



**U.S. Department of Justice**

**Civil Rights Division**

*Special Litigation Section - PHB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20035*

October 5, 2005

**Via Federal Express and U.S. Mail**

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Re: United States Department of Justice Investigation of  
the Virgin Islands Police Department

Dear Attorney General Drue, Commissioner Lewis and Attorney King:

As you know, in March 2004, the Civil Rights Division initiated an investigation of the Virgin Islands Police Department ("VIPD"), pursuant to Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"). We would like to take this opportunity to express our appreciation for the cooperation and documents that we have received thus far from the Virgin Islands and the VIPD. However, as you know, we have made repeated requests for and are still awaiting receipt of a number of documents, such as outstanding prosecutorial opinions and investigative files. We would greatly appreciate production of these items as soon as possible in order to complete our investigation.

To date, we have reviewed relevant VIPD policies and procedures and conducted interviews with Virgin Islands officials, VIPD command staff, a cross-section of VIPD supervisors and VIPD police officers.

At the beginning of our investigation, we committed to providing the Virgin Islands with technical assistance to improve VIPD's practices and procedures and ensure compliance with constitutional rights. During our meetings with you and the VIPD command staff in April, July and August 2004, we told you that we would provide in writing more specifics about recommendations our police practices experts had made orally. In this letter, we convey our recommendations regarding the VIPD's written policies. Important aspects of our fact-gathering process have yet to be completed, most notably reviewing documents related to specific incidents of VIPD officers' uses of force. Therefore, this letter is not meant to be exhaustive, but rather focuses on significant recommendations we can provide at this preliminary stage of our investigation.

We hope this letter will assist in our mutual goal of ensuring that the VIPD provides the best possible police service to the people of the Virgin Islands. We look forward to continued cooperation toward this goal. We would be happy to provide examples of policies used by other police departments that might address some of the issues we raise below.

#### **I. VIPD POLICIES AND PROCEDURES**

**The VIPD should revise and update its policies and procedures to be consistent and comprehensive.**

Policies and procedures are the primary means by which police departments communicate their standards and expectations to their officers. Accordingly, it is essential that the VIPD's policies be comprehensive, comprehensible, up-to-date and consistent with relevant legal standards and contemporary police practices.

It is our understanding that the VIPD's policies and procedures are contained throughout various documents, including a police manual, a field manual, general orders and standard operating procedures. The official police and field manuals were adopted twenty years ago in 1985. Although some policies and procedures have been revised and updated through the issuance of general orders and standard operating procedures, the majority of the VIPD's policies and procedures remain outdated. Moreover,

the field and police manuals do not consistently incorporate subsequent changes. Significant VIPD policies, such as those relating to the use of force, use of firearms and investigations are not organized by subject matter in one document, but instead are spread throughout different documents. As we discuss in detail below, several VIPD policies and procedures are inconsistent with generally accepted police practices and are insufficiently detailed to provide the appropriate guidance for officer conduct.

VIPD policies and procedures should apply uniformly and consistently to all Virgin Islands police officers, whether they are located on St. Croix, St. Thomas or St. John. We understand that several VIPD policies and procedures vary from island to island. For example, the Standard Operating Procedure ("SOP") for the Internal Affairs Units ("IAU") for St. Croix and St. Thomas/St. John are different.<sup>1</sup> We understand that even officer uniforms vary for each island. It is important for a police department, even one with particular geographical boundaries such as the Virgin Islands, to have consistent policies, procedures and practices.

We recommend that the VIPD's policies and procedures be consolidated into one document for all three islands. Although we do not provide line-by-line edits and recommendations for all of the VIPD's policies and procedures, we have endeavored to provide the VIPD with general recommendations regarding generally accepted police practices for significant VIPD policies and procedures (i.e., use of force, citizen complaints, investigations, discipline, supervisory oversight and training).

We recommend that updated and complete policies and procedures be distributed to all officers, and all officers should provide a written acknowledgment of their receipt, review and understanding of all VIPD policies. We suggest VIPD designate an individual to be responsible for reviewing the manuals and any revisions or new policies to ensure consistency. This individual would also be responsible for ensuring that all officers receive copies of the manuals and revisions, and for maintaining copies of officers' signed acknowledgments.

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<sup>1</sup> There is one IAU for St. Croix and another IAU for St. Thomas/St. John. Both IAUs are under the supervision of the Director of the Internal Affairs Bureau. For purposes of this letter, unless otherwise noted, references in this letter to the IAU SOP are references to the St. Croix IAU SOP, which appears to contain more information than the St. Thomas/St. John IAU SOP.

## II. USE OF FORCE

**The VIPD should revise its use of force policies regarding the use of force by VIPD officers and adopt an appropriate use of force continuum.**

In the course of duty, police officers are sometimes required to use deadly and non-deadly force. Because the use of force can place officers, civilians and subjects at serious risk of harm, it is incumbent upon law enforcement agencies to ensure that officers use force appropriately. Use of force policies and procedures must clearly set forth standards for appropriate use of force that are in accordance with constitutional standards.

### A. Legal Standards Governing the Use of Force

Uses of excessive force by police officers are violations of the Fourth Amendment and are analyzed under the Fourth Amendment's objective reasonableness standard. Graham v. Connor, 490 U.S. 386, 394 (1989). The analysis requires a balancing of the quality of intrusion on the individual's Fourth Amendment interests against the governmental interests. Id. at 396. The criteria courts apply to assess an excessive force claim include the severity of the crime at issue, whether the suspect presents an immediate safety threat to the officers or others, and whether the suspect is actively resisting or attempting to evade arrest. Id.; Abraham v. Raso, 183 F.3d 279, 288 (3d Cir. 1999). Lack of specific policy guidance on the appropriate use of force may lead officers to believe that they are justified in using force in situations in which it would be unreasonable or unnecessary. Conversely, unclear or overly general policies may result in officers refraining from using necessary and appropriate force out of an unwarranted fear of using excessive force.

