



Office of the Public Auditor
Commonwealth of the Northern Mariana Islands

Audit of the
Department of Public Safety
Evidence Controls



Audit Report
AR-05-04



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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September 21, 2005

Col. Santiago F. Tudela
Commissioner
Department of Public Safety
P.O. Box 500791
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Saipan, MP 96950-0791

Dear Commissioner Tudela:

Subject: Audit Report - Audit of the Department of Public Safety Evidence Controls
Report No. AR-05-04

This report presents the results of the Office of the Public Auditor's (OPA)¹ audit of the Department of Public Safety (DPS) Evidence Controls. OPA's audit objective was to determine whether DPS had adequate control and accountability over the receipt and storage of evidence.²

In its audit, OPA found that (1) the Evidence Custodian did not always receive evidence in a timely manner and, in some instances, it could not be determined when evidence was received; (2) obtaining officers did not always comply with DPS procedures for documenting evidence; (3) DPS did not have a uniform method for temporarily storing/securing evidence prior to transferring/relinquishing it to the Evidence Custodian; (4) DPS improperly handled and disposed of drug evidence related to an incident that occurred in June 2004 during OPA's audit fieldwork; (5) DPS evidence storage facility was structurally inadequate to prevent unauthorized entry; (6) DPS lacked an organized system for segregating and storing evidence; and (7) the Evidence Custodian performed incompatible duties. As a result, DPS weakened its accountability over in-custody evidence and increased the risk of possible destruction, theft, loss, and/or misuse of such evidence. OPA was also concerned that the integrity of evidence may have been diminished, potentially compromising the investigative and criminal proceedings requiring such evidence.

¹ See Appendix A for a list of abbreviations used throughout this report.

² The term "evidence" as used by OPA throughout this report will refer to physical property collected, submitted and/or retained in relation to a criminal case.

BACKGROUND

In a letter dated February 2, 2004, the former DPS Commissioner requested OPA to conduct an evaluation of DPS evidence controls. The former Commissioner expressed his concern over DPS's existing evidence controls and indicated that the controls were inadequate and required improvement. He further emphasized that he wanted to ensure that DPS's system of controls was compatible with other U.S. jurisdictions. During OPA's entrance conference with DPS on February 26, 2004, the former Commissioner reiterated his concerns and again mentioned the need to address them because he wanted DPS to seek accreditation from the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA).

The DPS Commissioner, appointed by the Governor with the advice and consent of the Senate, oversees DPS's duties of law enforcement and protection activities in the CNMI. To assist in complying with its law enforcement mandates, DPS established a Criminal Investigation Bureau (CIB) to investigate violations of the Commonwealth Criminal Code and other specified Commonwealth laws. Since April 2002, the CIB has undergone several reorganizations and was subsequently renamed the Criminal Investigation Division (CID). Despite the reorganization and name change, the CID's activities continued to be administered in accordance with the 2002 CIB Policy and Procedure Manual, also referred to as the 2002 standard operating procedures or 2002 SOP.³

According to the CID organizational chart (last amended in August 2004), the CID is headed by a Commander and is composed of seven bureaus, two of which are the Investigative Support Bureau⁴ (ISB) and Special Operations Bureau⁵ (SOB). The ISB Sergeant is the officer-in-charge of the ISB and reports to the CID Commander, who reports to the Commissioner. Personnel under the supervision of the ISB Sergeant are officers assigned to the Evidence Preservation Section,⁶ which includes the Evidence Custodian and the Crime Scene Investigation Section⁷ (CSI), which consists of CSI Technicians.

³ As Standard Operating Procedures or 2002 SOP are terms more commonly used within DPS, OPA uses 2002 SOP when referring to the 2002 CIB Policy and Procedure Manual in this report.

⁴ Formerly known under the 2002 SOP as the Investigative Support Section or ISS.

⁵ Formerly known under the April 2002 organizational chart as the Special Investigation Section or SIS.

⁶ Formerly known under the 2002 SOP as the Evidence and Property Custody Unit.

⁷ Formerly known under the 2002 SOP as the Crime Scene Processing Unit.

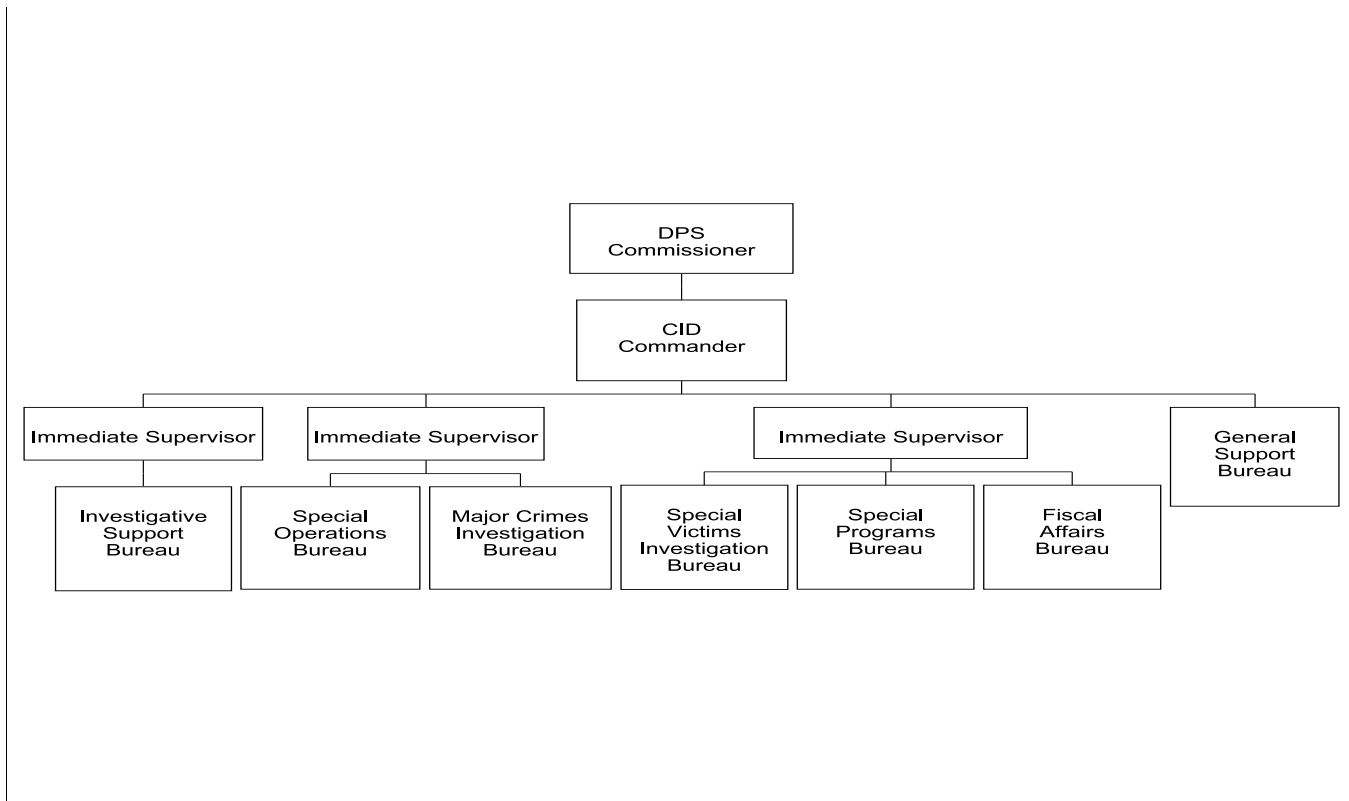


Figure 3 DPS Criminal Investigation Division organizational chart as of August 2004. (OPA diagram)

The Evidence Custodian, who manages the Evidence Preservation Section, is “legally responsible for the safekeeping of any and all property submitted or collected as evidence in criminal cases.”⁸ His duties include logging in and out evidence and confiscated property, submitting evidence to the crime lab, keeping an accurate inventory of all evidence and confiscated property stored in the evidence room, and maintaining the chain of custody. In relation to these duties, DPS sent the Evidence Custodian to training workshops coordinated by the International Association for Property and Evidence (IAPE). DPS officials informed OPA that the Evidence Custodian is the only person with the keys to the main evidence room. While the 2002 SOP does not provide for the appointment of an alternate Evidence Custodian, the Evidence Custodian informed OPA that the CID Commander may appoint an alternate Evidence Custodian on an as-needed basis.

