

**LOS ANGELES POLICE COMMISSION**

**REVIEW OF ETHICS  
ENFORCEMENT SECTION  
TESTS**

**3<sup>RD</sup> QUARTER, 2017 – 2<sup>ND</sup> QUARTER, 2018**



**CONDUCTED BY THE  
OFFICE OF THE INSPECTOR GENERAL**

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## **REVIEW OF ETHICS ENFORCEMENT SECTION TESTS 3<sup>RD</sup> QUARTER, 2017 – 2<sup>ND</sup> QUARTER, 2018**

### **I. INTRODUCTION AND BACKGROUND**

As directed by the Board of Police Commissioners (BOPC), the Office of the Inspector General (OIG) reviewed Los Angeles Police Department (LAPD or Department) Ethics Enforcement Section (EES) Quarterly Reports for the 3<sup>rd</sup> Quarter of 2017 through the 2<sup>nd</sup> Quarter of 2018.

The use of ethics enforcement tests, formerly known as “sting audits,” was one of the reforms implemented through the 2001 Federal Consent Decree. The consent decree required the Department to develop and initiate a plan for conducting “regular, targeted, and random integrity audit checks [...] to identify and investigate officers engaging in at-risk behavior,” as well as to identify and investigate officers “who discourage the filing of a complaint or fail to report misconduct or complaints.”<sup>1</sup>

The EES is a component of Special Operations Division (SOD). As stated in its quarterly reports:

The mission of EES is to safeguard the integrity of law enforcement operations within LAPD. In accordance with this mission, EES works closely with Internal Affairs Group and other Department managers to identify at-risk personnel and behaviors. Once identified, EES develops proactive strategies to test and curtail these behaviors.<sup>2</sup>

These reports also note that EES objectives fall into three primary categories:

- To develop tests that assess an employee’s conduct when they are “placed into a situation with the potential for at-risk behavior;”
- To serve as a resource for Department personnel who are attempting to identify or investigate an employee involved in potential at-risk behavior; and,
- To “create a sense of omnipresence” throughout the organization to ensure that incidents are handled ethically and legally, and in compliance with Department policy.<sup>3</sup>

Following each quarter, EES prepares a public statistical report that includes an analysis of the number, type, and final disposition of each test conducted during the previous quarter. Because of the confidentiality of these tests, the report does not include detail about the employees being tested or the scenarios being used. As such, the Commission routinely requests that the OIG conduct a review of these reports, as well as their underlying tests.

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<sup>1</sup> “Internal Affairs Group,” Los Angeles Police Department Consent Decree, Paragraph 97, 2001.

<sup>2</sup> Ethics Enforcement Section Quarterly Report, Third Quarter, 2017, Los Angeles Police Department, November 21, 2017.

<sup>3</sup> *Ibid.*

## II. STATISTICAL OVERVIEW

During the review period, EES reported the completion of 137 tests, with the following dispositions:<sup>4</sup>

- Pass (115) – The tested employee(s) performed their duties in accordance with established policy/procedure.
- Fail (3) – The tested employee(s) failed to perform in accordance with established policy/procedure. (Note that a test resulting in a disposition of “Fail” generally results in a Personnel Complaint being initiated against the involved employee[s].)
- Pass with Comments to Command (4) – Although an employee may have passed a test, the operation disclosed a concern that was later brought to the employee’s commanding officer (CO) for appropriate action.
- Attempt (12) – EES deployed in the field to conduct a test but, for reasons beyond their control, the test could not proceed (e.g., the targeted employee was on sick leave or vacation).
- Inconclusive (3) – The results of a test could not be clearly identified as Pass or Fail.<sup>5</sup>

Of these 137 tests, 72 were classified as “complaint intake” tests and 65 were classified as “integrity” tests. Complaint intake tests examine whether the front desk officers and/or field officers will properly notify a supervisor when requested or when misconduct has been alleged, and whether the supervisor will then initiate a complaint. Of these 72 complaint intake tests, 62 (86 percent) were telephonic tests, involving telephone calls by UCs to front desk officers. The remaining 10 (14 percent) were conducted as field tests, involving face-to-face contacts by UCs with field and front desk officers.

