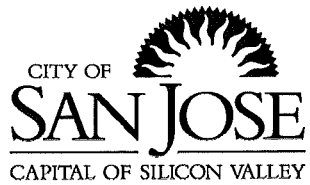
COUNCIL AGENDA: 5-10-11
ITEM: 8.2



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Christopher M. Moore

SUBJECT: **2010 SJPD INTERNAL AFFAIRS DEPARTMENT INITIATED INVESTIGATIONS REPORT**

DATE: April 28, 2011

Approved

Date 4/29/11

RECOMMENDATION

Accept the San Jose Police Department's (Department) Internal Affairs Unit (IA) report on Department Initiated Investigations (DII) for CY 2010.

OUTCOME

Under the revised IA complaint process instituted in July 2008, the Department agreed to provide DII information to Council on an annual basis. This information was to be provided in conjunction with the release of the Independent Police Auditor's (IPA) Annual Report. Acceptance of this report will provide the City Council and the community with statistics related to DII's for CY 2010.

BACKGROUND

This is the third DII report issued by the Department. It continues to be a report that may need further refinement over time. In future reports, we may modify the reporting approach with continued input from the Department, the IPA and City staff.

The Department initiates and conducts administrative investigations regarding potential misconduct by Department members, sworn and non-sworn, at the direction of the Office of the Chief. For the purpose of this report, a DII will include either or both sworn and non-sworn members. This differs from the IPA's current reporting which only reflect Department sworn members.

There is a distinction between a Conduct Complaint, which is generated by a citizen, and a Department-Initiated Investigation. An allegation will be classified as a Conduct Complaint when a member of the public files an allegation, with the Department or the IPA, against a

Department member and the Department determines that the allegation appears to contain misconduct. The initial investigation must determine that the facts stated in the allegation are such that, if sustained, would amount to a potential violation of the law or of the Department's policies, procedures, rules, or regulations. A Conduct Complaint is considered a citizen complaint.

When a citizen files a complaint with the IA Unit or the IPA, it is generally classified as a "Conduct Complaint." The distinction between Conduct Complaints and DII's are that DII's are internal investigations initiated either by the Office of the Chief of Police or at the Bureau level of the officer accused of misconduct. A DII is often based on an allegation which comes directly from a member of the Department who initiates investigation activity based on a specific awareness of, or a belief that, a potential violation of City and Department policy, procedure or law has occurred. Potential misconduct may be brought to the attention of the Chief of Police by a Department member, police agency, or judicial entity. All DII's are routed to and filed with the IA Unit where they are assigned an IA case number. The IA Unit is responsible for tracking and maintaining the DII statistical data, and then categorizing the DII's by the date it was received by the Department and the date it was completed.

While the Police Department considers citizen-initiated complaints and DII's as mutually exclusive, a Department review of all issues related to police officer conduct provides the ability to obtain trend information toward improving police officer training or supervision.

If at any time a citizen makes a complaint against a Department member, and the complaint is associated to an existing DII investigation, the DII will be reclassified as a Conduct Complaint. As with the case of any Conduct Complaint or citizen complaint, the IPA will be notified as soon as practical and is authorized to audit the Conduct Complaint investigation.

ANALYSIS

The Department views DII's as a priority and completes all investigations as soon as practical. DII's are prioritized by the date the Department is first made aware of the allegation and by the nature and degree of misconduct. A DII is considered complete when "Findings" are determined for each allegation and when discipline has been imposed on individuals involved in sustained cases.

A DII may include investigations of more than one Department member and can contain multiple allegations of potential misconduct. The Department utilizes a list of ten allegation categories for all citizen-initiated complaints (whether received by the Department or the IPA) and DII's. Based on IA Unit statistics compiled for this report, the following data points are highlighted; (See Appendix - Charts 1A – 2D)

- In 2010, the Department initiated 66 sworn DII's compared to 43 sworn DII's in 2006. The total number of DII's between these years fluctuates, with a high of 66 sworn DII's in 2010. (See Appendix - Chart 1-A)

- In 2010, the Department initiated 18 non-sworn DII's compared to 10 non-sworn DII's in 2006. The total number of DII's between these years fluctuates, with a high of 18 non-sworn DII's in both 2009/2010. (See Appendix - Chart 1-A)

- In 2010, the Department received 118 allegations of misconduct against sworn and non-sworn Department members, compared to 79 received in 2006. The total number of allegations received against all Department members fluctuates, with a high of 127 in 2007. (See Appendix - Chart 1-A)

- In 2010, there were 69 sworn officers subject to DII's, compared to 42 sworn officers in 2006. The total number of sworn members being investigated between these years fluctuates, with a high of 69 in 2010. (See Appendix - Chart 1-A)

