

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Christopher M. Moore  
Chief of Police

**SUBJECT:** 2011 SJPD INTERNAL AFFAIRS  
DEPARTMENT INITIATED  
INVESTIGATIONS REPORT

**DATE:** April 2, 2012

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Approved  Date 4/12/12

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## RECOMMENDATION

Accept the San Jose Police Department's Internal Affairs Unit (IA) report on Department Initiated Investigations (DII) for CY 2011.

## OUTCOME

Under the revised Internal Affairs (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 2011.

## BACKGROUND

This is the fourth DII report issued by the Department. It continues to be a report that may need further refinement over time with continued input from 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 both sworn and non-sworn Department members. This differs from the IPA's current reporting which only reflect Department sworn members.

DII's should not be confused with and are distinct from Conduct Complaints, which are generated by members of the public. An allegation of misconduct will be classified as a Conduct Complaint when a member of the public files a complaint, with the IA Unit or the IPA, against a Department member and the Department determines that the allegation appears to contain misconduct which, if

sustained, would amount to a potential violation of the law or of the Department's policies, procedures, rules, or regulations.

DII's are internal investigations initiated either by the Office of the Chief of Police or at the Bureau level of the Department member accused of misconduct. A DII is often based on an allegation which comes directly from a member of the Department (versus a member of the public) who initiates investigation activity based on a specific awareness of, or a belief that, a potential violation of City or 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 each DII by the date it was received by the Department and the date it was completed.

While Conduct Complaints and DII's are considered different and distinct from one another, a Department review of all issues related to alleged misconduct by Department members provides the ability to obtain trend information toward improving Department member training and/or supervision.

If at any time a member of the public 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. Thereafter, as is the case with any Conduct Complaint, the IPA will be notified as soon as practical and is, in turn, authorized to audit the Conduct Complaint investigation.

## **ANALYSIS**

The Department views DII's as a priority for the Department 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 which include either no action in unsubstantiated cases or discipline 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 the same list of (ten) allegation categories for DII's as it uses for Conduct Complaints (whether received by the Department or the IPA). Based on IA Unit statistics compiled for this report, the following data points are highlighted; (See Appendix - Charts 1A – 2D)

- In 2011, the Department initiated 38 sworn DII's compared to 60 sworn DII's in 2007. 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 2011, the Department initiated 17 non-sworn DII's compared to 14 non-sworn DII's in 2007. 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 2011, the Department received 97 internal allegations of misconduct against sworn and non-sworn Department members, compared to 127 received in 2007. The total number of internal allegations received against all Department members fluctuates, with a high of 127 in 2007. (See Appendix - Chart 1-A)
- In 2011, there were 38 sworn officers subject to DIIs, compared to 61 sworn officers in 2007. 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 2007 and December 2011, there were 353 completed investigations against sworn and non-sworn Department members (Chart 2-A). During the same time period, there were 293 allegations of Improper Procedure against sworn members. Of those, 224 (76%) allegations against sworn officers were sustained. (See Appendix - Chart 2-B/Graphs 2B)
- Between January 2007 and December 2011, “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 126 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 in 2011, 64% were sustained (Graphs 2-B). Over the last five years, the most common form of discipline imposed has been Documented Oral Counseling. This form of discipline was imposed 42% of the time. A copy of the disciplinary record, which results in a Documented Oral Counseling, will be placed in the Department member’s Internal Affairs file and will be retained in accordance with the City polices and bargaining agreements.

## **EVALUATION AND FOLLOW-UP**

Staff will continue to provide DII information to the Council on an annual basis in conjunction with the release of the IPA Annual Report.

**PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item does not meet the above criteria requiring additional notification; however, it will be posted on the City's Council Agenda Website for the April 24, 2012 Council Meeting.

