



## Memorandum

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Debra Figone  
Rick Doyle

**SUBJECT:** SEE BELOW

**DATE:** September 5, 2007

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**SUBJECT: CITY COUNCIL'S RESPONSE TO THE CIVIL GRAND JURY REPORT  
ENTITLED "POLICE MISCONDUCT MAY BE UNDERREPORTED"**

### RECOMMENDATION

Accept the City Council's formal response to the 2006-2007 Santa Clara County Civil Grand Jury's report entitled "Police Misconduct May Be Underreported," as authored by the City Manager and City Attorney.

### OUTCOME

Approval of this report satisfies the requirements of Penal Code Section 933(c), which requires the City Council to respond to Civil Grand Jury reports no later than 90 days after the Grand Jury submits its final report to the presiding judge of the Superior Court. A formal response from the City is due to the Grand Jury by September 28, 2007.

### BACKGROUND

On June 28, 2007 the Santa Clara County Civil Grand Jury (Civil Grand Jury) provided the City with its final report, including findings and recommendations, entitled "Police Misconduct May Be Underreported" (Attachment A). The Grand Jury's inquiry was in response to allegations from individuals and concerns from community organizations that the San Jose Police Department failed to properly report misconduct by Department members.

We would like to acknowledge the efforts of the Civil Grand Jury in reviewing and analyzing these important issues and bringing substantive recommendations to the City Council.

### *Grand Jury Response Process*

The California Penal Code, Section 933(c) requires that a governing body of the public agency which has been subject to a Grand Jury final report shall respond within 90 days to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under

September 5, 2007

**Subject: Response to the Civil Grand Jury Report Entitled "Police Misconduct May Be Underreported"**

Page 2

control of the governing body. The same California Code, Section 933.05(a), contains guidelines for responses requiring the City to state one of the following in response to the Grand Jury findings:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding and provides explanation.

In addition, for each Grand Jury recommendation, the City is required to report one of the following actions:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with an implementation time frame.
- The recommendation requires further analysis, with an explanation and the scope of the parameters of an analysis or study, and a time frame for the matter to be prepared for discussion, which shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

Listed below are the findings from the Grand Jury report along with staff's responses.

### **ANALYSIS**

At the June 21, 2007 Special Council Meeting on Various Police Related Reports, the City Council had the opportunity to discuss SJPD and IPA authored reports related to police services, use of force response, classification of complaints or allegations, investigative quality, and SJPD procedures. These reports made various findings and presented recommendations for City Council consideration. In addition, the City Council unanimously directed the City Manager, Independent Police Auditor, and Police Department to implement 21 directives/referrals that are related or similar to the Grand Jury findings/recommendations (See Attachment B for a summary of the City Council directives).

Between July and December 2007, staff from the City Manager's Office (CMO), Police Department (SJPD), Independent Police Auditor's (IPA) Office, and City Attorney's Office will work on the Council referrals and a status report will be presented to the City Council in November 2007. A final staff report, including recommendations will be presented to the full Council for action in January 2008. At the City Council's direction, one particular referral (Council Referral #18, see Attachment B for referral detail) will also be reported at the Public Safety Finance and Strategic Support Committee. Staff proposes to return to the Committee with status reports on Council Referral # 18 in October and December 2007.

September 5, 2007

**Subject: Response to the Civil Grand Jury Report Entitled "Police Misconduct May Be Underreported"**

Page 3

Below is the coordinated response from the City Manager, Police Chief, and City Attorney relative to the 10 findings and eight recommendations listed in the 2006-2007 Santa Clara County Civil Grand Jury's Final Report for Council review and approval. It is important to note that this response was largely coordinated with the Independent Police Auditor and the majority of edits received from the IPA were incorporated into this final report; however, there were some areas where discrepancies could not be resolved to obtain IPA authorship of this report. At the time that this report was authored, it was understood that the IPA would issue a separate memo to the City Council.

Since the City Council recently held a hearing on these matters, the framework for the City Council's response to this Grand Jury report is based on providing the Grand Jury with the Council action taken on June 21 that is in response to the Findings and Recommendations.

**Civil Grand Jury Finding & Recommendation #1:**

**Finding#1:** There are no objective, explicit criteria defining each of the complaint classification categories.

**Recommendation #1:** The IPA and IA should jointly establish definitive and objective criteria for each of the complaint classification categories for their use.

**City Council Response to Finding and Recommendation #1:**

The City Council partially agrees with Finding #1 and has developed a recommendation to be implemented that is sufficiently responsive to the Grand Jury's Recommendation #1. Partial agreement to Finding #1 is based on the City Council's directive to develop objective criteria for complaint classifications.

At the June 21 Special Council Meeting, the City Council discussed the complaint classification criteria used for the classification of complaints and issued the following Council referral:

**Council Referral #18:** Direct the City Manager to work with the Police Chief and IPA to develop a revised complaint process that determines classification based upon objective criteria and definitions for complaint categories. They are to bring regular updates on their progress to the Public Safety Finance and Strategic Support Committee. This will allow the IPA to be involved at the beginning of the process while the City Manager and Chief of Police are developing the criteria. Final recommendations are to be brought back to the City Council within 6 months.

The City Manager, Police Chief, and City Attorney are proceeding with the above referral as written. Between July and December 2007, staff will work on this Council referral and will present a status report to the Public Safety Finance and Strategic Support Committee in October

and December 2007. A final staff report, including recommendations for Council consideration will be presented to the full Council in January 2008.

**Civil Grand Jury Finding & Recommendation #2:**

**Finding #2:** Complaint forms do not:

- Require a complainant's signature,
- Clearly define the key classification categories,
- Provide a place for the complainant to indicate the classification he/she believes apply,
- Consolidate information common to both the IA and IPA on a single complaint form.

**Recommendation #2:** The IPA and IA should jointly develop a single citizen complaint form that includes:

- Complainant's signature line,
- Key complaint classification categories clearly defined and explained,
- Complainant's opinion of the classification category appropriate to his/her complaint.

**City Council Response to Finding and Recommendation #2:**

The City Council partially agrees with Finding #2 and has developed a recommendation to be implemented that is sufficiently responsive to the Grand Jury's Recommendation #2. Partial agreement with Finding #2 is based on the City Council's acknowledgement that the Complaint forms should contain additional information/disclosures for individual's filing complaints.

At the June 21 Special Council Meeting, the City Council directed the City Manager, Internal Affairs Unit (IA), and IPA to work together to "*develop a packet of intake materials (in multiple languages) to be given to complainants at both agencies that would include complaint definitions, an explanation of the process, and necessary forms.*" (Council Referral #8)

The City Manager, Police Department, and IPA have started very preliminary work to identify the information that should be included in the complainant packet, such as:

- Frequently Asked Questions
- Complaint Intake Forms
- SJPD & IPA Mission
- Complaint/Investigation Process
- Retaliation Policy Statement
- Definitions
- Retention File Statement
- Mediation Program
- Request form for audio recording of interviews
- Agency brochures

At a meeting held on August 6, 2007, attended by the City Manager, Chief of Police, and Independent Police Auditor, it was agreed that the packet materials would be developed after Council Referral #18 is completed (see Finding and Recommendation #1 for detail on Council Referral #18). A final report to the City Council will be issued in January 2008.

