



Guam Police Department Asset Forfeiture Fund

**Survey Report
October 1, 2001 through September 30, 2002**

**OPA Report No. 03-06
August 2003**

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EXECUTIVE SUMMARY

OPA Report No. 03-06 August 2003

Guam Police Department Survey Report on Asset Forfeiture Funds Fiscal Year 2002

A survey of the Guam Police Department's (GPD) Asset Forfeiture Fund (Fund) was initiated in May 2003 by the Office of the Public Auditor (OPA) based on an audit request by the Acting Chief of Police. The survey objectives were to evaluate the feasibility of an audit based on preliminary information gathered during this stage and to address specific questions of the Acting Chief of Police which were:

1. The financial status of the Fund;
2. Whether expenditures of the Fund were appropriately used for law enforcement; and
3. Whether firearms training targets were a prudent purchase of the Fund.

Asset Forfeiture programs strive to debilitate criminal organizations by removing the proceeds of their crimes.¹ GPD participates in the Equitable Sharing Program; the sharing of funds and property by the United States with cooperating state and local law enforcement agencies that assist in securing the forfeiture of criminal assets.

In FY 2002, \$715,000 in Equitable Sharing proceeds were accounted for in the Federal Asset Forfeiture account of the Government of Guam's General Fund. Proceeds of local assets forfeited to GPD are deposited into the Local Asset Forfeiture account. In August 2002, Public Law 26-120 created the Special Assets Forfeiture Fund, separate from the General Fund, to provide additional resources for the exclusive use of GPD.² This law requires the Public Auditor to review the Fund's fiscal year reports.

Notwithstanding PL 26-120, the Special Assets Forfeiture Fund had not been created and the funds had not been separated from the General Fund. The OPA has not been able to conduct its mandated review because FY 2002 financial reports have not been prepared for the Fund up to the date of this report. Other findings include:

- In 1999, GPD purchased 155,000 firearms training targets at a cost of \$90,120, **enough targets to last GPD over 1000 years**. We found the targets stored in an evidence warehouse and spilling out of a 40-foot container in deplorable condition, many of them ruined by the last two major typhoons and no inventory control.
- GPD's Asset Forfeiture ledgers did not reconcile to financial system printouts by as much as \$340,000. These inaccuracies may jeopardize continued participation in the Equitable Sharing Program. Subsequently, the Department of Administration

¹ The U.S. Department of Justice and U.S. Department of the Treasury administer their respective Asset Forfeiture Programs.

² Public Law added Chapter 79 to Part 2, Division 3 of Title 10 to the Guam Code Annotated.

(DOA) established the Fund in June 2003 and assigned a representative to work with GPD to resolve the inconsistencies.

- GPD does not maintain listings of items either forfeited to GPD by the U.S. Department of Justice or purchased with Asset Forfeiture proceeds. Federal Asset Forfeiture Fund Annual reports indicate properties valued at almost \$137,000 had been forfeited to GPD since 1998.
- Checks totaling \$715,000 received by GPD from the Departments of Justice and Treasury for equitable sharing proceeds are not deposited timely with average lapses of 198 days. This creates opportunities for loss or theft of funds.
- Travel authorizations for 19 training conferences totaled \$52,049 and were paid by Federal Asset Forfeiture Funds. 12 trips costing \$30,939 did not have trip reports or training certificates of completion so we were unable to determine if these GPD employees did attend the conferences.
- We saw that the organization and safeguarding of evidence items of ongoing cases was inadequate. There was no inventory of evidence, items were easily accessible and could be compromised.

We were unable to complete our review due to the lack of account reconciliation between GPD and DOA and a lack of Fund financial statements. A further review will be conducted after the Asset Forfeiture Fund has been reconciled with DOA and financial statements have been prepared by GPD.

