

OFFICE OF THE INDEPENDENT POLICE AUDITOR

MIDYEAR REPORT
JANUARY 1 TO JUNE 30, 1996



A REPORT TO THE
SAN JOSÉ CITY COUNCIL

TERESA GUERRERO-DALEY
INDEPENDENT POLICE AUDITOR



CITY OF SAN JOSÉ, CALIFORNIA

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September 6, 1996

Honorable Mayor and
Members of the City Council
801 North First Street, Suite 600
San José, CA 95110

Dear Honorable Mayor and Members of the City Council:

This is the Midyear Report detailing the activities of the Office of the Independent Police Auditor (IPA). Included are the statistical data, the ongoing changes that have taken place at the San José Police Department's Professional Standards and Conduct Unit and an update on previous issues and recommendations.

This report covers the period from January 1 to June 30, 1996.

I am grateful for the cooperation of the members of the San José Police Department, the assistance of the Mayor's, City Manager's and City Attorney's office and your continued support.

Sincerely,

Teresa Guerrero-Daley
Independent Police Auditor



INDEPENDENT POLICE AUDITOR STAFF

Teresa Guerrero-Daley, Auditor Mrs. Guerrero-Daley is the Independent Police Auditor for the City of San José. She has experience as a lawyer specializing in criminal law. She obtained her Juris Doctor degree from Lincoln Law School and received a Bachelor of Science degree from San José State University. Prior to becoming a lawyer, Mrs. Guerrero-Daley was a Private Investigator for ten years. She worked major cases including Death Penalty cases. Mrs. Guerrero-Daley's prior experience also includes working as a Drug Enforcement Agent for the U.S. Department of Justice. She became the first female agent at the San José Drug Enforcement Administration Office. Mrs. Guerrero-Daley is the Co-founder and the past president of the San Mateo County La Raza Lawyers Association and of the Lincoln Law School Alumni Association. Mrs. Guerrero-Daley serves on several committees of the Santa Clara and San Mateo County Bar Associations. She is also a grader for the State Bar of California, Committee of Bar Examiners. Mrs. Guerrero-Daley has been a resident of San José for the past nineteen years. She also serves as the Chair of Los Lupeños de San José, a Mexican Cultural Institution and as the Programs Chair for the Hispanic Charity Ball.

Mary Gonzales, Assistant to the Auditor Ms. Gonzales was the first person in her family to attend college and graduated on scholarship with a Bachelor of Science in Marketing from the University of Utah. Ms. Gonzales was a National Hispanic Scholar and an Upward Bound tutor. She worked for two years at a legal services support center before attending law school. She received her Juris Doctor degree from the University of California, Hastings College of the Law. At Hastings Ms. Gonzales was a Public Interest Law Scholar, a member of the Moot Court Board, active in student government, President of La Raza Law Students, Co-chair of the Public Interest Law Program and a Street Law teacher. Ms. Gonzales has worked as an attorney and a violence prevention community organizer. She is working to start a juvenile justice program in San Francisco where she is a volunteer attorney for a youth law project. Ms. Gonzales is involved with several legal associations.

Marivel Sosa, Data Analyst Ms. Sosa is an Industrial Engineer with a Bachelor of Science degree from Stanford University. While at Stanford, she was a math tutor for Redwood City middle school students in the summer Pre-College Math Institute Program. She was a member of the Society of Chicano/Latino Engineering Students. While attending Abraham Lincoln High School, she was president of the M.E.S.A. club (Mathematics, Engineering, Science Achievement), the M.A.Y.O. club (Mexican American Youth Organization), a member of the California Scholastic Federation, and the Latin club. Ms. Sosa has won various awards and scholarships, including the Rotary Club Award, a GI Forum Scholarship, and Bank of America Scholarship in 1991. She was born in San José and her native language is Spanish.

Lien N. Vong, Administrative Assistant Ms. Vong graduated from the University of California at Santa Cruz with a double major in Business Economics and Psychology. Ms. Vong's native language is Cantonese, additionally, she speaks Mandarin and Vietnamese. The City of San José has been Ms. Vong's home for much of her life. Ms. Vong is the newest member to join the Office of Independent Police Auditor.

EXECUTIVE SUMMARY

In the first half of 1996, a significant amount of time was spent adapting to changes in legislation that affected the citizen complaint process. The Boland Admonishment, which requires that the signature of the complainant accompany their complaint, took effect January 1, 1996. To satisfy this requirement, several changes in policies and procedures were implemented at the Office of the Independent Police Auditor (IPA) and the Professional Standards and Conduct Unit (PSCU). The objective was to comply with the new law without deterring citizens from filing a complaint. The new process provides for a limited investigation for those complaints in which no admonishment is signed, followed by an assessment of whether the complaint falls within the criteria established by the IPA and the PSCU which would necessitate that the complaint be reopened as a Department-Initiated (DI) complaint. An update on the process will be provided in the IPA's 1996 Year End report.

The IPA and the PSCU have also studied the impact of two other proposed bills, the Assembly Bill 3434 (which limits the types of complaints that can be placed in an officer's personnel file) and the Senate Bill 282 (which requires that complaints be investigated within one year). If either of these bills become law, policies and procedures meeting the new requirements will be established by the IPA and the PSCU.

THE FOLLOWING RECOMMENDATIONS ARE MADE IN THIS REPORT:

- **Complaints with No Boland Admonishment:** These complaints should continue to receive an intake investigation. The name of the subject officers should not be removed and remain as part of the master database in order to maintain an "early warning" system. Those complaints closed with a "No Finding" need not be placed in the officer's personnel file.
- **Automated Access to Information:** Training on the use of a newly designed database, which will facilitate the flow of information between the PSCU and the IPA and reduce the PSCU investigators workload, should be provided to all PSCU investigators. Additionally, a commitment to use the system and train the PSCU personnel is requested from the Chief of Police to ensure continuity from future PSCU Commanders.
- **Access to the Internet:** Access to the City Network is requested in order to facilitate dissemination of the information contained in the IPA Public Reports, and to allow access to E-mail.

- **Investigation of Use of Force Complaints:** It is recommended that Unnecessary Force complaints where emergency medical care is required be given priority and that the investigation of these complaints be completed within 120 days.

PENDING RECOMMENDATIONS RAISED ON PREVIOUS REPORTS.

- **Off-Duty Employment Guidelines:** Policy and procedure changes addressing secondary employment by San José Police Officers should be revised. It is anticipated that the Chief of Police will report on these changes when a response to this report is presented to the City Council on September 17, 1996.
- **Additional Office Space for the PSCU:** A time frame stating when adequate interview and intake office space for the PSCU will be provided is requested.

MIDYEAR REPORT STATISTICS

Comparison of All Classifications¹

Period Received	CI	DI	IN	PR	PO	Total Complaints	1996 Comparison of Total Complaints
Jan. - June 1996	122	47	53	60	20	302	
Jan. - June 1995	82	31	48	49	2	212	42%
July - Dec. 1994	101	35	61	62	16	275	10%

Legend	
CI = Citizen-Initiated	PR = Procedural
DI = Department-Initiated	PO = Policy
IN = Informal	

In the first six months of 1996, there were 302 complaints filed in comparison to 212 complaints filed during the same time period in 1995. This was an increase of 42% over 1995 and 10% over 1994. This is a significant increase however, the factors which contributed to the increase are not readily identifiable. A common assumption is to correlate an increase in complaints with a higher occurrence of police misconduct or a decrease in complaints with less police misconduct. In the three years that the IPA has been in existence the number of citizen complaints filed have increased in 1994, decreased in 1995, and increased in 1996 without a predominate factor being identified.

A consistent trend is the decrease of Unnecessary Force allegations for the first six months of the last three years, specifically the number of allegations decreased from 118 in 1994, to 67 in 1995, to 56 in 1996.

¹See Appendix G (Cases Received in Three Six-Month Periods).

The IPA has continued to grow in exposure to the public. There are three times more complaints filed at the IPA in 1996 than were filed in 1994. It is expected that with the passage of time more complaints will be filed at the IPA due to the police department implementing a policy instructing police officers to also offer the IPA as a source to file complaints.

There was also an improvement in the length of time taken to complete the investigation of citizen complaints. The PSCU came closer to achieving the goals of completing 75% of the investigations within 120 days and 100% of the investigations within 300 days. This is commendable in light of the fact that the number of new complaints increased.

Eight (8) Intervention Counseling sessions, an "early warning system" used to identify officers with multiple complaints, were administered during this reporting period. This was twice as many sessions as the first six months of 1995.

There was very little change in the statistical background of the subject officers. The Bureau of Field Operation (BFO) accounted for most units (87%) of the officers receiving complaints. The gender and ethnicity of the subject officer were very similar to the last six months of 1995, which was proportionally to the distribution of officers in the San José Police Department. Also, subject officers with two to four years of experience received the most complaints during this reporting period.

There has been a systematic tracking of the background factors of the complainants which recorded very little change. The occupation category encompassed a wide spectrum from Self-employed to Unemployed complainants. The ethnic group filing the highest number of complaints (43%) remained the Hispanic/Latino ethnicity category. Compared to the last reporting period, the level of education category remained similar with 78% of the complainants stating that they had a twelve grade or higher education. The majority (55%) of complainants were male. The age group filing the highest number of complaints was the 31-59 age range. English was the predominate language spoken by the complainants (89%) followed by Spanish (8%).

Summary of Complaints Received²

January 1-June 30, 1996

Districts	Type of Complaints					TOTAL COMPLAINTS	%
	CI	DI	IN	PR	PO		
JOHNSON 1	4	1	1	6	1	13	4%
POWERS 2	11	1	7	5	2	26	9%
PANDORI 3	34	27	14	17	10	102	34%
FERNANDES 4	7	2	4	3	0	16	5%
DIAZ 5	17	2	5	6	3	33	11%
FISCALINI 6	10	3	5	8	1	27	9%
SHIRAKAWA, JR. 7	8	0	4	2	1	15	5%
WOODY 8	9	1	9	2	2	23	8%
DIQUISTO 9	9	2	2	7	0	20	7%
DANDO 10	10	3	2	3	0	18	6%
³ Unk/OCL	3	5	0	1	0	9	3%
TOTAL CASES	122	47	53	60	20	302	100%⁴
%	40%	16%	18%	20%	7%	100%	

Legend	
CI = Citizen-Initiated	PR = Procedural
DI = Department-Initiated	PO = Policy
IN = Informal	

The number of complaints and allegations among Council Districts did not vary significantly from the first six months of 1995. Other than Districts Seven and Eight, all Districts received more complaints during this reporting period.

The goals for 1996 as described in the 1995 Year End report have been accomplished or are in progress. One of the goals was to prioritize the investigation of Unnecessary Force complaints which will be accomplished by the end of this year. Secondly, a consultant was hired to create a system to merge and automate the information at the PSCU and the IPA. The creation and distribution of a semiannual IPA newsletter is in place.

²See Appendix I (Classified Complaints by Council District).

³Unknown/Outside City Limit.

⁴The data was rounded off to the nearest percentage.

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I. INTRODUCTION

The Office of the Independent Police Auditor (hereafter referred to as the "IPA") opened its doors to the public on September 13, 1993. The office was established for the purpose of auditing investigations of citizen complaints¹ alleging misconduct by members of the San José Police Department (hereafter referred to as "SJPD"). The IPA is independent from all other city entities and reports directly to the Mayor and to the City Council.

A. OFFICE FUNCTIONS

The IPA has three primary functions: (1) it serves as an alternative forum where citizens may file a complaint; (2) it reviews the investigations of citizen complaints conducted by the San José Police Department's Professional Standards and Conduct Unit; and (3) it promotes public awareness of a citizen's right to file a complaint. The Independent Police Auditor routinely meets with various groups and organizations to increase public awareness of a citizen's right to file a complaint. The IPA has printed and distributed a brochure in three languages (English, Spanish and Vietnamese) to inform the general public about its functions. In April 1996, a new biannual newsletter was created and mailed to 263 organizations. The newsletter summarized complainant information from the IPA's 1995 annual report. Additionally, the newsletter was distributed to interested citizens at a lower per unit cost than the annual report which allowed a greater distribution. The newsletter is also an excellent tool for ongoing community outreach.

B. REPORTING REQUIREMENTS

As required by the San José City Council, IPA reports are prepared on a semiannual basis.² The first report covers the period from January through June; the second report contains comprehensive coverage of the entire year. This is the seventh report produced by the IPA pursuant to the requirements of San José Municipal Code Section 2.06.020c. This report covers January 1, 1996 through June 30, 1996. As required by ordinance this report includes:

- A. A statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken;
- B. An analysis of trends and patterns;
- C. Specific recommendations for change.

¹Citizen complaint is denoted as a complaint filed by an individual, not reflective of U.S. citizenship.

²In accordance with the change adopted by the City Council on September 6, 1994.

C. 1996 MIDYEAR REPORT CONTENTS

The following information is included in this report:

- Legislation affecting the IPA and the PSCU
- Updates on Prior Issues and Recommendations
- Changes at the Professional Standards and Conduct Unit and the Office of the Independent Police Auditor
- A comparison of statistics analyzed for the period of January through June for the years 1996, 1995, and 1994
- Statistical background of subject officers and complaints
- Complaints and allegations by Council District

II. LEGISLATION AFFECTING THE IPA AND THE PSCU**A. THE BOLAND ADMONISHMENT- A NEW LEGAL REQUIREMENT**

A law authored by California State Assembly Member Paula Boland (Republican, Granada Hills), became effective on January 1, 1996. Codified at California Penal Code Section 148.6³, the law

³California Penal Code Section 148.6 False allegations of misconduct against peace officers; information advisory; signature by complainant

(a) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the report to be false, is guilty of a misdemeanor.

(b) Any law enforcement agency accepting an allegation of misconduct against any peace officer shall require the complainant to read and sign the following advisory, all in boldface type:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY, CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

(Added by Stats. 1995, c. 590 (A.B. 1732, Section 1.) West's California Codes, Penal Code, 1996 Compact Edition

makes it a misdemeanor to knowingly file a false misconduct allegation against any peace officer. Any law enforcement agency accepting an allegation of misconduct must have the complainant read and sign a specified information advisory. This legislation does not directly apply to the IPA, because the IPA is not a law enforcement agency. Because the IPA is an alternative forum to the PSCU where complaints may be initiated, each complainant filing a complaint through the IPA is informed of the Admonishment and the form is sent to the complainants.⁴

The intent of the law was to discourage people from making false complaints. As of June 30, 1996 it appeared that no complainants had yet been prosecuted under the new law. However, this potential threat of prosecution may have a chilling effect on some individuals filing complaints.

B. BOLAND ADMONISHMENT IMPLEMENTATION

To comply with the new law, the IPA determined with the PSCU that those complaints in which a complainant does not return a signed Boland Admonishment (hereafter admonishment) within 30 days would be closed with a "No Finding". However, an intake investigation would still be conducted even though a signed admonishment is not received by the PSCU. This intake investigation involves reviewing the evidence related to the complaint incident including any photos, medical releases, police reports etc. The IPA receives all of the related police reports for each complaint closed due to a lack of a signed admonishment. Reviewing the reports helps the IPA determine whether further investigation is needed despite the lack of a signed admonishment. The PSCU and the IPA decide on a case-by-case basis whether the facts and the allegations of a particular complaint necessitate an investigation despite a lack of the signed admonishment. In considering whether to reopen a complaint which does not have a signed admonishment as a Department-Initiated complaint, PSCU applies the following criteria.

1. Was use of force complained about?
 - a. What type of force was used? For example, direct use of baton should usually be formally investigated.
 - b. Is the type of force consistent with what is contained in the crime report?
 - c. Did the supervisor do an adequate job of conducting the review and investigation of the case in the field if required under the Duty Manual?
 - d. Was immediate medical attention obtained or appropriate?
2. Does the case involve another allegation that warrants further review, e.g. such as discrimination?

⁴See Appendix A (Boland Bill Admonishment).

3. Are there other significant questions or issues that need to be dealt with beyond the facts that the intake officer was able to gather?
4. Is there a fact pattern that would tend to indicate provable misconduct?

From January to June 1996, only four out of 43 complaints closed due to the lack of signed admonishment had been reopened as Department-Initiated complaints. Several complaints that appeared to meet the above criteria had not been reopened as Department-Initiated complaints. The IPA discussed these cases with the PSCU Commander and those that fit the criteria will be investigated. If a signed admonishment is returned within three years of the date of the incident, the PSCU will reopen the complaint.

On July 29, 1996, the Attorney General's office issued an opinion which indicated that the investigation of a police misconduct complaint may occur without a signed Boland Admonishment.⁵ This interpretation is consistent with the procedure established at the PSCU.

C. IMPACT OF THE BOLAND ADMONISHMENT

In late April, the IPA examined the statistics available for the first quarter of 1996. The statistics revealed that a disturbing number of complaints appeared to be closing due to a lack of a signed admonishment. The IPA worked with the City Attorney's office to address Boland Admonishment issues.

In April, the intake concerns related to the admonishment were identified and addressed by the IPA. Previously the admonishment was incorporated into the complaint form and complainants were required to sign the form upon receipt of their complaint summary. This requirement appeared to be creating an unnecessary lag time. A revised procedure was implemented to address this concern. Complainants are now allowed to sign the admonishment at the initial intake without it being attached to their specific statement. With phone intakes, the admonishment is explained to the complainant and then immediately sent to them for their review and signature. In order to streamline the complaint process, it is expected that sending the admonishment immediately will expedite complainants' return of the admonishment.

