

INVESTIGATIVE AUDIT REPORT

MEMPHIS POLICE DEPARTMENT

PROPERTY AND EVIDENCE DIVISION

JANUARY 1, 2000, THROUGH SEPTEMBER 30,
2003



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
Department of Audit
Division of Municipal Audit



STATE OF TENNESSEE

John G. Morgan
Comptroller

COMPTROLLER OF THE TREASURY

STATE CAPITOL

NASHVILLE, TENNESSEE 37243-0260

PHONE (615) 741-2501

June 17, 2004

James H. Bolden, Director
Police Services
Memphis Police Department
201 Poplar Avenue, 12th Floor
Memphis, TN 38103

Dear Mr. Bolden:

Presented herewith is the report on our investigative audit of the records of the Memphis Police Department, Property and Evidence Room. This examination focused on the period January 1, 2000, through September 30, 2003. However, when the examination warranted, this scope was expanded.

Section 9-2-102, *Tennessee Code Annotated*, requires that the Comptroller of the Treasury prescribe a uniform system of bookkeeping designating the character of books, reports, receipts and records, and the method of keeping same, in all state, county and municipal offices, including utility districts, which handle public funds. This code section also requires that all officials adopt and use the prescribed system. The Comptroller has prescribed a minimum system of recordkeeping for municipalities, which is detailed in the *Internal Control and Compliance Manual for Tennessee Municipalities* combined with Chapters 1-13 of *Governmental Accounting, Auditing and Financial Reporting*. The purpose of our examination was to determine the extent of the entity's compliance with certain laws and regulations, including those in the above-mentioned manuals.

Our investigative audit revealed that 116.6 kilograms of cocaine, with a street value estimated at \$2,332,408, and 559.8 pounds of marijuana, with a street value estimated at \$447,876, could not be accounted for. Auditors were unable to locate or account for certain cash items totaling \$147,218.26, and were unable to account for at least 66 firearms.

James H. Bolden, Director
Police Services
Memphis Police Department
June 17, 2004

A federal grand jury indicted three former Property and Evidence Room (PER) shift supervisors and the former PER manager on a variety of charges including theft and conspiracy to distribute controlled substances.

Additionally, the findings and recommendations in this report relate to those conditions that we believe warrant your attention. All responses to each of the findings and recommendations are included in the report.

Copies of this report are being forwarded to Governor Phil Bredesen, the State Attorney General, the District Attorney General, certain state legislators, and various other interested parties. A copy is available for public inspection in our office.

Very truly yours,

John G. Morgan
Comptroller of the Treasury



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF MUNICIPAL AUDIT**

John G. Morgan
Comptroller of the Treasury

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Dennis F. Dycus, CPA, CFE, Director
Division of Municipal Audit

June 17, 2004

Mr. John G. Morgan
Comptroller of the Treasury
State Capitol
Nashville, TN 37243-0260

Dear Mr. Morgan:

As part of our on-going process of examining the records of municipalities, we have completed our investigative audit of the records of the Memphis Police Department, Property and Evidence Room. This examination focused on the period January 1, 2000, through September 30, 2003. However, when the examination warranted, this scope was expanded.

Section 9-2-102, *Tennessee Code Annotated*, requires that the Comptroller of the Treasury prescribe a uniform system of bookkeeping designating the character of books, reports, receipts and records, and the method of keeping same, in all state, county and municipal offices, including utility districts, which handle public funds. This code section also requires that all officials adopt and use the prescribed system. The Comptroller has prescribed a minimum system of recordkeeping for municipalities, which is detailed in the *Internal Control and Compliance Manual for Tennessee Municipalities* combined with Chapters 1-13 of *Governmental Accounting, Auditing and Financial Reporting*. The purpose of our examination was to determine the extent of the entity's compliance with certain laws and regulations, including those in the above-mentioned manuals.