Our recommendations detailed in the report include the following:

- Reconcile GPD and DOA records and prepare the necessary financial reports as of FY 2002. The Acting Chief of Police should request an extension of report filing as it is almost one year late. Thereafter, the funds should be rolled over to the Special Assets Forfeiture Fund and the former accounts closed.
- Compile an inventory and disposition listing of assets forfeited to GPD and purchased with Asset Forfeiture Funds. Immediate implementation of the Property Control section's inventory control and transfer of evidence to a secure location.
- Use accounting software to manage accounting data and aid in preparation of annual financial reports and inventory of forfeited assets.
- Deposit Equitable Sharing within one to two days of receipt of check.
- All GPD personnel who travel, regardless of the nature of the funding, submit trip reports and certificates of attendance after every trip.
- The Legislature should review its various reporting deadlines for adequacy of time and whether a penalty for failure to submit a report is appropriate.

The Acting Chief of Police, in his response to the draft report, stated that the report has provided a framework for GPD to address the Fund's problems and focus on compliance with statutes.



Doris Flores Brooks, CPA, CGFM
Public Auditor



**Guam Police Department
Asset Forfeiture Fund**

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Introduction

A survey of the Asset Forfeiture Fund (Fund) of the Guam Police Department (GPD) was initiated in May 2003 by the Office of the Public Auditor (OPA) based on a request for an audit of the Fund by the Acting Chief of Police in January 2003. The purpose of the survey was to evaluate the feasibility of an audit based on preliminary information gathered during this stage. The OPA determined that an audit was not feasible due to the lack of reconciliation of accounts between GPD and the Department of Administration (DOA) and a lack of financial statements of the Fund. We performed limited procedures to address the immediate concerns of the Acting Chief. A further review will be conducted after the Asset Forfeiture Fund has been reconciled with DOA and financial statements have been prepared by GPD.

Jurisdiction to Investigate

The Public Auditor is required to annually audit “all the transactions and accounts of all departments, offices, corporations, authorities, and agencies in all of the branches of the Government of Guam.”¹ The Public Auditor has the duty to “communicate directly with any person or with any department, officer or person having official relations with the office in any matter relating to the expenditures of government funds and property or to the settlement thereof and to require production of any books, records or documents.”²

Background Information

The primary purpose of the U.S. Department of Justice (USDOJ) Forfeiture Program is to deter crime by depriving criminals of the profits and proceeds of their illegal activities and to weaken criminal enterprises by removing the instruments of crime. Funds and tangible property are both shared, through the Equitable Sharing Program, with cooperating state, local, and international law enforcement agencies that assist the United States in securing the forfeiture of criminal assets. The U.S. Department of the Treasury administers the Treasury Forfeiture Fund of its respective bureaus.

Federal guidelines permit uses of shared monies for law enforcement purposes to include salaries (overtime, first-year salaries of officers), training, law enforcement equipment and operations (including vehicles, travel, transportation), and law enforcement facilities and equipment.³

¹ 1 GCA § 1908

² 1 GCA § 1909(c, d)

³ *A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies*, March 1994, U.S. Department of Justice

A Federal Annual Certification Report is required by the Departments of Justice and Treasury certifying that the accounting of the receipts received and expenditures made by the local law enforcement agency are correct and in compliance with the guidelines and statutes that govern the Equitable Sharing Program.

Payments are not allowed for salaries of existing positions (supplanting), non-law enforcement expenses, non-official government use of shared assets that creates the appearance that shared funds are being used for political or personal purposes, and extravagant expenditures. Shared resources must be used to increase or supplement the resources of the receiving state or local law enforcement agency and shall not be used to replace or supplant its resources. There should be no appearance that law enforcement decisions are motivated by the prospect of receiving forfeited funds.

Guam's Federal and Local Asset Forfeiture Accounts were established in 1993 and 1996, respectively, and are administered by GPD's Special Programs Division. Proceeds of local assets forfeited to GPD are deposited into the Local Account. Proceeds received by GPD from the Departments of Justice and Treasury are deposited into the Federal Account and represent GPD's equitable share of forfeited assets received as a result of local participation in Federal law enforcement activities. The Local Account has followed Federal guidelines until the enactment of Public Law 26-120 in August 2002 when the first local regulation was established.

