

## **I. Introduction**

The Internal Affairs Bureau (“IAB”) of the New York City Police Department (“NYPD” or “Department”) is responsible for investigating allegations of corruption and serious misconduct by police officers. In order to help ensure that investigations are effectively conducted, IAB created the Investigative Review Unit (“IRU”) to review its own investigations on a continuing basis.

IRU operates as a quality-control unit within IAB. Among other responsibilities, IRU conducts on-going evaluations of open and closed corruption investigations. By monitoring the quality of IAB’s investigations, IRU can identify areas where correction or improvement is needed and communicate these needs to IAB management for appropriate action.

Under its mandate, the Commission to Combat Police Corruption (“Commission”) reviews and evaluates the quality of IAB investigations and monitors the Department’s overall efforts to reduce corruption within the Department. The Commission has been particularly interested in IAB’s efforts to examine the quality of its investigations because of the potential value of such self-initiated review.

As described below, based on its review of IAB’s Investigative Review Unit, the Commission found that IRU provides valuable assistance to IAB management in its on-going efforts to maintain and improve the quality of the Department’s internal investigations. Through its review of both open and closed corruption investigations, IRU is in a position to identify strengths and weaknesses in investigative techniques and to recommend corrective measures where appropriate. Based on its review of the program, the Commission found that IRU is effectively fulfilling its function. There are, however, a few areas where it can enhance its

performance, including expanding its reviews to include evaluations of PG 118-9 interviews and integrity tests. The Commission also believes that the Department should consider having a higher-ranking officer head this unit.

## **II. Background**

The Investigative Review Unit of IAB is responsible for a number of self-monitoring activities including: dismissal-at-trial report;<sup>1</sup> special assignments;<sup>2</sup> Command Center report; and case review.<sup>3</sup> IRU was created in 1997 by IAB's current Chief as a separate and distinct unit exclusively responsible for quality assurance. The unit consists of one lieutenant (the unit head), one sergeant, and five detectives. The Chief of IAB informed the Commission that these staff members, assigned to IRU since its inception, are experienced IAB investigators having completed numerous investigations prior to this assignment.

In addition to IRU's on-going review of open and closed investigations, the Chief of IAB can utilize IRU as a means of addressing issues within IAB that particularly concern him. For instance, the Chief may request that IRU review particular investigative methods (such as interviewing and surveillance) that are used by investigators, to determine the quality of those

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<sup>1</sup> In cases where IAB has prepared charges and specifications against an officer and the case is dismissed administratively by the Department Advocate's Office, or by the Office of Administrative Trials and Hearings ("OATH"), IRU will review the investigation, trial minutes and decision of the Trial Commissioner to determine, what, if any, responsibility IAB bore in the outcome of the case. This report is given to the Chief of IAB and offers recommendations to improve IAB's case preparation so that similar problems will be avoided in future cases.

<sup>2</sup> The Chief of IAB may request that IRU conduct a special audit of an IAB unit, or an examination of a particular IAB investigation for internal flaws.

<sup>3</sup> IRU reviews both open and closed IAB investigations.

methods. Where insufficiencies are found, the information gathered by IRU may then be used as part of a training program for investigators. Additionally, there may be circumstances where the Chief of IAB is concerned about a specific investigative group or investigator. In these instances, the Chief may request that IRU review the work performed by the unit or investigator to determine whether or not the problem is isolated to a specific case or is more widespread, and what corrective action, if any, should be taken.

In a previous study of IAB's Command Center, the Commission evaluated IRU's self-initiated review of calls to the Command Center.<sup>4</sup> As discussed in that study, IRU reviews on a monthly basis a select sample of ten calls handled by the IAB Command Center. Through this self-monitoring, IAB seeks to ensure that logs are generated for calls containing allegations of corruption or misconduct, that those logs are recorded properly and that Command Center staff is performing in a professional manner. In its review of IRU's monitoring of the Command Center, although the Commission identified certain problems concerning the manner in which some of the calls were reviewed by IRU, overall the Commission agreed with IRU's general assessment of the calls. The Commission also found, however, that IRU evaluations generally did not include critical commentary regarding calls. In particular, the Commission noted some calls where IRU failed to identify problematic areas.