Even though it is not an investigative agency, the IPA also began sending the Boland Admonishment to the IPA initiated complainants to facilitate the intake process. The purpose of having a separate admonishment is to streamline the paperwork involved with the complaint process. California Penal Code Section 148.6 requires that complainants read and sign the admonishment but does not specify

⁵See Appendix B (Attorney General Opinion No. 96-111, July 29, 1996).

that the admonishment must be attached to the complainant's specific statement. The admonishment attempts to serve as a general warning against filing a false complaint. The impact of the new procedure of allowing an admonishment to be signed separately from the complaint is not yet fully known as it was implemented in May 1996.

Since the admonishment requires that the complainant "read and sign" the admonishment, the IPA worked with the PSCU to translate the admonishment into Spanish and Vietnamese. This enabled Spanish and Vietnamese speaking complainants to fully understand the admonishment and the potential consequences of making a false complaint.

Several complainants found the complaint form and the accompanying letter intimidating, especially, since they felt that they were being over warned not to make a false complaint. This double warning apparently occurs because the PSCU complaint form contained the admonishment in capital letters in bold face type (as the law mandates) and the accompanying PSCU letter reminds the complainant that "Current California law requires that we advise you that making a false complaint is against the law."

The intent of the law is to discourage people from making complaints they know are false. Reaching a balance between not discouraging the filing of complaints as case law and San José Police Department procedures require and adequately informing potential complainants of the admonishment is challenging.

D. ASSESSING THE ADMONISHMENT'S IMPACT

In order to assess the reason that complainants were not returning the Boland Admonishment, an informal study was conducted by the IPA staff in June 1996. The questions asked were open ended and no specific script was used. Complainants who had initiated their complaint between January 1, 1996 and April 30, 1996 were contacted and asked their reason for not returning the admonishment.

The IPA staff attempted to contact 33 complainants. Of the 33 complainants, seventeen could not be contacted.⁶ The 16 complainants that were contacted voiced various reasons for not returning the admonishment. The opinions expressed were those of the complainant. One person indicated that they were not informed of the admonishment. Two complainants indicated that they did send the admonishment to the PSCU. Three complainants misunderstood the investigative requirements. Of those three, one complainant did not think the admonishment was necessary for their complaint to go forward while another received the PSCU closing letter and thought that it was too late to send the

⁶These complainants had moved without leaving a forwarding address, did not have a working phone or did not return calls to the IPA.

admonishment. The third complainant to indicate a misunderstanding of the process said that he/she "was surprised that nothing was being done." Of the three complainants that indicated that they had misunderstood the process, two signed and returned the admonishment to the IPA and their complaints were reopened by the PSCU for investigation.

Four of the respondents expressed a lack of faith in the investigation and the complaint system. Three complainants felt that the subject officer would not be punished anyway. One person felt that the statement sent for their signature did not accurately reflect the actual statement they had given to the PSCU and did not want to bother with the complaint. A fear of potential retribution for filing a complaint prevented another complainant from following through with the investigation. Of the 16 complainants that the IPA staff contacted, six signed and returned the admonishment and their complaints were reopened for a more thorough investigation.

Boland Admonishment Survey Summary

Did not receive the admonishment	6	18%
Misunderstood the process	3	9%
Did return the signed admonishment	2	6%
Not informed of the admonishment	1	3%
No faith in the complaint system	4	12%
IPA unable to contact the complainant	17	52%
Total	33	100%

Every year, a number of complainants do not follow through with their complaints. The true impact of the Boland Admonishment is difficult to assess because there is no real basis of comparison for previous years. At this time, it is difficult to determine which complainants are simply not following through with their complaints and which complainants actually fear being prosecuted under the law, or are in fact not filing a complaint because their complaint is false. The IPA tried to determine how many complaints had been closed in previous years due to a lack of follow through on behalf of the complainant and learned that no such statistic is kept.

The following tables show the type of complaints and allegations that were closed because the admonishment was not signed by the complainant.

Type of Complaints Closed Due to a Lack of a Boland Admonishment⁷

Period Received	CI	PR	IN	Total Cases	PSCU Initiated	IPA Initiated
<i>Jan.-June 1996</i>	26	13	4	43	33	10

⁷See Appendix C (Classifications of Complaints).

Citizen-Initiated Allegations Closed With a No Finding⁸

Period Received	RC	UF	IP	MDP	UA	DH	UC	Total Allegs.
Jan.-June 1996	12	11	7	5	3	1	1	40

Legend	
UA = Unlawful Arrest	ES = Excessive Police Service
US = Unlawful Search	IP = Improper Procedure
UF = Unnecessary Force	FA = Failure to Take Action
RC = Rude Conduct	UC = Unofficerlike Conduct
DH = Discrimination/Harassment	MDP = Missing/Damaged Property

As of June 30, 1996, forty-three complaints were closed because of a lack of a signed admonishment. Of those 43 cases, ten were filed at the IPA and 33 at the PCSU. The 43 complaints out of a total of 235 total cases represented 17% of all cases classified during the first six months of 1996.⁹ Of the 43 closed cases, four were reopened as Department-Initiated cases.

The IPA is committed to ensuring that misconduct complaints are investigated as fully as possible under current law. The IPA will continue to closely monitor complaints closed because of the admonishment and request more thorough investigations when necessary.

RECOMMENDATION: The statistics kept by the IPA are affected by complaints that do not list an officer's name. An under reporting of the statistical background of subject officers results. The unnamed officers are not part of the statistics tracking the unit, gender, ethnicity, and years of experience of the subject officer. Fewer subject officers will be reported in complaint statistics and the number of officers recommended for Intervention Counseling could decrease since the subject officer's name is not tracked.

It is recommended that those complaints that do not have a signed admonishment continue to receive intake investigations. The intake investigation should then be forwarded to the IPA for review. The names of the officers should remain as part of the master database. Those complaints that are reopened by the Chief of Police as Department Initiated complaints should continue to be placed in the officer's personnel file. Those complaints that are closed with a "No Finding" need not become part of an officer's personnel file. These complaints could be filed together under a "No Finding" heading.

⁸See Appendix D (Definitions of Findings).

⁹The 235 cases include Citizen-Initiated, Informal and Procedural complaints.

III. POLICY AND PROCEDURAL CHANGES

A. AN INCREASE IN COMPLAINTS

The number of new complaints filed at the Professional Standards and Conduct Unit (PSCU) increased 37% in the first half of 1996 compared to the same time period in 1995. Also, number of complainants utilizing the Office of the Independent Police Auditor (IPA) for complaint intake increased 55% for this reporting period (January 1 through June 30, 1996).

The following number of complaints were received by the IPA and the PSCU from January 1 through June 30, 1996.¹⁰

Intake	Complaints Received Jan. - June 1994	Complaints Received Jan. - June 1995	Complaints Received Jan. - June 1996
IPA	20	40	62
PSCU	116	141	193
TOTAL	136	181	255

The IPA and the PSCU have determined that the IPA intake is thorough. Beginning in the third quarter of 1996, the IPA will tape record (with complainant consent) all complaint intakes initiated at the IPA. It is anticipated that having the tape recorded statement available for the PSCU investigation will streamline the intake process and eliminate needless re-interview of complainants. All complainants will be informed of the process and the need to tape record to ensure that their statements are accurately documented. The recorded statements will then be made available to the PSCU investigator.

B. COMPLAINANT INTERACTION

To ensure that they understand the role and function of the IPA, all complainants filing a complaint with the IPA now receive a 30-day confirmation letter. The letter explains the functions of the IPA and the PSCU. Continuous communication with complainants assures them of the IPA's auditing function. Furthermore, the letter serves as a reminder to the complainant that he/she filed a complaint through the IPA and that an investigation is pending. Complainants also receive the Boland Admonishment which they are instructed to read, sign, and return. At the end of the investigation and after the review of the completed case, a closing letter is sent to the complainant explaining that their

¹⁰Complaints classified as Citizen-Initiated, Informal, Procedural, and Policy. These complaints do not include Department-Initiated complaints.

complaint was reviewed and audited by the Auditor, and that the audit of their investigation has been completed by the IPA.

C. COMPLAINT CLASSIFICATION

Complaint classification continues to be a concern to the IPA. The IPA recently recognized a problem with the classification of Discrimination/Harassment allegations. Some complaints that raised allegations of racial discrimination only received Rude Conduct allegations instead of the appropriate Discrimination/Harassment allegation. This involved a number of cases where a complainant was called a racially derogatory name yet, the allegation attached to the complaint listed only "rude conduct" as an allegation. After the concern was raised with the PSCU, several of the affected complaint allegations were changed to accurately list the Discrimination/Harassment allegation. The IPA will be monitoring allegations closely.

The IPA's databases enable the IPA to accurately assess and track complaints from initial intake through case closure. Of those complaints initiated at the IPA, the IPA is able to determine if complainant concerns are addressed by comparing the IPA intake statement to the PSCU intake statement and its associated allegations. In order to effectively track potential allegations and emerging trends, the IPA is creating a more accurate database of those complaints filed at the IPA. The IPA intake will list and track potential allegations and emerging trends for comparison to the actual PSCU classification. If a discrepancy is noted, the PSCU liaison will be contacted for clarification. The IPA is working to improve its database system in order to raise concerns with the PSCU in a timely manner and, where possible, before complaint closure. The IPA and the PSCU continue to work together to implement a systematic and thorough approach to complaint classification.

D. GATHERING STATISTICS

One of the functions of the IPA is its ability to serve as a central collection of information related to citizen complaints. The IPA gathers, sorts and stores information in its computer database making retrieval automatic. By automating this information, studies can be conducted and recommendations and hypothesis tested. Most of the information is extracted from the complaints. Processing and analyzing information for the public reports requires skill, uniformity, accuracy and staying current with the flow of information between the PSCU and the IPA. Several hindrances have been encountered which impact the data analysis.

Transfer of Information from the PSCU to the IPA: The raw information is provided by the PSCU to the IPA on a monthly basis. This process requires the PSCU copying the entire database and hand delivering the disk containing the information to the IPA. The IPA translates the information from PC to Mac form, downloads and updates the IPA database. Besides being time consuming, the

information is always a month behind. Inquiries made to the IPA about cases newer than a month require the IPA to call the PSCU for an update.

Tracking Citizen Inquiries: Another ongoing problem is the tracking of citizen calls inquiring about filing a complaint. The IPA recommended in the 1995 Midyear Report that a central log be kept which would sequentially number the incoming calls. This log would contain the name of the complainant, the nature of the call and the disposition of the call. This log would also serve as a central ledger which would initiate the process of classifying, assigning and investigating those inquiries that mature into complaints.

A log was implemented, however, some of the past problems persist. Complainant's names are sometimes missing, crucial information is deleted, and the log is not consistently updated in a timely manner. Complaints can also be overlooked. For example, one complainant called to file a complaint on December 1995 and his name was entered in the contact log. Five months later, the complainant called the IPA to inquire about the complaint. The IPA searched the complaint data base and discovered that this complaint was not yet part of the system. A search of the contact log revealed that this complaint had not yet been classified or assigned for investigation. An oversight of the complaint appeared to have occurred. The reason offered by PSCU is that the log is still in the early stage of implementation and an inadequate tracking computer program has led to these problems. However, the PSCU is committed to make this issue a priority.

Waste of Resources: At this time only a small portion of the contents of a complaint investigation is provided to the IPA via computer disk. The majority of the contents of an investigation file now requires the PSCU personnel to make photo copies for the IPA. After the audit is completed the copies are returned to the PSCU. These copies have to be destroyed in a manner that safeguards confidentiality. This process wastes human resources and paper supplies, plus increases costs for shredding the files.

In addition, PSCU investigators duplicate efforts by having to type the same information several times because their work is not linked internally with other PSCU computers. The citizen complaint information needs to be linked internally so that access and retrieval is available to all of the PSCU investigators. Likewise, this information needs to be available to the IPA.

Automated Access to Information: The IPA and the PSCU are currently working with a consultant hired by the IPA to design and develop a system that will incorporate all the processes currently used at the PSCU and the IPA. This can be accomplished without compromising the

requisite security for these very confidential files. There are many sources of information used by the IPA in the course of conducting the intake of complaints, the audits of investigations and the preparation of the public reports. Automated access to these sources is in progress.

RECOMMENDATION: It is recommended that training for all PSCU investigators be required in order to maximize the initial investment expended in creating the new system. Additionally, a commitment from the Chief of Police is needed to ensure continuity of the use of this database by future PSCU Commanders.

E. ACCESS TO THE INTERNET

In an effort to maximize the IPA's human resources, access to the Internet through the City Network is needed. The building where the IPA is located also houses other city departments. The Parks, Recreation, and Neighborhood Services Department is on the same floor as the IPA. This department has access to the City Network, therefore, extending the service to the IPA would incur nominal cost. The advantages of having Internet access are many. For example, the IPA would be able to use E-mail to communicate with other city departments. Complaints could also be taken via E-mail. At least one complainant tried to file a complaint through E-mail.

Greater access would be offered to the public by placing the IPA reports on the Internet. The function of the Office of the Independent Police Auditor and all the past and current reports would be available to the public and they could download a copy free of charge. In addition, all members of the San José Police Department would have access to the reports. Currently, twenty copies are provided to the SJPD which is a small number considering that there are over 1200 members.

Another area that would be impacted is the cost of printing. The IPA report is mailed to over fifty civic and community organizations. Copies are also provided to the media. There are several libraries across the country that request copies of the IPA reports. In addition, copies of the IPA reports are provided to police oversight organizations in thirteen different countries.

RECOMMENDATION: The City of San José should provide the necessary hardware and software to connect the IPA to the City Network.

IV. UPDATES ON PRIOR ISSUES & RECOMMENDATIONS

A. OFF-DUTY EMPLOYMENT GUIDELINES

The IPA's 1995 Year End report raised the need to establish guidelines for off-duty employment by San José Police Officers. Several recommendations were made. Off-duty employment contributes greatly towards helping the Police Department successfully meet the increase in demand for police services.

Off-duty jobs are supplemental employment considered to be secondary in importance and subject to the approval by the officer's chain of command. They are also subject to discipline, and to citizen complaints.¹¹ Officers work most secondary jobs as civilians and during the officer's days off. Off-duty jobs can include officers working in full uniform or in civilian clothes. In 1995, approximately 50% of the San José police officers worked off-duty jobs.

Statistical and substantive information from citizen complaints filed against officers working off-duty jobs was compiled and analyzed. An evaluation of the process used by the San José Police Department to monitor and flag problems arising from off-duty employment revealed that there is a lack of oversight by the Department's management.

The Duty Manual provides some guidelines by which to regulate the type, the number and the conduct of officers engaged in off-duty employment. A lack of enforcement renders Duty Manual guidelines ineffective. Most officers provide the required documentation such as applications for work permits and time sheets, but there is no verification or random auditing of its contents.

Conflicts of interest between private employers and police officers were identified. Other problems included a lack of supervision from the Police Department or private employer; a lack of documentation of the officer's off-duty activities; a lack of accountability of hours and type of off-duty jobs and the use of police uniforms. In addition, an increase in stress and fatigue can have a negative impact on police officers' services to the public.

The San José Police Department is currently conducting an in-depth study of the existing Duty Manual guidelines; identifying and analyzing the benefits and detriments of secondary employment; gathering information and knowledge from other cities with comparable demographics; and drafting policies and procedures that will improve the services and work conditions for officers working off duty.

¹¹See Footnote 1.

B. LENGTH OF TIME TO COMPLETE INVESTIGATIONS

BACKGROUND: On June 30, 1994 a set of goals involving a time frame in which to complete the investigation of citizen complaints was identified by the Professional Standards and Conduct Unit (PSCU) and the Office of the Independent Police Auditor (IPA). These goals were subsequently publicly adopted by the San José Police Department. One goal was to complete 75% of the investigations from citizen complaints within 120 days . The second goal was to complete 100% of all investigations within 300 days. The number of days between the time that a complaint is filed to when it is assigned for investigation is not included. The goals cover only the actual investigation time. These goals have not been met; however, there has been an improvement since last year.

In 1995 PSCU met only 28% of the 120 days goal and 53% of the 300 days goal. In the first six months of 1996 the PSCU met 79% of the 120 days goal and 82% of the 300 days goal. This progress, if continued, would make tremendous strides towards the stated goal.

In spite of the aforementioned progress, there are still many cases that are almost two years old. There are 28 or 13% of the 1994 cases still open and 63 or 36% of the 1995 cases open and under investigation.

Pending Senate Bill 282 will prohibit the imposition of discipline or denial of promotion for misconduct if the investigation is not completed within one year of the filing of a complaint. The IPA agrees in principal with the one year mandate of this bill however, complying with this new requirement will strain an already over loaded PSCU. In order to maintain continuity in the intake and investigations at the PSCU an overlap for new investigators is necessary. There appears to be a constant rotation of investigators in and out of the PSCU. This high turnover is not compatible with the rate of completion of investigations. Cases can remain open for a longer period of time than that spent by an investigator at PSCU. Without overlap, more time is required to bring investigators up to maximum efficiency.

Ways of streamlining the less serious complaints have already been implemented. For example, complaints which allege misconduct such as rude conduct or improper procedure and at the request of the complainant can be processed as an Informal Complaint. This process only requires a preliminary investigation. Compared to the first six months of 1995, the number of complaints processed in this informal manner increased from 48 to 53 in the first six months of 1996.