Public Law 26-120 created the Special Assets Forfeiture Fund to provide additional resources for the exclusive use of the Guam Police Department to meet its need for new vehicles, equipment, and training of its officers. P.L. 26-120 specifies uses of the funds of locally seized assets and requires the Public Auditor to review its fiscal year reports. The Fund shall not be commingled with the General Fund and shall be kept in a separate bank account.⁴

Scope and Objectives

The scope of our survey was limited to transactions of the Asset Forfeiture Fund for fiscal year ending September 30, 2002. The objectives of our survey were to determine availability of reports and perform limited procedures as to the validity of expenditures of the Fund and to address specific questions raised by the Acting Chief of Police which included:

1. The financial status of the Fund,
2. Whether expenditures of the Fund were appropriately used for law enforcement; and
3. Whether firearms training targets were a prudent purchase of the Fund.

⁴ 10 GCA §79101 Creation of Fund.

Specific Findings and Conclusions

Concern 1: Financial status of the Fund.

Lack of Reconciliation between DOA and GPD

During our survey, we found that GPD and DOA were unaware of Public Law 26-120 that created the Special Assets Forfeiture Fund separate from other funds of the government of Guam. We found that the Fund had not been separated from the General Fund. The local and federal components were still commingled in the General Fund. Subsequently, the Division of Accounts, in June 2003, created the separate Special Assets Forfeiture Fund. Notwithstanding that the law specifies a separate bank account for the Fund, the General Fund's precarious cash situation did not allow a separate bank account to be established.

Title 10 GCA Section 79105 requires the Chief of Police to transmit detailed financial reports of the Fund to the Governor and the Legislature no later than 30 days after the end of the fiscal year. The report shall, among other things, include the estimated total value of property forfeited but not deposited into the Fund. The annual reports are to be reviewed by the Public Auditor and the Fund is to be audited every three years.

We found that no report or financial statements for FY 2002 have been prepared for the Asset Forfeiture Fund and submitted to the Governor and the Legislature up to the date of this report. GPD personnel have indicated to us that because the Fund was never created, they did not prepare the required reports.

We also found that ledgers maintained at GPD did not reconcile to financial system printouts generated by the AS400 and Oracle. GPD personnel stated that the reversion to the AS400 system from Oracle resulted in major differences in account balances between GPD and DOA, differences as much as \$340,000. Because of these discrepancies, we are unable to review and verify the financial status of the Fund.

We attempted to reconstruct a financial statement for fiscal year 2002 outlining the revenues and expenditures of the Fund according to DOA records and compared these transactions to GPD's ledgers and a check listing, provided by GPD, of the Equitable Sharing proceeds. We found numerous discrepancies as revenue sources and expenditures were not reconciled. See **Appendix A** for details.

	Revenues	Expenditures	Increase in Fund balance
DOA AS400	\$ 720,384.89	\$460,010.38	\$260,374.51
GPD Ledgers	\$ 669,684.71	\$463,590.50	\$206,094.21
Difference	\$ 50,700.18	\$ (3,580.12)	\$ 54,280.30

No Inventory of Forfeited Assets

During our survey, we found that USDOJ annual reports documented property valued at almost \$137,000, which had been forfeited to GPD since 1998. We asked for an inventory of assets forfeited and turned over to GPD and for a listing of items purchased with Asset Forfeiture Funds and were told that none existed. The Special Programs section of GPD maintains documentation of the administrative costs that GPD must pay prior to the acquisition of the forfeited asset from the federal government. According to GPD personnel, the Chief of Police determines which section receives the asset and thereafter, it is accounted for in the respective section's inventory.



Photograph A: Items bought with Asset Forfeiture Funds

The Special Programs section maintains all documentation relative to purchases utilizing the Asset Forfeiture Funds but does not maintain an inventory of these items and their disposition. There should be a documented trail of when the items are forfeited and their subsequent disposition.