The Commission's present study evaluates IRU's monitoring of IAB investigations.

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<sup>4</sup> See Commission Report, *Performance Study: A Follow-up Review of the Internal Affairs Bureau Command Center*, August 1999.

Throughout the year, IRU reviews a sample of non-steering<sup>5</sup> open and closed cases. IRU generally reviews open cases within the first six months they are open. This time period allows for a review of those initial investigative steps already taken, while ensuring that the case is not too old for recommendations to be meaningful.<sup>6</sup> The IRU reviewer conducts a complete review of the case file, and determines whether the IAB investigator interviewed witnesses, and obtained and reviewed critical background information (such as the subject officer's Central Personnel Index or "CPI"<sup>7</sup>). The IRU reviewer also checks key worksheets completed by the investigator to determine whether the worksheets accurately reflect investigative events. Finally, IRU staff reviews the investigator's anticipated steps before making its assessment of the investigation. The Commission learned during this study, however, that IRU does not review the audio cassette tapes of PG 118-9 interviews of subject officers and key witnesses, nor does IRU review integrity tests conducted during the course of IAB investigations.<sup>8</sup> After the IRU investigator has reviewed approximately five cases, IRU's unit head reviews the investigator's comments<sup>9</sup> to determine their accuracy.

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<sup>5</sup> These are cases which are not reviewed by IAB's Steering Committee. The purpose of IAB's Steering Committee is for IAB's executive staff to meet with the investigative groups and review a select number of their significant investigations, as well as the three oldest cases of the reporting group. Based on the Committee's wealth of investigative experience, these meetings provide an opportunity for the reporting group to receive critical feedback on investigative strategies. The Steering Committee meets approximately weekly.

<sup>6</sup> When an investigation is open for a long period of time, it may be difficult to re-contact witnesses, physical evidence may be lost and other circumstances may have changed. Thus, IRU is cognizant of the importance of reviewing the investigations in a timely manner and makes recommendations regarding the investigations in light of possible time constraints.

<sup>7</sup> The CPI summarizes an officer's assignments in the Department and contains brief summaries of any allegations that have been made against the officer, and the outcome, if any, of disciplinary cases.

<sup>8</sup> See Recommendations/Comments section at p. 12 for further discussion of this issue.

<sup>9</sup> Each IRU detective completes a "case review sheet" where they take notes regarding the case and draft

After the evaluation of a particular IAB investigative group's open cases, the relevant group captain is advised of IRU's findings<sup>10</sup> orally and by way of a written report. The findings may consist of recommendations regarding additional investigative steps that should be taken before closing a case. Any response from the group captain is forwarded to the Chief of IAB and eventually to the IRU unit head. Regardless of whether there are positive or negative comments given to an investigator about a case, IRU follows up by reviewing the case once it is closed to determine whether the investigator followed the IRU recommendations.

The criteria used by IRU to choose which closed cases to review include a number of factors, such as: when the case was closed;<sup>11</sup> whether IRU is examining a specific investigative technique or group; whether the case has received publicity; or whether IAB executive level staff asks IRU to look at the file for specific reasons.<sup>12</sup>

The IRU examiners follow the same review and commentary procedure in closed cases as for open cases, with the addition of a review of the disposition. The disposition is reviewed to determine whether sufficient investigative facts supported the conclusion reached in the case.

Additionally, IRU may on occasion request that a group captain re-open a case and re-investigate the allegations after closed case review. IRU can also contact investigators to

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questions and comments they may have regarding an investigation. Some may contain substantive information and commentary, while others do not.