Prioritizing Use of Force Cases: An area that needs to be changed or modified is the priority in which Citizen-Initiated, use of force complaints are investigated. These are the most serious types of complaints that citizens file. As of June 30, 1996, there were 66 use of force complaints filed by citizens that were assigned for investigation and have been open in excess of 120 days. With the passage of time memories wane, witnesses and complainants move or become disinterested. Evidence may dissipate or become unavailable. These factors also affect witness officers. The credibility of the citizen complaint process is weakened when a complainant has to wait up to two years to find out the results of their complaints. Likewise, subject officers are forced to wait for the results of the investigation which could affect their transfer to another unit or promotion.

RECOMMENDATION: Serious use of force complaints should be given priority and investigated within the 120 day goal. Serious use of force cases are those complaints requiring emergency medical treatment for the injuries.

C. ADDITIONAL SPACE AT PSCU

BACKGROUND: Since the last IPA report there has been no change in providing adequate facilities to intake citizen complaints at the Professional Standards and Conduct Unit (PSCU). Citizens are still not interviewed in privacy, instead their statements are often taken in an office shared by three PSCU staff members. The PSCU does not have a conference room or other available unoccupied offices for investigators to use when interviewing a complainant where privacy and confidentiality can be provided.

The PSCU needs to provide a setting where complainants feel comfortable talking to police officers about negative police encounters or about injuries inflicted by police officers. Some concerns expressed by complainants that come to file their complaints at the IPA is fear of retaliation by the police, skepticism that the PSCU will believe them, and concern that PSCU investigators will disclose confidential statements. A complainant that files a complaint with the IPA still has to be interviewed or interact with the PSCU or other police units during the investigation of their complaint. The IPA staff assist in dispelling misconceptions and encourages complainants to cooperate with the PSCU.

Besides the needs of the complainants, it is also important to maintain a desirable work environment for the PSCU investigators who have expressed that they conduct perhaps the most difficult and least desirable job in the San José Police Department. It is a known factor that negative conditions in the work place affect an employees performance which directly impacts the quality of service to the public. Processing citizen complaints on a daily basis requires a work environment that fosters patience, tolerance and empathy for the complainants.

It is important to be sensitive to factors that would impede the free flow of information from the public or that would be counter productive to efforts made in improving the public's confidence in the overall citizen complaint process.

RECOMMENDATION: Adequate offices for the intake of citizen complaints at the PSCU are needed. A time frame in which to correct this situation should be provided before the publication of the IPA's next report. An update on this issue will be addressed in the 1996 Year End report.

V. STATISTICAL METHODOLOGY

The Office of the Independent Police Auditor (IPA) maintains a separate database derived from the Professional Standards and Conduct Unit (PSCU) data, in order to independently track complaints and trends. The statistical information from this database also includes information from complaint audits, complainant contacts, and trends tracked by the IPA. By creating an all encompassing data bank, the IPA is able to obtain information much faster and supply detailed statistical information to the public. The raw data for the IPA database comes from classified complaints stored at the PSCU.

The IPA's analysis in the following sections is only statistical and not interpretive. There are too many factors to conclusively deduce results from the data. Any interpretive explanation is qualitative and is based on the IPA's knowledge and experience of reviewing over 1,000 complaints.

The PSCU has five complaint classifications: Citizen-Initiated (CI), Department-Initiated (DI), Informal (IN), Procedural (PR), and Policy (PO).¹² The CI and the DI complaints are reported by the number of cases and allegations, whereas the IN, the PR, and the PO complaints are reported by the number of cases only. Complaints that have been initiated, but have not yet been classified are categorized as In-Process.

The CI and DI complaints involve allegations such as Unlawful Arrest (UA), Unlawful Search (US), Unnecessary Force (UF), Rude Conduct (RC), Discrimination/Harassment (D/H), Excessive Police Service (ES), Improper Procedure (IP), Failure to Take Action (FA), Unofficerlike Conduct (UC), Delay in Response (DR) and Missing/Damaged Property (M/DP).¹³

¹²See Appendix C (Classifications of Complaints).

¹³See Appendix E (Misconduct Allegations).

A. SELECTION OF COMPLAINTS FOR REVIEW

Following the requirements of the San José Municipal Code Section 2.06.020a., the minimum number of complaints to be reviewed annually are:

- A. All complaints against police officers which allege excessive or unnecessary force; and
- B. No less than 20% of all other complaints.

The CI and the DI complaints list the misconduct allegations against the subject officer(s). The IPA reviews all complaints alleging Unnecessary Force from Citizen- and Department-Initiated complaints.

The Auditor is also required to review at least 20% of all other misconduct complaints, in addition to the Unnecessary Force complaints. The DI complaints are not fully audited unless there is a connection to a citizen complaint.¹⁴ The DI complaints that are only partially audited are tracked for trends, patterns, and statistical values. The IPA fully audits a majority of the CI complaints and all of the IN, the PR, and the PO complaints.

There were 302 complaints **received and classified** in 1996;¹⁵ all of the Unnecessary Force complaints were requested for review from the PSCU.¹⁶ Of the remaining complaints, sixty-eight percent (68%) were requested for review by the IPA.¹⁷ The audit of complaints requested for review does not take place until the investigation is completed, usually a year after the complaint is received.

VI. MIDYEAR REPORT STATISTICS

The following is a breakdown of the total number (321) of complaints **received** from January 1 to June 30, 1996. The number of Citizen-Initiated (CI), Department-Initiated (DI), Informal (IN), Procedural (PR), Policy (PO) and the complaints still In-Process¹⁸ are based on the data gathered by the Office of the Independent Police Auditor (IPA) as of June 30, 1996.¹⁹ The IPA initiated 25% of the total complaints received during the first six months of 1996.²⁰

¹⁴See Footnote 1.

¹⁵The 302 complaints do not include In-Process complaints, which are pending classification.

¹⁶There were 42 Citizen-Initiated complaints and one Department-Initiated complaint that alleged Unnecessary Force in the first six months of 1996.

¹⁷There were 259 complaints that did not involve Unnecessary Force, and 176 (68%) were requested for review.

¹⁸The In-Process category includes complaints that have been initiated, but not yet classified.

¹⁹See Appendix C (Classifications of Complaints).

²⁰Excluding the Department-Initiated Complaints, the IPA initiated 68 out of the 274 complaints initiated during the first six months of 1996.

All Complaints Received²¹
January 1- June 30, 1996

•	Citizen-Initiated (CI) Complaints	122
•	Department-Initiated (DI) Complaints	47
•	Informal (IN) Complaints	53
•	Procedural (PR) Complaints	60
•	Policy (PO) Complaints	20
•	In-Process ²²	19
	<i>TOTAL</i>	<u>321</u>

A. THREE SIX-MONTH COMPARISON FOR ALL CASE CLASSIFICATIONS

The table below indicates the types of cases received in the three mentioned six-month periods. The six-month term was used because the three classifications of Informal, Procedural and Policy complaints were implemented in June of 1994.

Comparison of All Classifications²³

Period Received	CI	DI	IN	PR	PO	Total Complaints	1996 Comparison of Total Complaints
<i>Jan. - June 1996</i>	122	47	53	60	20	302	
<i>Jan. - June 1995</i>	82	31	48	49	2	212	42%
<i>July - Dec. 1994</i>	101	35	61	62	16	275	10%

In the first six months of 1996, total cases increased 42% in comparison to 1995, and increased ten percent (10%) in comparison to 1994.

The following is the breakdown of the complaints received during the three six-month periods by each classification:

Citizen-Initiated(CI): In the most recent term, the number of CI complaints increased 49% over January to June 1995 and 21% over July to December 1994.

²¹See Appendix F (All Complaints Received).

²²The In-Process category includes complaints that have been initiated, but not yet classified.

²³See Appendix G (Cases Received in Three Six-Month Periods).

Department-Initiated (DI): In the first six months of 1996, the DI complaints increased 52% over January to June 1995, and increased 34% over July to December 1994.

Informal (IN): The number of Informal complaints received from January to June 1996 increased 10% over January to June 1995, and decreased 13% over July to December 1994.

Procedural (PR): There was a 22% increase of Procedural complaints generated during January to June 1996. However, there was a three percent (3%) decrease compared to the PR complaints received from July to December 1994.

Policy (PO): There were 20 Policy complaints filed between January and June 1996. Two complaints were filed from January to June 1995, and 16 complaints were filed during July to December 1994. There was a 25% increase in PO complaints received during January and June 1996 in comparison to the last six months of 1994.

VII. ANALYSIS OF CITIZEN-INITIATED COMPLAINTS

The following analysis of statistical data will focus on the Citizen-Initiated (CI) complaints.²⁴ These complaints involve most of the serious misconduct allegations. Each case is divided into separate allegations with individual findings.²⁵ The time periods used for statistical comparisons are from January to June for the years 1996, 1995, and 1994. The analysis will compare the total number of cases and allegations for the aforementioned periods, respectively.

There was an increase in CI complaints and allegations for the first six months of 1996 in comparison to the previous two years. The following is the statistical data for CI complaints categorized by allegations for the three time periods:

²⁴See Appendix C (Classifications of Complaints).

²⁵See Appendix E (Misconduct Allegations) and Appendix D (Definitions of Findings).

A. CITIZEN-INITIATED CASES AND ALLEGATIONS

Period Received	UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Total CI Allegs.	%	Total CI Cases ²⁶	%
Jan.-June 1996	15	16	56	59	4	0	61	11	8	20	250		122	
Jan.-June 1995	23	22	67	47	8	0	37	8	3	13	228	10%	82	49%
Jan.-June 1994	27	21	118	66	9	6	49	8	14	41	359	-30%	116	5%

Legend	
UA = Unlawful Arrest	ES = Excessive Police Service
US = Unlawful Search	IP = Improper Procedure
UF = Unnecessary Force	FA = Failure to Take Action
RC = Rude Conduct	UC = Unofficerlike Conduct
DH = Discrimination/Harassment	MDP = Missing/Damaged Property

The above information includes all cases **initiated** during the specified time frames regardless of the subsequent status.²⁷ The number of CI allegations increased since there was an increase in the number of CI complaints. The 122 CI complaints filed during the first six months of 1996 produced 250 allegations, causing a ten percent (10%) increase in the number of allegations filed from January to June 1995 and a decrease of 30% over the 1994 time period. The percentages comparing the number of allegations are displayed next to the total allegations category on the above table.

One hundred twenty-two (122) CI complaints were received from January to June 1996. As shown on the far right of the above table, January to June 1996 revealed a 49% increase when compared to the CI complaints received during January to June 1995 and a five percent (5%) increase compared to the CI complaints received from January to June 1994.

B. CITIZEN-INITIATED UNNECESSARY FORCE ALLEGATIONS

Period Received	UF Allegations	1996 UF Allegations Compared with Previous Years
Jan.- June 1996	56	
Jan.- June 1995	67	-16%
Jan.- June 1994	118	-53%

Fifty-six (56) Unnecessary Force allegations from the CI complaints were filed between January and June 1996. When compared to the previous two time periods, UF allegations decreased by 16% over

²⁶See Appendix H (Citizen- and Department-Initiated Cases Classified as Formal Complaints).

²⁷The status of a complaint is either open (under investigation) or closed (investigation completed).

the period from January to June 1995 and decreased by 53% when compared to the period from January to June 1994.

Another area of statistics the Office of the Independent Police Auditor (IPA) is tracking is the type of force the subject officers may have used as alleged by the complainant. The following table lists the number of times the complainant complained about a type of force allegedly used by the subject officer(s). This information was taken from the 42 CI cases alleging Unnecessary Force. Each complaint may allege more than one type of force. This accounts for the 56 UF allegations and the 61 types of alleged unnecessary force (displayed in the following table) from the 42 CI complaints. The CI complaints used in the statistics were filed from January to June 1996.

Trends from Unnecessary Force Complaints
January 1 - June 30, 1996

Type of Alleged Unnecessary Force			
Hands	29	Knee	4
Feet	9	Canines	2
Tight Handcuffs	6	Gun (officer)	1
Baton	5	Object	1
Chemical Agent	4		

The information for these statistics was based on the type of force the subject officers used as alleged by the complainants. The subject officers' use of hands, such as pushing or slapping a complainant, accounted for 48% of the different types of force alleged by the complainants. The alleged use of force from the subject officers' feet, such as leg sweeps or kicking the complainant, compromised 15% of the distribution. Tight handcuffs causing pain or injury to the wrists of the complainant accounted for ten percent (10%) of the different types of force alleged by the complaints. The use of the baton for striking or injuring the complainant accounted for eight percent (8%) of the alleged types of force.

C. CITIZEN-INITIATED CLOSED CASES

Citizen-Initiated Sustained Cases					
Period Received	Cases Filed	Open	Closed	Sustained Cases	Sustained Rate
Jan.- June 1996	122	55	67	5	7%
Jan.- June 1995	82	18	64	5	8%
Jan.- June 1994	116	7	109	14	13%

The above table indicates the number of CI complaints filed from January to June 1996, 1995, and 1994, and their status as of June 30, 1996. The sustained rate in the table above was derived from the number of sustained cases divided by the number of closed cases. If one allegation of the complaint

was sustained, then the entire complaint was considered sustained. As of June 30, 1996, twenty-eight CI complaints (13%) out of 217 CI complaints filed in 1994 remain open and sixty-three CI complaints (36%) out of 176 CI complaints filed in 1995 remain open.

There were 122 CI cases filed between January and June 1996, sixty-seven (67) cases were closed and 55 cases were under investigation. From those closed cases, five (5) cases were sustained. The sustained rate will vary for 1996, 1995, and 1994 until all the cases filed for each time period are closed. The sustained rate from the closed cases filed in 1995 was eight percent (8%) and for 1994, the rate was 13%. A reason for the decrease in the sustained rate since 1994 may be that 45% of the cases filed in 1996 and 22% of the cases filed in 1995 are still under investigation.

D. TIME TO CLASSIFY AND COMPLETE CITIZEN-INITIATED CASES

The length of time to classify a CI complaint is counted by the number of days from the received date of the complaint to the date when the complaint is assigned to an officer for investigation. The length of time to complete an investigation is tabulated as the number of days from the assigned date of the complaint until the investigation is completed. The goals listed on the following table were implemented on June 30, 1994 to ensure complaints were classified and completed in a timely manner.

Goal
30 days -- Classification of all complaints
120 days -- Completion of 75% of cases
300 days -- Completion of 100% of cases

The targeted goal for classifying complaints is 30 days. The PSCU is responsible for classifying all the complaints. The targeted length of time to complete 75% of the cases is 120 days, and the goal for completing all investigations is 300 days. The following table illustrates the actual percentage of CI complaints classified and completed within the goal, and the percentage of the goal achieved. The CI complaints used for the classification statistic were **received** between January and June 1996. The CI complaints providing the time to complete the investigation were **closed** between January and June 1996.

**Complaints Received and Investigated
by the Professional Standards & Conduct Unit (PSCU)²⁸**

Goal	Actual	% of Goal Achieved
30 days -- Classification of all complaints (received between January 1 - June 30, 1996)	78%	78%
120 days -- Completion of 75% of cases (closed between January 1 - June 30, 1996)	59%	79%
300 days -- Completion of 100% of cases (closed between January 1 - June 30, 1996)	82%	82%

Seventy-eight percent (78%) of the CI complaints received and investigated by the PSCU were classified within 30 days from the received date of the complaint. Seventy-eight percent (78%) of the classification goal was achieved. Fifty-nine percent (59%) of the CI complaints were completed by the PSCU investigators within 120 days, and this accounted for 79% of the goal. Eighty-two percent (82%) of the CI cases were completed by PSCU investigators within 300 days from the assigned date. Thus, eighty-two percent (82%) of the goal was achieved.

**Complaints Received by the PSCU and Investigated
by an Outside Bureau²⁹**

Goal	Actual	% of Goal Achieved
30 days -- Classification of all complaints (received between January 1 - June 30, 1996)	52%	52%
120 days -- Completion of 75% of cases (closed between January 1 - June 30, 1996)	70%	93%
300 days -- Completion of 100% of cases (closed between January 1 - June 30, 1996)	96%	96%

Fifty-two percent (52%) of the CI complaints received by PSCU and assigned to an outside bureau for investigation were classified within 30 days from the received date of the complaint. Fifty-two percent (52%) of the classification goal was achieved. Seventy percent (70%) of the CI complaints were closed by an investigative bureau within 120 days, and this comprised 93% of the goal. Ninety-six

²⁸These complaints initiated at the IPA or the PSCU.

²⁹An outside bureau may include Bureau of Investigations (BOI) or Bureau of Field Operations (BFO).

percent (96%) of the CI cases were completed within 300 days from the assigned date. Thus, ninety-six percent (96%) of the goal was achieved. Timeliness in classifying complaints and completing investigations continues to be a concern and is addressed in the "Updates on Prior Issues and Recommendations" section.

