



UNITED STATES CAPITOL POLICE OFFICE OF INSPECTOR GENERAL

Evaluation of the United States Capitol Police Disciplinary Process

Report Number OIG-2017-01

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*UNITED STATES CAPITOL POLICE
WASHINGTON, DC 20003*



OFFICE OF INSPECTOR GENERAL

PREFACE

The Office of Inspector General (OIG) prepared this report pursuant to the Inspector General Act of 1978, as amended. It is one of a series of audits, reviews, and investigative and special reports OIG prepares periodically as part of its oversight responsibility with respect to the United States Capitol Police (USCP) to identify and prevent fraud, waste, abuse, and mismanagement.

This report is the result of an assessment of the strengths and weaknesses of the office or function under review. Our work is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.



We developed our recommendations based on the best knowledge available to OIG and discussed in draft with those responsible for implementation. It is my hope that the recommendations will result in more effective, efficient, and/or economical operations.

I express my appreciation to those contributing to the preparation of this report.



A handwritten signature in cursive script that reads "Fay F. Ropella".

Fay F. Ropella
Inspector General

TABLE OF CONTENTS

	<u>Page</u>
Abbreviations and Acronyms	ii
Executive Summary	1
Background	3
Objective, Scope, and Methodology	4
Results	7
Internal Controls Need Improvement	7
Best Practices Could Improve the USCP Disciplinary Process	10
Other Matter	13
OIG Response to Department Comments	13
Appendices	16
Appendix A – Listing of Recommendations	17
Appendix B – Department Response to Draft Report	18
Appendix C – Discipline Process Narrative	31
Appendix D – Discipline Process Flow Charts	34
Appendix E – Questions Used to Guide Interviews	36
Appendix F – Penalty Recommendation Table	40
	

Abbreviations and Acronyms

Assistant Chief of Police	ACOP
Capitol Police Board	Board
Chief of Police	Chief
Collective Bargaining Agreement	CBA
Disciplinary Review Board	DRB
Disciplinary Review Officer	DRO
Disciplinary Review Task Force	DRTF
Fiscal Year	FY
Fraternal Order of Police, District of Columbia Lodge No. 1	FOP
Government Accountability Office	GAO
International Brotherhood of Teamsters Local Union No. 639	Teamsters
Merit Systems Protection Board	MSPB
Office of General Counsel	OGC
Office of Inspector General	OIG
Office of Professional Responsibility	OPR
United States Capitol Police	USCP or Department
	

EXECUTIVE SUMMARY

In 1998, the United States Capitol Police (USCP or Department) and the Union signed a contract establishing a disciplinary process laid out in a manner that codified the process outside of USCP written general orders. According to General Order [REDACTED], dated March 17, 1999, USCP established a system of internal discipline whereby objectivity, fairness, and justice to employees are assured through intensive investigation, thorough review, and timely adjudication of serious infractions of the Department's rules, regulations, policies, and procedures.

At the request of USCP Oversight Committees and in accordance with our annual plan, the Office of Inspector General (OIG) evaluated the Department's disciplinary process. Our primary objectives were to determine if the Department (1) established internal controls and processes for ensuring that USCP employees subject to the disciplinary process were afforded due process based on transparency and fairness, and (2) complied with applicable policies and procedures as well as applicable laws, regulations, and best practices. Our scope included internal controls, processes, and operations during Fiscal Year (FY) 2014 and FY 2015. We also requested that the Government Accountability Office (GAO) provide an opinion related to USCP Directive [REDACTED], dated November 19, 2012.

Although USCP had a discipline process that allowed for due process and fairness, some areas needed improvement. Those areas were as follows:

1. Updating policies and procedures by incorporating into Directive [REDACTED], changes made through memoranda on various dates. According to several USCP officials, the Department did not foresee disciplinary actions for senior command officials. The disciplinary process had been in place since the early 2000's and established to address disciplinary actions for rank-and-file officers. Although the Department periodically reviewed the process since establishment, as of October 2016, the Department had not fully implemented a revised disciplinary process or communicated any of those changes to employees. According to the Chief of Police (Chief), the Department tabled a new disciplinary process agreed to by the previous Chief and Union and during the past year was developing a modified process for the entire workforce.
2. Helping develop management's understanding of performance and misconduct issues through training could improve performance and discipline processes. USCP Directive [REDACTED] dated November 19, 2012, addresses unsatisfactory performance as a violation. Several officials agreed that challenges exist for managers when determining whether to correct employee behavior through

the Department's performance or misconduct adverse action systems. Each system has a different set of standards and requirements.

We did not test individual discipline penalties for compliance with Department policies and procedures because penalty determinations are a management function and an assessment of those penalties could impair OIG's independence and jeopardize litigation. OIG did, however, obtain and review discipline standards from several Federal, state, and local agencies and compared those standards with the Department's disciplinary process for best practices.

The Department could improve its discipline process by implementing best practices used by other law enforcement organizations. For example, in its penalty determinations, USCP considers only 4 of the 12 Douglas Factors,¹ although multiple Federal agencies reviewed consider the full 12 factors. According to the Chief, the Department consolidated 12 factors into 4. Under the Collective Bargaining Agreement (CBA), the parties negotiated the relevant factors required to arrive at a penalty recommendation. To ensure consistency with other Federal agencies and best practices, all of the 12 factors should be considered.

USCP also did not reference a table of penalties in its penalty determinations. Each agency reviewed, however, referenced some form of a table of penalties or a penalty matrix. Making managers responsible for discipline of low-level penalties rather than the Chief could lead to taking ownership for employee discipline and that disciplinary process. For example, the Department might impose a forfeiture of up to 24 hours of annual leave as a disciplinary penalty. Several Department officials did not believe that forfeiture of annual leave was an effective deterrent for correcting behavior. The majority of the agencies reviewed did not use annual leave forfeiture as a penalty.

Furthermore, a USCP official raised concerns that the language in USCP Directive [REDACTED] requires more than one element for supporting a violation. OIG requested GAO provide an opinion on whether the use of the word "and" required all the elements stated to charge someone with insubordination. GAO concluded that only one of the elements needed to exist for the Department to support a charge for insubordination.

Without up-to-date policies and procedures addressing the disciplinary process, the Department remains vulnerable and susceptible to allegations that the discipline process is neither transparent nor applied consistently. The USCP discipline process was decentralized and several officials stated they would like to see a centralized office within the Department handle discipline. The Metropolitan Police Department of the District of Columbia does utilize a Disciplinary Review Division to administer its disciplinary process. Therefore, we recommend the Department immediately update and formalize its policies and procedures, clarify performance and misconduct standards and requirements, and consider implementing

¹ The Merit Systems Protection Board in its decision, *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981), established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct.

best practices such as the Douglas Factors and a Table of Penalties in its discipline process ensuring transparent and equitable treatment. See Appendix A for a complete list of recommendations.

On October 26, 2016, OIG conducted an exit conference with Department officials and provided a draft report for comment. We incorporated the Department's comments to the draft report where applicable and attached its response to the report in its entirety in Appendix B. Appendices C, D, and E, respectively, provide the discipline process narrative, flow charts, and questions used to guide our interviews.

In its comments on the draft of this report, the Department agrees to "adopt" Recommendations 1, 2, and 4. In addition, the Department concurs with Recommendation 6 but also explains it was included in a "2015 Department reorganization proposal" which the Capitol Police Board (Board) previously approved. The Department further states it would re-present for approval Recommendation 6 to the Board and its Oversight Committees. On November 21, 2016, the Chief of Police issued a penalty recommendation table for supervisors to use as guidance in determining appropriate penalties in disciplinary matter, as shown in Appendix F. With its comments, the Department attached a draft of USCP Directive [REDACTED], as in [REDACTED]

The Department states in its response that it will not, however, implement Recommendation 3, *Douglas Factors*, and Recommendation 5, which recommends discontinuing the use of leave docking as a misconduct deterrent. Although GAO ruled in favor of USCP, the Department offers that it was "disconcerted" about our request for an independent opinion from GAO regarding language in USCP Directive [REDACTED] because of the source that raised this matter. The Department also expressed concern over the wording in our recommendations, which recommended USCP coordinate with the Board, its Oversight Committees, and Unions, if applicable [Emphasis Added]. As stated in our comment section, OIG continues to believe that its findings, conclusions, and recommendations are valid, as discussed in this report.

BACKGROUND

During the tenure of a previous Chief of Police (Chief), numerous employees filed complaints both with the Office of Inspector General (OIG) and various oversight committees related to the lack of a transparent process and inconsistent treatment for similar discipline cases.

Section 1907, title 2 of the United States Code [2 U.S.C. §1907] authorizes the Chief to appoint, hire, suspend with or without pay, discipline, discharge, and set the terms, conditions, and privileges of employment of employees of the Department, subject to and in accordance with applicable laws and regulations. Section 1907, title 2 of the United States Code also requires that the Chief provide notice and gain approval from the Capitol Police Board (Board) before terminating an employee. In addition, Section 1907, title 2 of the

United States Code requires that the Chief provide notice or receive approval, as required by the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives, as each Committee determines appropriate for the exercise of any authority listed above or the establishment of any new position for officers, members, or employees of the Capitol Police, for reclassification of existing positions, for reorganization plans, or for hiring, termination, or promotion for officers, members, or employees of the United States Capitol Police (USCP or Department).

In July 2013, the Department established the Disciplinary Review Task Force (DRTF), which acts on behalf of the Chief for certain disciplinary matters. The Chief delegated to the DRTF Commander the authority to administer appeals of command discipline and issue written decisions to employee when contesting Department discipline.

Disciplinary Review Officers (DROs) are attorneys within the Office of General Counsel (OGC) responsible for reviewing sustained investigations that will ensure disciplinary charges are sufficient, drafting penalty recommendations, and serving as the Department advocate during Disciplinary Review Board (DRB) proceedings.

OIG and Office of Professional Responsibility (OPR) are responsible for documenting, registering, and investigating complaints pertaining to Department policies or procedures or alleged misconduct by any employee of the Department. OIG depicts the USCP discipline process in Appendices C and D.

The Department's discipline process must adhere to its Collective Bargaining Agreements (CBAs) with Fraternal Order of Police, District of Columbia Lodge No. 1 (FOP) and International Brotherhood of Teamsters Local Union No. 639 (Teamsters) for bargaining unit employees. The Department's discipline process for employees exempt from CBA coverage typically mirrors the coverage afforded under the CBA in terms of process, except for representation by a Union Representative and the ability to grieve rather than appeal a penalty.

OBJECTIVE, SCOPE, AND METHODOLOGY

At the request of USCP Oversight Committees, OIG evaluated the Department's disciplinary process. Our primary objectives were to determine if the Department (1) established internal controls and processes for ensuring that USCP employees subject to the disciplinary process were afforded due process based on transparency and fairness, and (2) complied with applicable policies and procedures as well as applicable laws, regulations, and best practices. Our scope included internal controls, processes, and operations during Fiscal Year (FY) 2014 and FY 2015. To accomplish our objectives, we interviewed 24 Department and Union officials to gain a better understanding of the USCP discipline process as shown in Table 1. We used a series of questions to guide our discussion with each individual, as shown in Appendix E.

Table 1- Individuals Interviewed about the Discipline Process		
Individual Interviewed	Number	Organization
Chief	1	USCP
Deputy Chief	3	USCP
Inspector	10	USCP
Sergeant	1	USCP
Representatives	3	FOP
Representative	1	USCP Teamsters
Personnel Officials	2	USCP/OHR*
Attorneys	3	USCP/OGC
Total	24	

Source: OIG generated.

*OHR – Office of Human Resources.