<sup>10</sup> IRU's comments are given directly to the Chief of IAB who disseminates them through IAB management to the relevant group captain. This procedure allows for the Chief of IAB to become immediately aware of the quality of investigations, as well as for IAB management to contribute, where necessary, additional commentary to the investigative group.

<sup>11</sup> IRU reviews cases within six months of closing by the investigative group. Although the issue of immediacy is not as important in closed case review as it is for open case review, IRU nonetheless views timeliness as a critical aspect of its review.

<sup>12</sup> See footnote 2 at p. 2.

determine whether they have followed IRU's advice pertaining to the investigation.

### **III. Methodology**

#### **A. Sample**

The Department informed the Commission that IRU reviewed 596 closed investigations during the period from June 1, 1997, through July 31, 1998. From that pool of investigations, the Commission randomly selected every 10th case in numerical order to arrive at an initial sample of 60 cases for review.

The Commission requested the "UF 49s,"<sup>13</sup> worksheets and any other IRU-produced materials regarding the review of those cases within the sample. In response to this request, the Commission received the IRU case review sheets prepared for each of these selected cases.<sup>14</sup> From this group of 60 cases, the Commission arrived at a sample of 25 investigations to evaluate. These cases were selected because they had been recently closed and were representative of each of IAB's geographic groups, as well as specialized groups with city-wide jurisdiction.<sup>15</sup> Cases were also chosen to represent the various types of allegations that IAB typically handles. The cases selected included allegations related to: narcotics, abuse/force,

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<sup>13</sup> UF 49s are worksheets used by the Department to memorialize investigative steps taken, meetings attended and, generally, work performed by members of the service.

<sup>14</sup> As noted above, the IRU case review sheet contains basic case information, including: the IAB group assigned; name of the complainant; form of complaint (by letter, telephone or in person); date of complaint; nature of the allegation; and disposition of the case.

<sup>15</sup> The specialized groups are: Group 1 (allegations regarding members of the service of the rank of captain or above); Group 41 (allegations involving detectives and other members of the Organized Crime Control Bureau); Group 51 (allegations involving persons impersonating police officers); Group 52 (integrity testing); Group 53 (allegations regarding school safety agents); Group 54 (force allegations); and Group 56 (allegations regarding traffic enforcement agents).

money/property, sexual abuse, perjury, bribery, criminal impersonation, officer divulging official information, criminal association, conspiracy, and unauthorized off-duty employment. The final criterion for selection was case disposition. Cases chosen represented each type of disposition: substantiated, partially substantiated, unsubstantiated, unfounded, exonerated and those used for information and intelligence only.<sup>16</sup>

#### B. Commission Analysis of Underlying Investigations

The Commission's study proceeded in two steps. First, the Commission examined and analyzed the underlying investigations. Commission staff reviewed all documents contained in the investigative files including worksheets, audio cassette tapes and all other relevant documents.<sup>17</sup> Second, the Commission evaluated IRU's reviews of the underlying investigations. The Commission's evaluations and recommendations were then compared to IRU's comments to determine whether IRU's evaluations, in the Commission's view, appropriately critiqued the investigations.

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<sup>16</sup> When an investigation is concluded, IAB will make the determination that the allegation is either: (1) "substantiated" (supported by sufficient credible evidence); (2) "partially substantiated" (parts of the allegation were supported by sufficient credible evidence); (3) "unsubstantiated" (not supported by sufficient credible evidence); (4) "unfounded" (the act which is the basis of the complaint never occurred) or (5) "exonerated" (the act which is the basis of a complaint occurred but the act was proper). The case may also be closed with a disposition of "for information and intelligence only" (when there is insufficient evidence to conclude a case was substantiated or unsubstantiated) but the case is retained for future reference. A record is kept of this disposition for investigators to refer back to if a subsequent allegation is lodged against the same subject officer.