Our investigative audit revealed that 116.6 kilograms of cocaine, with a street value estimated at \$2,332,408, and 559.8 pounds of marijuana, with a street value estimated at \$447,876, could not be accounted for. Auditors were unable to locate or account for certain cash items totaling \$147,218.26, and were unable to account for at least 66 firearms.

Mr. John G. Morgan
Comptroller of the Treasury
June 17, 2004

A federal grand jury indicted three former Property and Evidence Room (PER) shift supervisors and the former PER manager on a variety of charges including theft and conspiracy to distribute controlled substances.

Additionally, our examination resulted in findings and recommendations related to the following:

1. Lack of separation of duties
2. Property clerks had capability to alter computer property records
3. Inadequate procedures for destruction of narcotics
4. Inadequate procedures for destruction or disposal of contraband weapons
5. Confiscated drugs and weapons not disposed of timely
6. Inadequate restrictions on access to evidence and inadequate storage conditions
7. Lack of policy manual
8. Failure to report and remit unclaimed property

In addition to our findings and recommendations, we are also providing management's response. If after your review, you have any questions, I will be happy to supply any additional information which you may request.

Sincerely,

Dennis F. Dycus, CPA, CFE, Director
Division of Municipal Audit

**INVESTIGATIVE AUDIT OF THE RECORDS OF THE
MEMPHIS POLICE DEPARTMENT
PROPERTY AND EVIDENCE DIVISION
JANUARY 1, 2000, THROUGH SEPTEMBER 30, 2003**

BACKGROUND

In the fall of 2002, the Memphis Police Department and the Federal Bureau of Investigation launched a criminal investigation involving certain activity at the property and evidence room (PER) of the Memphis Police Department. Prompted by that criminal investigation, the Director of the Memphis Police Department requested assistance from the Division of Municipal Audit in the performance of an inventory and audit of the PER. The purpose of the investigative audit was to (1) assist the Memphis Police Department and the Federal Bureau of Investigation in their criminal investigation, (2) determine if there was additional criminal activity, (3) evaluate the internal controls in place, and (4) determine the extent of the entity's compliance with those internal controls as well as with certain laws and regulations.

In 1999, the Division of Municipal Audit, Comptroller of the Treasury, performed an investigative audit of the Memphis Police Department Organized Crime Unit. During that examination, auditors performed selected procedures relative to internal controls at the police department PER. Police department management was informed of weaknesses in the operation of the PER in a Special Purpose Examination report dated November 4, 1999. In addition, the City of Memphis Internal Audit Division performed two subsequent reviews, in 2001 and 2002, of the PER drug destruction procedures and practices. The internal auditor found similar weaknesses to those noted by the Division of Municipal Audit. Management of the police department received notice of these weaknesses.

Our investigative audit determined that many of the weaknesses previously brought to management's attention still existed. These weaknesses directly contributed to the misappropriations outlined in the Legal Issues of this report. Unless management takes action to address these weaknesses, the PER will continue to be susceptible to losses as detailed in the Legal Issues of this report.

On September 29, 2003, there were 537,482 items on the PER computer records. Some of these property items had been disposed of and were no longer in PER custody. However, due to the volume of property transactions, auditors limited the scope of the investigative audit primarily to three general areas of high-risk property: narcotics, cash, and firearms. In most cases, within these three broad areas, auditors concentrated their analysis on property of relatively high monetary value, quality, and/or quantity.

LEGAL ISSUES

1. **ISSUE:** **Narcotics**

The auditors focused on larger quantities of narcotics, specifically parcels of cocaine and marijuana larger than a pound. Auditors attempted to track these evidence items from receipt by PER personnel, to storage, and to destruction or release, if applicable. (Narcotics are sometimes released to other law enforcement agencies, prosecutorial agencies, or courts). We were unable to locate or account for certain drug items, even though the PER computer inventory record, as well as other records, indicated that the property was still in PER personnel custody. In some cases, a portion of a drug item, for instance 2 kilograms from a 24-kilogram parcel, was not located.