**Civil Grand Jury Finding & Recommendation #3:**

**Finding #3:** The complaint forms do not advise complainants of the right to receive copies of their written statements and/or tape-recording made during their interviews.

**Recommendation #3:** The IPA and IA include on the citizen complaint form an advisory notification that a copy of the complaint is available, as well as a tape recording of the interview.

**City Council Response to Finding and Recommendation #3:**

The City Council agrees with Finding #3 and has developed a recommendation to be implemented that is sufficiently responsive to the Grand Jury's Recommendation #3.

At the June 21 Special Council Meeting, the City Council directed the City Manager, IA and, IPA to work together to "*develop a packet of intake materials (in multiple languages) to be given to complainants at both agencies that would include complaint definitions, an explanation of the process, and necessary forms.*" (Council Referral #8) The new IA and IPA revised complaint forms will include information advising complainants of their right to receive copies of their written statements and/or tape recorded interviews.

At a meeting held on August 6, 2007, attended by the City Manager, Chief of Police, and Independent Police Auditor, it was agreed that the packet materials would be developed after Council Referral #18 is completed (see Finding and Recommendation #1 for detail on Council Referral #18). A final report to the City Council will be issued in January 2008.

**Civil Grand Jury Finding & Recommendation #4:**

**Finding #4:** Only the IA is authorized to formally classify all citizen complaints.

**Recommendation #4:** The IPA should be authorized by the City Council to formally classify all citizen complaints.

**City Council Response to Finding and Recommendation #4:**

The City Council agrees with Finding #4 and disagrees with the Grand Jury's Recommendation #4.

At the June 21, 2007 Special Council Meeting, the City Council affirmed the IPA's authority which is also stated in the present day Charter and Municipal Code Provisions. Listed below is the approved Council action taken on June 21, 2007 to affirm the IPA's duties/authorities, no additional action/authorities were granted by the City Council:

**Council Referral #1:** Confirm the Independent Police Auditor's (IPA) right to challenge the Police Department's classification of complaints and inquiries, with ultimate resolution by the City Manager.

It should be noted that the IPA has current authority to classify cases into three (3) categories, which are not formal complaint classifications as categorized by the IA Unit:

1. **Citizen Contact:** A Citizen Contact is a type of communication that does not involve an expressed dissatisfaction with the police services provided by the San Jose Police Department or one of its members. A Citizen Contact refers to an informational type of contact from the public that can cover a broad range of issues, including a member of another police agency.
2. **Inquiry:** An inquiry refers to a case that is immediately resolved to the satisfaction of the individual which does not give rise to a complaint. Any concern that is not immediately resolved can become a complaint.
3. **Pre-Class:** Pre-Class is the classification assigned to a complaint before any investigation is conducted. This classification is utilized when the IA Unit has not yet had the opportunity to formally interview the complainant and/or obtain any investigative documents associated to the complaint. This category is commonly used by the IPA intake staff in situations where the complaint does not fall into the category of either a "Citizen Contact" or an "Inquiry." Within 30 days of the received date, IA Unit has to conduct an interview/investigation and classify the Pre-class as 1) Citizen-Initiated (Formal complaint), 2) Procedural, Policy, Command Review, Complaint Withdrawn, or 3) Inquiry.

**Civil Grand Jury Finding & Recommendation #5:**

**Finding #5:** The Inquiry-type complaint, which represents the largest percentage of complaints, requires no investigations and no officer contact. A pilot program, initiated in April 2007, currently records Inquiry-type complaints and subject officer information.

**Recommendation #5:** All essential Inquiry complaint information, including that of the subject officer, should be incorporated into the IAPro database and made available to the IPA.

**City Council Response to Finding and Recommendation #5:**

The City Council partially disagrees with Finding #5 and has developed a recommendation to be implemented that is sufficiently responsive to the Grand Jury's Recommendation #5.

At the June 21 Special Council Meeting, the City Council discussed the Inquiry classification and the administrative SJPd voluntary pilot program to manually track subject officer names in Inquiry cases. The City Council issued the following Council referrals regarding Inquiries:

**Council Referral #2:** Direct the Chief to establish policies on the types of inquiries that should be made a part of the early warning and intervention counseling system.

**Council Referral #8:** Restrict the inclusion of data regarding the dispute of routine traffic citations from reports of complaints and inquiries until the matter is addressed by the traffic court. Complaints that are strictly disputes of the citation should be resolved by the traffic court and eliminated from the reports of complaints and inquiries.

**Council Referral #17:** Direct the Chief to explore alternate terminology for "Inquiries," such as "information request" or "informational query."

**Council Referral #20:** Direct the City Manager to accept the Police Department's self-initiated practice, as of April 2007, of tracking police officers' names on Inquiries for a six-month period, and direct the City Manager to report on the status of this effort once six months of data are available, along with a staff resource and "value added" impact report.

Between July and December 2007, the City Manager's Office and Police Department will work on these Council referrals and will present a status report to the City Council in November 2007. A final staff report, including recommendations, cost and/or staffing impacts will be presented to the full Council for action in January 2008. The City Council affirmed the Administration's effort to pilot a new procedure with respect to manually collecting police officer names in the Inquiry category and no further direction was issued on this referral. As reflected in Council Referral #20, the City Council acknowledged that the Administration is afforded the opportunity to pilot administrative practices and to report out on the effectiveness upon completion of the pilot phase; based on the Council's action to approve the pilot program as presented by the Administration, the Administration is operating under the assumption that it will not be releasing names during the pilot program period.

If the City Council directed the release of police officer names, as recommended above, such an action may have a "Meet and Confer" obligation with the San Jose Police Officers' Association and would need to be resolved prior to implementation. It should be noted, that the pilot will conclude in October with a report to the City Council to be issued by December 2007. Any City Council action that differs from the above June 21<sup>st</sup> Council action would need to be reflected in the response to the Grand Jury, and the City Attorney's Office would draft a response that specifically follows Council's action taken at the September 18, 2007 Council meeting.

**Civil Grand Jury Finding & Recommendation #6:**

**Finding #6:** The number of Inquiry-type complaints has continued to increase each year since 2003, going from 113 to 233 complaints in 2006.

**Recommendation #6:** No recommendation.

**City Council Response to Finding and Recommendation #6:**

The City Council agrees with Finding #6.

At the June 21 Special Council Meeting, the City Council discussed the Inquiry classification, and possible contributing factors to the rise in Inquiry cases, such as: increased SJPd outreach, increased IPA outreach, increase in individual concerns with police conduct, increase in traffic court contacts, increase in collaborative relationships between the SJPd and/or IPA and community, increase in residents' desire to resolve issues informally (as opposed to filing a complaint), etc. Population growth and increase in Calls for Service are among many factors that can also affect the number of contacts, inquiries and complaints.

See response to Finding and Recommendation #4 for detail on Council direction on the Inquiry category.

**Civil Grand Jury Finding & Recommendation #7:**

**Finding #7:** In 2005 and 2006, the IPA did a classification analysis of 401 complaints classified by the IA as Inquiries. The IPA disagreed with the classifications on 50 percent of the complaints.

**Recommendation #7:** No recommendation.

**City Council Response to Finding and Recommendation #7:**

The City agrees with Finding # 7.

