

2003-2004 SANTA CLARA COUNTY CIVIL GRAND JURY

**INQUIRY INTO THE CITY OF SAN JOSE OFFICE OF THE
INDEPENDENT POLICE AUDITOR**

Summary

The Santa Clara County Civil Grand Jury (Grand Jury) conducted an inquiry into the Independent Police Auditor's Office (IPA) of the City of San Jose (City). After receiving documents, conducting interviews, and making comparisons to other California police watchdog agencies, the Grand Jury finds that the IPA performs most of its charter functions satisfactorily. Members of the San Jose City Council (Council) who were contacted are satisfied with its performance and role, the San Jose Police Department (SJPD) has a good working relationship with the IPA, but the IPA should improve the timeliness of some of its investigative reports. The community is able to voice its concerns about SJPD via either the IPA or the SJPD Internal Affairs Unit (IA).

To continue to build confidence and trust in the community, the Grand Jury recommends that the IPA office continue to issue biannual reports, but with significant improvements for clarity, content, and economy. The report should be in the format of a template to be used consistently each year. The report should allow the SJPD, the City Mayor and Council, and the public to fairly measure the conduct of the SJPD by placing the information in a balanced form and in context by comparisons to other similar cities and to prior years. Six of the eight recommendations concern the balance and completeness of the report. The Grand Jury also recommends that a performance audit of the IPA be conducted.

BACKGROUND

In the early 1990's, there was an increased climate of mistrust in police agencies. The Rodney King incident in Los Angeles drew attention to all police agencies and highlighted the possibility of officer misconduct. In San Jose, some citizens demanded that the Council appoint a civilian police review board. As a result, the IPA office was formed to work in conjunction with IA. The position of Independent Police Auditor was confirmed by the City on June 29, 1993 and the office of the IPA opened on September 13, 1993. The Independent Police Auditor is independent of all other City entities and reports directly to the Mayor and the Council. In November 1996, City voters amended the Charter, making the IPA a permanent City office with an auditor appointed for a term of four years.

According to the San Jose Municipal Code, the IPA shall have the authority and responsibility to receive, review, and report on citizen complaints filed against officers employed by the SJPD.

The office of the IPA has three primary functions:

1. It serves as an alternate forum where people may file a complaint.
2. It reviews the investigations of complaints conducted by the San Jose Police Department to determine if the investigation was complete, thorough, objective and fair. Based on these reviews, the IPA makes recommendations for changes to the conduct of the San Jose Police Department
3. It promotes public awareness of a person's right to file a complaint

The Municipal Code also states:

The police auditor shall review professional standard conduct unit [the name of IA at the time the Charter was written] investigations of complaints against a police officer to determine if the investigation was complete, thorough, objective and fair. The minimal number of complaints to be reviewed annually (by the IPA) is:

- A. All complaints against police officers which allege excessive or unnecessary force;
- B. No Less than twenty percent of all complaints.

Together, the current IPA and IA systems monitor the following types of complaints: Citizen Initiated Complaints, Department Initiated Complaints, and Citizen Nexus Complaints.

Citizen Initiated Complaints

Although a citizen may bring an allegation directly to IA, the IPA office offers an alternative way for a citizen to file a complaint. Both the IPA and IA are located away from police headquarters. The IPA office is on 2 North Second Street and the IA office is on 777 North First Street, San Jose.

The initial intake of an allegation may be done either by staff at the IPA office or by police personnel in the IA office. To become a complaint, the allegation must be signed by the complainant. All allegations rising to the level of a complaint are investigated by IA. The complaint is assigned to a police investigator who reviews police reports and physical evidence and conducts interviews with the complainant, witnesses, subject officer, or other officers present at the incident.

Upon completion of the investigation by IA, all investigative files involving use of force as well as complaints originally filed at the IPA office are returned to the IPA for review. Over the last ten years, the IPA has audited more than the minimum (20%) required by the Municipal Code.

Department Initiated Complaints

A Department Initiated Complaint is a complaint that comes from within SJPD itself. Another officer, sergeant, or higher-ranking staff will report to IA a concern about an officer that may rise to the level of a Department Initiated Complaint. Complaints can range from minor policy violations, such as chronic tardiness or being involved in too many auto accidents to serious violations of law. Once a complaint is sustained (found to be true), SJPD may impose varying degrees of discipline: training or counseling, documented oral counseling, a letter of reprimand, suspension, transfer, or termination. In some cases, an officer may choose to resign.

