

LOS ANGELES POLICE COMMISSION

**REVIEW OF ALLEGATIONS
CLASSIFIED AS UNBECOMING
CONDUCT**



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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May 17, 2017

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**OFFICE OF THE INSPECTOR GENERAL
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I. INTRODUCTION

Through December 2015, the Internal Affairs Group (IAG)¹ of the Los Angeles Police Department (LAPD or the Department) has used 31 classifications to identify the type of misconduct alleged against employees. Since 2011, the most frequently used classification has been Unbecoming Conduct (UBC), accounting for 21% of all allegations.² Because UBC allegations are such a high percentage of the total number of complaints against officers, the Office of the Inspector General (OIG) conducted this review of UBC allegations to determine whether the classification was appropriate.³

II. CLASSIFICATION PROCESS

When a misconduct complaint is made, the complaint is investigated by either the division where the employee is assigned, or by the IAG. Upon completing the investigation, the Investigating Officer (I/O) is responsible for writing, or “framing,” the alleged misconduct into appropriate allegations. The IAG provides I/Os with a reference guide that contains suggestions for classifying these allegations (hereinafter referred to as the “Supervisor’s Reference”).⁴ The Supervisor’s Reference lists examples of misconduct by classification and provides sample wording to frame the allegation.

After the allegations are framed, the completed investigation is then forwarded to the involved employee’s command for adjudication, and when appropriate, disciplinary action. When all command review and action is completed, the complaint is sent to the IAG’s Review and Evaluation Section (R&E). The R&E reviews the completed complaint file and determines the final classification for each allegation. The R&E personnel do not evaluate the allegations using the I/O’s Supervisor’s Reference, but instead use the “Complaint Statistical Guidelines” (Complaint Guidelines) to classify the allegations.⁵ Complaint Guidelines provide general definitions of each classification without any examples.

III. REVIEW RESULTS

To evaluate the use of the UBC classification, the OIG examined misconduct complaints from 2015, when the Department closed 3,518 total complaints. Of those complaints, 447 with at least one UBC allegation were closed in the third quarter of 2015.⁶ From those 447, the OIG

¹ The IAG is a unit within the Professional Standards Bureau, which reports directly to the Office of the Chief of Police.

² LAPD, *Annual Complaint Report*, 2011-2015. In 2015, there were 10,599 total allegations; 2,270 (21%) were UBC.

³ The OIG’s Audit & Complaint Section completed this review and report.

⁴ LAPD Internal Affairs Group, *Complaint Investigations: A Guide for Supervisors*. 4th Edition V.2, May 2015, page IX, hyperlink no. 13. All IAG I/Os are of supervisory rank.

⁵ “Complaint Statistical Guidelines,” March 4, 2003, was obtained from R&E staff and appears to have been designed as a companion to Complaint Statistical Form 1.19. The OIG could not locate Complaint Guidelines on the Department intranet.

⁶ LAPD, *Annual Complaint Report*, 2015. “Closed” means both the investigation and adjudication were completed.

randomly selected 36 complaints for review.⁷ These 36 complaints were generated from the sources identified in the table below.

Table 1: Source of UBC Allegations

Source	No. of Complaints	Percent of Total
Public	26	72%
Department Employee	4	11%
Anonymous	3	8%
Department	2	6%
Other Law Enforcement Agency	1	3%
Totals	36	100%

The 36 complaints contained 70 UBC allegations, each of which the OIG reviewed. For 54 of the 70 allegations (77%), the OIG agreed that UBC was the appropriate classification. For the other 16 allegations (23%), the OIG believes that an alternative classification was more appropriate.