**Civil Grand Jury Finding & Recommendation #8:**

**Finding #8:** As of April 2007, an off-line data collection pilot program of Inquiries is being maintained and is considered part of the SJPd's Early Warning System, but it is still not part of the IAPro database.

**Recommendation #8:** The off-line pilot program that tracks Inquiry subject officer information should be immediately incorporated into the IAPro database and made available to the IPA.

**City Council Response to Finding and Recommendation #8:**

The City Council agrees with Finding #8 and has developed a recommendation to be implemented that is sufficiently responsive to the Grand Jury's Recommendation #8.

September 5, 2007

**Subject: Response to the Civil Grand Jury Report Entitled "Police Misconduct May Be Underreported"**

Page 9

At the June 21 Special Council Meeting, the City Council discussed the Inquiry classification and directed the City Manager to *"accept the Police Department's self-initiated practice, as of April 2007, of tracking police officers' names on Inquiries for a six-month period, and direct the City Manager to report on the status of this effort once six months of data are available, along with a staff resource and "value added" impact report."* (Council Referral #20) The City Council also issued the following Council referrals regarding Inquiries:

**Council Referral #2:** Direct the Chief to establish policies on the types of inquiries that should be made a part of the early warning and intervention counseling system.

**Council Referral #8:** Restrict the inclusion of data regarding the dispute of routine traffic citations from reports of complaints and inquiries until the matter is addressed by the traffic court. Complaints that are strictly disputes of the citation should be resolved by the traffic court and eliminated from the reports of complaints and inquiries.

**Council Referral #17:** Direct the Chief to explore alternate terminology for "Inquiries," such as "information request" or "informational query."

Between July and December 2007, the City Manager's Office and Police Department will work on these Council referrals and will present a status report to the City Council in November 2007. A final staff report, including recommendations, cost and/or staffing impacts will be presented to the full Council for action in January 2008. The City Council affirmed the Administration's effort to pilot a new procedure with respect to manually collecting police officer names in the Inquiry category and no further direction was issued on this referral. As reflected in Council Referral #20, the City Council acknowledged that the Administration is afforded the opportunity to pilot administrative practices and to report out on the effectiveness upon completion of the pilot phase; based on the Council's action to approve the pilot program as presented by the Administration, the Administration is operating under the assumption that it will not be releasing names during the pilot program period.

If the City Council directed the release of police officer names, as recommended above, such an action may have a "Meet and Confer" obligation with the San Jose Police Officers' Association and would need to be resolved prior to implementation. It should be noted, that the pilot will conclude in October with a report to the City Council to be issued by December 2007. Any City Council action that differs from the above June 21<sup>st</sup> Council action would need to be reflected in the response to the Grand Jury, and the City Attorney's Office would draft a response that specifically follows Council's action taken at the September 18, 2007 Council meeting.

**Civil Grand Jury Finding & Recommendation #9:**

**Finding #9:** The IPA is authorized to review closed investigative reports. The IPA is authorized to be a part of the initial investigation into officer-involved shootings and does an in-depth audit of all use-of-force complaints.

**Recommendation #9:** The City Council should grant the IPA co-investigative authority for cases the IA does not investigate, those questioned by the IPA, and all complaints of officer-involved shootings and use of force.

**City Council Response to Finding and Recommendation #9:**

The City Council partially agrees with Finding #9.

The role of the Independent Police Auditor immediately after an officer-involved shooting is: "The IPA will be notified immediately after an officer-involved shooting by the Internal Affairs Commander... On-scene personnel will brief the IPA and Internal Affairs Commander as to the details of the incident." Council action at the presentation of IPA 2004 Year End Report.

The Police Department's review of officer-involved shootings that result in wounding or death is conducted by an internal administrative Panel established by the Chief of Police and is called the "Shooting Incident Training Review Panel." It consists of senior Department command staff, representatives from the City Attorney's Office, and since 1999, the IPA. The purpose of the Panel is precautionary and remedial in nature. The Panel is convened to review officer-involved shootings in order to determine whether any training or equipment needs exist or if any changes need to be made to current Department policies or procedures. The Panel can make referrals to the Department to develop appropriate training or changes in Department policies and procedures based upon its review.

The IPA is authorized to be a part of the initial response in officer-involved shootings and review closed investigative reports in officer-involved shootings for the purpose of providing the IPA sufficient information in preparation for the IPA's participation in Shooting Review Panel sessions. However, there is no investigative function for the IPA in officer-involved shootings nor is there a review or "audit" role for the IPA in officer-involved shootings, unless a complaint has been made against a police officer regarding the officer's conduct with regard to the shooting. Under the San Jose City Charter (Charter Section 809) and the Municipal Code (Section 8.04.020), the IPA's review function is limited to reviews of Internal Affairs investigations of complaints against police officers to determine if the investigations are complete, thorough, objective and fair. The IPA is further authorized to make recommendations with regard to Police Department policies and procedures based upon the IPA's review of Internal Affairs complaint investigations.

At the June 21, 2007 Special Council Meeting, the City Council took no action on the recommendation, as presented by the IPA, regarding additional investigative authorities, but directed the City Attorney to *"return to the City Council in the first meeting in August with a report on the litigation impacts of moving all in-custody death cases as officer-involved shootings. The City Attorney is further directed to analyze the county-wide protocol for in-custody deaths and clarify the distinction between in custody deaths and critical incidents."*

September 5, 2007

**Subject: Response to the Civil Grand Jury Report Entitled "Police Misconduct May Be Underreported"**

Page 11

The City Council has also taken steps to correct perceived problems in the complaint process, declines to grant the IPA investigative authority, an action which would require a Charter change.

In a memorandum from the City Attorney's Office, scheduled for City Council consideration on September 18, 2007 (see Council Agenda, Item 8.1), the City Attorney provides a legal opinion responsive to the above referenced City Council referral. This matter will be considered by the City Council on September 18, 2007 and final disposition on the Council's deliberation is not available at the time that this report was drafted. The City Attorney's Office will ensure that the above referenced memorandum will be attached to the cover letter transmitting this report to the Grand Jury, as well as a summary of the City Council's final action on the referral.

If the City Council takes separate action on the IPA's current responsibilities and authorities, either through deliberation of Item 8.1 (September 18 City Council Agenda) or with respect to this report, any City Council action that differs from (1) June 21<sup>st</sup> Council action, (2) report from the City Attorney regarding Item 8.1 on the September 18 City Council Agenda, or (3) this report responding to the Grand Jury Report, would need to be reflected in the response to the Grand Jury and the City Attorney's Office would draft a response that specifically follows Council's action taken at the September 18, 2007 Council meeting.

**Civil Grand Jury Finding & Recommendation #10:**

**Finding #10:** Neither the IPA nor the IA has undergone a performance audit.

**Recommendation #10:** Performance audits should be conducted of both the IPA and IA.

**City Council Response to Finding and Recommendation #10:**

The City Council partially agrees with Finding #10 and the City Council has implemented sufficient measures to be responsive to the Grand Jury's Recommendation #10. It should be noted that the SJPD is continuously subject to performance audits as conducted by the City Auditor's Office.

The City Council values managing by performance and indeed performance measures are in place and reviewed regularly by all City departments and offices to help maintain a customer-focused and results-driven organization that provides the highest quality services in the most cost-effective manner.

