

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Teresa Guerrero-Daley

**SUBJECT: GRAND JURY REPORT – INQUIRY INTO THE CITY OF SAN JOSE
INDEPENDENT POLICE AUDITOR** **DATE:** September 2, 2004

RECOMMENDATION

Honorable Mayor and members of the City Council I am presenting the Independent Police Auditor's response to the 2003-2004 Santa Clara County Civil Grand Jury's report entitled, "Inquiry into the City of San Jose Office of the Independent Police Auditor," and request that you accept this response.

BACKGROUND

The Office of the Independent Police Auditor (IPA) would like to thank and acknowledge the dedication and commitment of all the members of the 2003-04 Grand Jury. The countless hours of public service they provided is commendable. The Grand Jury's inquiry focused primarily on the duties and functions of the Office of the Independent Police Auditor as they relate to the oversight of the citizen complaint process of the San Jose Police Department. It is important to note that the Grand Jury, of their volition, decided to conduct this inquiry and was not initiated in response to any public complaint.

This response will address the Grand Jury's findings and recommendations to the IPA. It should be noted that six of the eight recommendations address ways of improving the statistics reported in the IPA's public reports. The IPA's reports have evolved throughout the last ten years and now serve as the model for police oversight agencies nation wide. The IPA's reports have been used as reference material by many experts in the field writing on the subject of police oversight.

ANALYSIS

The IPA provides a separate response to each of the eight Grand Jury Findings and Recommendations.

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.

IPA Response: The IPA partially agrees with this finding. The IPA reports satisfy the Municipal Code requirements and include the number of complaints, the finding, the actions taken, and any recommendations. The IPA reports are written in a manner that provides information to the public without violating confidentiality requirements. Penal Code section 832.7 requires that information from the investigation of citizen complaints filed against a police officer not identify the subject officer or contain information so specific as to make the identity of the officer known. However, in an effort to make the statistical section of the IPA reports more informative, the IPA will explore different ways of reporting the statistics.

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 analysis required by the Municipal Code.

IPA Response: The use of a template is a good idea and this recommendation will be implemented starting with the 2004 Year End Report. The IPA will standardize the most common statistical information included in its reports and design a template for easier comparison from year to year. From time to time new statistical information will be added or deleted depending on emerging and obsolete trends. Regarding the accuracy of the statistics, the SJPD's Internal Affairs Unit and the IPA conduct independent accounting and verification of the statistics before the report is published.

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

IPA Response: The IPA partially agrees that there is some overlap between the Department and Citizen initiated complaints. However, the number, type, and finding of complaints are reported separately.

Recommendation II: The IPA should separate statistics from the two types of complaints.

IPA Response: This recommendation will be partially implemented. Pertinent details and statistics are necessarily commingled in order to achieve a broader assessment of emerging patterns and trends. When analyzing the origins or causes of certain police conduct it is irrelevant how the investigation was initiated especially as it pertains to the Early Warning System that detects officers with multiple complaints. Behavioral patterns transcend both categories of complaints therefore; data from both types of complaints are tracked and reported. Beginning with the 2004 Year-End Report, the IPA will continue to report the number of complaints filed in each category separately and where there is a necessary overlap, provide a better explanation.

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

IPA Response: The IPA agrees with this finding.

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.

IPA Response: This recommendation will not be implemented. The IPA purposely abstains from making comparisons to other cities involving the number of citizen complaints filed in their respective cities. In making this decision, the IPA draws from ten years of experience and from its involvement with the National Association of Civilian Oversight of Law Enforcement (NACOLE) who recommends against such practice. The primary reason is because every city has their own way of documenting, classifying, and reporting citizen complaints alleging dissatisfaction with police services. There is no uniform standard in the industry about what constitutes a complaint, how they are to be resolved, and reported therefore making such a comparison misleading and inaccurate.