GPD personnel showed us a room that was discovered shortly after the Acting Chief took office in January during an assessment of GPD facilities. The room was filled with what appeared to be an assortment of idle law enforcement equipment such as uniforms, holsters, batons, and flashlights. **See Photograph A.** It is not known how long the items have been stored in the room. It also appeared that some of these items might have been purchased with Asset Forfeiture Funds since the boxes contained documentation from the same vendors that were observed on the GPD ledgers.

Checks Held And Not Deposited Timely

In a listing of 32 checks totaling over \$715,000, received by GPD from the Departments of Justice and Treasury for equitable sharing proceeds in FY 2002, we found significant lapses between check dates and deposit dates. The average lapse was 198 days with the longest lapse being 321 days and the shortest, 70 days. We requested an explanation of this long lapse and were told by GPD personnel that the former Chief of Police instructed them to hold the checks in a safe until he ordered deposit of the checks. Personnel indicated to us that this was an attempt to deter use of GPD monies

by other agencies within the realm of the General Fund. These checks were held until such time that GPD found a specific use of the money.

Conclusion:

In our opinion, the lack of reconciliation has caused inaccuracies in the Federal Annual Certification Reports and may jeopardize further participation in the Equitable Sharing Program. The unusually long delay of deposits of the equitable sharing proceeds has enhanced opportunity for theft or loss.

Also in our opinion, there is a lack of accountability of those items that have been purchased with Asset Forfeiture Funds and those items that have been forfeited to GPD. These items are required to be used for law enforcement purposes by federal guidelines.

We have requested that the Director of DOA designate a DOA representative to work with the designated GPD representative to resolve these discrepancies and reconcile the ledgers of the Asset Forfeiture Fund.

GPD should immediately submit a detailed report for FY 2002 as required under Title 10 GCA Section 79105 which, among other things, includes an updated inventory of forfeited assets as well as transmittal of financial statements of the Fund to the Governor and the Legislature. The annual report to the Legislature and the Governor is due 30 days after the fiscal year end. The OPA will review these reports including inventory related to the Fund at that time as required by P.L. 26-120.

Concern 2: Whether expenditures of the Fund were appropriately used for law enforcement.

Expenditures of the Fund are procured through the Government of Guam procurement process after obtaining approval from appropriate GPD officials and the Chief of Police.

Our survey found that items and services purchased with the Funds have generally met the criteria of federal guidelines of the USDOJ. We did not perform detailed tests of these transactions and reserve these procedures for such time that the OPA reviews the annual report of the Fund.

We did note that in FY 2002, there were 19 travel authorizations for training and conferences that utilized Federal Asset Forfeiture Funds of \$52,049. Title 5 Section 23104 of the Guam Code Annotated requires that an itinerary report be filed within 10 days of returning from official travel.⁵ GPD personnel have indicated to us that GPD has not adopted an internal travel policy. GPD personnel who travel on orders from the Chief of Police will usually be required to submit an *After Action Report* upon returning

⁵ An itinerary is required if an itemized statement of account is not submitted.

from travel. We were only able to locate reports and/or training certificates for the following individuals:

	TA#	Amount	Document found
Traveler #1	T021200004	\$3,735.56	Report & Certificate
Traveler #2	T021200021	\$4,585.66	Report & Certificate
Traveler #3	T021200027	\$3,356.66	Report & Certificate
Traveler #4	T021200020	\$2,280.86	Report
Traveler #5	T021200013	\$2,141.96	Certificate
Traveler #6	T021200018	\$1,218.86	Certificate
Traveler #7	T021200037	\$3,790.11	Certificate
Total		\$21,109.67	

Conclusion:

We did not make any conclusions as to appropriateness of the expenditures. The expenditures review will commence when the financial statements have been prepared and accounts are reconciled by GPD. We did find that travel expenditures of \$30,939 of Federal Asset Forfeiture Funds representing 12 off-island trips in FY 2002, did not have trip reports so we were unable to determine their usefulness and appropriateness to GPD.

Concern 3: Whether firearms training targets were a prudent purchase of the Fund.

The Acting Chief stated that large quantities of training targets were purchased whereas GPD only utilizes about 150 targets per year.

