



Memorandum

TO: PUBLIC SAFETY, FINANCE, &
STRATEGIC SUPPORT
COMMITTEE

FROM: Debra Figone

SUBJECT: SEE BELOW

DATE: October 10, 2007

SUBJECT: STAFF PROGRESS REPORT ON COUNCIL DIRECTION TO DEVELOP OBJECTIVE CRITERIA AND/OR NEW DEFINITIONS FOR THE POLICE DEPARTMENT'S CITIZEN COMPLAINT PROCESS REGARDING POLICE MISCONDUCT (COUNCIL REFERRAL #18, JUNE 21, 2007)

RECOMMENDATION

Accept the first progress report regarding Council Referral #18 from the June 21, 2007 Special Council Meeting on Various Police Related Reports, which states:

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.

OUTCOME

This report outlines the work completed to date regarding Council direction to develop objective criteria and/or new definitions for the San Jose Police Department's (SJPD) citizen complaint process, and includes milestones to complete this referral by January 2008. The next progress report on Council Referral #18 will be presented to the Public Safety, Finance and Strategic Support Committee on December 20, 2007.

BACKGROUND

At the June 21, 2007 Special Council Meeting on Various Police Related Reports, the City Council had the opportunity to discuss SJPD and Independent Police Auditor (IPA) authored reports related to police services, use of force response, classification of complaints or allegations, investigative quality, and SJPD procedures. The City Council unanimously directed implementation of 21 referrals to a combination of the City Manager, Independent Police Auditor, and Police Department.

Between July and December 2007, staff from the City Manager's Office (CMO), SJPD, IPA Office, and City Attorney's Office will work on the Council referrals and a detailed status report on all 21 referrals will be presented to the City Council at the same time that the IPA presents the 2007 Mid-Year Report (per Council direction). As a note, the Administration has already completed 11 referrals and anticipates completing the remaining directives between November 2007 and January 2008.

It is important to note that this response was coordinated with the Independent Police Auditor and the majority of edits received from the IPA were incorporated into this final report; however, there was one content area that could not be resolved in time to obtain co-signature with the IPA and make the committee distribution timeline. At the time that this report was authored, it was understood that the IPA would issue a separate memo to the Public Safety, Finance and Strategic Support Committee.

ANALYSIS

This section of the report provides an update on progress made by staff since June 21, 2007 on advancing Council direction "to develop a revised complaint process that determines classification based upon objective criteria and definitions for complaint categories."

Since June 21, 2007, staff from the CMO, SJPD, and IPA Office ("Working Group") have met several times to engage in discussion regarding the June 21 Council Referrals to set a framework/structure for completing this referral, along with goals and milestones to complete Council Referral #18 and other related referrals. The related referrals are listed below:

Table 1: Summary of Council Referrals Related to Council Referral #18

Council Referral #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). **Status:** Work is ongoing. This referral will be completed in January 2008.

Council Referral #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. **Status:** Work is ongoing. This referral will be completed in January 2008.

Council Referral #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. **Status:** Work is ongoing. This referral will be completed in January 2008.

Council Referral #21: Direct the City Manager to collaborate with the IPA on a report outlining the status of all the recommendations adopted at the Special Council meeting. This report is to be brought forward in conjunction with the IPA's Mid-Year Report.

Status: Detailed progress report will be presented to the City Council in November 2007.

Meeting Facilitator & Structure

In August, the Working Group elected to engage an outside facilitator to support discussions related to this effort. Shawn Spano, Ph.D., was mutually selected to assist staff with establishing a clear framework for completing Council Referral #18 and to ensure that respective roles and responsibilities were maintained during the process. Additionally, Dr. Spano has worked to ensure that the Working Group manages its project schedule and process to ensure completion by January 2008. A brief background of Dr. Spano's expertise and qualifications can be found in Attachment A.

As discussed, and agreed upon to during the first facilitated meeting on September 10, 2007, the IPA Office will actively participate throughout the complaint classification review process by providing feedback and suggestions to the Administration. The final decision on the new definitions and criteria will rest with the City Manager and Chief of Police, but the IPA will maintain the ability to express to the City Council agreement or disagreement with the approach and outcome of this effort. Additionally, the IPA will also have the opportunity, through Mid-Year and/or Annual Reports, to provide feedback on the new definitions and make recommendations for improvement or changes.