In the case of a serious complaint, such as tampering with evidence or driving under the influence (even off duty), an officer is put on suspension and must report to the Discipline Review Panel. The Discipline Review Panel consists of the subject officer's chain of command, the IA Commander, the Assistant Chief, and the Chief of Police. The Chief of Police reports the findings of the panel to the City Manager.

Historically, Department Initiated Complaints have a higher sustained rate than Citizen Initiated Complaints. As reported in the *IPA 2002 Year End Report* and the *IPA 2003 Mid-Year Report*, the sustained rates for Department Initiated Complaints and Citizen Initiated Complaints are:

	Department Initiated Sustained Rate	Citizen Initiated Sustained Rate
1998	82 %	13 %
1999	88 %	8 %
2000	76 %	10 %
2001	69 %	26 %
2002	65 %	10 %
2003 (First half)	91%	16 %

The SJPD tries to identify and correct all policy and procedural infractions. Violations of policies or procedures result in an investigation, review by police command staff, and disciplinary action. As stated by a member of the SJPD command staff, the high sustained rate for Department Initiated Complaints illustrates the commitment of the police administration to improve their organization

While IA investigates both Department Initiated Complaints and Citizen Initiated Complaints, IPA does not review Department Initiated Complaints. IA sends to IPA a face (cover) sheet with limited information regarding a Department Initiated Complaint. The IPA will review that information to determine if a Citizen Nexus Complaint may be warranted by the facts of the complaint.

Citizen Nexus Complaints

A Citizen Nexus Complaint is one that, while initiated by a member of the SJPD, given the circumstances a citizen might have initiated but failed to do so. An example would be when an

officer notifies the sergeant that he observed handcuffs that were placed too tightly on a suspect by another officer. These complaints are audited just as any other formal citizen initiated complaint. The number of these complaints per year has varied from a high of fifteen in 1999 to three in 2003.

Discussion

Allegation Input

Both IPA and IA can take in the initial information for an allegation. The IPA accepts allegations but passes them on to IA for investigation. Sometimes, according to police command staff, the IA investigator finds that pertinent information was not documented during the initial intake conducted by IPA, requiring additional involvement later by both the IA investigator and the citizen. According to the IPA, as part of their orientation and training, new IPA intake personnel are introduced to IA intake personnel and spend time becoming familiar with IA's intake procedures. Additionally, IPA intake staff have regular ongoing discussions with IA staff whenever there are any questions concerning allegations or classifications. Finally, IA and IPA are discussing joint training and other methods for ensuring that intake interviews are more consistent between the two offices.

Three-fourths of citizen initiated complaints were filed with IA and one-fourth with IPA in 2002.

Timeline

The IPA attempts to complete audits of all IA investigations within two months of the date IA closes its investigation. The IPA began tracking this data in 2002 and met that goal for 80% of the audits that year. The IPA achieved 83% in 2003. Of the 17% of the investigative reports that were in IPA review for several months, seven took four to eight months to complete and return to IA. The IPA office explained that, if there are multiple witnesses, it takes time to interview them, especially if witnesses are out of town. However, extended delay prolongs the uncertainty in the outcome for both the complainant and the officer.

Until the allegation is sustained and approved through the chain of command, disciplinary action cannot be imposed. On occasions when the IPA disagrees with the IA's disposition of a complaint, IPA may review the disagreement with the IA commander or ask the City Manager to override IA's finding. This has occurred one to two times a year, with the City Manager sustaining all IA findings to date.

IPA Report

The San Jose Municipal Code states the IPA shall file annual reports for transmittal to the Council which shall:

- Include statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken;
- Analyze trends and patterns; and
- Make recommendations.

The IPA *2002 Year End Report* indicates that there were 430 cases filed, of which 232 became formal complaints. The report breaks out the 232 complaints into several categories:

Type of Complaint	IPA Intake	IA Intake	Total
Formal: Citizen Initiated Complaints	24	73	97
Formal: Department Initiated Complaints	NA	44	44
Command Review Complaints	15	26	41
Procedural Complaints	12	37	49
Policy Complaints	1	0	1
Total Complaints	52	180	232

The 2002 report gave the categories (but no numerical breakdown) for the disposition of the remaining 198 cases that did not become complaints. However, additional information supplied by the IPA classified these cases as:

- A. No Boland sign-off: a case closes within 30 days from the date it is received if the complainant fails to sign the state law-mandated Boland Admonishment (26);
- B. Inquiry: a case that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen’s satisfaction can be reclassified and be fully investigated (128);
- C. Citizen contact: a case that does not involve a complaint against a San Jose Police Officer (27);
- D. Withdrawn: a case that is withdrawn at the complainant’s request (17).