Evidence and confiscated property are collected and submitted to the Evidence Custodian by CSI Technicians and other DPS officers authorized to obtain such items from crime scenes.⁹ The DPS officer

⁸ See 2002 SOP, Part III. Organization, Section 3.

⁹ To limit the scope of the audit, OPA used the 2002 CIB Policy and Procedure Manual (2002 SOP) as a guideline to determine DPS’s compliance and adequacy of controls in the receipt and storage of evidence. Although OPA found that DPS officers under divisions or units not directly supervised by CID were also involved in the handling of evidence, OPA did not conduct additional review to ascertain whether these divisions or units had separate policy and procedure manuals. Nevertheless, OPA believes that there should be a departmental-wide policy and procedure manual governing evidence receipt and storage.

who obtains the evidence is known as the “obtaining officer,”¹⁰ “procuring officer,” or “submitting officer.” The obtaining officer is responsible for completing the evidence/property custody receipt (also referred to as the chain of custody or COC).¹¹ The obtaining officer is also required to properly seal and mark the evidence before submitting it to the Evidence Custodian. For accountability purposes, the 2002 SOP requires that “[t]wo persons should observe evidence in place, during recovery, and being marked for identification.” The COC further emphasizes the importance of this procedure by requiring the identification of a witness to the procurement of the evidence on the form itself. Receipt of the evidence is completed when the Evidence Custodian affixes his/her signature on the COC, thus taking custody of the evidence, and stores it in the evidence storage facility.

There are two sections to a COC. The first section provides general information such as: case number, type of crime, where the evidence was obtained, time and date the evidence was obtained, location of the crime scene, circumstances surrounding the evidence obtained, description as to how the evidence was marked for identification, name of the obtaining officer, name(s) of any witness(es) to the procurement of the evidence, quantity and description of items obtained, assigned item number, and the disposal action taken, if any. The second section of the COC tracks the chain of custody. The second section is the formal documentation of the date, time, and acknowledgments of any and all transfers of the evidence throughout the course of an investigation and any subsequent judicial proceeding.

In 1999, DPS began storing confiscated property and evidence in the former law library building in Susupe, Saipan. *See Exhibits 1, 2, and 3.* At the start of OPA’s audit, the building housed the offices for, and was readily accessible to, five DPS personnel: the Evidence Custodian, three CSI Technicians, and the ISB Sergeant.

¹⁰ To minimize confusion when referring to the DPS personnel who obtained evidence from a crime scene, OPA will use the term “obtaining officer” throughout the report.

¹¹ As the primary purpose of the evidence/property custody receipt is to document the chain of custody, it is more commonly called the “chain of custody” or “COC.” As such, the evidence/property custody receipt will be referred to as COC in this report.

Exhibit 1

Photo of the North entrance to the DPS evidence storage facility building. (OPA photograph - March 2004)

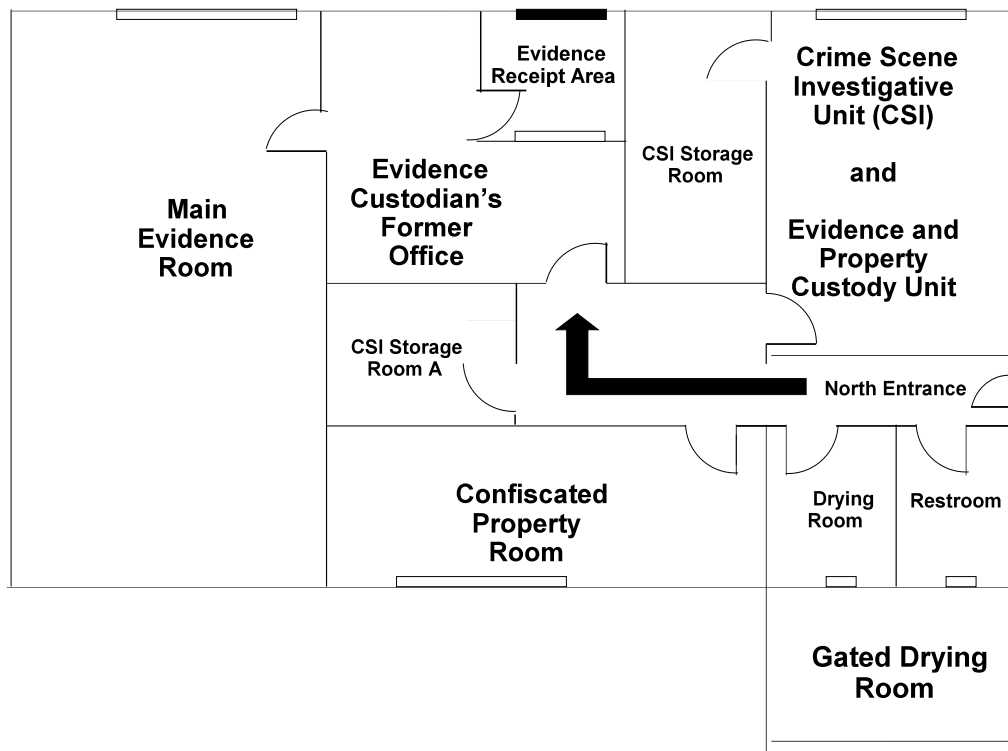


Exhibit 2

Photo of the west side of the DPS evidence storage facility building. (OPA photograph - March 2004)



Exhibit 3
 Sketch of the DPS
 evidence storage
 facility building
 layout. Sketch not
 drawn to scale.
 (OPA sketch)



OBJECTIVE, SCOPE AND METHODOLOGY

OPA's audit objective was to determine whether DPS had adequate control and accountability over the receipt and storage of evidence.¹² The audit covered an examination of evidence received and stored through June 2004.

The audit was performed from February to October 2004. To accomplish its objectives, OPA: (1) reviewed DPS's mandates and the 2002 SOP related to evidence; (2) interviewed knowledgeable DPS officials and employees; (3) tested COCs to determine the accuracy and completeness of information; (4) tested COCs to determine the actual existence and quantity of evidence; (5) reviewed practices and standards related to the receipt and storage of evidence adopted by other authoritative organizations like the Commission on Accreditation for Law Enforcement Agencies, Inc.(CALEA),¹³ the International

¹² See footnote 2.

¹³ The CALEA was established as an independent accrediting authority in 1979. The CALEA's general authority is derived from four major law enforcement membership associations: International Association of Chiefs of Police; National Organization of Black Law Enforcement Executives; National Sheriffs' Association; and Police Executive Research Forum. Their members represent approximately 80% of the law enforcement

Association for Property and Evidence (IAPE),¹⁴ the Honolulu Police Department (HPD), and the Federal Bureau of Investigation (FBI); and, (6) observed and compared aspects of internal controls that were being implemented at five different evidence storage facilities, three on Saipan and two in Hawaii.

The absence of a master list of COCs in the Evidence Preservation Section and of a uniform numbering system restricted OPA's ability to determine the total number of COCs in the Evidence Custodian's files. These deficiencies also prevented OPA from verifying the overall accuracy¹⁵ of the Evidence Custodian's records. Given these factors, OPA limited the scope of its tests to COCs filed from January to June of 2003 (484 COCs) and January to June of 2004 (291 COCs). This produced a total of 775 COCs, filed chronologically by month, within the two periods.

- ▶ In testing for compliance with the 2002 SOP on timely receipt and documentation of evidence, OPA selected 405 COCs (52% of the total 775) which, upon initial review, appeared to be deficient.
- ▶ In testing the adequacy of DPS controls and procedures for storing evidence, OPA applied a stratified systematic approach and categorized the total 775 COCs into the following nine evidence types: (1) biohazards, (2) computer equipment, (3) currency, (4) firearms, (5) flammables, (6) general, (7) liquids, (8) drugs, and (9) valuables. OPA then selected ten percent from each type of evidence to produce a sample size of 83 COCs for actual testing. OPA conducted most of its field work at the DPS evidence storage facility in Susupe, Saipan from June to October 2004.

The audit was done in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, OPA conducted such tests of records and other auditing procedures as was considered necessary.

PRIOR AUDIT COVERAGE

This was OPA's first audit of the DPS evidence controls.

profession in the nation. The CALEA derives its accreditation authority from those agencies that voluntarily participate in the accreditation program.

¹⁴ The IAPE Property Room Standards were prepared using data collected from known Property and Evidence management sources such as the CALEA.

¹⁵ Overall accuracy can only be determined by reconciling a complete list of COCs with another list derived from an actual physical count.