**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(a) Staff Reports.

/s/  
CHRISTOPHER M. MOORE  
Chief of Police

For questions please contact Lt. Michael Knox, Internal Affairs Unit Commander, (408) 277-4094

**APPENDIX**

**RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS**

**FIVE YEAR SUMMARY OF DIIS (2007-2011)**

Chart 1-A

Year	2007		2008		2009		2010		2011		Total	
	Sworn	Non Sworn										
DII totals	60	14	54	14	63	18	66	18	38	17	281	81
# of Department members investigated	61	12	55	12	64	17	69	15	38	14	284	70
# of investigations containing multiple Department members	5	0	2	0	7	0	5	0	2	0	21	0
Department members w/more than one DII for listed year	4	1	2	1	2	2	4	3	3	3	15	10
Total # of allegations received	99	28	79	17	80	29	88	30	56	41	402	145

(A Department member may have had multiple DIIs for the year listed.)

**BREAKDOWN OF ALLEGATIONS**

Chart 1-B

Year	2007		2008		2009		2010		2011		Total	
	Sworn	Non Sworn	Sworn	Non Sworn								
Procedure	71	22	46	12	59	26	59	27	36	35	271	122
Courtesy	1	0	1	0	3	0	2	0	0	0	7	0
Conduct Unbecoming an Officer/Non-Sworn	20	6	29	5	14	3	24	2	16	5	103	21
Neglect of Duty/Fail to Take Action	1	0	2	0	3	0	3	0	0	1	9	1
Discrimination	3	0	1	0	1	0	0	0	0	0	5	0
Harassment	3	0	0	0	0	0	0	1	4	0	7	1
<b>Total</b>	<b>99</b>	<b>28</b>	<b>79</b>	<b>17</b>	<b>80</b>	<b>29</b>	<b>88</b>	<b>30</b>	<b>56</b>	<b>41</b>	<b>402</b>	<b>145</b>

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

**EXPERIENCE OF INVOLVED OFFICERS(S)/NON-SWORN**

Chart 1-C

Year	2007		2008		2009		2010		2011	
	Sworn	Non Sworn								
0 – 3 Years experience	11	4	15	1	17	2	18	4	5	3
4 – 6 Years experience	7	0	4	3	10	5	5	1	6	3
7 – 10 Years experience	11	1	5	1	7	3	9	2	6	1
11 – 15 Years experience	7	1	8	2	14	3	23	3	11	4
16 – 20 Years experience	9	6	5	4	8	4	8	3	7	3
21 – 30 Years experience	16	0	16	1	8	0	6	2	3	0
Unknown*	0	0	2	0	0	0	0	0	0	0
<b>Total</b>	<b>61</b>	<b>12</b>	<b>55</b>	<b>12</b>	<b>64</b>	<b>17</b>	<b>69</b>	<b>15</b>	<b>38</b>	<b>14</b>

\*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 DIIS (2006-2011)**

Chart 2-A

Year	2007		2008		2009		2010		2011		Total	
	Sworn	Non Sworn										
DII completed investigations	45	11	60	17	57	19	47	24	57	16	266	87
# of Department members investigated	48	10	63	13	59	17	60	20	55	15	285	75
# of investigations containing multiple Department members	4	0	5	0	4	0	7	0	3	0	23	0
Department members w/more than one DII completed for listed year	1	0	3	3	3	1	0	3	5	1	12	8
Total # of Department members who received discipline	44	8	39	12	66	18	43	18	38	11	230	67