We reviewed available general orders, directives, and other internal documents related to the discipline process including those in draft as well as the CBAs:

- USCP Directive [REDACTED]
- General Order [REDACTED] March 17, 1999
- General Order [REDACTED], August 14, 1990
- General Order [REDACTED] June 1, 1989
- USCP Directive [REDACTED], March 14, 2003
- USCP Directive [REDACTED], November 19, 2012
- Email, [REDACTED] March 3, 2011
- Memorandum, [REDACTED] April 13, 2006
- Memorandum, [REDACTED] November 13, 2015
- [REDACTED], undated
- *Collective Bargaining Agreement Between the FOP/U.S. Capitol Police Labor Committee and the United States Capitol Police Effective June 8, 2010* (FOP CBA)
- *Collective Bargaining Agreement Between the United States Capitol Police and the International Brotherhood of Teamsters Local Union No. 639*, May 6, 2014 (Teamsters CBA)
- Draft USCP Directive [REDACTED], undated²
- [REDACTED], dated June 17, 2013

² The Department provided several draft directives renamed [REDACTED]. One draft, dated June 5, 2014, did not have a directive number, but had an effective date of May 15, 2014. Another draft dated September 20, 2016, had Directive Number [REDACTED], but did not have an effective date.

We also reviewed OPR's Annual Reports for October 1, 2013, through December 31, 2014,³ and January 1, 2015, through December 31, 2015, as well as the data from OGC supporting 121 DRO recommendations during FY 2014 and FY 2015. In addition, we reviewed standards related to discipline and penalties for best practices for the following Federal, state, and local agencies shown in Table 2.

Table 2: Other Agencies OIG Reviewed	
Federal	
	U.S. Customs and Border Protection
	U.S. Department of the Interior
State	
	Department of Maryland State Police
Local	
	Austin Police Department (Texas)
	Denver Police Department (Colorado)
	East Haven Police Department (Connecticut)
	Lansing Police Department (Michigan)
	Madison Police Department (Wisconsin)
	Metropolitan Police Department of the District of Columbia
	Prince George's County Police Department (Maryland)

Source: OIG generated.

Furthermore, we reviewed guidance from the Government Accountability Office (GAO) and requested an opinion related to USCP Directive [REDACTED].

We did not test individual discipline penalties for compliance with Department policies and procedures because penalty determinations are a management function and an assessment of those penalties could impair OIG's independence and jeopardize litigation.

We conducted fieldwork in Washington, D.C., from June through October 2016. We conducted our evaluation in accordance with the *Council of the Inspectors General on Integrity and Efficiency, Quality Standards for Inspection and Evaluation*. We did not conduct an audit, the objective of which would be the expression of an opinion on the performance and discipline programs. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that we would have reported. This report is intended solely for the information and use of the Department, the Board and the USCP Oversight Committees and should not be used by anyone other than the specified party.

³ OPR's Annual Report for October 1, 2013, through December 31, 2014, incorporated the change from fiscal year to calendar year. Thus, the 2014 report numbers reflect 3 months of additional statistics (October through December 2013).

RESULTS

The Department could improve its disciplinary process by updating controls and using best practices to make the process more transparent. In response to concerns from a Department official, we obtained an independent opinion from GAO relevant to the Department's charge for *insubordination* and the elements needed to support such a violation.

Internal Controls Need Improvement

The Department needs to improve internal controls related to its disciplinary process. Specifically, the Department did not maintain up-to-date policies and procedures. In addition, developing manager understanding of performance and misconduct issues through training should improve the performance and discipline processes.

Outdated Policies and Procedures

GAO *Standards for Internal Control in the Federal Government; Definition of Internal Control*, GAO-14-704G, dated September 2014, state internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity.

Although USCP had a discipline process, the Department's policies and procedures were not up to date—resulting in lack of clarity of the process for the workforce. Directive [REDACTED], for example, which is the Department's primary document outlining the discipline process, consists of various General Orders dating as far back as 1989. Although the Department modified the process over time by issuing other miscellaneous memoranda related to discipline, it did not incorporate the changes into Directive [REDACTED]—including changes such as establishment of DRTF.

Department officials expressed concerns about the discipline policies and procedures. Multiple USCP officials stated that the current discipline policies and procedures focus on sworn officers without considering discipline of senior command staff. Several officials expressed an opinion that the current DRB process was a “waste of everybody's time” and that the Department did not provide employees with adequate training or guidance related to the process. Officials also expressed concern that DRB panel recommendations were pointless because the final decision rested with the Chief, stating, the panels are inconsistent, and there are too many personal relationships within the Department to achieve an independent panel.

The Department provided several draft directives renamed [REDACTED]. One draft, dated June 5, 2014, did not have a directive number, but had an effective date of May 15, 2014. Another draft dated September 20, 2016, had Directive Number [REDACTED].

but did not have an effective date. The September 2016 draft, however, did consolidate much of the discipline process into one document.

The draft directive specifically addressed senior staff discipline, defined the DRTF role, and replaced the DRB with a Disciplinary Review Panel.⁴ Nevertheless, certain sections of the draft directive applied only to non-bargaining unit employees. For example, the current FOP CBA protects the DRB process as well as the grievance and appeal procedures.

GAO Standards of Internal Control in the Federal Government; Documentation of the Internal Control System, GAO-14-704G, September 2014, state:

Effective documentation assists in management's design of internal control by establishing and communicating the who, what, when, where, and why of internal control execution to personnel. Documentation also provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties, such as external auditors.

Management documents internal control to meet operational needs. Documentation of controls, including changes to controls, is evidence that controls are identified, capable of being communicated to those responsible for their performance, and capable of being monitored and evaluated by the entity.

Without up-to-date policies and procedures addressing the disciplinary process, the Department was vulnerable and susceptible to allegations that the discipline process was neither transparent nor applied consistently. Operating with outdated guidance also had the Department running the risk that employees did not understand the process, which could have resulted in individuals inadvertently violating the discipline policies and procedures.

Lack of Understanding for Performance and Misconduct

According to several individuals interviewed, a lack of understanding existed among managers about the performance and misconduct process and standards. It is a challenge for managers to determine, which process or standards to use to handle employees. Each system has a different set of standards and requirements. A manager must base a performance case

⁴ According to the September 20, 2016, draft policy, the DRB is a sworn five member panel with an administrative hearing process through which a sworn bargaining unit employee and a Department advocate present testimony and physical evidence evaluating whether a preponderance of evidence exists to sustain charges for a proposed disciplinary action involving a suspension of 15 days or more.

A Disciplinary Review Panel is comprised of three Department employees (both sworn and civilian) for determining whether a preponderance of evidence exists to sustain a charge for a recommendation of termination of employment with respect to non-bargaining unit sworn and civilian employees. Employees provide written statements and any other material or relevant information related to a recommendation of termination of employment. During a Disciplinary Review Panel Hearing, the Respondent or representative are allowed to make an oral statement and provide material and other relevant information challenging the termination of employment recommendation. During a Disciplinary Review Panel hearing, no witnesses are allowed to testify.

on an employee's performance occurring within the past year and the employee repeated after notice, and placement on a performance improvement plan. Rather than efficiency of the service in a misconduct case, failure to perform must relate to failure to meet a performance standard. The agency must prove a misconduct case by a preponderance of the evidence and must show some relationship to the efficiency of service. The agency need only prove a performance case by substantial evidence, a lower burden of proof than the preponderance of the evidence needed in a misconduct case.

Multiple officials stated the Department's guidance did not distinguish between discipline or performance issues, and the only issue the Department had strictly laid out was how to evaluate tardiness. In 2013, a Discipline Task Force recommended that the Department make a clear distinction between performance notes and discipline. The Task Force also stated, "counseling and coaching is critical and must generally take place prior to any disciplinary action." It would assist managers in determining which standards to follow if the Department provided training and guidance related to the performance and misconduct standards. According to one official, USCP had a contractor that previously worked for the Office of Personnel Management and conducted a study of issues related to performance and conduct. According to the official, the Department did not implement any of the recommendations. As of October 14, 2016, the Department was unable to provide OIG a copy of the study.

Conclusions

The Department did not have written internal control procedures for some new discipline processes, and most of its guidance was outdated. The Department also did not provide clear guidance for distinguishing between discipline or performance issues.

Management expectations, with regard to internal controls, is often referred to as the "tone at the top." In other words, it is an attitude that cascades down to the rest of the organization. If employees perceive that management has the right attitude and is doing the right thing, they are more likely to exhibit that same attitude because employees know that managers will hold them accountable and provide fair due process. On the other hand, if management does not communicate expectations regarding internal controls, a much higher likelihood exists that some employees will forsake what they know is right to achieve what they perceive expedient. This, of course, presumes that management follows what it says with appropriate actions. Words describing management's expectations are not enough; the Department must follow-up with appropriate and consistent actions when employees meet expectations and penalties when they do not. Therefore, OIG makes the following recommendations.

Recommendation 1: We recommend that the United States Capitol Police immediately update and formalize its discipline policies and procedures in order to equip employees with the knowledge that will ensure compliance.

Recommendation 2: We recommend that the United States Capitol Police provide annual training to all managers related to correcting employee behavior through the performance or the misconduct adverse action systems, which have different standards and requirements.

Best Practices Could Improve the USCP Disciplinary Process

The Department could improve its discipline process by implementing best practices of other Federal, state, and local agencies. Although the agencies reviewed consider 12 factors, USCP has a low threshold for Douglas Factors and considers only 4 of the 12 in penalty determinations. USCP did not reference a table of penalties in its penalty determinations. Each of the agencies reviewed, however, referenced either a table of penalties or penalty matrix. In addition, officials interviewed believed that forfeiture of annual leave was not an effective deterrent to misconduct. In addition, officials interviewed also believed that a centralized office for discipline would create more consistency in the process.

Use of Douglas Factors in Misconduct Cases

The Merit Systems Protection Board (MSPB) in its decision, *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981), established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. The criteria consists of 12 factors identified below and commonly referred to as the *Douglas Factors*. Those factors are:

- (1) Nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
- (2) Employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
- (3) Employee's past disciplinary record.
- (4) Employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
- (5) Effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties.
- (6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- (7) Consistency of the penalty with any applicable agency table of penalties.
- (8) Notoriety of the offense or its impact upon the reputation of the agency.
- (9) Clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
- (10) Potential for the employee's rehabilitation.
- (11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

- (12) Adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

The U.S. Customs and Border Protection, [REDACTED] and U.S. Department of the Interior consider all 12 Douglas Factors in their respective discipline processes. However, USCP considers only factors 1, 4, 6 and 11—the four factors the FOP CBA requires that the Department consider. As a legislative branch agency, USCP is not under the jurisdiction of the MSPB and many laws and regulations that apply to executive branch agencies do not apply to USCP. The Chief stated that the Department has successfully supported its disciplinary actions before arbitrators, the Office of Compliance, and district courts utilizing these 4 factors and no decision or finding has stated that the Department disciplinary process must consider the 12 Douglas Factors to arrive at a fair and reasonable penalty.

We believe, however, that those laws and regulations represent appropriate guidance and industry best practices. If USCP were to consider all 12 of the Douglas Factors in its penalty determinations, it would better align the Department's process with those of other Federal agencies.

Use of Table of Penalties

Our review of the discipline and penalty standards from other agencies revealed that each of the organizations referenced some form of a table of penalties or penalty matrix to aid in penalty determinations. If USCP were to employ a table of penalties it would not only add greater transparency to its penalty determination process but also better align the Department's process with other Federal, state, and local agencies. However, the Department does not use such a table or matrix when determining penalties.

Several USCP officials stated a table of penalties would create greater consistency as well as remove the perceived subjectivity in the Department's penalty determination process. One official stated a table of penalties could provide a deterrent to misconduct because employees would know they faced a certain penalty. In 2013, a USCP Discipline Task Force recommended that the Department use a penalty matrix with the stipulation that supervisors may go outside of the penalty matrix with explanation after considering applicable Douglas Factors.

