

2015 IPA Year End Report

Office of the Independent Police Auditor
City of San José



San José Mayor & City Council



Mayor Sam Liccardo

408-535-4800

mayoremail@sanjoseca.gov



Charles "Chappie" Jones

District 1

408-535-4901

District1@sanjoseca.gov



Pierluigi Oliverio

District 6

408-535-4906

pierluigi.oliverio@sanjoseca.gov



Ash Kalra

District 2

408-535-4902

District2@sanjoseca.gov



Tam Nguyen

District 7

408-535-4907

District7@sanjoseca.gov



Raul Perez

District 3

408-535-4903

District3@sanjoseca.gov



Rose Herrera

Vice Mayor

District 8

408-535-4908

rose.herrera@sanjoseca.gov



Manh Nguyen

District 4

408-535-4904

District4@sanjoseca.gov



Donald Rocha

District 9

408-535-4909

District9@sanjoseca.gov



Magdalena Carrasco

District 5

408-535-4905

District5@sanjoseca.gov



Johnny Khamis

District 10

408-535-4910

District10@sanjoseca.gov

2015 IPA Year End Report



Issued April 2016

by

Walter Katz

Independent Police Auditor
and Staff

sanjoseca.gov/ipa

facebook.com/SanJoseIPA

twitter.com/SanJoseIPA

Independent Police Auditor & Staff



Walter Katz

Independent Police Auditor



Shivaun Nurre

Assistant IPA



Vivian Do

IPA Senior Analyst



Telina Barrientos

IPA Analyst II



Jessica Flores

Office Specialist



Erin O'Neill

IPA Analyst II

The Office of the Independent Police Auditor

Creation of the Office of the Independent Police Auditor

The Office of the Independent Police Auditor was established by the San José City Council in 1993 with the enactment of a city ordinance codified in the San José Municipal Code. Thereafter, on November 6, 1996, the voters of San José amended the City Charter to establish the Office of the Independent Police Auditor as a permanent arm of city government. (Please see Appendix A for Municipal Code section 8.04.010 and City Charter section 809.)

In the twenty-two years that the IPA office has existed, there have been five Independent Police Auditors: Teresa Guerrero-Daley (1994-2005); Barbara J. Attard (2005-2008); Shivaun Nurre, Interim IPA (2009-2010); Judge LaDoris Cordell (Ret.) (2010-2015); Shivaun Nurre, Interim IPA (2015); and Walter Katz, the current IPA, appointed in November 2015.

Mission of the Office of the Independent Police Auditor

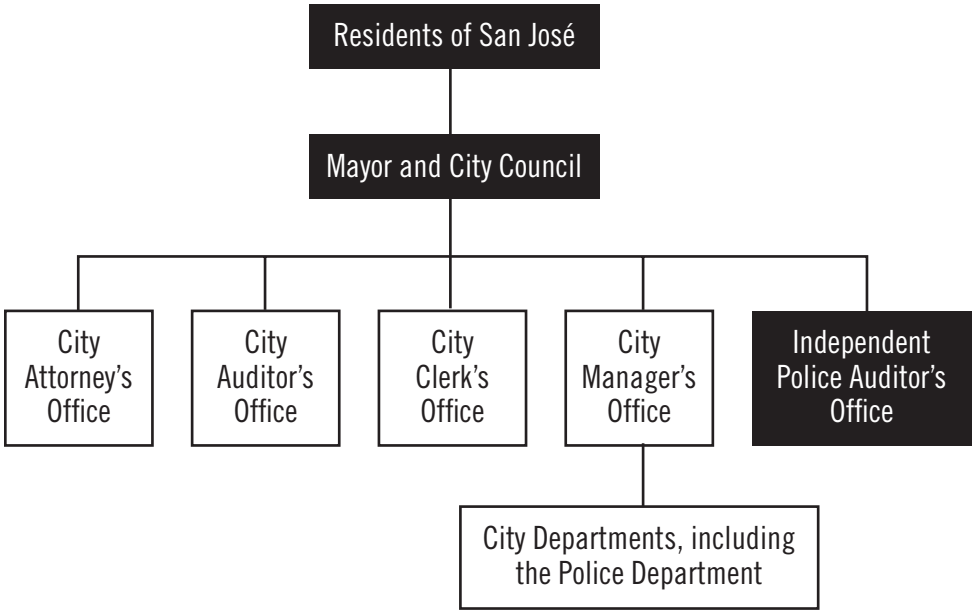
The mission of the Office of the Independent Police Auditor is four-fold: (1) to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations; (2) to conduct outreach to the San José community; (3) to propose thoughtful policy recommendations to the San José Police Department; and (4) to strengthen the relationship between the San José Police Department and the community it serves.

Independence of the Police Auditor

Pursuant to San José Municipal Code section 8.04.020, the Independent Police Auditor shall, at all times, be totally independent such that requests for further investigations, recommendations and reports shall reflect the views of the Independent Police Auditor alone. No person shall attempt to undermine the independence of the Police Auditor in the performance of the duties and responsibilities set forth in San José Municipal Code section 8.04.020. (Please see Appendix A for Municipal Code section 8.04.020.)



City of San José Organizational Chart



IPA Statement of Values



Office of the Independent Police Auditor

STATEMENT OF VALUES

I acknowledge that as a member of the staff of the Office of the Independent Police Auditor for the City of San José, I am expected to demonstrate the highest standards of personal integrity and honesty in all activities and in all settings in order to inspire public confidence and trust in the Office. My conduct in both my official and private affairs must be above reproach and my standards, views and behavior will comply with the following values:

1. **Integrity:** Demonstrate the highest work ethic; be honest and accountable.
2. **Independence:** Perform work that is free from actual influence or the appearance of influence of any individual or group; adhere to the No-Gift Policy of the Office.
3. **Confidentiality:** Understand and appreciate the critical importance of confidentiality to the Office; demonstrate unwavering adherence to the rules of confidentiality at all times.
4. **Respect:** Treat everyone fairly and be considerate of diverse views.
5. **Objectivity:** Be equitable, fair and neutral in the evaluation of complaints and issues considered by this Office.
6. **Professionalism:** Be committed to the mission of the IPA Office; refrain from making statements which may be viewed as compromising the independence and integrity of the IPA Office, its work, and its staff.

Adopted July, 2010 – IPA and Staff

IPA No-Gift Policy



Office of the Independent Police Auditor

NO-GIFT POLICY

Employees of the Office of the Independent Police Auditor must be held to the highest standard of conduct, to ensure that the independence and integrity of the unique work of the Office is maintained.

The acceptance of gifts or gratuities of any kind by the staff of the Office could be perceived or interpreted as an attempt by the donors to influence the actions of the staff. **Therefore, no gifts of any value may be accepted by members of the staff of the Office of the Independent Police Auditor from any individual or organization that may be impacted by the work of the employee or the Office.** However, gifts from family members and close personal friends are permissible, so long as they are consistent with state law and the City's Gift Policy and Ordinance.

Gifts include, but are not limited to the following: (1) any rebate or discount in the price of anything of value, unless the rebate or discount is made in the regular course of business to members of the public; (2) complimentary tickets; (3) meals, (4) holiday presents, and (5) non-informational materials.

This policy is more stringent than and supersedes the City's Gift Policy and Ordinance, as applied to the IPA Office, to the extent the City's Gift Policy and Ordinance conflict with this policy.

Adopted July, 2010 – IPA and Staff

Table of Contents

Creation of the IPA Office	iii
Chapter 1. Introduction.....	1
Chapter 2. Overview of the Process and Statistics.....	8
I. Step One: Intake	8
II. Step Two: Classification	13
III. Step Three: The Department Investigation.....	17
IV. Step Four: Department Makes Finding	18
V. Step Five: IPA Audit.....	20
VI. Officer Complaint Rates and Experience Levels.....	22
Status on Tackling Bias-Based Policing.....	26
Chapter 3. Use of Force Complaints and Audits.....	29
I. Force Complaints and Force Allegations	29
II. Force Complaint Demographics	31
III. Data Tracked from Force Complaints	33
IV. Force Complaints and Allegations Closed	39
Chapter 4. Officer-Involved Shootings in 2015.....	44
I. The Department's Deadly Force Policy	44
II. The Department's Investigation Process	44
III. Officer-Involved Shooting Statistics	46
IV. Role of the Independent Police Auditor in Shooting Incidents.....	48
Chapter 5. Sustained Findings in 2015	49
I. Overview of Sustained Findings	49
II. Officer Discipline for Sustained Findings	49
III. Experience Levels of Officers with Sustained Findings	51
IV. Five-Year Overview of Sustained Findings (2011-2015).....	51
V. Summaries of Sustained Findings in 2015.....	53

Chapter 6. Community Outreach	63
I. Background	63
II. General Outreach Overview	64
III. Outreach to Impacted Populations in 2015.....	67
IV. Media	68
V. IPA Publications.....	68
VI. IPA Website and Facebook Page.....	69
VII. Independent Police Auditor Advisory Council.....	69
VIII. Outreach by City Council District.....	70
 Chapter 7. IPA Recommendations to the SJPD	 72
I. 2015 IPA Recommendations	72
II. Update on Earlier IPA Recommendations	75
III. Status of 2014 Year End Report Recommendations.....	78
 Glossary.....	 96
 Appendices	
A. San José Municipal Code Chapter 8.04 and San José City Charter §8.09	99
B. California Penal Code §832.5 and §832.7	102
C. Mayor Sam Liccardo Press Release	104
D. Sample Closing Letter to Complainant	106
E. Frequently Asked Questions about the IPA Office	107
F. IPA 2015 Community Outreach Activities.....	111
G. IPA 2015 Media Contacts, Articles, and Interviews	117
H. San José Police Body Worn Camera Policy	122

Chapter One: Introduction

If there is one word which defines the law enforcement environment in San José it is *change*. In March 2015, Judge LaDoris Cordell (Ret.) announced her retirement as the Independent Police Auditor after more than five years of extraordinary leadership. Just a few months later, Larry Esquivel announced his retirement as chief of the San José Police Department. New leadership was also elected into City Hall as well as at the Police Officers Association. These changes in leadership occurred against the backdrop of an extraordinary set of circumstances resulting from the passage of Measure B which altered pension benefits and heralded an unprecedented exodus of police officers – many of them highly experienced and sought after – from the San José Police Department.

On a broader scale, there is more focus on policing practices at the local, state and national level than there may have ever been before in American history. The conventional wisdom – based on statistics sent to the Federal Bureau of Investigation – was that there were between four hundred and five hundred civilian deaths each year by law enforcement officers – mostly by firearms - in the line of duty.¹ The reality is much grimmer. In fact, according to The Washington Post, 965 civilians were fatally shot by law enforcement in 2015.² Public conversations are now occurring about topics that before

were limited to the law enforcement, attorneys, academics and police oversight practitioners on one hand, and community activists on the other, who had long sought to focus attention on what they view as heavy-handed police tactics unfairly impacting poor and ethnic minority communities.

The bridging of these various stakeholders who may have diametrically opposed points of view is at the center of the mission of the Independent Police Auditor. Years of research make it abundantly clear: law enforcement is only effective when the public confers it with legitimacy. “Perceived legitimacy exists when the policed regard the authorities as having earned an entitlement to command . . . Public perceptions of the fairness of the justice system in the United States are more significant in shaping its legitimacy than perceptions that it is effective.”³ While we live in a dynamic world with shared rights and responsibilities, the burden is on law enforcement to “demonstrate ‘moral authority,’ embodying a shared sense of right and wrong.”⁴

In our view, there are two cornerstones to the foundation of a just criminal justice system: accountability and transparency. Where the public can see that not only the institution of policing, but also its officers, are held accountable, trust will deepen in

¹ *Crime in the United States 2013*, Justifiable Homicide by Weapon, Law Enforcement, 2009-2013, Federal Bureau of Investigation.

² “A Year of Reckoning: Police Fatally Shoot Nearly 1,000,” *The Washington Post*, December 24, 2015. Of the 965 persons fatally shot in 2015, 564 persons were armed with a firearm, 281 were armed with another type of weapon and 90 persons were unarmed.

³ Hough, Mike, Jonathon Jackson, Ben Bradford, Andy Myhill and Paul Quinton. “Procedural Justice, Trust and Institutional Legitimacy.” *Policing* 4, no. 3 (2010): 203-210. Emphasis in original.

⁴ Ibid.

those very communities which historically have had tenuous and, at times, fractured relationships with their local police. The leaders and voters of San José were wise to have created the Independent Police Auditor in the 1990s. By conducting community outreach, providing a neutral location for the intake of complaints, auditing complaint investigations and providing policy recommendations to the Department and the City Council based on our review work, the Office of the Independent Police Auditor (IPA) has served as an important tool for accountability. As we will discuss elsewhere in this report, transparency is always a challenge in California where interpretations of peace officer privacy laws have made it extraordinarily difficult to

provide oversight agencies, such as the Office of the IPA, and the public with the valuable information necessary to assess the quality and fairness of law enforcement in general and accountability practices specifically.

Before we provide some of the highlights from 2015, one aspect must be noted. The impact of the loss of over four hundred police officers cannot be overstated. Even before the full impact of the Great Recession and the response to Measure B took hold, San José was an understaffed city. Based on city population and officer staffing in 2012, other cities among the ten largest in the United States had far more officers to serve their populations.⁵

Officers Per Capita Rate in the Ten Largest U.S. Cities (2012)

Rank	City	Total Officers	Officers per 10K Residents
1.	New York	34,555	41.7
2.	Los Angeles	9,992	25.9
3.	Chicago	11,944	44.1
4.	Houston	5,318	24.4
5.	Philadelphia	6,526	42.4
6.	Phoenix	2,979	20.1
7.	San Antonio	2,276	36.7
8.	San Diego	1,866	13.9
9.	Dallas ⁶	3,666	28.1
10.	San José	1,094	11.2

⁵ "Police Employment, Officers Per Capita Rates for U.S. Cities," *Governing*, 2012, accessed March 17, 2016, <http://www.governing.com/gov-data/safety-justice/police-officers-per-capita-rates-employment-for-city-departments.html>. The 2012 population ranking is from "The Largest US Cities," accessed March 17, 2016, http://www.citymayors.com/gratis/uscities_100.html.

⁶ Dallas employed officers is from 2010 data reported to FBI's Uniform Crime Reporting Program.

Since 2012, the population of San José has climbed to over a million and the number of officers has fallen to just over 900. By our estimate, there are now about 9.2 San José officers per 10,000 residents. That can have significant impacts on the very policing topics which have been at the forefront of the national conversation. An officer who cannot count on sufficient back-up arriving when he is in a potentially dangerous situation may be more likely to resort to force. Stanford University professor Jennifer Eberhardt has identified the factors that contribute to strains on police-community relations.⁷ She and her colleagues have found:

- When people are stressed and fatigued they make worse choices and exhibit greater bias.
- More use of force training and sharper skills means officers make better decisions.
- Knowing that co-workers are watching causes people to follow rules and act more fairly and that encourages accountability.
- Diverse organizations make fewer mistakes and create better solutions.

It is against that back-drop that we highlight issues that we noted while preparing the analysis for this report.

• **Complaints Received Dipped and Intakes to IPA Fell**

Since a high of 357 complaints were received by either the IPA or the SJPD's Internal Affairs Unit in 2013, the number of complaints received has dropped. In 2015, 303 complaints were received.

Moreover, the IPA received only 119 complaints – or 39% of all complaints received. This is in sharp contrast to 2014 when the IPA received 51% of all complaints. We believe that a number of factors contributed to the decrease. The retirement of the Honorable Judge Cordell as the IPA received significant attention and her public presence had increased the visibility of the office. Her departure may have mistakenly signaled to the public that the office was no longer operating. In addition, the SJPD's recently launched on-line complaint system may have led to their receipt of quite a few complaints that might otherwise have been filed at the IPA office. Lastly, the Office of the IPA moved to a new a location in December of 2015 which led to a notable decrease in walk-in traffic.

• **Lesser Experienced Officers Receive Disproportionately More Complaints**

In preparing this report, we closely examined the experience level of officers who received complaints. While the most experienced officers - those with 16 or more years of service - comprise 51% of the SJPD, they accounted for only 35% of the complaints received in 2015 and 20% of all Force allegations. On the other hand, the most junior officers - less than five years of experience - make up 17% of the Department but accounted for 29% of conduct complaints and a very notable 48% of Force allegations. The San José Police Department is under the rather unique strain of having lost hundreds of officers over the last few years and many

⁷ Jennifer Eberhardt and Hazel Rose Markus, *Seven Ways to Mitigate Bias and Improve Police-Community Relations*, SPARQ: Social Psychological Answers to Real World Questions.

of them were experienced officers who may well have been mentors to young officers. Habits and enculturation occur early in a career. The disproportionate share of Arrest and Detention, Procedure, and Force allegations among younger officers suggest that the Department's leadership should pay close attention to these allegations regardless of the corresponding finding or outcome.

- **Officers With Multiple Complaints**

We found that less experienced officers made up a disproportionate share of officers receiving multiple complaints from the public in 2015. Of the twenty-seven officers who received three or more complaints, sixteen had less than five years of experience. However, there were no sustained findings against these lesser experienced officers in 2015. It should be noted, that many times cases are closed the year after a complaint is received.

- **Allegations Received**

All types of allegations within complaints received in 2015 decreased except for a notable increase in Arrest and Detention allegations (from 79 in 2014 to 91) and a slight increase in Bias-Based Policing allegations (from 46 in 2014 to 50). The most significant decreases were Procedure allegations which fell from 308 in 2014 to 251 and Force allegations which decreased slightly from 139 in 2014 to 121. That does not mean that the Department's officers used less force in 2015. Because the Department has not published an annual report about its use of force since 2007, we do not know the data behind the decrease in complaints about force.

- **Bias-Based Policing**

Fifty allegations of Bias-Based Policing were received in 2015. That is a slight increase over the 46 received in 2014. Fifty-four allegations were closed in 2015 and the Department sustained one allegation (for bias because of a person's mental health status). This is the first time that the San José Police Department has sustained such an allegation. The most common finding in 2015 was "unfounded," meaning that evidence did not establish that the alleged biased conduct occurred. We voiced our concerns about the investigations of Bias-Based Policing allegations in our *2014 Year End Report*, and made a number of suggestions to improve investigation practices, track complaints and patterns of bias, and to enhance training. Shortly after the publication of our report, the Mayor recommended directing the City Manager to have the SJPD "broaden the scope of inquiry of complaints of Bias-Based policing." We discuss this issue in greater detail at the end of Chapter Two.

- **Limited Detention Stops**

A related issue to Bias-Based Policing is the matter of limited detentions of the public which come in the form of lengthy detentions where officers either sit civilians on a curb, handcuff or place them in patrol cars. In 2011, we made a number of formal recommendations to not only limit the practice of curb-sitting but also to track the ethnicity of people who are the subjects of pedestrian stops. We hoped this new policy would better document incidents where people are stopped on the basis

of a reasonable suspicion but where no incident report is ever written.⁸

As a direct result of our recommendation, the Department implemented a new policy in 2013 which required the documentation of “self-initiated pedestrian and/or vehicle stops.”⁹

Officers were now required to notate the stop and how it was carried out in the Computer Aided Dispatch system, including the type of detention (curb, handcuffed, or police vehicle). In 2015, the San José Mercury News analyzed the collected limited detention data for the first nine months of 2014 and reported that “police officers here pulled over, searched, curb-sat, cuffed or otherwise detained blacks and Latinos last year at far higher percentages than their share of this city’s population.”¹⁰ The Department then posted a Request for Proposal (RFP) for a consultant to conduct a review and study of the limited detention data. The initial RFP posting did not result in any proposals. Since then, however, the Department has contracted with the University of Texas at El Paso’s Center for Law and Human Behavior to identify patterns of disparity that may exist and provide recommendations to the Department for reducing or eliminating such disparities. The project began in March 2016 and is scheduled for completion and presentation of findings in January of 2017.

• Fewer Untimely Investigations

In last year’s report, we voiced our concern that while conduct complaint

investigations by the SJPD were not running beyond the 365-day statutory requirement, a notable number of investigations (67) were not being closed within the IPA-recommended 300-day deadline which allows for a thorough review and further investigation if our audit finds it necessary. We are pleased to note that in 2015 only 46 cases were closed after the 300-day. These cases tended to be more complex investigations. We are concerned, however, that we were far more likely to disagree with the quality of the investigation or the analysis in those late cases. Our “disagree” rate was nearly 8% for cases submitted to us within the 300-day window but it was 24% for cases submitted late. We will continue to work with IA so that case investigations, as well as our audits, are turned around as quickly as possible but we insist on the adequate time to review the more complicated investigations.

• Closed Complaints and IPA Audits

In 2015, Internal Affairs closed 304 complaints, which is an increase over the 253 complaints closed in 2014. The number of sustained complaints fell, though, from 25 in 2014 to 19 in 2015. The IPA audited 292 complaint investigations. We concluded 69% (202) of our reviews as “agreed at first review.” This was a lower proportion of initial agreements in any year since 2011. Conversely, in 2015, we disagreed with the investigation or the analysis in 27 complaint investigations we reviewed. That is more disagreements than we had in any of the prior five years.

⁸ 2011 Year End Report, Recommendations 1, 19 and 20.

⁹ San José Police Department, Duty Manual § L 5108.

¹⁰ “SJPD data show San José cops detained greater percentage of blacks, Latinos,” *San José Mercury News*, May 9, 2015.

- **Officer-Involved Shootings Increased**

In 2015, officers from the SJPd were involved in twelve shootings where a person was struck. Six of the incidents were fatal. Eight of the civilians were armed with a firearm, two were in the possession of an edged or bladed weapon and two were unarmed. In four of the incidents, the person is known to have a prior mental health history and in each of these four, the person was either armed with a firearm or attempting to arm themselves. The Department instituted a new process where it convenes an Officer-Involved Incident (OII) review panel within 90 days of the incident. The IPA attends the reviews and can ask questions of the investigators and Department executives. We will continue to pay very close attention to the tactics used leading up to the use of lethal force, the use of de-escalation techniques, and whether the person encountered was suffering from an acute mental illness or disability and how officers responded. We describe the officer-involved shooting review process in Chapter Four.

- **The IPA's Recommendation to Ban Chokeholds Is Enacted**

In 2014, we made a number of recommendations. Several were selected by the City Council and placed on the Public Safety Committee¹¹ work plan and most are still pending. We recommended that in light of the death of Eric Garner while he was restrained by New York police officers, the SJPd should have a policy which unequivocally prohibits

the use of the chokehold as a technique to restrain a person. That policy was implemented in early 2016 following Department consultation with the IPA. We appreciate the promptness with which the Department addressed the issue.

- **Recommendations for More Accountability Are Still Pending**

We noted in our 2014 report that the IPA does not have any access to Department-Initiated Investigations (DII), that is, those investigations which are not the result of a complaint by a member of the public but which originate from inside the Department. We recommended that there be independent oversight of such investigations, either by our office, which has extensive experience reviewing investigations, or by the City Attorney, if there are overriding concerns about peace officer privacy. That recommendation is still under discussion.

- **Recommendations for Greater Transparency Must Be Implemented**

A number of our recommendations last year and this year are about enhancing the transparency of Department practices. In 2014 we recommended that the Department annually submit reports describing DII investigations. We also recommended that the SJPd annual report of DII statistics include legally permissible descriptions of the misconduct to give the public greater insight into the conduct of its police officers. These recommendations are still under discussion with the SJPd and the City Attorney's Office.

¹¹ The full committee name is the Public Safety, Finance, and Strategic Support Committee.

As we will fully discuss in Chapter Seven, this year we are making the formal recommendation that Department resumes publishing its Force Response Report annually, if not quarterly, so it can provide the public with relevant statistics and information about the frequency and amount of force its officers use as well as the injuries sustained by civilians and officers as a result of use of force incidents. Disclosing such information is vital to building trust with the community.

• **Effective Outreach Continues**

One of the most important roles of the IPA office is meaningful community outreach. In fact, we are only as effective as our outreach efforts. It is important that the members of the public know that the office is a safe and neutral location where they bring any concerns about interactions with the police department. The objective of our outreach efforts is to increase awareness about our services and the various avenues the public has to file a complaint. In 2015 we participated in 172 outreach activities in every City Council District and reached 10,560 members of the public. While this was a slight dip from 2014, it is a testament to the hard work of our staff outreach specialist that we were able to reach so many people despite the retirement of Judge Cordell in July. Our outreach efforts are fully discussed in Chapter Six.

It goes almost without saying that both law enforcement and civilian oversight are in a period of dramatic change. Hardly a week goes by without the Office of the IPA receiving a call or e-mail from some other corner of the United States seeking

information about our oversight model. The leaders and voters of San José from more than twenty years ago should be proud of their forethought to establish a cutting edge and robust civilian oversight structure. The role of civilian oversight is transforming rapidly nationwide as government leaders everywhere become familiar with terms like “implicit bias” and “open data.” Being that San José is at the heart of the innovation capital of the world, we will continue to work hard to keep civilian oversight here at the forefront of innovation.

Despite the staff resource challenges faced, the men and women of the San José Police Department should be commended. While we raise a number of significant concerns in this report, it has to be acknowledged there were fewer complaints received in 2015 and that the Department’s leadership – sometimes in collaboration with the Police Officers Association and, at times, with input from community organizations – has set on a path of progressive policing. That can be seen with embracing the limited detention stop study, the commitment to purchase body worn cameras, implicit bias training and a commitment to train more officers in Crisis Intervention Training which will hopefully lessen the risk of horrible outcomes when officers encounter acutely mentally ill persons. We look forward to continue our comprehensive reporting to the leaders and community of San José with objective analyses of the Police Department.

Chapter Two: Overview of the Process and Statistics

Complaints by civilians are generally about a negative interaction they, or someone they know, had with a police officer. It helps to understand the complaint and investigation process to best make sense of the statistics drawn from those complaints made in 2015. Terms like “complaints,” “allegations” and “findings” can appear interchangeable, but they all refer to a part of process that begins when a person files a complaint with either the IPA or the police department. (The terms can also be found in the glossary at the end of this Report.)

I. Step One: Intake

The complaint process begins when a member of the public files a complaint about a San José Police Department (SJPD) officer(s) or an SJPD policy. Complaints can be filed either with the Office of the Independent Police Auditor (IPA) or with the Internal Affairs (IA) Unit of the SJPD. Complaints or concerns may be filed in person, by phone, fax, email or postal mail with either office. Anyone can file a complaint regardless of age, immigration status, or city of residence. Members of the community may file complaints even if they do not have a direct connection to the incidents or the persons involved. Complainants may also remain anonymous.

With the complainant’s consent, IPA or IA staff record the complainant’s statement to ensure that the concerns and information provided by the complainant are captured accurately. The complaint is then entered into a shared IA/IPA database. This initial

process is called **intake**. In 2015, 303 complaints and concerns were received. This was an eleven percent (11%) decrease in the number of complaints and concerns received compared to 2014, and the lowest number of complaints received in five years.

Illustration 2-A depicts the total number of complaints received in the past five years. The factors that influence the number of complaints received each year are difficult to measure. In 2015, 39% of complainants brought their complaints and concerns directly to the IPA office, while the remaining 61% contacted IA.

Illustration 2-A: Complaints Received—Five-Year Overview (2011-2015)

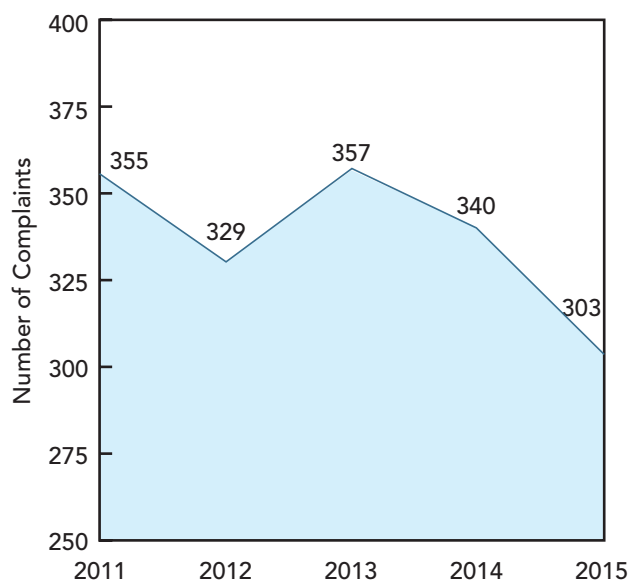


Illustration 2-B: Complaint Process

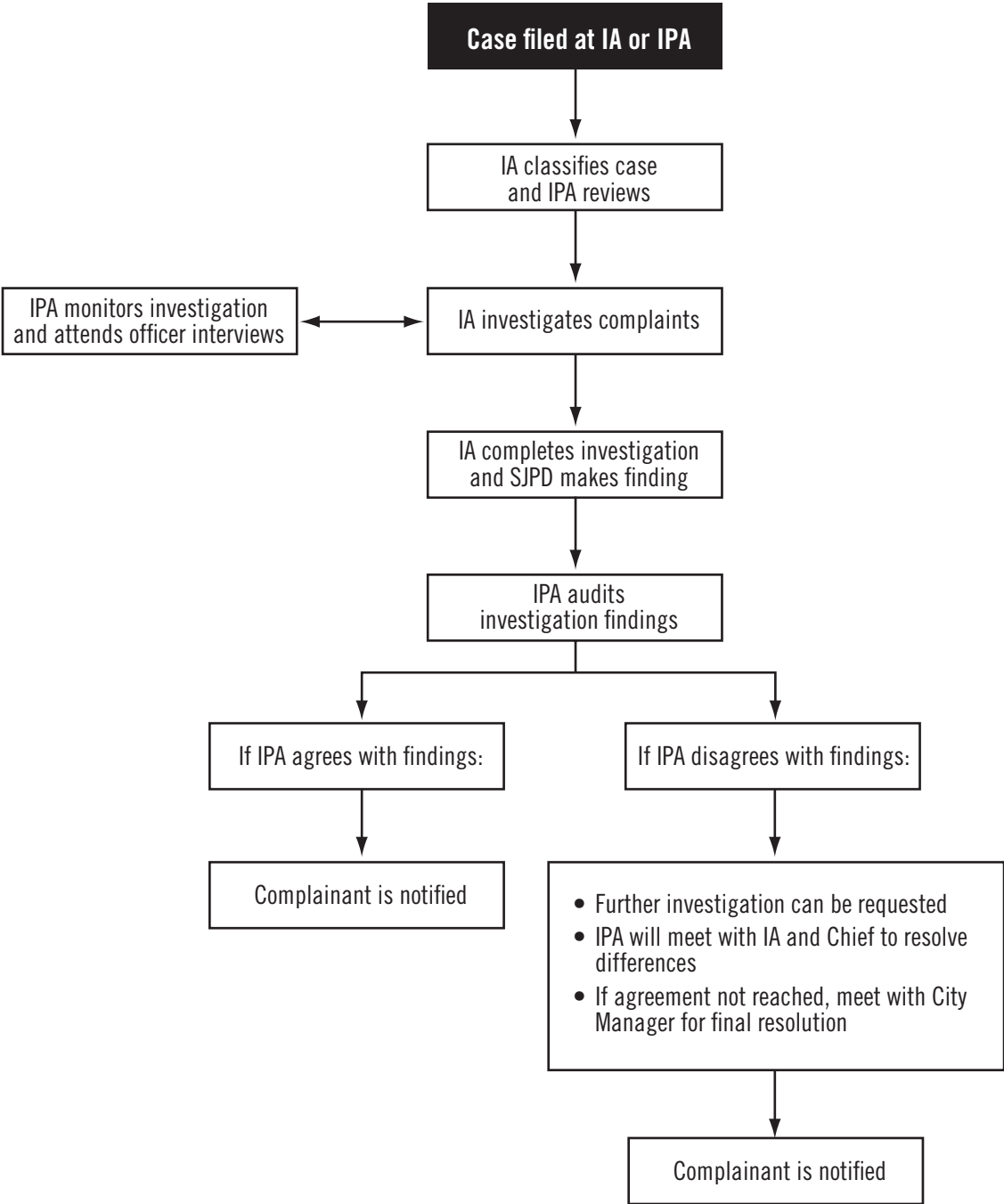
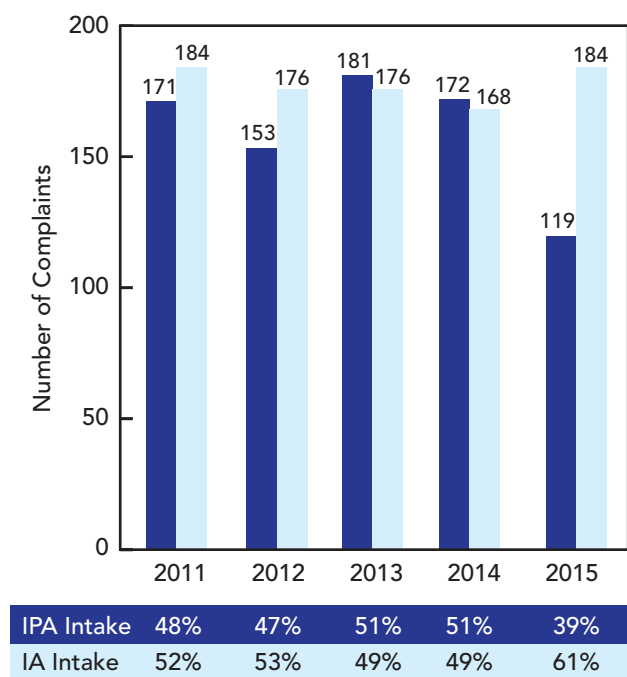


Illustration 2-C: IPA and IA Intakes—Five-Year Overview (2011-2015)



A. Why Each Complaint Matters

• Holding Officers Accountable

Every time a complaint is filed, the complaint must be reviewed by the Department, regardless of the alleged severity.

• Unbiased Review

IPA staff provides an unbiased review to ensure that the Department's investigations and analyses of the allegations are fair, thorough, and objective.

• Trends

The only way the IPA can identify problematic police practice trends in the community is if members of the public voice their concerns and file complaints.

• Policy Changes

When civilians voice concerns about SJPD policies, the IPA has the unique perspective and opportunity

to make policy recommendations to the Department. Many of our recommendations have had a positive impact on policing in the City.

• Counseling

If an officer receives too many complaints, the officer will receive mandatory Intervention Counseling by the Department to identify and correct problematic behaviors. Refer to the illustration below for a more detailed description of SJPD's Complaint Intervention Counseling Program.