Administration's Framework

Concurrent with the above effort, the Administration has implemented several means to ensure that its work is guided by best practices, outside expertise, subject area experts, and a citizen/resident focused approach. Examples of efforts recently implemented are:

- Internal Affairs' Unit (IA Unit) has undergone additional performance management work. Specifically, the IA Unit has engaged Management Partners, Inc. to conduct an evaluation of the performance measures used by the IA Unit, which includes a comparative review of other police department's performance measures, with respect to IA Unit activity, as compared to SJPD.
- SJPD has worked with Macias Consulting Group to ensure that data collected from crime reports and/or other data collection efforts facilitates a statistically correct method to extract interpretation, meaning, etc. SJPD will also begin to use Macias Consulting Group to issue select data related reports to ensure that a complete, and correct, independent statistical analysis is provided to the public.

- City Manager/Administration engagement of two subject area experts to guide the Administration on its work with the IPA Office during work on Council Referral #18.
- Establishment of an IA Unit Mission Statement and Guiding Principles that create a framework for completion of Council Referral #18.

Following is a discussion of the Administration's approach; specifically, the Mission Statement, Guiding Principles, and Framework that is being used.

IA Unit Mission Statement--IA has developed the following Mission Statement:

It shall be the policy of the Internal Affairs Unit to receive complaints from members of the public in a courteous and professional manner. Internal investigations shall be appropriately documented, promptly investigated, and conducted in a timely, legal and ethical manner, strictly adhering to procedural safeguards regarding employee rights. Internal Affairs employees shall demonstrate sincere responsiveness to concerns of members of the public, will inform members of the public that their grievances will be taken seriously, and shall meet legal and ethical requirements for taking and investigating complaints.

IA Unit Guiding Principles--IA has developed the following guiding principles:

1. An Internal Affairs investigation starts with an alleged misconduct violation (i.e., violation of Department policy, procedure, rules, regulations or the law).
2. The IA Unit has determined that the case contains sufficient evidence to initiate an investigation which if proven to be true may result in disciplinary action.

Framework--In addition to collaborating with the IPA Office, the City Manager has established an outside Complaint Classification Validation Committee. The role of the Validation Committee is to serve as an objective third party "sounding board" and provide best practices to the City Manager and Police Chief on complaint classification, categories, definitions, and criteria that are under development. This ensures that the Administration is considering both internal knowledge and expertise of the subject area, but is also guided by external experts that can add new perspective and best practices to inform the final work product. In essence, it is an additional layer of validation that ensures that the Administration is sufficiently considering a broad range of issues and headed in the right direction with respect to making changes to the Citizen Complaint Process. The goal of this multi-tiered layer of review and/or validation is to ensure that the Administration is considering all aspects of redefining complaint categories and establishing objective criteria. Moreover, it ensures that the Administration is sufficiently challenging itself to ensure that the best possible product is developed for Council presentation in January 2008.

The two outside experts on the Validation Committee are Mr. Patrick A. Hunter and Mr. Lance Bayer. Both are nationally recognized and well respected experts in the field of police oversight. Their combined years of experience will be very important in providing balance and credibility to the process as the Administration develops a revised complaint process that determines

complaint classification based on objective criteria and definitions for complaint categories. Mr. Bayer and Mr. Hunter will both be present at the January 29, 2008 Council meeting and have recently begun supporting the Administration to advance completion of this effort. Attachment A provides a brief summary of Mr. Hunter and Mr. Bayer's expertise and qualifications. The Administration's structure (Attachment B – Diagram) consists of two outside experts in the field of citizen complaint (Lance Bayer and Patrick A. Hunter), staff from the City Manager's Office, Police Department, and IPA Office.