Forfeiture of Annual Leave

When USCP issues discipline to an employee using a Form [REDACTED] the Department has an option of imposing a penalty of forfeiture of up to 24 hours of annual leave. Of the 12 organizations reviewed, only 4 used forfeiture of annual leave as a penalty. USCP Directive [REDACTED], defines the term corrective action as steps taken to correct an employee's deficiencies. Multiple Department officials did not, however, believe forfeiture of annual leave was an effective deterrent nor did it correct behavior because the officers have a lot of annual leave and can earn additional leave by working overtime. One official noted that the penalty is a remnant from a time when overtime was not as readily available and officers could not make back their annual leave so

easily. A 2013, USCP Discipline Task Force recommended that the Department no longer use forfeiture of leave as a penalty.

The task force recommended that the Department use only four types of discipline: written reprimands, suspensions, demotions, and terminations. By discontinuing forfeiture of annual leave as a penalty, the Department could increase the effectiveness of its discipline process by no longer using a penalty that many of its officials believe does not accomplish the objective of correcting employee deficiencies.

Decentralized Discipline Process

USCP's discipline process is decentralized. A USCP official stated, "numerous offices and individuals are involved throughout the disciplinary process—without any one official, office or supervisor having ownership of the process or even a discrete disciplinary matter—which can paralyze the process, create situations of conflicting advice and guidance and gaps in knowledge among Department officials." Several officials stated they would like to see a centralized office within the Department handle discipline, which would create more consistency in the process. The Metropolitan Police Department of the District of Columbia uses a Disciplinary Review Division to administer its disciplinary process. If the Department formalized the DRTF into a permanent office, it would provide exclusive ownership of the process. This would promote greater consistency within the discipline and DRB processes. A USCP official stated that the Department is working on a reorganization that includes establishing the DRTF as a permanent office but any reorganization of the Department would require approval from its oversight committees.

Conclusions

Best practices could improve the discipline process such as considering all of the 12 Douglas Factors or referencing a table of penalties in its penalty determinations. The Department could increase the effectiveness of its discipline process by centralizing the process and discontinuing using forfeiture of annual leave as a penalty. The purpose of discipline is not solely to punish an individual but to effect a positive change for both the individual and the organization. Therefore, OIG makes the following recommendations.

Recommendation 3: We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, consider all 12 of the Douglas Factors in its penalty determinations ensuring consistent, fair, and equitable treatment.

Recommendation 4: We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, consider developing and using a table of penalties to reference in its penalty determinations ensuring that employees are consistently treated and fully informed of potential penalties for misconduct.

Recommendation 5: We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, consider discontinuing use of forfeiture of annual leave as a penalty because it does not accomplish the objective of correcting employee deficiencies and would better align the Department's penalties with those of other Federal agencies.

Recommendation 6: We recommend that the United States Capitol Police, in coordination with the Capitol Police Board and its Oversight Committees, formalize the Disciplinary Review Task Force into a permanent office for discipline, providing a streamlined clearinghouse for all disciplinary matters and oversight of the discipline process while ensuring fairness and accountability.

Other Matters - Insubordination Language

A USCP official raised concerns that the language in the Department's charge for insubordination required more than one element to support a violation.

USCP Directive [REDACTED],

Employees will not refuse to obey, by words or actions, any lawful order of a supervisor, and will not utter any disrespectful, rebellious, insolent, or abusive language to or toward a supervisor. (Emphasis Added)

The official interpreted that the charge for insubordination required that an employee not only refuse to obey, by words or actions, any lawful order of a supervisor, but also utter disrespectful, rebellious, insolent, or abusive language to the supervisor in the process. OIG provided the Department language to GAO for an independent ruling on whether the use of the word "and" in the charge required that to charge someone with insubordination more than one element had to exist.

GAO concluded that only one of the elements needed to exist for the Department to support a charge for insubordination. The GAO attorney stated, "each of the actions described in the rule on insubordination are intended to be prohibited. Accordingly, the actions that are described in this provision cannot be viewed as cumulative in order to find that the rule has been violated. If any single action described in this rule occurs, such action—in and of itself—would serve as a factual predicate for a finding that the individual committing the action has violated the rule on insubordination."

Department Comments and OIG Evaluation

We provided a draft of this report to the Department for review and comment. OIG continues to believe that its findings, conclusions, and recommendations are valid. In written comments reprinted in Appendix B, the Department agrees to "adopt" Recommendations 1, 2, and 4. Although USCP concurs with Recommendation 6, the Department states in its response the Board previously approved a "2015 Department reorganization proposal." The Department further states that it would re-present

Recommendation 6 to both the Board and Oversight Committees for approval. On November 21, 2016, the Chief issued a penalty recommendation table as simply a guide for discipline and not a rigid standard, shown in Appendix F. The Department also provided with its written comments a draft of policies and procedures, undated and unsigned, shown in [REDACTED]. The Department did not concur with Recommendations 3 and 5, as discussed below.

In its written response to Recommendation 3, the Department states that that it believes Douglas Factors are applicable for the most serious discipline matters where the penalty is a suspension without pay for more than 14 days, as 5 U.S.C. §§ 7512-7513 requires and that “even in the executive branch agencies to which this law is applicable, those agencies do not utilize the Douglas factors for all of their disciplinary cases.” Subsections 7512 through 7513 of Title 5 in the United States Code (U.S.C.) entitles employees of applicable agencies receiving a penalty of a suspension without pay for more than 14 days to appeal to the Merit Service Protection Board (MSPB). While the statute would imply applicable agencies must use Douglas Factors where the penalty is a suspension without pay for more than 14 days, 5 U.S.C. §§ 7512-7513 does not directly address Douglas Factors. In fact, U.S. Customs and Border Protection, [REDACTED] and U.S. Department of the Interior guidance does not specify that consideration of Douglas Factors applied to only serious discipline matters where the penalty is a suspension without pay for more than 14 days. For example, [REDACTED] Directive [REDACTED], [REDACTED], states that the [REDACTED] table of penalties “must always be used in conjunction with consideration of all the Douglas factors.”

The Department also states in its response that Chapter 75 of Title 5 does not apply to the legislative branch. As we state in our report, we reviewed standards related to discipline and penalties of other Federal agencies for best practices and not compliance with laws and regulations. On page 10 of our report we state, “as a legislative branch agency, USCP is not under the jurisdiction of the MSPB and many laws and regulations that apply to executive branch agencies do not apply to USCP. We believe, however, that those laws and regulations represent appropriate guidance and industry best practices.” The Department acknowledges in its response that it negotiated four of the Douglas Factors into the FOP CBA, which applied to approximately 56 percent of Department personnel. As previously stated in this report, we concluded that Department consideration of 4 of 12 established Douglas Factors was not a best practice and reiterate our belief that consideration of all 12 Douglas Factors is the industry best practice.

In its written response to Recommendation 5, the Department states, “although the draft report references that some USCP officials did not believe the use of the [REDACTED] was a deterrent, a review of the existing [REDACTED] for employees between October 2014 and October 2016 reflects very few instances of repeated misconduct after the issuance of a [REDACTED] utilizing leave docking.” The Department agrees that the purpose of discipline is not solely to punish an individual but to effect a positive change and stated, “moving to mandatory unpaid suspensions for minor breaches of Department rules is contrary to this principle.” Yet, a 2013 USCP Discipline Task Force recommended that the Department no longer use forfeiture of leave as a penalty. The task force recommended that the Department

use only four types of discipline: written reprimands, suspensions, demotions, and terminations. In its written response, the Department states it discussed the processes extensively with the FOP and “several roadblocks in negotiations were encountered and, in 2016, the parties agreed to go back to the existing process that was set forth in the current CBA.” In its written response, the Department states that of 175 [REDACTED] issued between October 2014, and October 2016, “97 were issued with warning, thereby implicating no docking of leave and effectively serving as a written reprimand.” The cited numbers appear to support that written reprimands accomplish the objective of correcting employee behavior more often than not and the Department could use them at a greater frequency than it would have to use unpaid suspensions. Of the 12 agencies as cited earlier as having reviewed for best practices, only 4 used forfeiture of annual leave as a penalty. Thus, we concluded that forfeiture of annual leave, as a penalty was not an industry best practice.

In its written response related to *Other Matters*, the Department states it was “disconcerted” about why OIG provided Department language addressing insubordination to GAO for an independent ruling. The Department further indicates in its written response that the official raising the concerns to OIG “on at least two occasions charged employees with Insubordination without the alleged requisite cumulative interpretation.” Public Law 109-55 established OIG with the authority to receive and investigate complaints or information from an employee or member of USCP concerning possible existence of an activity constituting violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Additionally, Public Law 109-55 references section 6(a) of the Inspector General Act of 1978, which allows OIG to request such information or assistance as may be necessary for carrying out its duties and responsibilities from any Federal, State, or local governmental agency or unit thereof. As such, OIG reserves the right to seek unbiased and objective information, guidance or legal rulings to ensure that we remain independent in our oversight responsibilities regardless of the source of information.

In its comments, the Department expresses concern about the wording in our recommendations, which recommended that USCP coordinate with the United States Capitol Board, its Oversight Committees, and Unions, **if applicable** [Emphasis Added]. For example, as we previously state, USCP cannot implement reorganization without approval of the Board and its Oversight Committees.

APPENDICES

Listing of Recommendations

Recommendation 1: We recommend that the United States Capitol Police immediately update and formalize its discipline policies and procedures in order to equip employees with the knowledge that will ensure compliance.

Recommendation 2: We recommend that the United States Capitol Police provide annual training to all managers related to correcting employee behavior through the performance or the misconduct adverse action systems, which have different standards and requirements.

Recommendation 3: We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, consider all 12 of the Douglas Factors in its penalty determinations ensuring consistent, fair, and equitable treatment.

Recommendation 4: We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, consider developing and using a table of penalties to reference in its penalty determinations ensuring that employees are consistently treated and fully informed of potential penalties for misconduct.

Recommendation 5: We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, consider discontinuing use of forfeiture of annual leave as a penalty because it does not accomplish the objective of correcting employee deficiencies and would better align the Department's penalties with those of other Federal agencies.

Recommendation 6: We recommend that the United States Capitol Police, in coordination with the Capitol Police Board and its Oversight Committees, formalize the Disciplinary Review Task Force into a permanent office for discipline, providing a streamlined clearinghouse for all disciplinary matters and oversight of the discipline process while ensuring fairness and accountability.

DEPARTMENT COMMENTS



UNITED STATES CAPITOL POLICE

OFFICE OF THE CHIEF
110 D STREET, NE
WASHINGTON, DC 20515-7218

November 21, 2016

COP 161146

MEMORANDUM

TO: Ms. Fay R. Ropella, CPA, CFE
Inspector General

FROM: Matthew R. Verderosa
Chief of Police

SUBJECT: Comments and Response to the Office of Inspector General (OIG) Draft Report
Evaluation of the United States Capitol Police Disciplinary Process (OIG-2017-01)

Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) Draft Report, *Evaluation of the United States Capitol Police Disciplinary Process* (OIG-2017-01), dated October 20, 2016. The objectives stated in the draft Report were to determine if the United States Capitol Police (USCP or Department): (1) established internal controls and processes for ensuring that USCP employees subject to the disciplinary process were afforded due process based on transparency and fairness; and (2) complied with applicable policies and procedures as well as applicable laws, regulations, and best practices.

The draft Report at page 4 states that the recommendations provided are not based on the testing of individual penalties or review of discipline cases but on interviews of Department employees guided by a series of questions provided at Appendix E, as well as a review of available general orders, directives, and other internal documents related to the discipline process including draft documents and the collective bargaining agreements.