Below are the current performance measures for the Internal Affairs Unit and Independent Police Auditor. In addition, at the June 21, 2007 Special Council Meeting, the City Council issued a Council referral to require an independent and annual evaluation of key performance measures of the SJPD citizen complaint process (Council Referral #19).

### **Internal Affairs Unit Performance Measures**

1. Classify 95% of all cases within 30 days of intake:
2. Complete 75% of Citizen-Initiated Use of Force with medical (with major injuries) Administrative investigations within six months (180 days) of the received date.
3. Complete 90% of all Administrative investigations (including Inquiries) within 10 months (300 days) of received date.

It is important to note that to ensure thorough administrative investigations; the Police Department has a Performance Auditing Detail (PAD) that serves as the internal quality control for the Department. The Department is also subject to performance auditing by the City Auditor.

### **IPA Performance Measures**

1. % of IPA recommendations that become policy or change a procedure
2. % of investigations initiated within 3 days
3. % of complainants rating the professionalism and responsiveness of the IPA as good or excellent
4. % of residents rating confidence with the independent police review/oversight process as good or excellent
5. % of community members responding to evaluations at outreach presentations or events who report an increased knowledge of IPA and the citizen complaint process
6. % of complainants filing their complaint at the IPA office rather than at Internal Affairs

The City Council maintains the authority to hold additional performance audits for either the SJPD or IPA.

### **CONCLUSION**

The City wishes to thank the members of the 2006-2007 Santa Clara County Civil Grand Jury for their efforts in reviewing and analyzing these important issues, and bringing substantive recommendations to the City Council. The City is sincerely interested in the concerns and perceptions of the individuals the Grand Jury interviewed.

### **PUBLIC OUTREACH/INTEREST**

By the very nature of the Grand Jury's report and its release, public outreach requirements have been met. Additionally, upon approval of this memorandum by Council, the City Attorney will submit the memorandum to the presiding judge of the Superior Court, as required under Penal Code Section 933(c).

HONORABLE MAYOR AND CITY COUNCIL

August 24, 2007

**Subject: Response to the Civil Grand Jury Report Entitled "Police Misconduct May Be Underreported"**

Page 13

**COORDINATION**

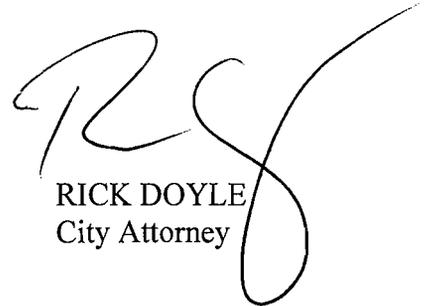
This report has been coordinated with the SJP.

**CEQA**

Exempt.



DEBRA FIGONE  
City Manager



RICK DOYLE  
City Attorney

*For additional information on this report, contact Deanna J. Santana, Deputy City Manager (535-8280); Carl Mitchell, Senior Deputy City Attorney (535-1919).*

**Attachment A:** Santa Clara County Civil Grand Jury's Report entitled "Police Misconduct May Be Underreported."

**Attachment B:** Summary of June 21 Council Referrals, Memo authored by Mayor Reed, Vice Mayor Cortese, Councilmember Nguyen, Councilmember Constant, and Councilmember Liccardo.



**2006-2007 SANTA CLARA COUNTY  
CIVIL GRAND JURY REPORT**

**Attachment A**

(ENDORSED)  
**FILED**  
JUN 27 2007

KIRI TORRE  
Chief Executive Officer  
Superior Court of CA County of Santa Clara  
BY D. ALDYCKI DEPUTY

**POLICE MISCONDUCT MAY BE UNDERREPORTED**

**Summary**

The Office of the Independent Police Auditor (IPA) was formed to address the potential for bias that could result from the police department investigating itself. The IPA is the City of San Jose's (City) chartered agency for civilian oversight of police department complaints, established by the City in 1993. It provides auditing oversight of the Internal Affairs Unit (IA) of the San Jose Police Department (SJPD) that investigates complaints of subject officer misconduct. A "subject officer" in this report is a police officer accused of misconduct. Although the IPA is functioning to the capacity of its limited authorized powers, recent statistical analyses, as shown on page 5, indicate that police misconduct may be underreported because definitive, objective criteria for categorizing conduct are not used, and the IPA lacks the authority to classify and investigate citizen complaints. The IPA, an independent civilian agency reporting directly to the Mayor and the San Jose City Council (City Council), is authorized only to monitor complaints and their classification at filing. After the completion of an investigation, the IPA reviews the investigation report and can appeal the findings. Also, the IPA prepares statistical analyses documenting the number of complaints by category and their ultimate resolution. This Grand Jury report focuses on recent statistical trends of "external complaints," those made by citizens. It excludes internal complaints, those made by police officers.

Citizens can file complaints with the IA or the IPA. The IA is responsible for the classification of all citizen complaints. For this report, the "Inquiry" classification is considered a "complaint." The SJPD does not consider an Inquiry as a complaint but rather as a citizen contact. Complaints can be classified into one of six categories, only four of which are important to this report: Formal, Procedural, Command Review, and Inquiries. The description of each key category is found in the "Categories" box on page 4. The annual total number of citizen complaints was just under 450 for 2006; of these, over 50% were classified as "Inquiries" and since 2003 the number of Inquiries has doubled. This is a concern because a complaint classified as an Inquiry is, by definition, almost incidental in nature and results in no officer-related investigation or tracking; that is, no officer accountability. However, this has recently changed. Beginning April 2007, the IA initiated an off-line pilot program of tracking Inquiry-type complaints. Subject officer specific data from this off-line program is not presently accessible to the IPA for monitoring purposes, as in the case of all other more serious complaints which are maintained in the IAPro, the IA's main database.

The 2006-2007 Santa Clara County Civil Grand Jury (Grand Jury) reviewed the IPA's 2003 to 2006 Year End Reports, attended two community-IPA-SJPD-Human

Rights Commission (HRC) forums, and conducted extensive interviews. A review of all the gathered information indicates significant differences between the IPA and the IA in classifying complaints. The IPA and the IA have a different hierarchy of classification. For clarity they should be the same. A contributing cause is that the four key categories lack definitive, objective criteria to use for complaint classification. Subject officer accountability is directly related to the degree of alleged misconduct being accurately reflected by the classification category. Since the IPA is the agency responsible for civilian auditing oversight of the SJPd, it needs access to the appropriate data, including that generated by Inquiries. Significant statistical trends identified by the IPA can be interpreted as an underreporting of subject officer misconduct. To address this, certain limited oversight authority should be granted to the IPA. This would include being the principal organization for receiving complaints, having the final authority to classify all citizen complaints, and sharing investigative powers with the IA. In addition, enhancing and unifying the complaint form and filing process, including the establishment of objective criteria for each category of complaint, should improve the accuracy of oversight and result in an increase in the public's confidence in the effectiveness of its civilian oversight agency, the IPA.

In its research the Grand Jury noted that neither the IPA nor the IA has ever been subjected to a performance audit. Specifically, a performance audit that examines the quality of criteria used for classifying complaints could contribute to a clarifying of the category differences. In turn, this would lead to a more standardized evaluation of officer conduct and increased effectiveness of the classification procedure. To build the public's confidence in the effectiveness of the IPA and the IA, the Grand Jury recommends that the City Council require performance audits for both.