DISCUSSION OF FINDINGS

1. Evidence Not Received In Timely Manner

The Evidence Custodian did not always receive evidence in a timely manner when measured against standards adopted by other established law enforcement agencies such as the CALEA, the IAPE, and the HPD. The 2002 SOP does not provide definite steps or time lines to be followed by personnel handling evidence. DPS personnel did not have a uniform understanding of what should be considered timely receipt of evidence. In addition, the Evidence Custodian, or an alternate, was not always available to accept evidence. As evidence was not always received in a timely manner, an increased risk of damage, theft, loss, and/or misuse of evidence existed, which may potentially weaken the integrity of evidence in DPS custody.

Although DPS's previous procedures (1998 SOP) required obtaining officers to "secure the evidence in the evidence room as soon as possible and not later than 24 hours after confiscation," the 2002 SOP omitted the "not later than 24 hours" deadline for evidence submission but retained the "as soon as possible" requirement. In addition, the 2002 SOP prohibits obtaining officers from storing evidence or confiscated property in their offices. The 2002 SOP further states that "[t]he only proper location for any evidence collected is the evidence/property room."

OPA interprets the 2002 SOP to infer that DPS personnel should still be submitting evidence within 24 hours. Although the time limit was omitted in the 2002 SOP, complying with the restriction that "[t]he only proper location for any evidence collected is the evidence/property room" compels an obtaining officer to turn over any evidence before the end of his/her daily tour of duty.¹⁶ OPA's comparisons found that standards adopted by the CALEA, the IAPE, and the HPD required that all property be (1) *logged into agency records as soon as possible* and (2) *placed under the control of the property and evidence control function before the officer ends his/her tour of duty*. It appears, therefore, that the 24-hour limit is a reasonable criterion for determining timeliness in the submission of evidence.

To test the timely receipt of evidence by the Evidence Custodian, OPA analyzed 405 COCs. The time of receipt for 45 COCs was indeterminable, thus, those 45 COCs were excluded from the timeliness analysis. Of the remaining 360 COCs, OPA found 331 (43% of the total 775) instances when it took more than 24 hours for evidence obtained from an alleged crime scene to be received by the Evidence Custodian. OPA did not consider "drying time"¹⁷ in calculating the delays. OPA categorized the items and tabulated the periods of delay as follows:

¹⁶ End of tour of duty refers to the end of the officer's daily work schedule.

¹⁷ According to the CSI Technicians interviewed, certain types of evidence, such as wet or bloodied items, marijuana, and items doused with gasoline or other chemicals are required to be dried before being packaged, sealed and submitted to the Evidence Custodian. The CSI Technicians said that it could take anywhere from 1 - 4 days, and sometimes up to a week to dry such items, depending on the weather, the quantity and type of evidence, and the degree of saturation. OPA, however, did not find any documentation showing that evidence was dried prior to submission. As such, drying time for certain types of evidence, if any drying process occurred, was not considered in the analysis of the 331 COCs.

Type of Evidence Described on COC	No. of Days Lapsed Before the Receipt of Evidence						Total No. of COCs
	>24 Hours to 2 Days	> 2 Days to 1 Week	>1 Week to 1 Month	>1 to 6 Months	>6 Months to 1 year	>1 Year	
Biohazards (e.g., rape kits, blood samples, human tissues)	2	13	17	16	0	0	48
Computer Equipment (e.g., hard drives, monitors, disks, tapes)	0	13	8	4	9	1	35
Currency (e.g., cash, cash equivalents, credit cards)	3	3	3	3	0	0	12
Firearms (e.g., rifles, handguns, ammunition)	0	16	2	5	1	0	24
Flammables (e.g., lighters, flares, items doused with gasoline)	1	0	2	6	0	0	9
General (e.g., latent prints, clothing, printed material, knives)	10	19	29	56	0	0	114
Drugs (e.g., marijuana, methamphetamine, drug paraphernalia)	8	32	14	26	0	2	82
Liquids (e.g., bottles of alcohol, beverages)	2	1	1	0	0	0	4
Valuables (e.g., watches, jewelry with precious stones and metals)	0	0	3	0	0	0	3
TOTAL COCs	26	97	79	116	10	3	331

It appears that the omission of the 24-hour deadline from the 2002 SOP may have resulted in varying interpretations by obtaining officers on the meaning of timely receipt of evidence as identified through the differing methods of implementation. OPA discovered, through interviews, that obtaining officers from various units and divisions followed different procedures. For example, officers from the Traffic Investigation Unit (TIU) explained that they followed a protocol of initially submitting evidence to the traffic case investigator, who then relinquished the evidence to the Evidence Custodian.¹⁸ SOB detectives stated that they sometimes secured evidence in a locked filing cabinet serving as a vault at the SOB building before submitting it to the Evidence Custodian. Moreover, none of the officers mentioned the provision in the 2002 SOP prohibiting the storage of evidence in areas other than the evidence room.

OPA also found that the Evidence Custodian was assigned non-custodial responsibilities that took him out of the evidence room, and in most occasions, without an alternate Evidence Custodian present to assume custodial responsibilities. For example, OPA found 14 COCs documenting the Evidence Custodian as the obtaining officer who procured evidence from a crime scene. During the course of the audit, OPA analysts had to suspend field work testing because the Evidence Custodian was called to assist in the collection of evidence. Additionally, SOB detectives stated that the Evidence Custodian assisted the SOB in operations where large quantities of controlled substances (e.g. marijuana) were seized.

OPA also determined that DPS did not designate an alternate Evidence Custodian when needed. This contributed to DPS's untimely receipt of evidence. In interviews with DPS officials, OPA was informed that the CID Commander may appoint an alternate Evidence Custodian. However, during the audit, OPA observed that when the Evidence Custodian was called out to collect evidence, an alternate was not always present at the DPS evidence storage facility to receive evidence. In our interview with an alternate Evidence Custodian, who was also a CSI Technician, OPA learned that the alternate only assumed the Evidence Custodian's responsibilities when the Evidence Custodian was either off-island or on leave. Specifically, the alternate Evidence Custodian informed OPA that he only took possession of the Evidence Custodian's keys on two occasions.

¹⁸ Although the TIU is not organizationally placed within the CID, TIU officers also submit evidence to the Evidence Custodian. See also footnote 9.

By not ensuring that items of evidence were secured in a timely manner, DPS increased the risk of potential damage, theft, loss, and/or misuse of evidence, which may have weakened the integrity of evidence in DPS custody.

2. Non-Compliance With DPS Procedures For Documenting Evidence

Obtaining officers, including the Evidence Custodian, did not consistently document evidence to comply with DPS procedures under both the 2002 SOP and as required by the COC form itself. DPS officials did not strictly enforce compliance in documenting evidence on the COCs, nor does the 2002 SOP provide the Evidence Custodian with a mechanism to conduct an in-house evaluation of controls over the documentation of evidence. Non-compliance with these requirements has weakened DPS's accountability over the evidence in its custody, as well as, increased the risk of theft, loss, and/or misuse of evidence requiring extra security measures.

The 2002 SOP requires that a witness be present during the observation, recovery, and marking of evidence. The 2002 SOP further requires that "each piece of evidence shall be logged" with the following information: case number; time and date; location of the crime scene; exact location of evidence at the crime scene; if evidence was received from another person, personal data; type of evidence; name, rank and agency of collector; and disposal of evidence. This information is also required on the COC. The COC form, however, requires additional information, such as: circumstances surrounding the evidence obtained, description as to how the evidence was marked for identification, name(s) of any *witness(es)* to the procurement of the evidence, *quantity and description of items obtained*, and the assigned item number. Documentation that the evidence was physically received by the Evidence Preservation Section is completed when the Evidence Custodian affixes his/her signature on the COC.

Of the 405 COCs reviewed, OPA found:

- ▶ 147 COCs did not identify a witness who was present during the procurement of evidence
- ▶ 59 COCs did not record the weight, length and/or quantity of drug evidence obtained
- ▶ 45 COCs were either not signed as being received by the Evidence Custodian or the date of receipt could not be determined.