Based on a review of the draft Report, it is important to note that the OIG does not conclude the USCP disciplinary process is lacking in full due process based on transparency and fairness. In fact, as has been supported in administrative and court opinions, the USCP disciplinary system clearly provides employees with the required elements of due process, notice of investigation of specific charges, and a meaningful opportunity to be heard, through multiple layers of investigation, discovery, hearings, and appeals/grievances. In addition, the draft Report also does not conclude that the USCP disciplinary process fails to comply with policies, procedures, applicable law, regulations, and/or best practices.

DEPARTMENT COMMENTS

The Department is grateful to the OIG for its evaluation and for its conclusions that support a very robust and comprehensive disciplinary system that offers USCP employees one of the best, if not the best, protection of employee rights and privileges in the legislative branch. Nevertheless, as the OIG discovered during its evaluation, the Department continues to conscientiously review our disciplinary policies and processes in an effort to improve upon our administration of discipline and employee accountability and development. Two sets of revised procedures were provided to the OIG along with the history of the revised drafts, status of the negotiation process, and the initiation of a revised policy once negotiations were unproductive.

The OIG has identified what it considers to be best practices that the Department should consider with regard to our disciplinary process. As will be discussed more fully below, the USCP does not agree that the OIG has identified best practices in the legislative branch but rather has identified practices in the executive branch, which is subject to different statutory and regulatory requirements not made applicable to the legislative branch. In addition, because the draft Report is not based on a review of individual discipline cases and penalty determinations, the Department will provide some empirical evidence to support its responses to the draft Report recommendations and draft Report statements.

OIG RECOMMENDATIONS

The Department is appreciative of the time and effort involved in the OIG evaluation. Each of the six OIG recommendations in the draft Report was considered thoroughly and the USCP will adopt Recommendations 1, 2, and 4. As you are aware, Recommendation 6, which was included in a 2015 Department reorganization proposal which was previously approved by the Capitol Police Board, will be re-presented to the Capitol Police Board and oversight committees for approval; this will occur in the 115th Congress. The USCP does not consider Recommendations 3 and 5 to be consistent with applicable law or supported by demonstrated facts. Respectfully, those recommendations will not be adopted for the reasons detailed below.

At the onset, it is important to note that the Department is concerned about the wording of most of the recommendations in recommending consultation with unions and Oversight Committees. In the past, the OIG has offered USCP with management recommendations consistent with Department statutory management rights. The inclusion in the recommendations of coordination with oversight committees and unions regarding statutory disciplinary authorities of the USCP Chief of Police appears inconsistent with the purpose and prior practice of the OIG regarding recommendations, as well as contrary to USCP statutory authorities regarding management rights in collective bargaining. The Department believes that requiring coordination of management rights with unions is inconsistent with law and potentially may constitute interference with the collective bargaining process.

DEPARTMENT COMMENTS

Recommendation 1

We recommend that the United States Capitol Police immediately update and formalize its discipline policies and procedures in order to equip employee with the knowledge that will ensure compliance.

The Department agrees with the recommendation that its policies and procedures should be updated. As noted above, the Department has provided two sets of revised procedures to the OIG as part of this evaluation, and is continuing to review, update, and formalize its disciplinary process and procedures. In addition, the final drafts of the directives, [REDACTED] were forwarded to the unions on November 18, 2016, in accordance with collective bargaining processes. Also, it is important to note that the Department's existing policies, upon which the revised policies have been modeled, have been successfully upheld in litigation both before the Office of Compliance and in federal district court.

With regard to the USCP discipline process, the USCP and the Capitol Police Board have assembled numerous task forces, as far back as 1996 and further, to continually review and update USCP policies and procedures related to the disciplinary process. In addition, with the advent of collective bargaining, the Department extensively reviewed its disciplinary procedures and incorporated the negotiated process in the collective bargaining agreements in 2010 and 2016 with the Fraternal Order of Police (FOP), and in 2014 with the International Brotherhood of Teamsters, Local Union No. 639.

Significantly, the disciplinary process contractually agreed upon with the FOP applies to approximately 56% of Department personnel. Therefore, that process is formalized, agreed upon, and subject only to negotiability with the FOP. Currently, there are discipline process negotiability issues with the FOP pending before the Office of Compliance in accordance with applicable laws, regulations, and practices. It is through that statutory process only that contractual obligations with the Department unions may be addressed.

With regard to the proactive approach of the Department to improve its disciplinary process, in 2006, an administrative review of Internal Affairs Division cases recommended under the then Department statutory scheme that: 1) as the Chief of Police and Assistant Chief of Police are responsible for determining grievances and appeals, they should not be part of the administrative review process; 2) Bureau Commanders/Office Directors within the employee's chain of command should review completed cases and disciplinary penalties; 3) General Order [REDACTED] should be changed to properly reflect that discipline resulting in termination or reduction in rank be approved by the Capitol Police Board and respective committees; and, 4) the Disciplinary Review Officer (DRO) should submit to the Chief Administrative Officer, Chief of Operations, and Chief of Police a quarterly report of discipline rendered.

DEPARTMENT COMMENTS

Further, in 2010, the Department conducted a more comprehensive review of its disciplinary processes. As a result of that review, several changes were recommended: 1) the Office of the General Counsel was charged with overseeing the entire Disciplinary Review Board (DRB) process; 2) [REDACTED] were no longer presented by the DRO but, rather, were presented by a Division or Bureau Commander only; 3) each Inspector was to receive training so that they would be equipped to preside over a DRB; 4) a panel of three permanent Presiding Officers be created and a system put in place to rotate a new member each year; 5) preliminary meetings be recorded; 6) each party present final witness lists at preliminary meetings before the selection of the panel members with the Presiding Officer having discretion to permit witnesses to be called who were not on the list for good cause shown; 7) witness lists include a brief description of the witnesses' proposed testimony; 8) DROs consult with the OPR to determine whether cause existed to strike any panel member; 9) development of a list of DRB panel disqualifying factors; 10) all discovery issues coordinated with the DRO; 11) the Presiding Officer meet with panel members before the DRB to discuss burdens of proof; 12) a permanent room be designated for DRBs; 13) bailiffs would be at the rank of Sergeant from the Mission Assurance Bureau or Uniformed Services Bureau; 14) court reporters would record DRB hearings and proceedings; 15) witnesses sworn in individually before testifying; and, 16) Presiding Officers write a detailed summary of the penalty deliberations that would include relevant observations.

In addition, in 2013, as part of the collective bargaining process, the then-Chief of Police undertook a review to restructure the discipline process. That review considered eliminating [REDACTED] instituting a tiered warning process that included Letters of Caution, Dereliction Reports, and Letters of Reprimand; and processes for diversion, coaching, counseling, mentoring, and intervention. These processes were discussed extensively with the sworn union throughout 2014 and 2015 by the current Chief in his role as Discipline Task Force Commander. Several roadblocks in negotiations were encountered and, in 2016, the parties agreed to go back to the existing process that was set forth in the current CBA.

Based on these substantive initiatives and related discussions, the Department embarked on updating its policies and directives by streamlining the several disciplinary directives into three Directives: 1) [REDACTED]

[REDACTED] As of November 18, 2016, the Department has finalized the [REDACTED] directives and has forwarded them to the unions in accordance with collective bargaining responsibilities and other employee obligations prior to implementation. Prior to implementation, the Department will provide notice to all employees regarding the revised policies and anticipated supervisory training on the revised disciplinary process.

With regard to the draft Report comment regarding a formalized discipline process for senior command officials, we recognize that the Department had not previously anticipated the need for such a process; however, that fact does not mean that a process was not available and

DEPARTMENT COMMENTS

utilized when required. As stated to the OIG, when it was necessary to discipline senior command officials, it was accomplished consistent with the same disciplinary due process procedures applicable to all other employees of the Department. This has been the practice for many years. The Department's most recently revised draft disciplinary process will formalize the disciplinary process applicable to senior command officials and we remain very gratified that historically our senior command officials rarely have been involved in misconduct matters.

We note that the commanders interviewed by the OIG for this evaluation include many of those commanders who have successfully guided the disciplinary process for subordinate employees on numerous occasions. The discipline process in place is formal, institutionalized, and guided by legal oversight. In each stage of the process, employees are afforded opportunities to be represented by legal counsel. There are a few nuances for supervisory personnel but the fact remains that the same basic processes have been afforded to supervisors as is provided to employees covered under the sworn CBA. These processes include the ability to be provided notice of written charges, permitting employees to review documents relied upon by management to sustain charges, an opportunity to respond to the charges in a meaningful way, the ability to be represented by counsel at every step of the process, and the ability to respond to the charges in writing or orally to a DRB or Disciplinary Review Process Hearing (DRPH) panel for penalty recommendations. The process is essentially the same with a few necessary adaptations for supervisors.

Recommendation 2

We recommend that the United States Capitol Police provide annual training to all managers related to correcting employee behavior through the performance or the misconduct adverse action systems, which have different standards and requirements.

The OIG draft Report states that "according to several individuals interviewed, a lack of understanding existed among managers about the performance and misconduct process and standards." However, Directive [REDACTED] Directive [REDACTED] and Directive [REDACTED], each address the process and standards for employee performance. Separately, current discipline Directive [REDACTED] addresses the process and standards for misconduct. The Department believes it is important to recognize that the executive branch standard for performance requires executive branch agencies to meet a "just cause" standard of efficiency of government and sets out statutory appeal rights when the disciplinary action involves suspension of 14 days or more.¹ As we know, the legislative branch

¹ With regard to misconduct, it is important to note that Congress has set forth an elaborate appeal process for most executive branch employees. See 5 U.S.C. 7501. Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service. Under the executive branch statutory process, an employee against whom a suspension for 14 days or less is proposed is entitled to: 1) an advance written notice stating the specific reasons for the proposed action; 2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer; 3) the opportunity to be represented by an attorney or other representative; and, 4) a written decision and the specific reasons therefor at the earliest practicable date. 5 U.S.C. § 7503.

DEPARTMENT COMMENTS

is not subject to that same statutory scheme. It would present great risks for the Department to adopt a statutory scheme not applicable to the legislative branch which could potentially make applicable executive branch case law and standards of review. Nevertheless, the longstanding Department disciplinary process ensures that the due process requirements of notice and a meaningful opportunity to be heard serve as its foundation and provides all the necessary employee rights and protections.

Importantly, unlike what is provided by statute for the executive branch, Congress has provided a different statutory scheme for USCP employees. Under Section 1907(e)(1)(A), as noted in the draft Report at page 3, the Chief is authorized to “appoint, hire, suspend with or without pay, discipline, discharge, and set the terms, conditions, and privileges of employment of employees of the Capitol Police, subject to and in accordance with applicable laws and regulations.” 2 U.S.C. § 1907(e)(1)(A). In addition, Congress created a special rule for terminations. 2 U.S.C. § 1907(e)(1)(B):

The Chief may terminate an officer, member, or employee only after the Chief has provided notice of the termination to the Capitol Police Board (in such manner as the Board may from time to time require) and the Board has approved the termination, except that if the Board has not disapproved the termination prior to the expiration of the 30-day period which begins on the date the Board receives the notice, the Board shall be deemed to have approved the termination. 2 U.S.C. § 1907(e)(1)(B).

Notably, where managers and supervisors have lacked a clear understanding of the differences in when to address performance versus misconduct, those officials have contacted the Office of Human Resources and Office of Employment Counsel. Those managers and supervisors have proactively sought assistance in determining whether it would be appropriate in a fact specific incident to move forward with an issue based on performance or misconduct as, often time, the two unavoidably may overlap.