VIII. ANALYSIS OF DEPARTMENT-INITIATED COMPLAINTS

The following statistical analysis focuses on the Department-Initiated (DI) complaints.³⁰ Like the Citizen-Initiated (CI) complaints, the DI complaints also include the most serious allegations. Each case is divided into separate allegations with individual findings.³¹ The time periods used for statistical comparison are from January to June for the years 1996, 1995, and 1994. The analysis compares the total number of cases and allegations for the specified time periods. The following is the statistical data for the DI complaints categorized by allegations for the three time periods:

A. DEPARTMENT-INITIATED CASES AND ALLEGATIONS

Period Received	UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Total DI Allegs.	%	Total DI Cases ³²	%
Jan.-June 1996	0	0	1	3	5	0	18	0	24	7	58		47	
Jan.-June 1995	0	0	0	1	2	0	21	4	17	3	48	21%	31	52%
Jan.-June 1994	1	0	2	5	2	0	40	3	19	0	72	-19%	40	18%

Legend	
UA = Unlawful Arrest	ES = Excessive Police Service
US = Unlawful Search	IP = Improper Procedure
UF = Unnecessary Force	FA = Failure to Take Action
RC = Rude Conduct	UC = Unofficerlike Conduct
DH = Discrimination/Harassment	MDP = Missing/Damaged Property

The previous table includes all allegations from the cases **initiated** during the specified time frames regardless of the subsequent status.³³ The 47 DI complaints produced 58 allegations during the first six months of 1996. This resulted in a 21% increase in DI allegations over the same time period of 1995 and a decrease of 19% in DI allegations over the first half of 1994. The percentages comparing

³⁰See Appendix C (Classifications of Complaints).

³¹See Appendix E (Misconduct Allegations) and Appendix D (Definitions of Findings).

³²See Appendix H (Citizen- and Department-Initiated Cases Classified as Formal Complaints).

³³The status of a complaint is either open (under investigation) or closed (investigation completed).

the number of allegations over the different time periods are displayed next to the total allegations category on the previous table.

One Unnecessary Force allegation from a DI case was received between January and June 1996. There were no DI Unnecessary Force allegations received during the first half of 1995. However, there were two DI Unnecessary Force allegations received in the first six months of 1994. For the 1996 time period, the type of force allegedly used by the subject officer in the Unnecessary Force allegation was the use of a canine and an object against the complainant.

Forty-seven (47) DI complaints were filed between January and June 1996. The number of DI complaints increased 52% compared to the same time period for 1995. An increase of 18% in the number of DI cases also occurred in comparison to the first six months of 1994. These percentages are illustrated on the far right column of the previous table.

B. DEPARTMENT-INITIATED CLOSED CASES

Department-Initiated Sustained Cases					
Period Received	Cases Filed	Open	Closed	Sustained Cases	Sustained Rate
<i>Jan.-June 1996</i>	47	21	26	18	69%
<i>Jan.-June 1995</i>	31	2	29	24	83%
<i>Jan.-June 1994</i>	40	0	40	32	80%

The previous table indicates the number of DI complaints filed between January and June 1996, 1995 and 1994, and their status as of June 30, 1996. The sustained rate was derived from the number of sustained cases divided by the closed cases. If one allegation in the complaint was sustained, then the entire complaint was considered sustained. For example, there were 47 DI cases filed during the first half of 1996, and 26 cases were closed; from those closed cases, 18 cases were sustained. The sustained rate for the first six months of 1996 was 69%.³⁴ In comparison, the sustained rate for the first half of 1995 was 83%, and 80% for the first six months of 1994. The sustained rate for 1995 and 1996 is subject to change until all of the cases filed for each time period are closed.

³⁴This 69% sustained rate was derived from the 18 sustained cases divided by the 26 closed cases.

IX. DISCIPLINE IMPOSED

An officer receives discipline based on the entire complaint and not based on each separate allegation.³⁵ For example, an officer may have had three allegations sustained, but only received one letter of reprimand as a discipline imposed for the three sustained allegations. An officer may receive discipline, even though the allegation in a complaint is not sustained.³⁶ The table below indicates the number of disciplines imposed for the Citizen-Initiated (CI) and Department-Initiated (DI) complaints closed during the first six months of 1996.³⁷ The complaints closed during this time period were initiated from 1994 to 1996. The number of disciplines imposed may be greater than the number of complaints because a complaint may have more than one discipline, depending on the number of officers per complaint.

Formal Complaints Closed with Discipline

Classification of Complaints	Time Period Closed	Number of Disciplines Imposed	Number of Complaints with discipline	Time Period Complaints were Filed		
				1996	1995	1994
Citizen-Initiated	Jan.- June 1996	17	14	6	6	2
Department-Initiated	Jan.- June 1996	19	19	7	9	3

The following tables indicate the percentage breakdown of discipline given to subject officers from CI and DI complaints closed during the first six months of 1996.³⁸ The disciplines are shown by the most frequent type of discipline imposed.

³⁵See Appendix B (Misconduct Allegations) and Appendix D (Definitions of Findings).

³⁶For example, officers who resign pending termination list a No Finding instead of a Sustained allegation. Also, some officers may receive Training and/or Counseling for a Not Sustained or Exonerated allegation.

³⁷See Appendix C (Classifications of Complaints).

³⁸Discipline given to sworn members of the San José Police Department.

Discipline Imposed for CITIZEN-INITIATED Cases

Closed Between January 1 - June 30, 1996

<u>Type of Discipline Imposed</u>	<u>CI Disciplines</u>	<u>Distribution</u>
Training and/or Counseling	10	59%
Documented Oral Counseling (DOC)	3	18%
Letter of Reprimand (LOR)	3	18%
Termination	1	05%

Discipline Imposed for DEPARTMENT-INITIATED Cases

Closed Between January 1 - June 30, 1996

<u>Type of Discipline Imposed</u>	<u>DI Disciplines</u>	<u>Distribution</u>
Documented Oral Counseling (DOC)	8	42%
Letter of Reprimand (LOR)	4	21%
Resignation Pending Termination	3	16%
20-Hour Suspension	2	11%
160-Hour Suspension	1	05%
Termination	1	05%

Training and/or Counseling accounted for 59% of the CI disciplines. Documented Oral Counseling accounted for 42% of the disciplines in DI cases and for 18% of the disciplines in CI cases. A Letter of Reprimand was more frequent (21%) in the DI cases than in the CI cases (18%). The 20-Hour Suspension discipline comprised 11% of the DI disciplines, and the 160-Hour Suspension discipline comprised five percent (5%) of the DI disciplines.

A. OFFICERS SEPARATED FROM SJPD

Five subject officers were either terminated or resigned pending termination from the San José Police Department as a result of CI and DI complaints closed during the first six months of 1996. Two subject officers were terminated; one officer was from a CI case and one officer was from a DI case. Three subject officers resigned pending termination from the San José Police Department; the three officers were from DI cases. The three DI complaints, which produced the three resignations pending termination, involved multiple allegations of Unofficerlike Conduct, Discrimination/Harassment, and Improper Procedure. The two complaints which generated the terminations were closed in 1996, although the complaints were filed in 1994 and 1995. The two complaints leading to the terminations involved multiple allegations of Unofficerlike Conduct, and Improper Procedure. These allegations were all sustained.

X. INTERVENTION COUNSELING

The Intervention Counseling Program is used as an "early warning system" to track police officers with complaint histories for the purpose of providing guidance. To receive Intervention Counseling (IC), the subject officers must meet the following criteria:

1. Three or more investigations of Citizen-Initiated or Department-Initiated complaints within a 12-month period.
2. Five or more investigations involving Informal or Procedural complaints or a combination with Citizen-Initiated or Department-Initiated complaints within a 12-month period.

During Intervention Counseling, the subject officers meet with the Deputy Chief of their bureau, the Professional Standards and Conduct Unit Commander and their immediate supervisor for informal counseling. This informal counseling session involves a review of the issues with the subject officer³⁹ in a positive attempt to assist him/her. No formal record is made of the substance of the IC session.

A monthly review of the internal investigation files is conducted by the Professional Standards and Conduct Unit (PSCU) to ensure that subject officers meeting the IC criteria are identified in a timely manner. When Department members are identified as a result of this review, a memorandum is written by the PSCU Commander to the subject officer's Bureau Chief requesting the scheduling and completion of Intervention Counseling.

Intervention Counseling (IC)

Time Period of Intervention Counseling	Total Number of Intervention Counseling Sessions	Number of Subsequent Complaints from IC Date to June 30, 1996					
		0	1	2	3	4	5
<i>Jan. - June 1996</i>	8	4 ⁴⁰	3	1	0	0	0
<i>Jan. - June 1995</i>	4	2	1	0	0	0	1
<i>Jan. - June 1994</i>	6	0	0	3	2	1	0

The previous statistics list the number of IC sessions between January and June 1996, 1995, and 1994. The number of subject officers with subsequent complaints from their Intervention Counseling date should not be compared due to the differences in time between the 1996, 1995, and 1994 sessions. A longer time period increases the possibility of having subsequent complaints after the IC date.

³⁹The subject officer refers to the sworn member of the San José Police Department who received a complaint.

⁴⁰This value represents the number of subject officers that received no complaints since their IC date.

Eight IC sessions occurred between January to June 1996. Fifty percent (50%) of the subject officers received no subsequent complaint from the IC date to June 30, 1996. Thirty-eight percent (38%) of the subject officers received one subsequent complaint from the 1996 IC date. One officer received two complaints from the 1996 IC date to June 30, 1996.

Four IC sessions occurred during the first half of 1995. Fifty percent (50%) of the subject officers had not received any subsequent complaints since they were counseled in 1995. Twenty-five percent (25%) of the subject officers had received only one complaint since they were counseled. However, one subject officer received five subsequent complaints since the IC date in 1995.

During the first six months of 1994, six IC sessions were conducted. Fifty percent (50%) of the subject officers have received two complaints from the IC date to June 30, 1996. Two officers have received three complaints, and one officer received four complaints since the IC date in 1994.

In addition to Intervention Counseling, the police administration has implemented other avenues to address those officers receiving multiple complaints. For example, the subject officers and their supervisors will enter into written agreement whereby certain steps are identified and followed in an effort to deter the alleged misconduct from reoccurring.

XI. STATISTICAL BACKGROUND OF SUBJECT OFFICERS

A statistical area tracked by the Office of the Independent Police Auditor (IPA) is the background of the subject officers from Citizen-Initiated, Department-Initiated, Informal, and Procedural complaints received between January 1 and June 30, 1996. Specific areas include the police unit⁴¹, gender, ethnicity, and years of experience of the subject officer.⁴² Two hundred twenty-nine (229) subject officers received complaints in this reporting period; one hundred ninety-six (196) officers received one complaint, twenty-five officers received two complaints, seven officers received three complaints, and one officer received four complaints. From complaints received between July and December 1995, ninety-two percent (92%) of the subject officers were ranked as Officers and eight percent (8%)

⁴¹The police unit of the subject officer at the time of the complaint incident.

⁴²The subject officer refers to the sworn member of the San José Police Department who received a complaint.

were ranked as Sergeants or above.⁴³ From complaints received between January and June 1996, eighty-five percent (85%) were ranked as Officers and 15% were ranked as a Sergeant or above.⁴⁴

There were 43 complaints in which the subject officer's name was omitted due to the lack of signature on the Boland Admonishment and 21 complaints listed an unknown officer due to lack of identification or because the complaints were withdrawn. There was a total of 64 unknown officers in the complaints received between January and June 1996; these officers will not be part of the police background data. Also, officers no longer working in the San José Police Department and non-sworn officers, such as dispatchers and reserve officers are not part of these statistics. These subject officers account for a total of 25 officers in the aforementioned time period.

A. UNIT OF THE SUBJECT OFFICER

The following tables list the unit of the subject officers from complaints received from January 1 to June 30, 1996.

Bureau of Field Operations (BFO)	
January 1 - June 30, 1996	
Patrol	184
Narcotics Enforcement Team (NET)	16
Traffic Enforcement	11
Street Crimes	6
Field Training	5
Merge/K-9	3
Airport	2
Special Operations	2
Violent Crime Enforcement Team	2
Administration	1
Crime Prevention	1
Parks	1
Recruit	1
School Liaison	1
Total incidents from BFO	236

Subject officers from the Bureau of Field Operations (BFO) accounted for 87% of all units from complaints; specifically, the patrol unit accounted for 78% of the units within BFO. There is more police-to-citizen contact within the BFO, thus increasing the likelihood of complaints involving a BFO police unit.

⁴³The rank of the subject officer as of June 30, 1996. The subject officer can be ranked as Officer, Sergeant, Lieutenant, Captain, Deputy Chief, Assistant Chief, or Chief.

⁴⁴The rank of the subject officer as of June 30, 1996. The subject officer can be ranked as Officer, Sergeant, Lieutenant, Captain, Deputy Chief, Assistant Chief, or Chief.

Bureau of Investigations (BOI) January 1 - June 30, 1996	
Homicide/Crime Scene	7
Juvenile Crimes	4
Robbery/Night General	4
Traffic Investigation Unit	2
Drug Enforcement Admin.	1
Fraud	1
Narcotics/Covert Investigations	1
Sexual Assault/Child Exploitation	1
Violent Crimes Unit	1
Total incidents from BOI	22

The Bureau of Investigations (BOI) comprised 8% of the total units from complaints received in the first six months of 1996.

The Bureau of Technical Services (BTS), specifically the Information Center, Warrants, and Training units, accounted for 2% of the police units from complaints received during the first half of 1996.

The Intelligence, Public Information, and Vice unit within the Office of the Chief accounted for 1% of the units. The Administration, Police Activities League, and Photo Lab unit within the Bureau of Administration (BOA) also accounted for 1% of the units from complaints received in the first six months of 1996.

B. GENDER OF THE SUBJECT OFFICER

The following statistics report the gender of the subject officers from complaints received between January 1 and June 30, 1996.

Gender	Number of Officers receiving Complaints⁴⁵	% of Officers receiving Complaints	Number of Officers in the Police Dept.⁴⁶	% of Officers in the Police Department
Male	213	93%	1146	92%
Female	16	7%	99	8%
Total	229	100%	1245	100%

In the first six months of 1996, two hundred thirteen (213) male officers received complaints which comprised 93% of the officers receiving complaints. Male officers accounted for 92% of the officers

⁴⁵229 officers received at least one complaint during the specified time period. 196 officers received one complaint, 25 received two complaints, seven (7) officers received three complaints, and one officer received four complaints.

⁴⁶San José Police Department.

in the Police Department. Sixteen female officers (16) officers received complaints in this time period, which accounted for seven percent (7%) of the officers receiving complaints. In the Police Department, female officers accounted for eight percent (8%) of the gender distribution. The number of officers receiving complaints is proportionate to the gender distribution of officers in the Police Department. Compared to the last six months of 1995, the gender of the subject officers receiving complaints remained consistent during this reporting period.

C. ETHNICITY OF THE SUBJECT OFFICER

The following table displays the ethnicity of subject officers from complaints received between January 1 and June 30, 1996.

Ethnicity	Number of Officers receiving Complaints ⁴⁷	% of Officers receiving Complaints	Number of Officers in the Police Dept. ⁴⁸	% of Officers in the Police Department
White / Euro. Amer.	148	65%	805	65%
Hispanic	44	19%	264	21%
African American	17	7%	64	5%
Asian American	16	7%	86	7%
Filipino American	3	1%	19	2%
Native American	1	0%	7	1%
Total	229	100%	1245	100%

The White/European American officers accounted for 65% of the total number of officers in complaints, which is directly proportional to the distribution of White/European officers in the Police Department. Hispanic officers comprised 19% of the officers receiving complaints in the first six months of 1996. Hispanic officers accounted for 21% of the Police Department's ethnic distribution. African American officers represented seven percent (7%) of officers receiving complaints and they accounted for five percent (5%) of the officers in the Police Department. The ethnic distribution of officers in complaints closely follow the ethnic distribution of officers in the Police Department. Compared to the last six months of 1995, Hispanic officers accounted for less complaints during this reporting period. Overall, the distribution of the subject officer's ethnicity in complaints remained consistent during this reporting period.

⁴⁷229 officers received at least one complaint during the specified time period. 196 officers received one complaint, 25 received two complaints, seven (7) officers received three complaints, and one officer received four complaints.

⁴⁸San Jose Police Department.

D. YEARS OF EXPERIENCE OF THE SUBJECT OFFICER

The following statistics list the subject officers' years of experience in the San José Police Department as of June 30, 1996. These statistics arose from the complaints received between January 1 and June 30, 1996.

Years of Experience	Number of Officers receiving Complaints ⁴⁹	% of Officers receiving Complaints	Number of Officers in the Police Dept. ⁵⁰	% of Officers in the Police Department
0-1+	33	14%	160	13%
2-4+	50	22%	161	13%
5-6+	32	14%	139	11%
7-10+	27	12%	161	13%
11-15+	42	18%	274	22%
16+	45	20%	350	28%
Total	229	100%	1245	100%

The subject officers with two to four years of experience had the highest number of complaints between January and June 1996. They comprised 22% of the officers in complaints and they accounted for 13% of the officers in the Police Department. The officers with more than 16 years of experience followed closely with 20% of the officers in complaints and they accounted for 28% of the officers in the Police Department. In proportion to the total number of officers in the Police Department with the respective years of experience, the officers with two to four years of experience accounted for the highest ratio of officers in complaints.

Nearly all San José officers with three years or less of experience are assigned to the BFO Patrol Unit, which has more police-to-citizen contact. Consequently, the high citizen contact may generate more incidents in complaints. With the passage of time, the officers may transfer out of the Patrol Unit into other specialized units. Officers return to the BFO for a minimum of one year after a specialized unit assignment, which is typically three years.

⁴⁹229 officers received at least one complaint during the specified time period. 196 officers received one complaint, 25 received two complaints, seven (7) officers received three complaints, and one officer received four complaints.

⁵⁰San Jose Police Department.

XII. STATISTICAL BACKGROUND OF COMPLAINANTS

The Office of the Independent Police Auditor (IPA) created a Voluntary Questionnaire requesting information about the background of the complainant upon filing a complaint. The sole purpose is to monitor trends in an effort to better serve the complainant and the community. This survey became effective as of April 17, 1995.

