



TEXAS FORENSIC SCIENCE COMMISSION

*1700 North Congress Ave., Suite 445
Austin, Texas 78701*

August 23, 2023

Via email to jmoral@hfsctx.gov

Jackeline Moral, Quality Director
Houston Forensic Science Center
500 Jefferson Street, 13th Floor
Houston, TX 77002

Re: Texas Forensic Science Commission (“Commission”) Laboratory Self-disclosure No. 23.30;
Houston Forensic Science Center (Firearms/Toolmarks)

Dear Ms. Moral:

At its July 21, 2023, quarterly meeting, the Commission voted to take no further action on the referenced self-disclosure given the root cause analysis, risk assessment and mitigation plans implemented by the laboratory.

Should the laboratory obtain new information that changes the core facts or corrective actions described in the disclosure, please update the Commission accordingly.

Thank you and please feel free to contact Commission staff with any questions or concerns.

Sincerely,

Leigh M. Tomlin

Leigh M. Tomlin
Associate General Counsel

cc: Peter Stout, via email to pstout@hfsctx.gov



Quality Division Use Only

Quality Tracking #:	2023-IA-01	Classification:	Corrective Action
Non-Conformance Level:	Class I	Section:	Firearms
Date of Discovery:	03/30/23	Date of Incident:	03/15/22

Forensic Case Number(s), if applicable:	Agency Case Number(s), if applicable:
2021-33770	151892621

Description of Non-conformance:

During the 2023 Firearms internal audit an item of evidence could not be located. This item of evidence contained test fires created from an officer's firearm as part of an officer involved shooting (OIS) case.

Additional Information/Follow-Up:

The evidence audit was conducted on March 30, 2023. The electronic chain of custody indicated that item 011-01 from case 2021-33770 was in the firearms vault; however, the item was not physically present in that location.

HFSC's legal counsel researched the status of this case and determined that it had been presented to a grand jury in Harris County and was a "No Bill". However, HFSC still had a pending firearms request from HPD for comparisons between the bullets retrieved from the suspect and the officers' firearms.

HFSC emailed HPD on April 21, 2023, to inform them that item 011-01 could not be located. The email requested assistance from HPD in retrieving the deputy's firearm to create new test fired evidence, should it be still needed. The email also explained that HFSC would likely be able to determine which items were consistent with the deputy's firearm without the missing item, based on the known class characteristics of the deputy's firearm. HPD responded on May 26, 2023, that they did not need to proceed with the request for comparisons due to the case being no billed.

There were other minor evidence related issues identified during the internal audit, including mislabeled evidence and an item of evidence that was physically returned to the property room, but the electronic chain of custody showed the item was still present at the laboratory. These issues were readily corrected prior to the closing of the internal audit. However, these minor issues together with the missing item, demonstrate that there were risks associated with the evidence workflow utilized by the Firearms section. When interviewed, the firearms examiner stated that possible scenarios in which the evidence could have been misplaced included the evidence being mislabeled, the evidence being inadvertently packaged with another item of evidence, or the evidence accidentally being stuck to another item of evidence.



When interviewed, the firearms examiner stated that possible scenarios in which the evidence could have been misplaced include the evidence being mislabeled, the evidence being inadvertently packaged with another item of evidence, or the evidence accidentally being stuck to another item of evidence.

The missing item of evidence had been in the examiner's possession for over a year. The examiner retained the evidence in anticipation of HPD submitting a request for firearms comparison because the case was an OIS. HPD submitted a request for a firearms examination on April 7, 2022. However, the case was not a court priority and was placed in the normal examination queue. The evidence should have still been in the firearms vault when the vault was audited.

However, based on the investigation, two possible scenarios as to the location of the test item were identified.

- The evidence was accidentally packaged with, or accidentally stuck to, another item of evidence and inadvertently returned to the HPD property room.

During the time that the evidence was in the examiner's custody, the examiner was involved in an extensive audit of evidence worked by a NIBIN technician (Quality Report 2021-032). As part of the audit, numerous test fires were recalled from the property and stored in the in-progress box (IPB) of the examiner involved in this nonconformance. IPBs are storage bins within the Firearms vaults used by individual examiners to store evidence from their active cases.

- The evidence was misplaced at HFSC. Speculative examples of how this could have occurred include the item being accidentally discarded, placed in an unknown location, or falling behind a cabinet or desk.

Steps taken to try and locate item 011-01:

1. The firearms section conducted another evidence audit on April 03, 2023, of both their evidence storage vaults but were unable to find the missing test fires. They also conducted an extensive search of the vault areas, including behind shelves and lockers.
2. The firearms examiner requested evidence back from HPD's property room that had been in her possession after November 12, 2021, including another set of test fires created for this case by the examiner.
3. The examiner went to the HPD property room on May 23, 2023, to examine evidence stored in the same location physical location as the other set of test fires (see above).
4. The examiner inventoried test-fire evidence brought to HFSC from the property and stored in her in-progress box during the investigation into corrective action 2021-032. Evidence from 10 cases remained at HFSC, evidence from the remaining 15 cases had been returned to HPD's property room and was brought back to HFSC from the PR to be inventoried.