The Supreme Court held that deadly force is permissible only when a suspect poses an immediate threat of serious physical harm to the officer or another person. Tennessee v. Garner, 471 U.S. 1 (1985). The only exception to this general rule is the "fleeing felon" rule, which allows police officers to use deadly force to prevent the escape of a suspect in cases where there is probable cause to believe the suspect either poses an immediate threat of serious harm to the officer or another, or has committed a crime involving the infliction or threatened infliction of serious physical harm. Id.; Abraham v. Raso, 183 F.3d 279, 288 (3d Cir. 1999). Yet, even in such circumstances, police are required to provide a warning, if feasible, before

using deadly force. Garner, 471 U.S. at 11. Deadly force is permissible only for as long as the threat remains. When the threat is over, the use of deadly force must stop. VIPD's use of force policy does not comport with these legal standards. Accordingly, as discussed in further detail below, we recommend that the VIPD's use of force policy be revised to incorporate these constitutional standards.

B. VIPD's Use of Force Policy<sup>2</sup>

Current VIPD policy instructs officers that they may use force as permitted by law, but the policy does not adequately identify authorized weapons or define key terms in the policy, such as "deadly force" and "deadly physical force." The use of force policy is inconsistent with applicable legal standards and does not outline the limitations on the use of deadly and non-deadly force, including de-escalation techniques.

We recommend the use of force policy identify the weapons that are authorized for use by the department and where each weapon falls on the use of force continuum, discussed in further detail below. We recommend that the VIPD define key terms, such as force, deadly physical force, serious use of force, serious bodily injury, etc. The definition of deadly force should include any use of force that is likely to cause death or serious bodily injury in accordance with Tennessee v. Garner, 471 U.S. 1 (1985). The lack of clear and consistent definitions of key terms in a use of force policy is particularly important given the current absence of in-service training for VIPD officers. We recommend that the VIPD's use of force policy identify any uses of force that are specifically prohibited or restricted to limited circumstances (e.g., choke holds or carotid control holds). The policy should include a description and the dangers of positional asphyxia and the methods and procedures to avoid it.

We recommend the VIPD use of force policy specify that

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<sup>2</sup> During our tour of St. Croix we received a document labeled "Proposed Use of Force Policy, General Order 2004-001." General Order ("GO") 2004-001 is currently being used as VIPD's Use of Force Policy. Reportedly, however, the policy still requires the Governor's final approval before it is an official policy. Our observations and recommendations are based on our review of GO 2004-001 and, where applicable, the VIPD Police Manual, VIPD Field Manual, Standard Operating Procedures, and other relevant GOs.

"deadly physical force" includes force methods that employ potentially lethal weapons (i.e., firearms, PR-24, etc.). Due to the possibility of death or serious bodily injury from the delivery of blows to the head with impact weapons, we recommend that the VIPD specifically limit strikes to the head with impact weapons, such as the PR-24 or flashlights, as tactics of last resort to be used only when the use of deadly force would otherwise be authorized. The only guidance the current VIPD policy provides regarding head strikes is that they "should be avoided to the extent possible." (GO 2004-001, Section 4.2.4.).

VIPD's policy should also define "non-deadly force." We recommend that the VIPD's definition include all uses of force beyond un-resisted handcuffing including, but not limited to, the use of hard-hand tactics, Oleoresin Capsicum ("OC"), and strikes with impact weapons. The use of force policy should include alternatives to more significant uses of force, such as emphasizing announcement of officers' presence, verbal commands, the use of "soft hand" techniques (i.e., using hands to escort rather than control subjects) and other de-escalation techniques. At a minimum, the policy should require that officers use the lowest level of force necessary to safely resolve a situation, including non-threatening verbal commands and alternative negotiation techniques.

VIPD's use of force policy should incorporate the de-escalation techniques appropriate to interactions with individuals with mental illness or who are under the influence of drugs or alcohol, including guidance to officers regarding the signs or symptoms for identifying such individuals. The policies and procedures should be revised to incorporate recent research and studies on police interactions with persons with mental illness and how best to accommodate these individuals. VIPD should establish special response teams on St. Thomas and St. Croix, composed of at least two officers who are specifically designated and trained, to respond to all situations involving individuals with mental illness. VIPD should establish a working relationship with local public mental health providers as a resource for training and support. Whenever practical, local mental health providers should be called to the scene of incidents involving persons with mental illness so that VIPD officers can utilize their knowledge and training.

### C. Use of Force Continuum

The VIPD's use of force continuum, which is included as an attachment to GO 2004-001, is incomplete because it fails to address and include several essential elements, such as adequate

and understandable diagrams and force definitions, the authorized types of force and authorized weapons.

We recommend the VIPD develop a comprehensive use of force continuum that augments and enhances a revised use of force policy. The use of force continuum should be a fluid and flexible policy guide to provide effective and efficient policing. Consistent with the practices of many other police departments, the continuum should be used to train officers to consider lower levels of force first, which protects the safety of both the officer and the civilian.

We recommend that the VIPD's use of force continuum be revised to provide diagrams that illustrate the various descriptions of uses of force that may be employed and make them consistent with the terms and definitions outlined in other parts of the policy. The descriptions of force should be more detailed and include descriptions of how the various force options may be used, how the various applications of the options affect their placement in the use of force progression, and what level of force is appropriate in response to different levels of resistance by suspects, including de-escalation techniques and interactions with individuals with a mental illness or who are under the influence of drugs or alcohol. The continuum should include all of the actual types of force used by VIPD, including, firearms, OC spray, PR-24s, canines, batons, and any other use of force.

#### D. Specific Force Policies

We have reviewed VIPD's use of force policies regarding specific uses of force and have the following comments.