Although the 2002 SOP does not provide guidance on how to address such documentation deficiencies, DPS officials could have prevented such errors had they continued to strictly enforce compliance with the 2002 SOP and COC documentation procedures. OPA was informed by DPS officials that only one undocumented informal review has been conducted, thus, it appeared that DPS did not conduct a formal in-house evaluation of controls over the documentation of evidence. The 2002 SOP clearly requires that "[t]wo persons should observe evidence in place, during recovery, and being marked for identification." An obtaining officer's compliance with this requirement would have been documented if the COC was properly prepared with two signatures, those of the obtaining officer and a witness. In an interview with SOB officers, OPA was also informed that the procedures described by SOB required a minimum of two officers (the case agent and a witness) to be present during: (1) the procurement of drug evidence, (2) the assessment of the drug weight, and (3) the packaging, marking, and sealing of any drug evidence. The

147 COCs that did not contain the signature or name of a witness raised questions for OPA regarding the substantiation of the evidence described in these COCs. Moreover, the 59¹⁹ COCs that did not record the weight and/or length of drug evidence obtained and the 45 COCs that were not signed as being received by the Evidence Custodian, or those of which the dates of receipt could not be determined, were also disturbing to OPA.

Such documentation deficiencies may be increasingly significant when considering the types of evidence an obtaining officer procures from a crime scene. Certain types of evidence, particularly currency, firearms, and drug evidence, require extra security measures. As such, documentation of a witness to the procurement of these types of evidence would reinforce DPS's accountability over the evidence procured. In Hawaii, the HPD established procedures to reduce such errors and deficiencies when documenting evidence by providing the Evidence Custodian with a "right to refuse the acceptance of any evidence if the property report is not completed correctly." Allowing the Evidence Custodian a "right of refusal"²⁰ is one in-house control mechanism that can be implemented to ensure accountability in the documentation of evidence. Neither the HPD nor the IAPE, however, provided guidance on what a law enforcement agency should do if the Evidence Custodian was also the obtaining officer. Instead, the IAPE states that, "staffing the property unit with personnel, who are not involved in the collection ... of evidence, [is a precaution] that will ... enhance the integrity of a property room."

OPA is concerned that the lack of critical information necessary to provide assurance on the accountability of evidence may adversely affect the usefulness and reliability of the evidence needed to complete investigations or support testimony during court proceedings. Such non-compliance with documentation procedures may diminish both the public's and the justice system's trust of DPS's method in conducting investigations and handling evidence. DPS must address the deficiencies in the documentation of evidence, as non-compliance with DPS procedures has weakened DPS's accountability over the evidence in its custody, as well as increased the risk of theft, loss, and/or misuse of evidence requiring extra security measures.

3. No Uniform Method Was Established For Temporarily Storing/Securing Evidence Prior To Its Transfer To The Evidence Custodian

DPS personnel stored evidence in places other than that allowed by the 2002 SOP. This occurred because DPS lacked a uniform method for temporarily storing and securing evidence, prior to the obtaining officer's transfer of the evidence to the Evidence Custodian. As a result, OPA could not verify that the procedures followed by DPS personnel in temporarily storing and securing evidence were adequate to maintain DPS's accountability over the evidence, prior to transfer to the Evidence Custodian.

¹⁹ Not all evidence listed on the 59 COCs were procured by SOB officers.

²⁰ The "Right of Refusal" principle is more aptly explained in the IAPE, New Standard for Certification, Standard 10 on Packaging, Handling and Storage. The IAPE recommended that a law enforcement agency's property room policies "...should clearly state that any deviation in packaging methods that does not meet the property room standards will be refused and the booking officer shall be notified through the chain of command to correct the problem."

Under the 2002 SOP, “[t]he only proper location for any evidence collected is the evidence/property room.” The 2002 SOP further states that “[d]etectives are not allowed to keep evidence or property stored in their office or desk.” The 2002 SOP, however, does not establish a uniform method for temporarily storing evidence.

“Temporary storage,” as referred to by the IAPE, is “the gap between the time the employee who seized the evidence leaves it at the [police] station, and the time that [the evidence] is actually received by a property room employee.” Although the 2002 SOP does not establish a uniform method for temporarily storing evidence, OPA interviewed personnel from three DPS units: (1) Traffic Investigation Unit (TIU),²¹ (2) Crime Scene Investigation Section (CSI) and (3) Special Operations Bureau (SOB), and found that all three units followed different procedures for the temporary storage of evidence. OPA also learned that DPS personnel were storing evidence in locations that were clearly prohibited by the 2002 SOP. TIU officers informed OPA that they used personal lockers and desk drawers for the temporary storage of evidence, but were required to relinquish the evidence to a supervisor upon the end of their tour of duty.²² The transfer of custody between officer and supervisor continued until such evidence was ultimately transferred to the Evidence Custodian. OPA was informed that evidence was temporarily held or stored because either (1) the evidence was not ready for submission, or (2) the Evidence Custodian was not available. Confiscated property procured by TIU officers was not submitted to the Evidence Custodian, but was temporarily stored in an office within the TIU building until final release to the property owners.

CSI Technicians also stored evidence not ready for transfer to the Evidence Custodian in their desk drawers. As the CSI Technicians and the Evidence Custodian shared office space within the same building, packaged items of evidence were occasionally left on or near the Evidence Custodian’s desk when the Evidence Custodian was not available to receive the evidence. Some CSI Technicians said they sometimes placed evidence in their desk drawers, as well. This practice was a security risk as the office was accessible to other individuals, such as DPS officers preparing to submit evidence. CSI Technicians also placed evidence, such as marijuana and bloodied items, in a drying room prior to submission to the Evidence Custodian. During OPA’s field work, it was observed that the door to the drying room was not locked despite the presence of what appeared to be drug evidence in containers on the floor of the room.

SOB officers temporarily stored evidence (i.e., drugs and tape recordings) inside a vault in the SOB Building. Opening the vault required two keys that needed to be operated simultaneously. Two officers were in possession of these keys and were also the key custodians. The vault provided a certain degree of security for the evidence, but its use was still contrary to the 2002 SOP, which states that the only proper location for any evidence collected is the evidence/property room.

These conditions occurred because DPS lacked written and uniform policies for temporarily storing and securing evidence during the period before the obtaining officer transfers evidence to the Evidence Custodian. It also appeared to OPA that DPS did not conduct a formal, department-wide assessment on evidence handling to develop uniform written policies. Although OPA saw the merit of different units

²¹ See footnote 18.

²² See footnote 16.

tailoring policies in accordance with their needs, to ensure the security of the evidence, all procedures should be put in writing and tested. DPS management must also clarify or allow exceptions to the 2002 SOP provision that “the only proper location for any evidence collected is the evidence/property room.”²³ This should be done so that other units may be allowed to provide alternative methods for temporarily storing evidence and different time periods for preparing and submitting evidence to the Evidence Custodian. Otherwise, DPS management should officially designate temporary storage facilities or adopt procedures on how the evidence storage facility can be secured, yet accessible during non-business hours or when the Evidence Custodian is not available.

As a result of the lack of designated temporary storage facilities and delay in transfer to the Evidence Custodian, DPS increased the risk of potential evidence tampering, destruction, theft, loss, and/or misuse, which potentially may compromise investigative and criminal proceedings.

4. Incidence Of Improper Handling And Disposal Of Drug Evidence

In one particular incident that occurred in June 2004 during the fieldwork phase of this audit, SOB officers did not follow either the 2002 SOP or the procedures described by SOB²⁴ in handling and disposing of drug evidence. As OPA could neither verify the procedures followed in collecting the evidence, nor that all the drug evidence collected was actually incinerated, DPS weakened its accountability over the drug evidence in that particular incident.

During OPA’s interview with an SOB official, OPA was informed that the SOB followed specific procedures for collecting large evidence items in relation to marijuana drug cases. The SOB official indicated that, in such instances, the Evidence Custodian is requested to procure the evidence from a crime scene and then count, measure and dry the evidence. The 2002 SOP also requires that “each piece of evidence shall be logged...” and that “[a]ll physical evidence shall be turned in to the [E]vidence [C]ustodian as soon as possible.” In releasing or disposing evidence, the 2002 SOP provides that “[e]vidence can be released only in the following circumstances: (a) [t]he case has been disposed of in court and no appeals have been filed; (b) [t]he Attorney General has declined prosecution; (c) [t]he property is of a nature that it cannot be securely stored and has been photographed...; and (d) [p]roperty is perishable and has been photographed.” (Emphasis added).

OPA identified one instance where SOB officers did not follow either the 2002 SOP or the procedures described by SOB for receiving, storing and disposing evidence. OPA interviewed an SOB officer about a drug case conducted in the summer of 2004. In the interview, OPA was informed that SOB officers conducted an investigation of a possible marijuana plantation, but as the crime scene or plantation site was located on public property and no witnesses or suspects were identified, the case was closed. OPA learned that the drug evidence, in this instance, was not submitted to the Evidence Custodian for safekeeping. In addition, a COC was never filed for documentation.