We were unable to account for a total of 116.6 kilograms of cocaine, with a street value estimated at \$2,332,408, and 559.8 pounds of marijuana, with a street value estimated at \$447,876. According to the PER computer inventory, PER personnel destroyed at least 1,389 kilograms of cocaine and 11,497.53 pounds of marijuana during the last 3 years. **However, due to the inaccuracy and uncertainty in the destruction process, auditors could not determine whether any of these narcotics were actually destroyed. (Refer to Finding 3.)**

2. **ISSUE:** **Cash**

Auditors identified and attempted to track cash items that police officers seized from suspects pursuant and incidental to arrest and turned over to the custody of PER personnel. We determined that, periodically, cash formally seized by the police department was properly removed from the PER and deposited into a city bank account. In addition, cash was released to the owner or other interested party when appropriate. However, we were unable to locate or account for certain cash items totaling \$147,218.26, even though the PER computer inventory record, as well as other records, indicated the property was still on hand.

3. **ISSUE:** **Firearms**

Auditors observed over 12,000 weapons that had been turned over to PER personnel for custody and safekeeping. However, numerous firearms, which PER records indicate as being in the custody of PER personnel, could not be located. Of the firearms that could not be located, we selected a limited number and conducted intense follow-up. Of these, at least 66 firearms could not be accounted for.

<p>A federal grand jury indicted three former PER shift supervisors and the former PER manager on a variety of charges including theft and conspiracy to distribute controlled substances.</p>

FINDINGS AND RECOMMENDATIONS

1. **FINDING:** **Lack of separation of duties**

PER personnel were responsible for recording the initial receipt of evidence, maintaining custody of receipt records, maintaining custody of the property, selecting property for destruction or release, and physically performing the destruction or release. In addition, even though PER personnel had exclusive custody of property, they also had exclusive responsibility to record the destruction or release of property on the computer inventory record. Finally, PER personnel were responsible for changing and storing the surveillance camera video tapes.

The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 1, Chapter 2, Section 2, states, “Municipal officials should enforce division of duties to provide a system of checks and balances so that no one person has control over a complete transaction from beginning to end. Work flow should be established so that one employee’s work is automatically verified by another employee working independently.”

RECOMMENDATION:

To reduce the risk of unauthorized and/or improper alterations and increase the reliability of data, the director of police should ensure that PER personnel do not have both custody of property and sole responsibility for maintaining the records for that property. PER employees should not have the capability to record property as destroyed in the computer or on other records. Court-ordered destructions should be administered by a group without prior access to the property, with close oversight by the internal audit division. PER personnel should not have access to surveillance camera recording equipment or recordings.

MANAGEMENT’S RESPONSE:

Director of Police:

MPD concurs with the finding. PER clerks will be limited to computer data entry rights to reduce the risk of unauthorized and/or improper alterations. Modification rights such as changes or deleting data will be assigned to a designated employee(s) independent of the PER to increase the reliability of the data. Written approval from the property and evidence room manager must be received before any type of modification is completed. MPD will establish an independent Destruction Review Team (DRT) that will administer court-ordered destructions with close oversight by the Internal Audit Department. MPD has installed a surveillance camera recording system that is maintained by the Vice and Narcotics Unit. These changes will be standard operating and Commission on Accreditation for Law Enforcement Agencies (CALEA) procedures.

2. **FINDING: Property clerks had capability to alter computer property records**

PER personnel used a computer property management system to account for property and evidence in its custody. An internal audit of the property room completed January 1999 noted that property room clerks had the capability to alter the computer record of previously entered information. A Comptroller's examination later that year revealed that this condition had not been corrected. Our current investigative audit revealed that certain property room personnel continued to retain the ability to alter the computer record of previously entered information. The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 1, Chapter 2, Section 2, states, "Municipal officials should enforce division of duties to provide a system of checks and balances so that no one person has control over a complete transaction from beginning to end. Work flow should be established so that one employee's work is automatically verified by another employee working independently."