In addition, between October 3 and October 14, 2016, Supervisor Leadership Training was provided to new supervisors on conduct and performance issues. Prior to this, from 2007 through 2012, every supervisor (sworn and civilian) during that period was provided 120 hours of training in *Leadership in Organizations*. This training, modeled after the International Association of Chiefs of Police training program *Leadership in Police Organizations*. The Department subsequently provided training in *Leadership in Organizations*, also known as the *West Point Leadership Program*, which entailed identifying “poor performance” tools to diagnose why poor performance was occurring and leadership actions to correct the poor performance. A significant investment was made by the Department for each of these supervisors in providing them with the tools to identify and correct performance designed to increase performance, motivation, and job development and satisfaction.

DEPARTMENT COMMENTS

As has been advised and trained, poor performance becomes misconduct when it meets the requirements of the *Rules of Conduct* in terms of employees failing to maintain sufficient competency to perform their duties and assume the responsibilities of their positions. *Rules of Conduct*, Rule B1. There are six very specific guidelines that govern when poor performance becomes misconduct. These six identified guidelines are cumulative and significant as opposed to being isolated instances of poor performance and require repeated violations before a conclusion can be made that the performance is unsatisfactory and constitutes misconduct.

Also, policies for initiating Performance Improvement Plans and providing annual performance plans are at the disposal of the commanders and have been in place for many years. Commanders have used these processes to engage employees in performance development and improvement, and to exercise control at their level over the more prevalent type of disciplinary action, Command Discipline.

As stated above, when the Department implements its new *Discipline and Accountability* directive, managers and supervisors will be provided training to include the differences between USCP performance standards and misconduct standards. Since annual training does not appear to be practical or an industry standard, the Department will not implement this OIG recommendation, but will provide this important training in a manner that addresses individual employee training requirements that also allows for accomplishment of all management priorities.

Recommendation 3

We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, consider all 12 of the Douglas factors in its penalty determinations ensuring consistent, fair, and equitable treatment.

The Department does not concur with this recommendation because it does not appear to be factually supported nor required by any fundamental due process standard. Although the draft Report states that best practices would include considering all twelve *Douglas* factors, it should be clarified that the *Douglas* factors were established in executive branch case law based on the statutory requirements for executive branch agencies. 5 U.S.C. § 7513. However, significantly, even in the executive branch agencies to which this law is applicable, those agencies do not utilize the *Douglas* factors for all of their disciplinary cases. Rather, the *Douglas* factors are applicable to the most serious discipline matters where the penalty is a suspension without pay for more than 14 days. 5 U.S.C. § 7512. In consideration of the *Douglas* factors OIG recommendation, it is important to note that these types of serious discipline matters comprised only approximately 12.5% of the USCP discipline cases between October 2014 and October 2016.

The Department has researched the three federal agencies reviewed by the OIG in the draft Report regarding their application of the *Douglas* factors. Both the U.S. Customs and

DEPARTMENT COMMENTS

Border Protection (CBP) and U.S. Department of Interior (DOI) are executive branch agencies that are covered under the statutory scheme of 5 U.S.C. § 7513.

It should be noted that the CBP discipline process has come under scrutiny a number of times as stated in a CBP OIG review in August 2006, resulting in 10 recommendations, as well as an outside consultant review of its complaint and discipline process in 2015 (*Report* dated November 13, 2015), with 19 findings and 62 recommendations. With regard to the DOI, although the agency policy recommends consideration of *Douglas* factors, it also adopts in its policy the legal standard “to promote the efficiency of service” that does not apply to the legislative branch. Moreover, the DOI policy references “Chapter 752, Discipline and Adverse Action in accordance with Chapter 75 of Title 5,” which has no applicability to the legislative branch. Even under its policy, the DOI states that “not all of these factors will be pertinent in every case” and “even though there is no absolute requirement to do so, it is advisable for management to specifically state in proposal/decision notices what factors it considered in setting the penalty, to avoid concerns that relevant issues were not addressed.” Therefore, we do not believe that the application of the policies of these two executive branch entities to be required, appropriate, or consistent with applicable law.

Similarly, the draft Report references the [REDACTED] which is covered under the regulatory scheme of the executive branch even though it is a legislative branch entity, 5 C.F.R. 401(c)(9), and, also is governed by the executive branch statutory “efficiency of service” standard found in 5 U.S.C. § 7513. In addition, unlike USCP employees, [REDACTED] employees have appeal rights to the executive branch Merit Systems Protection Board (MSPB). As such, its statutory requirements dictate that it analyze appropriately the *Douglas* factors as its disciplinary matters of suspensions of more than 14 days can be reviewed in light of precedent set by the MSPB. Thus, in its Directive, the [REDACTED] requires that “there must be an adequate relationship, or “nexus,” between the misconduct and the “efficiency of the service” to support the taking of any disciplinary action.” [REDACTED]

As indicated above, Congress did not adopt the “efficiency of service” standard and MSPB structure for USCP employees. Congress, however, did enact the Congressional Accountability Act (CAA) which clearly does not place these statutory requirements on the USCP or the legislative branch. Instead, and vital context to this evaluation, under the CAA, USCP employees may establish collective bargaining relationships with the USCP and engage in statutory collective bargaining. 2 U.S.C. § 1351. As stated in the draft Report, the USCP and the sworn union negotiated four of the *Douglas* factors into its collective bargaining agreement. *Douglas* factors were not adopted in the CBA with the Teamsters. See Article 24, Section 24.03. In support of the Department formalized contractual disciplinary process, no concerns have been raised in arbitration or in court opinions that the four factors agreed upon are too limiting for sworn bargaining unit employees, negatively impact due process, or that there was a concern that the Department failed to consider the appropriate facts and circumstances. Moreover, there appears to be no support provided in the draft Report that applying all twelve of the *Douglas*

DEPARTMENT COMMENTS

factors would yield a different or better outcome in discipline cases. Further, we are unaware of any entity in the U.S. House of Representatives or U.S. Senate, that serves as employing offices under the CAA, that applies the *Douglas* factors to any of its disciplinary actions.

Moreover, it is important to be aware that in arbitrations when determining whether the Department's discipline is appropriate, arbitrators do not apply any *Douglas* factors in their decision-making. As illustrated above, the Department has considered thoroughly this draft Report recommendation regarding application of the 12 *Douglas* factors. The Department respectfully does not agree that applying all 12 *Douglas* factors will increase the effectiveness or fairness of the longstanding USCP disciplinary process, or that it is appropriate for a legislative branch entity such as the USCP to adopt such a recommendation based on the executive branch statutory scheme designed for application to the limited number of disciplinary actions of more than 14 days.

Recommendation 4

We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, develop and use a table of penalties to reference in its penalty determinations ensuring that employees are consistently treated and fully informed of potential penalties and misconduct.

As discussed previously, the USCP has a statutory right to determine discipline in accordance with the CAA. Importantly, the draft Report at pages 2 and 6, states that "penalty determinations are a management function." Therefore, it would be inappropriate to waive that statutory management right and voluntarily negotiate away that management right. Further, the statutory right of the Chief of Police to determine discipline is limited only by the approval authority of the Capitol Police Board for terminations, and the notification/approval process required by the oversight committees as each committee determines appropriate for the carrying out of the statutorily enumerated official duties of the Chief and personnel actions of the Department. See 2 USC § 1907(e)(1)(C). Those statutory limitations on the authority of the Chief of Police to discipline Department employees do not contemplate a role in negotiating or requiring the adoption of a penalty table in the Department internal disciplinary process. In fact, to recommend involvement of the unions in this management right could potentially constitute interference in the collective bargaining process. Likewise, to recommend the involvement of oversight committees in Department disciplinary processes potentially could subject those entities to litigation claims as employing offices under the CAA.

Nevertheless, the USCP agrees with this draft Report recommendation with regard to the adoption by the Chief of Police of a Penalty Recommendation Table that may serve as a helpful guide in communicating to the employees the range of potential penalties should they become involved in an infraction of the *Rules of Conduct*. As previously communicated to the OIG, the

DEPARTMENT COMMENTS

Department has developed a Penalty Recommendation Table and on November 21, 2016, the penalty table was officially published for Department employees.

Recommendation 5

We recommend that the United States Capitol Police, in coordination with its Oversight Committees and employee unions, if applicable, discontinue use of forfeiture of annual leave as a penalty because it does not accomplish the objective of correcting employee deficiencies and would better align the Department's penalties with those of other Federal agencies.

The Department respectfully does not agree with this recommendation as the Department has successfully defended challenged actions to the use of the [REDACTED] discipline process which docks leave as a disciplinary action. In addition, the draft Report at pages 2 and 6, states that "penalty determinations are a management function" and, therefore, we believe it would be inappropriate to waive that statutory management right and voluntarily negotiate away that management right. In addition, the statutory right of the Chief of Police to determine discipline is limited only by the approval authority of the CPB for terminations, and the notification/approval process required by the oversight committees as each committee determines appropriate for the carrying out of the statutorily enumerated official duties of the Chief and personnel actions of the Department. 2 USC § 1907(e)(1)(C). Those statutory limitations on the authority of the Chief of Police to discipline Department employees do not contemplate a role in negotiating or requiring the adoption of a specific type of penalty within the internal disciplinary process. In fact, to recommend involvement of the unions into this management right could potentially constitute interference in the collective bargaining process and, likewise, to recommend the involvement of the oversight committees in Department disciplinary processes potentially could subject those entities to litigation claims as employing offices under the CAA.

Although the draft Report references that some USCP officials did not *believe* the use of the [REDACTED] was a deterrent, a review of the existing [REDACTED] for employees between October 2014 and October 2016 reflects very few instances of repeated misconduct after the issuance of a [REDACTED] utilizing leave docking. The USCP currently employs 2,138 employees. Between October 2014 and October 2016, 175 [REDACTED] were issued to 132 employees, meaning that 6% of the workforce received a [REDACTED]. Of those 132 employees, only 24 employees, or less than 1% of the workforce (1/10th of 1% to be exact), received discipline for repeated misconduct and that repeated conduct was most often related to tardiness matters. Accordingly, the Department believes the use of the [REDACTED] process is an effective deterrent to misconduct recidivism for those cases of less serious discipline. Further, of those 175 [REDACTED] 97 were issued with warning, thereby implicating no docking of leave and effectively serving as a written reprimand designed to correct employee deficiencies.

DEPARTMENT COMMENTS

As the draft Report notes at page 12, the “purpose of discipline is not solely to punish an individual but to effect a positive change,” which is an almost verbatim quote from the CBA language the Department negotiated with the FOP. Obviously, we agree with and support this principle. Moving to mandatory unpaid suspensions for minor breaches of Department rules is contrary to this principle. Additionally, while it may be a perception by some commanders that the docking of leave as a penalty has no deterrent effect since employees can work additional duty and make up the lost time in the form of compensatory time at a rate of time and one-half, the same result can be true if pay is forfeited through unpaid suspension. The only difference is the punitive nature of the more serious “suspension.” Again, this is contrary to the principle that commanders be held responsible for correcting minor infractions at the lower level, and would actually adversely impact the Department by having to expend overtime funds to replace the officer who would be suspended for more prevalent minor misconduct.

The OIG draft Report references four organizations that use docking of leave as a disciplinary action but does not identify those four organizations. We are unaware of any concerns that may have occurred as a result of those organizations docking leave as a disciplinary action. However, the Department certainly will research those four organizations once they have been identified and look into any concerns regarding the effectiveness of docking leave as a disciplinary action.

Recommendation 6

We recommend that the United States Capitol Police, in coordination with the Board and its Oversight Committees, formalize the Disciplinary Review Task Force into a permanent office for discipline, providing a streamlined clearinghouse for all disciplinary matters and oversight of the discipline process while ensuring fairness and accountability.

The Department concurs with the recommendation and has previously taken steps to seek Capitol Police Board and oversight committee approval to formalize the Disciplinary Review Task Force into a permanent office. The Department’s *Discipline and Accountability* directive likewise formalizes this office into its processes. The Department certainly will work with the Capitol Police Board and the appropriate committees for consideration of a reorganization plan in the 115th Congress that includes our prior recommendation of formalizing the DRTF into a permanent office for discipline matters.