Sometimes a complainant refuses to sign the required Boland Admonishment, which states in part, “It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.”

As stated by a Council member, common sense suggests that a small percentage of those cited or arrested will be angry with the officer, regardless of the use of proper procedures by the officer or misconduct on the suspect’s part. For example, during the Santana Row fire, SJPD officers were instructed to keep affected citizens away from their homes and a Citizen Complaint was filed by a citizen who was not permitted to enter a restricted area.

The IPA report does compare the number of complaints to the number of citizen contacts. A total of 32,749 arrests or citations were issued by SJPD officers in 2002 along with a total of 463,984 calls for services and 82,204 car stops (a total of over 500,000 documented citizen contacts). This number does not include citizens who had interactions with officers during public events, bystanders who observe a citation or arrest, and citizens who had a car towed or a home searched. The complaints received involve about one percent of the citations and arrests, eight in

every 100,000 citizen contacts. The ratio of complaints *sustained* is lower still, on the order of one in every 100,000 citizen contacts.

The IPA *2002 Year End Report* indicates that an officer may receive more than one allegation per incident. For instance, during an arrest an officer may have used improper language and secured handcuffs too tightly, a total of two complaints for that one incident. In the *2002 Year End Report* there is no information on the actual number of incidents and officers involved leading to the 97 Formal Citizen Complaints. Also, the report does not specify how many complaints against the officers were sustained.

In an earlier IPA report, it was stated that often the same citizen will file multiple allegations. The report does not specify if a citizen repeatedly files the same allegation with IPA and how those allegations are counted. It is unclear if it counts as two allegations or one if a citizen files with both IPA and IA.

In the *2002 Year End Report*, there is a chart of subject officers with one or more complaints. The report states "41 different officers received multiple complaints. This equates to a 35 percent decrease from 2001." Although officers who have confrontational citizen contacts might be expected to have more complaints, the report does not provide additional information, such as identifying the assignment the subject officers were working during the time of the alleged complaints.

The number of complaints against SJPD is low per capita but the report makes no reference to comparable cities to put the information into context. For instance, in San Francisco, with a population of approximately 764,000, the Office of Citizens Complaints opened 961 new complaints in the year of 2001. In 2002, Long Beach, with a population of 472,000 (half of the population of San Jose) 416 complaints were received against police personnel. Oakland, population of 408,400, received 350 complaints, and Sacramento, population of 426,000, received 173 complaints for the year of 2002. These rates are two to five times that for San Jose.

Of the Citizen Initiated Complaints, excessive use-of-force allegations are the most serious. The chart provided in the *2002 Year End Report* provides data on the type of force alleged. However, it is unclear from the chart how many of these allegations are sustained. Without a sustained rate it is difficult to assess accurately the extent of unnecessary use-of-force actions committed by SJPD. Detailed information on use-of-force incidents could help SJPD assess the need for additional training for officers.

In the IPA *2002 Year End Report*, no explanation is provided for why the use of force might be necessary. The public would have a clearer understanding and greater sense of confidence in SJPD if an explanation for the use of force were documented in the unsustained cases. For example, was force found to be necessary to ensure officer safety? Was the complainant in possession of a weapon, under the influence of drugs or alcohol, or mentally ill? Was there a history of mental illness? Was he being arrested on a parole violation? Was there a prior conviction of a violent crime? Was this arrest a third strike? Was the complainant charged with resisting arrest?

Due to the seriousness of the allegations in use-of-force complaints, the Grand Jury obtained and reviewed copies of all 88 (38% of all complaints) use-of-force complaints filed in 2002. Most of the complainants were charged with serious offenses such as domestic violence, assault, under the influence and/or possession of drugs, resisting arrest, or auto theft. There were a few cases involving subjects being detained for a 72-hour psychiatric hold. The IPA report included types of alleged use of force: baton, canines, car (officer), car (complainant), chemical agent, gun (officer), gun (complainant), feet, ground, hands, handcuff (tight), knee, object, other and unknown. Also published was a five-year comparison of the body area afflicted by alleged use of force: head, torso, limbs, multiple body parts, and unknown. The report states that 2002 was the fourth year that there was an increase in injuries to the head of complainants. There are no statistics indicating whether the use-of-force complaint was eventually classified as: sustained or not sustained (no finding, unfounded, or exonerated). Upon inquiry, the Grand Jury learned that none of the use-of-force complaints were sustained in 2002.