##### 1. Firearms

VIPD policies fail to provide clear guidance and comprehensive procedures regarding the use of firearms. Current VIPD policies inconsistently refer to the types of weapons and ammunition that are authorized to be carried by officers. For example, Section 5.7.3 of the VIPD Police Manual specifies that the regulation service revolver of the VIPD is a .38 caliber revolver, but GO 90-1 appears to revise this and specifies that the regulation service weapon for the VIPD is the .9 millimeter semi-automatic pistol or the .38 Special Double Action Revolver with a four-inch barrel. The policies fail to provide sufficient guidelines for firearms qualification. They fail to specify procedures following deadly force situations, including procedures for reporting and documenting firearm discharges. The

VIPD firearm policies do not provide important guidance to officers regarding the appropriate circumstances under which firearms may and may not be carried and used in off-duty situations.

We recommend the firearm policy clearly identify the equipment officers are expected to routinely carry and the appropriate exceptions. The policy should specify all firearms and ammunition that are allowed on- and off-duty. The VIPD should establish a system of accountability for both Department-issued and personal ammunition so that the Department is able to monitor how much ammunition is used and the circumstances in which it is used. This will facilitate investigations into firearm discharges.

We recommend that officers qualify to use each type of firearm the VIPD allows them to carry biannually. Section 3.9 of GO 84-2 appears to allow officers who fail to qualify with their weapons to remain in their positions for up to six months before they are suspended from duty. We recommend that all officers who fail firearms qualifications on any weapon be barred from serving in posts that require the use of a weapon until such time as they are able to qualify on the required weapon.

We recommend that the firearms policy be revised to require that all discharges of firearms by officers on- or off-duty, including unintentional discharges, be reported and investigated. Current VIPD policy limits investigations to incidents in which an officer discharges a firearm "while acting in the capacity of a police officer." (GO 2004-001, Section 4.4.1). Additionally, VIPD police officers are authorized to carry their weapons at all times, without any limitations. We recommend that the Department develop and implement guidelines and regulations for using and carrying firearms while off-duty, including prohibiting officers from carrying a firearm if they are or have been recently drinking alcohol.

## 2. Intermediate Force Weapons

GOs 2004-001 and 91-3 provide limited information and guidance regarding intermediate force weapons, including straight and ASP batons,<sup>3</sup> O.C. Spray and stun guns. The policies fail to

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<sup>3</sup> During our site visits we were informed that the VIPD had recently purchased ASP batons and would be distributing them to officers in the near future. GO 2004-001 mentions batons and kubatons, in addition to the ASP baton. We recommend VIPD



adequately identify all of the authorized intermediate force weapons and to provide instructions and guidance regarding the proper restrictions and use of such weapons. For example, current VIPD policy states generally that "[o]fficers may employ standard manufactured impact weapons capable of being carried on the uniform duty belt or plain-clothes assignment." (GO 2004-001, Section 4.2.4). In other words, VIPD officers appear to be authorized to carry as many impact weapons as they can fit on their duty belts. Additionally, GO 91-3 fails to specify which officers or rank of officers are authorized to carry and deploy stun guns and whether carrying stun guns will be mandatory or optional.

We recommend that VIPD create a separate and comprehensive policy that gives specific guidance and restrictions on all intermediate force weapons, including straight and ASP batons, O.C. Spray and stun guns. This policy should include, among other things, where these and other intermediate force weapons fall within the use of force continuum, the circumstances under which the intermediate weapon should be used and instructions on how to properly use it, prohibitions on the use of the weapon, whether all officer are required to carry them, reporting procedures, and decontamination procedures for O.C. Spray. Because officers may unnecessarily resort to their firearms if intermediate force options are not available, we recommend that all officers be required to carry O.C. Spray, in addition to the PR-24 or ASP Baton. Appropriate training on the use and deployment of all intermediate weapons should be developed and implemented.

### 3. Canines

The VIPD has canine units located on St. Croix and St. Thomas, which operate under the VIPD's Special Operations Bureaus. The units follow the policies outlined in the Canine Corps Standard Operating Procedures ("CC SOP"). However, the outdated CC SOPs were promulgated in the mid- to late 1980s and do not reflect current generally accepted practices and procedures. The CC SOPs fail to give proper guidance for the use and prohibitions on the use of canines. They also fail to specify the individuals who are authorized to deploy canine teams and to provide operational control over the team during the deployment.

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develop corresponding policies and procedures for the use of all existing and new intermediate force weapons employed by the VIPD.

We recommend VIPD's canine policy be revised to give canine handlers adequate guidance and instructions regarding the use of canines. The policy should require canine officers to specifically announce that police officers with a trained police canine are on the premises, that a trained police canine is on the scene, and that there is a risk that the canine may bite. This complete announcement should be amplified, repeated at least once, and made in another language, if applicable, and the suspect should be given a reasonable amount of time to voluntarily surrender before the canine is deployed, absent exigent circumstances. If the deployment involves the search of a multi-level structure, the complete announcement should, if feasible, be made and repeated on each level to ensure that appropriate warning and opportunity to surrender is provided. It is generally accepted practice for canines conducting building searches for suspects to be unleashed but within visual observation of their handlers unless there are exigent circumstances.

Current canine policy provides that canines may be used to prevent "imminent danger" to life or property or prevent escapes from custody. Because the use of canines is a serious use of force, current policy should be revised to prohibit the use of canines for the protection of property. We also recommend the policy be revised to clarify that canines should not be used to prevent the escape of suspected misdemeanants. We recommend VIPD's canine policy provide further guidance on those situations which are considered "imminent danger to life" situations and should cross-reference these situations to the use of force continuum.

We recommend that VIPD revise its canine policy to make clear that supervisory canine officers and canine handlers can not authorize deployment of their own dogs, absent extraordinary circumstances. Canine teams deployed in the field should be supervised by a non-involved canine supervisor or a field supervisor, when a canine supervisor is not available.