<sup>17</sup> In addition to these documents, investigative files also contain a case summary detailing the allegation, investigative steps taken and IAB findings, Command Center logs, duty rosters, property vouchers, and other documents related to criminal background checks.

#### **IV. Discussion**

##### **A. General Observations**

As discussed more fully below, the Commission determined that IRU effectively reviewed and evaluated almost all of the cases in its sample in a productive and timely manner. This timeliness ensured that the evidence in the case was not stale and that the investigator, where necessary, had ample opportunity to take further investigative action. Although in a number of cases Commission staff found that the investigator could have taken additional investigative steps, the Commission concluded that given the nature of the underlying allegation, IRU's decision not to comment did not constitute a deficiency in its overall evaluative responsibilities. In fact, the Commission determined that IRU's monitoring responsibilities were carried out effectively in almost all of the cases in the Commission's sample and that IRU not only noted problematic areas but also identified additional investigative steps to be taken.

The Commission found that IRU case reviews fell into two categories: those that contained critical commentary and those containing insufficient commentary or lacking commentary all together. Thus,

- In 11 cases, the IRU case review sheet contained evaluative commentary regarding the underlying investigation;
- In 14 cases, the IRU case review sheet contained limited critique or no critique at all of the underlying investigation.

Of the cases that contained commentary:

- In eight cases, the Commission determined that the underlying investigation was sufficient and that IRU's evaluation provided constructive comments to

investigators;

- In three cases, the Commission identified shortcomings in the underlying investigation; in each of these cases, IRU recognized these shortcomings and made appropriate comments in their evaluations;

Of the cases that contained no commentary or contained insufficient commentary:

- In thirteen cases, the underlying IAB investigation was sufficient and therefore no additional commentary from IRU was required.
- In one case, the Commission determined that IAB had not reviewed an audiotape of the PG 118-9 interview of the subject officer. Although, during the interview, the officer partly admitted committing the misconduct being investigated, the Commission noted that IRU should routinely review PG 118-9 interviews as part of its investigative review function.

In summary, in all instances where the Commission identified investigative deficiencies, IRU had properly recognized these failures and made appropriate recommendations.

#### B. Appropriate IRU Review

In five cases that had investigative shortcomings, the Commission determined that IRU provided meaningful evaluation and advisory comments on how the investigation should have been conducted. The IRU evaluations were insightful and indicative of a thorough understanding of the underlying investigations. A discussion of two of these cases follows.

In one case in which IRU identified investigative failures, a complainant stated that she

overheard a conversation between two women. The first woman accused the second of receiving information from someone in either a public housing complex or the local precinct and tipping off drug dealers prior to a police raid at a drug location. The complainant knew only the second woman's street name.

The investigating officer interviewed the complainant and through the use of photos was able to positively identify the woman allegedly tipping off the dealers. The investigator made several attempts to locate this woman through the use of NYPD and housing records and also gathered information about the drug location and the arrests which had been effected there, but made no attempt to speak to or debrief any of these arrestees. The case was incorrectly classified as a less serious case than the evidence warranted and the investigator's worksheets did not accurately reflect investigative events.

IRU properly criticized the investigator for failing to locate the woman and advised the investigator that if he had used the Department's "CRIMS" computer system, he might have been able to locate the woman for an interview. IRU also criticized the investigator for not interviewing people arrested at the drug location since they may have had information as to this woman's whereabouts. Finally, IRU noted documentation problems in the investigation, determining that the investigating officer had improperly completed the classification sheet and that several of the investigator's worksheets did not correspond in date and time to investigative events that had occurred.

In an additional case, IRU's review led to the reclassification of an investigation. In that case, an anonymous complainant alleged that a gambling operation was continuing to operate despite being repeatedly closed down by the police. The complainant suggested that this was

happening because police officers were being paid off by the operation. The investigating officer conducted surveillance at the location to determine whether any police personnel were frequenting the store and debriefed several people who were arrested there. No further evidence supporting the allegation was uncovered and the case was closed as unsubstantiated.

