



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Supplemental Memorandum --
Complaint Classification & IPA
Authority

DATE: January 28, 2008

Purpose

This memorandum is intended to clarify the advice of this Office with regard to the ability of the Independent Police Auditor (IPA) to dispute the classification of complaints and the applicability of meet and confer requirements.

Analysis

Classification Process

Where a citizen has contacted the Police Department or the IPA regarding the conduct of a police officer employed by the Department related to the performance of their official duties, the IPA and the Police Department may have differing views of the allegations as presented by the citizen.

The IPA's role is review of a Police investigation of a complaint to determine whether that investigation was complete, thorough, objective, and fair. A misclassification may result in an investigation that the IPA believes does not meet the Charter criteria, or in no investigation under circumstances where the IPA believes some additional investigation or fact-finding is warranted. It is our understanding that this concern has been identified throughout the history of the IPA and has been addressed through a practice of informal review of classifications of citizen contacts.

The Police Department has the authority to establish a classification system for citizen contacts. The IPA does not have authority to dictate this process or require a reclassification of citizen allegations from, for example, a Non-misconduct Concern to a Conduct or Policy Complaint.

However, while no formal process exists, the IPA may, upon review of a citizen contact regarding the performance of an officer's duties, disagree with the Police as to the appropriate classification of that citizen contact. This is consistent with past practice. The IPA is not prevented from informing the Chief and, if necessary, the City Manager that the IPA disputes the classification of the contact. The IPA may indicate how the

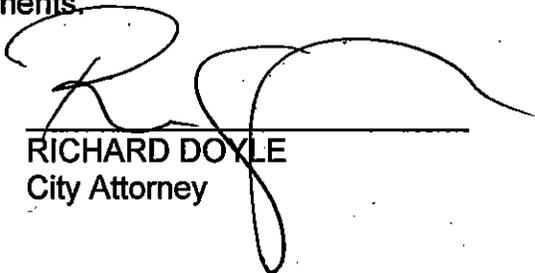
IPA would classify a citizen contact, based upon the classification categories used by the Police Department.

With this informal process, the Police Chief may or may not concur in the Police Auditor's dispute of a classification. Further, the City Manager, if a request for review is made to that Office, may or may not concur in the request. The matter of the classification is decided based upon the determinations by the Police Chief or the City Manager.

To summarize, it is the responsibility and duty of the Chief of Police (and ultimately the City Manager) to develop a system of classification of citizen contacts alleging an improper act or conduct. The IPA is not prohibited from disputing a classification of a citizen contact (whether it is entitled as a "Conduct Complaint", "Policy Complaint", or "Non-misconduct Concern"). A process for the IPA to request reclassification has been established by past practice and we believe should be continued. The past practice does not require the Police Chief or the City Manager to reclassify the citizen contact at the request of the IPA.

Meet and Confer Requirements

The duty to meet and confer in good faith under the Meyer-Milias-Brown Act (MMBA) (Gov. Code Section 3500 *et seq.*) requires both the City and SJPOA to meet and confer about any proposed change in procedures or regulations within the scope of representation. If there is a change in the classification process from prior practice that could result in greater exposure to discipline for police officers, such a change could be subject to the meet and confer requirements.



RICHARD DOYLE
City Attorney

cc: Debra Figone, City Manager
Rob Davis, Police Chief
Barbara Attard, Independent Police Auditor