#### 4. Specialized Units

VIPD has the following specialized units: Street Enforcement Team ("SET"); Marine Units; and Special Response Team ("SRT") units. These teams perform distinct functions throughout the Virgin Islands, including protecting witnesses, serving high risk warrants, patrolling high crime areas, and other high risk duties. We were provided with few, if any, policies or procedures for these specialized units.

We recommend the VIPD develop clear policies and procedures for each of these specialized units, including officer selection criteria, authorized tactics and weapons, chain of command and training. Due to the high risk nature of the missions of these units, clear and detailed policies and procedures should be developed by the VIPD.

E. Use of Force Reporting

General Order 2004-001 limits the circumstances under which a use of force report is required to be made. For example, Section 4.2.3 requires a use of force report only when there is an injury, medical treatment is required or requested, or the force used related to a criminal charge (i.e., resisting arrest, assault, endangering or harassment). A use of force report is only required to be completed by the "arresting officer and any other officer notified by a supervisor." In addition, this Section fails to identify the specific form to be used or the time frame in which this report must be completed.

Section 4.4 outlines a different reporting procedure for the discharge of firearms, but it does not indicate whether this report is also considered a use of force report. Section 4.4 is deficient in several ways. It does not state whether the reporting requirements apply to all officers whether on- or off-duty. It fails to specify the type of report to be completed (i.e., use of force report, narrative), who is required to complete the report (i.e., officers and/or supervisors), and what information is required in the reports. The time frames and limitations provided in Section 4.4 are inconsistent with generally accepted law enforcement practices. For example, Section 4.4 allows for firearm discharge reports to be completed within 72 hours of the incident and prohibits videotape or audiotape recorded interviews within the first 24 hours following an incident. These time frames should be shortened or eliminated.

We recommend that VIPD policy be revised to provide detailed guidance and procedures for reporting all uses of physical or instrumental force beyond un-resisted handcuffing on a form dedicated solely to recording use of force information.<sup>4</sup> The policy should be revised to require the arresting officer and all

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<sup>4</sup> All uses of force should be recorded on this form, including physical uses of force, shootings, or uses of force involving other weapons such as stun guns, tasers, or ASP batons.

other officers who took part in or witnessed a use of force to prepare a report detailing the event.

We recommend the form be structured so that discrete information about multiple uses of force by multiple officers in a single incident may be recorded. The form should require officers to provide a detailed description of the incident, beginning with the basis for the initial contact, continuing through the specific circumstances and actions that prompted each use of force, resulting injuries, and medical treatment. The form should contain check boxes, which may be supported by a narrative, where appropriate. The form should include sections to indicate whether the named witnesses provided statements and for supervisors to evaluate each use of force.

We recommend that the policy specify that all use of force reports and information be appropriately and timely reported and recorded, the responsibility of the first-line supervisor to ensure the use of force is documented, and a procedure for the information to be provided to the chain-of-command. The policy should establish a review mechanism to ensure that officers are complying with the reporting procedures and provide for appropriate administrative sanctions for officers who fail to comply.

#### F. Use of Force Review and Investigation

Supervisory review of officer uses of force is critical to a department's ability to ensure officers are using force in a manner consistent with constitutional standards and the department's policies. Use of force reviews may identify both officer training needs and patterns of unauthorized or excessive uses of force. The information regarding each use of force should be tracked in an Early Warning System ("EWS"), as discussed in further detail below.

VIPD lacks a clear policy on reviewing uses of force and investigating those that appear excessive, avoidable, and/or indicative of potentially criminal misconduct. GOs 92-3 and 2004-001 specify that the VIPD will review all circumstances involving critical incidents or violent confrontations. However, 92-3 limits such critical incident review to situations where a firearm or other deadly weapon is used. This review policy inappropriately focuses on the type of weapon used. The review policy establishes a panel to review critical incidents and violent confrontations, but it does not provide any guidance to its members regarding the appropriate review process.

We recommend that the VIPD force review policy be revised to state that all shootings and uses of force, whether they involve a weapon or not, be reviewed by VIPD officials. All uses of force beyond un-resisted handcuffing should be reviewed at some level within a police agency. The policy should outline the procedures for supervisory review regarding lower-level uses of force and the procedures for review and investigation regarding higher-level uses of force, including potential criminal misconduct.<sup>5</sup> The policy should provide clear guidelines for supervisors to follow in their review and investigation, including an approval signature or block on the appropriate forms and the circumstances under which a supervisor is required to notify command staff, including the Territorial Chief and the Police Commissioner.

We recommend that the IAU be responsible for routinely responding to the scene and investigating uses of force in which the subject is injured or complains of excessive use of force and all firearm discharges, except discharges in the course of training or certification.

### **III. VEHICLE PURSUITS**

The VIPD's vehicle pursuit policy is outdated and deficient in several areas. The policy fails to distinguish between "emergency driving" and "high speed pursuits." It does not specify when such actions are authorized or the proper procedures for and the supervisory control of such pursuits.

We recommend that VIPD policy be revised to clarify the distinction between emergency driving and high speed pursuits. Emergency driving typically refers to situations where officers are responding to calls and situations involving the protection of life (e.g., responding to a bank robbery in progress). High speed pursuits generally refer to situations in which officers are pursuing, for example, an armed and dangerous felony suspect fleeing a scene in a vehicle.

Because high-speed vehicle pursuits present a great risk of harm to the officer, the subject, innocent bystanders and other drivers, they should only be authorized for the apprehension of individuals who are alleged to have committed or are committing specified serious felonies and who pose an immediate threat of

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<sup>5</sup> The policy should specifically provide the procedures and guidelines for compelling statements from officers in accordance with Garrity v. New Jersey, 385 U.S. 493 (1967).

serious physical harm to the officer or the public. Accordingly, we recommend the policy be revised to eliminate the general and broad category of "assaults," which includes misdemeanor assaults, as a justification for high speed pursuits.