²³ DPS 2002 SOP, Section IV.C.6.A.1: Evidence Collections, Handling, Analysis and Preparation states that: “All physical evidence shall be turned in to the evidence custodian as soon as possible. Detectives are not allowed to keep evidence or property stored in their office or desk The only proper location for any evidence collected is the evidence/property room.”

²⁴OPA was informed of these procedures through interviews conducted during the course of the audit.

OPA was also informed that a CSI Technician was called to take photos of the alleged crime scene, but, upon arrival, the CSI Technician discovered that the SOB officers had already collected the drug evidence and left the site. An SOB officer told OPA that the drug evidence was incinerated, but that the evidence was not counted before incineration, there was no log to record who was present at the time of incineration, and no samples of the evidence were kept. Prior to incineration, the drug evidence was temporarily placed inside the gated drying area adjacent to the evidence storage facility building. During this incident, the gated drying area was not under the control of the Evidence Preservation Section or the Evidence Custodian.

OPA also received contradicting oral accounts, provided by a CSI Technician and an SOB officer, regarding access to the drug evidence while it was being temporarily stored in the gated drying area. To illustrate, OPA was told by an SOB officer that he and another SOB officer locked the gates of the drying area and kept the keys inside the SOB vault; however, a CSI Technician told OPA that he and another CSI Technician were the only DPS personnel who had the keys to the gated drying area, and that he was called on June 02, 2004 at 4:30 p.m. to open the gate so the SOB officers could temporarily store the marijuana plants inside. The CSI Technician stated that, as he did not relinquish the key to the SOB officers, he was called again at around 9:00 a.m. the next day to reopen the gate so the SOB officers could retrieve and then dispose of the evidence. As written logs were not maintained, OPA could not ascertain which of these statements (SOB officer or CSI Technician) was accurate. This disparity raised concerns regarding the accuracy of information provided due to the lack of documentation.

OPA also learned that SOB officers did not obtain prior approval from the Office of the Attorney General (AGO) to incinerate the drug evidence. An SOB officer informed OPA that the evidence in this instance was incinerated for the following reasons: (1) the SOB did not identify a suspect, (2) the evidence, if not disposed of, could have been subject to misuse, and (3) the procedures undertaken for this particular incident were based on similar procedures followed by the Drug Enforcement Agency for cases where a suspect could not be identified.

As there was no COC documenting the drug evidence collected or disposed of in this case, OPA could not verify the adequacy of the procedures followed in the collection, storage, and disposal of the evidence, nor could OPA verify that all the drug evidence collected was actually incinerated. DPS's accountability over the drug evidence in this particular incident was severely weakened. The circumstances in the instance described above raised concerns regarding DPS's procedures in the investigation, handling, and disposal of drug evidence. Specifically, DPS officials should ask the following questions:

- ▶ Why did the officers dispose of the evidence without retaining a sample in the event further investigation was necessary?
- ▶ Why was the evidence never transferred to the Evidence Custodian?
- ▶ Why was there no official record (i.e., COC) of the evidence?
- ▶ Who was the DPS officer authorized to make the decision to dispose of evidence in such a short period?

5. Evidence Storage Facility Was Structurally Inadequate

DPS did not have adequate structural controls²⁵ to prevent unauthorized entry into the DPS evidence storage facility as compared to the minimum standards recommended by established law enforcement agencies such as the CALEA and the IAPE. Although OPA was not able to identify the cause of DPS's inadequate structural controls, OPA believes that correcting the deficiencies is imperative to ensure the security of stored evidence. OPA observed that evidence and confiscated property were unnecessarily placed at risk of tampering, destruction, theft, and misuse. As some COCs lacked critical information (as discussed in Finding 2) necessary to account for quantities of stored evidence, the occurrence and extent of any tampering, destruction, theft, or misuse would be difficult to determine.

Both the CALEA and the IAPE address the need for law enforcement agencies to prevent unauthorized entry into areas used for the storage of evidence. The IAPE provides structural control standards aimed at preventing unauthorized entry. DPS should control entry into evidence storage areas and should, at a minimum, follow two structural control standards provided by the IAPE:

- ▶ Evidence room walls should be constructed to extend from the floor to the ceiling to prevent unauthorized entry.
- ▶ Intrusion alarms should be fitted into all evidence rooms to detect unauthorized entry. Alarms should be tested monthly with respective test records kept on file.

DPS utilized four storage areas for the long term storage of evidence:²⁶ (1) main evidence room, (2) Evidence Custodian's former office, (3) confiscated property room, and (4) CSI storage room A. *See Exhibit 3.*

²⁵ The term "structural controls" is used by OPA to refer to the physical measures described by the CALEA and the IAPE to prevent unauthorized entry including: (1) physical construction, both interior and exterior, of the evidence storage facility and (2) auxiliary tools (i.e., alarms).

²⁶ Although OPA was informed that DPS stored evidence/property in cargo containers and on an impound lot, these locations were not included in OPA's review. The locks on the cargo containers adjacent to the DPS evidence storage facility building were observed to be rusted and, when asked, the Evidence Custodian could not locate the keys. OPA was informed that the impound lot, an open field located behind the DPS Bureau of Motor Vehicles, could be accessed by all DPS units. In addition, the Evidence Custodian stated that he was not responsible for the impound lot and large items (i.e., vehicles) stored on the lot have been previously processed for evidence by the CSI Technicians.

OPA observed that the interior walls of three of the storage areas²⁷ were wooden partitions with gaps of 12 to 24 inches between the top of the partitions and the ceiling. Except for the gaps on the partition separating the Evidence Custodian's former office and the CSI storage room A, OPA observed that the other gaps were vertically lined by 2"x 2" wood placed about 4 inches apart. *See Exhibit 4*. Although the window in the main evidence room was secured by metal bars and the door of the evidence receipt area²⁸ was enforced by steel shutters, the windows of the confiscated property room were not secured by metal bars or shutters.

Exhibit 4

Photo of the wooden partitions for the Evidence Custodian's former office and the CSI storage room A. (OPA photograph - March 2004)



During a site visit, OPA observed that the interior doors leading to the storage areas were not closed and locked. To illustrate, the door to the main evidence room was open. Additionally, the door of the CSI storage room A did not have a doorknob or any other locking device. *See Exhibit 5*. Although the main evidence room door was a secondary door, as it was located inside the Evidence Custodian's former office, unauthorized access to the main evidence room was still possible through the gap in the partition separating the Evidence Custodian's former office from the CSI storage room A. Securing interior doors of storage areas with locks or other locking devices is a basic internal control used to prevent unauthorized entry.

OPA believes that correcting the deficiencies is imperative to ensure the security of stored evidence. DPS has begun addressing these physical control weaknesses. Subsequent to the audit fieldwork, OPA noted that the evidence storage facility was being rearranged, and the office spaces for the CSI Technicians and the Evidence Custodian have been relocated to a separate building.

²⁷ The three storage areas are the Evidence Custodian's former office, confiscated property room and CSI storage room A.

²⁸ During the audit, OPA observed that the Evidence Custodian no longer used the evidence receipt area as an entrance, exit, or to receive evidence.

Exhibit 5

Photo of the door without a doorknob leading to the CSI storage room A. (OPA photograph - March 2004)



Under conditions observed at the time of OPA's fieldwork, items of evidence and property were unnecessarily exposed to an increased risk of tampering, destruction, theft, or misuse. In addition, as some COCs lacked critical information (as discussed in Finding 2) to verify quantities of stored evidence, the occurrence and extent of any tampering, destruction, theft, or misuse may be very difficult to determine. These circumstances showed a lack of control and accountability.

6. No Organized System For Segregating And Storing Evidence

DPS did not have an organized system for storing, segregating and disposing of evidence when compared to the CALEA and the IAPE standards. DPS did not conduct any in-house evaluation of controls regarding the documentation of evidence. Consequently, DPS weakened the control of some of the evidence in its custody, which may have a negative impact on investigative and criminal proceedings requiring the production of such evidence.