Intervention Counseling Definition And Policy

The Intervention Counseling Program is used as an "early warning system" to track police officers with significant complaint histories for the purpose of identifying potential problems and providing guidance. To receive Intervention Counseling, the subject officers must have received the following:

- Five or more Conduct Complaints (CC) and/or Department-Initiated (DI) complaints within a twelve month period.
- Three or more Conduct Complaints (CC) and/or Department-Initiated (DI) complaints containing the same allegation within a twelve month period.
- "Unfounded" cases are excluded.

During Intervention Counseling, the subject officers meet with the Deputy Chief of their assigned Bureau, the IA Unit Commander, and their immediate supervisor for an informal counseling session. This session involves a review of the complaints against the subject officer, whether sustained or not, in an attempt to assist him/her with identifying potential deficiencies. No formal record is made of the substance of the informal counseling session.

• Mediation

When a complainant expresses a desire to discuss their complaints directly with the officer, mediation provides a confidential and respectful setting for both the complainant and the officer to discuss the incident candidly in the presence of a mediator. These conversations promote a better understanding between the officers and the community they serve. Both the Internal Affairs Unit and the Office of the IPA have to agree that mediation is appropriate and the complainant has to be willing to withdraw the complaint. In 2015 two mediations were conducted. The mediator was the Honorable James Emerson (Ret.) who volunteered his time to the program.

People Involved in the Complaint Process

- **Complainant**—The complainant is the person who files the complaint.
- **Subject Officer**—The subject officer is the officer who engaged in the alleged misconduct.
- **Witness Officer**—The witness officer is an officer who witnessed the alleged misconduct. The complaint is not against this officer.
- **Civilian Witness**—A civilian witness is a person with firsthand knowledge about the incident that gave rise to the complaint.
- **Internal Affairs Investigator**—The Internal Affairs investigators are police officers assigned to the Internal Affairs Unit who receive and investigate the complaints. The investigators analyze the complaints by applying the relevant SJPD Duty Manual sections. IA then sends written reports of their investigations and analyses to the IPA office for audit.
- **IPA Staff**—The IPA staff receive complaints and also audit the Department's investigations and analyses to ensure that they are fair, thorough, and objective.

B. Officers Receiving Multiple Complaints

A number of officers received multiple (two or more) complaints in 2015. Twenty-seven officers received three or more complaints.

Illustration 2-D: Subject Officers Receiving Complaints (by Years of Experience)

Years of Experience	0-1+	2-4+	5-6+	7-10+	11-15+	16+	Total Number of Officers Receiving Complaints
Number of Complaints							
1 Complaint	21	28	1	37	36	75	198
2 Complaints	5	9	0	9	9	17	49
3 Complaints	3	8	0	1	4	3	19
4 Complaints	2	2	0	2	0	0	6
5 Complaints	1	0	0	1	0	0	2
Total Number of Officers Receiving Complaints	32	47	1	50	49	95	274

It is notable that the majority of officers with three or more complaints had less than five years of experience with the SJPd. Six officers had less than two years of experience and another ten officers had less than five years of experience who received three or more complaints. This is concerning since officers with less than five years of experience make up only 17% of the Department's ranks.

C. Demographics of Complainants and Subject Officers

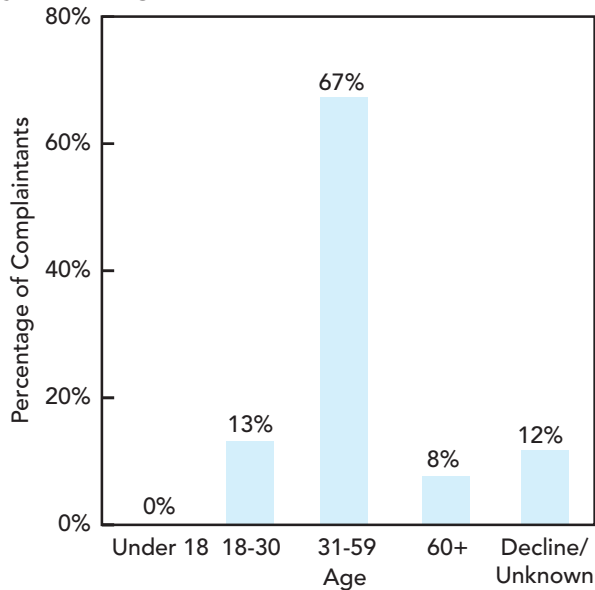
1. Complainant Demographics

During the intake process, IA and the IPA office gather demographic data about complainants. In 2015, 49% of complainants chose to identify their ethnicities at intake. Of the 51% of complainants whose ethnicity remains unknown, 90% filed their complaint with IA. It is important that IA capture this data so that the IPA can meaningfully assess the impact ethnicity has on complaints, allegations, and findings. Without this information, our process remains incomplete. Below is a summary of complainant demographics in 2015:

- Eighteen percent of the complainants in 2015 self-identified as Hispanic/Latino. Hispanics/Latinos represent 33% of the population of San José.
- Fifteen percent of the complainants in 2015 self-identified as Caucasian. Caucasians represent 29% of the population of San José.¹²
- Eleven percent of the complainants in 2015 self-identified as African American. African Americans represent 3% of the population of San José.
- Three percent of the complainants in 2015 self-identified as Asian American/Pacific Islanders. Asian American/Pacific Islanders represent 32% of the population of San José.

As shown in Illustration 2-E, complainants tended to be middle-aged. This is despite the fact that those with significant police contacts tend to be younger. We believe this disparity is partly attributable to the number of relatives – especially parents – who file complaints on behalf of a son or daughter.

¹² Asian American/Pacific Islanders include Filipino and Vietnamese.

Illustration 2-E: Age Range of Complainants in 2015 by Percentage

2. Subject Officer Demographics

We obtained from SJPd demographic data about subject officers who were employed during the 2015 calendar year. The data reveal that the number of subject officers who identify with a specific ethnicity continues to closely mirror the representation of ethnicities of the Department.

- Caucasian officers are 53% of the Department and were subject officers in 57% of complaints.
- Hispanic/Latino officers are 24% of the Department and were subject officers in 22% of complaints.
- African American officers are 4% of the Department and were subject officers in 5% of complaints.

- Asian American/Pacific Islander officers are 15% of the Department and were subject officers in 11% of complaints.¹³

Illustration 2-F demonstrates that male and female officers received complaints comparable to their representation in the Department.

Illustration 2-F: Gender of Subject Officers in 2015*

Gender	Subject Officers	%	SJPd Sworn Officers	%
Male	253	92%	835	90%
Female	21	8%	94	10%
Total	274	100%	929	100%

*Does not include officers named in Department-Initiated Investigations, Policy Complaints, and Non-Misconduct Concerns.

II. Step Two: Classification

Complaints fall into five classifications: Conduct Complaints, Policy Complaints, Non-Misconduct Concerns, Decline to Investigate¹⁴, and Other.¹⁵ The Department is ultimately responsible for classifying complaints before investigating. IPA staff reviews the Department's decisions early in the process and can appeal if the classification is not appropriate. Illustration 2-G shows a breakdown of the various complaints received in 2015. Eighty-nine percent of all complaints received in 2015 were classified as Conduct Complaints.

¹³ Asian American/Pacific Islanders include Filipino and Vietnamese.

¹⁴ Seven (7) cases were classified as "Decline to Investigate." This classification indicates that the facts in the complaint are so fantastical that they are unlikely to be based on reality. These cases are not investigated, but are retained and tracked for statistical purposes.

¹⁵ Twenty-one (21) cases were classified as "Other" this year because (a) the complaint did not involve any SJPd officers (twelve cases), (b) the complaint was duplicative of an existing case (eight cases), and (c) the complaint concerned another City Department (one case). The IPA reviews all cases classified as "Other" to ensure this classification is appropriate.

Illustration 2-G: Complaints/Concerns Received in 2015*

Matters Received in 2015	IA	IPA	Total	%
Conduct Complaints	171	100	271	89%
Policy Complaints	2	3	5	2%
Non-Misconduct Concerns	3	5	8	3%
Decline to Investigate	4	3	7	2%
Other	4	8	12	4%
Total	184	119	303	100%

*Excludes Department-Initiated Investigations

A. Conduct Complaints

Conduct Complaints contain one or more allegations. An allegation is an accusation that a SJPd officer violated Department or City policy, procedure, or the law. The Department policies are listed in the SJPd Duty Manual. Any member of the public may access the Duty Manual on the SJPd website (<http://www.sjpd.org/Records/DutyManual.asp>) and on the IPA website (www.sanJose.org/ipa).

ca.gov/ipa). There are eight types of allegations that, if proven, could result in officer discipline:

1. Procedure (P),
2. Search or Seizure (SS),
3. Arrest or Detention (AD),
4. Bias-Based Policing (BBP),
5. Courtesy (C),
6. Conduct Unbecoming an Officer (CUBO),
7. Force (F), and
8. Neglect of Duty (ND).

Illustration 2-H describes each allegation type, lists examples of allegations, and gives the number of each type of allegation received in 2015.

Illustration 2-H: Misconduct Allegations

MISCONDUCT ALLEGATIONS RECEIVED IN 2015

Procedure: The officer did not follow appropriate policy, procedure, or guidelines.

- 251 allegations (36%)
- **Example:** An officer allegedly failed to complete a thorough DUI investigation after a driver had crashed into a parked car and a witness told the officer that the driver admitted she had been drinking.

Courtesy: The officer used profane or derogatory language, wasn't tactful, lost his/her temper, became impatient, or was otherwise discourteous.

- 103 allegations (15%)
- **Example:** An officer allegedly told the complainant, "You're a thief and a liar...Shut the f--- up, and stop making a scene."

Force: The amount of force the officer used was not "objectively reasonable," as defined by SJPd Duty Manual section L 2602.

- 121 allegations (18%)
- **Example:** A complainant who stated that she was compliant with officers' orders alleged that an officer threw her to the ground causing facial cuts, abrasions, and ultimately requiring stitches to her lip.

Arrest or Detention: An arrest lacked probable cause or a detention lacked reasonable suspicion.

- 91 allegations (13%)
- **Example:** A complainant alleged that an officer made an unlawful traffic stop and unlawfully arrested him.

Search or Seizure: A search or seizure violated the protections provided by the 4th Amendment of the United States Constitution.

- 50 allegations (7%)
- **Example:** A complainant stated that officers accessed her house by jumping her neighbor's fence and then unlawfully searched her house. The officers did not have a search warrant or her consent.

Bias-Based Policing: An officer engaged in conduct based on a person's race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.

- 50 allegations (7%)
- **Example:** A complainant was pulled over for speeding. The complainant denied speeding and believed the officer singled him out and stopped him because he was African American.

Neglect of Duty: An officer neglected his/her duties and failed to take action required by policies, procedures, or law.

- 0 allegations (0%)

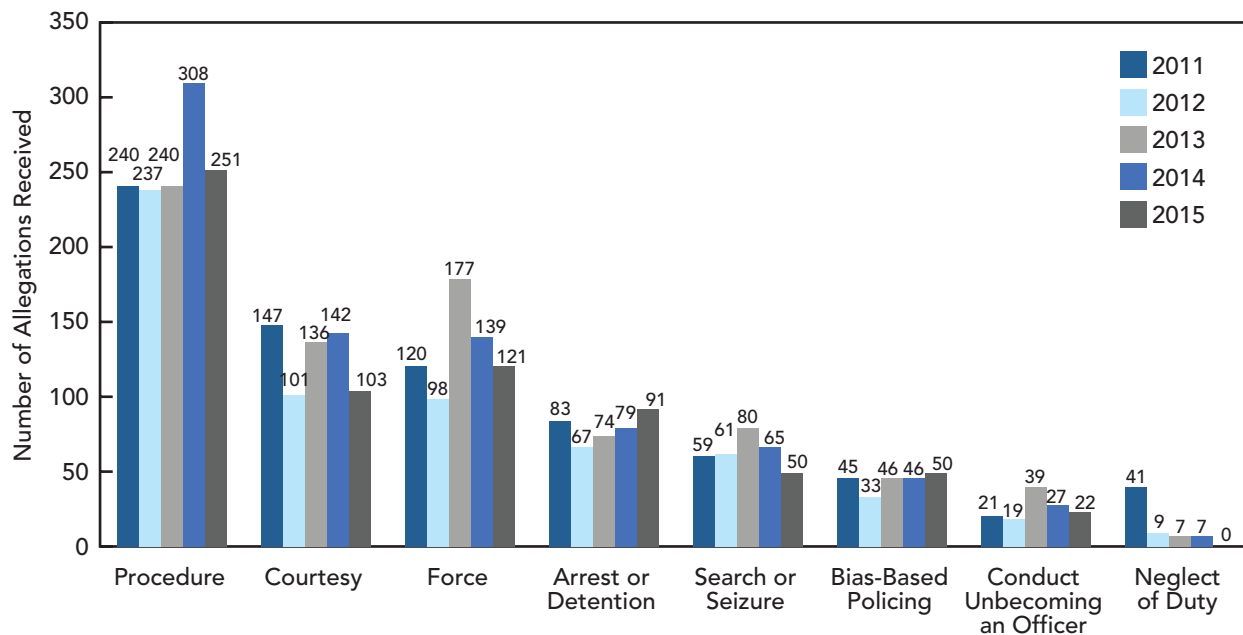
Conduct Unbecoming an Officer: A reasonable person would find the officer's on or off duty conduct to be unbecoming a police officer, and such conduct reflected adversely on the SJPd.

- 22 allegations (3%)
- **Example:** An officer wrote inflammatory remarks on his personal Twitter account and his conduct adversely reflected on the Department.

Illustration 2-I depicts the frequency of allegations over the last five years. Although Procedure allegations continue to be the most common allegation in conduct complaints over the past five years, 2015 saw a 19% decrease in Procedure allegations from the year prior. However, the 308 complaints with Procedure allegations received in 2014 were an unusually large number and the

251 Procedure allegations received in 2015 still exceed those from 2011 through 2013. Similarly, Courtesy allegations declined 27%, Search and Seizure allegations decreased by 23%, Conduct Unbecoming an Officer allegations decreased by 19%, and Force allegations decreased by 13%. Bias-Based Policing allegations, however, increased by 9% and Arrest/Detention allegations increased by 15%.

Illustration 2-I: Allegations Received—Five-Year Overview (2011-2015)



B. Policy Complaints

Policy Complaints are complaints that are not directed against any individual officer, but are complaints about SJPd policies or procedures or the lack thereof. Policy Complaints are typically forwarded to SJPd's Research and Development Unit for review and evaluation to determine if they need to be addressed.

Five Policy Complaints were received in 2015—a 44 percent decrease from 2014.

C. Non-Misconduct Concerns

Non-Misconduct Concerns (NMC) are complaints that do not rise to the level of a violation of policy, procedure, or law that could result in officer discipline. When IA classifies a complaint as an NMC, it is then forwarded to the IPA office. If the IPA has a concern about the NMC classification, the IPA discusses the matter with IA staff. When the case is classified as an NMC, the subject officer's supervisor addresses the matter with the officer.

The supervisor confirms to IA that the subject officer has been spoken to. Thereafter, the officer's name and allegations are removed. In 2015, eight complaints (3% of all complaints received) were classified as NMCs.

III. Step Three: The Department Investigation

After intake and classification, IA investigates all Conduct Complaints. IA investigations include the review of all relevant documentation, such as, police reports, medical records, photos, and the Computer-Aided Dispatch (CAD)¹⁶ records. IA may also conduct follow-up interviews with the complainants, witnesses, and officers to gather more information about the incident. This evidence is collected to determine what facts support or refute the allegations in the complaint. The evidence is then analyzed in light of relevant SJPD Duty Manual policies and procedures.

The IPA office does not investigate complaints. However, the IPA monitors the IA investigations in order to assess the objectivity and thoroughness of the investigation, and the collection of supporting documentation. The IPA accomplishes this by

1. reviewing complaints received at IA to ensure that complaints are properly classified and that the allegations reflect all of the complainants' concerns;
2. attending officer interviews or requesting that IA investigators ask subject officers specific questions; and
3. updating complainants about the status of IA investigations.

IPA staff has the option to request notification of interviews in any complaints. However, IA must notify the IPA of officer interviews for all complaints received at the IPA office and all complaints with allegations of Force or Conduct Unbecoming an Officer. Only the IPA and the Assistant IPA are authorized to attend officer interviews.

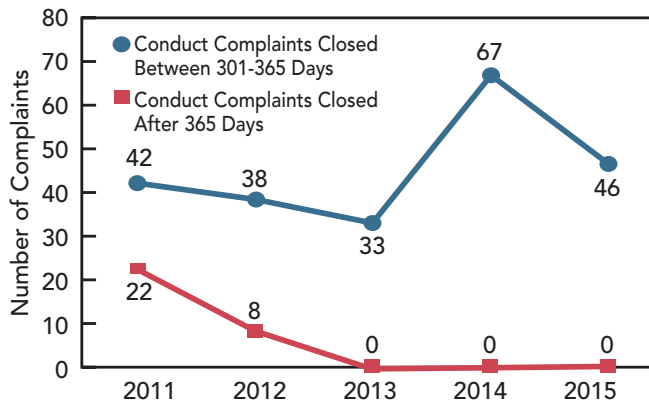
Timeliness of Closed Investigations

California state law mandates that all misconduct investigations of law enforcement officers must be completed and notice of any discipline intended to be imposed on the officer must occur within one year of receipt of the complaint. Therefore, in order for the IPA audit process to be meaningful, the IA investigation must be completed well before this one-year deadline.

The IPA's 2014 Year-End Report stated that the Department closed 67 complaints (26% of 253 closed complaints) after the 300-day deadline -- thereby making a meaningful audit process far more challenging. We saw marked improvement in 2015 where the Department only closed 46 cases of 304 (15%) conduct complaints after the 300-day standard. This demonstrated a significant effort by the Department to complete investigations and submit them to the IPA staff for audit in a timely fashion.

¹⁶ The CAD (Computer-aided Dispatch) is a log of all of the events from the moment the police are called, until the moment they leave. The information is logged by dispatch as it is being relayed by the officers and the reporting parties.

Illustration 2-J: Timeliness of Conduct Complaint Investigations Closed by the Department—Five-Year Overview (2011-2015)



We did note a characteristic which will require further analysis. We found that we were far more likely to disagree with the Department’s investigation or analysis for conduct complaint investigations that were submitted after the 300-day window to the IPA for audit. As we will discuss later in this report, the IPA closed as “disagreed” 28 of the 292 (9.5%) in total audits we completed in 2015. For the 246 cases submitted by IA inside the 300-day window, IPA staff closed as “Disagreed” 19 (8%) conduct complaint investigations. For the 46 investigations that were submitted outside the 300-day window, however, the IPA disagreed in 11 (24%) of the cases. That is more than triple the disagreement rate of cases which were submitted before the 300-day deadline. We are not clear why there is such a startling difference, however, it may be because those cases tended to be more complex. We will continue our analysis to better understand the reasoning behind this disparity.

IV. Step Four: Department Makes Finding

In each complaint, the Department must make a finding of whether or not the alleged misconduct occurred. Findings are based on an objective analysis using the “preponderance of the evidence” standard. The standard is met and a Sustained finding is made if the evidence indicates that it is more likely than not that the officer committed a violation of the Duty Manual. The seven possible findings for misconduct allegations are: Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other. Illustration 2-K lists and defines each of the findings and gives the number of each finding in 2015. It is important to note that many complaints opened in 2014 are closed in 2015. Therefore, many findings made in 2015 are based on complaints from the prior year. Officer discipline is imposed if an allegation receives a Sustained finding.¹⁷

¹⁷ Officers may also receive counseling or training even if the investigation results in a finding of Exonerated or Not Sustained.

Illustration 2-K: Findings for Misconduct Allegations Closed in 2015

FINDINGS FOR MISCONDUCT ALLEGATIONS

Exonerated: “The act or acts, which provided the basis for the allegation or complaint, occurred, however, the investigation revealed they were justified, lawful, and proper.”¹⁸ This means that the officer engaged in the conduct and the conduct was within policy.

- **Result:** The officer cannot be disciplined when there is an Exonerated finding. However, the officer may be required to undergo counseling or training.
- 424 allegations (48%) were closed as exonerated in 2015.

Not Sustained: “The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.” This means the alleged misconduct was a “he said-she said” situation where it is one person’s word against another and IA cannot determine, by a preponderance of the evidence, which version is true.

- **Result:** This finding does not result in officer discipline. However, the officer may be required to undergo counseling or training.
- 124 allegations (14%) were Not Sustained in 2015.

Sustained: “The investigation disclosed sufficient evidence to prove clearly the allegation made in the complaint.” This means that the Department determined that the officer engaged in misconduct.

- **Result:** This finding results in officer discipline.
- 32 allegations (4%) were sustained in 2015.

Unfounded: “The investigation conclusively proved either that the act or acts complained of did not occur, or that the Department member named in the allegation was not involved in the act or acts, which may have occurred.” This means that the IA investigation concluded that the alleged misconduct never happened.

- **Result:** The officer is not disciplined.
- 213 allegations (24%) were Unfounded in 2015.

No Finding: “The complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues, or the subject Department member is no longer employed by the Department before the completion of the investigation.” This means that the complainant did not provide sufficient information for IA to investigate, or the officer is no longer employed by SJPd.

- **Result:** The officer is not disciplined.
- 58 allegations (7%) were closed with No Finding in 2015.

Withdrawn: “The complainant affirmatively indicates the desire to withdraw his/her complaint.” This means the complainant decided not to pursue the complaint.¹⁹

- **Result:** This finding does not result in officer discipline.
- 11 allegations (1%) were withdrawn in 2015.

Other: Allegations were closed as Other when SJPd declined to investigate because of a delay of years from the date of the incident to the date of filing or because the officer who allegedly engaged in the misconduct was employed by another law enforcement agency, and not by SJPd.

- **Result:** No officer is investigated, and the officer name is removed.
- 30 allegations (3%) were closed as “other” in 2015.

¹⁸ All definitions in quotations in this table are from the 2010 Duty Manual § C 1723.

¹⁹ IPA staff routinely follows up to ensure that the complainants’ decisions to withdraw their complaints are entirely voluntary.

A. How Allegations Were Closed by the Department in 2015

Illustration 2-L lists the number of allegations closed by SJPD in 2015 and their respective findings.

Illustration 2-L: Dispositions of all Allegations Closed in 2015

	Dispositions of Allegations								Total	Percent
	AD	BBP	C	CUBO	F	ND	P	SS		
Sustained	0	1	3	7	0	0	20	1	32	4%
Not Sustained	0	1	75	0	0	1	44	3	124	14%
Exonerated	75	0	12	0	114	0	175	48	424	48%
Unfounded	6	47	39	21	12	0	80	8	213	24%
No Finding	9	4	14	1	8	0	17	5	58	7%
Complaint Withdrawn	0	1	6	0	1	0	3	0	11	1%
Other	5	0	2	3	1	0	14	5	30	3%
Total Allegations	95	54	151	32	136	1	353	70	892	100%

Legend of Allegations:

AD: Arrest or Detention; BBP: Bias-Based Policing; CUBO: Conduct Unbecoming an Officer;

C: Courtesy; F: Force; ND: Neglect of Duty; P: Procedure; SS: Search or Seizure

B. The Sustained Rate

The **Sustained rate** is the percentage of closed Conduct Complaints that contain at least one allegation with a Sustained finding. In 2015, 19 (6%) closed Conduct Complaints had an allegation with a Sustained finding. For summaries of sustained allegations closed in 2015, please refer to Chapter Five.

Illustration 2-M: Complaints Closed With Sustained Allegations—Five-Year Overview (2011-2015)

Year of Complaint	Conduct Complaints Sustained	Conduct Complaints Closed	Sustained Rate
2011	24	246	10%
2012	10	302	3%
2013	18	202	9%
2014	25	253	10%
2015	19	304	6%

V. Step Five: IPA Audit

After the Department completes its investigation, conducts an analysis, and makes a finding, it forwards the written report to the IPA for audit. The IPA is required to audit all complaints with Force allegations and at least 20% of all other complaints. In 2015, the IPA fulfilled this requirement by auditing all complaints containing Force allegations and 77% of all other complaints. IPA staff review various issues during the IPA audit to determine if the Department's investigations and analyses were fair, thorough, and objective.

Illustration 2-N: Issues Reviewed During IPA Audit

ISSUES REVIEWED DURING IPA AUDIT

Timeliness / tolling	<ul style="list-style-type: none"> Was the investigation completed in a timely manner?
Classification	<ul style="list-style-type: none"> Was the case properly classified?
Presence/absence of allegations	<ul style="list-style-type: none"> Do the listed allegations adequately capture the concerns voiced by complainant?
Presence/absence of supporting documentation	<ul style="list-style-type: none"> If pertinent, did the investigator obtain and review documentation such as: <ul style="list-style-type: none"> CAD (SJPD Computer-Aided Dispatch logs) Medical records Photographs Police reports/citations TASER activation logs Use of force response reports
Presence/absence of interviews conducted by Internal Affairs	<ul style="list-style-type: none"> Witnesses — what efforts were taken to identify and contact witnesses? Witness officers — what efforts were taken to identify and interview officers who witnessed the incident? Subject officers — what efforts were taken to identify and interview subject officers?
Presence/absence of logical objective application of policy to the facts	<ul style="list-style-type: none"> What is the policy/Duty Manual section that governs the conduct in question? Is this authority applicable to the case or is other authority more pertinent? Does the analysis apply all the factors set forth in the authority to the facts?
Presence/absence of objective weighing of evidence	<ul style="list-style-type: none"> What weight was given to officer testimony? Why? What weight was given to civilian testimony? Why? Does the analysis use a preponderance standard? Does the analysis logically address discrepancies?

After auditing the complaint, the IPA will make one of the following determinations:

- **Agreed** with the Department's investigation of the case after initial review (202 or 69% of audited cases),
- **Agreed After Further** action, such as receiving from IA a satisfactory response to an IPA inquiry or request for additional clarification or investigation (39 or 13% of audited cases);
- **Closed With Concerns**, which means the IPA did not agree with the Department's investigation and/or analysis, but the disagreement did not warrant a formal disagreement (24 or 8% of audited cases); or

- **Disagreed**, meaning the IPA determined that the Department's investigation and/or analysis were not thorough, objective, and fair (27 or 9% of audited cases).

Illustration 2-O: IPA Audit Determinations in 2015

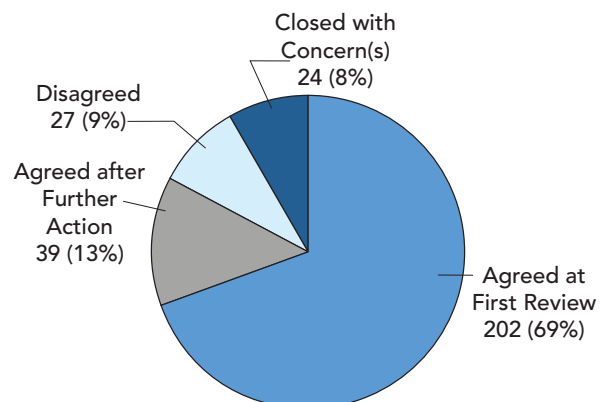


Illustration 2-P: IPA Audit Determinations in Closed Complaints—Five-Year Overview (2011-2015)

Audit Determination in Investigated Cases	2011		2012		2013		2014		2015	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	160	63%	257	74%	179	76%	207	74%	202	69%
Agreed after Further Action	48	19%	35	10%	32	14%	29	10%	39	13%
Disagreed	15	6%	23	7%	13	6%	19	7%	27	9%
Closed with Concern(s)	33	13%	30	9%	12	5%	25	9%	24	8%
Total Complaints Audited	256	100%	345	100%	236	100%	280	100%	292	100%

The 2015 IPA audits show an increase in the number of “Disagreed” and “Closed with Concern” determinations. In 2014, the IPA closed 44 complaints as “Closed with Concerns” or “Disagreed.” In 2015, the IPA closed 51 cases as “Disagreed” (27) or “Closed with Concerns” (24). In a change from past practice, going forward, the IPA will always be providing our reasoning to the Department in those cases which are “closed with concerns.” In our view, such feedback is vital to effective oversight.

VI. Officer Complaint Rates and Experience Levels

A. Officer Complaint Rates

Both the Department and the IPA collect the following data about subject officers:

- Number of complaints received by each subject officer
- Types of allegations attributed to each subject officer in the complaint
- Experience level of each subject officer

In 2015, 274 officers were named in Conduct Complaints – 29% of all SJPd officers. Of these officers, most (198 or 72% of subject officers) received only one complaint. Forty-nine (49) subject officers received two complaints (18% of subject officers). Nineteen (19) subject officers received three

(3) complaints and eight (8) subject officers received four or more complaints.

Illustration 2-Q provides a five-year overview of complaints received by individual officers. This data reflect only those complaints in which individual officers are identified by name either by the complainant or through the IA investigation process. There were 31 Conduct Complaints received in 2015 in which officers could not be identified (“Unknown” officers).

Illustration 2-Q: Complaints Received by Individual Officers — Five-Year Overview (2011-2015)*

Officers Receiving	2011	2012	2013	2014	2015
1 Complaint	201	178	218	205	198
2 Complaints	42	30	53	58	49
3 Complaints	8	5	18	11	19
4 Complaints	4	3	9	81	6
5 Complaints	0	0	0	3	2
Total Number of Officer Receiving Complaints	255	216	298	285	274

*Subject officer names are not retained in complaints classified as Non-Misconduct Concern, Policy, or Withdrawn. It does not include officers named in Department-Initiated Investigations.

The percentage of complaints which were attributable to an officer with three or more complaints in one year has risen. In 2011, 12 of 255 complaints were against an officer with three or more complaints. In 2015, 27 of 274 complaints were against officers with three or more complaints. Similarly, the number of total officers receiving complaints has increased since 2011. Notably, the

number of total sworn officers has decreased significantly. In 2011, there were 1,093 sworn officers and in 2015, there were 929 sworn officers.

B. Officer Experience Levels

As with other city employees, police officers have differing employment start dates throughout the calendar year. For this 2015 Year End Report, data reflecting the total number of sworn officers employed by SJPD was captured on January 1, 2015. For each complaint, however the experience level of the subject officers is captured at the time of the complaint incident – any date during the 2015 calendar year. Additionally, throughout the year, officers can move from one experience level to another and therefore, can belong to two groups of “years of experience.” Also, the total number of sworn SJPD officers with any given years of experience may increase with new/lateral hires, or decrease due to retirements, resignations, or terminations.

Despite these variants, a few trends emerged. *Similar to years past, officers with more experience received more complaints than officers with less experience.* For example, 53% of all subject officers were officers with at least 11 years of experience. The officers who received the fewest number of complaints were officers with 5-6 years of experience, which was 0% of all subject officers. It is significant to note that there was only one complaint filed against an officer with 5-6 years of experience in 2015. Also, although officers with 0-1 year of experience comprise just 8% of all sworn SJPD staff, these officers make up 12% of all subject officers. Therefore, forty-four percent (44%) of all officers with one year or less of experience had at least one complaint filed against them in 2015.

Illustration 2-R: Years of Experience of Subject Officers in Complaints Received in 2015*

Years of Experience	Total Subject Officers		Total SJPD Sworn Officers	
		%		%
0-1+	32	12%	72	8%
2-4+	47	17%	82	9%
5-6+	1	0%	21	2%
7-10+	50	18%	151	16%
11-15+	49	18%	127	14%
16+	95	35%	476	51%
	274	100%	929	100%

*Does not include officers named in Department-Initiated Investigations.

We sought to determine whether particular types of allegations were more likely to be correlated to different experience levels. In other words, we wanted to learn whether certain experience cohorts were either over- or under-represented in the various allegation categories of Arrest and Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, Procedure and Search and Seizure.

Illustration 2-S: Allegations received by Subject Officers in 2015, By Years of Experience*

Years of Experience	Type of Allegations and Percentage															
	AD	#	BBP	#	C	#	CUBO	#	F	#	ND	#	P	#	SS	#
0-1+	8	11.4%	7	17.5%	10	11.9%	2	12.5%	20	21.7%	0	0%	20	12.2%	7	15.9%
2-4+	13	18.6%	7	17.5%	10	11.9%	0	0.0%	24	26.1%	0	0%	22	13.4%	7	15.9%
5-6+	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0%	0	0.0%	1	2.3%
7-10+	16	22.9%	9	22.5%	14	16.7%	8	50.0%	13	14.1%	0	0%	31	18.9%	9	20.5%
11-15+	13	18.6%	9	22.5%	16	19.0%	4	25.0%	17	18.5%	0	0%	25	15.2%	9	20.5%
16+	20	28.6%	8	20.0%	34	40.5%	2	12.5%	18	19.6%	0	0%	66	40.2%	11	25.0%
Total	70	100%	40	100%	84	100%	16	100%	92	100%	0	100%	164	100%	44	100%

* Data excluded Unknown officers. It also does not include officers named in Department-Initiated Investigations.

Upper-Experienced Officers (16+ years)

As of 2015, 51% of the SJPd force had 16 or more years of experience. This contrasts with the relatively small proportion of officers with less than five years on the job. The Department had 72 officers (8% of the force) in 2015 with less than two years of experience and another 82 officers (9%) with more than two and less than five years.

Illustration 2-S (above) shows that the most experienced officers (those with more than 16 years) were never over-represented in any one category. For example, that 51% group were the subjects of 40% of Courtesy complaints, 20% of Force and 40% of Procedure complaints.

