

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE VIRGIN ISLANDS**

UNITED STATES OF AMERICA,)	
)	C.A. No. 3:08-CV-158
Plaintiff,)	
)	
v.)	
)	
1. THE TERRITORY OF THE VIRGIN)	
ISLANDS; and)	
)	
2. THE VIRGIN ISLANDS POLICE)	
DEPARTMENT,)	
)	
Defendants.)	

**REPORT REGARDING DEFENDANTS’ EFFORTS TO COMPLY WITH
QUARTERLY GOALS DUE AUGUST 5, 2016**

Pursuant to the Court’s August 21, 2015 Order, Dkt. # 165, the United States Department of Justice (“DOJ”) files this report to assess the efforts of the Territory of the Virgin Islands and the Virgin Islands Police Department (“VIPD”) to meet the quarterly goals due August 5, 2016, and to update the Court regarding the status of the Consent Decree. This quarter, VIPD was obligated to comply with Paragraphs 62 and 70 of the Consent Decree. While VIPD maintained a steady pace during the past three months and made much progress, and while it completed many of the interim tasks associated with each paragraph, it nonetheless failed to come into substantial compliance with the entirety of each paragraph. Thus, this month marks the end of the second consecutive year during which VIPD has attained substantial compliance with no Consent Decree paragraphs, and the tally remains static: 31 paragraphs are in substantial compliance, and 20 are not. In addition, as noted in this quarter’s report by the Independent Monitoring Team (“IMT”), several paragraphs are also close to slipping out of compliance.

Efforts to Address the Action Plan

The Action Plan for 2nd Quarter Consent Decree Paragraphs: 60 & 72, filed June 13, 2016, Dkt. # 217-1, requires VIPD to complete 61 “steps” associated with Paragraphs 60 and 72 and their sub-paragraphs, with deadlines set intermittently throughout the quarter. Of the 50 steps associated with Paragraph 60, VIPD completed 38. Of the 11 steps associated with Paragraph 72, VIPD completed 7. Thus, while VIPD made a substantial amount of progress, it nonetheless fell short of full compliance, as detailed below.

Paragraph 60

Paragraph 60 requires VIPD to ensure that its risk management system collects and records information regarding certain types of incidents, such as uses of force; canine bites; injuries to prisoners; and critical firearms discharges, among others. VIPD has fallen short on the following requirements:

Paragraph 60.b — Canine bite ratios

Step 4 requires VIPD to obtain 911 canine response data between January 1, 2015 and July 15, 2016 to ensure that all canine deployments during that timeframe are captured and analyzed. As of August 18, 2016, VIPD had only provided DOJ and the IMT with canine data through June 13, 2016 – a full month shy of VIPD’s reporting obligation.

Paragraph 60.c — Chemical spray

Steps 3, 5, 6, and 7 require VIPD to weigh officers’ canisters of oleoresin capsicum (“O.C.”) in order to determine whether any officers may have discharged the devices (a use of force) without reporting it. For officers with canisters outside an acceptable variance rate, VIPD must account for the variance and may bring administrative action against officers for unreported use. VIPD must track the information in a database and prepare a report on the

results of the review.

According to a June 30, 2016 VIPD memo, 35 officers had canisters that had not been weighed (22 officers on St. Thomas and 13 officers on St. Croix). A subsequent VIPD memo dated August 16, 2016 stated that 11 St. Croix officers still had not had their canisters weighed; it made no mention of St. Thomas officers. As of August 18, 2016, it appeared that at least 30 officers still needed to have their canisters weighed.