OIG OTHER MATTERS

The draft Report at pages 12-13 also advises that based on one official’s concerns regarding an apparent interpretation of the *Rules of Conduct* charge of *Insubordination*, the OIG provided the text of the charge to the Government Accountability Office (GAO), “for an independent ruling on whether the use of the word ‘and’ in the charge required that to charge someone with insubordination more than one element had to exist.” The rule in Directive [REDACTED], reads as follows:

DEPARTMENT COMMENTS

Rule A6: Insubordination

Employees will not refuse to obey, by words or actions, any lawful order of a supervisor, and will not utter any disrespectful, rebellious, insolent, or abusive language to or toward a supervisor.

The Department is concerned that an official of the Department would interpret, and possibly enforce, the charge of *Insubordination* in a cumulative manner to support a violation of the rule. As provided to the OIG, we are aware that this same official on at least two occasions charged employees with *Insubordination* without the alleged requisite cumulative interpretation. Therefore, we are disconcerted as to why this matter was referred to the GAO for consideration given this fact. However, we are appreciative of the “ruling” of the GAO that supports the Department’s drafting intent and application of the rule in discipline matters “if any single action described in the rule occurs, such action—in and of itself—would serve as a factual predicate for a finding that the individual committing the action has violated the rule in insubordination.”

CONCLUSION

The Department is appreciative of the time and effort involved in the OIG evaluation of the Department disciplinary process and we thank the OIG for the opportunity to respond to the draft Report. After careful consideration of all of the recommendations, for the reasons and to the extent outlined above, the USCP will adopt Recommendations 1, 2, and 4; respectfully disagrees with and will not adopt Recommendations 3 and 5; and will continue to move forward with Recommendation 6 by working with the Capitol Police Board and appropriate committees to formalize the DRTF into a permanent office for discipline matters.

With regard to the methodology employed for the draft Report, the Department has provided some empirical information in our responses to the recommendations in an effort to support the basis of each response. The Department understands that the draft Report does not offer an opinion on the performance and discipline programs and, based on its evaluation of the discipline process, the OIG does not conclude the USCP disciplinary process is lacking in full due process based on transparency and fairness.

The Department is gratified that its discipline process has been supported in administrative and court opinions, for all levels of employees, as providing employees with fundamental due process through multiple layers of investigation, discovery, hearings, and appeals/grievances. Also, the draft Report does not conclude that the USCP disciplinary process fails to comply with policies, procedures, applicable law, regulations, and/or best practices but does recommend updating our policies which we agree will be accomplished in the next several weeks given our extensive efforts in this regard over the past year.

Additionally, we are pleased that a number of our employees provided information and feedback to the OIG during its evaluation. However, the Department does believe that the

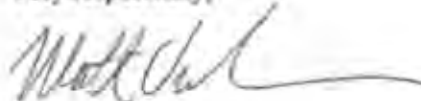
DEPARTMENT COMMENTS

population of employees interviewed should have included more sworn supervisors at lower ranks and more civilian employees at higher ranks, including the Chief Administrative Officer, as well as those staff members who have been closely involved with the administration of the disciplinary process for approximately 10 years. It is our belief that these individuals could have provided invaluable historical information, the ongoing, long-term goals of the Department with regard to the discipline process, and the necessary nuanced changes to the process that have occurred over the years to support disciplinary actions taken at various levels within the Department.

Finally, we note that page 9 of the draft Report mentions the “tone at the top” and that “words are not enough.” I, as Chief of Police, could not agree with you more. My tone at the top is very clear. This is particularly true in recent history as the Department has had to hold several high-ranking employees accountable for their inappropriate behavior. Employees must follow the rules of the Department, and commanders/managers must set an example for subordinate employees. I can assure you that the discipline process that I currently oversee, and in which I have painstakingly been instrumental in developing, drafting, negotiating, and implementing, is consistent with my career-long commitment to clearly setting expectations followed up with appropriate and consistent actions when employees meet expectations and consequences when they do not meet those expectations, as referenced on page 9 of the draft Report. While the Department naturally can expect complaints from those who have been disciplined and those individuals may take the opportunity to try to criticize the process, albeit not supported by facts, the Department is confident that our disciplinary process is fair and equitable applying to all employees, regardless of rank or grade, and that the employees who have been subjected to discipline are provided with all information necessary and legal representation needed to present a thorough defense.

Once again, thank you for the opportunity to respond to the OIG’s draft Report. I look forward to improving the discipline process; and with your recommendations, I know that we will move towards perfecting an already comprehensive, effective, and equitable process.

Very respectfully,



Matthew R. Verderosa
Chief of Police

cc: Richard Braddock, Chief Administrative Officer
Gretchen DeMar, General Counsel
Frederick Herrera, Employment Counsel
[REDACTED], USCP Audit Liaison

DISCIPLINE PROCESS NARRATIVE

According to [REDACTED]

[REDACTED] dated May 28, 2012, OIG typically investigates misconduct concerning a sworn employee with the rank of Inspector or above, civilian employees with the grade of CP-14 and above, or civilian employees with the title of Associate Director and above. OPR generally investigates misconduct concerning a sworn employee with the rank of Captain or below and civilian employees with the grade of CP-13 or below. However, OIG may investigate a matter not meeting the criteria previously cited because of factors such as the nature and magnitude of the offense; requests from the Chief, the Board, or Congress; the egregiousness of the public trust violated; and the importance to accomplishing crucial mission objectives.

According to Directive [REDACTED], dated November 19, 2012, depending on the nature of the allegation or potential departmental violations, the Department designates allegations of misconduct as Category I or Category II complaints. The Department defines Category I complaints as any complaint or allegation containing one or more of the following elements: (1) unnecessary or excessive use of force, (2) false arrest, (3) sexual or racial discrimination, harassment, or breaches of civil rights, or (4) violations of specific criminal statutes. The Department defines Category II complaints as allegations concerning inadequate police services, breaches of rules or regulations, minor policy violations, or a complaint not listed in Category I. OPR investigates Category I complaints and Division Commanders are responsible for investigating Category II complaints. In some instances, OPR may investigate Category II allegations for complaints that, by their nature or scope, are not suitable for investigation at the Division level, or when complaints involve personnel from more than one Division, or when directed by the Chief or Assistant Chief of Police (ACOP).

The Department requires completion of cases involving sworn or civilian employees that are Category I allegations within 120 days of initiation. For Category II allegations, the Department requires completion of cases within 60 calendar days of initiation for sworn employees and within 45 calendar days for civilian employees. When a Division receives a case, generally a Category II allegation, it has 20 work days to complete its investigation and submit a Report of Investigation to OPR. Both Division commanders and OPR may request an extension to complete their respective investigations. Completed investigations result in one of the following classifications: sustained, not sustained, exonerated, unfounded, misconduct noted, or dismissed. If it sustains the violation, OPR then sends the report and supporting documentation for the investigation to OGC for review and determination of a penalty recommendation.

According to the OGC, The Department considers four main Douglas Factors in particular when determining a penalty: the nature and seriousness of the offense, the employee's record, penalties imposed on other employees for the same or similar offenses within a 2-year period (or longer if necessary for non-bargaining unit employees), and any mitigating circumstances. When a DRO receives the report and supporting documentation for an investigation, that DRO requests information from OPR on similar cases occurring in the last 2 years. The DRO prepares

DISCIPLINE PROCESS NARRATIVE

a penalty recommendation, in the form of a memorandum, containing an analysis of the case using the four Douglas factors and a recommended penalty.

The DRO then sends the penalty recommendation to the Bureau Commander, who makes the final determination on the penalty recommendation and presents the penalty to the respondent. If there is a case in which a Bureau Commander and DRO cannot agree on a penalty recommendation, either the ACOP or Chief Administrative Officer will make the final decision on the penalty recommendation.

The Department uses a Form [REDACTED] for recording the actions of command discipline. Division commanders assess the penalties for command discipline. Command discipline involving [REDACTED] can range from a written warning to forfeiture of 24 hours time/pay. Command discipline involving [REDACTED] may be appealed to the Chief or his designee within 15 days from the date presented to the employee by the Division Commander, or his designee. For command discipline involving [REDACTED] with proposed loss of time or pay, sworn bargaining unit employees may appeal to the Chief or his designee within 15 days, or contest the action by filing a grievance within 15 days, but not both. A [REDACTED] with written warning remains in an employee's unit personnel file for 1 year, and a [REDACTED] with loss of time or pay remains in an employee's unit personnel file for 18 months.

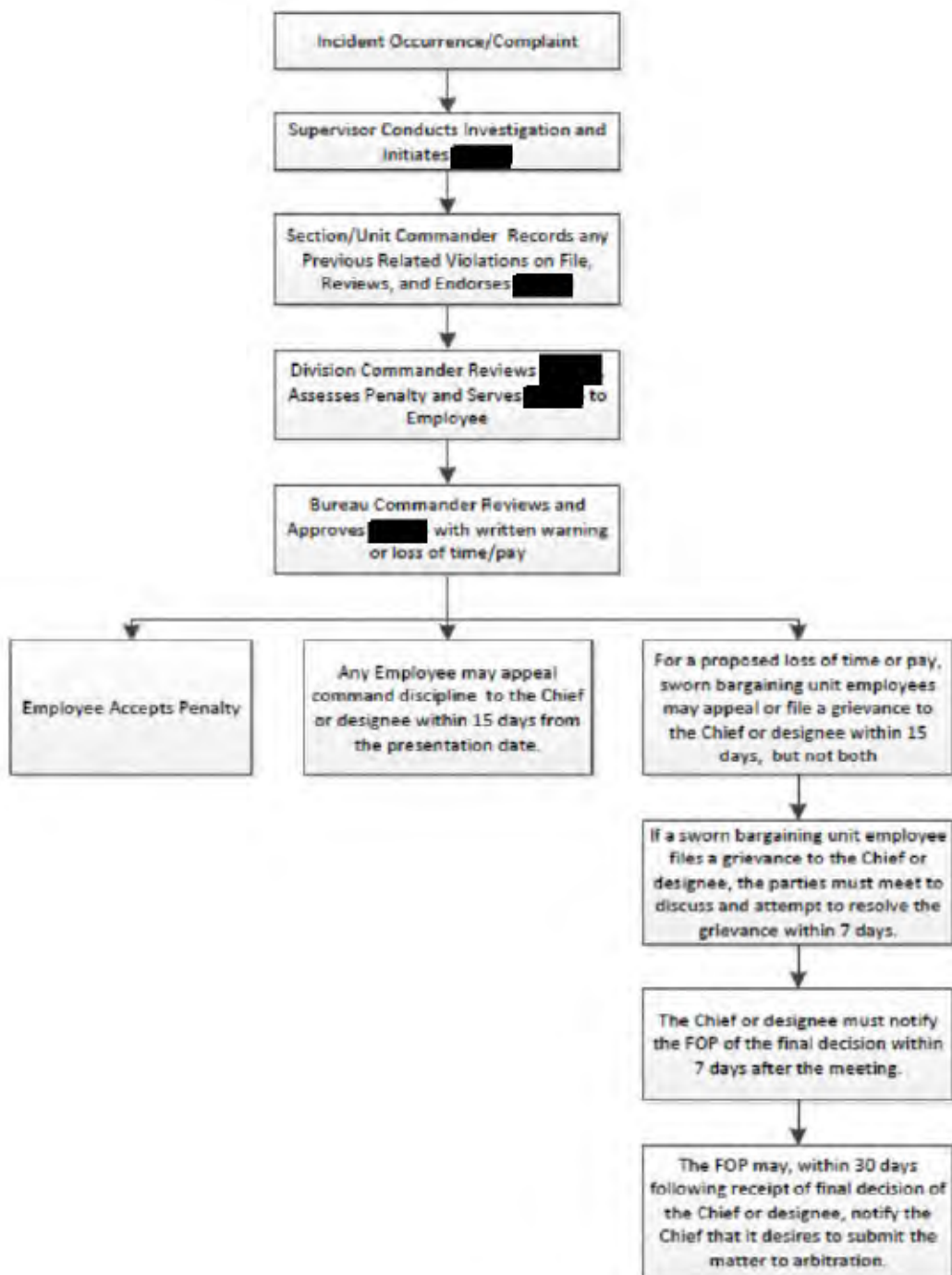
The Department uses a Form [REDACTED], for Levels 1 and 2 of Department Discipline. Level 1 proposes forfeiture of time or salary of up to and including 14 working days. Level 2 proposes forfeiture of time or salary of 15 working days or more, demotion or removal. An employee under review can contest the action either to the ACOP or designee (through the Deputy Chief Administrative Officer) within 15 days of the presentation date. The submission must be in writing and signed by the employee along with any designated representative. The ACOP or designee may interview anyone, including the employee, for clarification of facts. The ACOP must provide the final decision to the employee in writing within 20 working days. Following a written decision from the ACOP, the employee has 15 days from the date the decision was served to file an appeal or grievance to the Chief—but not both. Non-bargaining unit employees can only file an appeal. Employees receiving a Level 2 disciplinary action may also contest the discipline by requesting a hearing through the DRB process, but not both. A [REDACTED] remains in an employee's unit personnel file for 3 years.