We recommend that the VIPD policy be revised to contain specific instructions and provisions for supervisory control of pursuits. In all cases of pursuit, a supervisor should take command of the pursuit and be responsible for its continuance or discontinuance. In addition to road, traffic, light, weather and vehicle conditions, and driver's ability, the policy should be revised to require the supervisor to consider public safety and the likelihood of apprehending the suspect at another time. Following each pursuit, VIPD should conduct a supervisory review of the pursuit for consistency with VIPD policy. This review should consider only those facts known to officers at the time of the pursuit and not information subsequently obtained.

#### **IV. HOLDING CELLS**

We sent a letter addressed to Commissioner Lewis in October 2004, regarding our concerns about the VIPD holding cells in St. Thomas, St. John, and St. Croix. Our concerns included: 1) lack of policies or procedures for medical and mental health services for detainees; 2) presence of suicide hazards in the cells; 3) lack of procedures for the provision of food and necessary medication to detainees; 4) lack of functional fire control systems; 5) failure to provide for the safety and security of detainees; and 6) lack of adequate policies or procedures for the detention of juveniles. We provided you with technical assistance and sample policies and procedures regarding the various areas of concern in our October 2004 letter, which was re-sent to Attorney King with enclosures, per his request, on March 31, 2005. We recommend VIPD develop policies and procedures consistent with our recommendations to ensure the safety of all detainees.

#### **V. MISCONDUCT INVESTIGATIONS**

**The VIPD should develop and implement a centralized, formal, structured and consistent system for receiving and investigating complaints of police misconduct.**

##### **A. Investigation of Citizen Complaints**

An open, fair and impartial process for receiving and investigating citizen complaints serves several important

purposes. An appropriate citizen complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations, increasing public confidence in, and respect for, the VIPD. Improving the current procedure for handling citizen complaints would maximize these goals.

#### 1. Complaint Forms

Complaints may be made at an IAU office or any of the various zones located throughout the Virgin Islands.<sup>6</sup> However, citizen complaint forms are inconsistently used. For example, the IAU SOP identifies three forms related to a citizen complaint: 1) complaint form (Form #91-2); 2) confirmation of complaint form (Form #91-3); and 3) termination of complaint form (Form #91-4). Although the VIPD Police Manual requires a supervisor to enter a complaint on an "appropriate form" based on a complainant's recitation of the facts, a specific complaint form is not identified in the VIPD Police Manual. In fact, we understand that the zones use arrest reports, also known as IAs, instead of complaint forms to memorialize complaint information.

The IAU SOP's citizen complaint forms are inadequate and inconsistent with generally accepted police practices. For example, the forms include an "Options" section, which appears to provide complainants with a choice between two procedural routes for their complaints. The first option allows for the possibility of, but does not require, an investigation regarding the complaint. The complaint form notifies complainants that, if a hearing is conducted under the first option, they will be subjected to questioning by the Chief of Police, an investigator and a union representative. However, there is no similar discussion of the accused officer's obligations. The second option does not include an investigation requirement and simply states that the officer can be admonished verbally.

We recommend that VIPD citizen complaint policy be revised to require an investigation of every complaint. The appropriate command staff, rather than the complainant, should determine the appropriate action to be taken. The forms should be revised to eliminate the "options" section from the complaint forms. The forms should state that an investigation will be conducted, that the complainant will be notified of the results of the

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<sup>6</sup> According to the VIPD organizational chart, there are seven zones: St. Croix has zones A, B, and C; St. Thomas has zones A, B, and C, and St. John has zone D.

investigation and that the complainant's cooperation is requested throughout the investigation.

We recommend the elimination of the "Termination of Complaint" form. The current complaint process provides that a complaint can be terminated, without an investigation, if the complainant "declares" the following: "I am satisfied with the manner in which this complaint was handled and do hereby consider this matter resolved." It is inappropriate for a complaint to be unilaterally terminated by the complainant without an investigation. We recommend that at the conclusion of each investigation, all relevant parties, including the complainant, receive a letter setting forth the name of the complainant, the unique control number, the date of the incident, the name of the officer(s) involved, the key facts of the complaint, and the final disposition of the complaint. If sustained, the letter should indicate whether remedial actions will be or have been taken.

The letter advising the citizen of the resolution of the complaint should be drafted by the supervisor conducting the investigation and then reviewed and approved by the appropriate chain of command. If any individual in the chain of command review disagrees with the previous reviewer's findings and/or recommendations, the reason for such modification should be in writing and kept with the original recommendation in the complaint file, and, after final review and approval, the letter to the complainant should be modified accordingly. Every misconduct complaint should begin with a citizen complaint form, and end with a letter, each document reflecting the same control number for ease of reference and later review, if any.

## 2. Complaint Intake

The VIPD's current policies and procedures regarding complaint intake are located in the VIPD Police Manual and the IAU SOP. These two policies are inconsistent. For example, the IAU SOP requires the acceptance of anonymous complaints, but the VIPD Police Manual does not. The VIPD Manual requires complaints to be referred to a supervisor, but the IAU SOP does not. The VIPD Manual, unlike the IAU SOP, appears to require supervisors to complete complaint forms based on a complainants' "recitation" of the facts, instead of allowing complainants to complete the form themselves.

There should be one comprehensive policy for complaint intake. That policy should be consistent in the VIPD Police Manual, the IAU SOP, and all other relevant documents. We



recommend revision to the VIPD policy to provide clear procedures regarding the intake of any complaint, including anonymous and confidential complaints, against a VIPD officer. This policy should include instructions to an officer for taking a complaint and prompt delivery to a supervisor.