Integrity tests, which often involve UCs and/or covert surveillance, examine all other types of officer behavior. Each integrity test conducted is classified as either “specific” or “random.” A “specific” test is conducted on a specific officer suspected of a particular type of misconduct. In contrast, a “random” test is conducted on whichever officers respond to the test scenario or surveilled location. Of the 65 integrity tests, 26 were specific and 39 were random.

The misconduct categories tested and reported during integrity tests may include Constitutional Policing – Stops/Searches/Seizures, Neglect of Duty, Theft, Discourtesy, Unauthorized Force, Conversion (of an on-duty contact into an off-duty relationship), Sexual Misconduct, Unbecoming Conduct, and Policy/Procedure Violation.

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<sup>4</sup> Of these 137 tests, 5 were considered to be “open” random integrity tests that will not be closed until after the same tests are completed throughout the Department. The OIG’s review encompassed the 132 “closed” tests, and it is anticipated that the 5 “open” tests will be included in the OIG’s next review of EES.

<sup>5</sup> See Ethics Enforcement Section Quarterly Report, Third Quarter, 2017, pg. 3.

A statistical breakdown of the tests conducted during the review period can be found in the associated EES Quarterly Reports.

### **III. SCOPE OF OIG REVIEW**

The Commission directed the OIG to submit an analysis of each EES report reviewed, as well as any appropriate recommendations for improvement. To complete its review, the OIG focused on the following five areas: test design, execution, approvals, classification, and supporting documentation/recordings.

For each test reviewed, the OIG examined all documentation contained in the test folder, which included the following: (1) Test Request, (2) Operational Plan, (3) Close-Out Report, (4) Undercover Notes, (5) Secret Service Funds Request [if applicable], and (6) any other supporting documentation.<sup>6</sup> The OIG also reviewed all audio/video recordings made by EES personnel,<sup>7</sup> as well as all body-worn video (BWV) recordings made by the tested officers, when available.

Finally, to better understand EES field operations, the OIG also observed (via a ride-along) a random integrity test conducted on November 19, 2018. It is anticipated that the results of this test will be included in the EES Quarterly Report for 4<sup>th</sup> Quarter, 2018.

### **IV. REVIEW RESULTS**

Overall, the OIG determined that the testing processes and resulting paperwork generally complied with internal EES established practices. In conducting its review, however, the OIG noted that although EES uses forms and other mechanisms to foster consistency, it does not currently have written documents or guidelines codifying its administrative procedures or protocols. The OIG recommends that EES develop a set of written guidelines related to the initiation, planning, approval, execution, classification, and documentation of its tests to help ensure consistency and accountability across the process.<sup>8</sup> The OIG also identified a small number of issues, as noted in the following sections, which resulted in additional recommendations for improvement.

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<sup>6</sup> Supporting documentation included, for example, a Complaint Form (1.28) generated by the applicable division or by EES after a tested officer failed.

<sup>7</sup> Following an OIG recommendation made in February 2015, EES began covertly audio-recording tested officers, except during telephonic complaint intake tests. Per the City Attorney, during telephonic complaint intake tests, EES is only allowed to audio-record the UC's side of the conversation with the tested officer(s).

<sup>8</sup> Due to the sensitive and confidential nature of EES tests, as well as the need to maintain the flexibility to adapt them based on circumstances, the OIG acknowledges that it may be appropriate to exclude from these guidelines the specific methods and scripts used to conduct the tests.

### A. Test Classification

The OIG identified nine complaint intake tests that should have been classified as “Pass with Comments to Command” (PWCTC) rather than “Pass.” Each of these tests was classified as Pass by EES since the officer in question properly initiated a complaint of misconduct as required. The OIG determined, however, that a classification of PWCTC would have been more appropriate due to other concerns about the conduct or performance of the tested officers. These concerns are described below.<sup>9</sup>