Finally, the Administration feels that confidentiality is critical while staff develops the new definitions and criteria, and, as such, has committed to disclose to the IPA to whom it will provide information to throughout the process. For example, copies of draft definitions have only been shared with Validation Committee members and they have agreed to the Administration's confidentiality requirement. Final definitions and criteria will be disclosed to the public once the City Manager and Chief of Police have signed off on them.

Work Product & Timeline

Through the above structure, the Working Group has been successful in circulating the first draft of proposed definitions for each of the citizen complaint and contact categories, and is in process of exchanging ideas and edits toward completion of the definitions. Upon completion of this process, work on the objective criteria will begin in November and is estimated to conclude in December. The goal is to complete development of definitions and objective criteria by December, so that a final report can be issued in mid-January 2008 for Council review on January 29, 2008. Based on the work completed to date, completion of the referral is attainable.

The following table illustrates key milestones to ensure that this effort is completed by January 2008.

Table 2: Summary of Key Milestones/Timeline To Complete Council Referral #18

October 31, 2007:	Completion of proposed definitions for the SJPD's Citizen Complaint Classifications. Detailed status report on all 21 referrals will be presented to the City Council along with the IPA's Mid Year Report.
November 2007:	Council Referral 21: Direct the City Manager to collaborate with the IPA on a report outlining the status of all the recommendations adopted at the Special Council meeting. This report is to be brought forward in conjunction with the IPA's Mid-Year Report.
November - December 2007:	Development and completion of objective criteria related to the proposed definitions for the SJPD's Citizen Complaint Classifications.
December 13, 2007:	Second progress report on Council Referral #18 will be presented to the Public Safety, Finance and Strategic Support Committee.
January 15 or 19, 2008:	Release of proposed definitions and objective criteria related to the SJPD's Citizen Complaint Classifications.
January 29, 2008:	A final staff report, including recommendations, will be presented to the full Council for action.

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**

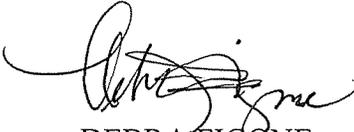
This report does not meet any of the criterions above. Information will be posted on the City's website for the October 18, 2007 Committee agenda per the Council Agenda process.

COORDINATION

This report has been coordinated with the Office of the City Attorney.

CEQA

Exempt.



DEBRA FIGONE
City Manager

For additional information on this report, contact Deanna J. Santana, Deputy City Manager (535-8280).

FACILITATOR

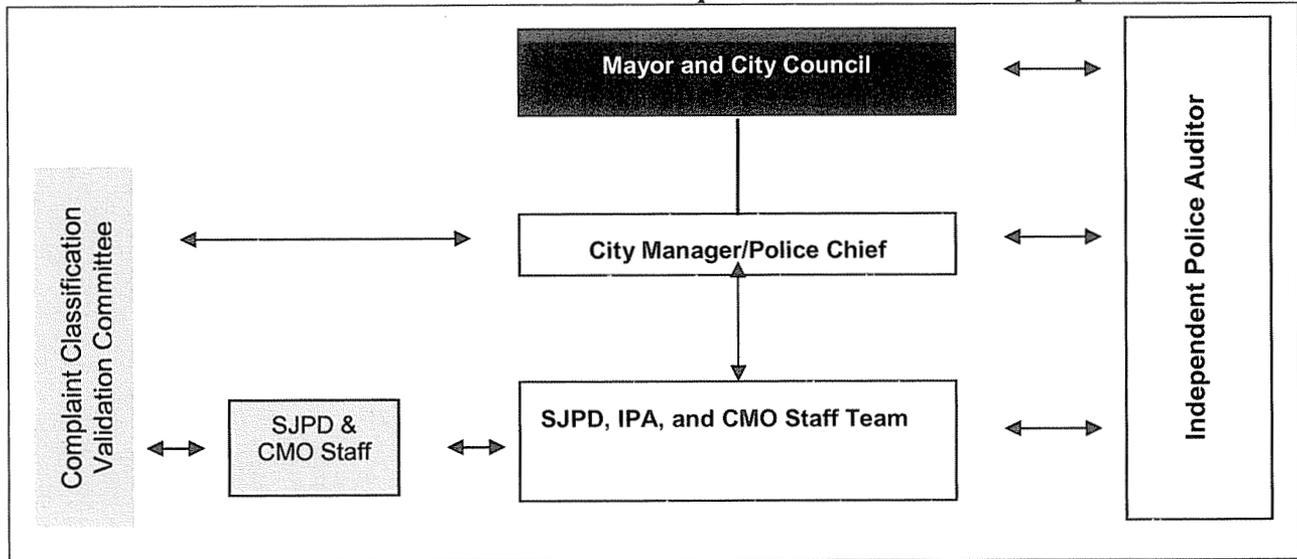
As background, Dr. Spano is a communication consultant and Professor in the Communication Studies Department at San José State University. Some areas of expertise include: public dialogue, conflict resolution, and designing and facilitating planning meetings, public forums, training workshops, and off-site retreats. Dr. Spano is also a founding member of the Public Dialogue Consortium, a non-profit organization devoted to improving the quality of public communication in local communities and public organizations. He has over 13 years of experience working with city government, higher education, and the non-profit sector, including multi-year projects with two different municipalities in Santa Clara County. Dr. Spano was elected “SJSU Outstanding Professor” in 2000, and has published numerous articles and chapters, including *Public Dialogue and Participatory Democracy: The Cupertino Community Project* (Hampton Press, 2001). He is currently serving as one of the principal investigators on the *Difficult Dialogue Initiative*, a multi-year project funded by a grant from the Ford Foundation and awarded to SJSU.