From the complaint data received between January 1 and June 30, 1996, there were 240 questionnaires completed by the complainants. There were 40 complainants who opted not to complete the Voluntary Questionnaire. There were 255 complaints⁵¹ received between January 1 and June 30, 1996; sixty-two (62) complaints were initiated by the IPA and 193 complaints were filed at the PSCU. There may be more questionnaires than complaints received in a time period because each complaint may have more than one complainant listed. Of the 240 questionnaires completed by the complainants, sixty-six (66) were from the IPA and 174 were from the PSCU. Currently, the process is more systematic than the previous reporting period in tracking the Voluntary Questionnaire from each complaint, and almost all complainants complete a questionnaire.

The survey asked for information such as the complainant's occupation, primary language, ethnicity, educational level, gender, age range, and type of referral to either the IPA or the PSCU. There were seven questions in the survey and complainants self-reported the answers on the Voluntary Questionnaire.

Question 1: How was the complainant referred to the IPA or the PSCU?

Type of Referral January 1 - June 30, 1996	To IPA	To PSCU	Total	%
Friend / Organization	23	64	87	36%
Police	5	54	59	25%
Personal Knowledge	5	17	22	9%
Other	14	7	21	9%
Unspecified	2	16	18	8%
City Official	11	6	17	7%
Media	6	10	16	7%
Total	66	174	240	100%⁵²

⁵¹Department-Initiated cases are not included in this number because there are no questionnaires completed for this classification. The 255 complaints include only those complaints classified as Citizen-Initiated, Informal, Procedural, and Policy.

⁵²Data rounded off the nearest percentage.

The previous table displays the answer to the first question, ranked by the highest total number of responses. The first question asked how the complainant had been referred to the PSCU or the IPA, whichever office the complainant contacted. Thirty-seven percent (37%) of the complainants were referred to the PSCU and 35% to the IPA by friends or an organization. Thirty-one percent (31%) of the complainants initiating their complaint at the PSCU were referred by the Police Department, and 8% of the complainants initiating their complaint at the IPA were referred by the Police Department. Nine percent (9%) of the complainants initiated their complaint at the PSCU or the IPA by their own personal knowledge of the organizations. Nine percent (9%) of the complainants stated another source of referral not listed in the Voluntary Questionnaire.⁵³ For example, referrals from this category may include the IPA brochure, an attorney, or the phone book.

Question 2: What is the most current occupation of the complainant?

Occupation of the Complainants					
January 1 - June 30, 1996					
Attorney	3	Gang Intervention	1	Probation	3
Buyer (unspecified)	1	Gardener	2	Production	10
Car Detailing	1	Hairstylist	1	Restaurant/Food Serv.	5
Child Care	1	Homemaker	9	Retired	5
Clerical	13	Inspector	1	Sales	9
Consultant	1	Investigator	1	Self-employed	8
County Worker	1	Laborer	10	Scheduler/Planner	1
Customer Service	1	Legal field ⁵⁴	4	Student	23
Director/Manager	11	Mail carrier/handler	3	Teacher	1
Disabled	10	Maintenance	3	Technician	10
Dispatcher	1	Mechanic	3	Unemployed	14
Driver/Trucker	8	Medical Field	7	Unspecified	31
Editor	1	Office Administration	12		
Engineer	1	Paper Delivery	1		
Financial field ⁵⁵	3	Parking/Sec. officer	5		

The second question inquired about the complainant's current or latest occupation. The above table lists the occupations of complainants in alphabetical order. Occupations were diverse and ranged from business owners to unemployed complainants.

⁵³This does not include the Unspecified referrals, in which the question was not answered by the complainant.

⁵⁴The legal field includes: legal clerk, legal secretary, court reporter, and law office employee.

⁵⁵The financial field includes: financial advisor, collector, and billing operator.

Question 3: What is the highest educational level completed by the complainant?

Educational Level		%
January 1 - June 30, 1996		
Ninth grade	10	4%
Tenth grade	14	6%
Eleventh grade	16	7%
Twelfth grade	83	35%
College 1	31	13%
College 2	29	12%
College 3	10	4%
College 4+	34	14%
Unspecified	13	5%
Total	240	100%⁵⁶

Similarly, the third question asked for highest educational level completed by the complainant. The responses ranged from persons who had not graduated from high school to complainants with advanced degrees. Thirty-five percent (35%) of the complainants graduated from high school, and 43% indicated college education. The level of education of the complainants was higher than the average level of education for Santa Clara County.⁵⁷ According to the 1990 census, nineteen percent (19%) of the Santa Clara County population reported a high school education, and 31% attended college.

Question 4: What is the ethnicity with which the complainant primarily identifies?

Ethnicity		%
January 1 - June 30, 1996		
Hispanic / Latino	103	43%
White	69	29%
African American	39	16%
Native American	6	3%
Vietnamese	5	2%
Asian	4	2%
Filipino	1	0%
Unspecified	4	2%
Other	9	4%
Total	240	100%⁵⁸

⁵⁶Data rounded off the nearest percentage.

⁵⁷Claritas/NPDC 1992, Population by race, education level - Santa Clara County. Market research firm, 1990 census data for Santa Clara County projected into the current year.

⁵⁸Data rounded off the nearest percentage.

The fourth question asked about the ethnic background of the complainant. The statistics above display the ethnic composition of the complainants, which was predominantly Hispanic/Latino. Forty-three percent (43%) of the complainants identified themselves as Hispanic/Latino and 29% identified themselves as White/European-American. African American complainants comprised 16% of the complainant distribution. Santa Clara County reported a 58% White population.⁵⁹ The County also reported a 21% Hispanic population, a 17% Asian population, and a four percent (4%) African American population. More Hispanic and African American complainants were reflected in the complainant survey distribution than the population distribution of Santa Clara County.

Question 5: What is the primary spoken language of the complainant?

Primary Language		%
January 1 - June 30, 1996		
English	213	89%
Spanish	18	8%
Vietnamese	3	1%
Other	4	2%
Unspecified	2	1%
Total	240	100%⁶⁰

English was the primary language spoken by 89% of the complainants that completed a Voluntary Questionnaire, and only 8% of the complainants primarily spoke Spanish.

Question 6: What is the gender of the complainant?

Gender		%
January 1 - June 30, 1996		
Male	133	55%
Female	107	45%
Total	240	100%⁶¹

The sixth question inquired about the gender of the complainant. Fifty-five percent (55%) of the complainants were male and 45% were female.

⁵⁹Ewel, Miranda, "Racial Split Emerges in Silicon Valley," *San Jose Mercury News*, 23 June 1996, 1A. Source: 1990 Census Data.

⁶⁰Data rounded off the nearest percentage.

⁶¹Data rounded off the nearest percentage.

Question 7: What is the age of the complainant?

Age Range January 1 - June 30, 1996		%
Under 18	8	3%
18-30	94	39%
31-59	127	53%
60+	8	3%
Unspecified	3	1%
Total	240	100%⁶²

The final question requested information about the age of the complainant. Fifty-three percent (53%) of the complainants were within the age range of 31-59 years, thirty-nine percent (39%) were in the age range of 18-30 years. Complainants under the age of 18 accounted for 3% of the distribution, and 3% were over 60 years old.

The Voluntary Questionnaire will continue to be requested from complainants. Currently, the process of receiving the Voluntary Questionnaire from each complainant is more systematic than the prior reporting period. The IPA tracks complaints that are lacking a questionnaire and provides this list to the PSCU for the completion of the Voluntary Questionnaire.

XIII. GAY / LESBIAN RELATED COMPLAINTS

The number of complaints involving a gay or lesbian issue is a trend tracked by the Office of the Independent Police Auditor (IPA) for complaints filed between January and June 1996. There were no complaints received and classified in this reporting period that involved gay or lesbian issues.

XIV. COMPLAINTS & ALLEGATIONS BY COUNCIL DISTRICT

All of the types of complaints received between January and June 1996 were compiled by City Council District. In addition, Citizen-Initiated (CI) and Department-Initiated (DI) complaints will be further categorized by the number and type of allegations.⁶³ The following table illustrates the total number of all complaints received by each City Council District; however, the complaints categorized as In-Process are not included because their classification is pending.

⁶²Data rounded off the nearest percentage.

⁶³See Appendix C (Classifications of Complaints).

Summary of Complaints Received⁶⁴

January 1-June 30, 1996

Districts	Type of Complaints					TOTAL COMPLAINTS	%
	CI	DI	IN	PR	PO		
JOHNSON 1	4	1	1	6	1	13	4%
POWERS 2	11	1	7	5	2	26	9%
PANDORI 3	34	27	14	17	10	102	34%
FERNANDES 4	7	2	4	3	0	16	5%
DIAZ 5	17	2	5	6	3	33	11%
FISCALINI 6	10	3	5	8	1	27	9%
SHIRAKAWA, JR. 7	8	0	4	2	1	15	5%
WOODY 8	9	1	9	2	2	23	8%
DIQUISTO 9	9	2	2	7	0	20	7%
DANDO 10	10	3	2	3	0	18	6%
⁶⁵ Unk/OCL	3	5	0	1	0	9	3%
TOTAL CASES	122	47	53	60	20	302	100%⁶⁶
%	40%	16%	18%	20%	7%	100%	

Legend	
CI = Citizen-Initiated	PR = Procedural
DI = Department-Initiated	PO = Policy
IN = Informal	

⁶⁴See Appendix I (Classified Complaints by Council District).⁶⁵Unknown/Outside City Limit.⁶⁶The data was rounded off to the nearest percentage.

The table below specifies the number and type of allegations by City Council District from the CI and DI cases received from January to June 1996.

CITIZEN- and DEPARTMENT-INITIATED Allegations Received⁶⁷

Districts	Type of Allegations										TOTAL ALLEGS.	%
	UA	US	UF	RC	DH	ES	IP	FA	UC	MDP		
JOHNSON 1	0	2	2	2	0	0	2	0	0	2	10	3%
POWERS 2	1	1	5	2	2	0	4	1	1	3	20	6%
PANDORI 3	5	5	12	18	5	0	26	5	10	8	94	31%
FERNANDES 4	2	0	8	5	0	0	8	0	2	1	26	8%
DIAZ 5	4	4	8	10	0	0	9	0	2	4	41	13%
FISCALINI 6	1	2	1	4	1	0	7	1	1	2	20	6%
SHIRAKAWA, JR. 7	0	0	5	7	0	0	5	3	6	1	27	9%
WOODY 8	0	1	5	6	0	0	8	0	0	0	20	6%
DIQUISTO 9	0	1	5	5	0	0	6	1	1	2	21	7%
DANDO 10	2	0	6	3	1	0	3	0	2	4	21	7%
⁶⁸ Unk/OCL	0	0	0	0	0	0	1	0	7	0	8	3%
TOTAL ALLEGS.	15	16	57	62	9	0	79	11	32	27	308	100%⁶⁹
%	5%	5%	19%	20%	3%	0%	26%	4%	10%	9%	100%	

Legend	
UA = Unlawful Arrest	ES = Excessive Police Service
US = Unlawful Search	IP = Improper Procedure
UF = Unnecessary Force	FA = Failure to Take Action
RC = Rude Conduct	UC = Unofficerlike Conduct
DH = Discrimination/Harassment	MDP = Missing/Damaged Property

Allegations are found in both CI and DI complaints. There may be more than one allegation per complaint; therefore, the number of allegations and the number of complaints are different.

The following information will display cases, the time when the incidents of the complaints arose⁷⁰, and allegations per City Council District. The complaints providing these statistics were filed from January 1 to June 30, 1996. Complaints categorized as In-Process are not part of the following statistics because they are pending classification.

A. DISTRICT 1: TRIXIE JOHNSON

Cases Filed (January - June 1996)

CI	DI	IN	PR	PO	Dist. 1 Cases	Total Cases	%
4	1	1	6	1	13	302	4%

⁶⁷See Appendix J (Citizen- and Department-Initiated Allegations by Council District).

⁶⁸Unknown/Outside City Limit.

⁶⁹The data was rounded off to the nearest percentage.

⁷⁰See Appendix K (Time of Incident by Council District).

Incidents that occurred within District One led to 13 complaints, which accounted for 4% of the 302 total cases classified from January to June of 1996. Procedural cases accounted for most of the complaints (46%) received from District One. The table above lists the different classifications of complaints from District One. Compared to the first six months of 1995, there were two additional complaints filed during this reporting period. District One received more CI, PR, and PO complaints and less DI and IN complaints in the first half of 1996.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 1 Cases
3	2	7	1	13

Of the 13 total complaints received for District One, 54% of the incidents arose from the swing shift hours between 4:01 p.m. and 12 midnight.⁷¹ The graveyard shift, from 12:01 a.m. to 8:00 a.m., comprised 23% of the distribution. The day shift, from 8:01 a.m. to 4:00 p.m., comprised 15% of the distribution. One complaint did not list one specific time of the complaint incident.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 1 CI Allegs.	Total CI Allegs.	%
0	2	2	2	0	0	1	0	0	2	9	250	4%

District One produced less CI allegations compared to the other nine Districts. Four (4) CI complaints generated 9 CI allegations, which contributed 4% of the total CI allegations received between January and June of 1996. Unlawful Search, Unnecessary Force, Rude Conduct, and Missing/Damaged Property allegations were the highest percentage (22%) of CI allegations received for District One.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 1 DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	1	0	0	0	1	58	2%

The above statistics display the DI allegations for District One. The DI allegation received for this reporting period was Improper Procedure.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 1 CI & DI Allegs.	Total CI & DI Allegs.	%
0	2	2	2	0	0	2	0	0	2	10	308	3%

⁷¹The time range given for each shift was not based on the San José Police Department's schedule because their work shifts overlap. The time ranges were based on three shifts in a 24-hour day, each shift accounting for eight hours of the day.

District One generated ten CI and DI allegations between January and June of 1996, which accounted for three percent (3%) of the total 308 CI and DI allegations. In proportion to the allegations received between January and June 1995, this is a 17% decrease in allegations. Unnecessary Force increased by two allegations, since none were filed during the first six months of 1995.

B. DISTRICT 2: CHARLOTTE POWERS

Cases Filed (January - June 1996)

CI	DI	IN	PR	PO	Dist. 2 Cases	Total Cases	%
11	1	7	5	2	26	302	9%

District Two received 26 complaints, which contributed 9% of the total cases received between January and June of 1996. Most of the complaints were found in the CI category, which accounted for 42% of the cases. Compared to the first six months of 1995, there were 14 additional complaints filed from this district during this reporting period. More CI, IN, PR, and PO complaints were filed in the first half of 1996.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 2 Cases
5	3	18	0	26

Of the 26 total complaints received for District Two, sixty-nine percent (69%) of the incidents arose from the swing shift hours between 4:01 p.m. and 12:00 midnight.⁷² The graveyard shift, from 12:01 a.m. and 8:00 a.m., comprised 19% of the distribution. The day shift, from 8:01 a.m. and 4:00 p.m., comprised 12% of the distribution.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 2 CI Allegs.	Total CI Allegs.	%
1	1	5	2	2	0	4	1	0	3	19	250	8%

The above statistics show the 19 CI allegations received from District Two, which contributed 8% of the total CI allegations received between January and June of 1996. The most frequent allegation received under this classification was the Unnecessary Force allegation, which accounted for 26% of the allegations.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 2 DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	0	0	1	0	1	58	2%

⁷²See Footnote 71.

The allegation from the DI complaint received for this district was Unofficerlike Conduct of the subject officer.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 2 CI & DI Allegs.	Total CI & DI Allegs.	%
1	1	5	2	2	0	4	1	1	3	20	308	6%

District Two received 20 CI and DI allegations between January and June of 1996 as compared to 13 allegations received in the first six months of 1995. This reflected a 54% increase in allegations for this reporting period. This reporting period showed an increase in Unlawful Arrest, Rude Conduct, Improper Procedure, Unofficerlike Conduct, and Missing/Damaged Property allegations. The number of Unnecessary Force allegations remained constant compared to the same time period of 1995.

C. DISTRICT 3: DAVID PANDORI

Cases Filed (January - June 1996)

CI	DI	IN	PR	PO	Dist. 3 Cases	Total Cases	%
34	27	14	17	10	102	302	34%

District Three received 102 complaints during January and June of 1996. The complaints received from this district were significant because they contributed 34% of the 302 total complaints received between January and June of 1996. This district received the highest number of complaints compared to other districts, including the Unknown/Outside City Limit category. The CI and DI cases accounted for the highest number of complaints; CI cases contributed 33% of the complaints and DI cases contributed 26% of the total complaints received from District Three. The Office of the Chief, which is located in District Three, initiates the Department-Initiated complaints, which explains why this district has the most DI complaints compared to the other nine Districts. Compared to the first six months of 1995, there was an increase of 37 complaints received from District Three during this reporting period. More complaints were filed for each classification listed in the table above.

Time of Incident (January - June 1996)

Graveyard	Day	Swing	Various Times	Dist. 3 Cases
12:01 a.m. ... 8:00 a.m.	8:01 a.m. ... 4:00 p.m.	4:01 p.m. ... 12:00 midnight		
28	33	23	18	102

Most of these complaints (32%) occurred during the hours of 8:01 a.m. and 4:00 p.m., as displayed on the table above.⁷³ Incidents that occurred during the graveyard hours comprised 27% of the complaints. Incidents that occurred during the swing shift hours comprised 23% of the complaints. Complaint incidents that occurred during various times of the day comprised 18% of the complaints.

⁷³See Footnote 71.