- Between January 2006 and December 2010, there were 324 completed investigations against sworn and non-sworn Department members (Chart 2-A). During the same time period, there were 243 allegations of improper procedure against sworn members. Of those, 205 (84%) allegations against sworn officers were sustained. (See Appendix - Chart 2-B/Graphs 2B)

- Between January 2006 and December 2010, Documented Oral Counseling was the most common form of discipline imposed for both sworn and non-sworn Department members. Documented Oral Counseling was imposed on a total of 122 occasions during that time frame (sworn and non-sworn). (See Appendix - Chart 2-D)

In reviewing the DII statistical data, the following conclusions can be made: The number of alleged misconduct investigations received and the number of Department members who were the subject of alleged misconduct investigations fluctuates from year to year. Over the last five years, the most common misconduct allegations for sworn and non-sworn Department members have been Conduct Unbecoming an Officer/Employee and Procedure. Listed below is the definition for each allegation.

• **Conduct Unbecoming an Officer (CUBO)** An allegation that a member's conduct, either on or off duty, was conduct that a reasonable person would find unbecoming a police officer or could reflect adversely on the Department.

• **Procedure (P)** An allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures or guidelines.

Of the completed investigations on these specific allegations against sworn and non-sworn Department members (2010), 82% were sustained (Graphs 2-B). Over the last 5 years, the most common form of discipline imposed has been Documented Oral Counseling. This form of discipline was imposed 47% of the time. A copy of the disciplinary record, which results in a

Documented Oral Counseling, will be placed in the employee's Internal Affairs file and will be retained in accordance with the City polices and bargaining agreements.

The new citizen complaint process was implemented on July 1, 2008. The new process combined certain allegation types into broader allegation categories and renamed some allegation categories. No allegations were eliminated; they were only re-categorized. The intent was not to eliminate allegations, but rather to simplify and clarify the process for both the citizens and the Department, whether as a Department or IPA received citizen-initiated complaint or a DII. The Department is committed to making this new process better for those involved and continues to work closely with the IPA in verifying all DII statistical data.

PUBLIC OUTREACH/INTEREST

This report will be posted on the City's web site for the May 10, 2011 Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Office and the City Attorney's Office.

CEQA

Not a project, File No. PP10-069, City Organizational & Administrative Activities.

/s/

CHRISTOPHER M. MOORE
Chief of Police

For questions please contact Lt. Rick Weger, Internal Affairs Unit Commander, 277-4094

APPENDIX

RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS

FIVE YEAR SUMMARY OF DII'S (2006-2010)

Chart 1-A

Year	2006		2007		2008		2009		2010		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
DII totals	43	10	60	14	54	14	63	18	66	18	286	74
# of Department members investigated	42	9	61	12	55	12	64	17	69	15	291	65
# of investigations containing multiple Department members	3	1	5	0	2	0	7	0	5	0	22	1
Department members w/more than one DII for listed year	1	1	4	1	2	1	2	2	4	3	13	8
Total # of allegations received	64	15	99	28	79	17	80	29	88	30	410	119

(A Department member may have had multiple DII's for the year listed.)

BREAKDOWN OF ALLEGATIONS

Chart 1-B

Year	2006		2007		2008		2009		2010		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	35	11	71	22	46	12	59	26	59	27	270	98
Courtesy	1	1	1	0	1	0	3	0	2	0	8	1
Conduct Unbecoming an Officer/Non-Sworn	24	3	20	6	29	5	14	3	24	2	111	19
Neglect of Duty/Fail to Take Action	3	0	1	0	2	0	3	0	3	0	12	0
Discrimination	1	0	3	0	1	0	1	0	0	0	6	0
Harassment	0	0	3	0	0	0	0	0	0	1	3	1
Total	**64**	**15**	**99**	**28**	**79**	**17**	**80**	**29**	**88**	**30**	**410**	**119**

(No allegations of Search/Seizure, Arrest/Detention, Bias-Based policing, or Force were received)

EXPERIENCE OF INVOLVED OFFICERS(S)/NON-SWORN

Chart 1-C

	2006		2007		2008		2009		2010	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
0 – 3 Years experience	4	0	11	4	15	1	17	2	18	4
4 – 6 Years experience	5	3	7	0	4	3	10	5	5	1
7 – 10 Years experience	8	2	11	1	5	1	7	3	9	2
11 – 15 Years experience	12	1	7	1	8	2	14	3	23	3
16 – 20 Years experience	8	2	9	6	5	4	8	4	8	3
21 – 30 Years experience	4	1	16	0	16	1	8	0	6	2
Unknown*	1	0	0	0	2	0	0	0		
Total	**42**	**9**	**61**	**12**	**55**	**12**	**64**	**17**	**69**	**15**

*Unknown reflects an investigation where the Department member was never identified or the ethnicity of the Department member is not listed in the database.

COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS

FIVE YEAR SUMMARY OF DII'S (2006-2010)

Chart 2-A

Year	2006		2007		2008		2009		2010		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
DII completed investigations	37	7	45	11	60	17	57	19	47	24	246	78
# of Department members investigated	41	7	48	10	63	13	59	17	60	20	271	67
# of investigations containing multiple Department members	1	0	4	0	5	0	4	0	7	0	21	0
Department members w/more than one DII completed for listed year	3	0	1	0	3	3	3	1	0	3	10	7
Total # of Department members who received discipline	37	6	44	8	39	12	66	18	43	18	229	62

(Investigations may take longer than a calendar year to complete – i.e. criminal investigations.)

*COMPLETED ALLEGATIONS VS. COMPLETED SUSTAINED ALLEGATIONS

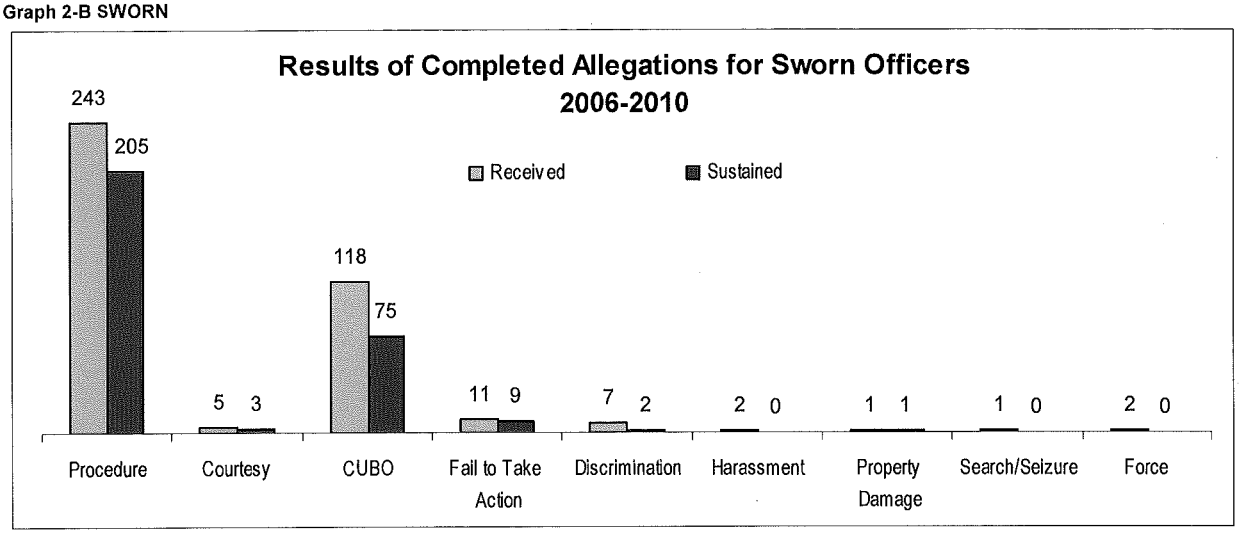
Chart 2-B

Year	2006		2007		2008		2009		2010	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	39/38	4/4	38/36	7/7	70/49	29/27	49/43	21/17	47/39	34/32
Courtesy	1/1	0/0	0/0	1/1	1/0	0/0	1/1	0/0	2/1	0
Conduct Unbecoming an Officer/Non-Sworn	17/16	5/4	15/11	3/1	42/21	6/5	26/17	4/3	18/10	3/3
Neglect of Duty/Failure to take action	0/0	1/1	2/2	0/0	3/3	0/0	2/1	0/0	4/3	0
Discrimination	0/0	0/0	1/0	0/0	2/0	0/0	2/0	0/0	2/2	0
Harassment	0/0	0/0	0/0	0/0	0/0	0/0	1/0	0/0	1/0	0
Property Damage	N/A	N/A	N/A	N/A	N/A	N/A	1/1	0/0	0	0
Search/Seizure	N/A	N/A	N/A	N/A	N/A	N/A	1/0	0/0	0	0
Force**	N/A	N/A	N/A	N/A	N/A	N/A	1/0	0/0	2/0	0
Total	**57/55**	**10/9**	**56/49**	**11/9**	**118/73**	**35/32**	**83/63**	**25/20**	**76/55**	**37/35**

*Completed Allegations/Completed Sustained Allegations
** (No Department Initiated allegations of Search/Seizure, Arrest/Detention, Bias-Based policing were received)