The CALEA provides general guidelines for law enforcement agencies to ensure the security and control of evidence and property. The CALEA requires that all evidence be stored in designated and secured areas. Due to the differences in the state and condition of evidence, items in custody need varying measures for control and security, such as: (1) locked containers (i.e., vaults, lockers, or interior rooms), (2) refrigerated storage for perishable items, such as blood and urine, and (3) secure storage areas, such as impoundment lots, for large items (i.e., vehicles, bicycles, appliances, etc.). Adhering to the CALEA standards, the IAPE categorized specific items of evidence and stated the applicable general standards as follows:

Type of Evidence	IAPE Standards
Firearms	<p>Separate from general evidence in a room created by a security screen, a secure closet, a locked gun cabinet, or a padlocked drawer in a smaller agency.</p> <p>Store rifles and shotguns in vertical racks or in rifle boxes and handguns in handgun boxes that are not stacked one on top of the other.</p>
Currency	<p>Separate from other forms of evidence, except when a common enhanced security area is shared.</p> <p>Store in a "vault" that is secured, independently keyed, and placed in an area where it is covered by an intrusion alarm.</p> <p>Separate storage locations for active cases, cases pending transfer to finance and cases pending disposal.</p>
Drugs	<p>Separate from other forms of evidence, except when a common enhanced security area is shared.</p> <p>Store in a 1) vault that is secured, independently keyed and placed in an area where it is covered by an intrusion alarm or 2) safe or fenced enclosure within a secured room.</p> <p>Provide adequate ventilation to control noxious odors. Drug fumes should not be circulated within a common ventilation system.</p> <p>Separate active cases from drugs pending destruction.</p>
Syringes, Knives and Sharp Objects	<p>Secure in appropriate containers due to the risk of infection from an unknown biological or chemical contaminant on the sharps if a cut or puncture wound was caused by such items.</p>
Perishable Items	<p>Store when it is evidence of a serious crime.</p> <p>Reserve freezer space for the preservation of DNA related evidence only when it is inappropriate to store these items in a room temperature controlled environment.</p> <p>Equip refrigerators and freezers with alarms that indicate if the temperature rises above a designated threshold level.</p>
Homicide Evidence	<p>Group together and store in areas of the evidence room that are least accessible.</p> <p>Do not expose biological evidence to any heat greater than normal room temperature; label and store bio-hazardous evidence in a temperature-controlled area.</p> <p>Store homicide related weapons and drugs in the designated firearms and drug locations, not with the homicide evidence.</p>
Hazardous Materials and Flammables	<p>Store in an area away from the regular or indoor storage facility. Small quantities and samples may be stored in adequate containers within the storage facility in an area designated for such storage where fumes would not contaminate the building's ventilation system.</p> <p>Equip the area with fire extinguishers, an adequate fire sprinkler system and an action plan.</p>
Latent Fingerprints and Film	<p>Maintain a secure file with the chain of custody accurately noted. Storage may be in an evidence technician's office due to its need for frequent access.</p>

DPS does not have adequate procedures for categorizing evidence or adequate standards for evidence storage and control. During the audit, OPA observed the condition of the evidence and property in the main evidence room, Evidence Custodian's former office and confiscated property room.²⁹ OPA also conducted a random test to determine the existence, condition, and quantity of the evidence/items in storage compared to what was recorded on the COCs. The results of OPA's observations are detailed below.

Main Evidence Room

In the main evidence room, items on the shelves appeared to be organized chronologically from 1995 to 2001, with a section designated for unsolved homicide cases. However, OPA was told that the chronological system for storage was discontinued in 2001 when two air conditioners broke.³⁰ OPA was not advised of a connection between the air conditioners and the chronological filing system.

The items on the tables and on the floor were not organized in any particular order. In addition, large bags and boxes crowded the narrow aisles between the shelves and tables, which restricted movement and access to items within the room. *See Exhibits 6 and 7.*

Exhibit 6

Photo of the evidence located on the shelves and the floor of the main evidence room. (OPA photograph - February 2004)



²⁹ OPA observed that the CSI storage room A stored a limited number of boxes, bags and larger pieces that apparently could not be packaged (i.e., a bicycle and a vacuum cleaner).

³⁰ OPA was also informed that despite repeated requests for repair, both remain broken.

Exhibit 7

Photo of the evidence located on the table and the floor of the main evidence room. (OPA photograph - February 2004)



Firearms were stored in various areas of the room. OPA was told that the rifles located in the southwest corner were deposited before the 1990's, while those along the southeast wall were deposited more recently. Firearms issued to DPS personnel, that were submitted as evidence, were secured in evidence bags and stored throughout the room.

Three refrigerators, located in the southwest corner of the room, stored perishable bio-hazardous material (e.g., blood, human organs, and rape kits). OPA observed that the largest of the three refrigerators was not operating properly, as it was not cold. It was also difficult to properly close the doors of all three refrigerators because they appeared to be overly full. The Evidence Custodian told OPA that the refrigerators were first used in 1997, but he has not opened them since 1998. OPA, however, identified an item from a 2003 DPS case in one of the refrigerators.

Evidence Custodian's Former Office

OPA observed various items of evidence (e.g., a rifle in its rifle casing, currency, and what appeared to be bio-hazardous materials and drugs) scattered and piled on tables and the floor which made it difficult to walk around the room. See Exhibit 8.

What appeared to be bio-hazardous materials (i.e., vials of blood, swabbing samples and sexual assault kits) were located in different areas of the room. Thirteen clear plastic bags containing vials of blood were on top of boxes near the entrance to the main evidence room. There was also a clear plastic bag containing a vial of blood on a desk. Four envelopes containing "swabbing" samples were also found on top of boxes. Seven sexual assault kits were noted in various areas of the room: three on a desk, two on top of filing cabinets, and two inside an open box. OPA was told that there was no more space in the refrigerators.

Although this room has a vault, what appeared to be drugs and drug paraphernalia were also stored outside of the vault in various areas of the room. The results of OPA's test to locate items in custody showed that four of the twelve items of drugs tested were stored inside the vault, as required by the CALEA and the IAPE standards. The remaining eight items were located in different areas of the room. In addition, OPA observed what appeared to be a marijuana plant protruding out of a brown paper bag behind a desk. See Exhibit 9. Four additional open bags of what appeared to be marijuana were found. OPA was informed that these items were collected by the Evidence Custodian and were not properly packaged because he took a leave of absence for approximately six weeks. An additional 46 packages of drugs and drug paraphernalia were observed in boxes on the floor near the doorway.

Exhibit 8

*Photo of the evidence on the floor near the entrance of the Evidence Custodian's former office.
(OPA photograph - February 2004)*



Exhibit 9

*Photo of what appeared to be a marijuana plant protruding out of a brown paper bag in the Evidence Custodian's former office.
(OPA photograph - February 2004)*



OPA was informed that monetary evidence was stored in the vault. However, the Evidence Custodian stated that the vault was purchased in mid 2003, and that monetary evidence submitted to the Evidence Custodian prior to the purchase has not been transferred to the vault, but remains in the original location in which it was stored.

Confiscated Property Room

The confiscated property room contained various types of evidence that were stored in no particular order. A bicycle and large boxes that would not fit on the shelves were on the floor between the shelves that lined the walls of the room. Boxes of marijuana, bags of evidence, and some large items that were not packaged (i.e., ice chests, chair, and guitar) were on the shelves. See Exhibit 10. There was also an unpackaged machete laying in plain view on a shelf and a packaged \$100 bill in a box on the floor.

What appeared to be bio-hazardous material was located throughout the room: 1) four clear plastic bags containing vials of blood - three in a box and one on a shelf, 2) two envelopes containing “swabbing” samples were in a box, and 3) three sexual assault kits -two in a box and one on a shelf. Boxes of human remains alleged to be pending release were on the floor nearly blocking the entrance door. See Exhibit 11.

Exhibit 10

Photo of the evidence on the shelves and the floor of the confiscated property room. (OPA photograph - February 2004)



Exhibit 11

Photo of the boxes of human remains on the floor of the confiscated property room.

(OPA photograph - March 2004)



Random Test

To determine the existence, condition, and quantity of the evidence/items in storage compared to what was recorded on the COCs as submitted, OPA selected 83 COCs for testing. The COCs were given to the Evidence Custodian to locate the items. Although the Evidence Custodian located all items of evidence listed on the 83 COCs, OPA observed that the Evidence Custodian had to search through piles of evidence in different storage areas. It took two days to locate the evidence listed on two of the COCs. Furthermore, an item listed on one of the COCs was found only after the CSI Technician who obtained the evidence described the packaging materials. The test confirmed that drugs and cash were not secured in a vault in accordance with the CALEA and the IAPE standards. As previously cited in this report, of the twelve items of drugs tested, only four were stored inside a vault, while the other eight were located in different areas of the room. Although the Evidence Custodian was able to locate all items of evidence listed on the 83 COCs, OPA observed that he had no system for locating these items during the sample search.