The IPA report contains no statistics on the number of officers injured, the areas afflicted by injury, the days of disability taken due to the injury, or the number of permanent disabilities. Nor is it clear what type of incident resulted in the use-of-force complaint; the reader does not know if the incident was an altercation between one officer and a complainant or if several officers were trying to subdue a violent suspect. According to an IA senior analyst, it can be inferred that the majority of contacts that result in use-of-force complaints also result in officer injuries.

Outreach

The IPA is intended to be an impartial body. It does not defend the SJPD nor does it act as an advocate for complainants. The IPA does seek to increase customer satisfaction concerning police services and public confidence in SJPD, as stated in its Core Service Purpose. The IPA auditor told the Grand Jury that the IPA office also encourages letters of commendations for the SJPD, but the report does not mention either the number or topics of any commendation letters.

The IPA seeks to increase customer satisfaction concerning police services and public confidence in the SJPD by participating in community events. The IPA reported it reached 3,800 people in 48 community events citywide in the year 2002. A sample of these events includes:

- Forum with our State Legislators.
- Mosque Open House: Meet Your Muslim Neighbors and Family Night.
- Santa Clara County Resources for Families and Communities 4th Annual Multicultural Conference.
- Association of Administration of Justice Educators.
- Hearing presented by the Commission on Police Accountability.

As part of professional development, the IPA auditor participated in the first National Police Auditors Conference, held in Omaha, Nebraska, in March 2003, with eight other police auditors to discuss the future of police auditing in the United States.

A 2002 goal of the IPA was to increase the San Jose residents' awareness of the existence of IPA from 20 percent to 25 percent. A 2003 survey commissioned by the City showed an increase of awareness to 30%.

The IPA prints 250 to 500 copies of its report on heavy, glossy stock at a relatively high cost per report. Some governmental agencies produce professional-looking reports in a less expensive format, or provide summary flyers that reference their complete reports on a website. The IPA website does provide extensive information which helps to fulfill its charter function to promote public awareness, as do the 1500 to 2000 CDs of the year-end reports that the IPA distributes. The IPA website includes the latest IPA reports and a Student Guide to Police Practices as well as the information necessary to make citizen complaints. In addition, the website lists community resources and the members of the IPA citizen advisory committee, which meets at least twice a year.

IPA Recommendations

As stated in the Municipal Code, the IPA shall make recommendations. The IPA began making recommendations every year starting with the *1994 Year End Report*. Some of the recommendations from IPA that have been adopted throughout the years have been:

- Implement policy to standardize format for officer's interviews.
- Contact complainants at regular intervals through updates and closing letters.
- Require complaint classification to appropriately reflect the nature of the complaint.
- Establish a written procedure to require officers to identify themselves to civilians.
- Design a training course focused specifically upon improving day-to-day verbal communications when dealing with the public.
- Tell motorists the reason for enforcement actions such as stop, search, and detention as soon as possible.

The *2002 Year End Report* describes an Early Warning System, a method of tracking complaints against officers that the SJPD has used for over twenty years to monitor the need for officer intervention. The intent of the program is to assist supervisors in tracking complaint histories so that trends and patterns of behavior can be identified and corrected. If an officer receives three or more formal complaints in a 12-month period, he or she will automatically be summoned to an informal counseling session including a Deputy Chief, the IA Commander and the officer's immediate supervisor.

In 1994, the police department adopted the IPA recommendation to expand the Early Warning System program to include the informal complaints known as Command Review and Procedural Complaints. This change added an additional way that would initiate an informal counseling session for an officer. It stipulated that an officer attend informal counseling if within a 12-month period, the officer received five or more informal or formal complaints.

Some recent recommendations that were not adopted were:

- The construction of a separate waiting room for sex offenders waiting to register, criminals waiting to self-surrender, and other people who would pose a threat to the safety of others waiting in the lobby area of the main police station.
- The construction of public restrooms in the police department lobby, eliminating the requirement to sign in with desk officers.
- The IPA should be part of the roll-out team for officer-involved shootings.

This last recommendation was not approved due to objections by the SJPD. A compromise was reached and approved by the Council in April 2004 such that the IPA will:

- Be notified immediately after an officer-involved shooting by the IA commander.
- Respond to the scene of an officer-involved shooting and contact the IA commander at the outer perimeter of the crime scene.