VIPD also has follow-up work to do regarding officers whose canisters were weighed and were found to be outside the acceptable variance rate. According to a report dated July 29, 2016, a total of 13 officers on St. Thomas had canisters outside the acceptable variance rate. The report states that five of the officers had submitted the appropriate use-of-force reports, but that VIPD is investigating the other eight officers. In addition, though VIPD's August 16 memo stated that 25 St. Croix officers also had canisters outside the acceptable variance rate, VIPD has provided no information regarding the reasons for such variances or whether VIPD is investigating the discrepancies.¹

Paragraph 60.e — Officer uses of force where subject is charged with “resisting arrest” or similar charges (“discretionary arrests”)

Step 3 requires VIPD to prepare a report that outlines findings VIPD has made based on a review of discretionary arrests between January 1, 2015 and July 15, 2016, to be used by the Deputy Chiefs in their quarterly Early Intervention Program reviews with commanders and supervisors. While VIPD submitted a tally of discretionary arrests made in the second quarter of 2016, dated August 2, 2016, VIPD failed to submit a report that analyzed the data, and there is no evidence that Deputy Chiefs have used any of the information as required by the step.

¹ The latest deadline associated with Steps 3, 5, 6, and 7 was August 2, 2016. On August 18, 2016, at 6:14 p.m., DOJ received a completion report from VIPD regarding these steps. DOJ has not yet had an opportunity to review the report.

VIPD has agreed to provide the information and documentation required.

Paragraph 60.g — Complaints and their dispositions

Steps 1, 2, and 3 require VIPD to check the status of complaint cases forwarded to Internal Affairs between January 1, 2015 and July 15, 2016; ensure they are completed correctly and entered into IAPro; and create a report regarding findings made and actions taken. As of August 18, 2018, VIPD had failed to ensure or provide documentation that completed cases were properly entered into IAPro. In addition, six cases had not been completed at all; and while the supervisors assigned to those cases have been administratively charged, the cases remain unresolved, and it is unclear regarding what, exactly, the supervisors have been charged with and what actions will be taken against them.

Paragraph 60.k — Disciplinary action taken against officers

Steps 2 and 3 require VIPD to review disciplinary action incidents in IAPro to ensure the data is accurate and complete, and to prepare a report outlining findings and corrective actions taken. While VIPD provided a list of disciplinary action incidents on July 22, 2016, the document did not contain the corrective action taken for multiple incidents listed.

Paragraph 72

Paragraph 72, sub-paragraph (a) requires VIPD to ensure it is taking disciplinary action—and not merely non-disciplinary corrective action—in cases where the disciplinary matrix calls for discipline to be imposed. In cases where discipline has been imposed, sub-paragraph (b) requires VIPD to also consider whether non-disciplinary action is also called for.

VIPD has fallen short on the following requirements:

Paragraph 72.a — Imposition of discipline

Step 5 requires VIPD to provide documentation that disciplinary action has been taken

as appropriate for charges sustained between January 15, 2015 and July 15, 2016. As of August 18, 2016, DOJ had received no such documentation.

Paragraph 72.b — Non-disciplinary action

Steps 1, 2, and 4 require VIPD to provide documentation that VIPD considered non-disciplinary action regarding the same charges identified in Paragraph 72.a. As of August 18, 2016, DOJ had received no such documentation.

Conclusion

Throughout this past quarter, VIPD has put forth a good-faith effort to come into substantial compliance with both Paragraph 60 and Paragraph 72, and it has made a good deal of progress regarding each. However, VIPD remains shy of the mark on 16 steps associated with the two paragraphs, and thus it has made no movement regarding its overall Consent Decree status: 31 paragraphs are in substantial compliance, and 20 are not. It has now been two years since VIPD brought into compliance a complete Consent Decree paragraph. VIPD's efforts, while well-intentioned, have again simply not been enough. Moving forward, DOJ recommends that VIPD reach out to agencies with expertise in program management and outcome-based evaluation strategies to propel it forward. In addition, it should continue to consider methods and opportunities to hire quality recruits and ensure supervisors are properly trained and dependable. As always, DOJ remains ready to assist VIPD in this effort.

Respectfully submitted,

FOR THE UNITED STATES:

August 19, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiff's Report Regarding Defendants' Efforts to Comply with Quarterly Goals Due August 5, 2016 was filed electronically on August 19, 2016 using the CM/ECF system, which will send electronic notification to the following:

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