Cause and Effect

Although DPS identified discrepancies in evidence handling procedures through an informal review, it appeared that DPS did not conduct any formal in-house evaluations of its system on evidence storage. The DPS evidence storage facility is in a state of disarray, which ultimately impacts its efficiency of operation. Based on OPA's audit, the lack of an organized system for segregating and storing evidence appeared to have resulted from the following:

(1) DPS did not initiate procedures to properly dispose of evidence from closed cases

Implementing the evidence disposal procedures outlined in the 2002 SOP may have alleviated the shortage of storage space. Although DPS case investigators were responsible for monitoring the status of cases, the Evidence Custodian should have periodically reviewed the status and should have been provided with the guidelines of when and how items of evidence that were no longer needed should be disposed. OPA was told that DPS is working with the AGO and has received authorization to destroy evidence collected in 1994.

(2) DPS did not maintain accurate and timely documentation

Although the 2002 SOP states that the Evidence Custodian is responsible for the safekeeping of any and all property submitted or collected as evidence in criminal cases, the Evidence Custodian did not maintain adequate records to identify and easily find all in-custody evidence. OPA was told that COCs were filed in three different areas within the evidence storage facility building: (1) filing cabinets in the main evidence room, (2) filing cabinets in the Evidence Custodian's former office, and (3) the Evidence Custodian's current desk. However, OPA also found that the most recent COCs were filed (by month) in manila folders that were scattered on the Evidence Custodian's former desk in his former office. During the fieldwork, OPA also found an additional 35 unfiled COCs in areas other than the Evidence Custodian's general files or the three other locations previously identified. Without accurate records, DPS will not be able to determine the quantity of evidence in custody in order to project the amount of storage space needed for future use. DPS is currently developing a tracking system for evidence in storage and has purchased computer hardware and a database software program that will utilize a bar scanner and bar codes for tracking evidence.

(3) DPS did not provide adequate and organized storage areas

To ensure immediate accessibility, items in storage should be well-organized. Based on OPA's evaluation, the following components, identified in both the CALEA and the IAPE standards, may be helpful to DPS, in endeavoring to maintain an organized storage facility: (a) a system for classifying items of evidence and property should be in place; (b) storage areas should be properly marked; (c) storage areas should be equipped (with vaults, refrigerators/freezers, special containers, etc.) or designed (with shelves, bays, gun racks, etc.) for the type of evidence to be stored; (d) numbering or labeling systems should be adopted for COCs and other documents, as well as for the storage facilities; and (e) formal written procedures should be created to address the evidence storage issues. These components will promote efficiency and enhance internal controls.

(4) DPS did not adopt applicable law enforcement agency standards for evidence and property room procedures

The 2002 SOP does not provide guidelines to the Evidence Custodian for carrying out his responsibilities. Section IV.C.7.B.3 of the 2002 SOP, "Collection, Recording, Preservation and Disposition of Physical Evidence: Types of Physical Evidence," classifies the different types of physical evidence, but does not set forth where the evidence should be stored within the evidence/property room. Procedures regarding the segregation of evidence by type were not addressed in this section, or any other section, of the 2002 SOP.

(5) DPS did not set forth parameters for the Evidence Custodian

Assigning the Evidence Custodian to perform other responsibilities and leave the evidence storage facility without an alternate may have also contributed to evidence not being properly documented and stored. As previously cited in this report, the parameters of the custodial responsibilities were not established in the 2002 SOP. The 2002 SOP also does not provide any guidelines for the selection of an alternate when the Evidence Custodian was absent or on leave.

(6) DPS did not conduct periodic inspections

Periodic inspections and reporting by supervisors to DPS officials can help ensure that the evidence storage facility is well-organized and that the integrity of the evidence is maintained. OPA learned, however, that DPS has never instituted such controls. The absence of an organized system for storing, segregating and disposing of evidence potentially compromised DPS's accountability/controls over evidence in storage, and may have negatively impacted the investigative and criminal proceedings requiring the production of such evidence. OPA found deteriorated and damaged evidence packages and containers in the Evidence Custodian's former office. One evidence bag was perforated with holes exposing the evidence within. OPA also observed the packaged envelopes of other items of evidence (i.e., swabbing samples) that appeared to be tainted with a liquid substance. In the main evidence room, packaged evidence inside two of the three refrigerators were already mold infested. See Exhibits 12 and 13.

Exhibit 12

Photo of evidence bags growing mold inside the white refrigerator unit. (OPA photograph - August 2004)



Exhibit 13

Photo of evidence bags growing mold inside the brown bottom refrigerator unit.

(OPA photograph - August 2004)



7. The Evidence Custodian Performed Incompatible Duties

The Evidence Custodian performed incompatible duties. Incompatible duties are responsibilities assigned to a single person that greatly increase the risk of error or irregularities existing undetected. A basic feature of internal control was disregarded in cases where the Evidence Custodian was also the obtaining officer. Thus, the process of preserving the integrity of evidence in those cases may be subject to increased scrutiny.

The 2002 SOP provides that the Evidence Custodian was responsible for receiving and storing evidence from obtaining officers. OPA, however, found 14 COCs documenting the Evidence Custodian as the obtaining officer who procured evidence from a crime scene. As such, the Evidence Custodian was technically submitting evidence to himself. As previously stated in the report, OPA observed what appeared to be a marijuana plant protruding out of a brown evidence bag and also found, during the audit fieldwork in June 2004, four unpackaged and unmarked bags of what appeared to be drug evidence that the Evidence Custodian stated he obtained. As the evidence in these instances were not marked and sealed prior to submission, no one other than the Evidence Custodian could vouch for the actual quantity and condition of the evidence at the time of collection or attest that the quantity and condition have remained the same. The integrity of the entire process of preserving the evidence in such instances, therefore, may be subject to increased scrutiny.

OPA determined that these occurrences were allowed as a result of the 2002 reorganization of the Evidence Preservation Section personnel to the ISB of the CID. Under the 2002 reorganization, the Evidence Custodian was placed under several tiers in the CID chain of command. Therefore, it appeared to OPA that any CID officer in the higher tiers of command may have required the Evidence Custodian

to perform other duties, even duties that possibly conflicted with the Evidence Custodian's primary custodial duties.

The Evidence Custodian who acted as an obtaining officer performed incompatible duties. OPA defines incompatible duties as responsibilities that, if assigned to a single person, greatly increase the risk of errors or irregularities. Thus, having an individual perform incompatible duties constituted a weakness in internal control. Internal control can be enhanced if the 2002 SOP was amended to define the parameters of the custodial responsibility and include a written description of the qualification and duties of an Evidence Custodian.

CONCLUSIONS

As a result of the audit, OPA found that DPS did not have adequate accountability over the receipt and storage of evidence. Specifically, (1) the Evidence Custodian did not always receive evidence in a timely manner and, in some instances, the date of receipt could not be determined; (2) obtaining officers did not always comply with DPS procedures for documenting evidence; (3) DPS did not have a uniform method for temporarily storing/securing evidence prior to transferring/relinquishing it to the Evidence Custodian, nor did DPS officially adopt the various systems that other sections of DPS were implementing; (4) DPS improperly handled and disposed of drug evidence related to an incident that occurred in June 2004 during OPA's audit fieldwork; (5) the DPS evidence storage facility was structurally inadequate to prevent unauthorized entry; (6) DPS did not have an organized system for segregating and storing evidence; and (7) the Evidence Custodian performed incompatible duties. The apparent lack of accountability in the handling and storage of evidence may have adversely impacted the integrity of some of the evidence in DPS custody. The absence of adequate controls increased the risk of potential tampering, loss, or misuse of evidence. OPA is concerned that these conditions may have compromised or adversely affected ongoing investigations or criminal proceedings requiring the production of evidence that is in DPS custody. If left uncorrected, DPS may also potentially compromise future investigations or criminal proceedings.