We found that 155,000 firearms training targets, at a cost of \$90,120, were procured through purchase order number P96A06386 on September 17, 1999. If GPD uses an average of 150 targets a year, that is **enough targets to last GPD over 1000 years**. We found the targets



Photograph B: A 1000 Years of Training Targets Gone to Waste

stored in an evidence warehouse and spilling out of a 40-foot container (**see Photograph B**) in deplorable condition, many of them ruined by the last two major typhoons and no inventory control.

The training targets were paid from the FY97 Local Law Enforcement Block Grant and not the Asset Forfeiture Fund as originally thought by the Acting Chief of Police. The block grant was written to fund three police academy cycles for new recruits, their uniforms, and equipment. However, prior to the last cycle, there were no new recruits to train therefore, the then Chief of Police approved the purchase for training related materials which included training targets, ammunition, target turner system, aluminum folding tables, an air compressor, and an enclosed trailer.

We saw that the evidence warehouse was in deplorable condition as the recent typhoons had damaged the building, leaving evidence exposed to the elements and deteriorating. **See Photograph C.** Often, evidence will sit with GPD for years as cases go through the court system and GPD has limited space to store these items. According to GPD, evidence cannot be disposed of until ordered by the Attorney General's office.



Photograph C: Evidence Warehouse

We saw that the organization and safeguarding of evidence items were lax. A more detailed report of these conditions has been relayed to the Acting Chief of Police. Further inquiries with the Property Control Officer revealed that a new evidence storage facility has recently been identified with the aid of the Federal Emergency Management Agency.

Conclusion:

GPD did not exercise prudence in the purchase of such an exorbitant number of targets nor did it exercise reasonable care in the protection of and the control of those items. The evidence warehouse did not have inventory control nor was evidence safeguarded.

Management Response

The draft report was provided to the Acting Chief of Police for review and comment. The Acting Chief stated that the report has shed light on the problem areas of the Asset Forfeiture Fund that will guide GPD to ensure compliance with statutes. The Acting Chief's response is found in **Appendix B** of this report.

Recommendations

We recommend the following to GPD:

1. Reconcile GPD records with those of DOA and prepare the necessary reports and financial information as of FY 2002. The Chief of Police should request an extension of filing this report as it is almost one year late. Following reconciliation of the accounts, the funds should be rolled over to the Special Assets Forfeiture Fund and the former Asset Forfeiture accounts closed.
2. Compile an inventory of assets forfeited to GPD and purchased with Asset Forfeiture Funds and their disposition.
3. Use accounting software to manage accounting data and aid in preparation of annual financial reports and inventory of forfeited assets.
4. Deposit Equitable Sharing proceeds in a timely manner, preferably within one to two days of receipt of check.
5. All GPD personnel who travel, regardless of the nature of the funding, submit trip reports to document the purpose of the travel and submit certificates of attendance after every trip.
6. The Acting Chief of Police immediately implement an inventory control system of the Property Control section and transfer evidence to a secure location.

For the Guam Legislature:

With the passage of P.L. 26-120, Chapter 79 of Title 10 of the Guam Code Annotated was added. Section 79105, requires that a report on the Asset Forfeiture be submitted to the Legislature no later than 30 days after the fiscal year end. It is important that reports be compiled and submitted in a timely manner; however, 30 days after the fiscal year end may not be a reasonable time frame in which GPD can complete the report, have the report reviewed by the OPA, and then submitted to the Legislature and the Governor. Further, there is no penalty for failure to submit reports in accordance with law.

The Legislature requires other various reports to be submitted and again, there is no penalty for failure to submit these reports in the time frame specified. The Legislature should research what other states have in the way of length of time to submit reports and penalties, if any, for failure to submit a report timely. The Legislature should review, from a policy perspective, the various reporting deadlines it has established for adequacy of time and whether a penalty for failure to submit a report is appropriate.