A complaint process should allow unfettered ability to make complaints. The availability of a uniform complaint form and information about the complaint process should be prominently posted at each police station, zone, VIPD headquarters, other public facilities, and in locations which permit the forms to be obtained without a specific request by a citizen or a requirement that the complaint be recited to a supervisor.

### 3. Centralized Investigation Assignments

Neither the VIPD manuals nor the IAU SOP establish a system or procedure for tracking all complaints. There is no centralized numbering and tracking system for all incoming complaints, whether they are received by the zones or the IAUs. There is no agency or individual responsible for numbering, tracking and maintaining oversight of all complaints. Although the IAU SOP states that all complaints that are received at the IAU receive a tracking number, the IAU receives only a portion of all complaints. Complaints that are investigated by the zones do not necessarily receive a tracking number and, if they do, they may be duplicative of IAU tracking numbers.<sup>7</sup>

The Police Manual and the IAU SOP provide inconsistent and limited guidance for determining which complaints should be investigated by the zones and which should be investigated by the IAU. For example, the VIPD Police Manual provides that the zones investigate complaints of unnecessary use of force. (VIPD Police Manual Ch. 8.4.2). However, the IAU SOP provides that the IAU investigates complaints of unlawful uses of force and brutality. (IAU SOP Ch. 3.2).

We recommend that the VIPD institute a centralized numbering and tracking system for all complaints, regardless of the nature of the complaint, the seriousness of the allegation, or the location where or to whom the complaint is made. The VIPD policy should provide that every complaint receive a tracking number as soon as possible. A centralized numbering system should be maintained by the IAU for all complaints.

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<sup>7</sup> During our investigation, we received documents regarding different complaint files with the same file numbers.

We recommend that the IAU be designated the primary and centralized agency to determine whether the investigation will be assigned to the zone, retained by the IAU, or referred for possible criminal investigation. If 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.<sup>8</sup> The policy should specify a standard procedure for notifying the Police Commissioner, or his or her designee, of complaints soon as possible. 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.

#### 4. Investigations and Referrals

VIPD does not have a consistent policy for conducting complaint investigations. The VIPD Police Manual does not provide any guidance to zone investigators. Although the IAU SOP provides limited guidance on conducting a complaint investigation to IAU investigators, it is outdated and inconsistent with accepted police practices. For example, in a stark departure from generally accepted law enforcement practices, the IAU SOP disposition categories are contingent upon whether the complainant suffers harm.<sup>9</sup> The IAU SOP does not provide clear guidance regarding the distinction between criminal and administrative investigations and the requisite procedural and legal protections should there be potential criminal misconduct. The IAU SOP appears to presume that if there is a criminal investigation, there cannot be a parallel administrative investigation. The VIPD Police Manual provides that an administrative investigation will be conducted only if the criminal proceedings are dismissed.

We recommend that the VIPD adopt a single policy concerning the investigation of misconduct complaints, regardless of whether

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<sup>8</sup> During our investigation, we asked for copies of several IAU investigation files. However, VIPD was unable to locate these files at IAU because the investigations were conducted at the zones. The citizen complaint policy should provide for clear document retention policies and for IAU's central file to be regularly updated and supplemented.

<sup>9</sup> The disposition categories are: proper conduct (no harm); improper conduct (harm); policy failure (harm); insufficient evidence; unfounded complaint; and partially sustained.

the investigation is conducted by the IAU or a zone. The VIPD policy and training should include investigative and interview techniques, including examining and interrogating accused officers and other witnesses; identifying misconduct even if it is not specifically named in the complaint; the factors to consider when evaluating complainant or witness credibility; the directive that officer and witness statements be weighed equally; and preponderance of the evidence as the appropriate burden of proof. We recommend that the VIPD policy require that all interviews be mechanically recorded using an audio or video tape.

We recommend that the categories of investigation disposition should not be conditioned on whether the complainant suffered harm. Harm can include physical or psychological harm, or violation of a person's civil rights, for example. An officer may have engaged in improper conduct even though the complainant did not suffer harm. Similarly, whether a policy failure occurred should not be contingent on whether the complainant suffered harm. Accordingly, we recommend VIPD revise its policies to 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 VIPD should revise its policies, training, or tactics.

We recommend that the policy 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 that should make the determination of whether the complaint be investigated criminally. We recommend that the policy be revised to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings.

We recommend that the policies and procedures clarify the rights of officers who may be the subject of a misconduct investigation. During an administrative investigation, officers suspected of potentially criminal misconduct should be informed of their rights under Miranda v. State of Arizona, 384 U.S. 436 (1966), before questioning, including their rights against self-incrimination and to have counsel present during questioning. The VIPD policy should provide clear guidance to investigators

regarding the procedures for when and how to compel statements from officers for the purposes of an administrative investigation in conformance with Garrity v. New Jersey, 385 U.S. 493 (1967).

B. Internal Affairs Unit: Structure and Organization

The internal affairs component of a law enforcement agency safeguards the integrity of the department and its officers. It should seek to ensure that those who enforce the law will themselves follow the law, as well as maintain an acceptable level of professionalism. The VIPD should acknowledge and support the integral role an internal affairs unit serves by ensuring that the IAU be an autonomous and objective component of the police department, and that it is comprised of well-trained personnel who are staffed at adequate levels throughout the various districts.

1. Organization and Responsibilities

The IAU SOP states that there are three responsibilities of the IAU: applicant screening; internal investigations; and labor relations. Not only does the IAU SOP fail to prioritize these responsibilities, but it also fails to provide any standards or procedures with respect to conducting applicant screening. The investigating officer apparently has complete discretion to determine the suitability of VIPD applicants.

We recommend the VIPD establish clear standards and structure for the IAU to follow for screening VIPD applicants. The policy should provide objective standards by which VIPD applicants will be reviewed and accepted, including, the effect, if any, of a prior criminal history on the suitability of an applicant.