RECOMMENDATIONS

Accordingly, we recommend that the DPS Commissioner do the following:

1. Develop and implement a plan of action to address evidence presently in DPS custody. OPA encourages DPS to consult, as appropriate or necessary, with agencies or experts such as the AGO, FBI, US Attorney's Office, Office of the Public Defender, CNMI Judiciary, and CNMI Bar Association. This plan of action should include, at a minimum, the following:
 - a. Conducting a physical inventory to determine the actual quantity, classification and condition of evidence;
 - b. Reconciliation of the physical inventory list with existing COCs or other evidence listings;
 - c. Segregation of items to be disposed, disposal of evidence in accordance with laws and regulations, and proper documentation of all disposals;
 - d. Implementation of an evidence tracking system; and
 - e. Evaluation of the condition of the existing evidence storage facility and equipment and the implementation of necessary controls and improvements.

2. Adopt and implement amendments to DPS policies and procedures regarding the receipt, storage and management of evidence. When developing these policies and procedures, OPA encourages DPS to refer to (1) established industry standards, such as those created by the CALEA or the IAPE, and (2) policies and procedures of established law enforcement agencies, such as the HPD. These policies and procedures should be in writing, be applicable department-wide, and, at a minimum, address the following:
 - a. Deadline for submission of evidence;
 - b. Temporary storage of evidence;
 - c. Required documentation for the collection, transfer and storage of evidence;
 - d. Classification, segregation, security, and disposal of evidence;
 - e. Structural measures and management controls over the evidence storage facility;
 - f. Duties and responsibilities of the Evidence Custodian and any alternate(s);
 - g. Prohibition of incompatible duties for evidence room personnel; and
 - h. Periodic inspections, inventory and reports.

3. Develop and implement a plan to ensure that, during the transition to a new evidence system, evidence collected is properly received, stored and managed.

DPS Response

During the exit conference held on August 17 and 22, 2005, the Deputy Commissioner voiced his opposition to OPA's use of the 2002 CIB Policy and Procedure Manual (2002 SOP) as the basis for evaluating all DPS officers' performance in the receipt and storage of evidence because, according to him, DPS officers (other than those under CID) are not required to follow the 2002 SOP.

DPS's letter response was received on September 13, 2005 (Appendix B). In the letter, the Deputy Commissioner reiterated his opposition and stated that the audit levied on DPS was unfair. More specifically, he expressed the need for OPA to reassess and reexamine compliance with the chain of custody procedures, and limit the review to only those DPS officers assigned to the CID.

The Deputy Commissioner's letter did not specifically address each of the seven findings in the report. His overall response is presented as follows:

I do agree with most of the findings of the audit conducted and I am aware of the issues that need immediate attention and correction for deficiencies. I know that these must be addressed to preserve the integrity of the evidence being procured by our officers. The Evidence Room dilemma should never have come to its current status if management had taken proper action and corrective measures at the onset.

Furthermore, I have instructed Sergeant Tarcisio Olopai to begin assessing the following:

- # Bars on windows
- # Bar door to main entrance
- # Bars to cover gap

- # Assess bio-hazard chemicals in refrigerator
- # Procure additional refrigerator
- # Restart master list
- # Labeling shelves
- # One location for COC
- # Procure aircondition for CST (Purchase Requisition enroute)

Funds have been identified for the costs of these assessments. Also, the DPS Legal Counsel is currently reviewing the standard operating procedures for Uniform Services that will incorporate evidence handling and temporary storage of evidence to facilitate compliance with one of the recommendations.

OPA Comments

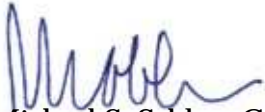
OPA referred to the 2002 SOP in the report as the standard for evaluating all DPS officers' documentation efforts in the receipt and storage of evidence for the following reasons: (1) The 2002 SOP was the only produced written policy and procedure manual in effect for the handling of evidence. OPA mentioned in the report that DPS officers from various sections stated that they followed other procedures, and some of those procedures were briefly described in the report. However, the procedures described by DPS officers were not in writing; (2) DPS had no uniform written policy for the handling of evidence. OPA believes that DPS should have adopted a uniform policy for the handling of evidence. If DPS officers (other than those under CID) were allowed to handle evidence, they should have also been provided with and required to follow written policies irrespective of whether such policies were departmental-wide or for a specific division or section; and (3) DPS had one standard chain of custody form. Upon review of the form, OPA assumed that all sections provided for (i.e., the names/signatures of the obtaining officer, the witnessing officer and the Evidence Custodian) must be properly filled in. During the exit conference, the Deputy Commissioner stated that a witness should be indicated on the COC only if the evidence was procured by an officer under CID. Although OPA agrees that non-CID officers may not have omitted any procedural step applicable to them, having a witness sign the COC is a beneficial form of control.

With respect to the Deputy Commissioner's request for a reassessment of DPS's compliance with the chain of custody procedures, OPA informed DPS during the exit conference and in two subsequent letters dated August 19, 2005 and September 09, 2005, that in order to satisfy both parties and make Finding no. 2 (DPS's compliance with the chain of custody procedures) more informative, DPS must identify the division and sections/units of the obtaining officers who signed the COCs. OPA provided DPS with a schedule to simplify the identification process. Upon return of the completed schedule, OPA would then revise Finding no. 2 to include the number of instances officers (under CID) did not comply with the chain of custody procedures, along with the number of instances officers (not under CID, thus, exempt from such requirements) did not fully complete the COCs. OPA has not received the completed schedule from DPS.

* * *

OPA has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until OPA has received evidence that the recommendations have been implemented. An open recommendation is one where no action or plan of action has been made by the client (department or agency). A resolved recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame of action. A closed recommendation is one in which the client has taken sufficient action to meet the intent of the recommendation or OPA has withdrawn it. Please provide OPA with the status of recommendation implementation within 30 days along with documentation showing the specific actions taken. If corrective actions will take longer than 30 days, please provide additional information every 60 days until OPA has notified you that the recommendation has been closed.

Sincerely,

A handwritten signature in blue ink, appearing to read "MS Sablan", written in a cursive style.

Michael S. Sablan, CPA
Public Auditor

Abbreviations

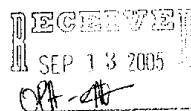
AGO	Office of the Attorney General
CALEA	Commission on Accreditation for Law Enforcement Agencies, Inc.
CIB	Criminal Investigation Bureau
CID	Criminal Investigation Division
COC	Chain of Custody form
CSI	Crime Scene Investigation Section
DPS	Department of Public Safety
FBI	Federal Bureau of Investigation
HPD	Honolulu Police Department
IAPE	International Association for Property and Evidence
ISB	Investigative Support Bureau
ISS	Investigative Support Section
OPA	Office of the Public Auditor
SIS	Special Investigation Section
SOP	Standard Operating Procedures
SOB	Special Operations Bureau
TIU	Traffic Investigation Unit



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
Department of Public Safety



September 6, 2005



Emergency (24 hrs.) 911
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Police Division
664-9001
Fire Division
664-9001
Division of Correction
664-9058
Bureau of Motor Vehicles
664-9066
Training and Development
664-9094
Administrative Support
664-9000
Office of Special Programs
664-9120
Rota DPS
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Fax: (670) 532-9434
Tinian DPS
Tel: (670) 411-9222
Fax: (670) 411-9259

Mr. Michael S. Sablan, CPA
Public Auditor
Office of the Public Auditor
P. O. Box 501399
Saipan, MP 96950

Subj: Draft Report on DPS' Evidence Controls

Dear Mr. Sablan:

I stated at the exit conference, and I must reiterate, my opposition to the unfair audit levied on our department by utilizing the 2002 Standard Operating Procedure of the Criminal Investigation Bureau. I hope arriving at a mutual understanding will initiate a reassessment and re-examination of the Chain-of-Custody (COC) procedures, as is relates to Criminal Investigation Bureau only, for compliance.

I do agree with most of the findings of the audit conducted and I am aware of the issues that need immediate attention and correction for deficiencies. I know that these must be addressed to preserve the integrity of the evidence being procured by our officers. The Evidence Room dilemma should never have come to its current status if management had taken proper action and corrective measures at the onset.

Furthermore, I have instructed Sergeant Tarcisio Olopai to begin assessing the following:

- Bars on windows
- Bar door to main entrance
- Bars to cover gap
- Assess bio-hazard chemicals in refrigerator
- Procure additional refrigerator
- Restart master list
- Labeling shelves
- One location for COC
- Procure aircondition for CST (Purchase Requisition enroute)

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Funds have been identified for the costs of these assessments. Also, the DPS Legal Counsel is currently reviewing the standard operating procedures for Uniform Services that will incorporate evidence handling and temporary storage of evidence to facilitate compliance with one of the recommendations.

Sincerely,


Juan S. Salas
Deputy Commissioner

cc: Commissioner