RECOMMENDATION:

To reduce the risk of unauthorized and/or improper alterations and to increase the reliability of data, the director of police should ensure that access to certain functions of the computerized property management system is strictly limited and well documented. PER personnel should not have the authority to alter computer data once they take property into their custody.

MANAGEMENT'S RESPONSE:

Director of Police:

MPD concurs with the finding. PER clerks will be limited to computer data entry rights to reduce the risk of unauthorized and/or improper alterations. Modification rights such as changing or deleting data will be assigned to a designated employee(s) independent of the PER to increase the reliability of the data. Written approval from the property and evidence room manager must be received before any type of modification is completed. These changes will be standard operating and CALEA procedures.

3. **FINDING: Inadequate procedures for destruction of narcotics**

Police officers seized narcotics possessed in violation of the law and forwarded this property to PER personnel for custody and safekeeping. Periodically, PER personnel would identify narcotics no longer needed for evidence, and petition the court to destroy that property. With court approval, property room personnel would accumulate the specific property and deliver it to be disposed of in accordance with state law. However, during the destruction process, there was no independent reconciliation between the narcotics listed on the destruction order and the narcotics destroyed. In addition, our investigative audit revealed that the narcotics listed on the court order did not include

quantities. Therefore, from the court order, it was not possible to tell, for example, if a cocaine property item was 1 gram or 100 kilograms. The city's internal audit department performed a limited review of the destruction process for two years, including physically observing the destructions. In their 2001 review, they noted that property presented for destruction was not always listed on the court order. In their 2002 review, they noted that narcotics listed on the court order were not always presented for destruction. The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 1, Chapter 2, Section 2, states, "Municipal officials should enforce division of duties to provide a system of checks and balances so that no one person has control over a complete transaction from beginning to end. Work flow should be established so that one employee's work is automatically verified by another employee working independently."

RECOMMENDATION:

To reduce the risk that errors or intentional misconduct remain undetected, the director of police should ensure that someone independent of the custodial function of contraband property reconcile property items listed on the destruction order with the property actually destroyed. That person should report and investigate any discrepancies.

MANAGEMENT'S RESPONSE:

Director of Police:

MPD concurs with the finding. MPD will establish an independent DRT that will administer court-ordered destructions with close oversight by the Internal Audit Department. The DRT will be responsible for reconciling property listed on the destruction order with the property actually destroyed. The DRT will report any discrepancies to the property and evidence room manager for investigation. These changes will be standard operating and CALEA procedures.

4. **FINDING: Inadequate procedures for destruction or disposal of contraband weapons**

Police officers seized weapons used or possessed in violation of the law. They forwarded this property to PER personnel for custody and safekeeping. Periodically, PER personnel would identify weapons no longer needed for evidence, and petition the court to destroy the weapons or, in some cases, retain the weapons for law enforcement use or trade. With court approval, property room personnel would accumulate the weapons and deliver them to be disposed of in accordance with state law. However, during the disposal process, there was no independent reconciliation between the weapons listed on the court order and the actual weapons destroyed or released weapons. We also noted that in at least one instance, a list of weapons was apparently attached to a court order almost four months after the court order had been filed with the court clerk. It appears that the court order did not cover these weapons, and therefore they were not lawfully disposed of. The *Internal*

Control and Compliance Manual for Tennessee Municipalities, Title 1, Chapter 2, Section 2, states, “Municipal officials should enforce division of duties to provide a system of checks and balances so that no one person has control over a complete transaction from beginning to end. Work flow should be established so that one employee’s work is automatically verified by another employee working independently.”

Section 39-17-1317 (b), *Tennessee Code Annotated*, states:

Any weapon declared contraband shall be sold in public sale, destroyed, or used for legitimate law enforcement purposes, at the discretion of the court, by written order.