VALIDATION COMMITTEE

Patrick A. Hunter was appointed as the 5th Executive Director of the Citizens’ Review Board on Police Practices (CRB) for the City of San Diego in September 2007. The CRB was created by the voters in 1988 to review and evaluate all internal police investigations of citizen complaints filed against San Diego police officers. Mr. Hunter became involved in civilian oversight of law enforcement in 1997, accepting appointment as a Board Member on the City of San Diego Citizens’ Review Board on Police Practices. During his 8-year tenure he served on Board committees dealing with Training, Outreach, Rules and Regulations, and Policy; chairing both the Training and Policy Committees. He was elected Chair of the CRB for the 2003-2005 terms. While still serving with the CRB he was appointed to the County of San Diego Citizens’ Law Enforcement Review Board (CLERB) where he served from March 2005 until September 2007, serving as the Board Secretary from 2006-2007.

Lance Bayer is an attorney and the former Director of the City of San Francisco’s Office of Citizen Complaints. He has worked extensively with law enforcement agencies throughout the Bay Area. Mr. Bayer’s current practice includes representing public agencies in personnel and code enforcement matters, advising law enforcement and other public agencies regarding policies and procedures, and providing training for public agencies. Mr. Bayer has taught criminal law at San Jose State University and at the police academies in Santa Clara and San Mateo Counties.

Administration's Structure for the Complaint Classification Development





Memorandum

TO: PUBLIC SAFETY, FINANCE &
STRATEGIC SUPPORT
COMMITTEE

FROM: Barbara Attard
Independent Police Auditor

SUBJECT: SEE BELOW

DATE: October 10, 2007

Approved

Date

SUBJECT: IPA PROGRESS REPORT ON COUNCIL DIRECTION TO DEVELOP A REVISED COMPLAINT PROCESS THAT DETERMINES CLASSIFICATION BASED UPON OBJECTIVE CRITERIA (COUNCIL REFERRAL #18)

RECOMMENDATION

Accept the first progress report, as authored by the Independent Police Auditor (IPA), regarding Council Referral #18 from the June 21, 2007 Special Council Meeting on Various Police Related Reports, which states:

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.

OUTCOME

This report outlines the IPA perspective on the process and progress attained on referral #18 to date. The next progress report on Council Referral #18 is currently scheduled to be presented to the Public Safety, Finance and Strategic Support Committee on December 20, 2007.

BACKGROUND

On June 21, 2007, at a Special Council Meeting on Various Police Related Reports, the City Council unanimously directed implementation of 21 referrals to a combination of the City Manager, Independent Police Auditor, and Police Department. This memo focuses solely on Referral #18 in which the Council directed 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.