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

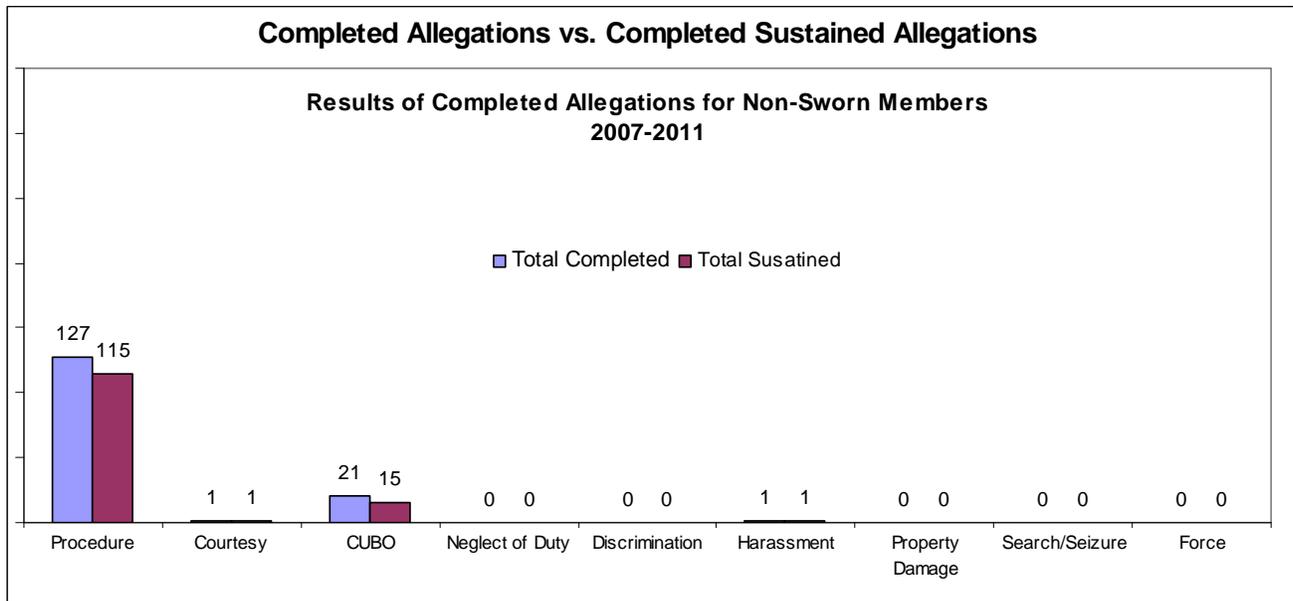
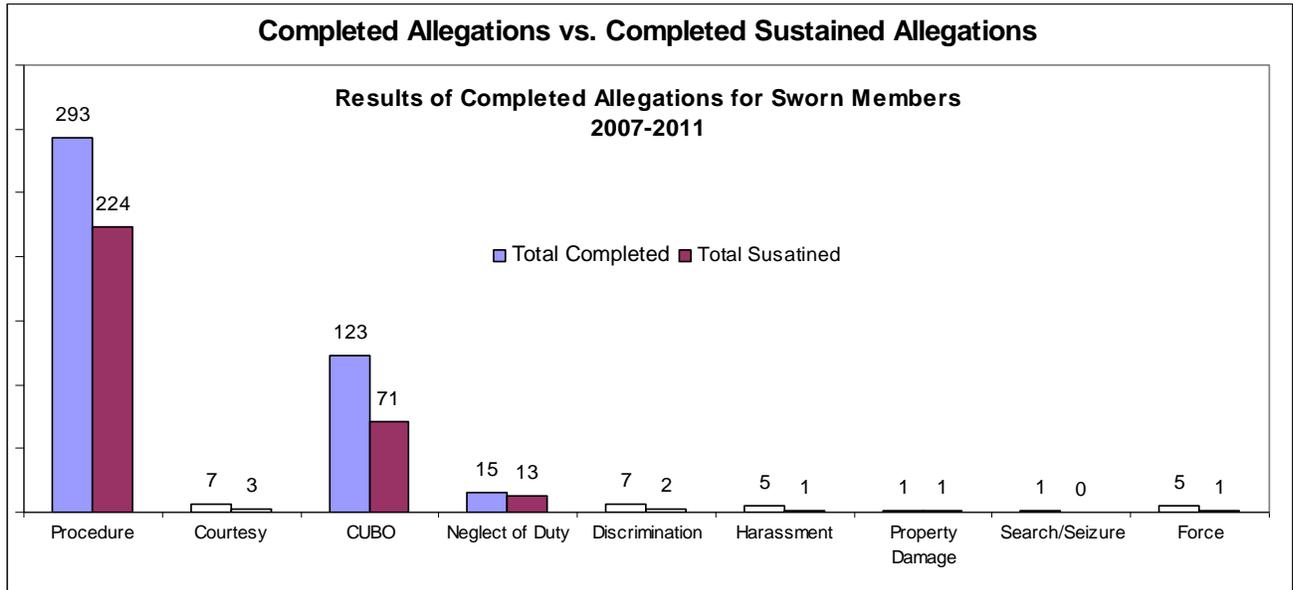
**\*COMPLETED ALLEGATIONS VS. COMPLETED SUSTAINED ALLEGATIONS**