Mid-Experience Officers (11-15, 7-10 and 5-6 years)

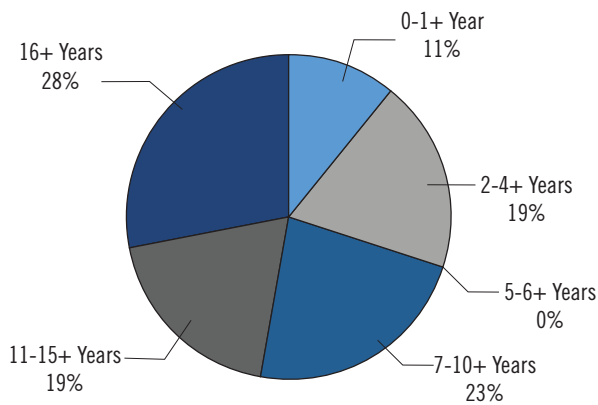
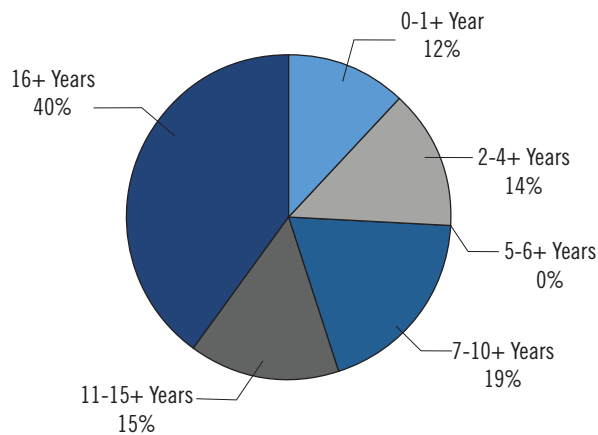
Because the most experienced group was consistently and significantly under-represented in conduct complaint allegations, it goes without saying that lesser experienced groups tended to be over-represented. In fact, setting aside the relatively uncommon Conduct Unbecoming an Officer (CUBO) allegation, the only type of allegation where any experience level outside 16+ years was *under-represented* were Force allegations

against officers with 7 to 10 years of experience.

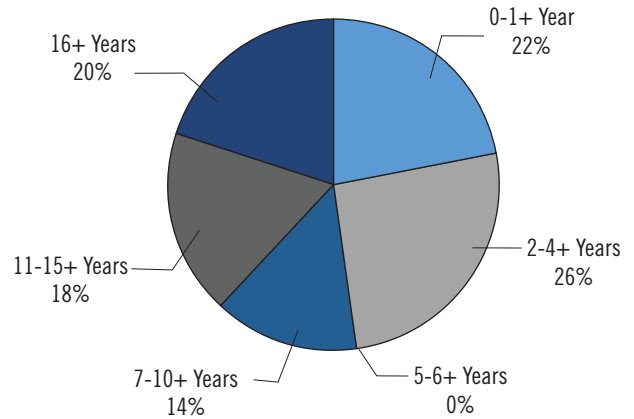
The mid-experienced cohorts show a moderate disparity in certain allegation categories. The 11 to 15 years of experience group is 14% of the SJPd and accounted for 23% of the Bias-Based Policing allegations and 21% of the Search and Seizure allegations. The 7 to 10 years of experience group represented 16% of the Department and 23% of Arrest and Detention allegations and 23% of Bias-Based policing allegations. The 5 to 6 year group is only 2% of the SJPd due to a hiring freeze during the last recession.

Least-Experienced Officers (2-4 and 0-1 years)

It is the two least-experienced groups which provide the most significant concern. Joined together, the 0 to 1 year (8%) and 2 to 4 years of experience (9%) groups represent only 17% of the Department but are an out-sized portion of allegations in several important categories. The two least experienced cohorts received 11% and 19%, respectively, of all Arrest and Detention allegations. They also combined to represent 35% of Bias-Based Policing allegations and more than 25% of Procedure allegations.

Illustration 2-T: Officers Receiving Arrest & Detention Allegations by Experience**Illustration 2-U: Officers Receiving Procedure Allegations by Experience**

However, the most troubling concern is when Force allegations are closely examined. Put together, the two least-experienced cohorts of officers which comprise 17% of the Department were the subjects of nearly 48% of all allegations of unnecessary or excessive force. The reasons why this disparity exists are unclear without further research, but it is an issue which we will monitor closely over the next year.

Illustration 2-V: Officers Receiving Force Allegations by Experience

We are mindful that in 2015 126 of 136 Force allegations were closed as either Exonerated or Unfounded. In 2015, there were no Sustained findings for an allegation of unreasonable force and the IPA either disagreed or closed with concerns on eight such occasions. As stated earlier, the IPA will continue to provide feedback to the Department in all cases where we disagree with the investigation or the analysis but, going forward, also in cases which we “close with concerns.” Finding force unreasonable may be difficult for a number of factors, however, it is critical that a modern police department pays close attention to force used by its officers.

STATUS ON TACKLING BIAS-BASED POLICING

In the 2014 IPA Year End Report, we included a substantial discussion on “tackling Bias-Based policing.” We noted that all agree that policing based upon a person’s race and ethnicity is wrong both legally and morally. The Department’s Duty Manual specifically states that officers will not engage in biased and/or discriminatory-based policing.

SJPD Duty Manual Section C 1306: Revised 02-15-11

Bias-Based Policing occurs when a police officer engages in conduct based on a person’s race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.

Bias-Based Policing can occur not only at the initiation of a contact, but any time during the course of an encounter between an officer and a member of the public.

Officers will not engage in biased and/or discriminatory-based policing as this undermines the relationship between the police and the public, and is contradictory to the Department’s mission and values.

Our discussion noted that, unlike other office misconduct allegations, the investigation of a Bias-Based Policing allegation is difficult. The investigation of other misconduct allegations relies primarily on the presence of objective and observable conduct and/or things. However, the crux of a Bias-Based Policing allegation must determine the officer’s state of mind which is incredibly difficult to discern in the absence of an admission by the officer.

Thus is not surprising that none of the 192 Bias-Based Policing allegations closed in the five years between 2010 and 2014 were sustained. In fact, each year the majority of these allegation are closed with a finding of unfounded which means that the investigation “conclusively proved that the misconduct never occurred.” Fifty allegations of Bias-Based Policing were received in 2015 and 54 allegations were closed in 2015. The Department sustained one allegation (for bias because of a person’s mental health status). **This is the first time that the San José Police Department has sustained such an allegation.** As in prior years, most allegations (47 or 87%) were closed as unfounded.

STATUS ON TACKLING BIAS-BASED POLICING

Our 2014 report offered a number of suggestions to improve investigation practices, track complaints and patterns of bias, and to enhance training:

- Investigating Bias-Based Policing Allegations:
 - Search for specific patterns in the officer's conduct
 - Track complaints of bias-based policing against the officer
 - Observe patterns in the conduct of the officer
- Addressing Implicit Bias
 - Implement mandatory training for all officers, from Command Staff to recruits, about implicit bias in policing
 - Implement Community Policing
 - Utilize body-worn cameras and adopt a best practices protocol that is posted online
 - Continue to make the recruitment of racially and ethnically diverse officers a priority
 - Ensure that culture of the Department always reflects the standard set forth in Duty manual section C 1306.

Shortly after the publication of our report, the Mayor issued a press release announcing several initiatives to increase police accountability and public trust.¹ In furtherance of those initiatives, the Mayor recommended directing the City Manager to have the SJPD “broaden the scope of inquiry of complaints of bias-based policing.”² This recommendation was approved by the City Council’s Rules and Open Government Committee in May 2015.³ In August 2015, the Department developed a framework and proposed timeline for enhancing bias-based policing training. In addition to that training already provided to officers,⁴ the Department announced that additional measures would be taken: (1) officers would be provided with training specifically addressing implicit bias (2) top command staff would attend a program provided by the Museum of Tolerance in Los Angeles, and (3) the Department would meet with community stakeholders on how to enhance its training curriculum in the academy.

¹ Office of the Mayor, Press Release: *Liccardo Announces Initiatives to Increase Police Accountability and Increase Public Trust*, May 11, 2015 (reprinted in Appendix C).

² Mayor Sam Liccardo, *Memorandum: Police Accountability Initiatives*, May 21, 2015.

³ San José City Rules and Open Government Committee Meeting May 27 2015, item G.5.

⁴ Chief Larry Esquivel, *Memorandum: Information and Timeline for Bias-Based Policing Training*, August 10, 2015.

STATUS ON TACKLING BIAS-BASED POLICING

The Department has made some progress towards its goals. Command staff attended training at the Museum of Tolerance in December 2015/January 2016. Department staff held one meeting with the Chief's Advisory Board to discuss the academy training curriculum. Initial training on implicit bias for selected officers with Dr. Lorie Fridell, an expert in this field, is scheduled to occur in June 2016. Training for the entire Department is anticipated to occur in 2016 and 2017.

We commend the Department in developing these training goals and in partnering with a recognized expert in the field. We hope that the training for all officers can be completed in 2016. As to the status of the Mayor's actual recommendation in May 2015 to "broaden the scope of inquiry of complaints of bias-based policing" there has been little movement. The Department's position is that "The issue of broadening the scope of Bias-Based Policing allegations is complex and should be based on data and specific criteria that can be measured and objectively analyzed." The Department will wait until other projects have been completed that might inform their discussion of broadening Bias-Based Policing investigations; namely (1) the analysis by University of Texas at El Paso data from limited-detentions conducted by SJPd officers (anticipated completion date January 2017) and completion of implicit bias training (anticipated completion date sometime 2016-2017).

We hope that the Department, in addition to ensuring completion dates are met, will consider other possible avenues to achieve the Mayor's recommendation. Exploring the "best practices" used by other major law enforcement agencies might be a good start.

Chapter Three: Use of Force Complaints and Audits

This chapter provides information about misconduct complaints containing Force allegations. The data include Force Complaints received in 2015 as well as Force Complaints closed by the Department and audited by the IPA office in 2015.

I. Force Complaints and Force Allegations

A. Overview

Police work poses both expected and unexpected dangers. On occasion, the use of force by officers is necessary. A police officer who has probable cause to believe that a suspect has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. The use of unnecessary or excessive force is one of the most serious allegations against an officer. The Office of the Independent Police Auditor (IPA) is required by the City's Municipal Code to audit all Department investigations of Force allegations filed by members of the public. The IPA does not review Department use of force when no complaint has been filed. This is the case even when the use of force is serious and results in loss of consciousness, broken bones or hospitalization.

When an officer uses force, the officer must complete a form called a "Force Response." An officer is subject to discipline if he/she fails to complete this form. In 2006 and 2007, the SJPd compiled data from these forms into a public Force Response Report. The data included force incidents in various service areas, the level of force and

information about suspects – including age, gender, race and city of residence. In 2007, the SJPd reported that its officers used force 1,263 times in 2006. In the 2014 Year End Report, the IPA suggested that SJPd resume publishing an annual Force Response Report. In this 2015 Report, the IPA makes a **formal recommendation** that the Department issue these compilation Force Reports annually as a vital tool for transparency.

B. Force Complaints

In this report, a "Force Complaint" is a complaint that includes one or more allegations of improper use of force by a San José police officer.

The Department's investigation of a Force Complaint should answer three questions:

1. Was the force response lawful?
2. Was the force response reasonable?
3. Was the force response within SJPd policy?

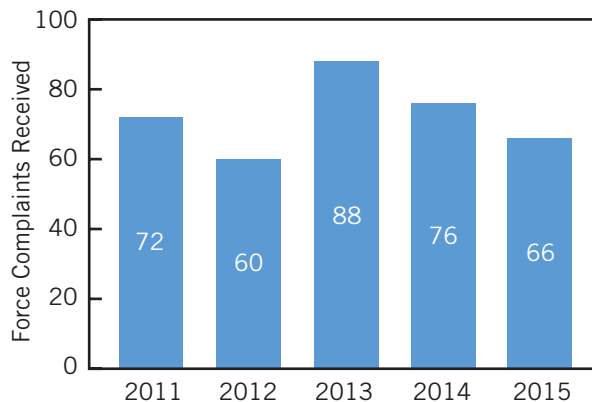
The Department's investigation must examine all the facts and circumstances associated with the incident in order to determine whether or not the officer acted reasonably. The factors that the Department evaluates include the severity of the crime, the threat presented by the suspect and the resistance offered by the suspect.

Sixty-six (66) Force Complaints were received in 2015²⁰. That number is lower than the number of Force Complaints received in 2014

²⁰ Even if a complaint is received in 2015, it may not necessarily be closed in 2015.

(76) and is lower than the average number of Force Complaints received over the past five years (72). Illustration 3-A shows the number of Force Complaints received in years 2011 through 2015.

Illustration 3-A: Force Complaints Received – Five-Year Overview (2011 - 2015)

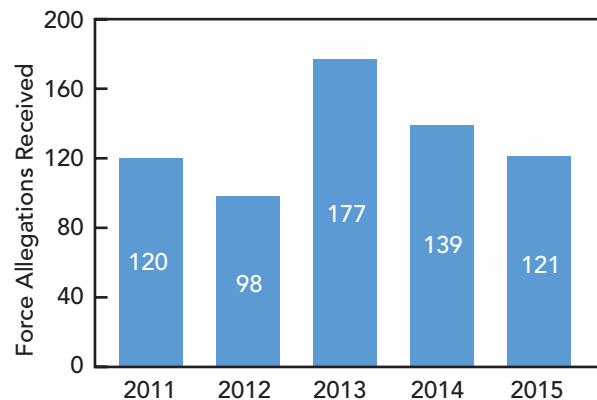


C. Force Allegations

The annual number of Force **allegations** in complaints is always higher than the annual number of Force Complaints because one complaint can have more than one Force allegation. For example, a complainant might allege that one officer shoved him against a fence and then another officer tackled him to the ground; this example reflects one Force Complaint with two Force allegations. The 66 Force Complaints received in 2015 contained 121 force allegations. Fewer Force allegations were received in 2015 than in 2014; the average number of Force allegations reviewed

over the past five years is 131. Because, as we stated earlier, the Department does not publish statistics about overall use of force, we have no way of attributing the decrease in force allegations to any particular reason. Illustration 3-B shows the number of Force allegations received over the past five years.

Illustration 3-B: Force Allegations Received – Five-Year Overview (2011 – 2015)

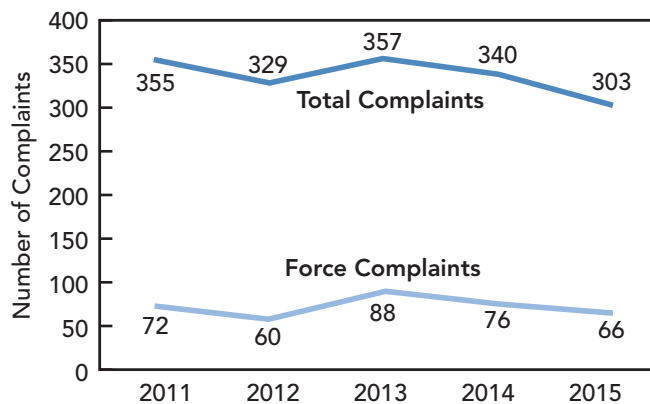


Twenty-two percent (22%) of all complaints received in 2015 were Force Complaints containing one or more Force allegations. Illustration 3-C shows the number of Force complaints relative to all complaints received from the public from 2011 to 2015. The percentage of Force Complaints received in 2015 is comparable to the percentage of Force Complaints received over the past five years.

Illustration 3-C: Force Complaints Received Relative to Total Complaints Received — 2011 through 2015

Year	Total Force Allegations	Total Force Complaints	Total Number of Complaints	Force Complaints as % of Total Complaints
2011	120	72	355	20%
2012	98	60	329	18%
2013	177	88	357	25%
2014	139	76	340	22%
2015	121	66	303	22%

Illustration 3-D: Force Complaints Received Relative to Total Complaints Received — Five-Year Trend Line



Illustrations 3-A through 3-D reflect that, when comparing 2015 data to 2014 data, fewer Force Complaints were filed in 2014 and those Force Complaints contained fewer Force allegations although the percentage of Force Complaints relative to all complaints remained the same. The 2015 data does not appear to be anomalous if one considers the data over the last five years.

II. Force Complaint Demographics

A. Ethnicities of Complainants

The IPA attempts to identify the ethnicities of complainants during the initial complaint intakes. We obtained information on ethnicity from 155 of 315 individual complainants in 2015. We were not able to capture the ethnicity of all complainants because some declined to disclose this information to us. As we discuss elsewhere in this report, 90% of all complaints without ethnicity information were intakes by the Internal Affairs Unit. Illustration 3-E shows the ethnicities of the 46 of the 73 complainants who filed Force Complaints, as well as the ethnicities of all complainants, and the percentage of those ethnic groups within the San José population.

Illustration 3-E: Force Complaints Received in 2015 Complainants by Ethnicities*

Ethnicities From Complainant Intakes	Force Complainants		Total Complainants		% of San José Population**
	Number	%	Number	%	
African American	11	15%	35	11%	3%
Asian American / Pacific Islander***	1	1%	8	3%	32%
Caucasian	6	8%	47	15%	29%
Hispanic / Latino	27	37%	58	18%	33%
Native American	0	0%	2	1%	1%
Other	1	1%	5	2%	2%
Decline / Unknown	27	37%	160	51%	0%
Complainant Responses	73	100%	315	100%	100%

* Information on ethnicities of complainants is obtained during intake. Not all complainants reside within the City of San José; however all complainants are members of the public.

** Source: U.S. Census Bureau, Census 2010

***For the purpose of this illustration, Asian/Pacific Islanders includes Filipino and Vietnamese

B. Subjects of Force Allegations Closed in 2015

Anyone can file a complaint, regardless of the person's connection to the incident. A complainant may be the subject of force, a witness to force used on another, a relative of the suspect, or a civilian who, having learned about force used upon another, has concerns about that force. Since anyone can file a complaint, the demographics of complainants may not reflect the demographics of the persons upon whom police are allegedly using force. For example, it is not uncommon for parents to file complaints about the force police allegedly used upon their adult or minor children. The demographics of the parents (the complainants) may be different from those of the children (the subjects of the force). The IPA reviewed the 73 Force Complaints closed in 2015 to determine the ethnicities, ages and genders of the persons on whom unreasonable force was allegedly used. This detailed information was gleaned from police reports, citations, and/or medical records. Illustrations 3-F shows the ethnicities of 78 individuals against whom force was allegedly used, the gender of these persons and their ages.

SJPD Duty Manual Section C 1305 Equality of Enforcement

"People throughout the city have a need for protection, administered by fair and impartial law enforcement. As a person moves about the city, such person must be able to expect a similar police response to the person's behavior -- wherever it occurs. Where the law is not evenly enforced, there follows a reduction in respect and resistance to enforcement.

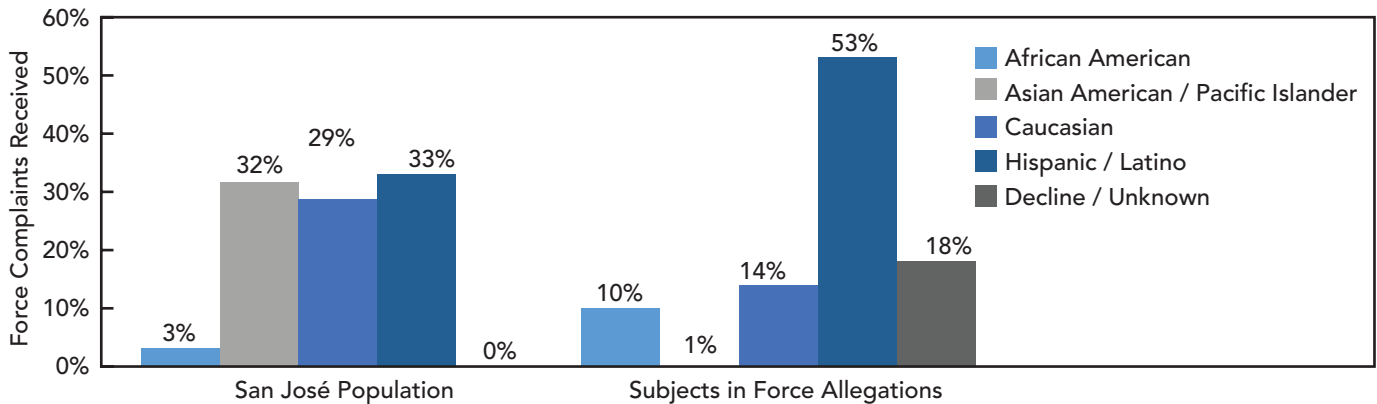
The element of evenhandedness is implicit in uniform enforcement of law. The amount of force or the method employed to secure compliance with the law is governed by the particular situation. Similar circumstances require similar treatment -- in all areas of the city as well as for all groups and individuals. In this regard, Department members will strive to provide equal service to all persons in the community."

Illustration 3-F: Ethnicities of Subjects in Force Allegations Closed in 2015

Ethnicities	Number of persons	Percentage of total persons	Percentage of San José population*
African American	8	10%	3%
Asian American/ Pacific Islander**	1	1%	32%
Caucasian	11	14%	29%
Hispanic / Latino	41	53%	33%
Native American	1	1%	1%
Other	2	3%	2%
Decline/unknown	14	18%	0%
Total persons	78	100%	100%

*Source: U.S. Census Bureau, Census 2010. Information on ethnicities of subjects of alleged force is obtained during the audit process. Not all subjects reside within the City of San José; however all complainants are members of the public.

**For the purpose of this illustration, Asian/Pacific Islanders includes Filipino and Vietnamese.

Illustration 3-G: Force Complaints Closed in 2015 - Subjects of Alleged Force by Ethnicity**Illustration 3-H: Gender of Subjects in Force Allegations Closed in 2015**

Gender	Number of persons	% of total persons
Male	55	71%
Female	23	29%
Total persons	78	100%

Illustration 3-I: Ages of Subjects in Force Allegations Closed in 2015

Age Range	Number	Percent
Under age 20	10	13%
20-29 years	21	27%
30-39 years	16	21%
40-49 years	12	15%
50-59 years	9	12%
60 and over	5	6%
Unknown	5	6%
Total persons	78	100%

III. Data Tracked from Force Complaints

The IPA tracks data from Force Complaints received in 2015 and from our audits of the Department's force investigations completed in 2015 to determine whether any trends or patterns can be detected. The IPA tracks information reported by complainants, as well as information gleaned from the Department's investigation — primarily officer interviews, witness interviews, police

reports and medical records. We gather additional trend information regarding the consistency of the data reported by the complainant versus the data reported by the SJPD officers and/or reflected in written documents.

A. Types of Force Applications

We collect data about the types of force used in order to track the frequency as shown in Illustration 3-J. The total number of types of force alleged is always greater than the total number of Force Complaints because there can be more than one type of force alleged in one complaint; also there can be more than one officer alleged to have used force in one complaint. For example, a complainant may allege that one officer struck him with a baton, and another officer hit him with fists and slammed him against a wall. This example illustrates three different types of force applications against multiple officers in one complaint. Additionally, an allegation of force may focus only on one application of one type of force or it may focus on multiple applications of force. Our review of the data showed that the 136 Force allegations included 185 applications of force.

Force Options: Selected Terms

Force: SJPd Duty Manual section L 2603 describes force options ranging from mere physical contact (touching) to impact weapons, tasers and deadly force. While the Duty Manual also lists *voice commands* as a force option, the use of voice commands does not provide a basis for a force allegation under the misconduct complaint process.

Control Hold: an officer's use of his/her limbs, torso or body weight, to move or restrain a person or to constrict a person's movements.

Takedown: an officer's use of his/her limbs, torso or body weight to force a person against an immovable object (such as a car or a wall) or to force a person to the ground.

Body Weapons: an officer's use of her/her limbs in a manner similar to an impact weapon, e.g, using his/her hands to punch, hit or slap a person.

Illustration 3-J shows that “control holds” was the type of force most frequently alleged in Force Complaints in 2015. The next most frequently alleged type of force was “body weapons.” The use of “takedowns” and batons were, respectively, the third and fourth most frequently alleged types of force. This frequency data matches that of 2013 and 2014.

Reviewing types of force applications over a five-year period shows that the use of control holds, as a percentage of total applications, has been the most frequently alleged type of force. The use of “body weapons” as a percentage of total applications has steadily increased from 15% of total force applications in 2011 to 31% in 2015. The use of canine, which had numbered one per year for the years 2011 to 2014 jumped to six applications in 2015.

Illustration 3-J: Types of Force Applications in Allegations Closed from 2011 through 2015

Types of force	2011		2012		2013		2014		2015	
	Number of Applications	% of Total Force Applications	Number of Applications	% of Total Force Applications	Number of Applications	% of Total Force Applications	Number of Applications	% of Total Force Applications	Number of Applications	% of Total Force Applications
Baton	17	10%	15	7%	10	8%	14	6%	14	8%
Body weapons	26	15%	40	18%	38	29%	66	30%	57	31%
Canine bite	1	1%	1	0%	1	1%	1	0%	6	3%
Car impact	1	1%	1	0%	0	0%	1	0%	0	0%
Chemical agent	0	0%	2	1%	1	1%	4	2%	3	2%
Control hold	72	41%	86	39%	53	40%	74	34%	62	33%
Flashlight	1	1%	0	0%	0	0%	0	0%	0	0%
Gun	3	2%	3	1%	8*	6%	8**	4%	4***	2%
Lifting up cuffs	0	0%	3	1%	1	1%	2	1%	1	1%
Takedown	45	25%	60	27%	19	14%	37	17%	31	17%
Taser	10	6%	10	5%	2	2%	9	4%	8	4%
Other	1	1%	0	0%	0	0%	0	0%	0	0%
Total	177	100%	221	100%	133	100%	216	100%	186	100%

* In 2013, there were 8 gun applications; 2 involved the use of a less-lethal projectile weapon that fired rubber bullets.

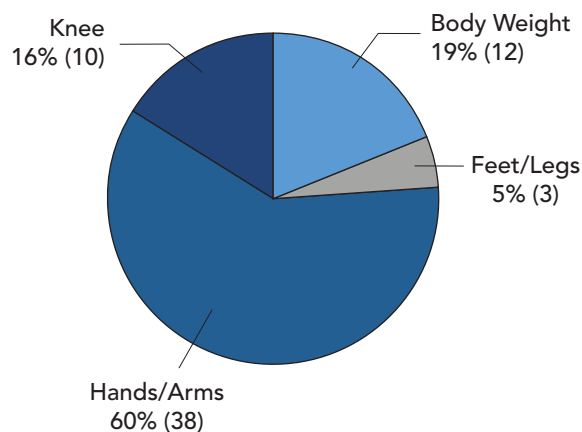
** In 2014, there were 8 gun applications; 5 involved use of a less-lethal projectile weapon.

***In 2015, there were 4 gun applications; 2 involved use of a less-lethal projectile weapon.

1. Control Holds

A control hold is defined as the application of force or pressure by the officer to move, push, pull a person, to keep a person in one position, or to restrain a person's limbs, torso or head. For example, an officer may use a control hold to grab a suspect's arm and to force the arm behind the suspect's back. The hold both prevents the suspect from striking the officer and allows the officer to handcuff the suspect behind his/her back. If a suspect is on the ground, an officer may use control holds to pull his/her arms from underneath the suspect's body and then force them behind his/her back for handcuffing. During this process, the officer may place his/her knee on the suspect's back to prevent the suspect from getting up and fleeing. In 2015, there were 63 control hold applications that formed the bases of Force allegations. Most of these, 60% (38) involved officers' uses of hands.

Illustration 3-K: Control Hold Methods in Force Allegations Closed in 2015

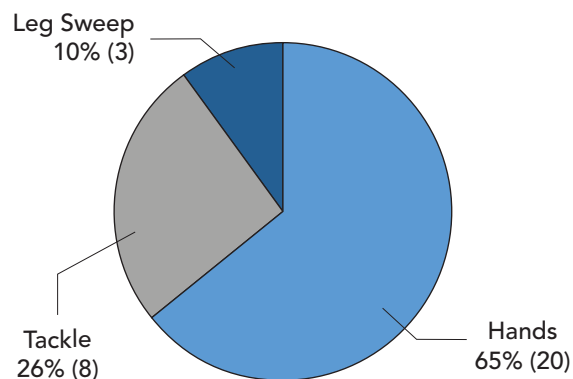


2. Takedowns

A takedown is defined as the application of force or pressure by the officer to force a person against an immovable object, usually a car, a wall or the ground. For example, an officer chasing a fleeing suspect may tackle the suspect to the ground. An officer may force a suspect against a car in order to better control his/her movements during handcuffing.

In 2015, there were 31 takedown applications that formed the bases of force allegations. Most of these, 65% (20) involved officers' uses of their upper limbs (including hands, forearms, and elbows) to push or pull suspects. Complainants alleged that officers tackled suspects in eight cases (26%). The 2015 data does not differ substantially from 2014 data.

Illustration 3-L: Takedown Methods in Force Allegations Closed in 2015

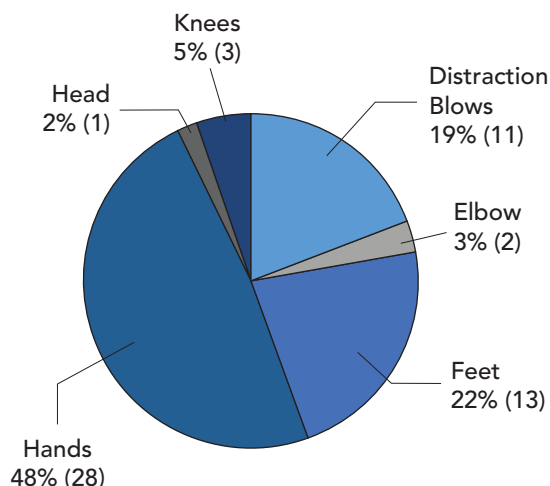


3. Body Weapons

Depending on the circumstances, an officer may need to strike, punch or kick a suspect in order to counter the suspect's force, to gain compliance or to protect the officer or other persons. For example, if a fleeing suspect suddenly turns and throws a punch at the pursuing officer, that officer may respond with a punch or kick to the suspect. SJPd calls these strikes or blows "body weapons" because the officer is using a part of his/her body in a manner similar to an impact weapon (e.g., a baton). In 2015, there were 55 body weapon applications that formed the bases of Force allegations. Most of these, 48% (28) involved officers' use of hands/fists to punch or hit suspects.

In 2013, the IPA began tracking "distraction blows" as a separate category within body weapon applications. The term "distraction blow" generally means a strike, punch or kick delivered by an officer to distract the suspect so the officer can gain compliance. For example, an officer trying to handcuff a suspect who is on the ground with his hands underneath his body, might punch or slap the suspect to distract the suspect's concentration on keeping his hands under his body. Although the primary goal of the distraction blow is to gain compliance from the suspect and not to inflict injuries, injuries are inevitable. Through the audit process, IPA staff reviewed the alleged use of 11 distraction blows by officers in 2015.

Illustration3-M: Body Weapon Methods in Force Allegations Closed in 2015



B. Consistency Between Complainants' and Officers' Accounts of Officers' Use of Force

The IPA staff was interested in examining whether — in general terms — the force alleged by complainants was consistent with the force described by the officers. The descriptions of the force alleged by complainants were obtained mostly through the intake interviews. The IPA obtained descriptions of the officers' use of force from interviews of the subject officers (if any), written police reports and force response reports. Fifty-six percent (56%) of complainants' descriptions of force (44 of 78) were fairly consistent with the force described by the officers. However, in 21% of complaints (16), the force alleged by complainants was significantly inconsistent with the force described by the officers. We were unable to make a determination about consistency in 23% (18) of the complaints. It should be noted that some complainants who lodge force complaints are not the subjects of the force or witnesses to the incident. In those instances, the complainants filed complaints on behalf of others and relied

upon descriptions provided by others. Additionally, in a significant percentage of Force Complaints, the IPA noted that the complainant and/or the subject of the force was likely under the influence of alcohol (24%) and/or drugs (24%) — substances that can impair the ability to accurately perceive and/or recall details.

Illustration 3-N: Consistency between Complainants' and Officers' Accounts of Officers' Use of Force in 2015

	Number of Subjects of Force	% of Total Subjects of Force
Mostly consistent	44	56%
Significantly inconsistent	16	21%
Unable to determine	18	23%
Total Subjects of Force	78	100%

C. Injuries in Force Allegations Closed in 2015

1. Levels of Injury in Force Allegations Closed in 2015

Illustration 3-O provides data about the levels of injuries alleged by complainants. We tracked six categories of injury — Level I, Level II, Level III, “none,” pre-existing,” and “unknown.” Level I reflects the most serious injuries and Level III reflects the least serious injuries. Examples of the types of injuries are shown in Illustration 3-P.

Illustration 3-O: Levels of Injury in Force Allegations Closed in 2015

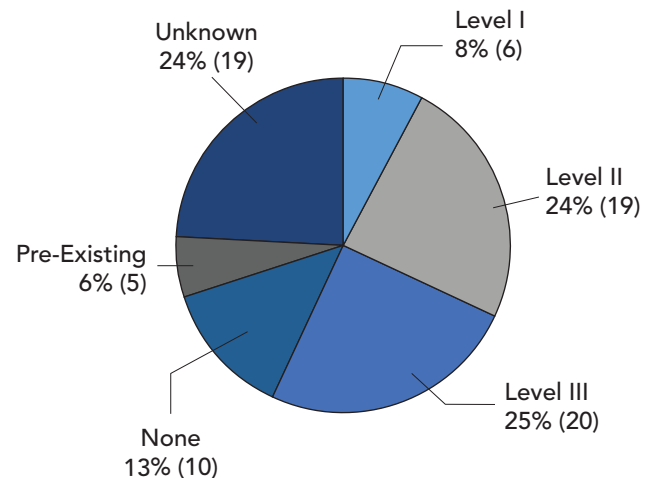


Illustration 3-P: Levels of Alleged Injuries

Level I	Level II	Level III
Fatal injuries	Minor bone broken	Bruising
Major bone broken	Major laceration requiring stitches	Minor laceration
Compound fracture	Minor concussion	Minor abrasion
In-patient hospital stay required	Brief loss of consciousness	
Blood loss requiring transfusion	Chipped or lost tooth	
Major concussion	Major abrasion	
Longer than brief loss of consciousness	Sprain	
Debilitating chronic pain		
Damage to organ (other than skin)		
Effective Tasings		

Data from Force Complaints closed in 2015 show that allegations of Level III injuries accounted for 25% of incidents alleging force. In 13% of complaints that alleged force there were no resulting injuries. The level of injury was unknown for a substantial percentage (24%) of complainants alleging force.

2. Consistency between Injuries Alleged and Supporting Medical Records

The IPA tracked whether the injuries described by the complainants were consistent with the injuries reflected in medical reports and records. In 32% (25 of 78) of the complaints, the injuries described by complainants were consistent with the injuries reflected in medical reports/records. In 44% (34) of the complaints, there were no supporting medical records, and thus a determination of consistency could not be made. The lack of supporting medical records does not necessarily negate an injury. Medical records may not be available if the complainant refused to sign an authorization for release of medical records or if the complainant was not the person injured and therefore not authorized to receive another person's medical records. In eight percent of the complaints (6), the injuries described by the complainants were significantly inconsistent with the injuries described in their medical reports/records.