ANALYSIS

This section provides an update on progress accomplished since June 21, 2007 on referral #18.

Between July and October, staff from the City Manager's Office (CMO), Police Department (SJPD), Independent Police Auditor's (IPA) Office (Working Group) have met and discussed the process by which this referral item would be handled, agreed upon target deadlines, and have provided input on draft memorandum. Additionally, lower level staff has discussed issues with current complaint classifications, provided input on initial definitions proposed by Internal Affairs (IA) and has drafted proposed changes and/or alternative classifications for further review and discussion.

Since September 2007, the Working Group has been utilizing the service of an outside facilitator Shawn Spano. His efforts in facilitating discussion and fostering dialogue have been helpful in moving the process forward.

In mid-September the IPA was informed that the CMO had hired two external experts specifically and solely on Referral #18.¹ According to CMO staff, the goal of soliciting outside experts is "to ensure that the Administration is guided by our internal knowledge and experience of the subject area but, also, by external field experts that can add a broader perspective." CMO staff stated that a "governance model" reflecting the role of the outside experts in the process was to be developed.

The governance model developed includes two external consultants as a "Complaint Classification Validation Committee." The CMO staff describes the Validation Committee role as providing best practices support to the CMO and SJPD on complaint classification, categories, and definitions and criteria and offering an additional layer of validation that ensures that the City of San Jose is headed in the correct direction with respect to making changes in its citizen complaint process. The governance model allows for dialogue between the Validation Committee and CMO/SJPD staff; however, there is no direct dialogue between the Validation Committee and the IPA staff.

The IPA has the following concerns with this structure:

- The IPA questions the need for such an external Validation Committee because the Working Group staff already has considerable expertise and experience on the current complaint process, its limitations and how to structure revisions that are best suited for this community. The plan to hire outside consultants to work with the administration to "validate" aspects of the project engenders a real concern that the IPA must seek an outside consultant for the same purpose. This serves to undermine the collaborative process that was authorized by the Council on June 21, 2007.

¹ Other experts have already been hired to advise on other referral items. The IA Unit has engaged Management Partners, Inc. to conduct an evaluation of the performance measures used by the IA Unit and SJPD has worked with Macias Consulting Group on data collection for statistical analysis on SJPD use of force.

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- Second, the use of the term “validation committee” is not reflective of the process. The term implies that this outside committee does not serve in solely an advisory fashion; the term “validation” implies that the committee will render some measure of official sanction or confirmation.
- The IPA questions the structure of such model which excludes the IPA from contact with the expert. If the role of these experts is to offer guidance on best practices and new perspective, then it is only logical that the IPA be able to provide its knowledge of perceived issues and the rationale behind proposed revisions. Surely input from both CMO/SJPD and IPA would provide such experts with the pertinent range of information necessary to provide the requested advice. Limiting information to an expert renders his/her opinion exactly that – namely, limited.
- The IPA questions the process by which these experts have been or are to be chosen. There has been no consultation with the IPA regarding who might best serve on such committee. Given the IPA’s affiliation with NACOLE, the IPA has particular expertise on available experts in this field.

In short, the IPA’s concern with the validation committee are so grave that the IPA provided this separate progress memorandum so that these issues would be set forth with particularity.

Also at issue is that the process as currently proposed does not foster collaboration. The CMO points out that the IPA maintains its ability to voice disagreement, if any, before the City Council to the revised definitions and classification procedure proposed by CMO/SJPD. However, the IPA hopes that disagreements and concerns would be considered and addressed in a collaborative process such that at the end of the process, there would be agreement on definitions of classifications, allegations and criteria presented to the Council.

The IPA has developed the following guiding principle for the project of establishing objective criteria for complaint classifications:

The IPA is working to ensure that all cases filed by members of the public are properly classified and investigated at the appropriate level based upon the premise that any case brought forward that contains misconduct issues will be classified as a complaint and tracked by officer identification.



BARBARA ATTARD
Independent Police Auditor

*For additional information on this report, contact
Shivaun Nurre, Assistant Independent Police Auditor (794-6226)*