Citizen-Initiated Allegations (January- June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 3 CI Allegs.	Total CI Allegs.	%
5	5	12	15	0	0	13	5	0	5	60	250	24%

The 34 CI complaints from this district produced 60 CI allegations, which were 24% of the total CI allegations. Most of the allegations in this District were Rude Conduct; specifically, RC allegations accounted for 25% of the allegations. The Improper Procedure allegations for this District accounted for 22% of the allegations, closely followed by the Unnecessary Force allegations which comprised 20% of District Three allegations.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 3 DI Allegs.	Total DI Allegs.	%
0	0	0	3	5	0	13	0	10	3	34	58	59%

District Three contributed 59% of the total DI allegations. Improper Procedure (38%) and Unofficerlike Conduct (29%) allegations accounted for most of the DI allegations.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 3 CI & DI Allegs.	Total CI & DI Allegs.	%
5	5	12	18	5	0	26	5	10	8	94	308	31%

District Three generated 94 CI and DI allegations between January and June of 1996 as compared to 76 allegations filed between January and June of 1995. This accounted for a 24% increase in allegations for this reporting period. There were more Unlawful Arrest, Rude Conduct, Improper Procedure, Failure to Take Action, Missing/Damaged Property allegations filed during this reporting period. In proportion to the first six months of 1995, there were four less Unnecessary Force allegations from this District.

Overall, District Three had the most number of complaints and allegations compared to the other Districts. District Three covers the downtown area which has a denser and more transitory population than the other districts and generates more police-to-citizen contacts.

D. DISTRICT 4: MARGIE FERNANDES**Cases Filed (January - June 1996)**

CI	DI	IN	PR	PO	Dist. 4 Cases	Total Cases	%
7	2	4	3	0	16	302	5%

District Four had 16 complaints during the period from January to June 1996 which accounted for 5% of the total complaints. The CI complaints accounted for 44% of the cases, followed by Informal cases (25%). Five more complaints were filed from this district compared to the first six months of 1995. There were more CI and DI complaints received during this reporting period.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 4 Cases
2	3	9	2	16

Fifty-six percent (56%) of these 16 complaints occurred during the swing shift, between 4:01 p.m. and 12 midnight.⁷⁴ The daytime hours, from 8:01 a.m. to 4:00 p.m., produced 19% of the complaints.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 4 CI Allegs.	Total CI Allegs.	%
2	0	8	5	0	0	6	0	0	0	21	250	8%

The seven CI complaints in this district generated 21 allegations shown on the table above, which accounted for eight percent (8%) of the 250 total CI allegations received in 1995. The highest number of allegations was in the Unnecessary Force category, which comprised 38% of the allegations.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 4 DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	2	0	2	1	5	58	9%

The two DI complaints from this district produced five DI allegations, which accounted for nine percent (9%) of the total DI allegations received in this reporting period. The Improper Procedure and Unofficerlike Conduct allegations each accounted for 40% of the DI allegations from this district.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 4 CI & DI Allegs.	Total CI & DI Allegs.	%
2	0	8	5	0	0	8	0	2	1	26	308	8%

District Four produced 26 CI and DI allegations between January and July 1996. This is a 89% increase in allegations, since nine allegations were filed in the first six months of 1995. There were four more Unnecessary Force allegations received in this reporting period as compared to the same time period of 1995. Also, there were more Unlawful Arrest, Rude Conduct, Improper Procedure, and Unofficerlike Conduct allegations filed for this district during this reporting period.

E. DISTRICT 5: MANNY DIAZ**Cases Filed (January - June 1996)**

CI	DI	IN	PR	PO	Dist. 5 Cases	Total Cases	%
17	2	5	6	3	33	302	11%

⁷⁴See Footnote 71.

District Five received 33 complaints during January to June 1996, which accounted for 11% of the 302 complaints filed in 1996. Most complaints (52%) received from this district were CI. Compared to the first six months of 1995, there were 15 more complaints from this district during this reporting period. More complaints were received for each classification listed in the table above.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 5 Cases
6	12	15	0	33

The previous table displays the time of incident for the complaints received from District Five.⁷⁵ Forty-five percent (45%) of the complaints from this district arose from incidents which occurred during the swing shift, from 4:01 p.m. to 12 midnight; the daytime incidents contributed 36% of the complaints. The graveyard shift, from 12:01 a.m. to 8:00 a.m., comprised 18% of the complaints.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 5 CI Allegs.	Total CI Allegs.	%
4	4	8	10	0	0	9	0	0	4	39	250	16%

Seventeen (17) CI complaints produced 39 allegations, which contributed 16% to the total CI allegations received during the first half of 1996. The above statistics display the different allegations from this district. Rude Conduct accounted for 26% of the CI allegations, Improper Procedure accounted for 23%, and Unnecessary Force comprised 21%. District Five produced the second highest number in CI allegations compared to the other districts.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 5 DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	0	0	2	0	2	58	3%

Two DI complaints generated two Unofficerlike Conduct allegations for this district, as shown on the table above.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 5 CI & DI Allegs.	Total CI & DI Allegs.	%
4	4	8	10	0	0	9	0	2	4	41	308	13%

District Five generated 41 CI and DI allegations between January and June 1996 as compared to 33 allegations filed in the first six months of 1995. Three more Unnecessary Force allegations were filed during this reporting period as compared with the same time period of 1995. There was an increase of

⁷⁵See Footnote 71.

Unlawful Arrest, Unlawful Search, Rude Conduct, Unofficerlike Conduct, and Missing/Damaged Property allegations filed during this reporting period.

F. DISTRICT 6: FRANK FISCALINI

Cases Filed (January - June 1996)

CI	DI	IN	PR	PO	Dist. 6 Cases	Total Cases	%
10	3	5	8	1	27	302	9%

From January to June of 1996, District Six produced 27 complaints, which comprised 9% of the complaints distribution. Citizen-Initiated complaints composed 37% of the total cases received from District Six. The table above displays the number of cases received for this district. Compared to the first six months of 1995, this district received one more complaint during this reporting period. There was an increase in PR and PO complaints, and a decrease in CI and IN complaints for this reporting period.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 6 Cases
9	5	12	1	27

The statistics above display the time of incident that led to a complaint for District Six.⁷⁶ The swing shift hours, from 4:01 p.m. to 12 midnight, produced 44% of the complaints from this District. The graveyard shift hours, from 12:01 a.m. to 8:00 a.m., accounted for 33% of the incident times. The daytime hours comprised 19% of the complaint incidents.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 6 CI Allegs.	Total CI Allegs.	%
1	2	1	4	1	0	5	1	0	1	16	250	6%

The table above displays the composition of CI allegations from District Six. There were 16 CI allegations derived from the ten CI complaints; these allegations contributed six percent (6%) of the total CI allegations received during the first half of 1996. The most common allegation for District Six was the Improper Procedure allegation, which accounted for 31% of the 16 allegations.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 6 DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	2	0	1	1	4	58	7%

⁷⁶See Footnote 71.

The four DI allegations accounted for seven percent (7%) of the total DI allegations received in this reporting period. The table above lists the DI allegations for District Six. Improper Procedure, Unofficerlike Conduct, and Missing/Damaged Property comprised the four DI allegations.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 6 CI & DI Allegs.	Total CI & DI Allegs.	%
1	2	1	4	1	0	7	1	1	2	20	308	6%

District Six produced 20 CI and DI allegations between January and June 1996; this is a 38% decrease in allegations in proportion to the allegations filed in the first six months of 1995. Six less Unnecessary Force allegations from this district were filed during this reporting period compared to the first six months of 1995. Also, there were less Unlawful Arrest, Unlawful Search, Rude Conduct, and Missing/Damaged Property allegations filed during this reporting period.

G. DISTRICT 7: GEORGE SHIRAKAWA, JR.

Cases Filed (January - June 1996)

CI	DI	IN	PR	PO	Dist. 7 Cases	Total Cases	%
8	0	4	2	1	15	302	5%

District Seven generated 15 complaints during this reporting period and comprised five percent (5%) of the 302 total complaints received between January and June 1996. The CI complaints accounted for 53% of the complaints received for this district. The above statistics list the different types of complaints received from District Seven. Compared to the first six months of 1995, this District received three less complaints in this reporting period. Specifically, there were less CI and PR complaints, and more IN and PO complaints received in the first half of 1996. This is the only district that received fewer complaints during this reporting period compared to the other nine districts.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 7 Cases
2	5	8	0	15

The table above outlines the time of incident for the complaints received from District Seven.⁷⁷ Most complaints (53%) from this district arose from swing shift incidents that occurred between 4:01 p.m. and 12 midnight. The daytime hours comprised 33% of the complaint incidents.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 7 CI Allegs.	Total CI Allegs.	%
0	0	5	7	0	0	5	3	6	1	27	250	11%

⁷⁷See Footnote 71.

The statistics above display the composition of the CI allegations from District Seven. The eight CI complaints generated 27 CI allegations. The 27 allegations from District Seven comprised 11% of the total CI allegations received during this reporting period. Most CI allegations received from District Seven were Rude Conduct, and this category accounted for 26% of the allegations.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 7 DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	0	0	0	0	0	58	0%

There were no DI complaints received from this District, therefore no DI allegations were reported.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 7 CI & DI Allegs.	Total CI & DI Allegs.	%
0	0	5	7	0	0	5	3	6	1	27	308	9%

District Seven generated 27 CI and DI allegations between January and June 1996 as compared to 24 allegations filed in the first six months of 1995. Six less Unnecessary Force allegations were filed during this reporting period as compared to the same time period of 1995. During the first six months of 1996, there were more Rude Conduct, Improper Procedure, Failure to Take Action, Unofficerlike Conduct, and Missing/Damaged Property allegations for this District.

H. DISTRICT 8: ALICE WOODY

Cases Filed (January - June 1996)

CI	DI	IN	PR	PO	Dist. 8 Cases	Total Cases	%
9	1	9	2	2	23	302	8%

Twenty-three (23) complaints were received from District Eight between January and June 1996, as listed on the table above. These 23 complaints accounted for 8% of the total complaints received in 1996. Most complaints received from this district were CI and IN, each accounted for 39% of the allegations. Compared to the first six months of 1995, this district received the same total number of complaints. During this reporting period, there were more DI, IN, and PO complaints, and less CI and PR complaints received from District Eight.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 8 Cases
2	8	12	1	23

The swing shift, from 4:01 p.m. to 12 midnight, contributed 52% of the incident times received from District Eight.⁷⁸ The daytime hours, from 8:01 a.m. to 4:00 p.m., accounted for 35% of the complaint incidents, as the previous table displays.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 8 CI Allegs.	Total CI Allegs.	%
0	1	4	6	0	0	8	0	0	0	19	250	8%

Nineteen (19) CI allegations were derived from the nine CI complaints filed from this District. The 19 allegations were 8% of the total CI allegations received during the first half of 1996. Most of the CI allegations were Improper Procedure, which accounted for 42% of this District's allegations. Rude Conduct allegations comprised 32% of the allegations from District Eight.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 8 DI Allegs.	Total DI Allegs.	%
0	0	1	0	0	0	0	0	0	0	1	58	2%

District Eight received only one Department-Initiated allegation in this reporting period. The DI allegation was for Unnecessary Force of the subject officer.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 8 CI & DI Allegs.	Total CI & DI Allegs.	%
0	1	5	6	0	0	8	0	0	0	20	308	6%

District Eight produced 20 CI and DI allegations between January and July 1996 as compared to 33 allegations filed during the first six months of 1995. Six less Unnecessary Force allegations were filed during this reporting period compared to the first six months of 1995. Also, less Unlawful Arrest, Unlawful Search, Discrimination/Harassment, Failure to Take Action, and Missing/Damaged Property allegations were filed from this District during this reporting period.

I. DISTRICT 9: JOHN DIQUISTO

Cases Filed (January - June 1996)

CI	DI	IN	PR	PO	Dist. 9 Cases	Total Cases	%
9	2	2	7	0	20	302	7%

District Nine had 20 complaints during the period of January to June 1996 which comprised seven percent (7%) of the total complaints. As shown above, most of the complaints were CI (45%), followed by 35% Procedural complaints. Compared to the first six months of 1995, there were six more complaints filed from this district. Specifically, there were more CI, DI, and PR complaints, and less IN complaints received during this reporting period for this district

⁷⁸See Footnote 71.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 9 Cases
3	5	11	1	20

Most of the complaints (55%) arose from incidents that occurred during the swing shift hours, from 4:01 p.m. to 12:00 midnight, as seen on the above table.⁷⁹ The day shift accounted for 25% and the graveyard shift for 15% of the complaint incidents.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 9 CI Allegs.	Total CI Allegs.	%
0	1	5	5	0	0	6	1	0	1	19	250	8%

From the eight CI complaints received from this District, 19 CI allegations were generated. The 19 CI allegations comprised eight percent (8%) of the total CI allegations received in this reporting period. The above table indicates the composition of District Nine allegations. The most common allegation for this District was Improper Procedure, which accounted for 32% of the allegations. Rude Conduct and Unnecessary Force allegations each accounted for 26% of the CI allegations for this District.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 9 DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	0	0	1	1	2	58	3%

Three Department-Initiated allegations from this District contributed 3% of the total DI allegations received in this reporting period. The two allegations were for Unofficerlike Conduct and Missing/Damaged Property.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 9 CI & DI Allegs.	Total CI & DI Allegs.	%
0	1	5	5	0	0	6	1	1	2	21	308	7%

District Nine generated 21 CI and DI allegations between January and June 1996 as compared to 16 allegations received in the first six months of 1995. There were five more Unnecessary Force allegations filed in this reporting period. Also, from this District, there were more Rude Conduct, Failure to Take Action, and Missing/Damaged Property allegations filed during this reporting period compared to the first six months of 1995.

⁷⁹See Footnote 71.

J. DISTRICT 10: PAT DANDO**Cases Filed (January - June 1996)**

CI	DI	IN	PR	PO	Dist. 10 Cases	Total Cases	%
10	3	2	3	0	18	302	6%

District Ten received 18 complaints during January and June 1996, as displayed on the above table, accounting for 6% all complaints. The CI complaints comprised 56% of the complaints received from this district. Compared to the first six months of 1995, there were 11 more complaints received during this reporting period. From this district, there were more CI, DI, IN, and PR complaints and one less PO complaint filed during the first six months of 1996.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Dist. 10 Cases
3	4	10	1	18

The above statistics tabulate the time of the incident from District Ten complaints.⁸⁰ Approximately 56% of the incidents from this District occurred during the swing shift hours, from 4:01 p.m. to 12:00 midnight. The day shift, from 8:01 a.m. to 4:00 p.m., comprised 22% of the complaint incidents.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 10 CI Allegs.	Total CI Allegs.	%
2	0	6	3	1	0	3	0	0	3	18	250	7%

Eighteen (18) CI allegations were generated from the ten CI complaints received from this District. The CI allegations from this district were seven percent (7%) of the total CI allegations received during the first half of 1996. Unnecessary Force was the most frequent allegation and it accounted for 33% of the CI allegations from District Ten.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 10 DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	0	0	2	1	3	58	5%

Three DI allegations were generated from the three DI complaints of District Ten. These three allegations comprised 5% of all the DI allegations received in this reporting period. Two allegations were Unofficerlike Conduct and one allegation was Missing/Damaged Property.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Dist. 10 CI & DI Allegs.	Total CI & DI Allegs.	%
2	0	6	3	1	0	3	0	2	4	21	308	7%

⁸⁰See Footnote 71.

District Ten generated 21 CI and DI allegations between January and June 1996 as compared to 17 allegations filed in the first six months of 1995. Two more Unnecessary Force allegations were filed during this reporting period. Also, more Discrimination/Harassment, Unofficerlike Conduct, and Missing/Damaged Property allegations were filed during the first six months of 1996 as compared to the first six months of 1995.

K. UNKNOWN/OUTSIDE CITY LIMIT (UNK/OCL)

Cases Filed (January 1 - June 1996)

CI	DI	IN	PR	PO	Unk/OCL Cases	Total Cases	%
3	5	0	1	0	9	302	3%

The abbreviation used for the Unknown/Outside City Limit category was Unk/OCL, and it was used when the location of incident was not specified or the incident occurred outside of San José. This category generated nine complaints which accounted for three percent (3%) of the total complaints received during the first half of 1996. The DI complaints generated the majority of the cases (56%) from this section. Compared to the first six months of 1995, there were two additional complaints filed from this category. Specifically, there were more CI, DI, and PR complaints and less PO complaints received during this reporting period.

Time of Incident (January - June 1996)

Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	Unk/OCL Cases
2	4	2	1	9

Forty-four percent (44%) of the incidents occurred during the day shift hours of the day.⁸¹ The above statistics list the time of the incident that led to a complaint. The swing shift hours and graveyard hours accounted for 22% of the complaints from this category.

Citizen-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Unk/OCL CI Allegs.	Total CI Allegs.	%
0	0	0	0	0	0	1	0	2	0	3	250	1%

The three CI complaints from this category generated three CI allegations. These allegations contributed only one percent (1%) of the total CI allegations received in this reporting period. The UNK/OCL category received the least number of CI complaints and CI allegations during the first six months of 1996.

⁸¹See Footnote 71.

Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Unk/OCL DI Allegs.	Total DI Allegs.	%
0	0	0	0	0	0	0	0	5	0	5	58	9%

There were five DI allegations derived from the five DI cases from this section. The allegations were nine percent (9%) of the total DI allegations received in this reporting period. All the DI allegations were in the Unofficerlike Conduct category.