Illustration 3-Q: Consistency between Injuries Alleged and Supporting Medical Records in 2015

Level of Consistency between Injuries Alleged and Supporting Records	Number	% of Total Audited Force Complaints
Mostly consistent	25	32%
N/A	10	13%
Significantly inconsistent	6	8%
Unknown – complainant not the subject of the force; injury description not provided	3	4%
Unknown – no medical records	34	44%
Total Number of Force Complaints	78	100%

3. Location of Force Applications in Allegations Closed in 2015

Illustration 3-R provides data showing the parts of the body that complainants reported were impacted by the use of force. The IPA tracks this data to determine if any trends exist in Force Complaints. The IPA captures data for five areas of the body: head, neck, torso, limbs, and unknown. The force alleged in a complaint can impact more than one body area. The IPA closely monitors the number of allegations of head injuries because force to the head has the greatest potential to cause serious injury. Over the past five years, alleged force applications to the head as a percent have ranged from 24% in 2015 and 2014 to 20% in 2011, 2013 and 18% in 2012.

Illustration 3-R: Locations of Force Applications in Allegations Closed in 2015

Location of Force Applications	#	%
Head	35	24%
Neck	7	5%
Torso	42	29%
Limbs	59	40%
Unknown	4	3%
Total	147	100%

IV. Force Complaints and Allegations Closed

A. SJPD Findings for Force Allegations Closed in 2015

Illustration 3-S provides information about Department findings for each of the 683

Force allegations closed between 2011 through 2015. Over this five-year period, only two Force allegations were sustained – one in 2011 and one in 2014. Each year, the Department closed the majority of the Force allegations with findings of “Exonerated,” meaning that their investigations determined that the level and the type of force used by the officers were reasonable and justified. The percentage of allegations closed as “Exonerated” range from a low of 67% in years 2011 and 2012 to a high of 84% in 2015. The percentage of Force allegations closed as “Not Sustained” has decreased steadily from 2011 (9%) to 2015 (0%).

Illustration 3-S: SJPD Findings for Force Allegations Closed – Five-Year Overview (2011 – 2015)

Disposition of Force Allegations	2011		2012		2013		2014		2015	
	#	%	#	%	#	%	#	%	#	%
Sustained	1	1%	0	0%	0	0%	1	1%	0	0%
Not Sustained	10	9%	7	4%	0	0%	4	2%	0	0%
Exonerated	76	67%	107	67%	75	81%	141	77%	114	84%
Unfounded	16	14%	23	14%	14	15%	24	13%	12	8%
No Finding	5	4%	12	8%	4	4%	5	3%	8	6%
Complaint Withdrawn	1	1%	3	2%	0	0%	6	3%	1	1%
Other	4	4%	7	4%	0	0%	1	1%	1	1%
Total	113	100%	159	100%	93	100%	182	100%	136	100%

B. IPA Audit Determination

The IPA is mandated to audit all complaints with Force allegations. In 2015, the IPA audited 73 Force Complaint investigations. The IPA agreed with the Department in 73% of these cases after a first review. In 16% of the Force Complaints, the IPA requested additional documentation, additional interviews or evidence, and/or re-analyses of the facts and supporting rationales. In 11% of Force Complaints, the IPA concluded that the Department investigations were not complete or objective (“Disagreed”) or the IPA closed the case despite having some reservations about the Department’s investigation and/or analysis (“Closed with Concerns”).

Illustration 3-T: IPA Audit Determination of Force Complaints Closed in 2014 and 2015

IPA Audit Determination	Explanation of IPA Audit of the IA Investigation of Force Complaints	2014		2015	
		Audits	%	Audits	%
Agreed	IPA audit determined that the IA investigation was thorough, complete and objective.	49	(86%)	53	(73%)
Agreed After Further	The IPA requested and reviewed supporting documentation from IA or requested IA re-examine its analysis.	6	(11%)	12	(16%)
Closed with Concerns	IPA questioned the IA investigation and/or IA analysis	1	(2%)	3	(4%)
Disagreed	IPA audit concluded that the IA investigation was not thorough, fair and objective.	1	(2%)	5	(7%)
	Total Force Complaints Audited	57	(100%)	73	(100%)

Illustration 3-T reflects that, in 2015, the IPA agreed with the Department's investigations in 73% of the Force Complaints after the first review. This was a decrease from 2014 where we initially agreed in 86% of audits of Force Complaints. The percentage of Force Complaints in which the IPA disagreed or had concerns about the Department's investigation and/or analysis rose from 4% in 2014 to 11% in 2015.

C. Disagreements in Force Complaints Closed in 2015

Transparency is critical to maintaining the public's trust in the work of the IPA office. The better that the public understands our role in the complaint and audit processes, the more willing the public will be to seek the services of our office, should the need arise. However, the laws governing police officer confidentiality limit our ability to be transparent. For example, we are prohibited by law from revealing to the public the identities of complainants and the identities of officers investigated for alleged misconduct. We also cannot disclose the discipline, if any, imposed upon officers deemed to have engaged in misconduct. A breach of confidentiality is a serious matter that can result in criminal prosecution.

Unfortunately, because we need to keep the detail of our work on individual cases confidential, we are unable to show complainants exactly how we exercised our independent judgement in assessing the quality of the IA investigation. A sample of our closing letter is reproduced in Appendix D. In an effort to promote transparency about our audit process, while strictly adhering to the requirements of confidentiality, this Report presents summaries of all of force complaint cases

that our office audited in 2015, in which we disagreed. The identities of the complainants and subject officers are omitted.

While we acknowledge that the number of disagreed cases may seem relatively small, our goal in providing this information about these audits is to ensure that the public understands that independence and objectivity are an integral part of the work of the Independent Police Auditor. Our disagreement with these cases reflect our analysis of one and only one core element – *was the investigation fair, thorough, complete and objective?* The cases that we audited in 2015 and that are described in the following summaries, demonstrate that the IPA's civilian oversight audit process, while it can always be improved, does work.

Case #1

This is a fatal officer-involved shooting incident. An SJPD officer responded to a report of a car break-in. A witness provided a description and license plate of the suspect's car. This officer spotted the suspect's car and pursued it. During the pursuit, the officer stated that the suspect was armed with a large semi-automatic handgun. Eventually the car was located and several officers approached. The suspect exited the car and allegedly ran forward toward the officers and reached toward his waistband. Two officers fired their weapons and killed the suspect. The autopsy showed, among other gunshot wounds, three entrance gunshot wounds to the suspect's back.

SJPD's Conclusion: The officers' conduct was within policy.

IPA's Disagreement: The investigation did not acknowledge and address two important issues: (1) the absence of a gun on the suspect or in his car and a lack of evidence that the suspect disposed of a large handgun during the daytime, (2) the officers who fired their weapons stated that the suspect was facing towards them and approaching them but the autopsy showed three entrance wounds to the suspect's back. In the absence of an explanation about these two issues, the investigation was not thorough or complete.

Case #2

Complainant was detained by an officer in a parking lot. Soon after the complainant starting talking with the officer, he was taken to the ground by the officer and arrested for resisting a peace officer. The interaction between them was captured on surveillance video. The complainant made several allegations about officer misconduct. The IPA concerns focused solely on the use of force allegation.

SJPD's Conclusion: The take-down used by the officer was appropriate because the complainant pulled away from the officer's grasp. The investigation showed that the complainant held a wallet in his hand and the officer was worried that a weapon might be contained inside the wallet.

IPA's Disagreement: We were concerned about the analysis supporting the conclusion that the force depicted in the surveillance video was objectively reasonable. Duty Manual Section L 2602 lists three "important factors to be considered when deciding how much force can be used to apprehend or subdue a subject include, but are not limited to, the **severity of the crime** at issue,

whether the subject poses **an immediate threat** to the safety of the officers or others and whether the subject is **actively resisting arrest or attempting to evade arrest** by flight." (Emphasis added.) The investigation did not appear to apply these three important factors objectively and discrepancies were resolved in favor of the officer.

Case #3

Complainant stated that he was waiting for his friend after a concert. Officers came by and told him to leave the building without his friend. Officers began escorting the complainant out of the area. The complainant alleged that offices then pushed him in the back, pushed him to the ground and held him down. Then the officers picked him up and escorted him outside. He was not arrested or cited. Among other things, the complainant alleged that the force used was excessive and caused injury.

SJPD's Conclusion: The officers' actions were within policy. A small number of officers needed to clear the building and many in the large crowd were intoxicated, aggressive and combative. At one point, the officers felt surrounded by a hostile crowd. Officers escorting complainant fell to the ground, and the complaint went to the ground also. It was not clear whether all or some of the men were pushed, tripped or lost their balance. The complainant was not cited or arrested because of the lack of resources to process such an arrest.

IPA's Disagreement: The officers had no explanation for the complainant's injuries which were documented in medical reports and photographs. The investigation appears

to have speculated that the injuries were from fighting at the concert, but there was no evidence that the complainant had been involved in a fight. Two officers were inconsistent in their documentation of the force each used. These inconsistencies were not discussed in the investigation. The IPA believed that the investigation was biased in favor of the officers.

Case #4

Complainant stated an officer contacted her at her home regarding a disturbance. He was allegedly verbally abusive toward her and then left. The officer returned to the residence an hour later; during the second interaction, the officer allegedly punched the complainant in the face. She was then transported to the hospital for medical treatment.

SJPD's Conclusion: The officer's use of force was proper. The officer grabbed the complainant by the arm to prevent her from going inside her home. The complainant fell because she pulled away from the officer and was highly intoxicated. The investigation showed that the complainant lacked credibility because she did not use the same words each time when describing the officer's actions.

IPA's Disagreement: The complainant described the officer's actions using slightly different words at the scene, when she sought medical care, and when she filed the complaint. However the distinction between the words were not substantial enough as to discredit the essence of her allegation. Contemporaneous audio records called into question the officer's description of the complainant as *highly intoxicated*. Further analysis whether the complainant's injuries

were more consistent with a fall to the ground or a punch to the face should have been conducted. All inconsistencies and doubts were improperly resolved in favor of the officer.

Case #5

An off-duty officer was in his personal vehicle and stopped at a traffic light, when he was rear-ended. The officer followed the car a substantial period of time. When the driver exited the car, the subject officer attempted to restrain her by using force. Among other things, complainants alleged that the officer's use of force was excessive.

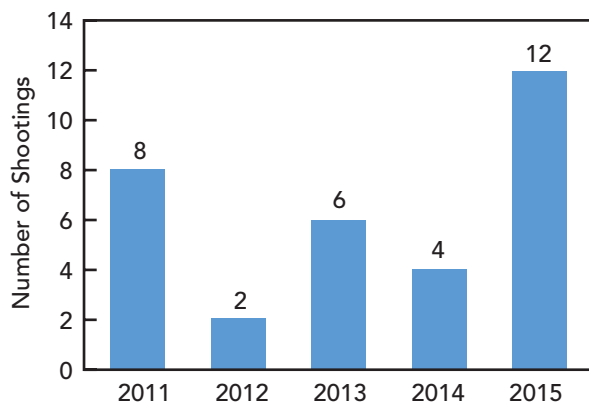
SJPD's Conclusion: The officer's force was within policy. The investigation showed the interaction as one in which the driver ignited the situation by exiting the car and assaulting the officer. The investigation showed that the incident was a rapidly-evolving dangerous situation.

IPA's Disagreement: The investigation failed to provide any analysis on whether the officer should have followed the suspect after the "hit and run." The investigation did show that the officer – off-duty and not in uniform – followed a suspect because he wanted her arrested. There was no "emergency" requiring that he follow her. There was no discussion of specific Duty Manual sections identified by the IPA as relevant the incident the day prior to the officer's interview. The investigation of the complaint focused primarily on the officer's actions once he exited his car. The investigation should have more critically examined the officer's action prior to that moment. All doubts and inconsistencies were resolved in favor of the officer.

Chapter Four: Officer-Involved Shootings in 2015

In 2015, the San José Police Department had twelve officer-involved shootings. Six of the shootings were fatal. Two others were hit shootings with injury and the remaining four were non-hit shootings. In this chapter we discuss statistics about officer-involved shootings in 2015, the San José Police Department's deadly force policy, the shooting review process and the IPA's mandated responsibilities.

Illustration 4-A: Officer-Involved Shootings 2011-15



I. The Department's Deadly Force Policy

The legal foundation for the use of force is found in California Penal Code section 835a:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.”

Such force must be in accordance with the legal standard that all force used must be objectively reasonable. The Duty Manual states:

“Objectively reasonable force is that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force.” (Duty Manual section L 2602.)

Finally, Department policy prescribes the circumstances when an officer may use lethal force, namely a firearm:

“An officer may discharge a firearm under any of the following circumstances . . . When deadly force is objectively reasonable in self-defense or in defense of another person's life.” (Duty Manual section L 2638.)

II. The Department's Investigation Process

Every officer-involved shooting that results in death is subject to an investigation and review process that is depicted in Illustration 4-G. As the illustration indicates, the Department's Homicide Unit conducts a criminal investigation which, when completed, is submitted to the Santa Clara County District Attorney. Historically, the District Attorney's office presented deadly force cases to a grand jury, however, the current District Attorney, Jeffrey Rosen, has had a policy of reviewing cases and then making the determination internally whether the officer-involved shooting was a crime. Regardless, as of January 1, 2016, a grand jury is prohibited from inquiring into any officer-involved shooting or “use of excessive

force.” (California Penal Code section 917(b).) The new statute does not make shooting reviews any more transparent, but the current District Attorney, to his credit, releases a public report explaining his office’s charging decision.

The Duty Manual requires that the Internal Affairs Unit “shall conduct and investigation . . . (w)hen injury or death results from police use of deadly force.” (Duty Manual section L 2607.) This is an administrative investigation to determine whether the use of force was within Department policy.

The Department also convenes a shooting review panel to examine whether the incident reveals that a possible training, equipment or policy issue exists requiring closer examination. In our *2014 IPA Year End Report*, we addressed our serious concern that the shooting review panels were not occurring soon and frequently enough to be effective:

The purpose of the shooting review panels is to determine whether, given the circumstances of the incident, any training or equipment needs exist and whether any changes to SJPd policies are warranted. In 2011, the IPA voiced concerns that these review panels were not convened until months or even years after the incidents, thereby defeating their purpose. In 2012, SJPd convened eight review panels — a significant improvement over the prior two years in which no panels were held. The Department held two panels in 2013 and four panels in 2014. *It is essential that these panels be convened shortly after the incidents so that SJPd can quickly implement changes, if any, to policies and procedures.* (Emphasis added.)

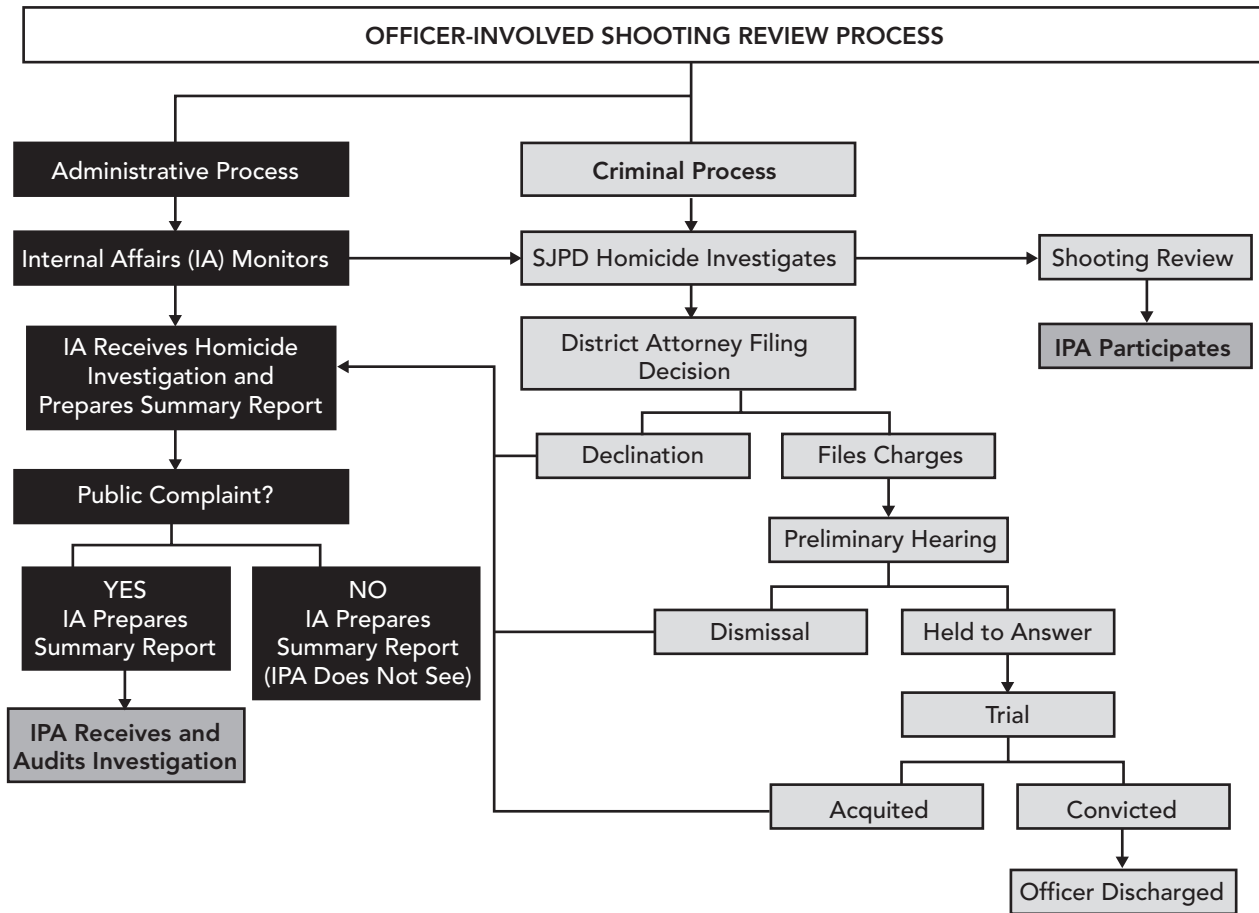
We are pleased that the Department amended its Duty Manual in 2015 and now requires more timely shooting review panels:

The Internal Affairs Unit Commander will convene the Officer-Involved Incident Training Review Panel within 90 days of the incident to determine and recommend any training that should be provided as a result of the incident. This meeting shall occur even though the District Attorney’s Office has not issued its final report. Since the City Attorney participates in the OIS Training Review Panel, these sessions are subject to the attorney-client privilege and thus the discussions are confidential.

Officer-Involved Incident Training Review Panel Presentation Homicide Unit Investigators will present a factual synopsis of the incident and investigation to the Panel for the purpose of reviewing Department policy and procedures, training and tactics, officer safety, equipment and communication. (Duty Manual section L 2646.)

Since the implementation of the new policy, the Department has been holding Officer Involved Incident (OII) review panels within ninety days of the incident. The IPA and the Assistant IPA attend the OII review panels and can ask questions about training, procedures and equipment. These sessions provide the Office of the IPA with valuable information that can serve as the foundation for future policy recommendations. In 2015, the SJPd convened four OII review panels and examined six officer-involved shootings.

Illustration 4-B: Officer-Involved Shooting Review Process



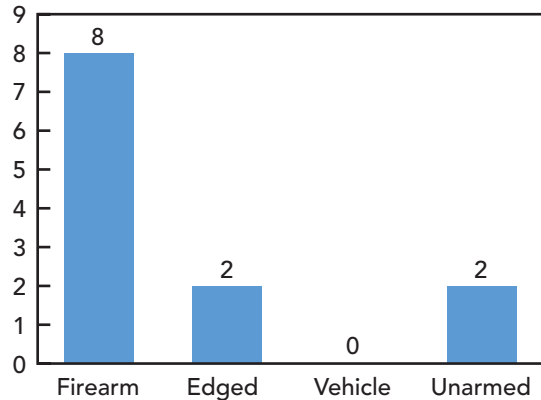
III. Officer-Involved Shooting Statistics

Illustration 4-C: Officer-Involved Shootings - 2015

Case	Ethnicity	Person Armed?	Mental Illness History?	CIT* at Scene?	Prior Criminal Record	Police Weapons Used	Outcome
1	African American	Knife	Unknown	No	Yes	Handgun	Fatal
2	White	Rifle	Yes	Yes	Yes	AR-15 Rifle	Fatal
3	Hispanic	Handgun	Unknown	Yes	Yes	Handgun	Non-hit
4	Hispanic	Handgun	Unknown	Yes	Yes	AR-15 Rifle	Non-hit
5	Filipino	Knife	Unknown	No	Yes	Handgun	Fatal
6	African American	Shotgun & Handgun	Yes	Yes	Yes	AR-15 Rifle & Handgun	Non-hit Self Inflicted
7	Hispanic	Handgun	Unknown	No	Yes	AR-15 Rifle	Fatal
8	Hispanic	No	Unknown	Yes	Yes	Handgun	Injured
9	White	Attempting to remove shotgun from patrol vehicle	Yes	Yes	No	Handgun	Injured
10	Hispanic	Two Handguns	Unknown	Yes	Yes	.308 Rifle	Fatal
11	Filipino	Rifle & Handgun	Yes	No	No	Handgun	Non-hit
12	Hispanic	No	Unknown	Yes	Yes	Handgun	Injured

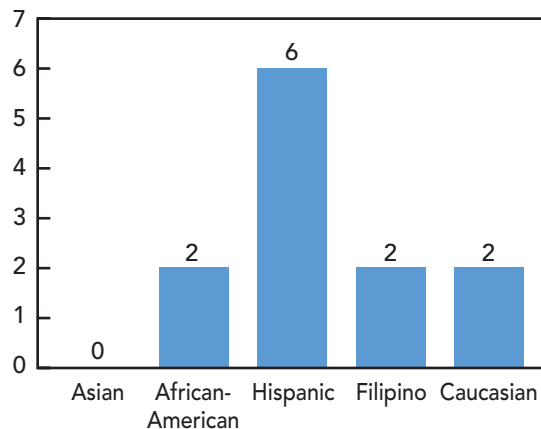
The majority of the persons shot by San José were armed with firearms. Two persons were armed with edged weapons and two were unarmed:

Illustration 4-D: Suspect Weapon Used - 2015



According to data supplied by the SJPd, in 2015, Hispanic suspects were shot in six, or 50%, of OIS incidents. The other six officer-involved shootings involved two African Americans, two Caucasians and two Filipinos.

Illustration 4-E: Suspect Ethnicity - 2015



In one-third (4) of the officer-involved shootings, the person who was shot had a history of mental illness. In each of the four incidents, the person was either armed with a firearm or attempting to arm himself. In the other eight incidents, the police department reported not knowing whether the person had a developmental or mental health history.

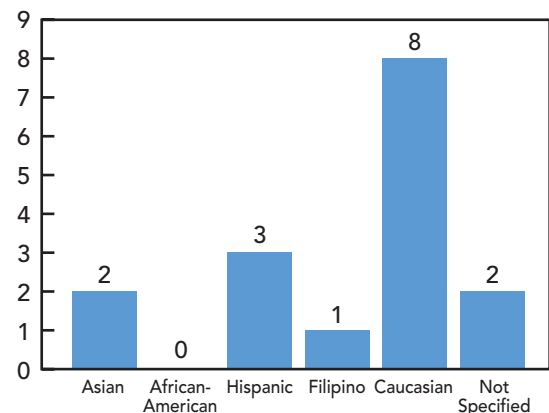
Recently, the Ruderman Family Foundation published a study where it concluded that “it is safe to say that a third to a half of all use-of-force incidents involve a disabled civilian.”²¹

It is important that the Department gather as much information as possible about a person’s history and whether the person was in some form of a state of distress at the time force was used in order to get a proper understanding of the role of disability and mental illness in police encounters. This will help the Department refine its policies and de-escalation training and hopefully reduce the likelihood of resorting to force during encounters with the mentally ill.

Sixteen officers fired weapons in the twelve OIS incidents that occurred in 2015.

Officer ethnicity is based on voluntary self-description, thus we have ethnicity information on all but two officers. Eight officers (50%) involved in an OIS were white. Three officers (19%) were Hispanic, two (12%) were Asian and one officer (6%) self-described as Filipino.

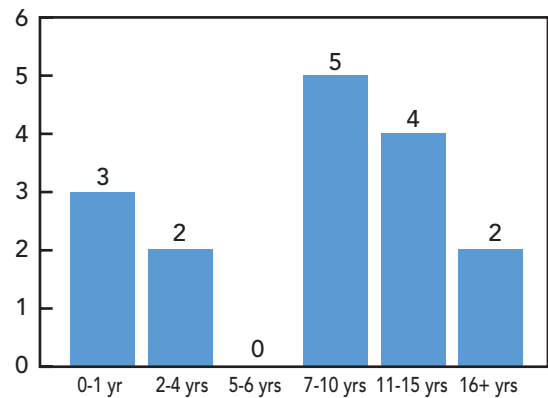
Illustration 4-F: Officer Ethnicity



²¹ David M. Perry and Lawrence Carter-Long, “The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability,” March 2016. http://www.rudermanfoundation.org/wp-content/uploads/2016/03/MediaStudy-PoliceDisability_final-final1.pdf

The experience level of the sixteen involved officers varied. Three officers had less than two years of experience and two officers had two to four years of experience.

Illustration 4-G: Involved Officer Experience - 2015



The majority of involved officers had more than seven years of experience. In one incident, the two involved officers each had less than three years of experience.

IV. Role of the Independent Police Auditor in Shooting Incidents

The extent of the IPA’s role and responsibilities in connection with an officer-involved shooting depend upon whether a member of the public has filed a complaint about the incident. As shown in Illustration 4-H, if a member of the public files a complaint about an officer-involved shooting incident, the role of the IPA in reviewing that incident is more extensive because the IPA will audit the Department’s investigation of the incident.²² The IPA or the Department received complaints from the public in only three of the twelve officer-involved shooting incidents that took place in 2015.

Illustration 4-H: Role of IPA in Officer-Involved Shooting Incidents

All Officer-Involved Shooting Incidents	Officer-Involved Shooting Incident Where a Public Complaint is Filed
IPA is notified of incident, and can respond to scene and be briefed by IA Commander.	IPA is notified of incident, and can respond to scene and be briefed by IA Commander.
IPA can participate in the shooting review panel. IPA is provided with pertinent documents to prepare for panel. The purpose of the panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted. The panel does not determine whether the officer acted within SJPD policy.	IPA can participate in the shooting review panel. IPA is provided with pertinent documents to prepare for panel. The purpose of the panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted. The panel does not determine whether the officer acted within SJPD policy.
IPA NOT PRESENT	IPA can attend interviews of witnesses and any subject officers conducted by IA.
IPA CANNOT AUDIT	The Department investigation determines whether the officer acted within SJPD policy. The IPA audits the Department’s investigation to determine whether it was fair, thorough, complete and objective.
IPA CANNOT APPEAL	IPA can appeal the Department’s determination to the City Manager.

²² The SJPD may initiate an internal investigation of the officer’s conduct. However, the IPA is not permitted to review or audit Department-Initiated Investigations (DII).

Chapter Five: Sustained Findings in 2015

A finding is sustained when the San José Police Department concludes that the Department's investigation disclosed sufficient evidence to clearly prove that the alleged misconduct occurred. Providing the public with information about such sustained findings is an important tool for the public to have a transparent understanding both about officers conduct as well as the complaint investigation process. This chapter summarizes such sustained findings.

I. Overview of Sustained Findings

In 2015, the Department investigated and closed 353 complaints containing 892 allegations. Of these allegations, the Department closed 23 (4%) with findings of sustained.

Twenty of the 32 sustained findings in 2015 (63%) were for Procedure violations of the Duty Manual. The Duty Manual contains the rules and procedures that all SJPD officers must follow. The Duty Manual is available to public on the SJPD website and on the IPA website: <http://www.sanJoseca.gov/ipa>. The remaining 12 sustained findings were for misconduct related to Courtesy (3), CUBO (7), Search/Seizure (1), and Bias-Based Policing (1). The Department sustained none of the 136 Force allegations that it investigated.

Illustration 5-A: Allegations Closed by the Department in 2015*

Type of Dispositions	Dispositions of Allegations								Total	%
	AD	BBP	C	CUBO	F	ND	P	SS		
Sustained	0	1	3	7	0	0	20	1	32	4%
Not Sustained	0	1	75	0	0	1	44	3	124	14%
Exonerated	75	0	12	0	114	0	175	48	424	48%
Unfounded	6	47	39	21	12	0	80	8	213	24%
No Finding	9	4	14	1	8	0	17	5	58	7%
Complaint Withdrawn	0	1	6	0	1	0	3	0	11	1%
Other	5	0	2	3	1	0	14	5	30	3%
Total Allegations	95	54	151	32	136	1	353	70	892	100%

*Excludes Department-Initiated Investigations

II. Officer Discipline for Sustained Findings

Officers who receive sustained findings are subject to discipline by the San José Police Department (SJPD). By state law, the names of the officers and the discipline imposed upon them are confidential, and

cannot be disclosed to anyone, not even the complainants. The Department does not disclose to the IPA the discipline that is imposed on an officer with a sustained complaint. What we can reveal are the number of officers who were disciplined, and the types of discipline imposed in 2015.

There were three cases with serious discipline. Two officers were terminated and one officer was suspended for 10 hours in response to seven sustained allegations of Conduct Unbecoming an Officer (CUBO) in 2015. An officer who receives a sustained CUBO finding is deemed to have engaged in conduct (on or off duty) that reflects

adversely on the Department, and/or has engaged in conduct that a reasonable person would find to be unbecoming an officer.

According to SJPD data, sixteen (16) officers received training and/or counseling, two received documented oral counseling, and none were given a letter of reprimand.

Illustration 5-B: Officer Discipline Imposed by the Department in 2014 and 2015

Type of Discipline	2014		2015	
	# of Times	% of All Discipline	# of Times	% of All Discipline
Training	0	0%	5	23%
Training & Counseling	20	69%	11	50%
All Training and/or Counseling	20	69%	16	73%
Documented Oral Counseling (DOC)	6	21%	2	9%
DOC and Training	0	0%	1	5%
Letter of Reprimand (LOR)	1	3%	0	0%
All DOC & LOR	7	24%	3	14%
10-Hour Suspension	0	0%	1	5%
20-Hour Suspension	1	3%	0	0%
40-Hour Suspension	1	3%	0	0%
All Suspensions	2	7%	1	5%
Settlement Agreement	0	0%	0	0%
Termination	0	0%	2	9%
Total Discipline Imposed	29	100%	22	100%

III. Experience Levels of Officers with Sustained Findings

Of the 20 officers who received sustained findings in 2015, ten of them had more than 16 or more years of experience. This means that 50% of the officers with proven misconduct were the most experienced ones on the force. None of the officers with the

least law enforcement experience (under 5 years) had proven misconduct in 2015. An officer with 11 to 15 years of law enforcement experience received the lone sustained finding of Bias-Based Policing. Of the 20 sustained findings for Procedure allegations, 10 (50%) were against officers who had more than sixteen years of experience.

Illustration 5-C: Years of Experience of Officers with Sustained Findings in 2015

Years of Experience	Total Officers with Sustained Findings	% of Officers with Sustained Findings	Type of Allegations						Total Sustained Allegations	% of Sustained Allegations
			BBP	C	CUBO	F	P	SS		
0-1+	0	0%	0	0	0	0	0	0	0	0%
2-4+	0	0%	0	0	0	0	0	0	0	0%
5-6+	2	10%	0	0	3	0	1	0	4	13%
7-10+	2	10%	0	1	0	0	3	0	4	13%
11-15+	6	30%	1	1	0	0	6	1	9	28%
16+	10	50%	0	1	4	0	10	0	15	47%
	20	100%	1	3	7	0	20	1	32	100%

Legend of Allegations:

BBP: Bias-Based Policing; C: Courtesy; CUBO: Conduct Unbecoming an Officer; F: Force; P: Procedure; SS: Search or Seizure

IV. Five-Year Overview of Sustained Findings (2011-2015)

Over the last five years, there have been 167 sustained findings. Procedure allegations (117) accounted for 70% of the sustained findings. CUBO (21) and Courtesy (17) allegations were the basis, respectively, for 13% and 10% of the sustained findings,

followed by Search/Seizure (6) and Arrest/Detention (2). There were just two sustained findings for Force allegations—one in 2011 and one in 2014—and one sustained finding for a Neglect of Duty allegation. In 2015, IA sustained the first ever Bias-Based Policing allegation.

Illustration 5-D: Types of Sustained Findings by the Department (2011-2015)*

Year	Types of Allegations								Total
	AD	BBP	C	CUBO	F	ND	P	SS	
2011	1	0	5	6	1	1	27	3	44
2012	1	0	0	0	0	0	12	1	14
2013	0	0	3	5	0	0	27	0	35
2014	0	0	6	3	1	0	31	1	42
2015	0	1	3	7	0	0	20	1	32
	2	1	17	21	2	1	117	6	167

Legend of Allegations:

AD: Arrest/Detention; BBP: Bias-Based Policing; C: Courtesy; CUBO: Conduct Unbecoming an Officer; F: Force; ND: Neglect of Duty; P: Procedure; SS: Search or Seizure

*Excludes Department-Initiated Investigations

The number of sustained findings reached a low of 14 in 2012. In the following two years, sustained findings jumped dramatically—in 2013 there were 35, and in 2014 sustained findings rose to 42. However, in 2015, sustained findings dropped to 32.

From 2013-2015, officers with the longest tenure in law enforcement received a majority of the sustained findings, most of which were for procedural misconduct. In 2013, officers with eleven or more years of experience

accounted for 85% of the sustained findings. Similarly, in 2014, officers with eleven or more years of experience received 63% of the sustained findings. In 2015, these officers received 80% of sustained findings. (See Illustration 5-E).

Over the last five years, discipline was imposed on 127 officers. Discipline has ranged from the relatively minor—training and/or counseling, to the severe—suspension and termination. (See Illustration 5-F).