## **Discussion**

One of the most sensitive areas of public concern is citizen-police relations. These relations are built, in part, on citizen-police contacts, which can range from positive interactions to violent confrontations. In 2006 there were just over 400,000 citizen-police contacts in San Jose which generated just under 450 total citizen complaints. Since personal perception plays a major role in the characterization of the contact event, an objective documentation and classification of citizen-police contacts is essential to fairly and accurately monitor the performance of the public's most visible authoritative agency, the police department.

This Grand Jury has used the statistics from the IA's database in examining the issue of complaint classification. The statistics showed a trend of an increase in the number of complaints in the category of Inquiries. At the same time, there is a trend showing a substantial decline in the number of complaints in the Command Review category. These two trends were compared, and a conclusion was reached. The trends, the comparison, and the conclusion will be discussed more thoroughly in the "Classification Issue" section of this report.

## **Community Forums and Interviews**

As part of its investigation, the Grand Jury interviewed 18 individuals and was present at community forums attended by more than 450 citizens. The forums were intended to provide the public with a venue for its concerns. Over 90 community members from various ethnic and socio-economic backgrounds and organizations spoke at the forums. The Grand Jury heard some positive comments for the SJPD and their safety enforcement; however, there were far more complaints than accolades.

The 18 interviews conducted by the Grand Jury were quite varied in the range of perspective of those interviewed. The Grand Jury interviewed officials of the Office of the City Auditor, SJPD, IA, IPA, Independent Police Advisory Committee, Mayor's office, The Coalition of Concerned Citizens, NAACP, ACLU, People Acting in Community Together, African American Parent Coalition, and several concerned citizens who spoke at both forums.

Common complaints heard by the Grand Jury at the forums and interviews were: (1) inappropriate police conduct, including rude behavior; (2) racial profiling, exemplified by vehicular and pedestrian stops; (3) police harassment; (3) reclassification of complaints into Inquiries; (4) inability to obtain information about subject officers; (5) ineffectiveness of the IPA and the HRC; (6) lack of accountability due to police investigating themselves; (7) length of time to commence and complete investigations, and (8) failure to respond to complaints.

## **Filing a Complaint**

Citizens may report their complaints of alleged police misconduct to either the IPA or the IA. The principal filing organization is the IA and the filing process is called the "intake." A secondary intake is the IPA, and for the past four years the intake for the IPA has remained level at about 40 percent of the total complaints. The intake procedure is initiated by filling out a complaint form. A complaint form is completed by the complainant at the IPA and by the intake officer at the IA. The IA and IPA use different complaint forms, having sixteen items common to both and seven items unique to each. The intake officer interviews the complainant and, with his/her consent, records the interview. The complainant is provided with a summary of his/her statement, not a copy of the complaint itself. Based on the complainant's interview, the complaints filed at the IPA are given a "preclassification" category.

According to the *SJPD Internal Affairs Unit Guidelines*, "Complaints and inquiries will be accepted in any form (in person, by telephone/fax, Independent Police Auditor (IPA) referrals, in writing, third party, via e-mail, or anonymously.)" An official of the IA informed the Grand Jury that, although not routinely advised so, complainants have the right to obtain a copy of their complaint when they appear in person for their interviews. They may also obtain a copy of their tape-recorded meeting with the IA interviewing officer(s). The complainants are also not made aware of the recordings' availability.

There have been very few requests for the recordings. The complaint forms give no clearly defined descriptions of the four main categories of complaints: "Inquiry," "Command Review," "Procedural," and "Formal;" nor is there a place for the complainant to sign a statement that he or she understands the categories of complaints and what classification they believe should apply to his/her complaint.

### The Classification Issue

A classification system is used by the SJPD that identifies and defines officer conduct when involved in a citizen-police contact situation. The categories range from incidental "citizen contact" to the most serious "Formal" complaint. The "Categories" box below gives the descriptions currently used for the four classification categories important to this report. The descriptions are summarized from the *SJPD Internal Affairs Unit Guidelines*, June 2006, pages 8, 9, and 10.

<b>Internal Affairs Unit Categories</b>
<p><b>Formal (External, civilian):</b> Initiated by a citizen alleging misconduct which, after an initial investigation by the intake officer, the IA determines that the facts of the allegation, if proven, would amount to a violation of the law or of Department policies, procedures, rules or regulations.</p>
<p><b>Procedural:</b> After an initial investigation by the intake officer the Department determines the subject officer acted reasonably and within policy and procedure given the specific circumstances and facts of the incident and there is no factual basis to support the misconduct allegations; or the allegation is a dispute of fact wherein there is no independent information, evidence, or witnesses available to support the complaint and another judicial entity is available to process the concerns of the complainant.</p>
<p><b>Command Review:</b> Involves allegations of minor transgressions on the part of a subject officer, which may be handled informally by bringing the matter to the attention of the officer's chain of command.</p>
<p><b>Inquiry:</b> An issue of concern 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 fully investigated. Officers' names are not tracked in cases classified as Inquiries.</p>

There are key elements of accountability applicable to the four categories that show the important differences between them. The chart below highlights those differences.

<b>IA Procedure Requirements</b>				
<b>Categories</b>	<b>Recorded Complaint</b>	<b>IA Interviews Officer</b>	<b>IA Investigation</b>	<b>On File</b>
<b>Formal</b>	Yes	Yes	Yes	Yes
<b>Procedural</b>	Yes	No	Yes	Yes
<b>Command Review</b>	Yes	Yes	Yes	Yes
<b>Inquiry</b>	Yes	No	No	Yes*
*Off-line manual log since April 2007				

The classification issue and its critical relationship to the accountability of the SJPd to the public were examined most specifically by targeting the Inquiry category. The Grand Jury examined Inquiries because of a significant increase in their incidence since 2003. It is a key distinction that a citizen-police contact classified by the IA as an Inquiry is not considered a "complaint;" rather, it is considered incidental in nature and "immediately resolved" to the citizens' satisfaction. The Grand Jury is concerned that the significant increase in Inquiries indicates these complaints are being given a lower category classification than is justified. Upgrading an Inquiry to Command Review or higher would increase subject officer review and accountability if, in fact, the citizen-police contact was more serious than merely incidental.

The following chart shows four years of complaint data from the 2006 IPA Year End Report. It indicates a significant increase of 106 percent of citizen-police contacts classified as the less serious Inquiry-type complaints, in contrast to the more serious categories of Command Review and Procedural which, taken together, have increased only 17 percent.

<b>IPA Complaint Data</b>				
<b>Categories</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>Formal</b>	86	111	106	107
<b>Procedural</b>	27	32	42	76
<b>Command Review</b>	39	29	7	1
<b>Inquiry</b>	113	118	203	233
<b>Other*</b>	30	45	25	27
<b>Total</b>	295	335	383	444
*Policy; No Boland; Withdrawn.				

A significant classification analysis was done by the IPA on 401 Inquiry-type complaints from 2005 and 2006. This represented 92 percent of all Inquiry-type complaints for those years, and the results were as follows:

- 127 cases (32%) – IPA agrees with SJPD classification
- 202 cases (50%) – IPA disagrees with SJPD classification
- 72 cases (18%) – Not enough information

The 50 percent disagreement for Inquiry only complaints, as shown above, is substantially different than the 5 percent disagreement for all complaints. This difference raises questions about the lack of definitive criteria for all complaint categories classification and their standardized use by the IPA and IA. This has become more significant since 2003, when Inquiries were 38 percent of all complaints, and 2006 when they were 52 percent of all complaints.