We recommend that someone other than the IAU Director serve as the labor relations specialist. It is critical for the IAU and its Director to have autonomy, objectivity and impartiality. The role of a "labor relations specialist" places the Director in potential conflicts of interest. For example, because contract negotiations and interpretation include issues directly related to the IAU (e.g., misconduct complaints and investigations), the Director of the IAU may be negotiating with the union, as the labor relations specialist, regarding pending misconduct penalties that s/he would have to impose as the IAU Director. We recommend that an independent person outside of the IAU be designated to serve in this capacity.

## 2. Staffing and Training

The VIPD has no policy establishing selection criteria for IAU positions, nor are there recruiting or training procedures. Currently, the VIPD's Internal Affairs Bureau oversees two IAUs, which are comprised of different ranking supervisors and inconsistent staffing levels. For example, the St. Thomas/St. John IAU supervisor is a Sergeant, but the St. Croix IAU supervisor is a Corporal. The St. Thomas/St. John IAU's investigators are a Corporal and police officer, but the St. Croix IAU's investigators are a Corporal and two "agents." The IAU SOP does not provide an explanation for the different staffing levels or the distinction between an "agent investigator" and "police officer investigator."

We recommend that the VIPD develop a policy regarding selection criteria for IAU personnel, including recruiting and training procedures. An IAU component must be appropriately staffed and trained to handle investigative and administrative responsibilities. In selecting IAU personnel, their disciplinary histories must be taken into account to ensure that only officers with the highest ethical standards serve as investigators. IAU investigators should not be selected to investigate a particular matter if they had any involvement in the incident under review or whose relationship with an officer in question would create an appearance of bias or impropriety. The VIPD should offer incentives to encourage qualified officers to apply for IAU positions.

We recommend that the Districts for St. Thomas/St. John and St. Croix maintain consistent staffing, or, at least, require the equivalent rank for supervisory staff.

## VI. DISCIPLINE

**The VIPD should develop and implement a formal, structured and consistent system for determining and imposing discipline.**

Several of the areas of concern regarding the VIPD disciplinary system are directly related to the deficiencies in investigative procedures. For example, because there is no centralized tracking, it is possible for zone commanders to use their discretion to designate a charge against an officer as "minor" and summarily impose a verbal reprimand as the sole disciplinary action before the Deputy Chief of Police or the IAU ever learns about the complaint. (Chapter 8.3.5).

We are concerned with the VIPD's short 50-day statute of limitations for instituting disciplinary action. Current VIPD policy requires disciplinary action to be instituted within 50 days from the date the alleged violation was committed or becomes known or should have become known to the department. No disciplinary action may be instituted after ninety (90) days following the alleged infraction. Based on our preliminary review of citizen complaint investigations, a number of complaint investigations may not have been thoroughly completed because of this short statute of limitations period. We recommend the VIPD explore its options to extend this statute of limitations period. Irrespective of the short statute of limitations period, VIPD's failure to complete investigations precludes the department from identifying potential system-wide issues, providing corrective training, and revising policies, as necessary. VIPD policy should 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 should 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 should be outlined in the policy.

We recommend that the VIPD policy be revised so that no penalties, including verbal reprimands and counseling, be imposed without final authorization by the appropriate chain of command. The policy should include review and approval of any discipline by the chain of command and, ultimately, the Police Commissioner, before any discipline is imposed.

## VII. SUPERVISORY OVERSIGHT

**VIPD command staff should examine and review officer conduct on a regular basis as a proactive measure to minimize and detect misconduct, and to identify training and policy issues.**

### A. Risk Assessment and Management

There is a lack of structured and formal oversight of VIPD officers by command staff. There do not appear to be regular review procedures formalized in policy. To the contrary, review of officer activity appears to be informal and ad hoc.

We recommend that the VIPD implement policies and procedures for VIPD supervisors to routinely review all aspects of VIPD officer conduct, including a review of: 1) all uses of force, as

set forth above; 2) probable cause for arrests and the appropriateness of charges filed; and 3) reasonable suspicion for stops and searches that do not result in an arrest.

We recommend that VIPD policy require supervisors to review and approve all arrest reports and searches and seizures, and to record their approval on the arrest or incident reports by handwritten or electronic signature. We recommend that the Police Commissioner, or his or her designee who will directly report to the Police Commissioner, meet annually with every VIPD officer to discuss his or her complaint history, if any, and to discuss any problems or concerns officers may have concerning the department.

B. Early Warning System

The VIPD does not have, but should adopt, a risk assessment system or an Early Warning System ("EWS") as an integral part of its risk management program. The VIPD can develop an EWS that is appropriate and applicable to its needs and size. Whether paper-based or computer-based, even a simple EWS would provide a useful assessment of each officer's conduct as well as the department as a law enforcement agency. We recommend that the VIPD implement policies and procedures to collect data on individual officers for the purpose of maintaining, integrating, and retrieving information necessary for effective supervision and management of VIPD personnel. The EWS should contain information on all investigations and complaints, including non-sustained complaints and complaints prior to final disposition, discipline and other corrective actions, uses of force, arrests and charges, searches and seizures, service calls, training, awards and commendations, sick leave, civil lawsuits and other items relevant to an officer's conduct. The VIPD can then use this data regularly and proactively to promote best professional police practices; improve accountability and management; manage the risk of police misconduct and potential liability; and evaluate and audit the performance of officers and units on a regular basis. We recommend that the VIPD require supervisors, including command staff, to review this data for every officer they supervise on a regular, predetermined basis, such as every quarter.