Illustration 5-E: Years of Experience of Officers with Sustained Findings (2011-2015)

Years of Experience	2011	2012	2013	2014	2015	Total Number of Officers
0-1+	8	2	1	5	0	16
2-4+	6	1	0	2	0	9
5-6+	1	1	0	4	2	8
7-10+	6	3	2	1	2	14
11-15+	6	3	6	7	6	28
16+	3	1	11	13	10	38
	30	11	20	32	20	113

Illustration 5-F: Discipline Imposed on Officers by the Department (2011-2015)*

Type of Discipline	2011 # of Times	2012 # of Times	2013 # of Times	2014 # of Times	2015 # of Times	Total # of Times
Training and/or Counseling	19	9	15	20	16	79
Documented Oral Counseling and/or Training	10	2	2	6	3	23
Letter of Reprimand	1	0	2	1	0	4
10-Hour Suspension	3	0	0	0	1	4
20-Hour Suspension	2	0	0	1	0	3
40-Hour Suspension	1	0	0	1	0	2
120-Hour Suspension	0	0	1	0	0	1
160-Hour Suspension	0	0	1	0	0	1
Termination**	6	0	2	0	2	10
Total Number of Officers Disciplined	42	11	23	29	22	127

*Data provided by SJPD

** Included Transfers, Resignations, Settlement Agreements, and Terminations

In our 2014 Year End Report, the IPA raised the question of whether or not the Department is disciplining its officers in a consistent manner based on comparing discipline statistics on sustained CUBO allegations from years 2010 and 2014 to discipline imposed in years 2011 and 2015. However, because the discipline of officers is confidential and not even disclosed to the IPA, it is difficult, if not impossible, to critically examine this issue.

- In 2010, there were five sustained findings for CUBO allegations; no officers were terminated.
- In 2014 there were three sustained findings for CUBO allegations; no officers were terminated.
- In 2011 there were six sustained findings for CUBO allegations; there were six officer terminations, transfers, resignations, or discipline resolved by settlement agreements.
- In 2015, there were seven sustained CUBO allegations in three complaints. All three resulted in terminations or suspensions.

V. Summaries of Sustained Findings in 2015

The IPA office believes that we should be as transparent as lawfully permissible about the civilian oversight process. One way to promote transparency is by providing to the public summaries of the incidents that gave rise to the sustained findings. Because state law prohibits the disclosure of the identities of the complainants and the subject officers, we have deleted from the summaries the names of the involved parties.

Please note: The sustained finding summaries were audited and closed by the IPA office only after the Department closed its investigations and issued its findings. However, some of these sustained findings may have been modified (changed or removed) as a result of various appeals hearings or negotiations (e.g. Skelley hearings, civil service appeals, arbitration or settlement) between the subject officers and the City of San José. Because our office is not privy to these hearings or negotiations, any subsequent modifications to the sustained findings are not reflected in this Report.

Case #1

SJPD officers responded to a domestic dispute call. The female told the officers that she wanted to leave the house to avoid further conflict with her husband for the evening. The subject officer offered to drive her to a hotel. The officer arrived at her hotel room and allegedly sexually assaulted her.

Rule: Duty Manual section C 1404 states that “a member’s conduct, either on or off duty, which adversely reflects upon the Department will be deemed to be conduct unbecoming an officer.”

Finding: Three CUBO allegations are SUSTAINED.

Case #2

An officer attempted to conduct a pedestrian stop on a bicyclist for Vehicle Code violations. The bicyclist refused to stop and back-up officers were called. The initial officer eventually detained and handcuffed the bicyclist by the time the second officer arrived. However, the subject spontaneously

stood up and slipped one hand out of the handcuffs and attempted to flee custody. The second officer gave the subject commands to stop, but the subject refused. The second officer attempted to grab the subject's clothing, but was unsuccessful. That officer then struck the subject with his baton four times, after which the subject was taken into custody. The officer, however, did not complete a Force Response Report.

Rules:

- Duty Manual section R 1574 states that a Force Response Report "will be completed by an officer using any reportable force..."
- Duty Manual section L 2644 defines reportable force as "any incident in which officers, either on or off duty, exercise their police powers and use deadly force or any force option including physical force in conformance with L 2603." The only exception to reportable force is "the use of a firm grip control which does not result in injury, the appearance of injury or complaint of pain; or that force reasonable to overcome resistance due to physical disability or intoxication, which does not result in injury, the appearance of injury or complaint of pain."

Finding: Procedure allegation (failure to complete a Force Response Report) is SUSTAINED.

Case #3

A citizen observed an officer drive with a woman in his patrol car and drop her off at a building downtown. The citizen filed this complaint, alleging that unless the woman was participating in a ride-along, it is improper for an on-duty officer to transport a civilian in a patrol car.

Rules:

- Duty Manual section C 1432 states that "Department members will not devote any of their on-duty time to any activity that does not relate to a police function."
- Duty Manual section L 1211 states that "officers will respond to the call immediately unless there is a need/reason to delay response."
- Duty Manual section L 1807 states that "officers may leave an assigned beat whenever any of the following conditions are met: when assigned or authorized by competent authority, to aid and assist, when performing a follow-up process or pursuing a suspect, [or] when ending a tour of duty."

Findings:

- **Procedure allegation (devoting on-duty time to an activity that does not relate to a police function) is SUSTAINED.**
 - **Procedure allegation (delay in response to call for service) is SUSTAINED.**
 - **Procedure allegation (leaving the beat) is SUSTAINED.**
-

Case #4

Officers were dispatched to conduct a welfare check on a ninety-one-year-old woman after the woman's daughter called 911 stating that her brother had transported their mother from her current residence (a care facility) to her prior residence. The reporting party's brother refused to return his mother to the care facility. When officers arrived at the

house, they found the elderly woman, her son, and her former caretaker inside the home. A neighbor complained, stating that the officers were rude.

Rule: Duty Manual section C1308 states, “Except when necessary to establish control during a violent or dangerous situation, no member shall use course, profane or derogatory language.”

Finding: Courtesy allegation (saying “shut up” to witness) is SUSTAINED.

Case #5

The complainant’s friend was cited for urinating in public. The complainant questioned officers about why his friend was being cited. The complainant was ordered to stand back, but instead of complying, the complainant kept questioning why his friend was cited. When officers moved to arrest him for obstructing or delaying an officer, the complainant resisted the arrest and officers used baton strikes to bring him to the ground. Custody officers refused to admit the complainant to the jail because of injuries on his arm. The officer released the complainant from custody and offered him an ambulance. The complainant refused an ambulance to the hospital because he would have to incur the cost.

Rules:

- Duty Manual section L 2622 states that “when use of an impact weapon causes injury which would reasonably require medical attention, the officer using the impact weapon will ensure the injured individual receives proper medical attention.”
- Duty Manual section L 2922 states

that “suspects with...injuries requiring immediate medical attention will be transported to Valley Medical Center and medical treatment obtained. An ambulance or police vehicle may be used for transporting depending on the prisoner’s condition.”

Finding: Procedure allegation (not ensuring the complainant receive immediate medical aid while in custody) is SUSTAINED.

Case #6

The complainant was in a park with several friends sitting on a bench. An officer smelled marijuana and approached the complainant and his friends. The officer noticed what appeared to be a marijuana cigarette on the bench. The cigarette did not appear to belong to any specific person. The complainant became loud and aggressive and was detained. The officer removed his backpack and searched it.

Rule: Duty Manual section L 4801 states that “officers will normally conduct searches and seizures under the authority of a search warrant unless one or more of the following circumstances exist: incidental to an arrest, incident involves a motor vehicle, threats to life, property or evidence, when consent is given, and when in plain view.”

Finding: Search/Seizure allegation (searching backpack without probable cause) is SUSTAINED.

Case #7

An officer was dispatched because of a report of aggressive panhandlers. When the officer arrived at the scene, there were

several subjects, yelling obscenities at the officer. One subject threatened to assault the officer, while another took a fighting stance and challenged the officer to a fight. As the officer attempted to arrest one subject, another subject (the complainant) attempted to pull the subject from the officer's grip. The officer then pulled the complainant's hair and conducted a takedown to prevent her from successfully releasing the subject. The officer, however, failed to complete a Force Response Report.

Rule: Duty Manual section R 1574 states that a Force Response Report "will be completed by an officer using any reportable force..." Duty Manual section L 2644 defines reportable force as "any incident in which officers, either on or off duty, exercise their police powers and use deadly force or any force option including physical force in conformance with L 2603." The only exception to reportable force is "the use of a firm grip control which does not result in injury, the appearance of injury or complaint of pain; or that force reasonable to overcome resistance due to physical disability or intoxication, which does not result in injury, the appearance of injury or complaint of pain."

Finding: Procedure allegation (failure to complete a Force Response Report) is SUSTAINED.

Case #8

A vehicle was impounded as a suspect vehicle in a drive-by shooting. The owner/complainant called SJPD and spoke to an officer about his displeasure that his car was towed. The officer told the complainant that the vehicle would be released and he

would be notified once the investigation was complete. Once the investigation was complete, the officer notified an officer in another unit that the vehicle could be released. The vehicle subsequently released to a private tow yard. Neither officer notified the auto theft desk which is then to notify the registered owner of the release. The fees from the tow yard totaled over \$4,000.

Rule: Duty Manual section L 5401 states that "vehicles held for investigation need a release from the assigned investigative unit. It is the investigator's responsibility to notify the Vehicle Records Unit when a vehicle is cleared to be released by to the owner. Vehicle Records Unit members will notify the vehicle owner after the hold has been released."

Finding: Procedure allegation (failure to notify the Vehicle Records Unit that the vehicle was cleared to be released by the owner) is SUSTAINED.

Case #9

An officer was attached to a carjacking investigation. The officer was looking for the victim's car when he stopped his patrol car and pulled over to assist an officer from another agency on an unrelated pedestrian stop with two suspects. One of the suspects was arrested for possession of narcotics and weapons. The officer did not notify dispatch that he was assisting the non-SJPD officer with the pedestrian stop, and remained attached to the carjacking investigation.

Rule: Duty Manual section L 1704 states that "Department members record activity or actions taken whether self-initiated or assigned. Radio communication will be utilized for this purpose regardless of what

other records are maintained. Each officer assigned to patrol or other uniformed field activity is responsible for notifying Communications of the following: arrival on the scene, completion of assignment, disposition information, location and nature of self-initiated activity.”

Finding: Procedure allegation (failure to notify radio communication of officer’s location) is SUSTAINED.

Case #10

A patrol officer was on-duty when he parked his car in a residential neighborhood below a sign that stated “No Stopping Any Time.” He remained parked there for over two hours. An anonymous complainant filed this complaint stating that an officer should not park a patrol car illegally.

Rule: Duty Manual section L 1900 states that “department members will obey provisions of the law relating to the operation of vehicles in the same manner required of any other person using the roadway.”

Finding: Procedure allegation (parking patrol car in a “No Stopping” zone) is SUSTAINED.

Case #11

A complainant stated that she saw children enter a patrol car. The officer activated his lights and sirens and took the children on a 15-minute ride in his patrol car. The children were not secured in car seats.

Rules:

- Duty Manual section L 1900 states that “Department members will obey

provisions of the law relating to the operation of vehicles in the same manner required of any other person using the roadway.”

- California Vehicle Code section 27360 (a) states that “...a child or ward who is under eight years of age, without properly securing that child in a rear seat in an appropriate child passenger restraint system meeting applicable federal motor vehicle safety standards.”

Finding: Procedure allegation (driving a car with children without ensuring they are secure in a rear car seat) is SUSTAINED.

Case #12

An officer responded to a domestic violence call for service. The responding officer did not take a report, document the incident, or obtain an Emergency Protective Restraining Order for the victim. Rather, the officer noted details in the CAD and gave the victim an incident card with a case number.

Rule: Duty Manual section L 7307 states that “a General Offense Report and Domestic Violence Supplementary Report will be completed in all cases of domestic violence.”

Finding: Procedure allegation (failure to document the domestic violence incident in a Domestic Violence Supplementary Report) is SUSTAINED.

Case #13

The complainant called SJPD to report that she was the victim of a home burglary. An officer arrived at the complainant’s house to

investigate. The complainant described her house as ransacked, but the officer stated that he did not believe her house had been ransacked. Rather, the officer concluded that the complainant was likely suffering from a mental illness and lived in disarray. He concluded that no burglary had occurred, thus, the officer did not take any photos or fingerprints at the scene. The complainant found the implement she believed was used to gain entry into the house. The officer took the object but did not handle it with care or preserve the crow bar for latent fingerprints.

Rules:

- Duty Manual section L 4203 states that “the preliminary investigation is conducted at the scene of the crime and is generally the responsibility of uniformed patrol officers...the preliminary investigation is directly concerned with the arrest of perpetrators at or fleeing from the scene and the initial crime scene processing and recording of information. This stage of the investigation includes, but is not limited to, the following tasks... collection of evidence.”
- Duty Manual section C 1306 states that “Bias-Based Policing occurs when an officer engages in conduct based on a person’s race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.... Officers will not engage in biased and/or discriminatory-based policing as this undermines the relationship between the police and the public and is contradictory to the Department’s mission and values.”

Findings: Procedure allegation (failure to complete a thorough preliminary investigation) and Bias-Based Policing allegation (failure to complete a thorough investigation based upon the complainant’s perceived mental illness) are SUSTAINED.

Case #14

An officer responded to a report that a juvenile bicyclist was struck by a vehicle. Upon the officer’s arrival, the bicyclist had been transferred to a nearby hospital. The officer interviewed the driver who stated that after he hit the bicyclist with his car, he left the scene to pick up his elderly mother who had been waiting for him. The officer did not perceive this explanation to mean that the driver committed a “hit and run” and therefore did not document this fact in the report. The bicyclist’s mother filed this complaint alleging that the officer did not write an accurate report because there was no mention of the suspect driver leaving the scene.

Rules:

- California Vehicle Code section 20001(a) states that “the driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of 20003 and 20004.”
- California Vehicle Code section 20003(a) states that “the driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address, the names and residence

addresses of any occupant of the driver's vehicle injured in the accident, the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with..."

- Duty Manual section R 1200 states that "effective crime reporting is one of the most important duties required of an officer. To be effective, specific information is necessary since such reports are used to inform department members, criminal justice personnel, and other authorized persons of the existence of circumstances, conditions and facts which impact on their respective duties and responsibilities. Therefore, officers will adhere to established procedures when initiating any reports pertaining to a criminal act."

Findings: Procedure allegation (failure to complete a thorough report including a "hit-and-run") is SUSTAINED.

Case #15

A male was arrested at his home for domestic violence. The subject officer had a personal association with the male through a secondary employment assignment business. The officer, while on-duty, in uniform, and without notifying Dispatch, went to the male's house on two separate occasions. On the night of the arrest, the officer was off-duty and received a call from the male requesting his assistance. Instead of notifying on-duty officers, the officer went to the house, but did not participate in the investigation. An anonymous complainant stated that the

officer's personal relationship with the male and his presence at the arrest scene lead to a perceived conflict of interest.

Rules:

- Duty Manual section L 1704 states that "Department members record activity or actions taken whether self-initiated or assigned. Radio communication will be utilized for this purpose regardless of what other records are maintained. Each officer assigned to patrol or other uniformed field activity is responsible for notifying Communications of the following: arrival on the scene, completion of assignment, disposition information, [and] location and nature of self-initiated activity."
- Duty Manual section C 1450 states that "Department members shall not engage in enforcement, investigative or administrative functions that create conflicts of interest or the appearance of conflicts of interest, either on or off-duty."
- Duty Manual section C 1404 states that "an officer's conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find that such conduct was unbecoming an officer."

Findings:

- **Procedure allegation (failing to create a record of events when responding to the male's house on multiple occasions) is SUSTAINED.**
- **Procedure allegation (violating the Department's Conflict of Interest**

policy) is SUSTAINED.

- **CUBO allegation (the officer's actions adversely reflected upon the Department) is SUSTAINED.**
-

Case #16

An officer posted inflammatory statements on his personal social media account.

Rule: Duty Manual section C 1404 states that “an officer’s conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find that such conduct was unbecoming an officer.”

Findings: CUBO allegation (the officer's actions adversely reflected upon the Department) is SUSTAINED.

Case #17

While on-duty, an officer went to a female’s work place to conduct personal business. A few months later, the officer went to the female’s new work place. The woman had called the police to report this incident. Officers from another agency stopped the officer and asked what he was doing at the location. The officers learned that the SJPDP officer had access to a weapon in his car. The officers admonished the SJPDP officer for disorderly conduct, for entering the property without authorized business, and for entering the property with a firearm.

Rules:

- Duty Manual section C 1432 states that “Department members will not devote

any of their on-duty time to any activity that does not relate to a police function.”

- Duty Manual section L 1807 states that “officers may leave an assigned beat whenever any of the following conditions are met: when assigned or authorized by competent authority, to aid and assist, when performing a follow-up process or pursuing a suspect, [or] when ending a tour of duty.”
- Duty Manual section L 1205 states that “each supervisor has a responsibility to remain aware of assignments which affect subordinates. When such assignments originate through radio communications, supervisors will, when practical, monitor such assignments and determine if the subordinate receiving the communication is supplied with adequate information to determine the necessary response.”
- Duty Manual section C 1404 states that “an officer’s conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find that such conduct was unbecoming an officer.”

Findings:

- **Procedure allegation (conducting personal business while on-duty) is SUSTAINED.**
- **Procedure allegation (leaving the beat while on-duty) is SUSTAINED.**
- **CUBO allegation (first interaction with the woman at her work place which adversely reflected on the Department) is SUSTAINED.**

- **CUBO allegation (second interaction with the woman at her workplace which adversely reflected on the Department) is SUSTAINED.**

Case #18

An officer was working a Secondary Employment assignment. He contacted the complainant who was parked in a handicapped parking spot while dropping off her children. The officer approached her and asked if she had a handicapped placard. She replied that she did not. The officer told the complainant that she had able-bodied kids and they were too lazy to walk from the parking lot into a store. He yelled at her and told her that he did not want to hear any excuses, asked if she wanted a ticket, and said, "Don't ever do it again." The officer did not submit a Secondary Employment tracking sheet and did not log onto CAD notifying Communications of his Secondary Employment location.

Rules:

- Duty Manual section C 1308 states that "Department members will be courteous and professional to the public. Department members will be tactful in the performance of their duties, control their tempers and exercise the utmost patience and discretion even in the face of extreme provocation."
- Duty Manual section C 1543 states that "officers will report all hours of secondary employment worked (uniformed, non-uniformed and Department-sponsored special overtime assignments) on the "Secondary Employment Tracking Form." Forms will be submitted biweekly to

coincide with the end of the City pay period."

- Duty Manual section C 1547 states that "officers working a uniformed secondary employment assignment, or a non-uniformed secondary employment security assignment in the City of San José, shall contact Communications and "log-on" to CAD. Officers will provide Communications with their badge number, location, nature of assignment (e.g., traffic control, condo complex security, school security, etc.), a cell phone number where they can be reached, and an expected O.D. time. At the completion of their assignment, officers must contact Communications and "log off."

Findings:

- **Courtesy allegation is SUSTAINED.**
- **Procedure allegation (failing to submit a Secondary Employment tracking sheet) is SUSTAINED.**
- **Procedure allegation (failing to log onto CAD notifying Communications of Secondary Employment location) is SUSTAINED.**

Case #19

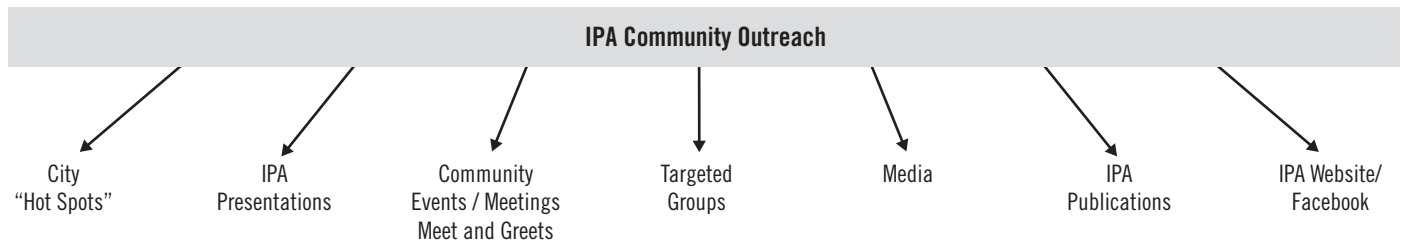
The officer pulled the complainant over for speeding. After issuing the complainant a speeding ticket, the officer noticed the complainant's radar detector in her car and said, "Anyone that needs to spend that much on a radar detector must have a problem with speeding."

Rule: Duty Manual section C 1308 states that “Department members will be courteous and professional to the public. Department members will be tactful in the performance of their duties, control their tempers and exercise the utmost patience and discretion even in the face of extreme provocation.”

Finding: Courtesy allegation is SUSTAINED.

Chapter Six: Community Outreach

Effective community outreach is a core function of the Office of the Independent Police Auditor. It is our mission to educate as many members of the public as possible about the complaint process and the role of the IPA. This is especially true for those populations of the San José which are more likely to come into contact with the police.



I. Background

Each year, the IPA office receives numerous invitations to provide presentations to the community and to participate in local events. In addition, IPA staff solicit public outreach opportunities to ensure that a diverse cross-section of the community learns of our services. We base our decisions concerning whether or not to accept an invitation or to solicit an opportunity on the following factors:

- Location of event (Is it in San José or the immediate surrounding area? Are the participants likely to live, work, attend school or visit San José? Is it a “hot spot” area where SJPd officers frequently interact with the public?²³)
- Audience size (Does the event have ten or more attendees?)
- Target groups (Are participants likely to be people of color, immigrants, youth and/or young adults?)

- Staff availability (What is the current IPA staff workload? Will there be sufficient staffing levels at our office?)
- Length of event (If it is a presentation, will we have 30 minutes or more to present?)
- Council District (Have we had a presence in each district this year?)

IPA outreach is multi-faceted. In addition to conducting presentations, participating in community events, and initiating individual meet-and-greets, we utilize targeted advertising. The signs read, “Concerns about a San José Police Officer? Call 408.794.6226,” and were printed in English, Spanish and Vietnamese. We distributed, multi-language version of the signage in to local businesses, agencies and organizations. Finally, we created a postcard-sized version of the signage for distribution throughout the City.

²³ “Hot spot” locations used by the IPA were identified based on information obtained from (1) the SJPd Research and Development Unit in 2012 regarding areas from which the largest number of requests for SJPd services originated and/or the areas at which SJPd officers initiated the largest number of stops (pedestrian or vehicle), and (2) the Mayor’s Gang Prevention Task Force, a coalition of local residents, government leaders, school officials, community and faith-based organizations, and local law enforcement.



II. General Outreach Overview

We participated in 172 outreach activities and reached 10,560 members of the public in 2015. The total number of members of the public who received IPA outreach services decreased slightly from 2014. This decrease is, in part, due to the retirement of the former IPA and thus fewer staff resources available for outreach activities. IPA outreach activities include participation in community events, presentations to the public, and media appearances or interviews. You can view all of our 2015 outreach activities in Appendix F.

Illustration 6-A: Attendees at IPA Outreach Activities in 2015

Outreach Activities	Events	% of Total Events	Attendees	% of Total Attendees
IPA Presentations	44	26%	1,671	16%
Community Events/Meetings	88	51%	8,720	82%
Meet and Greet & Material Distribution	40	23%	169	2%
Community Outreach Totals	172	100%	10,560	100%

A. Presentations by the IPA and Staff in 2015

Presentations by the IPA and staff are intended to accurately and thoroughly convey the purpose and functions of the IPA office. Presentations often include question and answer periods with audience members. We gave 44 presentations in 2015, a slight decrease from 2014. The total number of individuals we reached with these presentations 1,671, was consistent with previous years.

We request attendees at IPA presentations to complete evaluation forms so that we can gauge the effectiveness of IPA presentations. Attendees consistently reported that their knowledge about the IPA office and the police misconduct complaint process increased. The overwhelming majority of the responders, 97%, rated the IPA presentations

as good or excellent. Responders also have an opportunity to provide qualitative feedback about the presentation. Some comments from our responders are listed below:

- “This presentation gave empowering information.”
- “What was most interesting was how to respond to a police officer breaking a rule.”
- “The most important part of the presentation...was that there was an oversight organization for the police departments.”
- “I learned how to file a complaint.”
- “I learned police have a lot of rules they need to follow.”
- “I learned about the law.”

- “The most interesting part of the presentation was learning about the Office of the Independent Police Auditor. “
- “I liked that I got to learn about my rights, rights that I didn’t know I had.”
- “It was empowering to here push for change can make a difference.”
- “The most important part of the presentation was... I got the phone number (*for the IPA Office*).”

B. Community Events/Meetings

Community events and meetings differ from IPA presentations. At presentations, we talk to audiences about the work of the IPA office. At community events, we engage with attendees on a one-to-one basis or are introduced to large groups of attendees. We also attend monthly meetings with community and neighborhood groups. Community events and meetings are opportunities for the IPA and staff to be a part of the community, understand local concerns, answer questions about the IPA office, and connect with other government agencies and community based organization in order to support the residents and visitors of the City of San José. The number of community events and meetings we attended in 2015 was 88 and the number of individuals reached was 8,720. This is a slight decrease from 2014 in which we reached 8,898 through events / meetings.

C. Meet and Greets

In 2015, IPA outreach included “meet and greet.” Staff walked through specific hot spot neighborhoods and spoke, one-on-one, with residents to whom we distributed IPA outreach materials. The meet and greets took place at laundromats, community centers,

libraries, stores and restaurants. As a part of these contacts, we displayed IPA posters and distributed postcards throughout each of the districts. While IPA staffing resources are too limited to blanket the City, our approach effectively conveys important information about our office to those who frequently interact with SJPD officers.

D. Meetings with City Officials and Participation in City Events

While meetings with city officials and participation in City events are technically not community outreach, we believe that IPA communication with our government officials is very important. Throughout 2015, the IPA met regularly with the Mayor, City Council members, City Council appointees, and San José Police Department (SJPD) Command staff. IPA staff occasionally attended City meetings, including Agenda Review meetings and meetings of the Public Safety Finance Strategic Support Committee.

E. IPA Trainings for SJPD Officers About Sustained Findings

In 2015, the Independent Police Auditor presented officer trainings that focused upon sustained findings to Field Training Officers (FTOs) and recruits. The goal of the training was to inform the officers about those various procedures in the Duty Manual that are most frequently violated to prevent the officers they train from engaging in the same conduct. The trainings were supported by SJPD and well-received by the officers. Officers consistently commented in the post-training survey the information from this training helped them understand how to avoid common mistakes that can lead to a complaint. We look forward to continuing this training in 2016.



City of San Jose
OFFICE OF THE INDEPENDENT POLICE AUDITOR
Presentation Evaluation

Date: _____

Organization / Location: _____

Name of Presenter(s): _____

1. As a result of the presentation today, do you know more about the **Office of the Independent Police Auditor**? ☐ Yes ☐ No
2. As a result of the presentation today, do you know more about **how to file a complaint about the police**? ☐ Yes ☐ No
3. Did the presenter know enough about the information covered ?
☐ Yes ☐ No
4. Were the handouts helpful? ☐ Yes ☐ No
5. Was the presentation: ☐ Excellent ☐ Good ☐ Average ☐ Poor
6. Do you wish we had talked about anything else? If so, what ?

7. What was the **MOST important or interesting** part of the presentation?

For Office Use Only

PE Total	_____				
PE 1	Y _____	N _____	N/A _____		
PE 2	Y _____	N _____	N/A _____		
PE 5	E _____	G _____	A _____	P _____	N/A _____

III. Outreach to Impacted Populations in 2015

The IPA has a strong commitment to reaching diverse groups of individuals who may benefit from the services of the IPA office. People of color and youth have been the subject of focused IPA outreach efforts for several years. To ensure that we are reaching these populations, we focus some of our outreach activities in these communities and those who provide assistance and services to these populations. For example, in 2015 we provided outreach services to the Mexican Consulate, community schools, and youth organizations. The IPA reached out to the community during National Night Out and attended four different neighborhood events in City Council Districts 2, 3, 7, and 10.

A. Outreach to People of Color and Immigrants

In 2015, we participated in 87 events involving people of color, immigrants, and agencies that serve those populations. This outreach constituted 51% of IPA outreach activities that included ongoing resource tabling at the Mexican Consulate, presentations to adult English-language learners, and door-to-door meet and greets in neighborhoods. Fourteen of our IPA outreach activities in 2015 were conducted in Spanish or Vietnamese, with translation services provided by IPA staff or volunteers.

B. Outreach to Youth

Our youth outreach encourages young people to consider positive ways to interact with law enforcement officers and teaches them about their legal rights and responsibilities. In 2015, we participated in 76 events reaching 5,129 teenagers, young adults and the staff who serve them. Youth outreach activities

comprised 44% of the IPA's outreach activities in 2015. Our presentations to young people were made possible, in part, through the generous assistance of community agencies such as Girl Scouts of Northern California, Fresh Lifelines for Youth, the Bill Wilson Center, as well as the Santa Clara County Public Defender's Office and the Juvenile Opportunity Court held at ConXión.

The IPA's 4th edition of *A Student's Guide to Police Practices (Guide)* to youth, continues to be utilized and widely supported by parents, teachers and service providers. The guide is given to most youth after an IPA presentation. The *Guide* was developed by the IPA office in 2003 and its purpose is to address common concerns expressed by youth about the police; and it has been a valuable tool in IPA youth outreach. The distribution of the *Guide* to youth and their parents throughout San José remains an IPA priority. The *Guide* is also available on-line at www.sanJoseca.gov/ipa, under "Publications."

In 2015, the IPA office continued its IPA-Teen Leadership Council (TLC) project. Established by our office in April 2011, the TLC is a diverse group of 15 San José residents, ages 15 to 18, who live or attend school in the City of San José. Several TLC Alumni (former TLC members who now work and/or attend college) remain connected to the group. The TLC members provide advice to the IPA on the most effective ways to conduct outreach to youth in San José, inform the IPA about police-related issues that are on the minds of youth in San José, and develop their leadership skills. They interact with city officials, community leaders and police officers, and they participate in IPA community outreach events.

The TLC met once a month with the IPA and staff to work on projects, discuss issues or to participate in workshops. Guest speakers attend the meetings to share their personal stories and their paths to leadership. In 2015, the TLC met and learned about government from Mayor Sam Liccardo, attended a college seminar on race and policing at San José State University, and attended a training hosted by the FBI. IPA staff provided the TLC workshops about study skills, the college application process, and college survival skills. They also traveled to Sacramento, toured the State Capitol, visited Assemblywoman Nora Campos' office, and learned about the legislative process.

With generous funding from the Castellano Family Foundation, the Comerica Foundation, and several individual donors, we convened our fourth TLC Annual Retreat in June 2015 at the Happy Valley Conference Center in the Santa Cruz Mountains. The TLC worked on team building and leadership activities, brainstormed program highlights and areas of improvement, and received training from the IPA staff about police practices, and about their rights and responsibilities when interacting with the police.

IV. Media

Throughout 2015, the work of the IPA office was the subject of print, radio, television and online news stories. The IPA and her staff were interviewed, quoted, or mentioned in the media approximately 153 times in 2015. The IPA was contacted by local and national news forums that brought state and national attention to the IPA office. The IPA was interviewed for *The Last Word with Lawrence O'Donnell* on MSNBC and moderated several interviews for the

Commonwealth Club, including one with activist and rapper Talib Kweli. The list of the 2015 IPA media contacts and interviews is in Appendix G. A few highlights of media mentions include:

- “Officer Misconduct and Prosecutions in California,” *KQED Radio* with Peter Schuler, February 9, 2015.
- “Police auditor wants more sunshine on internal misconduct reports,” *San José Mercury News*, April 28, 2015.
- “LaDoris Cordell makes legitimate call for transparency,” *San José Mercury News*, May 1, 2015.
- “SJPd data show San José cops detained greater percentage of Blacks, Latinos,” *San José Mercury News*, May 10, 2015.
- “Body worn cameras, SJPd agreement,” *San José Mercury News*, May 25, 2015.

V. IPA Publications

Each year the IPA office distributes informational materials at resource fairs, presentations, and community events. They are available online at www.sanJoseca.gov/ipa. IPA publications include the following:

- *A Student's Guide to Police Practices* (Guide)
- IPA Year End Reports to City Council
- Brochures describing IPA functions and the complaint process
- Information cards (wallet-sized) providing IPA contact information and a brief description of IPA services

We distributed approximately 3,567 wristbands with the IPA phone number. The IPA staff distributed our “Frequently

Asked Questions about the IPA Office” (FAQ) handout in English, Spanish and Vietnamese at our outreach events. You can find the FAQ in Appendix E of this Report as well as on our website at www.sanJoseca.gov/ipa.

VI. IPA Website and Facebook Page

Available on the IPA website www.sanJoseca.gov/ipa are IPA outreach materials such as the Guide, Year End Reports, information about the complaint process, and general information about civilian oversight of law enforcement. Under the section “News & Announcements,” you can find links to current IPA developments, announcements and events. The IPA office has a Facebook page listed as, “Office of the Independent Police Auditor, San José,” where we also provide ongoing information to the public.

VII. Independent Police Auditor Advisory Council

The Independent Police Auditor Advisory Council (IPAAC)²⁴ was established in 1999. The group has two functions: (1) promote community awareness of the services offered by the IPA office, and (2) advise the IPA office

about police-related issues and concerns that arise in San José. The support, advice, and insights offered by the IPAAC are integral to the success of the IPA. Members of the IPAAC engaged in approximately 137 hours of volunteer work for the IPA office in 2015. In addition to attending quarterly meetings, members assisted the IPA with community outreach and provided support to the TLC.

- Mauricio Astacio participated on the Chief of Police Community Advisory Board and neighborhood meetings in District 3.
- Norma Callender staffed the National Night Out resource table for the IPA at the Hayes Mansion.
- Merylee Shelton hosted an event “An Evening of Community Engagement.” An IPAAC member and Interim IPA were on the panel
- Hilbert Morales assisted in promoting the IPA office to members of the La Raza Roundtable
- Otis Watson engaged in fundraising for our teen leaders.

²⁴ In 2013, the Independent Police Auditor Advisory Committee changed its name to Independent Police Auditor Advisory Council.