Currently, over 50 percent of all citizen complaints are classified as Inquiries. Accountability, dependent upon accurate complaint classification, is a critical element in the public's confidence in its oversight agencies. All the complaint categories require definitive criteria that distinguish one category from another. The Grand Jury finds that the lack of specific criteria defining each complaint category inhibits the accuracy of complaint categorization. Definitive criteria must be applied to the facts of the complaint, and the facts must be collected in an objective and professional manner. This is critical in accurately classifying complaints.

**The Early Warning System (EWS) and Intervention Counseling Program**

Complaints from the community serve as a quality control measure for the SJPD. The response of the IA is what the public sees as accountability. It is imperative that accountability be based on accurate documentation; that is, having the ability to track subject officer misconduct and responding promptly to correct it. In 2003 the SJPD initiated a program that identifies and addresses officers who are developing a record of misconduct. It was called the EWS and became the Intervention Counseling Program. The subject officers are scheduled for counseling regarding their behavior. This counseling effort is a proactive method of preserving an officer's career while improving the SJPD's reputation in the community. An example of the program's positive results is that the number of officers getting four or more complaints per year has dropped from three officers in 2005 to zero officers in 2006. There were five officers who received three complaints in 2006. The SJPD has an officer base of 1346.

In the past, Inquiries did not trigger an officer's entry into the EWS; however, an IA procedural change became effective in April 2007, to expand subject officer accountability. Inquiries are now tracked and maintained in an off-line pilot program that records the officers' names, badge numbers, and background information. SJPD management receives a manual report of this information on Monday of every week. This new procedure allows SJPD management to get more detailed and timely reporting on officers accused of misconduct. Although it is not yet a part of the IAPro database, if

this information is incorporated this should increase the accountability and prevent premature dismissal of cases due to misclassification.

### **Investigative Powers and the IPA**

There have been repeated requests from community members, various organizations, and complainants asking the City Council to expand the authority of the IPA from an auditing and monitoring agency to a more powerful civilian oversight agency. It is important to note that at present the IPA has little or no recourse on complaints deemed by the IA to require limited or no investigation.

The *SJPD Internal Affairs Unit Guidelines*, states that the IPA or his/her designee has the right to attend the interviews of all subject officers and witnesses. The IPA has requested advance notification of all subject officer interviews regarding cases involving the use of force, as well as other serious cases that will subsequently be reported by the IA to the IPA.

The Grand Jury was informed by an official of the SJPD that the IPA has no authority during formal interviews to directly question the subject officer. Granting the IPA the right to question officers as a participant in a thorough investigation would be another way of increasing its investigative powers.

### **Performance Audits**

Both the IPA and the IA use established policies, procedures, and a common database, IAPro, to accomplish their main mission of the SJPD oversight. One of the procedures, complaint classification, should be evaluated for the distinctiveness of each category of complaint. The quality of the category definition is essential for effective use of the criteria. This will improve the objectiveness and standardization of the classification process.

How efficient these agencies are and the effectiveness of their policies and procedures have never been thoroughly evaluated by an outside agency. Nor has an independent evaluation of the statistical program and analyses been performed. This Grand Jury echoes a recommendation by a prior Grand Jury report that the IPA be subjected to a performance audit. This should be expanded to include a performance audit of the IA.

## Conclusion

At recent community-police forums, concerns were raised as to the ability of the SJPD to appropriately oversee itself through the response of the Internal Affairs Unit to citizen complaints and a monitoring of their investigations. The IPA, which reports on the actions of the IA through auditing of complaint investigations and monitoring of IA statistics, questioned the accuracy of the current complaint classification process in the 2005 and 2006 IPA Year End Reports. A special analysis of 92 percent of those years' Inquiry-type complaints showed that the IPA disagreed with the IA's Inquiry classification at least 50 percent of the time.

Although citizen complaints may be received by both the IPA and the IA, only the IA is authorized to investigate the complaint, and give a final classification. The IPA comments when there is a perceived discrepancy within a category or between categories. As an example, since 2003 the Command Review category went from 13 percent down to 0.2 percent; that is, a single Command Review complaint for all of 2006. Correspondingly, since 2003 the percentage of Inquiry and Procedural-type complaints taken together has gone up from 47 percent to 70 percent of all complaints. These two categories of complaints in comparison to Formal complaints carry little subject officer accountability, investigation, or discipline. A new EWS manual off-line log, that captures and manages information from Inquiry-type complaints, was initiated in April 2007. If this procedure is formally incorporated into the IAPro database, it will increase officer accountability.

The number of citizen complaints is quite low, about 450 for 2006. Put into perspective, there were just over 400,000 citizen-police contacts in 2006, and there are 1346 police officers in San Jose. The ratio of complaints to all citizen-police contacts is 0.1 percent. However, it is a concern of the Grand Jury that, given the current complaint classification and resolution procedures, a number of citizens do not have the confidence to report perceived officer misconduct.

In order to promote public confidence that police oversight is objective and effective, the Grand Jury recommends that more joint responsibility be given to the IPA as the principal intake location and that the IPA be authorized to classify all citizen-generated complaints. As a critical first step, the IPA and IA should jointly develop category-specific criteria for complaint classification purposes, and a category hierarchy that goes from the incidental Citizen Contact to the most serious Formal complaint. An improved, single complaint form used by both the IA and IPA would standardize the complaint filing process. In addition, the IPA should be granted co-investigation authority for those cases the IA does not investigate, or cases questioned by the IPA. This especially includes the most serious Formal complaints – use of force, and officer-involved shootings. Finally, both the IPA and the Internal Affairs Unit of the SJPD should be subjected to a performance audit that should be ordered by the City Council. By following these recommendations better police-community relations will be achieved.

## Findings

The following findings were reviewed with the subject agencies:

- F1:** There are no objective, explicit criteria defining each of the complaint classification categories.
- F2:** Complaint forms do not:
- a. require a complainant's signature,
  - b. clearly define the key classification categories,
  - c. provide a place for the complainant to indicate the classification he/she believes applies,
  - d. consolidate information common to both the IA and IPA on a single complaint form.
- F3:** The complaint forms do not advise complainants of the right to receive copies of their written statements and/or tape-recordings made during their interviews.
- F4:** Only the IA is authorized to formally classify all citizen complaints.
- F5:** The Inquiry-type complaint, which represents the largest percentage of complaints, requires no investigations and no officer contact. A pilot program, initiated in April 2007, currently records Inquiry-type complaints and subject officer information.
- F6:** The number of Inquiry-type complaints has continued to increase each year since 2003, going from 113 to 233 complaints in 2006.
- F7:** In 2005 and 2006, the IPA did a classification analysis of 401 complaints classified by the IA as Inquiries. The IPA disagreed with the classifications on 50 percent of the complaints.
- F8:** As of April 2007, an off-line data collection pilot program of Inquiries is being maintained and is considered part of the SJPD's Early Warning System, but it is still not a part of the IAPro database.
- F9:** The IPA is authorized to review closed investigative reports. The IPA is authorized to be a part of the initial investigation into officer-involved shootings and does an in-depth audit of all use-of-force complaints.
- F10:** Neither the IPA nor the IA has undergone a performance audit.