Although steps 1 – 4 failed to locate the missing test fires, the Firearms section will continue to look for Item 011-01.



Summary of Root Cause Analysis:

Note: Incidents are documented for tracking purposes and trend analysis. Root Cause Analysis is not required for incidents.

Item 011-01 was not located during the investigation into this nonconformance, making it difficult to determine the circumstances that led to the evidence being misplaced. However, during a risk assessment held with the Firearms section on April 2, 2023, contributing factors were identified that may have created an environment in which evidence could be misplaced.

One possible contributing factor is the practice of some examiners, including the one involved in this nonconformance, of holding onto to evidence for an extended period after completing their examinations. Examiners retain evidence in anticipation of additional requests for forensic services.

Another contributing factor is a significant backlog in firearms cases. The backlog resulted from an increase in homicides during the Covid-19 pandemic, combined with the closure of the court system. When the courts re-opened in March 2022, the Harris County District Attorney’s Office began submitting requests to the Firearms Section to prioritize cases scheduled for court. As a result, some Firearms examiners focused on completing one case, then immediately starting their next case, rather than taking the time to prepare evidence for return to the stakeholder.

Actions Taken:

The following table summarizes the risk assessment findings and mitigation plans.

Risk: loosing, misplacing, and/or mislabeling evidence

Current practices with potential risk to evidence	Firearms section mitigation plans
[There are] Firearms examiners [who] leave evidence in their in-progress boxes (IPBs) longer than necessary (i.e., after the report is released).	For cases where the report had been released, examiners returned evidence in their in-progress boxes. <ul style="list-style-type: none"> • Completed on June 13, 2023. • Examiners transferred evidence out of their in-progress boxes for completed cases with no pending requests. • For cases with pending requests, examiners inventoried, verified labels, and secured small items evidence stored in their IPBs.
[There are] Firearms examiners [who] leave evidence unsealed in their IPBs.	Examiners will be responsible for ensuring that small items of evidence kept in their in-progress boxes shall be secured in a manner that prevents loss, when the case is being actively worked. If evidence is retained because the examiner has a reasonable expectation that they will receive a request for examination, it shall be sealed.
The Firearms section does not conduct routine evidence audits.	The Firearms section will conduct quarterly audits of the examiner’s in-progress boxes starting June



	14, 2023, for at least one year (tentatively planned for September, December, March (internal audit), and June. <ul style="list-style-type: none"> The audit will include both vaults. The first audit was conducted on June 14th, 2023, and no issues were observed.
When returning evidence, not all examiners verify that evidence is labeled correctly. Additionally, for items examined, not all examiners check the case record (report, case notes, or LIMS) to make sure they can account for all of the evidence related to the request.	Prior to returning evidence to stakeholders, examiners will verify that the electronic chain of custody is correct, that evidence is labeled correctly, and ensure the evidence in their possession matches what is listed in the case record.

The changes discussed during the risk assessment may take time to become a routine habit for staff. To help remind staff, the mitigation plans developed during the risk assessment were again discussed with staff during a section meeting on May 16, 2023. Additionally, a PowerPoint presentation summarizing the risk assessment was shared with staff on July 10, 2023. Staff were required to take a Qualtrax test to document their understanding of the process changes.

The 2024 Firearms internal audit will be extended from a one-week audit to a two-week audit to ensure there is ample time to conduct a full evidence inventory as part of the audit.

HFSC fully expects the Firearms to continue to operate with an extensive backlog, routine requests for priority court cases, and limited storage facilities for evidence for the foreseeable future. Operating under these conditions will require examiners to manage large amounts of evidence under less-than-ideal circumstances. Although the root cause could not be determined, the actions taken in response to this nonconformance should help prevent a recurrence and help the section establish good evidence handling habits aimed at reducing the risk of mislabeling and/or misplacing evidence.

Section Manager: <u>Donna Eudaley</u>	Date: <u>07/13/23</u>
Division Director: <u>Amy Castillo</u>	Date: <u>07/13/23</u>

Incidents or Corrective Actions that involve the Biology/DNA section are reviewed by the Technical Leader and CODIS Administrator.

Technical Leader: <u>N/A</u>	Date: _____
CODIS Administrator: <u>N/A</u>	Date: _____

Quality Director: <u>Jackeline Moral</u>	Date Closed: <u>07/14/23</u>
-------------------------------------------------	-------------------------------------