2015 IPA ADVISORY COUNCIL MEMBERS

Name	Employer	Occupation
Mauricio Astacio	Barracuda Networks	Sales & Marketing
Robert Bailey	Pratt & Whitney Space Propulsions (Ret.)	Naval Officer/Rocket Scientist
Joshua Barousse	City of San José	Policy Analyst
Mydzung Bui	Santa Clara Unified School District	Educationally Related Mental Health Services Coordinator
Norma Callender	Self-employed	Semi-retired Independent Paralegal
Linda Young Colar	The Colar Team, Coldwell Banker Realty	Realtor
B.J. Fadem	Law Offices of B.J. Fadem & Assoc., APC	Attorney
Che Hammond	Netflix, Inc.	Software Engineer
Hilbert Morales	El Observador	Publisher-Emeritus
Randi Perry	Fresh Lifelines for Youth	Law Program Manager
Yesenia Ramirez	Evergreen Valley College	Business Services Coordinator
Panteha Saban	Santa Clara County Public Defender's Office	Attorney
Merylee Shelton	San José City College	Professor
Otis Watson	Comerica Bank	Banking/Financial Services
Jorge Wong	Asian Americans for Community Involvement	Director of Clinical and Regulatory Affairs

VIII. Outreach by City Council District

Starting in 2000, the City Council asked the IPA to provide outreach information by City Council district. Even though it is impossible for us to identify the City Council district of each person who attended an IPA event, in this Report, we provide a breakdown of outreach event locations by district. As in prior years, the plurality of IPA outreach in 2015 was in District 3 – the district that includes City Hall and the downtown area. District 3 is a popular location for city-wide events and draws attendees from other City Council districts.

Illustration 6-B: IPA Outreach by City Council District -- 2015

Council District	Number	%
District 1	2	1%
District 2	3	2%
District 3	56	33%
District 4	13	8%
District 5	14	8%
District 6	13	8%
District 7	32	19%
District 8	6	3%
District 9	3	2%
District 10	3	2%
N/A	27	16%
Total	172	100%

*Events, meetings, and presentations that did not occur in San José but involved attendees who are likely to reside or conduct business here.

Each year, some of our community outreach is directed to residents of particular neighborhoods by participating in events and meetings in 2015 such as:

- National Night Out
- Community resource fairs
- Senior walks
- Door-to-door meet and greets

For a complete list of IPA outreach events and activities in 2015, please see Appendix F.

IPA Community Outreach 2015 – Year In Photos



Golden Gate University School of Law panel: Rachel Van Cleave, Brendon Woods, Judge Cordell, Melinda Hagg, and Peter Keane



Judge Cordell speaking at Golden Gate University School of Law



Judge Cordell, Analyst Telina Martinez Barrientos, and the TLC hosted a meeting with the Mayor San Liccardo.



IPA Analyst Telina Martinez Barrientos, Josh Barousse, and Jeremey Barousse at Day in the Park Community Resource Fair



IPA Analyst Erin O'Neill, Analyst Telina Martinez-Barrientos, and the TLC completing a ropes course in the Santa Cruz Mountains



Judge Cordell interviewed hip hop artist and social justice Activist Talib Kweli.



2015 IPAAC Members



Mayor San Liccardo, Chief Eddie Garcia, and Walter Katz at the news conference announcing the Independent Police Auditor appointment

Chapter Seven:

IPA Recommendations to the SJPD

One of the responsibilities of the Independent Police Auditor is to make recommendations regarding Police Department policies and procedures. Such recommendations provides feedback both to the Department as well as the City Council about important emerging issues.

I. 2015 IPA Recommendations

In 2015, the IPA office made six recommendations to the San José Police Department (SJPD) covering a variety of subjects which we discuss below. Misconduct complaints from the public were the source of the majority of our recommendations. In each such instance, we found that either a gap in policy, procedure or training created a circumstance that led to a complaint which likely would not have occurred otherwise.

Recommendation #1

Since 2005, SJPD officers have been required to complete a Force Response Report form when an officers uses reportable force. This form allows the SJPD to collect and analyze data on force being used by its officers. In March 2007, the Department publicly issued a report that provided detailed statistics on the force data collected from January 1, 2006 to December 31, 2006. The Department at

the time stated “that this information will be provided to the public on an annual basis.” In July 2008, the Department published its second “Annual Force Response Report” which covered the 2007 calendar year. Since then, the San José Police Department has not publicly issued any such similar report even though it still collects use of force data.

In the interim, police use of force has become a critical and highly debated issue in American society. One of the most pressing concerns nationwide is the recognition that the public has had very little information about the frequency and amount of force that law enforcement agencies are using.²⁵

The International Association of Chiefs of Police and other leading organizations have acknowledged that law enforcement transparency is a key foundational block for building trust.²⁶ There is no better example of the nationwide trend towards law enforcement transparency than the White House Police Data Initiative which focuses, in part, on working with departments to use “data to increase transparency, build community trust, and support innovation.”²⁷ Locally, the Oakland Police Department, which is a participant in Police Data Initiative, publishes a monthly use of force analysis report that provides details on use of force incidents.

²⁵ Lowery, “How many police shootings a year? No one knows,” *Washington Post*, September 8, 2014; Fischer-Baum, “Nobody Knows How Many Americans the Police Kill Each Year,” *FiveThirtyEight Politics*, August 19, 2014; Tedford and Favot, “Graphic: The numbers on Los Angeles’ officer-involved shootings,” *Los Angeles Daily News*, August 16, 2014.

²⁶ International Association of Chiefs of Police, *Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement*, September 2006.

²⁷ Launching the Police Data Initiative, May 18, 2015, Megan Smith and Roy L. Austin, Jr. <https://www.whitehouse.gov/blog/2015/05/18/launching-police-data-initiative>.

Detailed information on force used by SJPd officers would also further the mission of the IPA. When we audit misconduct complaints alleging unreasonable use of force, we do not have a broader context in which to place the conduct that occurred. That is, without being afforded a broader scope of insight that such data may provide, we do not necessarily know if a perhaps troubling practice is an aberration or part of a broader trend. This lack of context makes it difficult for the IPA to prioritize issues and provide meaningful policy recommendations.

Our recommendation (1a) is that the Department resumes publishing its Force Response Report annually, and preferably quarterly, for the benefit of the Council and the community. In addition, we recommend (1b) that the related data should also be published as open data and included in the City of San José's developing open data initiative.

Recommendation #2

In recent years, the City of San José has been confronted with the challenges of a rapidly growing population of persons who are homeless. Encampments along Coyote Creek and the Guadalupe River caused particular concern. Litigation in the cities of Fresno and Los Angeles established that governments cannot seize and immediately destroy the belongings of homeless persons merely during clean ups of encampments on public property. Government Civil Code section 2080 *et seq.* requires that public entities who recover personal property found on public land must hold it for at least ninety days.

The City Municipal Code strikes a similar tone and requires the chief of police to store any property found on public property with a value that exceeds \$10 for ninety days.²⁸ As a result of those requirements, the City of San José put in place clean-up procedures for encampments on public property – such as that controlled by the Santa Clara County Water District – that involved the Environmental Services Department, the Housing Department and the Police Department.

Now that the encampments along the waterways have been dismantled, newer smaller encampments sprung up in other locations. Some of these are on private property, including land belonging to the Union Pacific Railroad that runs parallel to the Guadalupe River. We are concerned that when SJPd officers are involved in the dismantling of encampments on such private land, that the same protocols safeguarding the personal property of the homeless are not being followed.

We are recommending (2a) that the SJPd review its encampment clean up procedures to assure that the homeless are afforded the same rights to their personal property regardless of whether an encampment is found on public or private land. (2b) The SJPd should strengthen coordination with other public entities and impacted private stakeholders, such as the Union Pacific Railroad. Finally, (2c) the SJPd should provide training to its officers so that they are aware of the rights of the homeless to their property when encampments are cleaned up wherever they are found.

²⁸ See San José Municipal Code, Chapter 4.16- Unclaimed and Surplus Personal Property.

Recommendation #3

We became aware that a civilian attempted to find out how to file a conduct complaint by calling the SJPD dispatcher. The dispatch operator gave incorrect information regarding the availability of the Internal Affairs unit.

It is our recommendations that dispatchers need additional training on informing callers when and how to file complaints with Internal Affairs as well as the Office of the Independent Police Auditor.

Recommendation #4

Officers are often called upon by civilians with the hope that they can resolve a legal dispute. The San José Police Department Duty Manual has a clear policy that its officers are to avoid getting involved in civil disputes between two parties where there is no crime or potential for violence.²⁹ They “should avoid rendering opinions concerning the rights of parties in civil disputes, except as necessary in the discharge of their duties.” The SJPD policy also states that there are occasions where a person is seeking to recover their property from the possession of another and requests the police’s assistance. In such a case, an officer’s primary role is to “escort the citizen to the location and stand-by while the citizen makes their request.” That portion of the policy mandates that “officers must remain neutral in these situations and are not to actively participate in the recovery” of property.

We are concerned about recent complaints where it appears that officers took a more active role during the recovery of property than the policy allows. We believe this is because the policy may be confusing. In circumstances that do not involve property recovery, an officer can state an opinion about the rights of the parties. However, when they are called on to act as a stand-by for property recovery, the officer must remain neutral.

It is our recommendation (4a) that the Department should re-organize policy section L 1313 into two subsections – the first which deals with civil disputes in general and the second which specifically covers the circumstances of property recovery. (4b) The Department should also provide additional training to its force so that officers are aware of their role during the recovery of personal property by civilians.

Recommendation #5

Officers have discretion whether to cite drivers but the exercise of that discretion must ensure that “the safety and security of the public is properly protected.”³⁰ SJPD should require officers to issue citations to non-licensed drivers 14 and under who cause vehicle accidents. This is also consistent with the Brady-Jared Teen Driver Safety Act passed in 1997 and implemented in 1998.³¹ The graduated driver licensing system imposed by the Act dealt with one of the most serious risks facing teen drivers - too many people were killed or injured in cars driven by teens. The National Transportation Safety Board has established that car crash injuries

²⁹ *Duty Manual*, San José Police Department, 2015, § L 1313

³⁰ *Duty Manual*, San José Police Department, 2015, § C 1100

³¹ California Vehicle Code § 12814.6

were the leading cause of death among those aged 15 to 19 years. Moreover, 16-year-old drivers have caused more fatal crashes per 100 million miles than any other age group. The Insurance Institute for Highway Safety also confirmed that beginning teen drivers have disproportionately higher crash rates than any other age, including older teenagers. An under-age non-licensed driver who caused an accident is likely to cause additional accidents.

It is our recommendation that the Department should issue policy that requires officers to cite such offenders instead of merely warning them.

Recommendation #6

Vendors and other business people are subject to a variety of state and local regulations. Unnecessary stress and expense is caused if Department personnel enforcing such regulations are not aware of the distinctions between the various licenses and permits. For example, some have an expiration date, while others have no expiration. The burden should be on the personnel to understand those differences.

Our recommendation is that SJPD staff tasked with enforcing business/sellers permits issued pursuant to state law or the city's municipal code should be trained to distinguish those permits and the corresponding expiration dates, if any.

II. Update on Earlier IPA Recommendations

Over the last five years (2011-2015), the Office of the Independent Police Auditor (IPA) has proposed 89 recommendations to the San José Police Department (SJPD). You can read those recommendations in each of our Year End Reports for those years, all of which are online at the IPA website (www.sanjoseca.gov/ipa). The great majority of our recommendations have been adopted and implemented by the Department. There are, however, some recommendations that have not yet been implemented which are described here.

• 2011 IPA Year End Report:

Translators: We recommended that SJPD establish a formal process to certify officers who serve as bi-lingual translators. Now that a substantial increase in the compensation of language certified police officers is under consideration, it is critical that a formal certification process be instituted by the City to ensure that all officer/translators are competent. It is also critical that there be periodic re-certification testing to ensure that the language skills of the officer/translators are maintained.

(Recommendation #29)

In Progress. According to the Department, the City has a formal process to certify officers, however, at the time of writing this report, only a limited number of officers are certified as bi-lingual translators and not many have signed up to attempt certification. According to Department management, the testing process administered by the City has become

more difficult. Apparently, oral fluency is no longer sufficient, but an employee has to be able to read and write in the non-English language. These requirements have reportedly deterred interest since the primary requirement for an officer is to provide oral translation in the field.

Body Worn Cameras: We also recommended that SJPD equip all officers with state-of-the-art body-worn cameras and that the Department develop a protocol for the use of the cameras. To date, SJPD officers do not utilize body-worn cameras. In the aftermath of recent controversial officer-involved shootings throughout the country, numerous police departments now have body-worn cameras that assist in combating crime, protecting officers and holding them and the public accountable. **(Recommendation #28)**

In Progress. We are pleased that the SJPD is now planning the purchase and implementation of a body-worn camera and evidence management system. On May 15, 2015, the Department and the San José Police Officer's Association (SJPOA) reached an agreement on Body Worn Camera policies with the intent that the policies would apply both to the pilot program that took place in 2015 as well as the eventual deployment to Department officers. The Department and the SJPOA also agreed to meet at six-month intervals to discuss any further policy changes. We have re-printed the Body Worn Camera Policy

in Appendix H. We will continue to monitor the implementation of the program and pay close attention to various aspects of the policy, including its enforcement and the effectiveness of various provisions, such as the ability to view video footage after a force incident which does not rise to the level of an "Officer-Involved Incident."³²

- **2013 IPA Year End Report:**

Crisis Intervention Training.

Since 2009, there have been four fatal shootings of mentally ill individuals by SJPD officers. The most recent shooting occurred in 2014 where an officer, trained in crisis intervention, fired the one and only fatal shot. Appropriately, our first three recommendations addressed Crisis Intervention Training (CIT). It is imperative that the content of the CIT program be objectively evaluated by an independent expert, and if necessary, revised. We also continue to urge that a competent CIT Civilian Coordinator be hired to supervise the training program. That position has been vacant for more than three years. Because of the low staffing in the Department, it is not possible for all officers to take CIT. However, when staffing levels rise, we believe it is of utmost importance that all officers, including Command Staff, receive this training. The Department and the City must make CIT a top priority. The liability of the City and the safety of officers and the mentally ill in our community are at stake.

(Recommendations #1, 2, 3)

³² According to the Department policy, "An Officer-Involved Incident includes: officers-involved shootings, in-custody deaths, and any intentional act by an officer which proximately causes injury likely to produce death to another."

In Progress. After a significant delay, the Department has hired a Crisis Intervention Training coordinator who has been in place since February. The coordinator will assist the sergeant who runs the crisis management unit. Critical Incident Training is voluntary and, according to the Department, mostly young officers have taken advantage of the offered training. The training is 40-hours long and training all officers on the Department will take a significant amount of time. We anticipate new Department policy on CIT requirements and we will continue to monitor progress.

III. Status of 2014 Year End Report Recommendations

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #1: Expand the Department's definition of use of force (deadly force and non-deadly force) to include the circumstances leading up to the use of force (e.g., who provoked the force?), and proportionality (was the force used proportional to the force encountered?).</p> <p>Rationale: The Department's definition of the proper use of force is narrow, focusing solely upon the actual force used by an officer. Our Force chapter in this Report describes complaints in which officers used force resulting in injuries to suspects where officers either provoked the use of force or responded with force that was far greater than the threat posed by the suspects. In each case, the Department examined only whether the particular use of force by the officer was proper. The small stature of a suspect, the provocation of an acknowledged combative suspect, or the minor nature of the criminal activity of</p>	<p>In Process: A Use of Force Committee was created and first convened in September 2015 to identify the next steps. At that meeting, the Committee worked through development of a chokehold policy which was completed in January 2016 and rolled out to the entire Police Department on February 8, 2016.</p> <p>Prior to finalizing its report, the Committee will provide a draft of its findings and recommendations to the IPA and the Police Officer's Association (POA) for review and feedback.</p> <p>The Committee is targeting June 2016 to present findings and recommendations to the PSFSS Committee.</p> <p>(See PSFSSC Memo dated 2/11/16)</p>	<p>The use of force policy landscape is evolving. Recent policy recommendations in cities, such as Los Angeles, and by law enforcement organizations, like the Police Executive Research Forum, demonstrate the need for the SJPD to take a broad look at its policies and procedures. No particular perspective should be either accepted or rejected outright without a close examination of what is the most appropriate for San José.</p> <p>IPA will continue to monitor.</p>

IPA RECOMMENDATION	SJPDP RESPONSE	IPA COMMENTS
<p>the suspect was not considered by the Department in its analyses of whether the force used was proper.</p> <p>Increasingly, courts are ruling that provocation and proportionality are factors that should be considered in determining if officers used excessive force.</p> <p>In 2013, the California Supreme Court in <i>Hayes v. County of San Diego</i> (57 Cal. 4th 622) held that “tactical conduct and decisions preceding the use of deadly force are relevant considerations in determining whether the use of deadly force gives rise to negligence liability.”</p>	<p>In Process: In response, the Police Department has consulted with the City Attorney’s Office (CAO) to evaluate this recommendation. On October 8, 2015, the CAO issued a memorandum to the Mayor and City Council concluding that in light of the legislative history of the City’s Charter provision establishing the IPA, the Charter does not provide the IPA with the authority to audit DII’s. As a result of the CAO’s analysis, the Police</p>	<p>IPA will continue to monitor.</p>
<p>Recommendation #2: Require independent civilian oversight of all Department-Initiated Investigations (DII), and require written reports describing the DII investigations be annually submitted to the Mayor, City Council and posted online for the public.</p>		

IPA RECOMMENDATION

Rationale: here is no independent oversight of DIIIs, even though these investigations address allegations of officer misconduct. Since transparency is critical to the integrity of the Department and to building trust with the community, there should be independent civilian oversight of all DIIIs. Without oversight, the police are left to police themselves. The Office of the City Attorney could provide this oversight because that office can ensure that the audits of DIIIs are objective, while maintaining confidentiality. Independent civilian oversight of DIIIs is not prohibited by the Peace Officers' Bill of Rights. And just as the IPA office provides annual reports about complaints that it audits, the entity that oversees DIIIs should be required to provide detailed annual reports to the Mayor, City Council, and the public.

SJPD RESPONSE

Department and the IPA have agreed that the question of civilian oversight of the DII process should return to the City Council for further consideration and direction.

With regard to the recommendation that a written report describing the DII investigations be annually submitted to the Mayor and the City Council and be posted for public review, the Police Department worked with the CAO and OER to evaluate this recommendation in light of existing laws. In addition, the Police Department and the IPA have recently had conversations about this recommendation. Those conversations have proved to be productive and the Police Department and the IPA would like to continue their discussions and report back to the PSFSS Committee with an update on the work being done around this recommendation in June 2016.

(See PSFSSC Memo dated 2/11/16)

IPA COMMENTS

IPA RECOMMENDATION	SJPDP RESPONSE	IPA COMMENTS
<p>Recommendation #3:</p> <p>Include in the annual Department-Initiated Investigation (DII) Report descriptions of the misconduct that gave rise to each of the sustained findings.</p> <p>Rationale: The public has a right to know as much as is legally permissible about police misconduct complaints and investigations. While the statistics for sustained findings are included in SJPDP's DII Report, the Report does not describe the misconduct that gave rise to the sustained findings. The IPA office includes descriptions of the misconduct that gave rise to sustained findings in its Year End Reports. The Department should, likewise, include descriptions of the misconduct that resulted in sustained findings from DII investigations. Such disclosures are permissible under the law, and they promote transparency.</p>	<p>In Process: After the IPA issued her 2014 report, the Police Department reached out to her and the POA to discuss how it could enhance current DII reporting practices. The Police Department also discussed the issue with OER and the CAO to ensure that the framework of any new reporting process complies with State law in that brief narrative descriptions of the sustained DII complaints can be done consistent with California police personnel record confidentiality law (See California Penal Code Sections 832.7 and 832.8). More recently, the Police Department has also had productive conversations with the IPA and both would like to continue their discussions around this recommendation and report back to the PSFSS Committee in June 2016 with an update.</p> <p>(See PSFSS Memo dated 2/11/16)</p>	<p>IPA looks forward to substantial progress on this recommendation in June. Other law enforcement agencies in this state have provided such information, including the levels of discipline imposed. Disclosure of such information will enhance the needed transparency to support public accountability and trust in policing.</p>

IPA RECOMMENDATION	SJPd RESPONSE	IPA COMMENTS
<p>Recommendation #4: Provide “stairwell encounters” training to patrol officers.</p> <p>Rationale: In two recent incidents, unarmed suspects suffered serious injuries when they encountered police officers in stairwells. In one instance, the suspect, handcuffed behind his back, struggled with three officers in a stairwell and suffered a broken nose, dislocated elbow, broken cheek bone, and broken eye socket. In another instance, the suspect who was passed out in a stairwell was shot multiple times by officers. The City of San José agreed to pay \$4.95 million to settle a lawsuit filed by that suspect.</p>	<p>Completed: The Department’s Training Unit completed this during the most recent cycle of the required “Continuous Professional Training” (CPT), which began in October of 2015. Officers received one hour of specific stairwell incident training. Officers were taught the proper way to approach stairwells from both above and below a possible threat, as well as how to mitigate safety concerns when contacting suspects or individuals in these areas. Role players presented themselves in a multitude of ways, and officers were taught to safely engage them. The Training Unit ensured that we discussed cover and concealment, distance to threats, escape routes for officer safety, and ingress and egress options.</p>	

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #5: Establish both a Duty Manual rule and an Internal Affairs rule that state what the representatives of subject officers at IA interviews can and cannot say to subject officers in preparation for the interviews.</p> <p>Rationale: It is permissible for subject officers to be represented by officers at IA interviews. It is common practice for these representatives to confer with the subject officers in preparation for these interviews. Oftentimes these private conferences occur at the IA office shortly before the interviews begin.</p> <p>Where there are multiple subject officers associated with one complaint, the same representative usually accompanies each of those officers to their respective IA interviews. After the first interview, the representative is aware of the focus of the IA investigation and knows</p>	<p>In Process: The Police Department has been working with the City Attorney's Office (CAO) and Office of Employee Relations (OER) to evaluate this recommendation in light of existing laws. In addition, the Police Department and the IPA have recently had conversations regarding this recommendation. Both the Police Department and the IPA would like to continue their conversations regarding this recommendation and report back to the PSFSS Committee in June 2016 with an update.</p> <p>(See PSFSSC Memo dated 2/11/16)</p>	<p>IPA will continue to monitor.</p>

IPA RECOMMENDATION	SJPd RESPONSE	IPA COMMENTS
<p>the questions that will likely be asked of the other subject officers associated with the complaint. There is no rule that concerns what can and cannot be disclosed to the subject officers by their representatives. The Duty Manual should expressly prohibit representatives of subject officers from revealing information about anything that transpired at the IA interviews to anyone, including subject officers associated with one complaint.</p>		
<p>Recommendation #6: Require SJPd to adopt a “no chokehold” rule</p> <p>Rationale: Chokeholds should not be a force option and should be expressly prohibited in the SJPd Duty Manual. Currently, choke holds are not referenced in the Duty Manual.</p>	<p>Completed: The Police Department has formed a Committee and collaborated with the POA and the IPA to adopt a new policy. The policy prohibits the use of the chokehold as a control technique to overcome resistance and provides that a chokehold may only be used as an option when objectively reasonable in order to protect the officer or others from an imminent threat of death or serious bodily injury. The new policy was officially rolled out to the entire Police Department on February 8, 2016.</p> <p>(See PSFSSC Memo dated 2/11/16)</p>	<p>Implementation verified.</p>

IPA RECOMMENDATION	SJPDP RESPONSE	IPA COMMENTS
<p>Recommendation #7:</p> <p>Track car keys for patrol cars that are not in service and for “retired” patrol cars; preserve car key records and shift sheets for out of service and retired patrol cars for two years so that each car’s location can be tracked at all times; and maintain logs for checking in and out of all retired and out of service patrol cars.</p> <p>Rationale: The complainant alleged that he saw an officer driving a patrol car with excessive speed. The Department’s investigation showed that the car identified by the complainant was a “retired” car. Since the Department does not maintain records of who has access to its “retired” cars, the Department was unable to identify who was driving the vehicle. The Department does not track “retired” patrol cars and patrol cars that are not in service.</p>	<p>Completed: Once a patrol car is retired (out of service) the Department contacts GSA and the vehicle is towed away from the Department and to the City Corp yard. The vehicle becomes the property of the City’s GSA. GSA becomes responsible for that Department retired marked vehicle.</p> <p>The Department has a “one for one” exchange policy with GSA so once a car is retired, it is no longer archived in the Department’s Fleet Maintenance records.</p> <p>The Department recommends no further action to be taken.</p>	<p>The IPA will continue dialogue with the SJPDP and the City to examine whether there is an unrecognized risk of the use of retired vehicles while still in the possession of the City.</p>

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #8: Automatically activate GPS on patrol cars instead of relying upon officers to log in to turn on the GPS.</p> <p>Rationale: Same Rationale as for Recommendation #7, above.</p>	<p>Completed: The Department is currently practicing the most accountable way to track officers when they use a patrol car by requiring each officer to “log-on” to the mobile vehicle computer.</p> <p>The Department’s GPS system only works through our CAD (Intergraph/Tracker) software. When a marked patrol car is turned on, the GPS is immediately tracked through Intergraph/Tracker. The I-mobile software needs to be logged onto by the officer to associate them to the vehicle, otherwise you don’t know who is driving the vehicle.</p> <p>No further changes are recommended.</p>	

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #9: Revise Duty Manual section L 5403 so that it expressly applies to all towed/impounded vehicles, and not just the recovery of stolen vehicles.</p> <p>Rationale: In 2011, our office recommend that Duty Manual section L 5403 be revised by including the language “whenever possible” to clarify when officers must contact vehicle owners to avoid tows. The Department adopted our recommendation and issued a Training Bulletin in 2013 with that language. A complainant subsequently alleged that his car had been towed for an expired registration, and that no attempt had been made to contact him to move his car. The Department’s response was that the revised Duty Manual section L 5403 was limited to the recovery of “stolen” vehicles. It was our intent that the revised Duty Manual section L 5403 apply to all vehicles subject to tow or impound.</p>	<p>In Process: The Department clarified the statements made by the IPA regarding Duty Manual Section L 5400 and it in fact, pertains to all vehicles towed regardless of the legal reason, not just for stolen vehicles. Duty Manual Section L5403 already states: <i>“Whenever possible, a reasonable attempt should be made to contact the vehicle owner and avoid taking the vehicle into custody, unless the situation by its nature requires an immediate removal of the vehicle.”</i></p> <p>Section 22651 (o) of the California Vehicle Code (CVC) gives officers the discretionary authority to remove any vehicle found or operated on a street or in an off street public parking facility with an registration expiration date in excess of six months before the date it was found or operated.</p> <p>Section 4000(a) CVC prohibits a person from driving, moving, or leaving standing a vehicle on a street or in an off street public parking facility unless it is registered and the appropriate fees have been paid.</p> <p>Therefore, no change to this duty manual section is recommended.</p> <p>A training bulletin will be disseminated to remind officers that whenever possible, a reasonable attempt should be made to contact the vehicle owner and avoid taking the vehicle into custody, unless the situation by its nature requires an immediate removal of the vehicle.</p>	<p>IPA will continue to monitor. The issuance of a training bulletin should occur in a timely fashion.</p>

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #10: Create an inventory form for use with the CHP 180 form for towed/impounded vehicles.</p>	<p>In Process: Duty Manual section L 5403 requires that officers prepare an inventory of all items contained in vehicles that they have ordered towed/impounded. They must use the current CHP 180 form to tow/impound any vehicle.</p>	<p>IPA will continue to monitor and makes the additional recommendation:</p>
<p>Rationale: Duty Manual section L 5403 requires that officers prepare an inventory of all items contained in vehicles that they have ordered towed/impounded. However, there is no space on the CHP 180 form to list inventoried items.</p>	<p>The current CHP 180 form is supplied to us from the State of California. On the first page of the form, there is a section stating "Remarks (List property, tools, vehicle damage, arrests)."</p> <p>Therefore no change to this duty manual section is recommended.</p> <p>A training bulletin will be disseminated to remind officers that when they tow or impound vehicles, inventoried items shall be documented on the CHP 180 form.</p>	<p>Duty Manual section L 5403 states "Prepare an inventory of vehicle accessories and its accessible contents. Request the tow driver to verify the written inventory before acceptance."</p>
		<p>The IPA further recommends that this section include a phrase stating, "The inventory list shall be written in the 'remarks' section of the CHP 180 form and that the tow driver shall sign directly below the list in the remarks section."</p>

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #11: Require officers who encounter suspects who complain of breathing difficulties to immediately call for medical personnel.</p> <p>Rationale: In recent police encounters in other jurisdictions (e.g., New York City and Los Angeles), suspects who were subdued by police officers and complained of breathing difficulties, died. The officers involved ignored the suspects' complaints of physical distress. Because officers are not medically trained, they should immediately call for medical assistance in these situations. In the Los Angeles incident, the officer told the dying suspect, "You can breathe just fine." http://www.latimes.com/local/crime/la-me-lapd-cutody-death-20140823-story.html</p> <p>SJPD should be proactive and not wait for a similar tragedy to occur here.</p>	<p>In Process: Duty Manual Section L2922 states that <i>"Officers will evaluate illnesses or injuries of suspects in their custody. Suspects with illnesses or injuries requiring immediate medical attention will be transported to Valley Medical Center and medical treatment obtained."</i></p> <p>This Duty Manual section is a guideline in determining any situation determining medical attention and does not specify any one single incident.</p> <p>Under Duty Manual section L2600, there are several sections that further that state you must render first aid after using force.</p> <p>In addition, the Department requires officers to attend First-Aid training bi-annually during their Continuous Professional Training (CPT) cycles. Included in this training requires officers to recognize different symptoms that they should be aware of when dealing with the public or suspects that might be symptoms of a serious nature requiring emergency medical care.</p> <p>Therefore no change to this duty manual section is needed.</p> <p>A training bulletin will be disseminated to remind officers who encounter suspects who complain of breathing difficulties to immediately call for medical personnel.</p>	<p>IPA will continue to monitor. The issuance of a training bulletin should occur in a timely fashion.</p> <p>In addition, we recommend that the SJPD consider consolidating the various Duty Manual sections that require providing medical care into one section.</p>

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #12:</p> <p>Revise Duty Manual section R 1574 that states that a Force Response Report Form "will be completed by an officer using any reportable force as defined in DM Section L 2644" to exempt officers involved in shootings, since the Homicide Unit makes recorded interviews of these officers.</p> <p>Rationale: An officer fired his weapon at a moving car after the driver had rammed another car, refused to stop, and nearly hit the officer. The officer did not complete a Force Response Report because officers involved in shootings are no longer required to complete these forms. The Duty Manual should reflect this change.</p>	<p>In Process: The Department agrees with this recommendation.</p> <p>We are close to the completion of this recommendation but it required us to edit a few other Duty Manual sections to be consistent with this change. The new language states that when any force is used requiring the Homicide to respond and investigate; the Homicide Unit will complete the Force Response Report.</p> <p><i>"When Officer-Involved Incidents occurs, it shall be conducted consistent with the most recently published Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines. The officer will be interviewed by the Homicide Unit and the supplemental report for the officer's statement as well as the Force Response Report Form (Form FRS-001) will be completed by the Homicide Detective who conducted the interview."</i></p> <p>The final edits will be completed soon.</p>	<p>IPA will continue to monitor.</p>

IPA RECOMMENDATION	SJPDP RESPONSE	IPA COMMENTS
<p>Recommendation #13:</p> <p>Provide ongoing training for reserve officers to ensure that they are knowledgeable about current Department policies and procedures.</p> <p>Rationale: The Duty Manual applies to reserve officers, even if they are working secondary employment. As such, reserve officers must be up to date on all Department policies and procedures. Our office has audited complaints about reserve officers.</p>	<p>Completed: All of the Reserve Officers get regular and updated training as the regular full time offices and includes mandatory attendance for the annual Continuous Professional Training (CPT) cycles. This is done through routine and scheduled training every year. The Internal Affairs Unit Commander provided updates to the reserves regarding complaints and the IA process.</p> <p>The San José Police Reserve unit documents the completion of all mandated training in each Reserve Officer's personnel folder. The San José Police Department Training unit is the official keeper of records for all Department members' (including Reserve Officers) training records.</p> <p>The number of Reserves fluctuates from 80 to 100 throughout the year. For the fiscal year 2014-15 and for the first two quarters of fiscal year 2015-16 the average number of Reserves was roughly 88. Using this number, each Reserve officer averaged 25 hours of training for FY 14-15 and 15 hours of training for the first two quarters of FY 15-16. During Fiscal Year 2014-2015 The Reserve Unit completed 2,192 hours of training. Through the first two quarters of Fiscal Year 2015-2016 the Reserve Unit has already completed 1,283 hours of training.</p>	

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #14:</p> <p>Include Sustained Findings Trainings in standard training programs for all sworn staff.</p> <p>Rationale: The IPA presented trainings to recruits and Field Training Officers (FTOs) about sustained findings. The purpose of the trainings is to prevent officers from engaging in the misconduct that results in sustained findings.</p>	<p>Completed: The Department agrees with this recommendation and will continue the training as described.</p>	<p>The IPA looks forward to continuing this annual training.</p>
<p>Recommendation #15:</p> <p>Require officers who investigate traffic collisions to make reasonable efforts to contact percipient witnesses and to document those efforts.</p> <p>Rationale: An officer who investigated a traffic collision made no effort to contact two eyewitnesses, both of whom gave their contact information to the complainant before they left the scene.</p>	<p>In Process: Duty Manual Section L6905 states, <i>"The officer assigned to interview drivers and witnesses will do so at the scene unless they have been taken to a hospital, physically incapacitated or have left prior to the officer's arrival. When a driver or witness is not at the scene, officers will delay interviewing until completion of the on-scene investigation. Interviews will be conducted in accordance with DM Section L 4500 (Interviews/Interrogations)."</i></p> <p>Duty Manual Section L 4500 states, <i>"Officers will, when possible, interview any person who may have the potential to supply information that relates to an incident under investigation. Interviews should be conducted at a place that is convenient and familiar to the person being interviewed as soon</i></p>	<p>IPA will continue to monitor. The issuance of a training bulletin should occur in a timely fashion.</p>

IPA RECOMMENDATION	SJPDP RESPONSE	IPA COMMENTS
	<p><i>after the incident as is possible and practical."</i></p> <p>No further Duty Manual revisions are recommended.</p> <p>A training bulletin will be disseminated to remind officers to make reasonable efforts to contact percipient witnesses and to document those efforts.</p>	
<p>Recommendation #16:</p> <p>Require officers who photograph suspects to include full body photos where reasonable suspicion is based, in part, on the suspects' wearing baggy clothing.</p> <p>Rationale: The officer reported that he was concerned that the suspect might be armed because he was wearing baggy clothing. However, the officer's photos of the suspect depicted only the suspect's head, neck and bare back. There were no photographs documenting the officer's assertion that the suspect wore baggy clothes.</p>	<p>In Process: Duty Manual section L 3311 states, <i>"Officers may take photographs of detained persons in relation to the specific crime for which the person is being detained. This section requires documentation of the photograph in the crime report, including details regarding the crime, the detainee's relationship to the crime, case number, name, date of birth of the person photographed, date of photograph and the photographing officer's name and badge number...."</i></p> <p>No further Duty Manual revisions are recommended.</p> <p>A training bulletin will be disseminated to remind officers to include full body photographs depicting the suspect's clothing when appropriate during investigations.</p>	<p>IPA will continue to monitor. The issuance of a training bulletin should occur in a timely fashion.</p>

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #17:</p> <p>Provide training for officers assigned to the lobby about accepting restraining orders.</p> <p>Rationale: Officers assigned to the police lobby refused to accept service of a restraining order that had been issued by the Superior Court to the complainant, even though the court order directed him to present it to the police department.</p>	<p>Completed: As a result of this recommendation, the Police Main Lobby supervisor instituted roll-call training on this issue. The training covered "department policies, obligations and current laws" regarding taking reports when dealing with violations of restraining orders. This training will be instituted at each shift change for officers assigned to the front lobby.</p> <p>The Police Main Lobby Procedural Manual will be updated to include these procedures.</p> <p>Duty Manual Sections L4100-L4112 already orders officers to accept and enforce restraining orders.</p> <p>No further Duty Manual revisions are recommended.</p> <p>A training bulletin will be disseminated to remind officers to accept restraining orders when working the police main lobby.</p>	<p>IPA will continue to monitor. The update to the Duty Manual and issuance of a training bulletin should occur in a timely fashion.</p>

IPA RECOMMENDATION	SJPD RESPONSE	IPA COMMENTS
<p>Recommendation #18:</p> <p>Clarify that Duty Manual section S 1608 refers to private residences only, and not to personal property, such as automobiles.</p> <p>Rationale: An officer allowed a ride-along to enter the complainant's car to try to start it. Duty Manual section S 1608 states that the ride-along "will not enter a person's private property unless the officer has informed the owner . . . [and] the consent shall be documented." The subject officer did not document the ride-along entry into the vehicle. The City Attorney has concluded that the intent of the policy is to restrict ride-along participants from entering only private residences.</p>	<p>In Process: An officer allowed a ride-along to enter the complainant's car to try to start it. Duty Manual section S 1608 states that the ride-along "will not enter a person's private property unless the officer has informed the owner . . . [and] the consent shall be documented." The subject officer did not document the ride-along entry into the vehicle. The City Attorney has concluded that the intent of the policy is to restrict ride-along participants from entering only private residences.</p> <p>The Department agrees with this recommendation.</p> <p>Section S1608 will be updated to include privately owned vehicles requiring the owner's consent for entry.</p> <p>The Duty Manual revisions will be completed soon.</p>	<p>IPA will continue to monitor. The update to the Duty Manual should occur in a timely fashion.</p>

Glossary

Agreed (IPA determination): A complaint is closed as “agreed” if the Independent Police Auditor (IPA) determines that the the Department investigation of a complaint was thorough, objective, and fair.