The DRB process is available for employees contesting a Level 2 disciplinary action. A DRB panel comprises a Presiding Officer the rank of Inspector and above, one member the rank of Captain or Lieutenant, one member the rank of Sergeant, and two members the same rank as the respondent. A DRB hearing has three stages: the Hearing Stage, Deliberation Stage, and the Pronouncement Stage. The Presiding Officer oversees the proceedings and votes only in the case of a tie among the members. During the DRB process both parties introduce evidence. DRB panel members then render a decision regarding guilt or innocence, vote on appropriate penalties, and announce the decision to the respondent. The Chief may either accept, reject, or modify any finding and/or penalty recommendation submitted to them for action.

DISCIPLINE PROCESS NARRATIVE

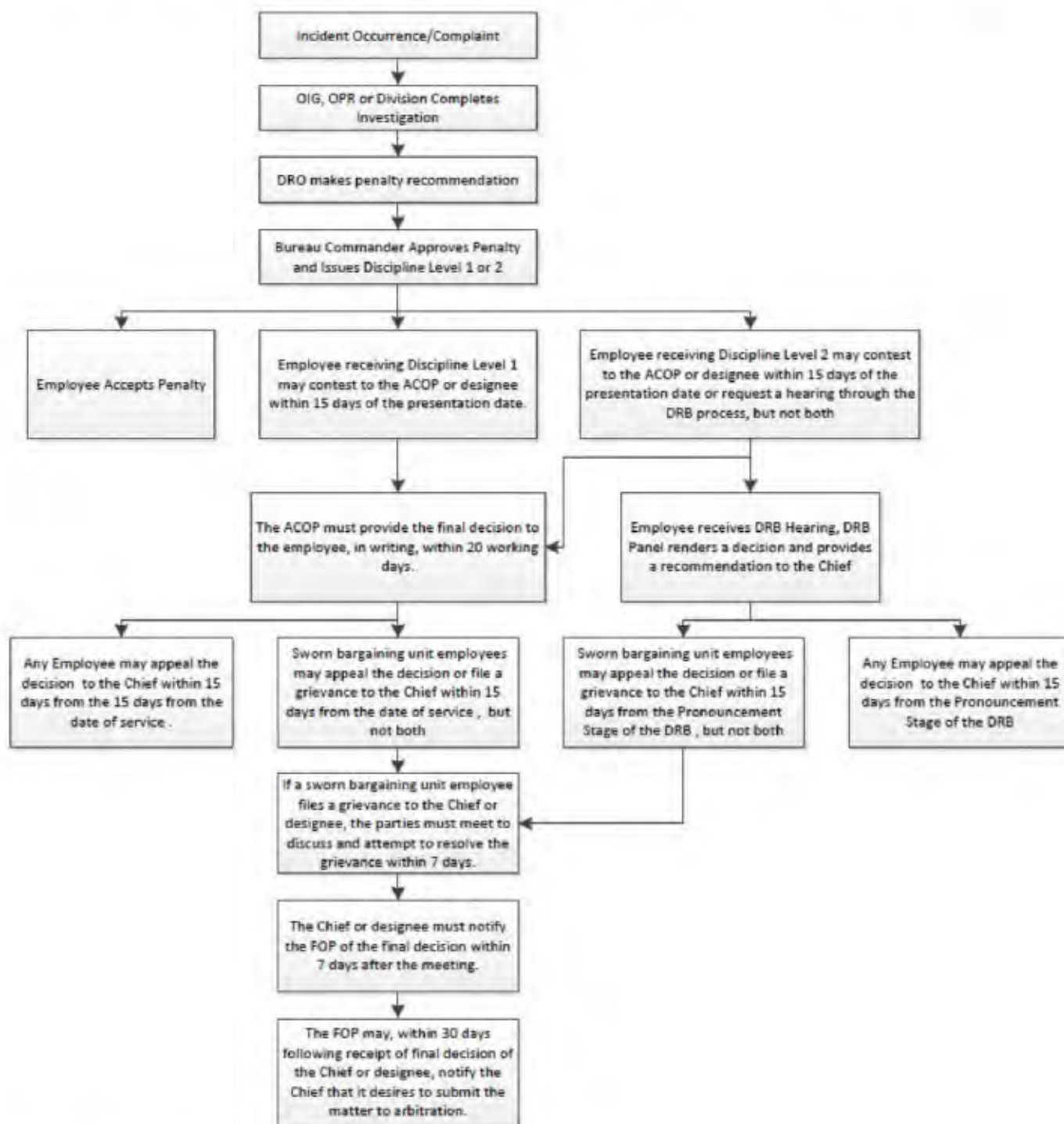
If a sworn bargaining unit employee files a grievance to the Chief or designee, the parties must meet to discuss and attempt to resolve the grievance within 7 days. The Chief or designee must notify the FOP of the final decision within 7 days after the meeting. If the Chief denies the grievance, the reasons for the denial must be in a written response. The FOP may, within 30 days following receipt of final decision of the Chief or designee, notify the Chief that it desires to submit the matter to arbitration. (Non-bargaining unit employees cannot submit matters for arbitration.)

DISCIPLINE PROCESS FLOWCHARTS – COMMAND DISCIPLINE





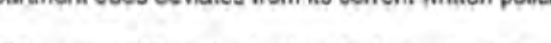
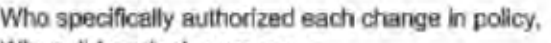
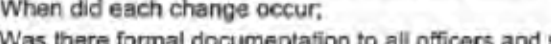

Source: OIG generated from USCP Directives, CBAs, and interviews.

DISCIPLINE PROCESS FLOWCHARTS – DEPARTMENT DISCIPLINE



Source: OIG generated from USCP Directives, CBAs and interviews.

QUESTIONS USED TO GUIDE INTERVIEWS**Disciplinary Process in General**

1. Does the Department adhere to its regulations regarding the disciplinary process to specifically include, but not limited to:
 - a. 
 - b. 
 - c. 
 - d. 
 - e. 
 - f. 
2. If the Department does deviates from its current written policies:
 - a. Who specifically authorized each change in policy,
 - b. When did each change occur;
 - c. Was there formal documentation to all officers and supervisors of the USCP of each change;
 - d. Was notification of each change made to and negotiated with the FOP and Teamsters Unions as required by contracts;
3. Is the Due Process of the Disciplinary Review Board and entire disciplinary system, as written in Department policy, being adhered to?
 - a. If not, have any persons been deprived of their rank or position without the due process outlined in regulation
 - b. If not, have any persons been deprived of leave or forced into an unpaid suspension without the due process outlined in regulation
4. If there has been a violation of a person's due process, what are recommended courses of action to be considered to make these persons whole?
5. Do the senior commanders of the Department (Inspectors and above) have faith in the disciplinary process and believe it is fair and equitable?
6. What is the actual documented role of the Chief of Police in the disciplinary system? Does the Chief of Police influence any aspect of the disciplinary system and/or focus too much on discipline?
7. Is the USCP's Disciplinary Policy a "model policy" of a professional agency that reflects favorably upon the United States Congress?
8. Anyone providing information/responses to these questions should be informed that all information will be kept confidential and said persons will be protected by whistleblower policy.

QUESTIONS USED TO GUIDE INTERVIEWS

Investigations

1. Does OPR have exclusive and unilateral authority to conduct investigations and determine the innocence or guilt of USCP personnel?
2. What is the process if the OPR Commander, DRO or any entity disagrees with the findings of the OPR investigator?
3. If not, who specifically has the authority to review and direct findings to be changed?
4. Is the Office of the DRO, the Disciplinary Review Office, General Counsel, Employment Counsel or the Office of the Chief involved in overseeing the investigative process and determining the outcome of cases?
5. Do entities outside of OPR provide guidance and direction on the manner in which a case is investigated or founded?
6. Has any entity ever directed that the OPR change the findings of a case?
7. Has any entity ever directed that OPR resolve a case without conducting a full investigation?
8. Does OPR adhere to Directive [REDACTED] in charging personnel and ensure all elements of the offense are satisfied before sustaining a charge against persons?
9. Has OPR ever found a person guilty of an offense that they didn't actually commit?
10. Has a person ever been charged with an offense by the DRO, Chief of Police or other entity that they were not found guilty of in the actual investigative report?
11. What is the role of General Counsel and Employment Counsel in regards to investigations, determining penalties, appeals and the administration of discipline?
 - a. Is there involvement supported by written policy
 - b. Is one of these entities "in-charge" of the disciplinary process?
12. Have there ever been meetings between entities to include the Chief of Police, Employment Counsel, OPR, General Counsel and the Disciplinary Review office to discuss cases, findings and penalties as opposed to allowing the entire process to occur separately?
13. Has the Chief of Police or other entity ever suggested or directed a person to be fired or terminated before a full investigation of a case and the penalty recommendation of the Office of the DRO?
14. Does any involvement by the Chief of Police in the entire process negate his ability to be an independent arbitrator in the final appeal of a case?