Section 39-17-1317 (h) (1), *Tennessee Code Annotated*, states:

A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. Any such weapon shall be sold, destroyed or retained for legitimate law enforcement purposes not less than sixty (60) days nor more than one hundred eighty (180) days after the last legal proceeding involving the weapon. . . .

(i) No weapon seized by law enforcement officials shall be used for any personal or law enforcement purposes, sold or destroyed except in accordance with this section.

RECOMMENDATION:

To reduce the risk that accidental or intentional errors or irregularities remain undetected, the director of police should ensure that someone independent from the custodial function of contraband weapons reconcile the destruction and retention court orders with the property actually destroyed or retained. Any discrepancies should be reported and investigated.

MANAGEMENT’S RESPONSE:

Director of Police:

MPD concurs with the finding. MPD will establish an independent DRT that will administer court-ordered destructions along with close oversight by the Internal Audit Department. The DRT will be responsible for reconciling weapons listed on the destruction order with the weapons actually destroyed. The DRT will report any discrepancies to the property and evidence room manager for investigation. These changes will be standard operating and CALEA procedures.

5. **FINDING: Confiscated drugs and weapons not disposed of timely**

The police department maintained custody of drugs and drug paraphernalia seized pursuant to Section 53-11-451, *Tennessee Code Annotated*, but did not follow the procedures set forth in state statutes for the disposal of those items when the related cases were concluded. Narcotics and firearms were not disposed of in a timely manner. Section 53-11-451, *Tennessee Code Annotated*, sets forth the following procedures relating to the disposal of seized controlled substances and drug paraphernalia which have been held as evidence or exhibits for cases which have been concluded:

(1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the same and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when such property was used;

(2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and

(3) The clerk, or such deputy clerk as the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning such destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction.

In addition, police officers seized weapons used or possessed in violation of the law. They forwarded this property to PER personnel for custody and safekeeping. Section 39-17-1317 (h) (1), *Tennessee Code Annotated*, states:

A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. Any such weapon shall be sold, destroyed or retained for legitimate law enforcement purposes not less than sixty (60) days nor more than one hundred eighty (180) days after the last legal proceeding involving the weapon. . . .

RECOMMENDATION:

To comply with state statutes and to alleviate the responsibility for safeguarding property not needed as evidence, the director of police should ensure the annual inventory and

disposal of applicable seized drugs, drug paraphernalia, and weapons. Procedures set forth in Sections 53-11-451 and 39-17-1317 *Tennessee Code Annotated*, should be followed for the disposal of such property.

MANAGEMENT’S RESPONSE:

Director of Police:

MPD concurs with the finding. MPD will complete an annual inventory of property in the custody of the PER to comply with state statute. To alleviate the responsibility for safeguarding the property not needed as evidence, MPD will follow the procedures set forth in the *Tennessee Code Annotated* regarding the disposal of property in the custody of the PER. These changes will be standard operating and CALEA procedures.

6. **FINDING: Inadequate restrictions on access to evidence and inadequate storage conditions**

Our investigative audit revealed inadequate restrictions on access to high-risk property as well as inadequate storage conditions. As noted in previous findings, cash, guns, and narcotics were not properly disposed of on a timely basis. In addition, at the PER warehouse, narcotics and guns were often stored along with general property, such as clothing and televisions. Access to all property at the warehouse storage location, including narcotics and firearms, was unrestricted for PER personnel. Our examination revealed unlabeled property items, as well as torn or opened packaging on property, including narcotics. Our examination also revealed numerous instances of loose marijuana littering the shelves and floor areas of the property warehouse. These conditions increase the risk that property will be lost, stolen, or contaminated.

The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 1, Chapter 4, requires policies and procedures for the identification, storage, and annual inventory of high-risk, sensitive property. Although the property room had policies and procedures for the disposition of weapons and drugs no longer needed as evidence, the disposal of those items was not conducted properly or on a timely basis.