For example, on page six of the Grand Jury report, it compares the number of complaints filed in various cities with its respective populations and makes reference to these rates being two to five times that for San Jose. In comparing San Jose to San Francisco, the Grand Jury failed to factor essential differences such as the fact that San Francisco is the investigative body for all citizen complaints, has twice as many officers and twice as large a non-resident or daytime population as San Jose. In addition, San Francisco bases their sustain rate on the percentage of all types of complaints filed, the IPA only looks to those complaints where the investigation leads to a finding. These are a few examples of the differences in oversight agencies that make comparisons misleading. The IPA already uses prior year statistics as its own benchmark for future comparison.

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.

IPA Response: The IPA agrees that this information needs to be clarified.

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.

IPA Response: The IPA already reports the number of incidents and allegations but will better clarify these statistics. Each complaint equals to one incident regardless of the number of complainants or subject officers involved. For example, if the police respond to a call for loud music at a home where a party is taking place and where multiple complaints result from various people, this whole incident would constitute one complaint. This complaint would contain multiple complainants, multiple allegations, and multiple subject officers however; it would count as one complaint. What is further broken down is the number of allegations that result from the one complaint. Each allegation is investigated and receives a finding. The IPA also reports the number of officers that receive multiple complaints. What is not reported is the number of officers per incident that receive a complaint. This information is difficult to compile because there are many officers that

respond as backup but do not write reports and are not always mentioned in any police report. The value of knowing this information is far outweighed by the resources it would require to gather this information.

Finding V: Review of citizen's 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.

IPA Response: The IPA partially agrees with this finding. While the initial police reports may indicate that the person arrested exhibited such symptoms or conditions, this should not imply that their complaints are without merit or serve to impugn their credibility in the case at hand. History has shown that those people that are not viewed as the pillars of society are most vulnerable to police misconduct precisely because of the likelihood that they will not be believed. This was the case in the Rampart Scandal in Los Angeles and in the Riders case in Oakland and many other such incidents across the country. The IPA and IA intake staff take great precaution not to prejudge a complainant based on such factors.

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.

IPA Response: This recommendation will not be implemented. First of all, each case must be decided on its merit and not on prior bad acts or character evidence of either the complainant or subject officer. For the IPA office to operate as a public office that is gathering intelligence on prospective complainants could damage years of work of gaining confidence in this office and in lessening fears of retaliation for filing a complaint. If the Grand Jury's concern is the malicious filing of complaints, there is already a law that addresses this concern. Complainants sign an admonishment that clearly states that if they are falsely making a complaint, they can be criminally prosecuted. In fact, some people have been prosecuted for making false complaints. If the inference is that people that fall in the above categories are predisposed to violent behavior or provoke officers to use force, that is a presumption that may be considered in assessing credibility but only in the absence of physical or testimonial evidence. Secondly, the IPA does not have the resources it would require to verify the necessary information in the suggested categories. The IPA works with the information contained in the completed investigation and provided by Internal Affairs.

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 citizen's allegations.

IPA Response: The IPA disagrees with this finding. The 2002 and other IPA reports contain charts which breakdown the type, if any, of discipline imposed by type of allegation. This information is reported in aggregate form rather than listing each

allegation separately. Use of force allegations that were sustained and the type of disciplinary action taken are routinely reported.

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.

IPA Response: This recommendation requires further analysis. The IPA and IA are in the process of integrating a new relational database program, which may have the capability of providing this information. The IPA will assess the value added in implementing this recommendation versus the human resources required given that the information in aggregate form is already included in the IPA reports.

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

IPA Response: This recommendation requires further analysis. The IPA would need access to this type of information and would require that the San Jose Police Department systematically provide this information in order for the IPA to track and report the number of officer and citizen injuries. This recommendation does not appear to be specific to injuries related to a complaint and therefore would require further analysis. However, beginning January 2004, the IPA and IA will begin to gather these statistics as they pertain to injuries reported in community complaints.

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.