QUESTIONS USED TO GUIDE INTERVIEWS

Penalty

1. Does the Department have a written directive that specifically details how a penalty is decided for personnel?
2. Has the Department changed the policy on who reviews and determines the final penalty of a case from the regulations?
 - a. Who specifically authorized each change in policy;
 - b. When did each change occur;
 - c. Was there formal documentation to all officers and supervisors of the USCP of each change;
 - d. Was notification of each change made to and negotiated with the FOP and Teamsters Unions as required by contracts;
3. Do the individual DRO have exclusive authority to independently determine the initial penalty recommendation for each case?
4. If not, who specifically has the authority to review and direct the initial penalty recommendation to be changed?
5. Is OPR, the Disciplinary Review Office, General Counsel, Employment Counsel or the Office of the Chief involved in overseeing the recommended penalty for each offense?
6. Do entities outside of the assigned DRO provide guidance and direction on the penalty to be recommended for offenses?
7. Has any entity ever directed that the DRO assigned to the case change the initial penalty recommendation of a case?
8. Does the Office of the DRO fairly apply the required Douglas Factors (Nature and Seriousness of the Offense, The Employee Record, Penalties imposed on other employee's for similar offenses, any mitigating circumstances)
 - a. Has the Office of the DRO relied upon "A case of first impression" opinion to circumvent the requirement to impose similar penalties for similar offenses?
 - b. How many times out of how many cases was "A case of first impression" opinion used in the demotion or termination of an persons
 - c. How does the DRO ever determine if any mitigating circumstances were present in a case (i.e. do they meet with the respondent before deciding a penalty)
9. Who has the final authority for determining the penalty in a case before it goes to a Hearing?
 - a. If this different than the documented policy, when was it last changed and by whom?
 - b. If this is different than documented policy, was it changed to influence the penalty recommendation for a specific case?
 - c. What is the procedure if a Bureau Commander disagrees with a penalty recommendation

QUESTIONS USED TO GUIDE INTERVIEWS

DRB

1. Does the Department adhere to the policy that all cases of termination or demotion require a DRB Hearing?
2. Does the Department have a policy on the selection of presiding officers for DRB Hearings? If so, does the Department adhere to this policy?
3. Is the role of the Presiding Officer supported by policy?
4. Does the Department provide any training to the Presiding Officers before their first case?
5. Can the Presiding Officer change the finding or penalty as written in regulation? If not;
 - a. Who specifically authorized the change in policy;
 - b. When did each change occur;
 - c. Was there formal documentation to all officers and supervisors of the USCP of each change;
 - d. Was notification of each change made to and negotiated with the FOP and Teamsters Unions as required by contracts;
6. Are Presiding Officers influenced in any matter by the Office of the DRO, Chief of Police or other entities outside of the DRB to a predetermined course?
7. Does the Office of the DRO amend their penalty recommendation if the results of the DRB Hearing are different than the findings of the investigation? Have there been any cases when the penalty was not amended after the findings were pronounced by the DRB panel, and therefore required factors not applied to the outcome of a case?
8. Has there by any cases where the DRB Process appears to have been a mere procedure and the findings, testimony and information were ignored by the Agency?

Appeal Process

1. Do the Disciplinary Review Office and/or the Department have a policy that guides the appeal and decision-making process of this office?
2. Does the Disciplinary Review Office have the exclusive and unilateral authority to impose findings and penalties on cases appealed by USCP personnel?
3. Is the Office of the DRO, General Counsel, Employment Counsel or the Office of the Chief involved in determining the final penalty in disciplinary cases?
4. Has the Office of the DRO, General Counsel, employment Counsel or the Office of the Chief ever directed that an appeal should be decided for a specific outcome?

PENALTY RECOMMENDATION TABLE



FROM THE DESK OF THE CHIEF

TO BE READ AT ALL ROLL CALLS AND POSTED ON ALL BULLETIN BOARDS

As part of the continuous efforts of the Department to enhance the administration of discipline and employee accountability and development, I am issuing the Penalty Recommendation Table which will be utilized by supervisors as guidance in determining appropriate penalties in disciplinary matters. The Penalty Recommendation Table will serve as a useful guide in communicating to employees the potential range of potential penalties should they become involved in an infraction of the *Rules of Conduct*.

As a foundation for all penalty recommendations, supervisors will continue to consider relevant facts and circumstances including: 1) the nature and seriousness of the offense; 2) the employee's record; 3) penalties imposed on other employees for the same or similar offense; and, 4) any mitigating circumstances in the case. Therefore, no existing applicable collective bargaining agreement is affected by the use of the Penalty Recommendation Table as guidance.

For future reference, this Penalty Recommendation Table can be found on PolicoNet at

[REDACTED]

Matthew R. Verderosa
Chief of Police

November 21, 2016

16.38

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PENALTY RECOMMENDATION TABLE

UNITED STATES CAPITOL POLICE

PENALTY RECOMMENDATION TABLE



Based on personnel actions administered over the last several years, the Department has established this Penalty Recommendation Table which identifies appropriate penalty ranges for first and subsequent disciplinary actions.

This Penalty Recommendation Table is a guide to discipline and not a rigid standard. Deviations are permissible where, for example, an employee is charged with multiple offenses at the same time. The Chief of Police may deviate from the published sanctions in his/her sole discretion as conditions and circumstances warrant.

This Penalty Recommendation Table does not affect any collective bargaining agreement provision or the Department's ability to consider relevant facts and circumstances including: 1) the nature and seriousness of the offense; 2) the employee's record; 3) penalties imposed on other employees for the same or similar offense; and, 4) any mitigating circumstances in the case.

	OFFENSE	PENALTY PARAMETERS First Violation	PENALTY PARAMETERS Second/Subsequent Offenses
A1	<u>Knowledge of Laws and Regulations</u>	██████/Warning to ██████/ 5-Day Suspension	██████/5/1-Day Suspension to Termination
A2	<u>Conformance to Laws</u>	██████/4/Warning to Termination	██████/5/1-Day Suspension to Termination
A3	<u>Compliance with USCP Orders/Directives</u>	██████/Warning to Termination	██████/Forfeiture of 8 Hours to Termination
A4	<u>Conflicting Orders</u>	██████/Warning to ██████/5-day Suspension	██████/1-Day Suspension to Termination
A5	<u>Improper Orders</u>	██████/Warning to Termination	██████/5/5-Day Suspension to Termination
A6	<u>Insubordination</u>	██████/Warning to Termination	██████/5/1-Day Suspension to Termination
A7	<u>Truthfulness</u>	Civilian: ██████/Warning to Termination Sworn: Termination	Termination
B1	<u>Unsatisfactory Performance</u>	██████/Warning to Termination	██████/5-Day Suspension to Termination
B2	<u>Personal Appearance</u>	██████/Warning to 10-Day Suspension	██████/1-Day Suspension to Termination
B3	<u>Absence Without Leave (AWOL)</u>	██████/Warning to Termination	██████/1-Day Suspension to Termination
B4	<u>Reporting for Duty (Tardiness)</u>	See PRF 1.10.8	See PRF 1.10.8
B5	<u>Carrying of Credentials and Identification</u>	██████/1-Day Suspension to 10-Day Suspension	██████/10-Day Suspension to Termination
B6	<u>Malingering</u>	██████/Warning to Termination	██████/1-Day Suspension to Termination
B7	<u>Duty Post</u>	██████/Warning to Termination	██████/1-Day Suspension to Termination
B8	<u>Meals and other Relief Periods</u>	██████/Warning to ██████/10-Day Suspension	██████/1-Day Suspension to Termination
B9	<u>Courtesy</u>	██████/Warning to ██████/10-Day Suspension	██████/24 Hours to Termination
B10	<u>Neglect of Duty</u>	██████/Warning to Termination	██████/1-Day Suspension to Termination
B11	<u>Use of Property and Services, and Inspection of Equipment and Facilities</u>	██████/Warning to Termination	██████/1-Day Suspension to Termination
B12	<u>Operating Vehicles</u>	██████/Warning to ██████/5-Day Suspension	██████/5-Day Suspension to Termination

PENALTY RECOMMENDATION TABLE

UNITED STATES CAPITOL POLICE

PENALTY RECOMMENDATION TABLE



	OFFENSE	PENALTY PARAMETERS First Violation	PENALTY PARAMETERS Second/Subsequent Offenses
B13	<u>Use of Force</u>	4/16 hours to Termination	1/1-Day Suspension to Termination
B14	<u>Use of Weapons</u>	Warning to Termination Negligent handling, securing or loss of firearm 30-Day Suspension to Termination (If this act occurred within a secure USCP facility, minimum recommendation of 15-Day Suspension to Termination considered.)	5/10-Day Suspension to Termination Negligent handling, securing or loss of firearm: Termination
B15	<u>Arrest, Search, Seizure Apprehension or Detention</u>	Warning to Termination	1/1-Day Suspension to Termination
B16	<u>Treatment of Persons in Custody</u>	Warning to Termination	10/10-Day Suspension to Termination
B17	<u>Property and Evidence</u>	Warning to Termination	1/1-Day Suspension to Termination
B18	<u>Court Appearances</u>	Warning to 5-Day Suspension	1/1-Day Suspension to Termination
B19	<u>Response to Calls</u>	Warning to Termination	1/1-Day Suspension to Termination
C1	<u>Conduct Unbecoming</u>	1/1-Day Suspension to Termination	5/5-Day Suspension to Termination
C2	<u>Discrimination and/or Harassment</u>	1/1-Day Suspension to Termination	7/7-Day Suspension to Termination
C3	<u>Possession and/or use of Drugs or Controlled Substance</u>	30 day Suspension to Termination	Termination
C4	<u>Use of Alcohol On Duty</u>	Civilians: 1/1-Day Suspension to Termination Sworn: Termination	Termination
C5	<u>Use of Tobacco Products</u>	Warning to 10-Day Suspension	1/1-Day Suspension to Termination
C6	<u>Gifts, Gratuities, Bribes, and Rewards</u>	1/1-Day Suspension to Termination	5/5-Day Suspension to Termination
C7	<u>Improper Associations</u>	1/1-Day Suspension to Termination	10/10-Day Suspension to Termination
C8	<u>Gambling</u>	1/1-Day Suspension to Termination	10/10-Day Suspension to Termination
C9	<u>Communication with Criminals</u>	10/10-Day Suspension to Termination	Termination
C10	<u>Improper Remarks</u>	Warning to Termination	1/1-Day Suspension to Termination
C11	<u>Retaliation</u>	1/1-Day Suspension to Termination	Termination
D1	<u>Off-Duty Employment</u>	Warning to 10-Day Suspension	1/1-Day Suspension to Termination
D2	<u>Telephone</u>	Warning to 1/1-Day Suspension	1/1-Day Suspension to Termination

PENALTY RECOMMENDATION TABLE


 UNITED STATES CAPITOL POLICE
 PENALTY RECOMMENDATION TABLE

	OFFENSE	PENALTY PARAMETERS First Violation	PENALTY PARAMETERS Second/Subsequent Offenses
D3	<u>Changes in Personal Status</u>	Warning to /1-Day Suspension	/1-Day Suspension to Termination
E1	<u>Abuse of Process</u>	/1-Day Suspension to Termination	/10-Day Suspension to Termination
E2	<u>Improper Intervention</u>	Warning to Termination	/1-Day Suspension to Termination
E3	<u>Work Stoppage</u>	/10-Day Suspension to Termination	/30-Day Suspension to Termination
E4	<u>Dissemination of Information</u>	/10-Day Suspension to Termination	/30-Day Suspension to Termination
E5	<u>Public Statements</u>	/1-Day Suspension to Termination	/10-Day Suspension to Termination
E6	<u>Public Appearances</u>	/1-Day Suspension to Termination	/10-Day Suspension to Termination
E7	<u>Testimonials</u>	/1-Day Suspension to Termination	/10-Day Suspension to Termination
E8	<u>Services of Civil Processes</u>	/1-Day Suspension to Termination	/10-Day Suspension to Termination
E9	<u>Reports</u>	/Warning to 10-Day Suspension	1 Day Suspension to Termination
E10	<u>Compromises</u>	/1-Day Suspension to Termination	/10-Day Suspension to Termination
F1	<u>Subordinate Compliance</u>	Warning to Termination	/1-Day Suspension to Termination
F2	<u>Subordinate Discipline</u>	Warning to Termination	/1-Day Suspension to Termination
F3	<u>Subordinate Performance</u>	Warning to Termination	/1-Day Suspension to Termination
F4	<u>Subordinate Failures</u>	Warning to Termination	/1-Day Suspension to Termination

CONTACTING THE OFFICE OF INSPECTOR GENERAL

Success of the OIG mission to prevent fraud, waste, abuse, or mismanagement depends on the cooperation of employees and the public. There are several ways to report questionable activity.

Call us at 202-593-3868 or toll-free at 866-906-2446. A confidential or anonymous message can be left 24 hours a day/7 days a week.



Toll-Free
1-866-906-2446

Write us at:
United States Capitol Police
Attn: Office of Inspector General, Investigations
119 D Street, NE
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Or visit us – we are located at:
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