Citizen- and Department-Initiated Allegations (January - June 1996)

UA	US	UF	RC	DH	ES	IP	FA	UC	MDP	Unk/OCL CI & DI Allegs.	Total CI & DI Allegs.	%
0	0	0	0	0	0	1	0	7	0	8	308	3%

This UNK/OCL section generated eight CI and DI allegations between January and June 1996 as compared to 11 allegations filed in the first six months of 1995. There were four Unnecessary Force allegations filed in the first half of 1995. Also, less Improper Procedure, and Missing/Damaged Property allegations were filed from this section as compared to the first six months of 1995.

XV. CONCLUSION

The Office of the Independent Police Auditor (IPA) has completed its third year of operation. The IPA acknowledges continued cooperation and a strong commitment by the San José Police Department and the City Manager for improving the citizen complaint process. Changes and proposed changes in legislation affecting citizen complaints have resulted in new procedures used by the Office of the Independent Police Auditor (IPA) and the Professional Standards and Conduct Unit (PSCU). The number of citizen complaints filed in this reporting period increased as compared to the same period in 1995. There appears to be a higher public awareness of the IPA as evidenced by the greater number of complaints filed at the IPA. The general profile of the subject officers and complainants revealed very little change from the last reporting period.

The goals for 1996 as defined in the 1995 Year End report have been accomplished or are in progress. One of the goals was to prioritize the investigation of Unnecessary Force complaints which will be accomplished by the end of 1996. Secondly, a consultant was hired to create a system to merge and automate the information at the PSCU and the IPA. Lastly, the creation and distribution of a semiannual IPA newsletter is in place.

The IPA police oversight model continues to be recognized as one of the best in the country by leading experts in the field. The upcoming 1996 Year End report will include the findings of the audits of closed complaints. The IPA will also continue to update previous issues and recommendations and will include new areas of statistical analysis.

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APPENDIX I	Classified Complaints by Council District
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APPENDIX A

SAN JOSE POLICE DEPARTMENT
PROFESSIONAL STANDARDS AND CONDUCT UNIT
BOLAND BILL ADMONISHMENT

Please read and sign this admonishment explaining the law in California (California Penal Code Section 148.6). Without this signed document we cannot investigate your complaint. Your cooperation in complying with this requirement is appreciated. Sign and return this form as soon as possible. If we do not receive your signed form within thirty (30) days, your complaint will be closed.

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDING RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I HAVE READ AND UNDERSTOOD THE ABOVE STATEMENT.

<u>X</u>	<u>X</u>
Signature of Complainant	Date

Print Name Here	PSCU Complaint No. (if known)
-----------------	-------------------------------

Date Complaint Initiated at IPA	SJPD Case Number or Cite # (if known)
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APPENDIX B

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

DANIEL E. LUNGREN
Attorney General

OPINION	:	
	:	No. 96-111
of	:	
	:	July 29, 1996
DANIEL E. LUNGREN	:	
Attorney General	:	
	:	
ANTHONY S. Da VIGO	:	
Deputy Attorney General	:	
	:	

THE HONORABLE DE WITT W. CLINTON, COUNTY COUNSEL,
COUNTY OF LOS ANGELES, has requested an opinion on the following question:

May a law enforcement agency investigate an allegation of police misconduct
if the prescribed information advisory form has not been signed by the person filing the
allegation?

CONCLUSION

A law enforcement agency may investigate an allegation of police misconduct
even though the prescribed information advisory form has not been signed by the person
filing the allegation.

ANALYSIS

Penal Code section 832.5, subdivision (a),¹ provides as follows:

"Each department or agency in this state which employs peace officers shall establish a procedure to investigate citizens' complaints against the personnel of such departments or agencies, and shall make a written description of the procedure available to the public."

The Legislature, through the adoption of section 832.5, has indicated its desire that complaints filed with a law enforcement agency are to be encouraged. (*Pena v. Municipal Court* (1979) 96 Cal.App.3d 77, 82.) The Legislature contemplated that when police misconduct was discovered in such investigations, appropriate disciplinary action would be taken; the purpose of the statute is to have the agency "investigate and remedy wrongdoing." (*Id.*, at p. 82; 71 Ops.Cal.Atty.Gen. 1, 3 (1988).)

Section 148.6 was recently enacted (Stats. 1995, ch. 590, § 1) to provide as follows:

"(a) Every person who files any allegation of misconduct against any peace officer . . . knowing the report to be false, is guilty of a misdemeanor.

"(b) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following information advisory, all in boldface type:

"YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

¹ All unidentified section references herein are to the Penal Code.

"IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

"I have read and understood the above statement.

"

Complainant"

We are asked whether a law enforcement agency may initiate an investigation and take appropriate action in connection with a complaint of police misconduct where the information advisory form has not been signed by the complainant. Essentially, if allegations of police misconduct are contained in an anonymous or unsigned complaint, is the agency prohibited from investigating and taking disciplinary action? We conclude that the agency is not so prohibited.

In analyzing the terms of sections 148.6 and 832.5, we apply well established principles of statutory construction. "When interpreting a statute our primary task is to determine the Legislature's intent." (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.) "To determine the intent of legislation, we first consult the words themselves, giving them their usual and ordinary meaning." (*DeFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601.) "[A] statute '... is to be interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions.' [Citation.]" (*Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1097; see also *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 381.) "A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation.]" (*People v. Hull* (1991) 1 Cal.4th 266, 272.) "A statute should be construed whenever possible so as to preserve its constitutionality." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

Applying these principles, we find that a "law enforcement agency . . . shall require the complainant to . . . sign the . . . information advisory . . ." (§ 148.6, subd. (b).) Use of the term "shall" indicates that the agency's duty is mandatory, not permissive or discretionary. (See *West v. State of California* (1986) 181 Cal.App.3d 753, 760; *State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 855; *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 348.)

However, section 148.6 does not prescribe a penalty for an agency's noncompliance with its statutory duty. No consequences are stated; no sanctions are

expressed. May we add a penalty provision to the terms of the statute under the guise of statutory interpretation?

For example, a complainant refuses to sign the advisory form because of a fear of official retaliation, concern about social ostracism, or merely a desire to preserve his or her privacy. May we insert into section 148.6 a provision that such refusal removes the power and jurisdiction of the agency to investigate the allegations, even if the allegations appear legitimate and substantial?

The courts have examined this general issue in a variety of contexts. A failure to comply with a mandatory duty did not bar further action in *Edwards v. Steele* (1979) 25 Cal.3d 406, 409-413 [administrative decision valid although hearing held and decision rendered after deadlines specified in city charter]; *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 931 [wage resolution valid though enacted prior to the date designated in city charter]; *Garrison v. Rourke* (1948) 32 Cal.2d 430, 434-436 [judicial decision valid though rendered after statutorily prescribed period]; *Cake v. City of Los Angeles* (1913) 164 Cal. 705, 709-710 [tax assessment valid although not adopted within time limit prescribed by statute]; *People v. Curtis* (1986) 177 Cal.App.3d 982, 987-989 [judicial order valid although hearing held after statutory deadline]; and *Castorena v. City of Los Angeles* (1973) 34 Cal.App.3d 901, 908 [reapportionment ordinance valid though enacted subsequent to charter designated deadline]. In *Curtis*, the court relied upon language contained in *French v. Edwards* (1872) 80 U.S. (13 Wall.) 506, 511 [20 L.Ed. 702, 703], which was also quoted with approval in *People v. McGee* (1977) 19 Cal.3d 948, 961. In *French*, Justice Fields declared:

"There are, undoubtedly, many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them, which do not limit their power or render its exercise in disregard of the requisitions ineffectual. Such, generally, are regulations designed to secure order, system and dispatch in proceedings, and by a disregard to which the rights of parties interested cannot be injuriously affected. Provisions of this character are not usually regarded as mandatory unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated." (*French v. Edwards*, *supra*, 80 U.S. at 511.)

The absence of a "penalty for noncompliance, i.e., the consequences . . . in the legislation itself" (*Palmer v. City of Ojai* (1986) 178 Cal.App.3d 280, 293) is thus significant in determining whether a public agency loses power and jurisdiction by its failure to act as required by law. Here, as previously observed, section 148.6 is silent with respect to the consequences of a law enforcement agency's noncompliance in obtaining a signed advisory form.

We have examined in detail the legislative history of the enactment of section 148.6 in 1995. Nothing therein remotely suggests that a law enforcement agency loses its authority to investigate a complaint if the advisory form is unsigned. Obviously the signature is to establish that the complainant has "read and understood" the information contained on the advisory form.

Finally, we are required to interpret section 148.6 in a manner that avoids any doubt as to its constitutionality. (See *Young v. Haines* (1986) 41 Cal.3d 883, 898; 66 Ops.Cal.Atty.Gen. 367, 368 (1983).) Both the federal Constitution (U.S. Const., 1st Amend.) and state Constitution (Cal. Const., art. I, § 3) protect the right of the people to petition government for the redress of grievances. (See *McIntyre v. Ohio Elections Comm'n* (1995) ___ U.S. ___, 115 S.Ct. 1511, 1516-1517, 131 L.Ed.2d 426; *Zablocki v. Redhail* (1978) 434 U.S. 374, 388; *California Transport v. Trucking Unlimited* (1972) 404 U.S. 508, 510; *Mine Workers v. Illinois Bar Assn.* (1967) 389 U.S. 217, 222; *City of Long Beach v. Bozek* (1982) 31 Cal.3d 527, 532-535; *Fair Political Practices Commission v. Superior Court* (1979) 25 Cal.3d 33, 46-49; *Matossian v. Fahmie* (1980) 101 Cal.App.3d 128, 135-137.) This constitutional right has been applied to anonymous complaints (see *McIntyre v. Ohio Elections Comm'n*, *supra*, 115 S.Ct. at 1516 ["the anonymity of an author is not ordinarily a sufficient reason to exclude [the publication] . . . from the protections of the First Amendment"]; *Talley v. California* (1960) 362 U.S. 60, 64 ["persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all"]) and undergirds the statutory right to file complaints of police misconduct (see *Pena v. Municipal Court*, *supra*, 96 Cal.App.3d at 83 ["Many, if not most, allegations of police misconduct are also violations of various criminal laws"]; *Imig v. Ferrar* (1977) 70 Cal.App.3d 48, 55 [it is a policy of the law "to assure utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing"]; *People v. Craig* (1993) 21 Cal.App.4th Supp. 1, 5 ["the importance of providing the community an avenue to report alleged misconduct by peace officers overrides concerns that this process may be abused by individuals to falsely report police misconduct"].)

The plain wording and legislative history of section 148.6, along with the governing principles of statutory construction, including the duty to uphold the statute's constitutional validity, all support the conclusion that a law enforcement agency does not lose its power and jurisdiction to investigate allegations of police misconduct even though it fails to secure the signature of the complainant on the advisory form.

We thus conclude that a law enforcement agency may investigate an allegation of police misconduct and take appropriate action based thereon even though the prescribed information advisory form has not been signed by the person filing the allegation.

* * * * *

CLASSIFICATIONS OF COMPLAINTS

1. **Citizen-Initiated (CI) Complaints** initiated by a civilian alleging misconduct on the part of a member of the San Jose Police Department; these Formal complaints allege a serious violation of Department policy or a violation of law by an officer.
2. **Department-Initiated (DI) Complaints** allege a serious violation of Department policy or a violation of law by an officer; these Formal complaints are initiated by the Office of the Chief.
3. **Informal (IN) Complaints** involve allegations of minor transgressions on the part of a subject officer¹ which may be handled informally by bringing the matter to the attention of the officer's chain of command at the complainant's request.² This is typically the Rude Conduct complaint. However, if the complainant feels that such conduct was in his or her opinion egregious that a Formal (CI or DI) complaint is warranted, the Professional Standards and Conduct Unit is then obligated to investigate this complaint as such. The complainant has ultimate control as to whether to treat the complaint as Formal or Informal.
4. **Procedural (PR) Complaints** are now defined in two separate portions:
 - (a) The first portion includes the following: "After the initial investigation by the Intake Officer, the Department determines the subject officer acted reasonably and within Department policy and procedure given the specific circumstances and facts of the incident and that despite the allegation of misconduct, there is no factual basis to support the allegation." At the end of the investigation, the assigned finding will be "Within Department Policy."
 - (b) The second portion of the definition includes: "The allegation is a dispute of fact case wherein there is no independent information evidence or witnesses available to support the complaint and there exists another judicial entity which is available to process the concerns of the complainant." A finding of "No Misconduct Determined" will be assigned to the dispute of fact cases.

For example, a person files a complaint alleging an Unlawful Search, where the complainant states that the police entered his or her home and conducted a search. After a preliminary investigation, the Professional Standards and Conduct officer discovers that the complainant is on parole and has a search clause. The case will be closed with a finding of "No Misconduct."
5. **Policy (PO) Complaints** pertain to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid. These complaints do not focus on the conduct of the officer but on the policy or law with which the complainant disagrees.

¹ Subject officer refers to the officer of whom the complaint is about.

² San José Police Department, *Response to Independent Police Auditor's First Quarterly Report*, page 7, May 25, 1994.

APPENDIX D

DEFINITIONS OF FINDINGS

1. **SUSTAINED:** The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
2. **NOT SUSTAINED:** The investigation failed to disclose sufficient evidence to clearly prove the allegation made in the complaint or to conclusively disprove the allegation.
3. **EXONERATED:** The acts which provided the basis for the complaint or allegation occurred; however, the investigation revealed that they were justified, lawful and proper.
4. **UNFOUNDED:** The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when the individual member(s) or employee(s) named were not involved in the act or acts which may have occurred.
5. **NO FINDING:** The complainant failed to disclose promised information to further the investigation; or the investigation revealed that another agency was involved and the complaint or complainant has been referred to that agency; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification.

APPENDIX E

MISCONDUCT ALLEGATIONS

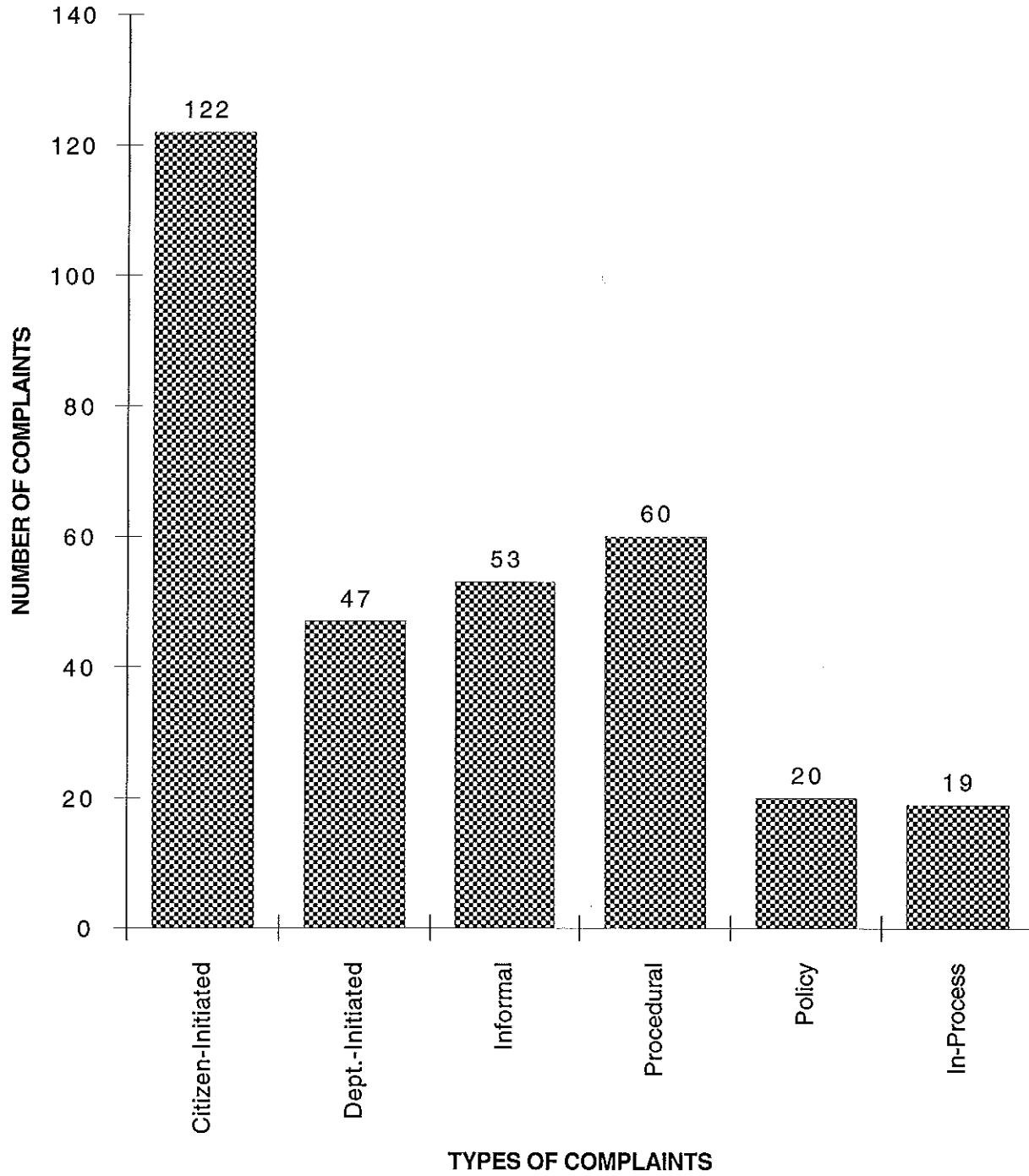
Citizen- or Department-Initiated misconduct complaints will involve one or more of the following general allegations:

1. Unlawful Arrest
2. Unlawful Search
3. Unnecessary Force
4. Rude Conduct (abusive, threatening, profanity, poor attitude, etc., while on duty.)
5. Discrimination/Harassment (sexual, racial, etc.)
6. Excessive Police Service (harassment, providing confidential information, etc.)
7. Improper Procedure (violation of City policy or SJPD Duty Manual.)
8. Delay In Response
9. Failure To Take Action
10. Unofficerlike Conduct (off-duty behavior, violation of the law, drug/alcohol use, misuse of City property, gratuities, bribes, abuse of authority, etc.)
11. Missing/Damaged Property

APPENDIX F

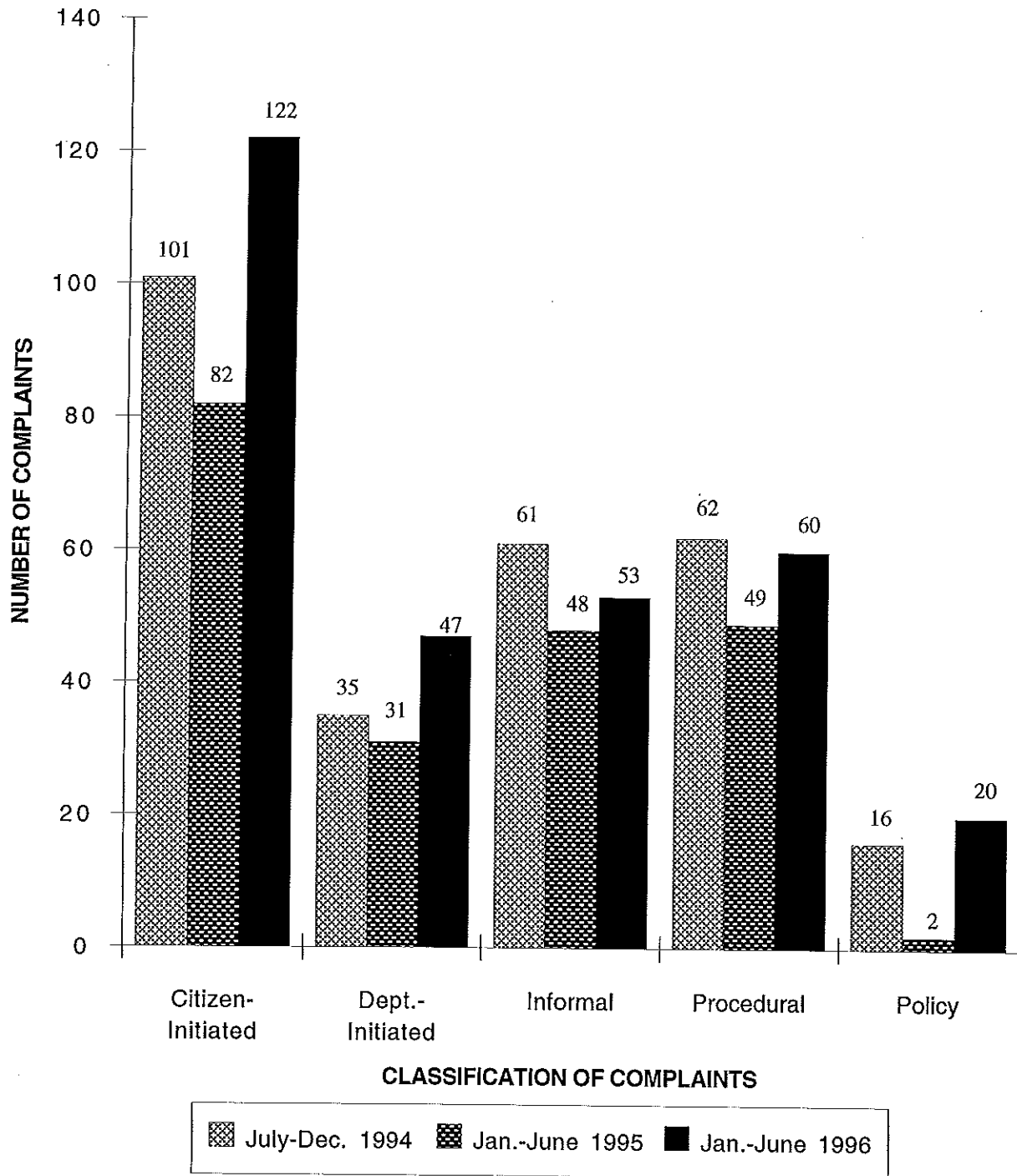
ALL COMPLAINTS RECEIVED

JANUARY 1 - JUNE 30, 1996



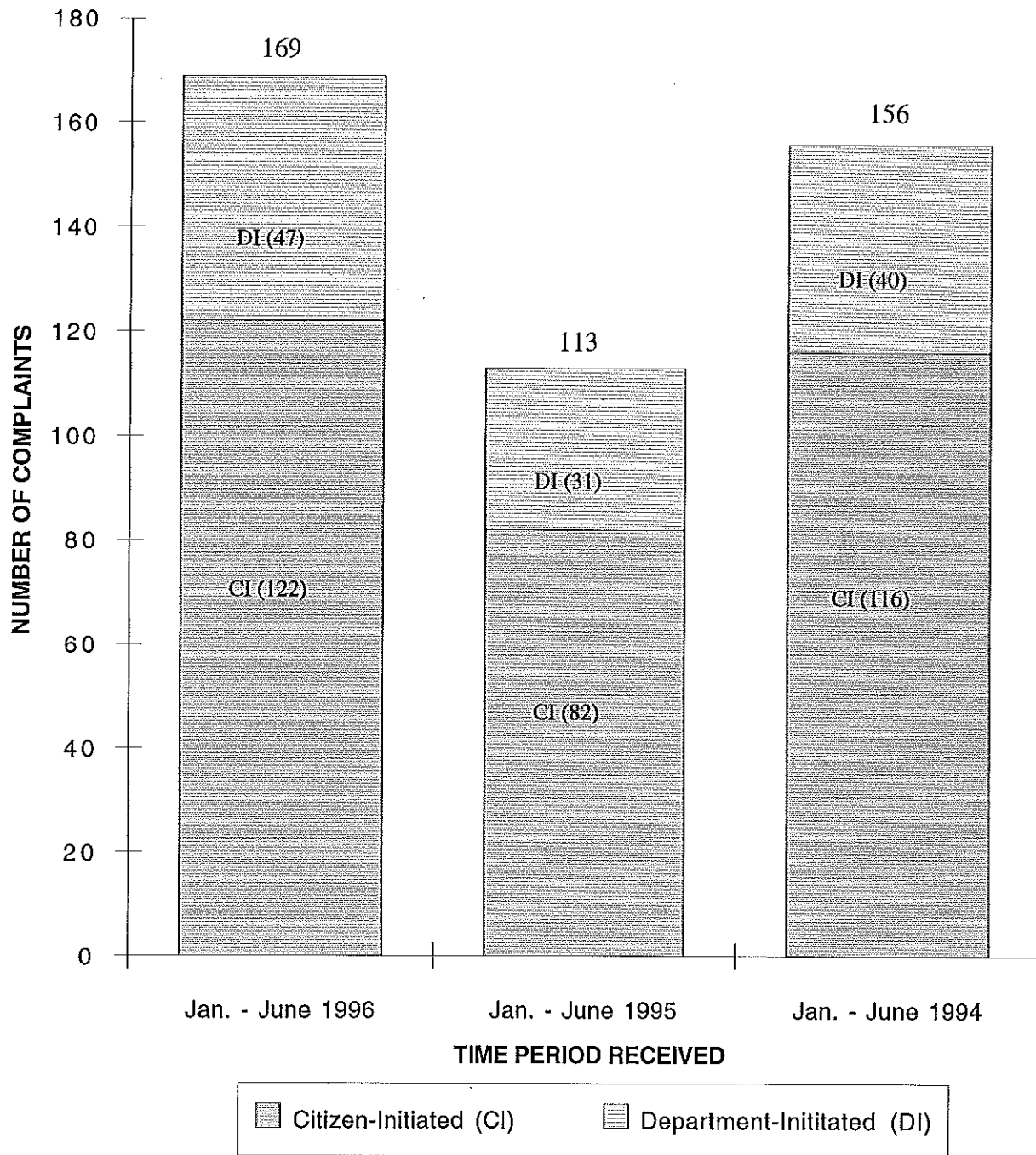
APPENDIX G

CASES RECEIVED IN THREE SIX-MONTH PERIODS



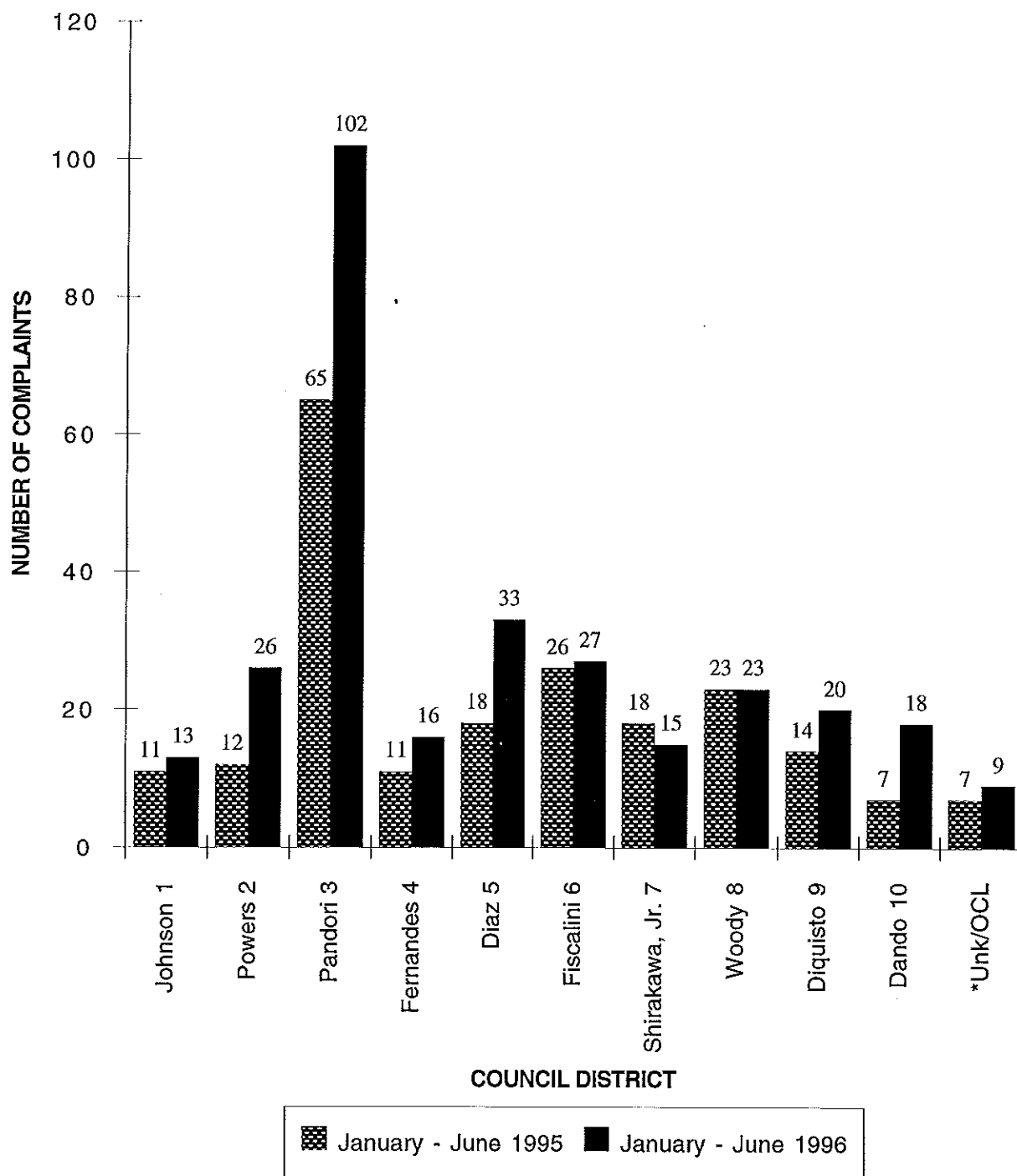
APPENDIX H

**CITIZEN- AND DEPARTMENT-INITIATED CASES
CLASSIFIED AS FORMAL COMPLAINTS**



APPENDIX I

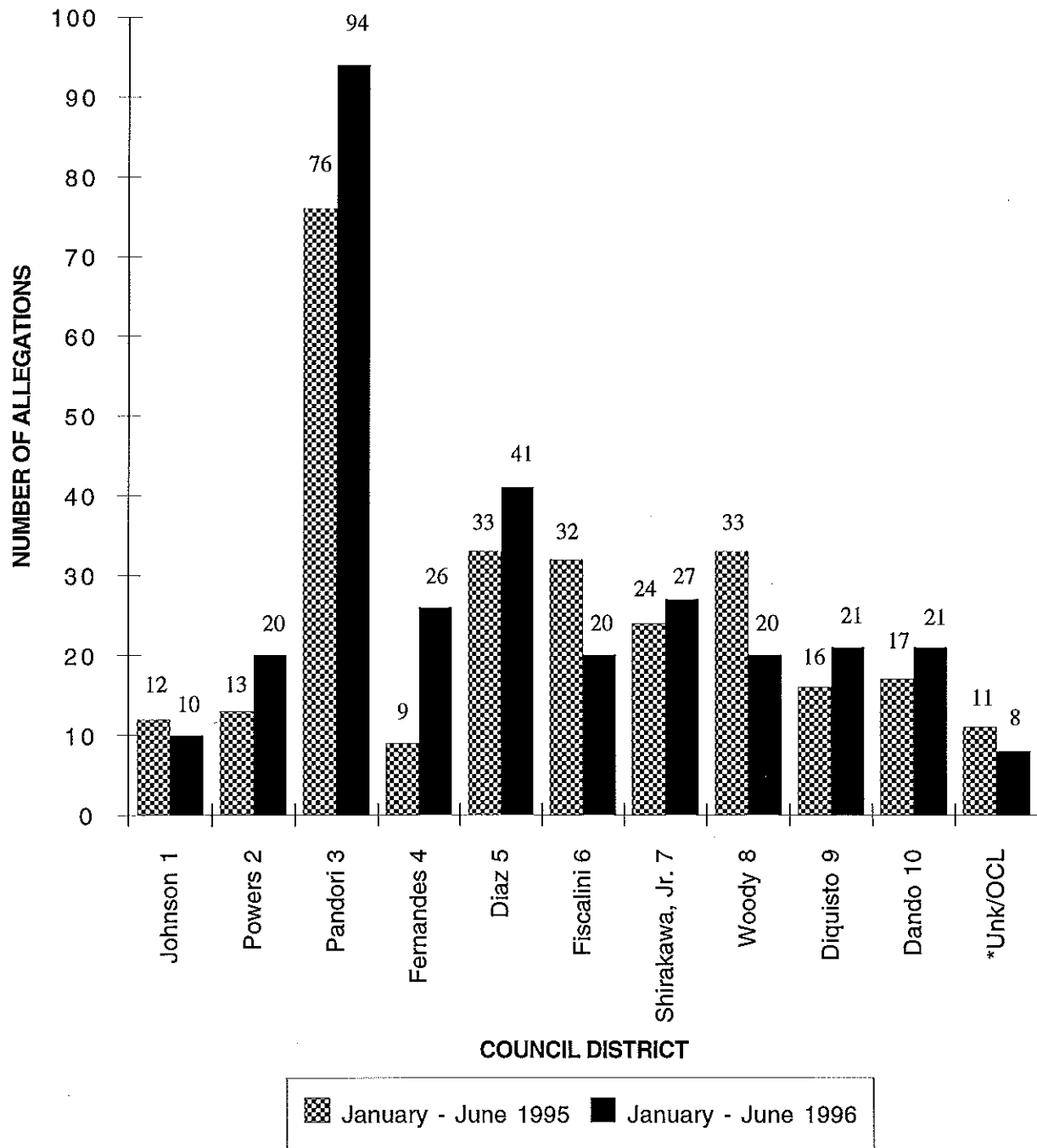
CLASSIFIED COMPLAINTS BY COUNCIL DISTRICT



*Unknown/Outside City Limit

APPENDIX J

CITIZEN- AND DEPARTMENT-INITIATED ALLEGATIONS BY COUNCIL DISTRICT



*Unknown/Outside City Limit

APPENDIX K

TIME OF INCIDENT BY COUNCIL DISTRICT

Districts	Graveyard 12:01 a.m. ... 8:00 a.m.	Day 8:01 a.m. ... 4:00 p.m.	Swing 4:01 p.m. ... 12:00 midnight	Various Times	TOTAL CASES
JOHNSON 1	3	2	7	1	13
POWERS 2	5	3	18	0	26
PANDORI 3	28	33	23	18	102
FERNANDES 4	2	3	9	2	16
DIAZ 5	6	12	15	0	33
FISCALINI 6	9	5	12	1	27
SHIRAKAWA, JR. 7	2	5	8	0	15
WOODY 8	2	8	12	1	23
DIQUISTO 9	3	5	11	1	20
DANDO 10	3	4	10	1	18
¹ Unk/OCL	2	4	2	1	9
TOTAL CASES	65	84	127	26	302
%	22%	28%	42%	9%	100%

¹Unknown/Outside City Limit.