IRU appropriately criticized the investigator for closing the case as unsubstantiated, noting that the case should have been closed as “for information and intelligence only,” given that neither a subject officer nor complainant was identified. In light of this review, IRU took the affirmative step of contacting the officer’s supervisor and requesting a reclassification of the case.

C. Areas for Improvement in IRU Review

In order to effectively evaluate an investigation, IRU needs to obtain and review all case materials that document the investigation. In one case in the Commission's sample, IRU failed to review a key aspect of the investigation, the interview of the subject officer, thereby limiting the effectiveness of the review. A discussion of this case follows below.

In this case, a man was arrested for possession of marijuana and bribery. During the arrest process, he produced an NYPD Honor Legion Card and said the officer who gave it to him told him to use it if he ever got into trouble. Although the investigating officer conducted routine background checks of the subject officer and attempted to interview the complainant, the most significant investigative step taken was the PG 118-9 interview of the subject officer. This interview was memorialized in a worksheet, yet IRU did not review the tape or a transcript of the interview. While the worksheet indicated that the subject officer admitted, during the

interrogation, to giving the card to the individual, a better practice would have been for IRU to obtain and review an audiotape of the actual interview. PG 118-9 interviews can be a critical step in an investigation and it is important that IRU review the quality of these interviews to ensure that they are being used effectively. At the time of the Commission's review, IRU was not routinely obtaining and reviewing PG 118-9 tapes as part of their responsibilities. This issue is further discussed in the recommendation section of this report.

## **V. Conclusion**

Overall, the Commission found that IRU sufficiently performed its quality-assurance function in a thorough and productive manner. IRU evaluated closed IAB investigations in a timely fashion and provided constructive critiques which allowed for reopening investigations where additional investigative steps were necessary. However, in one case IRU failed to evaluate a key aspect of the investigation, the interview of the subject officer, thereby diminishing the thoroughness of the review.

## **VI. Recommendations/Comments**

### **A. Training**

Because IRU has the opportunity to review a sizeable number of IAB investigations and provide assessments about the quality of those investigations, IRU is in a unique position to identify training issues and provide guidance to other IAB investigators. The Department contends that this guidance is currently given to investigators on an informal basis. The Commission recommends that this process be more formalized and that IRU continue its

monitoring program and look for ways to consolidate the problems it identifies, making them accessible to commands, so that training may be enhanced. By generating more commentary of both a positive and negative character, IRU can also provide material to be used in larger training courses for IAB investigators.

B. More Experienced IRU Investigators

Because IRU's work is vital to the overall quality of IAB investigations, unit staff should have extensive investigative experience. The Commission observed during the course of its review that IRU is headed by a lieutenant who reports directly to the Chief of IAB. Although the Chief of IAB ultimately supervises the work performed by IRU, the lieutenant is responsible for reviewing investigations that group captains and IAB management have endorsed. The suggestions made by a lieutenant may not receive the same consideration as those of someone of a higher rank. The Commission therefore recommends that IRU be administered by someone in the rank of captain or above. The Commission also learned that IRU is primarily staffed with detectives and has recruited only one new staff member in nearly three years. By not recruiting staff of varied ranks and with fresh perspectives, IRU limits the investigative experience available to review IAB's investigations.

C. PG 118-9 and Integrity Testing Review

During the course of the study, the Commission learned that IRU was not routinely reviewing PG 118-9 interrogations and integrity tests as part of its on-going review of open and closed investigations. Without PG 118-9 tapes or integrity testing documents, IRU cannot fully

evaluate an underlying investigation and IRU's role as a quality-control unit is diminished. The Commission therefore recommended that IRU routinely obtain PG 118-9 tapes and integrity testing documents as part of its review of cases. IAB has now established a practice whereby IRU routinely obtains and reviews PG 118-9 and integrity testing documents as part of its investigative review function.

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