IPA Response: The IPA agrees with this finding, but it should be noted that the IPA has consistently completed over 80% of all audits within the goal set for completing audits which is two months after Internal Affairs has completed its investigation. Some complaints can take longer to review due to several factors, including: 1) a case can contain especially complex issues; 2) delays in verifying witness statements can occur because of the difficulty in locating the witnesses; and 3) other workload demands.

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.

IPA Response: The IPA agrees with this recommendation.

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

IPA Response: This decision is for the City Council to make. However, many opportunities to evaluate the work of the IPA are in place. Several years ago Mayor Ron Gonzales implemented a process which requires that the IPA submit an annual achievement plan detailing the IPA duties and any major projects the IPA will accomplish

during that fiscal year. The IPA is required to explain the reasons any project listed in the achievement plan was not completed and required to submit a new achievement plan for the following year. In addition, as part of the Public Safety City Service Area, the IPA submits a business and strategy plan with performance measures that are evaluated yearly. Lastly, the IPA reports contain detailed quantifiable information on the duties and performance of this office.

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.

IPA Response: The adoption of this recommendation is for the City Council to determine and the IPA welcomes any external review that helps improve the services the IPA provides to the public. The Grand Jury report contains a seven-year comparison chart depicting a decrease in complaints and an increase in funding. The inference is that the IPA's funding has increased while the number of complaints has decreased. The Grand Jury did not consider that the intake, monitoring, and auditing of complaints represents only a fraction of the work the IPA performs on an ongoing basis. Much time is dedicated to researching, analyzing, making recommendations, and assisting the San Jose Police Department with the implementation of the recommendations. Each recommendation, over 100 to date, requires ongoing monitoring, tracking, and reporting while others require a direct involvement such as the implementation of the mediation program. The IPA spend many hours researching other mediation programs, designing one for the SJPD, setting up the process, promoting the concept, and monitoring the implementation of the SJPD mediation program. The IPA has worked side by side with the SJPD to design, implement, and evaluate the many programs that have resulted from the IPA recommendations.

While the number of complaints may be decreasing, the level of public outreach has increased. This outreach extends internally to the complainants and subject officers and externally to the public at large. This outreach includes holding public forums, creating brochures, and publications such as the "Youth Guide to Police Practices". In addition, the IPA designed and maintains its own website using in-house staff. It is important to distinguish that none of the cities cited by the Grand Jury impose an affirmative duty on the oversight agency to conduct community outreach as a core function.

While a comparison to other cities is not accurate because of the differences in duties, it should be noted that last year the San Francisco Office of Citizen Complaints had a budget of over 2.2 million dollars, and the budget for the Oakland Review Board was over \$800,000. The IPA's current funding and staffing are well below these two cities.

The national recognition that the IPA has received as the leader in civilian oversight, is a testament to the caliber of services it provides to the residents of San Jose.

HONORABLE MAYOR AND CITY COUNCIL

September 2, 2004

Subject: Grand Jury Report – Inquiry into the Independent Police Auditor

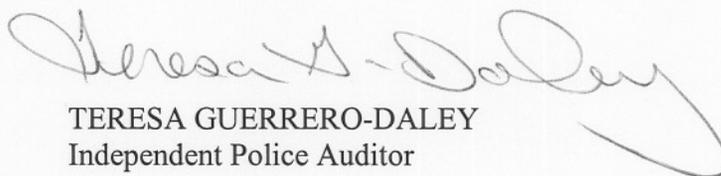
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CONCLUSION

The IPA welcomes and appreciates the hard work, diligence, and commitment from the members of the Santa Clara County Civil Grand Jury in preparing its report. The Independent Police Auditor will use this report to identify additional goals and direction for this office. The IPA commits to implement most of the Grand Jury's recommendations as soon as possible.

COORDINATION

This report was provided to the City Attorney in advance for comment and discussion.



TERESA GUERRERO-DALEY
Independent Police Auditor

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