Budget

IPA is funded by the City General Fund. The IPA has grown from a staff of three in 1996 to the current staff of six in 2002 consisting of police auditor, assistant auditor, citizen complaint examiner, public and community relations outreach worker, data analyst, and office assistant. As shown below, the budget has grown accordingly, while the number of complaints has fallen. Printing costs for the IPA reports from 1999 to the present have ranged from \$5,000 to \$16,000. The City Auditor has never been asked by the Council to audit the agency.

Fiscal Year	Adopted Budget	Staff	Department and Citizen Complaints
1996-1997	\$ 214,500	3	581
1997-1998	\$320,957	4	443
1998-1999	\$354,688	4	364
1999-2000	\$396,937	4	383
2000-2001	\$580,504	6	374
2001-2002	\$603,506	6	258
2002-2003	\$647,866	6	232

Conclusion

The IPA offers the community an alternate location and means to file a complaint against an SJPD officer, thoroughly reviews IA’s investigations of citizen complaints, and provides recommendations to the SJPD. The two Council members contacted and the San Jose Mayor are very satisfied with the role played by the IPA office. The IPA and the SJPD have a good working relationship, in part because of the clear distinction of job functions between the IPA and the IA. While both may perform intake of a citizen allegation, only IA does an investigation. Then, upon completion of the investigation, the IPA office reviews it to confirm if it was complete, thorough,

objective, and fair. The IPA office is fulfilling a worthwhile function by performing its charter responsibilities, which includes allowing the community to voice its concerns regarding police conduct.

The reports produced by IPA are useful, but some comparative data is lacking, as is a standard template to make year-to-year comparisons easier. The website and CD are more economical means of disseminating the information in the reports than is the limited-distribution glossy print report. The IPA budget has doubled in the past five years, while citizen initiated complaints have steadily dropped. A performance audit could determine the proper staffing and funding levels that would still satisfy the IPA charter and mission during this period of budget cutbacks.

Finding I

The IPA reports contain valuable data, but only minimally satisfy the Municipal Code requirements to “include statistical analysis documenting the number of complaints sustained and the actions taken.” The reports could be made even more informative with changes and additions.

Recommendation I

The Grand Jury recommends that accurate and balanced statistics be presented in the form of a template which would be used consistently in each report to better allow assessment of trends in performance and the statistical analyses required by the Municipal Code.

Finding II

The IPA reports commingle the details and statistics of Department Initiated Complaints and Citizen Initiated Complaints.

Recommendation II

The IPA should separate statistics for the two types of complaints.

Finding III

The IPA reports do not provide comparisons of the number of complaints filed against officers in comparable cities.

Recommendation III

The IPA report should provide benchmark statistics of police complaints from comparable cities as provided by their police review boards to allow the public to better place the information in context.

Finding IV

It is not clear in the IPA reports if complaints from multiple complainants, from multiple incidents, or multiple allegations are combined or treated separately.

Recommendation IV

The IPA report should specify the number of incidents, as well as the number of allegations, and how many officers per incident receive a complaint.

Finding V

Review of citizens' allegations of officer misconduct showed that many of the complainants were under the influence of alcohol or drugs, were mentally ill, or were being detained for serious violent felonies.

Recommendation V

The IPA report should publish statistics of complainants that the IPA verifies fall into the various categories such as: a citizen in possession of a weapon, under the influence of drugs, intoxicated, mentally ill, arrested for a parole violation, a history of violence, a third strike arrest, or resisting arrest.

Finding VI

An allegation of excessive use of force is a serious charge. The number of such allegations is published in the IPA report but there is no clarification as to the eventual findings regarding the citizens' allegations.

Recommendation VI-A

The IPA report should record the number of excessive use-of-force allegations classified in categories such as: no finding, unfounded, exonerated, not sustained, and sustained.

Recommendation VI-B

The IPA report should record the number of injuries officers receive from citizens, and injuries incurred while apprehending a suspect.

Finding VII

Several investigative reports were not completed by the IPA for more than several months, causing the subject officer and complainant uncertainty about the outcome.

Recommendation VII

The IPA should return the investigative report to IA as soon as possible to avoid prolonged uncertainty for the citizen and subject officer.

Finding VIII

The Council has never requested a performance audit of the IPA function.

Recommendation VIII

The Council should request that the City Auditor conduct a performance audit of the IPA. A performance audit could determine the proper staffing and funding levels that would still satisfy the IPA charter and mission during this period of budget cutbacks.

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 27th day of May 2004.

Richard H. Woodward
Foreperson

References

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- *City of San Jose Office of the Independent Police Auditor 2003 Mid-Year Report;*
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