According to R&E’s Complaint Guidelines, UBC is defined as “Conduct on or off-duty, which may bring discredit to the employee, the Department, or the City, *and which is not specifically classified under another category*” (emphasis added).⁸ The 16 misconduct allegations discussed below were all classified by R&E as UBC. However, the OIG believes that 10 other, more specific, classifications provide a better description of the misconduct. For each of the 16 allegations described below, the alternative classification from either the Supervisor’s Reference or the Complaint Guidelines, or both, is provided.⁹

When the OIG advised the IAG about these 16 allegations, the IAG agreed with the OIG for seven, disagreed for seven, and did not respond for one. The IAG’s response for each disputed allegation is documented below, with the complaint and allegation numbers provided.

Allegation One - Discourtesy

The complaint alleged that an officer was discourteous¹⁰ when he threatened to arrest the complainant during a traffic stop. Both the Supervisor’s Reference and the Complaint Guidelines generally define a discourteous remark as a discourteous statement from a Department employee to a citizen.

The IAG believes that the allegation (CF 14-002646, No.1) was properly classified as UBC because the statement was a threat. However, IAG said, “In hindsight, it would have more

⁷ The OIG calculated its sample size of 36 complaints using a population of 447 complaints, a one-tail confidence level of 95%, an expected error rate of 6%, and a plus-precision of 6%.

⁸ The Supervisor’s Reference does not define UBC, but instead provides 71 different examples of UBC.

⁹ For the specific classifications provided, the OIG edited the Supervisor’s Reference or Complaint Guidelines wording for easier reading, but the allegation language is from the source text.

¹⁰ The “discourteous” wording was taken from the actual allegation written by the I/O.

appropriate to have framed one allegation of Discourtesy and one allegation related to the officer inappropriately threatening to arrest the complainant.” The OIG maintains that even though the allegation was a threat, the conduct fits the definition of Discourtesy contained in both reference guides.

Allegations Two and Three – False Imprisonment

The complaint alleged that officers ordered the complainants to exit a residence without cause. Both reference guides define False Imprisonment in the same general manner. The Supervisor’s Reference defines False Imprisonment as detaining or arresting without cause, whereas the Complaint Guidelines define it as a detaining or arresting a person without legal cause or reason.

The IAG believes that UBC (CF No. 14-002335, Nos. 1 and 2) was the proper classification because the allegations did not specify that the complainants were “detained” when the officer ordered them out of the residence. However, the OIG notes that, according to Department training, when an officer orders a person “to move to some other location, the encounter will be viewed as a detention.”¹¹ Therefore, according to both reference guides, False Imprisonment is the appropriate classification.

Allegation Four – False Statement

The complaint alleged that an officer knowingly submitted an arrest report that contained false information. The Supervisor’s Reference indicates that a False Statement is a report that the officer knew or should have known contained false information. The Complaint Guidelines define this same misconduct as a written communication made by an employee who knew or should have known the statement was false at the time it was made, or who fails to correct a statement upon learning it was false.

The IAG agreed the allegation was misclassified.

Allegation Five – Insubordination

The complaint alleged that an officer inappropriately stated to a sergeant, “Most Code 2 Calls are [redacted], you know that. You can read the comments and tell that. I’m only going to respond if it’s an officer needs help call.” The Supervisor’s Reference informs that an improper remark is classified as Insubordination when a Department employee makes the remark to a Department supervisor.¹²

The IAG agreed the allegation was misclassified.

¹¹ Training Bulletin, Volume XXXVII Issue 1, April 2006. “If an officer starts to give orders, demand answers, display a weapon, use a harsh tone, tell the person to stop what he or she is doing, or to move to some other location, the encounter will be viewed as a detention, and it will be illegal unless supported by “reasonable suspicion.”

¹² LAPD, *supra* note 4, at Insubordination.

Allegation Six – Narcotics /Drugs

The complaint alleged that an off-duty officer was smoking methamphetamine. The Supervisor's Reference says that Narcotics/Drugs is ingesting an illegal drug, while the Complaint Guidelines classify misconduct as Narcotics/Drugs when the behavior involves the use of illegal drugs.

The IAG agreed the allegation was misclassified.