Limitations of the Report

This report does not provide conclusions involving legal determinations. This report contains evidentiary conclusions based on documentation available during our review. This report has been released to the Governor of Guam, the Speaker and members of the 27th Guam Legislature, the Chief of Police, the Director of Administration and the Attorney General of Guam. This report is a matter of public record and its distribution is not limited.



Doris Flores Brooks, CPA, CGFM
Public Auditor

Appendix A: Reconstructed Revenues and Expenses FY 2002

Federal Asset Forfeiture Fund

FY 2002

Revenues:

U.S. Department of Justice	\$694,269.97
U.S. Department of the Treasury	<u>\$ 20,889.50</u>
Total checks received	<u>\$715,159.47</u>

Items to reconcile to AS400:

Unidentified Allotments	\$150,444.53
Unidentified Allotment Reduction	\$ (90,360.62)
Difference between check and actual allotment	\$ (3,015.49)
Checks not found in system	<u>\$ (51,843.00)</u>
Total FY 2002 AS400 Allotments	<u>\$720,384.89</u>

Items to reconcile to GPD ledgers:

Checks not recorded in ledger	\$ (51,843.00)
Unidentified allotment	\$ 6,093.24
Other revenue	<u>\$ 275.00</u>
Total FY 2002 deposits per ledger	<u>\$669,684.71</u>

Expenditures:

	AS 400	GPD ledgers	Variance
Travel	\$ 52,048.81	\$ 56,544.59	\$ (4,495.78)
Contractual services	\$ 54,583.64	\$ 34,036.62	\$ 20,547.02
Rent	\$ 3,000.00	\$ -	\$ 3,000.00
Supplies and Materials	\$ 13,149.20	\$ 129.90	\$ 13,019.30
Equipment	\$ 13,317.86	\$ 10,745.70	\$ 2,572.16
Miscellaneous	\$ -	\$ -	\$ -
Capital Outlay	\$323,910.87	\$362,133.69	\$ (38,222.82)
Total Expenditures	<u>\$460,010.38</u>	<u>\$463,590.50</u>	<u>\$ (3,580.12)</u>

Increase in fund balance:

Per AS400	\$260,374.51
Per GPD ledgers	\$206,094.21

Local Asset Forfeiture Fund

		FY 2002	
		AS400	GPD Ledgers
Revenues:		\$ -	\$ -
Total revenues		<u>\$ -</u>	<u>\$ -</u>
Expenditures:			
Travel		\$ 3,890.92	\$ 3,890.92
Contractual Services		\$ -	\$ -
Supplies and Materials		\$ -	\$ -
Equipment		\$ -	\$ -
Miscellaneous		\$ -	\$ -
Capital Outlay		\$ 1,058.00	\$ 1,058.00
Total expenditures		<u>\$ 4,948.92</u>	<u>\$ 4,948.92</u>
e in fund balance:		\$(4,948.92)	\$(4,948.92)

Appendix B: Management Response



FELIX P. CAMACHO
Governor of Guam

KALEO S. MOYLAN
Lieutenant Governor

Guam Police Department



EARL C. AGUIGUI, Major
Acting Chief of Police

Government of Guam

Bldg. No. 233, Central Avenue, Tiyan, Guam 96913
Tel: (671) 475-8473 (Switchboard) ; (671) 475-8509; 475-8512
Fax: (671) 472-4036

August 1, 2003

Doris Flores Brooks, CPA, CGFM
Public Auditor
Office of the Public Auditor
Suite 101, Pacific News Building
238 Archbishop Flores Street
Hagatna, Guam 96910

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Dear Madam Brooks:

Thank you for giving me the opportunity to review beforehand the draft report of the Guam Police Department Asset Forfeiture Fund.

The work that your staff put into this inquiry is by no means an easy task and are commended for their diligence.

Now that the report has shed some light into several issues that poise potential problematic areas in the acquisition, retention, expenditure and reporting of both local and federal assets, this report now gives us a framework to ensure that the whole process is in compliance with both local and federal statutes.

Please contact my office should you have any questions or concerns about the report.

Sincerely,


EARL C. AGUIGUI, Major
Acting

Drug Free Guam Para Todos