RECOMMENDATION:

To comply with state statutes, to alleviate the responsibility for safeguarding PER property not needed as evidence, and to reduce the risk of loss or theft, the director of police should ensure at a minimum an annual inventory with timely destruction of applicable seized drugs and weapons as set forth in *Tennessee Code Annotated*. In addition, the director of police should ensure that items held as evidence are adequately labeled, stored, and safeguarded. The director of police should also restrict access to high-risk property, including narcotics and weapons, to only essential personnel under specific conditions.

MANAGEMENT’S RESPONSE:

Director of Police:

MPD concurs with the finding. MPD will complete an annual inventory of property in the custody of the PER to comply with state statute. To alleviate the responsibility for safeguarding property not needed as evidence, MPD will follow the procedures set forth in the *Tennessee Code Annotated* regarding the disposal of property in the custody of the PER. Narcotics, weapons, and other high-risk property will be stored in separate, bar code labeled, locked, and secured containers. Metal detectors and security fencing has been installed to limit access to property. These changes will be standard operating and CALEA procedures.

7. **FINDING: Lack of policy manual**

Management had not developed and implemented a comprehensive written policy manual for PER. As a result, personnel did not always handle transactions consistently.

The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 1, Chapter 1, Section 1, states, “Municipal officials should ensure that a policies and procedures manual is part of the written record system of the municipality.”

RECOMMENDATION:

To ensure that transactions are handled consistently by all personnel, management should develop and implement a comprehensive written policy manual for the PER.

MANAGEMENT’S RESPONSE:

Director of Police:

MPD concurs with the finding. MPD will develop and implement a comprehensive written policy manual for the PER.

8. **FINDING: Failure to report and remit unclaimed property**

Police officers seized cash from suspects pursuant and incidental to arrest. The cash was documented and placed in the police department PER. However, in many cases, the police department did not formally make a claim on this money under the state’s administrative, civil, or judicial forfeiture procedures. Additionally, the suspect from whom the money was taken made no claim on the money. Therefore, the cash remained in the custody of the property room. Periodically, property room personnel would identify

such cash property that had been in their custody for more than a year and had no pending court proceedings. For the period July 1, 2000, through March 30, 2001, \$82,219.66 of this cash was identified and placed into an escrow account. However, property room personnel did not provide the city comptroller with adequate information to file a list of the property with the state treasurer's office. Therefore, that money has not been properly distributed to the rightful owner or to the state.

Title 66, Chapter 29, part 1, *Tennessee Code Annotated*, addresses unclaimed property. Section 66-29-103, *Tennessee Code Annotated*, states, "Unless otherwise provided in this part or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under this section . . . are satisfied. . . ."

Section 66-29-110, *Tennessee Code Annotated*, states:

All property held for the owner by any court, including a federal court, public corporation, public authority or agency, or public officer, or a political subdivision . . . that has remained unclaimed by the owner for more than one (1) year is presumed abandoned, except property in the custody or control of any state or federal court in any pending action.

Section 66-29-113, *Tennessee Code Annotated*, details the requirements for the annual reporting and remitting of unclaimed property to the state treasurer's office. In addition, Section 1700-2-1-.19 of the "Regulations Governing the Uniform Disposition of Unclaimed Property Act" requires that, prior to filing the annual report of property to the state treasurer, the holder of the unclaimed property must exercise due diligence to find and notify the owner of the property being held.

RECOMMENDATION:

The director of police and the finance director should ensure that police department employees annually identify unclaimed property and when appropriate attempt to notify the owner. All remaining unclaimed property should be appropriately reported and remitted to the state treasurer's office. This issue has been referred to the Tennessee State Treasurer's Office.

MANAGEMENT'S RESPONSE:

Director of Police:

MPD concurs with the finding. MPD will mail annual certified letters to identifiable property owners and report and remit unclaimed property to the Tennessee State Treasurer's Office. These changes will be standard operating and CALEA procedures.