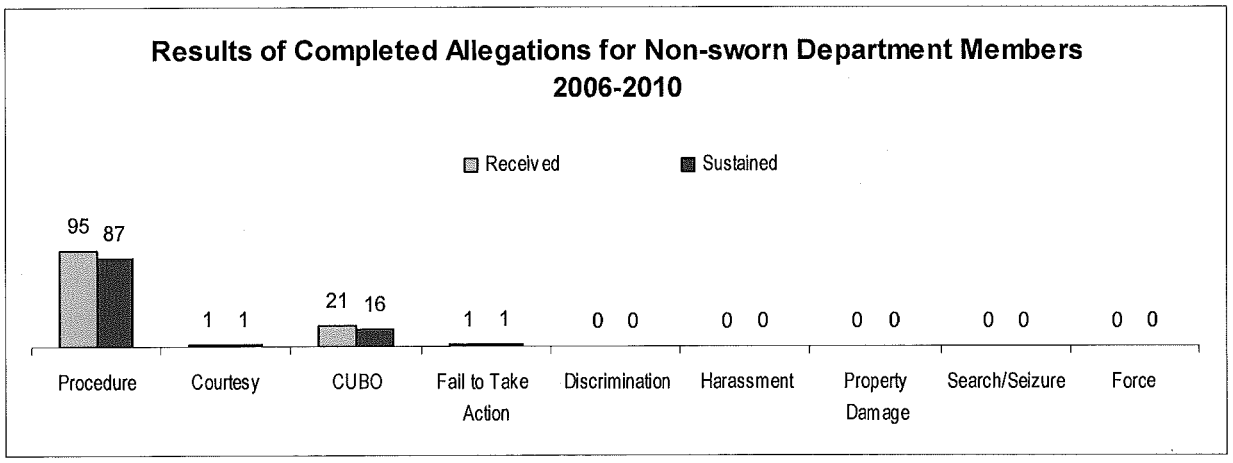
Completed Allegations vs. Completed Sustained Allegations

Graph 2-B SWORN



Completed Allegations vs. Completed Sustained Allegations

Graph 2-B NON-SWORN



COMPLETED EXPERIENCE OF INVOLVED OFFICER(S)/NON-SWORN

Chart 2-C

	2006		2007		2008		2009		2010	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
0 – 3 Years experience	4	0	7	1	13	4	7	1	19	5
4 – 6 Years experience	9	2	5	1	6	0	9	3	2	3
7 – 10 Years experience	13	1	6	1	12	2	3	8	14	3
11 – 15 Years experience	7	4	10	1	8	2	13	3	12	4
16 – 20 Years experience	5	0	8	6	9	5	5	1	6	4
21 – 30 Years experience	3	0	11	0	14	0	21	1	7	1
Unknown*	0	0	1	0	1	0	1	0	0	0
Total	**41**	**7**	**48**	**10**	**63**	**13**	**59**	**17**	**60**	**20**

*Unknown reflects an investigation where the Department member was never identified.

COMPLETED: PRIMARY DISCIPLINE IMPOSED
(Some discipline involved multi-sanctions. This chart shows the highest level for each investigation.)

Chart 2-D

Discipline Imposed	2006		2007		2008		2009		2010	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Training	6	0	1	0	2	1	7	2	9	2
Counseling	0	2	0	0	0	0	0	2	0	0
Documented Oral Counseling (DOC)	17	1	25	6	26	8	0	4	24	11
Letter of Reprimand	2	1	7	2	7	1	0	4	6	3
Disciplinary Transfer*	N/A	N/A	N/A	N/A	N/A	N/A	1	0	0	0
10-hours Suspension	9	0	3	0	5	1	0	0	1	7
20-hours Suspension	0	0	3	0	1	0	0	0	1	1
30-hours Suspension	0	0	1	0	1	0	0	0	0	0
40-hours Suspension	2	0	1	0	4	1	0	0	0	2
Greater than 40-hours Suspension	3	0	1	0	2	1	0	0	0	0
Settlement Agreement	0	0	0	0	0	0	2	1	0	2
Suspension reversed	0	0	0	0	0	2	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	3	1	4	0
Associated Department Investigation Outcomes										
Retirement before investigation concluded	0	0	1	0	1	0	3	0	0	0
Resigned in lieu of discipline/or resigned	0	2	0	0	4	3	2	0	1	2
Officers receiving more than one discipline	3	0	1	0	4	3	3	0	0	3
Retired prior to discipline on a sustained case*	N/A	N/A	N/A	N/A	N/A	N/A	3	0	0	0
									0	0
Other*	N/A	N/A	N/A	N/A	N/A	N/A	1	0	2	0

(Each sustained case may include more than one Department member.)

* Retired prior to discipline on a sustained case, Disciplinary Transfer and Other are categories added as 2009. Other includes: Cease Secondary Employment order, Separation from Reserve Unit