inputting the data, the specific fields of information to be included in the RMS, the historical time periods for which information will be inputted into the system, deadlines for inputting data, and the persons responsible for the input of data.

- The Data Input Plan must provide for the input of historical data that is up to date and complete into the RMS.
- Once the RMS is operational, the VIPD is required to enter information into the RMS in a timely, accurate, and complete manner and to maintain the RMS data in a secure and confidential manner.

The VIPD must maintain all personally identifiable information about individual officers that is contained in RMS for at least five years. The VIPD shall maintain information necessary for aggregate statistical analysis in the RMS indefinitely.

The Consent Decree requires the VIPD, even prior to the implementation of the RMS, to use existing databases and resources to the fullest extent possible to identify patterns of conduct by individual VIPD officers or groups of officers.

Following the initial implementation of the RMS, the VIPD may propose to add, subtract, or modify data tables and fields in the system, modify the types of documents entered into the RMS, or modify the standardized reports generated by the RMS. The VIPD is required to submit all such proposals to the DOJ for review and approval prior to implementing the proposed changes.

B. Oversight (CD ¶ 69)

1. Requirements

The Consent Decree requires the VIPD to develop a protocol for conducting audits within the RMS, which must be followed by the VIPD personnel responsible for conducting audits. The protocol must establish a regular and fixed audit schedule to ensure that such audits occur with sufficient frequency and cover all VIPD Zones.

C. Discipline (CD ¶¶ 70-72)

1. Requirements

The VIPD is required to use a disciplinary matrix to take into account a subject officer's violations of various rules, as opposed to considering only repeated violations of the same rule. The VIPD must revise its disciplinary matrix to increase penalties for uses of excessive force, improper searches and seizures, discrimination, and dishonesty. The revised disciplinary matrix, which must be reviewed and approved by DOJ, is required to provide the VIPD with the discretion to impose any

appropriate punishment when the VIPD believes an officer's misconduct reflects a lack of fitness for duty.

- Absent exceptional circumstances, the VIPD is not permitted to take mere non-disciplinary corrective action against an officer in cases in which the revised disciplinary matrix indicates that the imposition of discipline is appropriate.
- In cases in which disciplinary action is imposed on an officer, the VIPD is required to also consider whether non-disciplinary corrective action is necessary.

The VIPD's policy must identify clear time periods by which each step—from the receipt of a complaint through the imposition of discipline, if any—of the complaint adjudication process should be completed. Absent exigent circumstances, extensions of these deadlines must not be granted without the Police Commissioner's written approval and notice to the complainant. The policy must outline appropriate tolling provisions in the limited circumstances when an extension of these deadlines is necessary.

V. Training (CD ¶¶ 73-81)

A. Management Oversight (CD ¶¶ 73-77)

1. Requirements

The Consent Decree requires the VIPD to provide training to its officers that is consistent with VIPD policy, the law, and proper police practices. Accordingly, the Consent Decree requires that:

- The VIPD review all use of force policies and training to ensure quality, consistency, and compliance with applicable law and VIPD policy;
 - After completing its initial review of its force-related policies and training programs, the VIPD must conduct regular reviews of its use of force training program at least semi-annually.
- The VIPD must ensure that only mandated objectives and approved lesson plans are taught by training instructors; and,
- The VIPD must make best efforts to train each work shift as a team in its use of force training.

Under the Consent Decree, the VIPD's Director of Training, either directly or through his or her designees, is responsible for:

- Ensuring the quality of all use of force training;
- Developing and implementing use of force training curricula;
- Selecting and training VIPD officer instructors;
- Developing, implementing, approving, and overseeing all in-service training;
- In conjunction with the District Chiefs, developing, implementing, approving, and overseeing a protocol for patrol division roll calls that is designed to effectively inform officers of relevant changes in law, policies, and procedures;
- Establishing procedures for evaluating all training curricula and procedures; and
- Conducting regular training needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.

The VIPD must keep complete and accurate records of force-related lesson plans and other training materials. These lesson plans must be maintained in a central, commonly accessible file and must be clearly dated.

The VIPD also must maintain training records for every VIPD officer. These records must reliably reflect the training that each officer has received. These records must include, at a minimum, the course description, duration, curriculum, and instructor for each training program in which each individual officer participated.

B. Curriculum (CD ¶¶ 78-81)

1. Requirements

The Consent Decree requires the VIPD's Director of Training to review all use of force training and use of force policies on a regular basis to ensure that the training program complies with applicable laws and VIPD policy. Moreover, the Director of Training must consult with the Virgin Island Attorney General's Office concerning any additions, changes, or modifications regarding use of force training or policies to ensure compliance with applicable laws.

The VIPD must provide all recruits, officers, supervisors, and managers with annual training on the use of force. This use of force training must address the following topics:

- The VIPD's use of force model;
- Proper use of force decision-making;
- The VIPD's use of force reporting requirements;
- The Fourth Amendment and other Constitutional requirements;
- Examples of scenarios faced by VIPD officers that illustrate proper use of force decision-making;
- De-escalation techniques that encourage officers to make arrests without using force;
- Instruction that disengagement, area containment, surveillance, waiting out a suspect, summoning reinforcements, calling in specialized units, or delaying an arrest may be appropriate responses to a situation even when the use of force would be legally justified;
- Threat assessment; and
- Appropriate training regarding conflict management.

The VIPD also is required to provide training to all officers regarding the citizen complaint process. The VIPD must develop a protocol, to be used by all VIPD officers, that sets forth an appropriate process for handling and responding to complaints by members of the public. The VIPD must train officers regarding this protocol.

- The VIPD also is required to train all supervisors with respect to appropriate burdens of proof in conducting misconduct investigations. This training also must include a discussion of the factors investigators should consider in evaluating complainant or witness credibility.

Finally, the VIPD must provide training to all supervisors regarding leadership and command accountability, including techniques designed to promote proper police practices.

- This training must be provided to all officers promoted to supervisory rank within 90 days of the officer's assumption of

supervisory responsibilities. This training also must be made a part of the annual in-service training of supervisors.

**IV. Monitoring, Reporting, and Implementation
(CD ¶¶ 82-102)**

1. Requirements

The Consent Decree requires the VIPD to appoint a full-time Compliance Coordinator to serve as a liaison among the Virgin Islands Attorney General's Office, VIPD, the OIM, and DOJ. The Compliance Coordinator's responsibilities include:

- Coordinating the VIPD's compliance and implementation activity relating to the Consent Decree;
- Facilitating the provision of data and documents and access to VIPD employees and materials to the Monitor and DOJ as needed;
- Ensuring the proper maintenance of relevant documents and records relating to the Consent Decree; and
- Assisting the Police Commissioner and his designees in assigning compliance-related tasks to appropriate VIPD personnel.

In addition to fulfilling these functions, the VIPD must file with the Monitor and the Virgin Islands Attorney General's Office, with a copy to DOJ, quarterly status reports describing the steps taken during the reporting period to comply with each provision of the Consent Decree.

Finally, the Virgin Islands and the VIPD are required to implement the provisions of the Consent Decree "as soon as reasonably practicable" and, in any event, no later than 150 days after the March 23, 2009 effective date of the Consent Decree.