Allegations Seven – Neglect of Duty

The complaint alleged an officer drove a Department vehicle while texting. The Supervisor's Reference explains that Neglect of Duty includes, while on duty, failing to obey traffic laws as required.

The IAG agreed the allegation was misclassified.

Allegation Eight – Neglect of Duty

The complaint alleged that officers inappropriately parked their police motorcycles at a red curb while at a restaurant. The Supervisor's Reference explains that Neglect of Duty includes, while on duty, failing to obey traffic laws as required.

The IAG did not respond to this classification.

Allegations Nine and Ten – Neglect of Duty

The complaint alleged that officers dissuaded the complainant from making a private person's arrest. The Supervisor's Reference informs that Neglect of Duty includes failing to accept a private person's arrest. The Complaint Guidelines define Neglect of Duty as failure to perform assigned duties, including failure to comply with Department policies and/or procedures.

The IAG believes that the allegations (CF 14-002708, Nos. 9 & 10) were properly classified as UBC. The OIG notes that the Department Manual states, "If an individual makes a private person's arrest and requests that an officer take a person into custody, the officer shall do so if there is probable cause to believe a criminal offense has been committed or an arrest warrant has been issued for the person being arrested."¹³

Allegation Eleven – Neglect of Duty

The complaint alleged that an off-duty police service representative was employed by a security company without a Department-approved work permit. The Supervisor's Reference provides that Neglect of Duty includes engaging in outside employment without a valid work permit.

The IAG agreed the allegation was misclassified.

¹³ LAPD Department Manual, Volume 4, Section 216.31, *Private Person's Arrest-Responsibility*, Third Quarter 2015.

Allegation Twelve – Sexual Misconduct

The complaint alleged an officer, while licking his lips and smiling, stared at the complainant's genitals. According to the Supervisor's Reference, Sexual Harassment includes inappropriately staring at a person's breasts or crotch area.

The OIG suggested that Sexual Harassment might be a more accurate classification. The IAG responded that the allegation (CF No. 14-002724, No. 7) was properly classified as UBC because, "The alleged misconduct was made to a member of the public. Sexual Harassment was not appropriate as this type of misconduct applies to behavior associated within the workplace. Therefore, UBC was more appropriate."¹⁴

Note: The issue with Sexual Harassment has been resolved with the updated Complaint Allegation Types, Complaint Statistical Form, Form 1.19, January 4, 2016, which R&E is currently using. The modified Sexual Misconduct classification now includes the kind of incident described above.

Allegation Thirteen – Sexual Misconduct

The complaint alleged that an officer placed his open hand over the complainant's clothed breast. Both guides inform that Sexual Misconduct is improperly touching another in a sexual manner.

The IAG agreed the allegation was misclassified.

Allegation Fourteen – Unauthorized Force

The complaint alleged an officer unnecessarily stuck needles or pins into the complainant's arm. Both guides refer to the unnecessary use of force as Unauthorized Force.

The IAG agreed the allegation was misclassified.

Allegation Fifteen – Unlawful Search

The complaint alleged that an officer entered the complainant's residence without cause. The Supervisor's Reference specifies that an Unlawful Search occurs upon unnecessarily entering a residence without permission. The Complaint Guidelines define Unlawful Search as knowingly conducting an unlawful search of a person, vehicle, or location.

The IAG believes that the allegation (CF 14-003070, No. 1) was properly classified as UBC. However, the OIG notes that, according to Department training, people have a reasonable expectation of privacy in their homes, and "a search occurs when a [reasonable] expectation of privacy . . . is infringed upon."¹⁵

¹⁴ IAG emailed response to OIG's draft report, dated November 10, 2016.

¹⁵ California Commission on Peace Officer Standards and Training, Basic Course Workbook Series, Student Materials, Learning Domain 16, Search and Seizure, Version 4.4, pages 1-5 to 1-7 (2006); available at <http://pdinfoweb/webmaster/sites/TrainingDivSite/left-nav-manuals.html>.