## Recommendations

The 2006-2007 Civil Grand Jury recommends that:

- R1:** The IPA and IA should jointly establish definitive and objective criteria for each of the complaint classification categories for their use.
- R2:** The IPA and IA should jointly develop a single citizen complaint form that includes:
  - a. complainant's signature line,
  - b. key complaint classification categories clearly defined and explained,
  - c. complainant's opinion of the classification category appropriate to his/her complaint.
- R3:** The IPA and IA include on the citizen complaint form an advisory notification that a copy of the complaint is available, as well as a tape recording of the interview.
- R4:** The IPA should be authorized by the City Council to formally classify all citizen complaints.
- R5:** All essential Inquiry complaint information, including that of the subject officer, should be incorporated into the IAPro database and made available to the IPA.
- R6:** No recommendation.
- R7:** No recommendation.
- R8:** The off-line pilot program that tracks Inquiry subject officer information should be immediately incorporated into the IAPro database and made available to the IPA.
- R9:** The City Council should grant the IPA co-investigative authority for cases the IA does not investigate, those questioned by the IPA, and all complaints of officer-involved shootings and use of force.
- R10:** Performance audits should be conducted of both the IPA and IA.

## Bibliography

- "Blacks, Latinos fare worse in traffic stops," *Associated Press Report*. April 29, 2007.
- City of San Diego. "Citizens' Review Board on Police Practices." *Annual Report*, 2004.
- City of San Diego. "Documentation/Reporting."  
[www.sandiego.gov/Citizensreviewboard/geninfo/docs.shtm](http://www.sandiego.gov/Citizensreviewboard/geninfo/docs.shtm).
- City of San Jose, Memorandum. *Civil Grand Jury Report – Racial Profiling by SJPD: Perception vs Reality*, August 2, 2006.
- City of San Jose, Memorandum. *Internal Affairs Study*. November 2, 2006.
- City of San Jose, Memorandum. *SJPD Input for Sunshine Reform Task Force*. February 15, 2007.
- City of San Jose. Office of the Independent Police Auditor. "Grand Jury Report "Inquiry Into the City of San Jose Independent Police Auditor," September 2, 2004.
- City of San Jose, Office of the Independent Police Auditor. "IPA Report," 2004.
- City of San Jose, Sunshine Reform Task Force, Memorandum. "Discussion Document J, Public Records Discussion Document." February 16, 2007.
- City of San Jose, Sunshine Reform Task Force. "Police Records, Panel Biographies, and Position Statements". February 24, 2007.
- Communities United Against Police Brutality, "CRA Redesign Action Group Outcomes Subcommittee Recommendations,"  
<http://www.charityadvantage.com/CUAPB/OutcomesSubcommittee.asp>.
- Davis, Robert L. "San Jose Police Department Internal Affairs Unit Guidelines" *SJPD internal document*, June 2006.
- Goldberg, Susan. "S.J. sunshine task force considers your right to know crime details." *San Jose Mercury News*, March 4, 2007.
- Gonzales, Sandra. "Forum alleges police abuse." *San Jose Mercury News*, January 19, 2007.
- Guerrero-Daley, Teresa, Independent Police Auditor. Memorandum, "Grand Jury Report – Inquiry Into the City of San Jose Independent Police Auditor." September 2, 2004.
- Lee, Henry K. "Hearings on police to be kept from public." *San Francisco Chronicle*, February 13, 2007.

## **Bibliography - continued**

Leno, Mark. California Assemblyman. "AB 1648 Assembly Bill – Introduced."

February 23, 2007. [http://info.sen.ca.gov/pub/bill/asm/ab\\_1601-1650/ab\\_1648\\_bill\\_20070223\\_introduced.html](http://info.sen.ca.gov/pub/bill/asm/ab_1601-1650/ab_1648_bill_20070223_introduced.html) (accesses June 5, 2007).

Office of General Counsel, The California State University. "Pitchess Motions." Revised March 2007. [http://www.calstate.edu/gc/Docs/Pitchess\\_Motions.doc](http://www.calstate.edu/gc/Docs/Pitchess_Motions.doc).

Spivey, Sara. "SJPD needs to develop a new way to clear downtown streets." *San Jose State University Spartan Daily*, February 7, 2007, Sparta Guide.

Stannard, Matthew B. "Civil Grand Jury Issues Report on San Jose Police, Panel urges better accountability in shootings by cops." *San Francisco Chronicle* July 4, 2000. <http://www.sfgate.com/cgi-bin/article.cgi?f=/chronicle/archive/2000/07/04/MN45574.DTL>.

Summary Report. Two Community Forums Co-Sponsored by the San Jose Human Rights Commission and the Independent Police Auditor. "The Police in San Jose: What's working, what isn't and what can be improved?" November 30, 2006, San Jose City College, January 18, 2007, Eastside Union High School District.

Webby, Sean. "Police challenge auditor's report." *San Jose Mercury News*, June 12, 2007.

Webby, Sean and Foo, Rodney. "Blacks, Latinos more likely to be arrested by force." *San Jose Mercury News*, March 21, 2007.

West, Tony. "Only an informed public will know whom to trust." *San Jose Mercury News*, May 18, 2007, Another view section.

## **Grand Jury Documents**

2003-2004 Santa Clara County Civil Grand Jury Report. "Inquiry Into the City of San Jose Office of the Independent Police Auditor."

2004-2005 Santa Clara County Civil Grand Jury. "Confirmation of Responses to 2002-2003 Santa Clara County Civil Grand Jury Recommendations."

2005-2006 Orange County Grand Jury Report. "Oversight of Orange County Law Enforcement Agencies Resolving a Dichotomy!" <http://www.ocgrandjury.org/pdfs/citizenoversight.pdf>.

2005-2006 Santa Clara County Civil Grand Jury Report. "Racial Profiling By San Jose Police Department – Perception vs Reality."

## **Independent Police Auditor's Reports**

Attard, Barbara J., Independent Police Auditor. 2004 IPA Year End Report.

Attard, Barbara J., Independent Police Auditor. 2005 IPA Year End Report.

Attard, Barbara J., Independent Police Auditor. 2006 IPA Year End Report.

Guerrero-Daley, Teresa, Independent Police Auditor "IPA 2003 Year End Report, A Comprehensive Ten Year Overview."