Agreed After Further (IPA determination): A complaint is closed as “agreed after further” if the IPA determines that the Department investigation of a complaint was thorough, objective, and fair after additional inquiry and/or investigation.

Allegation: a person’s accusation that a member of the SJPd violated Department or City policy, procedure, rules, regulations, or the law. Only Conduct Complaints contain allegations. There are eight types of allegations: Procedure, Search or Seizure, Arrest or Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, and Neglect of Duty. A Conduct Complaint can have more than one allegation. When IA finishes a Conduct Complaint investigation, IA issues a finding on each allegation.

Arrest or Detention (an allegation): an arrest lacked probable cause or a detention lacked reasonable suspicion

Audit: the process the IPA uses to decide if a Conduct Complaint investigation by the Department was thorough, objective and fair

Bias-Based Policing (an allegation): An officer engaged in conduct based on a person’s race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability. The SJPd changed its definition of Bias-Based Policing in February 2011 to

clarify that this form of misconduct can occur at any time during an encounter between an officer and another person, not only when the encounter begins.

CIT: see Crisis Intervention Training

Classification: a decision about whether an issue or complaint raised by a member of the public about an officer is a Conduct Complaint, a Policy Complaint, or a Non-Misconduct Concern. Classification is an IA determination; the IPA can appeal the classification determination through the appeal process.

Closed With Concerns (IPA determination): A complaint is “closed with concerns” if the IPA questioned the Department investigation and/or the Department analysis. The complaint is closed without an Agree or Disagree determination. The IPA first implemented this determination in 2010.

Complainant: any member of the public who files a complaint

Complaint: an expression of dissatisfaction that contains one or more allegations of police misconduct

Complaint process: the sequence of events that begins when a person files a complaint, continues when the Department investigates the complaint and issues findings, and concludes when the IPA audits the investigation and issues a determination

Conduct Complaint (a classification): a statement from any member of the public that alleges that a SJPd officer broke one (or more) of the rules he or she must follow, and requesting that the officer’s conduct be investigated by the SJPd

Conduct Unbecoming an Officer (an allegation): an officer's on or off-duty conduct could reflect adversely on the SJPD or that a reasonable person would find the officer's on or off duty conduct unbecoming a police officer

Courtesy (an allegation): an officer used profane or derogatory language, wasn't tactful, lost his/her temper, became impatient, or was otherwise discourteous. This definition went into effect in October 2010. Previously, only an officer's use of profane words, derogatory language or obscene gestures was considered misconduct.

Crisis Intervention Training (CIT): a 40-hour training program that teaches officers how to better address situations involving persons who are experiencing a mental or emotional crisis, or who have a developmental disability, thus reducing the possibility of the officers using force to gain control of the situation

Department-Initiated Investigation: an investigation into a misconduct allegation that is initiated by someone within the SJPD, and not by a member of the general public

Disagreed (IPA determination): A complaint is closed as "disagreed" if the IPA determines that the Department investigation of a complaint was not thorough, objective, or fair.

Documented Oral Counseling: a form of officer discipline

Duty Manual, the: a book of rules that each SJPD officer must follow. An officer's failure to abide by the rules in the Duty Manual can result in discipline. The Duty Manual is a public document and can be viewed on the SJPD website.

Exonerated (finding): the officer engaged in the conduct described by the complainant, and the officer's conduct was justified, lawful, and proper

Finding: When a misconduct investigation is finished, IA makes a finding for each allegation. The possible findings are Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other.

Force (an allegation): the amount of force the officer used was not "objectively reasonable"

Force Case: a Conduct Complaint that includes one or more allegations of improper use of force by a San José police officer(s)

IA: see Internal Affairs

Independent Police Auditor (IPA): a City Council appointee who leads the office that takes complaints from the public about SJPD officers, audits investigations of those complaints, and makes recommendations to improve police practices and policies

Independent Police Auditor Teen Leadership Council (IPA-TLC): young people selected by the IPA to advise the IPA staff about how to improve outreach to youth in San José

Independent Police Auditor Advisory Council (IPAAC): adult volunteers selected by the IPA to promote community awareness of the services offered by the IPA office and inform the IPA office about police-related issues within the San José community

Intake: the first step in the process of filing a complaint

Internal Affairs (IA): the unit within the SJPD that investigates allegations of officer misconduct

IPA: see Independent Police Auditor

Letter of Reprimand: a form of officer discipline

Misconduct: an act or omission by an officer that is a violation of policy, procedure, or law

Neglect of Duty (an allegation): an officer neglected his/her duties and failed to take action as required by policy, procedure, or law

No Finding (finding): the complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues, or the subject officer is no longer employed by the SJPd before the completion of the Department investigation

Non-Misconduct Concern (classification): a concern expressed by a member of the public about an officer's conduct that the Department determines does not rise to the level of a violation of policy, procedure, or law or that would not result in officer discipline

Not Sustained (finding): The Department investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation[.]” This means it was a “he said-she said” situation where it is one person’s word against another and the Department can’t tell which version to believe.

Officer-involved shooting: an incident that involves an officer’s discharge of his or her firearm

Other (finding): when SJPd declines to investigate because of too long a delay from the date of the incident to the date of filing, or because the officer was not a SJPd officer, or because a duplicate complaint exists

Police Officer’s Association (POA): the bargaining unit (union) that represents SJPd police officer interests

Policy Complaint (classification): complaints from the public about SJPd policies or procedures

Procedure (an allegation): an officer did not follow appropriate policy, procedure, or guidelines

Search or Seizure (an allegation): a search or seizure violated the 4th Amendment of the United States Constitution

Sustained (finding): the investigation disclosed sufficient evidence to clearly prove that the allegation about the conduct of the officer was true

Sustained rate: the percentage of Conduct Complaints (not allegations) that results in a finding of Sustained for one or more allegations

TLC: see Independent Police Auditor Teen Leadership Council

Unfounded (finding): The investigation conclusively proved either that the act or acts complained of did not occur, or that the officer named in the allegation was not involved in the act or acts, which may have occurred. This means that the Department investigation concluded that the acts never happened.

Withdrawn (finding): the complainant expressed an affirmative desire to drop the complaint.

Appendix A

San José Municipal Code Chapter 8.04 and San José City Charter §8.09

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04

OFFICE OF THE INDEPENDENT POLICE AUDITOR

8.04.010 Duties and responsibilities.

In addition to the functions, powers and duties set forth elsewhere in this code, the independent police auditor shall have the duties and responsibilities set forth in this section.

A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

1. The minimal number of complaints to be reviewed annually are:
 - a. All complaints against police officers which allege excessive or unnecessary force; and
 - b. No less than twenty percent of all other complaints.

2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.

3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.

4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.

B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of officer involved shootings.

C. Community function.

1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.
2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.

D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:

1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.

2. Analyze trends and patterns.
3. Make recommendations.

E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer.

(Ords. 25213, 25274, 25922.)

8.04.020 Independence of the police auditor.

A. The police auditor shall, at all times, be totally independent and requests for further investigations, recommendations and reports shall reflect the views of the police auditor alone.

B. No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in section 8.04.010, above.

(Ord. 25213.)

SAN JOSÉ CITY CHARTER §809

OFFICE OF THE INDEPENDENT POLICE AUDITOR

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The Independent Police Auditor shall have the following powers and duties:

(a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

(b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.

(c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

Added at election November 5, 1996

§ 809.1. Independent Police Auditor; Power Of Appointment

(a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a “professional” or “technical” employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.

(b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.

(c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

Added at election November 5, 1996

Appendix B

California Penal Code §832.5 and §832.7

§ 832.5. Citizen's complaints against personnel; investigation; retention and maintenance of records; removal of complaints; access to records

(a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of section 832.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 commencing with section 6250) of Division 7 of Title 1 of the Government Code) and section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) “Unfounded” means that the investigation clearly established that the allegation is not true.

(3) “Exonerated” means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

California Penal Code §832.7

§ 832.7. Confidentiality of peace officer records: Exceptions

(a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(e) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to section 1043 of the Evidence Code.

Appendix C



Press Release *Office of the Mayor*

For Immediate Release:
May 11, 2015

Contact:
Ragan Henninger, Interim PIO
Office of the Mayor
(408) 535-4830 or (408) 203-5157 (cell)

Liccardo Announces Initiatives to Increase Police Accountability and Increase Public Trust

SAN JOSE – In response to concerns arising from San Jose Police Department data suggesting to racially disparate detention and search rates, San Jose Mayor Sam Liccardo has announced his intention to push forward with several initiatives to assure additional accountability and maintain public trust in the Department's actions. "We have the nation's most professional, highly-trained police officers," Liccardo noted, "but we can do better, and when it comes to issues of race and policing, we must vigilantly seek every opportunity to do so."

Specifically, Liccardo advocates a four-point plan to address concerns about bias and policing. "First," he proposes, "I will identify the funding in my June Budget Message to purchase and fully deploy body-worn cameras on every patrol officer in this coming fiscal year." Liccardo first publicly proposed use of body-worn cameras in 2012, and has urged the SJPd to accelerate its extensive study and repeated pilot efforts. After discussions with police union leaders in recent months, a consensus has emerged of the need for cameras. Upon taking office sixteen weeks ago, Liccardo urged SJPd and staff to identify federal grant funding for cameras through his March Budget Message. "Whether that grant funding emerges or not, I will make it a priority to get it done within the fiscal year," Liccardo added.

Second, Liccardo will urge his Council colleagues to accept the recommendation of the Independent Police Auditor (IPA) to broaden the scope of inquiry of complaints of bias-based policing. Specifically, a recent IPA report criticized the Internal Affairs' investigation of bias-based policing allegations as narrowly ignoring prior patterns of complaints by persons of color against specific officers. Liccardo noted, "[w]e all recognize that prior complaints and patterns of conduct can be relevant in understanding whether race entered an officer's decision-making, and our IA investigation needs to embrace the same approach used by our courts: looking at the totality of circumstances surrounding a pat-down frisk, arrest, search, or use of force." In August, the Council will consider the SJPd's response to all of the IPA's recommendations, and Liccardo will push to implement several of those recommendations, particularly concerning allegations of racial bias.

Liccardo also committed to expand civilian review of police misconduct, subjecting department-initiated investigations to review by the Independent Police Auditor. "The IPA has urged that we apply a consistent procedure to all misconduct complaints, whether they originate from the public, or from within the department," Liccardo noted. "I look forward to working with the Police

San José City Hall, 200 E. Santa Clara Street, San José, California 95113 tel (408) 535-4800

Department, Police Officers Association and IPA on a consistent and legally sound procedure to expand civilian review.”

Finally, through the Rules Committee, Liccardo will urge the acceleration of long-planned independent analysis of detention and search data presented by the *Mercury News*. “The analysis made available to me raises significant questions that deserve further scrutiny and public discussion,” Liccardo noted, “before jumping to conclusions, we critically need to understand whether similarly-situated people are being treated differently because they’re Latino or African-American. That requires a deeper dive.” Liccardo characterized that the disproportionate search and detention rates of drivers as problematic, for example, but added that “not all car stops are alike. We expect that an officer will deal differently at 3 a.m. when stopping a speeding car full of 19-year-old males, than she will when pulling a driver maneuvering rush-hour traffic to get to work at 8:30 am.” Liccardo agreed to fund the consultant’s work, which the Council approved in February, and now will seek a hearing before the Public Safety, Finance, and Strategic Support Committee in June to ensure the consultant’s hiring and timely report in the weeks ahead.

Liccardo lauded efforts by SJPD Chief Larry Esquivel to expand training in bias-based policing, and to proactively collect the very data that led to the *Mercury News* report. “Chief Esquivel decided to require officers to report every detention and arrest, and to identify the detainee’s race, in every interaction. We commend the Department for their transparency, and for their proactive efforts to confront bias. We have more work to do, but I’m confident that working together, we’ll create practices that will become a model for the rest of the nation.”

###

San José City Hall, 200 E. Santa Clara Street, San José, California 95113 tel (408) 535-4800

Appendix D



OFFICE OF THE INDEPENDENT POLICE AUDITOR

152 North Third Street, Suite 602
San José, CA 95112
TEL (408) 794-6226 • FAX (408) 977-1053
www.sanjoseca.gov/ipa/

SAMPLE CLOSING LETTER TO COMPLAINANT INDICATING THAT THE IPA DISAGREED WITH THE INTERNAL AFFAIR'S INVESTIGATION

[date of letter]

Complainant
Complainant's mailing address

RE: Complaint # I201x-0xxx

Dear Mr./Ms. Complainant:

The Office of the Independent Police Auditor (IPA) was created by the City of San Jose so that non-police officers would be involved in reviewing complaints filed against San Jose police officers. The IPA does not investigate complaints. Instead, the IPA monitors and tracks complaints as they go through the complaint process. Completed investigations are reviewed by the IPA to see if they are thorough, fair and objective.

The Internal Affairs Unit (IA) of the San Jose Police Department sent the completed investigation of your complaint to us for review. The investigation focused on the incident that occurred on [date of incident]. The IPA's Office reviewed relevant documents contained in the IA investigation file. The IA investigation file typically contains a summary of the evidence gathered, an analysis of the facts and applicable SJPd policies. Supporting documentation such as police reports, dispatch logs, medical records, photographs, and force response report, is typically attached. The IPA office reviewed the IA investigation and requested more investigation before the case was closed. You will receive a letter from the IA Unit Commander with the final outcome.

The case has been officially closed by the IPA. Please contact the Commander of the Internal Affairs Unit at (408) 277-4094 if you have questions about the investigation or if you have not received a letter about the final outcome. After that, if you want to discuss the process used to review your complaint, please contact our office at (408) 794-6226.

Sincerely,

Walter Katz
Independent Police Auditor

By: _____

Appendix E:

Frequently Asked Questions

What is the IPA?

The Independent Police Auditor (IPA) is a City Council appointee whose office does mainly three things: (1) takes in complaints from members of the public about San José police officers; (2) makes sure that the Department of the SJPd investigates those complaints thoroughly and fairly, and (3) recommends improvements to SJPd's policies and procedures.

The IPA is Walter Katz, who has a staff of five people.

Why does the Office of the IPA matter?

The Office of the IPA matters because, by auditing the investigations into claims of police misconduct to ensure that those investigations are fair and thorough, it helps keep SJPd accountable to the communities it serves. The work of the Office of the IPA has resulted in improved police policies. For example, because of the IPA, SJPd officers must follow better rules about how to treat a person who is:

- watching an officer in the field (i.e. onlooker policy)
- hurt by an officer
- suspected of being drunk in public
- asking for an officer's name or badge number
- filing a Conduct Complaint

Is the IPA part of the police department? Why should I trust the IPA?

No, the IPA is not part of the police department. The IPA answers to the Mayor and the City Council. The Chief of Police answers to the City Manager.

You should trust the IPA because the IPA is independent. The IPA is free to agree or disagree with the decisions of the SJPd.

What can I do if I think an SJPd officer did something wrong?

One of the things you can do is file a Conduct Complaint with the IPA.

What is a Conduct Complaint?

A Conduct Complaint is a statement from you explaining why you think an SJPd officer broke one (or more) of the rules that the officer has to follow, and requesting that the officer's conduct be investigated by the SJPd. The rules are in the SJPd Duty Manual.

What if I don't know which rule the officer may have violated?

There are many rules officers have to follow and you don't need to know them all. If you have a question about whether a certain kind of behavior by an officer is against the SJPd rules, you can contact the IPA to ask.

Does it matter whether I file a Conduct Complaint?

Yes, it does matter. By speaking out about a possible problem with an officer, you are

alerting the SJPD leadership about ways to improve the SJPD.

Also, the IPA looks for trends in Conduct Complaints. When we identify patterns, we make recommendations to the SJPD for improvements.

Do I have to know the officer's name or badge number?

No, you don't. While it's useful information, if you don't have that information, you can still file your complaint.

Can I file a complaint with the IPA against an officer who is not with the San José Police Department?

No. The Office of the IPA can only process your complaint if it is about an SJPD officer. Complaints about officers employed by other law enforcement agencies cannot be filed with the IPA.

Who can file a Conduct Complaint with the IPA?

Any member of the public can file a Conduct Complaint about a SJPD officer. You can file a Conduct Complaint about something that happened to you, or about something that happened to somebody else. You can live in San José or outside the city. You can be a U.S. citizen, or you can be an immigrant – with or without papers. IPA staff are fluent in English, Spanish, Vietnamese, Cantonese and Japanese. You can be a young person or you can be an adult.

You can also file a complaint if you are a defendant in a criminal case; but if the case is related to the complaint you want to tell us about, we recommend that you talk to your lawyer first.

How do I file a complaint?

You can file your complaint in writing (email, mail, fax, or hand delivery), or by talking to us about it by phone or in person. We have a form that you can fill out if you prefer to file your complaint this way. You can be anonymous if you want, although it will be harder to investigate and prove your complaint. If you file in writing, we will need to reach you if we have any questions about your complaint.

What happens after I file a Conduct Complaint?

When the Office of the IPA receives your complaint, we identify specific allegations that you have made against the officer(s). Then we forward your complaint to Internal Affairs (IA) for investigation. The IPA does not investigate any complaints. Unlike the IPA, IA is a part of SJPD. IA investigates all Conduct Complaints. As part of IA's investigation, you and any witnesses may be contacted for more information about the incident. If you claim that you were injured by an officer, you might be asked to sign a release of medical records. IA may obtain documents about the incident from the SJPD, and may interview the subject officer(s) and any witness officers. The IA investigation can take from several months to a year.

When the investigation is finished, the Department issues a finding for each allegation. The possible findings are Sustained, Not Sustained, Exonerated, Unfounded, No Finding, Withdrawn, or Other. (You can read the definitions of these findings in the Glossary.) Based on these findings, the SJPD decides whether or not to discipline the subject officer(s).

The IPA gets involved again at this stage. The IPA audits the Department's investigations and findings. The IPA and his staff review the investigations by the Department to ensure that those investigations are **thorough, objective, and fair**. Sometimes the IPA agrees with the findings and sometimes the IPA disagrees. When there is a disagreement, the IPA can discuss the matter with IA. Sometimes this causes the Department to re-open the investigation or change its findings. The IPA can also bring the disagreement to the attention of the Police Chief and the City Manager. You can read the IPA's Year-End Report for more details about the complaint process.

After the entire process is over and your case is closed, you will get a letter in the mail telling you the findings of the investigation.

Will I have more problems with the police if I file a Conduct Complaint?

The SJPd has strict rules that prohibit officers from retaliating against complainants.

Is the process fair to the officers?

Yes, we believe that it is. The Peace Officers Bill of Rights (POBR) is a state law that provides many protections to officers during this process. These protections include the right to have a representative present during misconduct investigation interviews, the right to an administrative appeal, and the right to review and respond to adverse comments in the officer's personnel file. POBR also places restrictions on how interviews of police officers are conducted and timelines in which investigations must be completed.

What if I don't have a Conduct Complaint against an individual officer, but I don't like a pattern I see with the police?

You can file a policy complaint. Policy complaints are not requests for individual officers to be investigated and disciplined. Instead, they are requests that the SJPd change its policies or procedures or adopt new ones. You can file a policy complaint with the Office of the IPA.

What if an officer did a good job and I want to give him or her a compliment?

You can submit compliments with Internal Affairs at SJPd by calling 408-277-4094 or by going to the SJPd website: <http://www.sjpd.org/COP/IA.html>

Can you tell me what happened to the officer about whom I complained?

No, we can't. Because we must follow very strict confidentiality rules, we are not allowed to give you any information about this. In fact, it is against the law for us to talk about this with any member of the public.

What if I think that the police should have to pay me money because of what they did to me. Can the IPA help me with this?

No, we can't. This complaint process looks only at possible officer discipline. You should seek the advice of a lawyer about other remedies.

I have been charged with a crime. Will filing a complaint affect the criminal case against me?

No. The complaint you file with us is completely separate from your criminal case. The IPA cannot advise or represent you on any legal matter.

As a community member, how can I be supportive of the IPA Office?

You can help us spread the word by inviting us to give presentations in your communities. Also, there are two groups who advise the IPA: IPAAC (IPA Advisory Council) and the IPA-TLC (Teen Leadership Council). You can visit the IPA website to learn more about these groups and how you can get involved.

Appendix F:

IPA 2015 Community Outreach Activities

Date	Name	Type	District	Location/Notes
01/08/15	IPAAC Meeting	Meeting/Event	3	IPA Office
1/9/2015	Santa Clara University	Meeting/Event	N/A	Santa Clara University
1/9/2015	California Alliance of American Educators	Materials Distributed	N/A	Out of City Limits
1/9/2015	Meeting w/Community Leaders- Chandra Brooks, Tamara Alvarado, Demone Carter	Press Conference	3	IPA Office
1/13/2015	San José State University	Presentation	3	San José State University Campus
1/14/2015	Mayor's Gang Prevention Task Force	Presentation	4	Eastside Union High School District
1/14/2015	FBI Citizens Academy Event	Meeting/Event	N/A	Microsoft
1/15/2015	Claiming the Beloved Community	Meeting/Event	5	Emmanuel Baptist Church
1/15/2015	Juvenile Opportunity Community Drug Court	Presentation	7	Center for Training & Careers
1/16/2015	Teen Leadership Council	Meeting/Event	3	IPA Office
1/16/2015	Luis Valdez Ledership Academy	Presentation	7	Yerba Buena High School Campus
1/16/2015	Luis Valdez Ledership Academy	Presentation	7	Yerba Buena High School Campus
1/22/2015	San José Community Day School	Presentation	3	San José Community Day School
1/29/2015	Vice Mayor Swearing in Ceremony	Meeting/Event	3	City Hall Rotunda
1/30/2015	La Raza Round Table	Meeting/Event	7	Center for Training & Careers
1/30/2015	Gideon Hausner Jewish Day School	Presentation	N/A	Gideon Hausner Jewish Day School
2/2/2015	Mexican Consulate	Meeting/Event	4	Mexican Consulate
2/2/2015	Gang Intervention & Community Services	Meeting/Event	N/A	Santa Clara University
2/4/2015	Women's Fellowship Group	Presentation	N/A	First Congregational Church
2/5/2015	Taping of T.V. Show w/SF Public Defender	Meeting/Event	N/A	San Francisco Main Library
2/6/2015	African American Flag Raising Ceremony	Meeting/Event	3	City Hall Rotunda
2/8/2015	Black History Month Jack & Jill of Silicon Valley	Presentation	3	Martin Luther King Jr. Main Library
2/8/2015	Phone Town Hall Meeting	Meeting/Event	N/A	Santa Clara County Supervisor Simitian's Office
2/10/2015	Joint Hearing w/Senate & Assembly	Meeting/Event	N/A	Sacramento
2/10/2015	Senator Mitchell	Meeting/Event	N/A	Sacramento
2/11/2015	Mayor's Gang Prevention Task Force	Meeting/Event	3	Center for Employment Training

Date	Name	Type	District	Location/Notes
2/12/2015	San José High School	Presentation	3	San José High School
2/13/2015	Democratic 21st Century Club	Presentation	3	San José Airport Garden Hotel
2/17/2015	VTA Panel - Black History Month	Presentation	4	3331 N. 1st Street Building B
2/19/2015	Juvenile Justice Opportunity Court	Meeting/Event	7	729 Story Rd
2/19/2015	Edward Maxwell of Zoe Lofgren's office	Meeting/Event	3	IPA Office
2/20/2015	Teen Leadership Council	Meeting/Event	3	IPA Office
2/23/2015	Speaker at Event "The Verdict"	Presentation	6	San José City College
2/25/2015	Community Member Request	Materials Distributed	N/A	Francella Stevens
2/27/2015	Senior Walk & Resource Fair	Presentation	10	Westfield Oakridge Mall
2/28/2015	Mayor's Gang Prevention Task Force Gang Summit	Meeting/Event	5	Mt. Pleasant High School
3/2/2015	Fresh Lifelines for Youth: (FLY)	Presentation	7	Fresh Lifelines for Youth - Andrew Hill High School Site
3/4/2015	Fresh Lifelines for Youth: (FLY)	Presentation	5	Fresh Lifelines for Youth - Mt. Pleasant High School Site
3/10/2015	Emmanuel Baptist Church	Meeting/Event	3	IPA Office
3/10/2015	Fresh Lifelines for Youth (FLY)	Presentation	5	Fresh Lifelines for Youth - Hank Lopez Community Center Site
3/11/2015	Mayor's Gang Prevention Task Force	Meeting/Event	4	Eastside Union High School District
3/12/2015	Fresh Lifelines for Youth (FLY)	Presentation	6	Fresh Lifelines for Youth - Del Mar High School Site
3/13/2015	Fresh Lifelines for Youth: Snell Community School	Presentation	7	Fresh Lifelines for Youth - Snell Community School Site
3/15/2015	Keynote Speaker @ NAACP Freedom Fund Banquet	Meeting/Event	N/A	Elks Lodge San Mateo
3/17/2015	KIQI 1010 AM Radio Interview	Media-Radio	3	IPA Office
3/19/2015	IPAAC Meeting	Meeting/Event	3	IPA Office
3/20/2015	Interviewed Talib Kweli - for Commonwealth Club	Meeting/Event	N/A	Castro Theater San Francisco
3/20/2015	Teen Leadership Council	Meeting/Event	3	IPA Office
3/20/2015	Teen Leadership Council	Meeting/Event	3	IPA Office
3/23/2015	Know Your Rights Townhall Meeting	Meeting/Event	N/A	Palo Alto
3/25/2015	Gina Gates	Meeting/Event	3	IPA Office
3/27/2015	La Raza Round Table	Meeting/Event	7	Center for Training & Careers
3/30/2015	SJPD Recruit Training Regarding Sustained Cases	Presentation	8	Evergreen Valley College Police Academy
4/3/2015	Valley Palms On The Move	Meeting/Event	7	Family Resource Center
4/6/2015	Mexican Consulate	Meeting/Event	4	Mexican Consulate

Date	Name	Type	District	Location/Notes
4/8/2015	Mayor's Gang Prevention Task Force	Meeting/Event	10	Victory Outreach
4/10/2015	UC Berkeley	Presentation	N/A	U.C. Berkeley Barrows Hall
4/13/2015	People Acting In Community Together (PACT)	Meeting/Event	3	IPA Office
4/14/2015	Girl Scouts: Got Choices Program	Presentation	2	Oakgrove High School
4/15/2015	Girl Scouts: Got Choices Program	Presentation	N/A	Bill Wilson Center
4/15/2015	UC Berkeley	Meeting/Event	N/A	U.C. Berkeley Goldman School of Public Policy
4/16/2015	Teen Leadership Council	Meeting/Event	3	IPA Office
4/17/2015	Valley Fair Senior Walk	Meeting/Event	6	Valley Fair Mall
4/22/2015	East Side Union High School District	Presentation	2	Eastside Union High School District
4/22/2015	Mt. View Human Rights Commission	Meeting/Event	N/A	Mt. View Senior Center
4/23/2015	Girl Scouts: Got Choices Program	Presentation	6	Willow Glen High School
4/24/2015	La Raza Round Table	Meeting/Event	7	Center for Training & Careers
4/25/2015	63rd Annual Freedom & Friendship Gala	Meeting/Event	3	Holiday Inn San José Airport
4/27/2015	Community Meeting for IPA Job Search	Materials Distributed	3	Mayor's Office
4/29/2015	Alum Rock Laundreland	Meet & Greet	5	2006 Alum Rock Ave San José CA 95116
4/29/2015	Wash America	Meet & Greet	5	1939 Alum Rock Ave
4/29/2015	Girl Scouts: Got Choices Program	Presentation	7	Andrew Hill High School
4/29/2015	Girl Scouts: Got Choices Program	Presentation	9	Broadway High School
4/29/2015	Interview w/SJSU Student Quinn Dang	Meeting/Event	3	IPA Office
4/29/2015	People Acting In Community Together (PACT)	Meeting/Event	3	IPA Office
4/29/2015	Jewish Lawyer Group	Presentation	3	Law Foundation
4/30/2015	Sister to Sister Conference	Meeting/Event	5	Mexican American Heritage Plaza
4/30/2015	Menlo Atherton High School	Presentation	N/A	Menlo Atherton High School
4/30/2015	Girl Scouts: Got Choices Program	Presentation	3	Washington Youth Center
5/1/2015	Phone Meeting w/Northwestern University	Meeting/Event	3	IPA Office
5/6/2015	Job Corp	Presentation	5	Job Corp
5/6/2015	White Laundry	Meet & Greet	5	White Road 95127
5/6/2015	SJPD FTO Training	Training	3	
5/13/2015	Mayor's Gang Prevention Task Force	Meeting/Event	4	Eastside Union High School District
5/14/2015	Beloved Community Event	Meeting/Event	3	St. Paul's United Methodist Church

Date	Name	Type	District	Location/Notes
5/14/2015	Santa Clara University Law School	Meeting/Event	N/A	Santa Clara University School of Law
5/14/2015	Human Rights Commission	Meeting/Event	3	70 W. Hedding
5/15/2015	Teen Leadership Council	Meeting/Event	3	IPA Office
5/16/2015	San José State University	Meeting/Event	3	San José State University Campus
5/17/2015	St. James Church AME	Presentation	3	St. James Church
5/18/2015	Coalition for Justice & Accountability	Meeting/Event	6	Asian Americans for Community Involvement Center
5/20/2015	San José Police Use of Force Training	Training	3	San José Police Dept. Admin Bldg.
5/21/2015	Opportunity Court	Meeting/Event	3	Center for Employment Training
5/30/2015	Senior Walk	Meeting/Event	8	Eastridge Mall
6/1/2015	Mexican Consulate	Meeting/Event	4	Mexican Consulate
6/8/2015	Teen Leadership Council	Meeting/Event	N/A	Happy Valley Conference Center
6/10/2015	Mayor's Gang Prevention Task Force	Meeting/Event	5	Mt. Pleasant High School
6/15/2015	Teen Leadership Council	Meeting/Event	N/A	Sacramento State Capital
6/18/2015	Juneteenth	Presentation	7	Seven Trees Community Center
6/18/2015	Reception @ Castellanos	Meeting/Event	N/A	Castellanos House
6/19/2015	Teen Leadership Council Celebration Event	Meeting/Event	N/A	Santa Clara
6/19/2015	Teen Leadership Council	Meeting/Event	3	IPA Office
6/20/2015	Asian Americans for Community Involvement (AACI)	Meeting/Event	6	AACI Office
6/26/2015	Firehouse	Materials Distributed	3	IPA Office
7/24/2015	Asian Americans for Community Involvement (AACI)	Presentation	7	Juvenile Hall Unit B-4 @ AARS
8/3/2015	Mexican Consulate	Meeting/Event	4	Mexican Consulate
8/4/2015	National Night Out	Meeting/Event	10	Almaden Hills United Methodist Church
8/4/2015	National Night Out	Meeting/Event	7	Seven Trees
8/4/2015	National Night Out	Meeting/Event	3	St. James Park
8/4/2015	National Night Out	Meeting/Event	2	Dolce Hayes Mansion
8/12/2015	Mayor's Gang Prevention Taskforce	Meeting/Event	3	Center for Employment Training
8/20/2015	Opportunity Court	Meeting/Event	7	
8/21/2015	Recovery Café	Presentation	3	Summit Center
9/8/2015	San José City College	Meeting/Event	6	SJ City College Student Center