<b>Test No.</b>	<b>2017 Conduct or Performance Concerns for Tested Officers</b>
17-075	Sergeant did not record phone number provided by UC on Complaint Form.
17-084	Sergeant did not: (1) ask UC for address and record it on Complaint Form, or (2) input name provided by UC in designated field on Complaint Form. (However, it is noted that the name was mentioned in the Intake Summary section of the form.)
17-114	Sergeant did not record address provided by UC on Complaint Form.
17-117	Sergeant re-contacted UC three times, attempting to audio-record conversation, even after UC specifically requested that Sergeant not do so.
17-120	On first call, civilian volunteer was rude and “hung up” phone on UC. On second call, Officer told UC to call back. On third call, Sergeant took “biased policing” (BP) complaint but incorrectly stated on original intake summary that BP investigation checklist could not be completed because accused officers were not identified.
17-130	Sergeant who ultimately took complaint yelled and interrupted UC and did not want to provide badge number to UC. (Additionally, UC did not document Sergeant’s discourtesy in the notes).
<b>Test No.</b>	<b>2018 Conduct or Performance Concerns for Tested Officers</b>
18-007	Sergeant did not record address provided by UC on Complaint Form.
18-021	Sergeant did not record address provided by UC on Complaint Form.
18-059	Sergeant did not record address provided by UC on Complaint Form.

<sup>9</sup> Per Department Manual § 3/815.01 GENERAL INVESTIGATION GUIDELINES: “[T]he following procedures shall apply to complaint investigations: [...] Obtaining names, addresses, and telephone numbers of all witnesses, and a summary of their statements. (Indicate the times, locations, and business and residence phone numbers where witnesses will be available for re-interview.)”

**B. Test Documentation**

*1. Approval Document for use of Secret Service Funds was not Maintained in the File*

The following two integrity tests involved the use of secret service funds (SSFs). However, it was noted that the required SSF pre-approval document had not been retained in the file.

Test No.	\$ of SSF Used	How SSF Was Used by EES
17-104	\$250	Test for possible Officer theft of money from UC’s car.
17-136	\$200	Test for possible sale of stolen property by Officer to UC.

*2. Audio Recording Was Not Reviewable by the OIG*

For nine telephonic complaint intake tests<sup>10</sup>, the audio recording referenced in the file was not reviewable by the OIG. For some tests, the Department’s process of copying the recording to a compact disc (CD) was unsuccessful; for other tests, the copied recording on the CD was not playable. Therefore, the OIG could not listen to the UC’s side of the conversation with the tested officer(s).<sup>11</sup>

*3. TEAMS II Complaint History Report Not Maintained in the File*

For nine specific integrity tests<sup>12</sup>, the tested officer’s TEAMS II complaint history report was not maintained in the file. Management review of this complaint history is required to be completed prior to the initiation of a specific integrity test. Without maintaining the documentation in the file, the OIG was unable to check for compliance with this requirement.

*4. Email Communications Not Maintained in the File*

In those cases resulting in a classification of PWCTC, it is the practice of the CO of SOD to send an email communicating concerns about tested officers’ conduct to the relevant CO, except in cases when an officer is to be re-tested by EES. For two tests of one particular officer that were conducted on the same day, both of which were classified as PWCTC,<sup>13</sup> the files did not contain this email to the CO. As such, the OIG was not able to review these communications.

<sup>10</sup> Nos. 17-076, 17-086, 17-097, 17-107, 17-108, 17-135, 18-006, 18-012, and 18-029.

<sup>11</sup> As noted earlier, EES is permitted to audio-record only the UC’s side of the conversation with the tested officer(s).

<sup>12</sup> Nos. 17-080, 17-088, 17-090, 18-026, 18-030, 18-033, 18-045, 18-053, and 18-069.

<sup>13</sup> Nos. 18-029 and 18-030.

## **V. RECOMMENDATIONS**

Based on its review and findings, the OIG recommends that the Department:

1. Develop written administrative guidelines or protocols related to the initiation, planning, approval, execution, classification, and documentation of EES tests.
2. Ensure that in any case where an officer passes a test but raises another concern related to conduct or performance:
  - the test is classified as PWCTC;
  - the concerns are timely communicated to the tested officer's CO; and,
  - the communication to the CO is documented in the test file.
3. Require that UCs document any employee discourtesy in the relevant UC notes and summary report. The CO of SOD should then determine whether the discourtesy warrants a re-test of, or the initiation of a complaint against, the tested officer.
4. Ensure that for each test using SSF, the test file contains documentation evidencing pre-test approval of the SSF usage.
5. Verify that all recordings retained as part of an EES test are playable or provide an explanation if any recordings are determined to be unplayable.
6. Maintain the tested officer's TEAMS II complaint history report in the test file for each specific integrity test.

## **VI. DEPARTMENT'S RESPONSE**

The Department generally agreed with the OIG's findings and recommendations and indicated that it has already begun to make changes that are necessary for the implementation of the recommendations.