The policy implementing these recommendations should also establish guidelines regarding specific events that will trigger an additional supervisory review, such as a specific number of uses of force or citizen complaints within a discrete period. Once an officer has been selected for this additional review, a report should be prepared that details all use of force reports, formal and informal complaints, calls for service, sick leave,

counseling reports, civil lawsuits, and commendations pertaining to the officer within the past ten years. The officer's immediate supervisor and command staff should then meet to discuss the report and determine if any corrective action is warranted. The supervisor's and command staff's recommendations should then be forwarded to the Police Commissioner for his or her review and implementation. The effectiveness of the implemented recommendations should be determined by monitoring the officer and drafting written reports on the officer's conduct on a monthly basis. Both the supervisory recommendations and the written monthly report should be included in the officer's file.

We recommend that the VIPD consider utilizing peer reviews of the information contained in the reports by comparing complaints, use of force reports, and other pertinent information about a particular officer with similar information from other officers on the same patrol team or shift. In addition, the policy should provide explicit guidance to supervisory officers reviewing reports to ensure that patterns of possible misconduct are identified, analyzed and addressed properly by command staff. The aim of this process is to give supervisors valuable information that, if received early, could identify potential problem officers before misconduct actually develops.

#### **VIII. OFFICER TRAINING**

**The VIPD should develop comprehensive training programs for new and experienced VIPD officers.**

##### **A. Police Academy Training**

Based on our investigation and discussions with the Director of Training, there are no standard curricula or lesson plans for training provided to new recruits.<sup>10</sup> The VIPD's Recruit Rules and Procedures Manual ("Recruit Manual") does not contain any substantive information regarding police tactics, practices, procedures or protocol. The content of each subject matter area is left to the discretion of the instructor. There are no standards for selection of instructors, except that we were told that Assistant Attorneys General are requested to provide instruction on legal matters, such as search and seizure.

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<sup>10</sup> VIPD recruits attend a 26-week academy training along with other territorial law enforcement agencies, including the Territorial Marshals, Department of Planning and Natural Resources, and the Taxi Commission.



Moreover, we understand that there is no standardized or formalized written examination that each recruit must pass. It is our understanding that each instructor creates his or her own test to determine the recruits' proficiency in the relevant subject matter area.

We recommend that the VIPD develop standardized curricula, lesson plans, and written tests for each section of a recruit's training at the police academy, including, but not limited to, use of force, Fourth Amendment and other constitutional requirements. This training should also include role-playing and interactive exercises regarding situational ethical and use of force scenarios, including de-escalation techniques, cultural diversity and community policing. The exercises should include training on interactions with persons from different racial, ethnic, and religious groups, persons of the opposite sex, persons of different sexual orientations, and persons with disabilities. The curricula and lesson plans should incorporate comprehensive and updated police practices and be approved by legal counsel and the Police Commissioner. There should be an approved, standardized and written examination at the end of the academy to measure an acceptable level of proficiency and competency in all areas covered by the training. Recruits should be required to pass the examination to become a VIPD officer. We recommend that all instructors receive certification to serve as instructors. This certification can be obtained through programs and seminars offered by various certifying agencies throughout the United States.

#### B. Field Training

A structured field training program is essential for training new recruits. Field training for new officers is an integral component of any comprehensive officer training program, and minimizes the risk of officers engaging in problematic behaviors, including the use of excessive force.

Although the VIPD has a number of officers that are designated as Field Training Officers ("FTOs"), there is no policy, standard or procedure for selecting, training, or evaluating an FTO. FTOs are selected by the Territorial Chief. There are no written standards for an officer to qualify or to be selected as an FTO. It is our understanding that after graduation from the police academy, new recruits are assigned to an FTO for a probationary year. Although new recruits accompany an FTO on patrol, there is no structured field training program.

We recommend that the VIPD develop and implement a field

training program. The field training program should utilize qualified FTOs to supervise and train new VIPD officers. FTOs should have at least three years experience on the VIPD. Additionally, FTO instructors should have completed a course on how to serve in that capacity. An FTO candidate's experience, complaint history and interpersonal skills should be considered as selection criteria. We recommend that the VIPD take measures to recruit and train qualified FTOs, including providing incentives to current officers to encourage them to apply to become FTOs. The VIPD should develop and implement a mechanism for evaluating FTOs and for removing FTOs who fail to perform adequately, and whose actions while serving as FTOs would have disqualified them from selection.

### C. In-Service Training

In addition to the absence of any formal training for new recruits after the police academy, VIPD does not have a structured training program for experienced officers.

We recommend that the VIPD develop and implement an in-service training program for all officers. Consistent with most police departments throughout the country, VIPD should provide in-service training that includes a minimum of 40 hours per year of training (excluding firearms re-qualification) on police topics, such as: use of force, firearms, defensive tactics, policies and procedures, current legal issues or other issues that are essential to police work, searches and seizures, legal developments and police integrity. The VIPD in-service training should include de-escalation techniques for interactions with persons with mental illness and those who may be under the influence of drugs or alcohol. We recommend that officers receive firearms training biannually for all service weapons used by VIPD officers. All VIPD personnel should receive training on the new complaint policy and procedures. We recommend that training be conducted by instructors who have been trained and certified to be instructors, and who are competent in the subject matter.

We note that one potential resource for the VIPD in establishing and improving in-service and field training officer programs may be the longstanding training and grant programs administered by other components of the Department of Justice, such as the Office of Justice Programs. While these programs are completely separate and independent of the Civil Rights Division's investigations, we would be pleased to provide you

with contact information for exploring the possibility of such assistance.

**IX. CONCLUSION**

We strongly urge the VIPD to adopt these technical assistance recommendations as it revises its policies and procedures. We look forward to working with you and the VIPD as our investigation proceeds. If you have any questions, please do not hesitate to contact me at (202)514-6255, Je Yon Jung at (202)305-1457 or Michael Frazier at (202)307-2715.

Sincerely,

/s/ Shanetta Y. Cutlar

Shanetta Y. Cutlar  
Chief  
Special Litigation Section

cc: Anthony Jenkins  
United States Attorney  
for the Virgin Islands