Date	Name	Type	District	Location/Notes
9/9/2015	Mayor's Gang Prevention Task Force	Meeting/Event	4	East Side Union High School District
9/16/2015	Bench Bar Media	Meeting/Event	6	3 Flames Restaurant
9/18/2015	Parking Day	Meeting/Event	3	Downtown San José
9/21/2015	Fresh Lifelines for Youth (FLY)	Presentation	7	Andrew Hill High School
9/23/2015	Always Pure Water	Meet & Greet	7	2302 Senter Rd.
9/23/2015	Senter Coin Op Laundromat	Meet & Greet	7	2310 Senter Rd.
9/23/2015	Bill Insurance	Meet & Greet	7	Senter Rd.
9/23/2015	Dolce Espresso	Meet & Greet	7	2326 Senter Rd.
9/23/2015	Senter Laundromat	Meet & Greet	7	2266 Senter Rd.
9/23/2015	Ace Laundromat	Meet & Greet	7	2611 Senter Rd
9/23/2015	Fresh Lifelines for Youth (FLY)	Presentation	6	Edge Community School
9/24/2015	Youth Meeting (San José Community Member)	Meet & Greet	3	iJava Café
9/25/2015	La Raza Round Table	Meeting/Event	7	Center for Training & Careers
9/28/2015	Santa Clara County Public Defender Event "Know Your Rights"	Meeting/Event	3	Downtown Street Team Office
9/28/2015	Willow Glen Library	Materials Distributed	6	Willow Glen Library
9/28/2015	Cambrian Library	Materials Distributed	9	Cambrian Library
9/30/2015	Santa Clara County Public Defender Event "Know Your Rights"	Meeting/Event	N/A	Kurt Kumli Resource Center
10/1/2015	Fresh Lifelines for Youth (FLY)	Presentation	6	Del Mar High School
10/1/2015	Bascom Library/Community Center	Materials Distributed	6	Bascom Library/Community Center
10/3/2015	Tully Library	Materials Distributed	7	Tully Library
10/3/2015	Day In The Park	Meeting/Event	8	Lake Cunningham Park
10/5/2015	Fresh Lifelines for Youth (FLY)	Presentation	7	Snell Community School
10/6/2015	Evergreen Community Center	Materials Distributed	8	Evergreen Community Center
10/6/2015	Evergreen Library	Materials Distributed	8	Evergreen Library
10/7/2015	Martin Luther King Library	Materials Distributed	3	Martin Luther King Library
10/9/2015	Dahl Elementary School	Meeting/Event	7	Dahl Elementary School
10/9/2015	College Day Outreach	Meeting/Event	7	Bridges Academy
10/9/2015	Seven Trees Library/Community Center	Materials Distributed	7	Seven Trees Library/Community Center
10/9/2015	Pearl Library	Materials Distributed	9	Pearl Library

Date	Name	Type	District	Location/Notes
10/14/2015	Joyce Ellington Library	Materials Distributed	3	Joyce Ellington Library
10/14/2015	SJ Conservation Corp	Presentation	4	SJ Conservation Corp
10/15/2015	Opportunity Court	Meeting/Event	7	Opportunity Court
10/15/2015	Alum Rock Library	Materials Distributed	5	Alum Rock Library
10/15/2015	Gardner Community Center	Materials Distributed	3	Gardner Community Center
10/15/2015	Biblioteca Library	Materials Distributed	3	Biblioteca Library
10/15/2015	Washington Community Center	Materials Distributed	3	Washington Community Center
10/15/2015	Mayfair Community Center	Materials Distributed	5	Mayfair Community Center
10/15/2015	Hillview Library	Materials Distributed	5	Hillview Library
10/19/2015	Mexican Consulate	Meeting/Event	4	Mexican Consulate
10/20/2015	Judge Cordell	Materials Distributed	N/A	IPA Office
10/23/2015	Office of the Public Defenders	Materials Distributed	3	Office of the Public Defenders
10/28/2015	Grace Community Center	Materials Distributed	3	Grace Community Center
10/28/2015	Downtown Street Team	Presentation	3	Grace Community Center
10/30/2015	La Raza Round Table	Meeting/Event	7	Center for Training & Careers
10/30/2015	Community Member Jon R.	Materials Distributed	N/A	IPA Office
11/2/2015	Independence High School	Presentation	4	Independence High School
11/2/2015	Community Member	Meet/Greet	3	IPA Office
11/12/2015	An Evening of Community Engagement	Meeting/Event	6	San José City College
11/17/2015	Mayor's Gang Prevention Task Force	Meeting/Event	3	Center for Employment Training
11/17/2015	County Office of the Public Defenders	Materials Distributed	3	Public Defenders Office
11/19/2015	Opportunity Court	Meeting/Event	7	Alum Park Youth Center
11/23/2015	Public Safety Meeting	Materials Distributed	8	Evergreen Community Center
11/23/2015	Calabazas Branch Library	Materials Distributed	1	Calabazas Branch Library
11/23/2015	West Valley Branch Library	Materials Distributed	1	West Valley Branch Library
12/9/2015	La Raza Round Table	Meeting/Event	7	749 Story Rd San José
12/9/2015	Mayor's Gang Prevention Task force	Meeting/Event	5	Job Corp - East San José
12/14/2015	Mexican Consulate	Meeting/Event	4	Mexican Consulate
12/14/2015	Community Member Andrew Costa	Meet & Greet	3	IPA Office

Appendix G:

IPA 2015 Media Contacts, Articles, and Interviews

Date	Media Outlet	Topic
1/14/2015	San Francisco Daily Journal	Cartoonists' killings raise old issue for ex-judge
1/22/2015	San José State Spartan Daily	Liccardo promises outreach at Mayor Inauguration
2/3/2015	The Press Democrat	Lopez task force unveils civilian review model
2/8/2014	"Phone" Town Hall meeting participant re Post-Ferguson policing'	Phone Town Hall Meeting that will be broadcast on KLIV radio.
2/4/15- 2/10/2015	Metro News	City Attorney Looks into Coaching of SJPd
2/5/2015	SF GOV TV	Justice Matters
2/6/2015	Metro News - San José Inside	Telephone Town Hall Addresses, Race, Police, and Public Trust
2/9/2015	KQED	Interview Topic: issues about officer misconduct prosecutions in California
2/10/2015	Santa Rosa Democratic Press	Interview Topic: Santa Rosa Civilian Oversight and San José IPA
2/9/2015	ABC Channel 7 news	Special Roundtable for show "beyond the headlines" Judge will speak about Independent Police Auditor Office
2/10/2015	ABC 10 (Sacramento Bureau)	Re: Testimony in Sacramento about policing and building trust
2/10/2015	FOX 40 (Sacramento, Stockton, Modesto)	Re: Testimony in Sacramento about policing and building trust
2/10/2015	Ventura County Star	Lawmakers urged to consider bills to improve police accountability
2/11/2015	Press Democrat (Sonoma/Mendocino County)	Re: civilian oversight that is being proposed in Sonoma County
2/11/2015	Associated Press	Re: officers employed by private security firms (Mercury News article 1/22/15)
2/11/2015	Palo Alto Online	East Palo Alto workshop aims to bridge police - community divide
2/12/2015	California State Senate (Press Release)	Senator Holly J. Mitchell bill would eliminate criminal grand jury
2/14/2015	Los Angeles Times	Lawmaker would bar grand juries in cases of police shootings
2/17/2015	Daily Journal	SB 227 (eliminating grand juries in fatal police shooting and deaths from excessive force).
2/18	The Last Word with Lawrence O'Donnell	criminal grand juries
2/20/2015	Journalist Interview (phone): ABC 7	Re: Santa Clara County using mobile tracking to assist w/ investigations: Stingray aired 2/20 4pm & 6pm
2/20/2014	Mercury News / Contra Costa Times	Privacy and transparency issues raised over Santa Clara County's push to get phone tracker
2/25/2015	UT San Diego	Legislators more apt to tackle cop issues
3/17/2015	KIQI 1010 AM	Carlos Gutierrez interview re: events in Ferguson

Date	Name	Notes	Contact
3/18/2015	KLIV	Judge Cordell's Retirement	
3/18/2015	San José Metro	Judge Cordell's Retirement	
3/18/2015	ABC	Judge Cordell's Retirement	
3/18/2015	San José Mercury News	Independent Police Auditor LaDoris Cordell to step down this summer	
3/19/2015	KTVU Channel 2	Independent Police Auditor Retirement	
3/19/2015	KCBS	Independent Police Auditor LaDoris Cordell Retirement	
3/18/2015	SFBAY.CA	San José Police Auditor to Retire	
3/20/2015	NBC Bay Area	"Create Context for Us to Voice Struggle": Hip-Hop Artist Talib Kweli, Judge LaDoris Cordell Talk Race and Justice	
3/26/2015	Bloomberg Business	"Pao Case Lawyers: Legal Professions' 'Odd Couple'"	
4/4/2015	The Press Democrat	San José, BART police auditor programs a model for Sonoma County	
4/8/2015	KQED	Drones	
4/8/2015	San José Mercury News	Mountain View: Roundtable changes format, to talk Ferguson	
4/8/2015	MSNBC	investigations into police misconduct	
4/9/2015	1010 AM	Police officer Shooting in South Carolina	
4/9/2015	KTVU Channel 2	Officer worn cameras and citizen's rights (air's 6pm; 10pm; and online)	
4/9/2015	San Francisco Chronical	South Carolina Video may have huge impact on debate over police	
4/10/2015	San José Mercury News	San José IPA Annual Report	
4/10/2015	ABC Channel 7 news	Annual Report - Racial Bias	
4/10/2015	NBC Bay Area	KPIX Channel 5 Annual Report - Accountability and Use of Police Force	
4/10/2015	KGO Radio	Annual Report	
4/13/2015	KTVU Channel 2	Body Worn Cameras	
4/14/2015	NBC Bay Area	Subject: Sacramento's discussion on police wearing body camera's	
4/14/2015	KPIX	Body Worn Cameras - San José City Council	
4/14/2015	San José Inside	SJPD Claims It's Never Had a Single Incident of Racial Bias	
4/16/2015	The New York Times	Body Cameras	
4/16/2015	National Public Radio (NPR)	Body Cameras	
4/18/2015	Associated Press	California: Kamala Harris announces police anti-bias training program	
4/20/2015	Pasadena Star News	Pasadena election may result in outside oversight of police department	
4/21/2015	San José Mercury News	SJPD bias record questioned	
4/21/2015	KNTV - NBC	IPA Annual Report	

Date	Name	Notes	Contact
4/21/2015	KTVU Channel 2	SJ Police Department - Security Breach	
4/21/2015	KQED	IPA Annual Report	
4/21/2015	Univision Channel 14	IPA Annual Report	
4/21/2015	NBC Bay Area	Federal officer grabbed/kicked phone from citizen filming.	
4/22/2015	The New York Times	Re: Silicon Valley DeBug and their sentencing video	
4/22/2015	Los Altos Town Crier	Mountain View sponsors roundtable on police relations	
4/22/2015	CBS Channel 5	Barry Bond's conviction for obstruction of justice	
4/23/2015	Daily Post	Could Ferguson happen here? Re: Mountain View community forum moderated by Sup. Simitian	
4/28/2015	San José Mercury News	San José: Police auditor wants more sunshine on internal misconduct reports	
5/1/2015	San José Mercury News	LaDoris Cordell makes legitimate call for transparency	
4/29 -5/1/15	Metro News	Pistol in my pocket: request to carry guns skyrocket in silicon valley	
5/1/2015	Mountain View Voice	Mountain View is no Ferguson	
5/5/2015	KTVU Channel 2	San José Police Officer Force Video	
5/5/2015	NBC Bay Area	Facebook Video Shows San José Police Wielding Baton, Punching Suspect Who Allegedly Attacked Cops, Refused Arrest	
5/5/2015	Univision Channel 14	Video of White Rd. Incident	
5/5/2015	KGO TV	Video of White Rd. Incident	
5/5/2015	ABC Channel 7 news	Video of White Rd. Incident	
5/5/2015	CBS5	Jury Duty	
5/6/2015	KPIX Channel 5	Video of White Rd. Incident	
5/7/2015	1010 AM	Police Officer Force in San José: Latino Male beaten	
5/7/2015	SF Examiner	SF district attorney taps 3 judges from outside city to head probe into police bias	
5/7/2014	KQED	SF DA Convenes 3 Retired Judges to Probe Police Department	
5/8/2015	SF Chronical	D.A. drops 8 cases over text scandal	
5/8/2014	Radio 1010 AM	Police Officer Force in San José: Latino Male beaten	
5/10/2015	San José Mercury News	SJPD data show San José cops detained greater percentage of blacks, Latinos	
5/10/2015	KCBS	Re: Mercury News Article; race data in SJ	
5/11/2015	Telemundo	Re: Mercury News Article; race data in SJ	
5/11/2014	Univision Channel 14	Re: Mercury News Article; race data in SJ	
5/11/2015	KQED	Re: Mercury News Article; race data in SJ	
5/12/2015	Georgia Public Broadcasting (GPB),	Bias training for police officers	

Date	Name	Notes	Contact
5/13/2015	Los Altos Town Crier	Civility Roundtable opens discussions on race, policing	
5/13/2015 - 5/19/2015	San José Inside (Metro)	Report: SJPD Disproportionately Targets Latinos, Blacks	
5/14/2015	NBC Bay Area	Body cameras	
5/14/2015	Univision Channel 14	Detention data	
5/15/2015	San José Mercury News	SJ police challenge: Build trust	
5/21/2015	KTVU Channel 2	POA/City/SJPD agreement re: Body Cameras	
5/21/2015A	San José Mercury News	A call for social change, rebuilding community	
5/25/2015	The New York Times	Last Exhibit for the Defense: A Flattering Video	
5/25/2015	San José Mercury News	Body worn cameras SJPD agreement	
5/25/2015	KCBS Radio	Body worn cameras	
5/27/2015	ABC News	San José's independent police auditor to retire, focus on music	
5/30/2015	The Warrior Times: Yerba Buena High School Newspaper	The Role of Bias in Policing	
6/1/2015	Mercury News	Increase power of San José independent police auditor	
6/2/2015	Mercury News	Statewide data collection on police stops is needed.	
6/1/2015	Mercury News	Auditor should have hand in PD cameras	
6/4/2015	Mercury News	Readers' Letters: When LaDoris Cordell retires, we all lose	
6/19/2015	Mercury News: Blog	San José poised to appoint interim independent police auditor	
6/22/2015	Mercury News	PACT celebrating 30 years of community impact	
6/24/2015	Mercury News	Letters from Mercury News readers: If it weren't so sad, it would be a joke	
6/24/2015	Charlotte Observer	Civilian Oversight	
7/2/2015	Bay Area Reporter	South Bay celebrates Supreme Court's marriage ruling	
7/27/2015	Santa Rosa Press Democrat	PD Editorial: Finding the right person for this post	
7/30/2015	KQED	Merc Article: federal lawsuit on racial profiling	
8/4/2015	NBC Bay Area	Rohnert Park Launches Investigation After Video Shows Cop Pull Gun Out on Man	
8/10/2015	KTVU Channel 2	Interview: Officer Involved Shootings	
8/10/2015	NBC Bay Area	Interview: Data on Officer Involved Shootings	
8/11/2015	San José Mercury News	Gov. Brown Okays nation's 1st ban on grand juries in police shootings	
8/11/2015	San José Inside (Metro)	San José Chief orders additional bias training	
8/11/0015	San Francisco Chronicle	State ends secret hearings in police killings of civilians	

Date	Name	Notes	Contact
8/11/2015	Tribune News Service	California's Gov. Brown okays nation's first ban on grand juries in police shootings	
8/12/2015	tech dirt	California Governor Passes Ban on Use of Grand Juries in the Officer- Involved Killings	
8/18/2015	KQED	Officer involved shootings	
8/19/2015	ABC News	SJPD under scrutiny for shooting homicide suspect	
8/19/2015	San José Mercury News	SJPD admits "waistband" error in officer -involved shooting	
8/19/2015	NBC Bay Area	Complaint Filed Against San José Police Over Fatal Shooting of Homicide Suspect	
8/20/2015	KQED	SJPD officer involved shooting	
8/20/2015	Telemundo	SJPD officer involved shooting	
8/20/2015	San José Mercury News	Mercury News Editorial: SJPD Killing leads to a real trust problem	
9/2/2015	Contra Costa Times	California needs a law to quantify police profiling	
9/2/2015	Univision Channel 14	Body Cameras	
9/5/2015	San José Mercury News	LaDoris Cordell: Sheriff's deputies, correctional officers need civilian oversight	
9/11/2015	San José Mercury News	Santa Clara County to form commission to investigate jail systems	
9/16/2015	San José Mercury News.com	How does change come to a culture of brutal violence	
9/30/2015	KQED	report regarding officer involved shooting of a man with a knife (suicidal): Phillip Walkins	
10/2/2015	San José Mercury News	Santa Clara Co. recommendation: Bar public from testifying about mistreatment of inmates	
10/7/2015	San José Mercury News	Santa Clara Co. moves forward on jail improvement commission	
10/20/2015	The Press Democrat	Sonoma County could hire auditor to monitor Sheriff's Office by February	
10/23/2015	San José Mercury News	Santa Clara Co: Sheriff's Office must navigate policy pitfalls as it mulls body cameras in jails	
10/26/2015	San José Mercury News	LaDoris Cordell to head jail commission	
10/26/2015	NBC Bay Area	LaDoris Cordell to Helm Santa Clara County's Jail Commission	
11/3/2015	KRON 4	San José appoints new independent police auditor	
11/3/2015	NBC Bay Area	San José has New Independent Police Auditor	
11/3/2015	ABC 7	San José Officials Appoint New Independent Police Auditor	
11/3/2015	San José Inside (Metro)	Walter Katz named San José's Next Independent Police Auditor	
11/4/2015	San José Mercury News	Experience is key in SJ's choice for new police auditor	
11/4/2015	KLIV 1590	Los Angeles attorney Walter Katz named San José's new independent police auditor	
11/4/2015	San José Mercury News	San José's successor to LaDoris Cordell looks promising	
11/4/2015	CBS Channel 5	IPA announcement	
12/6/2015	San José Mercury News	Abuse claims grow in county jail scandal	

Appendix H



San José Police Body Worn Camera Policy

1. Background, Scope and Purpose

The Department adopts the use of body-worn cameras to visually and audibly record specific categories of interactions between officers and the public and to retain associated video for a period of time. Officers shall utilize the device in accordance with the provisions of this policy.

2. User Training

The Department shall ensure that each officer is trained in the use of the body-worn camera prior to issuance and deployment. The training shall include:

- A. Training on operation (including when to activate and deactivate), maintenance and care;
- B. Training on mandatory, discretionary and non-permissible uses of body-worn cameras;
- C. Periodic training on significant changes in the law pertaining to body worn cameras;
- D. Additional training at periodic intervals to ensure continued effective use of the body-worn camera equipment, performance, and to incorporate changes, updates or other revisions in policies and equipment.

3. Officer Responsibilities

Each uniformed officer assigned a body-worn camera and working a patrol assignment, including pay cars, is responsible for ensuring that they are equipped with a Department-issued body-worn camera and that the camera is fully charged and in good working order at the beginning of their shift. If a device is in need of repair, members will notify their supervisor and turn the body-worn camera into Central Supply for repair or replacement. Actual time spent testing or reporting damage to a body-worn camera shall be regarded as time worked.

Uniformed officers should wear the camera on their uniform at a location that will facilitate an optimum recording field of view.

Officers shall not deliberately remove, dismantle or tamper with any hardware and/or the evidence management software component of the body-worn camera.

Each officer is responsible for ensuring that their assigned body-worn camera is downloaded/ uploaded during their shift as needed or at the completion of their shift, or at any time the device's memory is deemed to be full. Actual time spent downloading/uploading the body-worn camera files at the completion of an officer's shift shall be considered booking evidence and regarded as time worked.

Media captured via the body-worn camera shall only be downloaded/ uploaded to Department-approved secure storage. Since the content of the recording may be considered evidence, and are considered Department records of investigation, officers will comply with all sections in the Duty Manual regarding the handling of evidence and official Department records.

4. Supervisor Responsibilities

Supervisors will ensure that officers utilize the body-worn camera according to these policy guidelines.

Supervisors shall ensure videos related to Officer-Involved Incidents, as defined in Section 16, are uploaded/downloaded as soon as possible following the event or as requested by a supervisor.

Supervisors completing a Use of Force investigation where a body-worn camera was used should review the video and follow procedures set forth in Duty Manual Section L 2605 (Supervisor's Responsibilities).

Supervisors may have the ability to immediately resolve citizen complaints by viewing video captured by the officer's body-worn camera prior to contacting the citizen. At no time, except at the direction of the Chief or designee, shall the supervisor allow the citizen to view the file footage. In those circumstances where a complaint is resolved with no further action needed, supervisors shall make notes in the CAD event.

5. When to Activate

There are many situations when to activate the body-worn camera, however, this policy is not intended to describe every possible circumstance.

The safety of officers and members of the public is the highest priority, and the Department acknowledges there may be situations in which operation of the device is impractical or may be an impediment to public and officer safety. Additionally, the Department recognizes human performance limitations during particularly stressful, critical situations.

Officers shall make every effort to record non-enforcement contacts should they become confrontational, assaultive or enforcement-oriented. In addition to the required conditions, personnel may activate the system any time they feel its use would be appropriate and/or valuable to document an incident. Also, officers shall not be required to activate or deactivate

their body-worn camera based solely on the requests or demands of a citizen, but rather rely on their training and this policy to direct their use of the body-worn camera.

During their shift, officers shall make every reasonable effort to activate the body-worn camera prior to initiating, or as soon as practical after initiating, the following police actions:

- A. All enforcement encounters where there is at least reasonable suspicion the person(s) has committed, is committing or may be involved in criminal activity. This includes, but is not limited to:
 - a) Detentions, vehicle stops, pedestrian stops and consensual encounters
 - b) Probation, parole, post-release community supervision, mandatory supervision or consent searches, 'knock and talks.'
- B. Taking or attempting to take a person into custody (e.g., arrests, protective custody of mentally disturbed person, etc.).
- C. Enforcement encounters where there is reason to believe that the individual is committing a violation for which a citation may be issued.
- D. All incidents involving a use of force.
- E. All public interaction, regardless of context, that escalates and becomes adversarial.
- F. Service of search or arrest warrants.
- G. Suspect statements.
- H. Witness/Victim statements (when practical).
- I. Pursuits (when practical).
- J. Response to complaints or calls for service.

6. When to Deactivate

Body-worn camera recordings shall not be intentionally terminated until the conclusion of the encounter, except for tactical or safety reasons, or the encounter no longer holds evidentiary or investigative value.

Anytime the recording is terminated prior to the end of the encounter, the reason(s) should be documented both on the body-worn camera recording before deactivation and in the subsequent police report. If no police report is filed for the recorded encounter, then the reason(s) for the early termination should be recorded on the citation, CAD event or Street Check.

Officers will use reasonable judgment in determining when to deactivate the body-worn camera, such as when the purpose for activation is no longer present. (Example: An officer is assigned to an outer perimeter position for an extended period of time and has no verbal or visual contact with involved parties.) (Example: Officers have secured a prisoner and are completing paperwork outside the presence of the prisoner, unless the prisoner is combative, agitated or otherwise uncooperative.)

Keeping in mind that static situations may change rapidly, officers need to recognize it may be necessary to re-activate their body-worn camera unexpectedly. (Example: Officers are assigned to an outer perimeter position with their cameras turned off, and a suspect exits the residence to surrender or run from police.)

Officers shall deactivate the body-worn camera when engaged in conversations with individuals with whom the officer is in a privileged relationship (e.g. spouse, attorney, police peer counselor, labor representative, minister, etc.) Officers will verbally indicate why the body-worn camera is being deactivated and will reactivate the body-worn camera at the conclusion of the private conversation if the need for recording the police encounter or investigation still exists.

7. Advisements and Consent

Generally, officers are **not** required to advise or obtain consent to utilize the body-worn camera from a private person when:

- A. In a public place; or
- B. In a location where there is an expectation of privacy (e.g., inside a building or dwelling) but the officer is lawfully present.

However, when initiating a police action as described in Section #5 (When to Activate), officers **shall make a reasonable effort** to advise persons they are being recorded with the body-worn camera, unless the officer has reason to believe that doing so will endanger the safety of the officer or another officer or a member of the public or will interfere with the conduct of an investigation.

When an officer's legal grounds for a search of a residence is based solely on **consent**, they are required to both **advise and obtain consent** to record with a body-worn camera from the person, with legal standing, who is being recorded and/or searched. This does not apply to crimes in progress or other circumstances that would allow the officer to be lawfully present without a warrant.

8. When Not to Activate

Personnel are not required to activate the camera system during routine, incidental contact with a citizen, (i.e. giving directions or lunch breaks).

Officers will not knowingly activate the body-worn camera in the following circumstances:

- A. A potential witness who requests to speak to an officer confidentially or desires anonymity (See Section 9, Victim and Witness Statements).

- B. A victim or witness who requests that he or she not be recorded and the situation is not confrontational (See Section 9, Victim and Witness Statements).
- C. A victim who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation (See Section 9, Victim and Witness Statements).
- D. During tactical briefings, or the discussion of safety and security procedures.
- E. Undercover officers, except in the course of criminal investigation.
- F. Strip Searches.
- G. Public or private locker rooms, changing rooms, restrooms, unless taking the police actions stated in 5(A)-(F), and (I).
- H. Doctor's or lawyer's offices, unless taking the police actions stated in 5(A)-(F), and (I).
- I. Medical or hospital facilities, unless taking the police actions stated in 5(A)-(F), and (I).
- J. Other places where individuals unrelated to the investigation are present and would have a reasonable expectation of privacy, unless taking the police actions stated in 5(A)-(F), and (I).
- K. To surreptitiously record any department member without their consent, a court order, or unless lawfully authorized by the Chief of Police or designee for the purposes of a criminal investigation. (Duty Manual Section L 4513)
- L. The monitoring of persons based solely upon the person's political or religious beliefs or upon the exercise of the person's constitutional rights to freedom of speech and religious expression, petition and assembly under the United States and California Constitutions, or because of the content or viewpoint of the person's protected speech is prohibited.

9. Victim and Witness Statements

When conducting an investigation, the officer shall attempt to record the crime victim or witness' statement with the body-worn camera. The recording may be valuable evidence that contributes to or complements an investigation. While evidence collection is important, the Department also recognizes it is important for officers to maintain credibility with people wanting to share information with law enforcement.

On occasion, an officer may encounter a reluctant crime victim or witness who does not wish to make a statement on camera. In these situations, the officer should continue to develop rapport with the individual while balancing the need for evidence collection with the individual's request for privacy.

Should the officer use discretion and not record the crime victim or witness statement with the body-worn camera, the officer should document the reason for not fully recording the statement with the body-worn camera. In these instances, officers may still record with an audio recorder as outlined in Duty Manual Section L 4513.

Refer to When Not to Activate (Section 8), for circumstances not when to record a victim or witness statement.

10. Unauthorized Access and Use

All body-worn camera recordings shall remain the property of the Department and constitute official records of investigation of the Department.

Unauthorized access to, or use, duplication, and/or distribution of body-worn camera files is prohibited. Personnel shall not make copies of any body-worn camera file for their personal use and are prohibited from using a recording device such as a phone camera or secondary video camera to record body-worn camera files.

The body-worn camera shall not be used to record:

- A. Encounters not directly related to official activities in the proper performance of police duties.
- B. Performance of non-enforcement functions or administrative duties within a Department facility.

Personally owned body-worn cameras shall not be used while on duty.

11. Accidental Recordings

In the event of an accidental activation of the body-worn camera where the resulting recording is of no investigative or evidentiary value, the recording officer may request that the body-worn camera file be deleted. The officer will submit a request for deletion via email, with sufficient information to locate the body-worn camera file, to their direct supervisor.

The email will be forwarded through the officer's chain of command to their Lieutenant. The receiving Lieutenant shall review the file and approve or deny the request. Prior to deleting an accidental activation, the Lieutenant will ensure the file is not associated with a police contact or CAD event. No files associated with an official police contact, CAD event, or any pending litigation or complaint is eligible for deletion.

12. Documenting use of the Body-Worn Camera

Personnel should not substitute a body-worn camera recording for a detailed and thorough report. Personnel should continue to prepare reports as outlined in the Duty Manual.

Exception: Officers involved in an Officer-Involved Incident (Section 16).

Officers will document on a report when a body-worn camera file is made associated with an incident. If no report is filed, the officer will ensure the use of the body-worn camera is noted on the citation, CAD event or Street Check.

13. Review of Body-Worn Camera Files

All file viewing is for law enforcement use only and subject to a right to know and need to know basis [Refer to Duty Manual Sections C 2002-2004, C 2007, C 2011, and Chapter C 2100]

Department personnel may review body-worn camera files according to the provisions of this policy and Duty Manual requirements.

Access to the body-worn camera system is logged automatically with the date, time and name of person viewing the files.

An officer should review body-worn camera files, including those of other officers, in the following instances:

- A. For the purposes of completing criminal investigations and preparing official reports with the exception of Officer-Involved Incidents. See Officer-Involved Incidents (Section 16).
- B. Prior to courtroom testimony or for courtroom presentations, or as part of preparation by the San Jose City Attorney's Office for litigation in which a police officer is a party or a witness and the City Attorney's Office is representing the City and/or officers who are parties to the litigation.
- C. For potential training purposes see Training (Section 15).
- D. For preparation of an Internal Affairs interview, including review with officer representative, outside the presence of any investigator or supervisor.
- E. For other reasons as specified with the permission of the Chief of Police.

Exception: Department members identified as Administrative Users may access body-worn camera files from a computer or device outside of the Department for the purpose of completing administrative tasks, such as locking or unlocking users, etc.

14. Administrative Review of Body Worn Camera Files

It is not the intent of the Department to review body-worn camera files for the purpose of general performance review of individual officers or to proactively discover policy violations.

Supervisors and Internal Affairs personnel may, however, access body-worn camera files for administrative investigations limited to the specific complaint against the officer. Supervisors should, however, on a reasonable basis; review body-worn camera files to ensure that body-worn camera equipment is functioning properly and officers are adhering to Department body-worn camera procedures. Inadvertent discovery of other allegations during this review shall

require the supervisor or Internal Affairs personnel to articulate the reason for expanding the scope of the investigation.

Supervisors who inadvertently discover minor, non-criminal policy violations will continue to have discretion to resolve the violation with training or informal counseling. Should the policy violation rise to the level of more formal discipline, the supervisor will adhere to policies set forth in the Duty Manual.

Exception: Field Training Officers (FTO) and the FTO Commander may view body-worn camera files to evaluate the performance of an officer in the Field Training Program.

15. Training with Body-Worn Camera Files

A body-worn camera file may be utilized as a training tool for individuals, specific units, and the Department as a whole with the involved officers' permission. Department members recommending utilization of a body-worn camera file for training purposes will submit the recommendation through the chain of command to the Training Unit Commander.

Exception: Field Training Officers may use body-worn camera files to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).

16. Officer Involved Incidents

The Department recognizes that the video images captured on the body-worn camera files are two dimensional and cannot always capture the entire scene due to a number of limiting factors. The body-worn camera files should be considered but one piece of evidence collected from a scene or incident and not a singularly inclusive piece of evidence.

An Officer-Involved Incident includes:

- A) Officer-involved shootings,
- B) In-custody deaths, and
- C) Any intentional act by an officer which proximately causes injury likely to produce death to another.

Following an Officer-Involved Incident involved officers, herein defined as both involved officers and witness officers to the incident, personnel and their representative(s) shall not view their video, or any video capturing their image or the incident on any device.

The initial interview of an officer involved in an Officer-Involved Incident should occur before the officer has reviewed any audio/video recordings of the incident. Once an involved officer has provided an initial statement, he will have an opportunity to review any available recordings with his representative. The officer shall then be afforded an opportunity to provide a follow-up statement after having reviewed the recording(s). The Chief or designee shall have discretion to permit officers to review video files prior to the initial interview.

Investigators will be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by the involved officer. When the investigator shows any audio/video recordings to an involved officer **after** the initial interview, the investigator will admonish the involved officer about the limitations of audio/visual recordings.

The following is an example of an admonishment that would be appropriate in a case involving video evidence that is shown to the involved officer after he/she has provided an initial statement. In these situations, the showing of a body-worn camera file to an officer will be documented in the investigator's report:

In this case, there is video evidence that you will have an opportunity to view after you have given your initial statement. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and recollection.

In those situations where a Crime Scene supervisor is charged with the collection of evidence, the Crime Scene supervisor will, as soon as safe and practical, retrieve the body-worn camera from the involved officer at the scene. The Crime Scene supervisor will be responsible for assuring the body-worn camera file is uploaded/ downloaded.



The IPA logo incorporates one of the most recognized legal symbols, Lady Justice. Lady Justice is blindfolded signifying impartiality. The IPA logo depicts the scales of justice with a badge symbolizing the SJPd on one side and an image symbolizing the people of San José on the other. In creating this logo, the IPA envisioned a trademark that would convey the message that it is the weight of the evidence that determines the outcome of a complaint. The virtues represented by Lady Justice – fairness, impartiality, without corruption, prejudice, or favor are virtues central to the mission of the IPA office and are the guiding principals by which the IPA seeks to operate.

Judge Teresa Guerrero-Daley, former Independent Police Auditor, designed this logo.

This report was reproduced at taxpayers' expense.

*You are welcome to keep this copy if it is useful to you.
If you no longer need this copy, you are encouraged to return it to:*

*Office of the Independent Police Auditor
152 North Third Street, Suite 602
San José, CA 95112*

Concerns about a San José Police Officer?
¿Problema con un oficial de policía de San José?
Bạn có vấn đề với cảnh sát San José?



Call 408.794.6226
Llame al 408.794.6226
Hãy gọi 408.794.6226



**Published by the
Office of the Independent Police Auditor**

152 North Third Street, Suite 602
San José, California 95112

Tel: (408) 794-6226

TTY: (408) 294-9337

Fax: (408) 977-1053

Ind_Pol_Aud@sanjoseca.gov

sanjoseca.gov/ipa

twitter.com/SanJoseIPA

facebook.com/SanJoseIPA