Chart 2-B

Year	2007		2008		2009		2010		2011	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	38/36	7/7	70/49	29/27	49/43	21/17	47/39	34/32	89/57	36/26
Courtesy	0/0	1/1	1/0	0/0	1/1	0/0	2/1	0/0	3/1	0/0
Conduct Unbecoming an Officer/Non-Sworn	15/11	3/1	42/21	6/5	26/17	4/3	18/10	3/3	22/12	5/3
Neglect of Duty/Failure to take action	2/2	0/0	3/3	0/0	2/1	0/0	4/3	0/0	4/4	0/0
Discrimination	1/0	0/0	2/0	0/0	2/0	0/0	2/2	0/0	0/0	0/0
Harassment	0/0	0/0	0/0	0/0	1/0	0/0	1/0	0/0	1/0	1/1
Property Damage	N/A	N/A	N/A	N/A	1/1	0/0	0/0	0/0	0/0	0/0
Search/Seizure	N/A	N/A	N/A	N/A	1/0	0/0	0/0	0/0	0/0	0/0
Force**	N/A	N/A	N/A	N/A	1/0	0/0	2/0	0/0	2/1	0/0
<b>Total</b>	<b>56/49</b>	<b>11/9</b>	<b>118/73</b>	<b>35/32</b>	<b>83/63</b>	<b>25/20</b>	<b>76/55</b>	<b>37/35</b>	<b>121/74</b>	<b>42/30</b>

\*Completed Allegations/Completed Sustained Allegations

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



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

Chart 2-C

	2007		2008		2009		2010		2011	
	Sworn	Non Sworn								
0 – 3 Years experience	7	1	13	4	7	1	19	5	13	3
4 – 6 Years experience	5	1	6	0	9	3	2	3	6	2
7 – 10 Years experience	6	1	12	2	3	8	14	3	4	1
11 – 15 Years experience	10	1	8	2	13	3	12	4	20	7
16 – 20 Years experience	8	6	9	5	5	1	6	4	7	1
21 – 30 Years experience	11	0	14	0	21	1	7	1	5	1
Unknown*	1	0	1	0	1	0	0	0	0	0
<b>Total</b>	<b>48</b>	<b>10</b>	<b>63</b>	<b>13</b>	<b>59</b>	<b>17</b>	<b>60</b>	<b>20</b>	<b>55</b>	<b>15</b>

\*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	2007		2008		2009		2010		2011	
	Sworn	Non Sworn								
Training	1	0	2	1	7	2	9	2	2	0
Counseling	0	0	0	0	0	2	0	0	0	0
Documented Oral Counseling (DOC)	25	6	26	8	0	4	24	11	19	3
Letter of Reprimand	7	2	7	1	0	4	6	3	5	2
Disciplinary Transfer*	N/A	N/A	N/A	N/A	1	0	0	0	N/A	N/A
10-hours Suspension	3	0	5	1	0	0	1	7	4	0
20-hours Suspension	3	0	1	0	0	0	1	1	1	0
30-hours Suspension	1	0	1	0	0	0	0	0	0	0
40-hours Suspension	1	0	4	1	0	0	0	2	3	1
Greater than 40-hours Suspension	1	0	2	1	0	0	0	0	2	2
Settlement Agreement	0	0	0	0	2	1	0	2	5	1
Suspension reversed	0	0	0	2	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	3	1	4	0	5	1
Termination Reversed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2**	0
<b>Associated Department Investigation Outcomes</b>										
Retirement before investigation concluded	1	0	1	0	3	0	0	0	0	0
Resigned in lieu of discipline/or resigned	0	0	4	3	2	0	1	2	0	1
Officers receiving more than one discipline	1	0	4	3	3	0	0	3	4	0
Retired prior to discipline on a sustained case*	N/A	N/A	N/A	N/A	3	0	0	0	1	0
							0	0	1	0
Other*	N/A	N/A	N/A	N/A	1	0	2	0	N/A	1***

(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

\*\* I2009-0380 - Completed in 2010 (Termination); Termination reversed at arbitration in 2011

I2009-0398 - Completed in 2010 (Termination); Settlement agreement of 1000 hr suspension and retirement in 2011

\*\*\*Transferred to a different city position before discipline