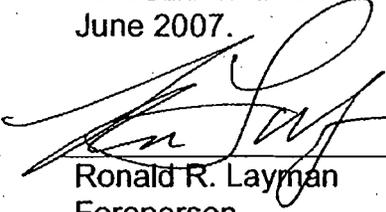
## **Interviews and Visitations**

- |                   |  |
|-------------------|--|
| November 30, 2006 | Observed testimony during public forum at San Jose City College. Panel members consisted of officials from the San Jose Police Department, Office of the Independent Police Auditor, and the San Jose Human Rights Commission.               |
| January 18, 2007  | Observed testimony during public forum at Eastside Union High School District. Panel members consisted of officials from the San Jose Police Department, Office of the Independent Police Auditor, and the San Jose Human Rights Commission. |
| February 2, 2007  | Interviewed officials of the Office of the San Jose City Auditor.  |
| February 16, 2007 | Interviewed official from the Northern California Office of the American Civil Liberties Union (ACLU).   |
| February 16, 2007 | Interviewed official of the Office of the San Jose Independent Police Auditor.   |
| February 23, 2007 | Interviewed official from the San Jose Silicon Valley Chapter of the National Association for the Advancement of Colored People (NAACP).   |
| February 24, 2007 | Observed testimony from Police Records Panel and community members before the Sunshine Reform Task Force.  |

## **Interviews and Visitations - continued**

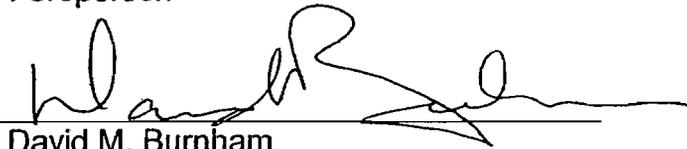
February 26, 2007	Interviewed official from the Office of the San Jose City Attorney.
March 2, 2007	Interviewed official from the Northern California Office of the American Civil Liberties Union (ACLU).
March 7, 2007	Interviewed member of the Police Advisory Board.
March 7, 2007	Toured the San Jose Police Department and interviewed official of the Office of Internal Affairs.
April 25, 2007	Interviewed member of the African American Parent Coalition.
April 25, 2007	Interviewed members of the Coalition of Concerned Citizens and Organizations.
April 25, 2007	Interviewed official of the Office of the San Jose Independent Police Auditor.
April 27, 2007	Interviewed member of People Acting in Community Together.
May 2, 2007	Interviewed official of the Office of the San Jose Independent Police Auditor.
May 4, 2007	Interviewed official of the San Jose Police Department.
May 15, 2007	Interviewed official of the San Jose Police Department, Internal Affairs Unit.
May 18, 2007	Interviewed official of the San Jose Mayor's Office.

**PASSED and ADOPTED** by the Santa Clara County Civil Grand Jury on this 12<sup>th</sup> day of June 2007.



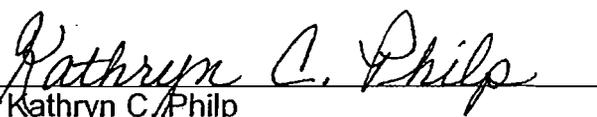
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Ronald R. Layman  
Foreperson



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David M. Burnham  
Foreperson Pro tem



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Kathryn C. Philp  
Secretary



# Memorandum

**TO:** City Council

**FROM:** Mayor Reed  
Vice-Mayor Cortese  
Councilmember Nguyen  
Councilmember Constant  
Councilmember Liccardo

**SUBJECT:** POLICE RELATED REPORTS

**DATE:** August 21, 2007

Approved *Chuck Reed*

Date *8/21/07*

*Constant*  
*Malisa Nguyen*  
*Sanford*

## INFORMATION

This memo is intended to provide written documentation of Council direction that was given at the Special City Council Meeting on Various Police Related Reports on June 21, 2007. This will assist staff in moving forward on the recommendations and in preparation of the September 11, 2007 City Council meeting, where the City Attorney will return with his response to Referral #11 (see below). Below is a comprehensive list of the final recommendations as adopted by the City Council.

1. Confirm the Independent Police Auditor's (IPA) right to challenge the Police Department's classification of complaints and inquiries, with ultimate resolution by the City Manager.
2. Direct the Chief to establish policies on the types of inquiries that should be made a part of the early warning and intervention counseling system.
3. Direct the Chief to develop a specific policy prohibiting retaliation against complainants.
4. Direct the Chief to continue to incorporate rudeness awareness training and reinforce the need for respectful treatment into regular training for all officers.
5. Add regular monitoring of major downtown night time events like Cinco de Mayo and Mardi Gras to the workplan of the Human Rights Commission (HRC).
6. Continue use of the mediation process and publicize its availability.

CITY COUNCIL

August 21, 2007

**Subject: Police Related Reports**

Page 2

7. Direct the City Manager and Independent Police Auditor to work together to develop information packets for individuals contacting the IPA or Internal Affairs Unit (IA). *These packets are to be made available in multiple languages.*
8. Restrict the inclusion of data regarding the dispute of routine traffic citations from reports of complaints and inquiries until the matter is addressed by the traffic court. Complaints that are strictly disputes of the citation should be resolved by the traffic court and eliminated from the reports of complaints and inquiries.
9. Direct the IPA and IA to develop a packet of intake materials to be given to complainants at both agencies that would include complaint definitions, an explanation of the process, and necessary forms.
10. Direct the City Manager to work with the IPA and IA to develop a standardized script that explains the inquiry process, which IPA and IA staff will read at the time of intake.
11. Confirm the IPA's existing authority to review officer-involved shooting and in-custody death cases. Direct the City Attorney to return to the City Council at the first meeting in August with a report on the litigation impacts of moving all in-custody death cases that are a result of a use of force to the same level of auditing by the IPA as officer-involved shootings. *The City Attorney is further directed to analyze the county-wide protocol for in-custody deaths and clarify the distinction between in-custody deaths and critical incidents.*
12. Direct the Police Department to present its rudeness prevention training to the Human Rights Commission.
13. Direct the Independent Police Auditor to add further information- such as whether a complaint was filed, date and city of incident- to data collected at all future public forums regarding the Police Department and to convey this information explicitly in post-forum reports. This same information should be included in reports brought forward by the Human Rights Commission.
14. Add review of the Police Department's cultural diversity training to the workplan of the Human Rights Commission.
15. Accept the SJPD's self-initiated process to re-establish the Citizens' Police Academy, and grant priority for participation to HRC members.
16. Direct the Chief to conduct deeper data analysis for an annual use of force report. This analysis should include, but is not limited to, the location of arrest, residence of those arrested, and time of day the arrest occurred.

CITY COUNCIL

August 21, 2007

Subject: Police Related Reports

Page 3

17. Direct the Chief to explore alternate terminology for "Inquiries," such as "information request" or "informational query."
18. Direct the City Manager to work with the Police Chief *and IPA* to develop a revised complaint process that determines classification based upon objective criteria and definitions for complaint categories. They are to bring regular updates on their progress to the Public Safety, Finance and Strategic Support Committee. *This will allow the IPA to be involved at the beginning of the process while the City Manager and Chief of Police are developing the criteria.* Final recommendations are to be brought back to the City Council within six months.
19. Require an independent and annual evaluation of key performance measures of the SJPD citizen complaint process.
20. Direct the City Manager to accept the Police Department's self-initiated practice, as of April 2007, of tracking police officers' names on Inquiries for a six-month period, and direct the City Manager to report on the status of this effort once six months of data are available, along with a staff resource and "value added" impact report.
21. Direct the City Manager to collaborate with the IPA on a report outlining the status of all the recommendations adopted at the Special City Council Meeting. This report is to be brought forward in conjunction with the IPA's mid-year report.

This documentation is also crucial in allowing the City of San José to officially respond to the Santa Clara County Civil Grand Jury report, **Police Misconduct May Be Underreported**. This report was released on June 27, 2007 following the Special City Council Meeting. A proposed City Council response, jointly authored by the Independent Police Auditor and the City Manager, is to be brought forward to Council on September 11, 2007.

Cc: Debra Figone, City Manager  
Barbara Attard, Independent Police Auditor  
Rick Doyle, City Attorney  
Lee Price, City Clerk