Allegation Sixteen – Unauthorized Tactics

The complaint alleged that an officer placed a gun to a person's head. The Supervisor's Reference provides examples of Unauthorized Tactics which include the unnecessarily displaying or pointing of a firearm at a person. The Complaint Guidelines define Unauthorized Tactics as those deemed by the Department to be improper or adjudicated as Administrative Disapproval.

The IAG believes that allegation (CF No. 14-002219, No. 3) was properly classified as UBC, and that the OIG's suggested classification of Unauthorized Tactics was improper because the suspect was already in custody at the time of the alleged gun pointing. The third-party complainant stated she did not know whether the pointing of the gun occurred before, during, or after the suspect was handcuffed. The OIG believes the definition of Unauthorized Tactics in the Complaint Guidelines provides the correct classification.

IV. DUPLICATE CLASSIFICATIONS IN A REFERENCE

While conducting this review, the OIG also noted that for 10 types of misconduct, the Supervisor's Reference identifies two different classifications for the same act of misconduct.¹⁶ The 10 types are described in the table on the following page.

Table 2: Misconduct Dually Classified in Supervisor's Reference

Type of Misconduct	Classification, per the Supervisor's Reference
1. Inappropriately converted (or attempted to convert) an official on-duty contact into a social relationship.	UBC & NOD
2. Engaged in off-duty security employment without the proper permit from the State of California.	UBC & NOD
3. Failed to pay registration fees for his/her personal vehicle.	UBC & NOD
4. Failed to wear his/her seatbelt.	NOD & Other Policy/Rule
5. Accessed a Department computer for non-duty-related activities.	UBC & NOD
6. Engaged in off-duty employment during his/her regularly scheduled duty assignment.	UBC & Dishonesty
7. Violated an administrative Stay-Away Order.	UBC & Insubordination
8. While off-duty and on light duty status, engaged in activity which was inconsistent with his/her medical claim.	UBC & Dishonesty
9. Engaged in off-duty employment while on sick/family illness status with the Department.	UBC & Dishonesty
10. Unnecessarily became involved in a dispute, which resulted in the response of on-duty officers.	UBC & Off-Duty Altercation

¹⁶ Although these 10 types of misconduct included UBC classifications, none were part of the 36 reviewed complaints.

The OIG suggests that identifying one type of misconduct as either of two classifications may result in disparate treatment of employees. For example, consider if two employees become involved in a dispute resulting in the response of on-duty officers (No. 10, above). If one employee's sustained misconduct is classified as UBC, that might result in a different penalty than that given to an employee with a sustained off-duty altercation.

V. CONCLUSIONS

From this review, the OIG noted that:

1. The R&E's Complaint Guidelines specifically instruct that UBC be assigned as the appropriate classification when the complaint "conduct . . . is not specifically [described] under another category."¹⁷ Despite this, the OIG identified that 23% of the UBC allegations reviewed might have been more specifically classified as an alternative category in either Supervisor's Reference, the Complaint Guidelines, or both. This finding suggests that UBC is being used too broadly.
2. The IAG uses two references, the Supervisor's Reference and the Complaint Guidelines, to inform Department personnel regarding allegation classification. While the OIG found that the sources often aligned, the OIG also found that the two references were not identical, and that the lack of uniformity may contribute to confusion or misclassification.
3. The Supervisor's Reference advises I/Os that the same misconduct may be defined as either of two different classifications for at least 10 types of misconduct.

VI. RECOMMENDATIONS

To remedy the issues identified in Conclusions, the OIG recommends that:

1. To avoid the overbroad use of UBC, the IAG instruct that UBC should be used *only* when the complaint misconduct is not more specifically described under another classification;
2. The IAG develop and use only one complaint classification reference guide for classifying allegations, for both I/Os and R&E; and
3. For any type of misconduct, the reference guide identifies that misconduct under one classification only.

¹⁷ Complaint Guidelines, *supra* note 5; the bracketed word in the original is "classified." The OIG inserted "described" to avoid confusion.