



OFFICE OF THE INDEPENDENT POLICE AUDITOR 2006 MID-YEAR REPORT

I. INTRODUCTION

This report documents the auditing and oversight functions of the Office of the Independent Police Auditor (IPA) for the period of January 1 through June 30, 2006. The report will show that this has been a period of intense activity for the IPA. The number of outreach presentations, audits conducted, complaints received, and overall activity has risen over last year.

Following the 2005 IPA Year End report, the IPA continued to monitor complaint classifications. The increased use of the inquiry complaint classification has continued since mid-year 2005, and has risen significantly over a two-year period. The classification of cases impacts the type of investigation and, in many cases, determines the outcome of the investigation. This report focuses, in part, on the classification process and the impacts of specific classifications on the audit and disciplinary processes.

The IPA would like to acknowledge that the City of San José has the distinction as the safest big city in the country, in large part due to the quality of services provided by the San José Police Department (SJPD) and the City Council's strong commitment to the community. Faced with one of the lowest officer to citizen ratios, it is important to recognize the exemplary work of officers in the SJPD. The Department's ongoing efforts to train officers in cultural sensitivity and crisis intervention, as well as initiatives to maintain a culturally diverse police force, are to be commended.

In an effort to maintain the highest quality of service, the IPA was mandated to provide increased accessibility and accountability to the community. In keeping with this mission, this report presents an analysis of statistical information regarding community concerns raised during the first six months of 2006.

A. FUNCTIONS OF THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

The mission of the Office of the Independent Police Auditor is to provide an independent review of the complaint process, thereby ensuring increased accountability of the San José Police Department. The five primary functions of the IPA are:

- To serve as an alternative location to file a complaint against a San José police officer;
- To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
- To conduct outreach about the complaint process and the services the office provides to the community;
- To make policy recommendations to enhance and improve policies and procedures of the SJPD; and
- To respond to the scene of and review officer-involved shooting investigations.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

B. REPORTING REQUIREMENTS

In 2001 the San José City Council directed the IPA to produce mid-year reports in addition to annual reports. San José Municipal Code Section 8.04.010 mandates that the IPA submit reports to the City Council that: 1) include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the action taken; 2) analyze trends and patterns; and 3) make recommendations.

C. CONTENT OF THIS REPORT

This report covers the activity of the first six months of the 2006 calendar year. It includes a report on complaint statistics and provides an update on policy recommendations from the 2005 Year End Report. The information covered in this report will be discussed in more detail in the comprehensive year-end report, encompassing the activity of the IPA for the full 2006 calendar year.

**II. UPDATE OF POLICY RECOMMENDATIONS MADE IN THE
IPA 2005 YEAR END REPORT**

Two policy recommendations were made in the 2005 Year End Report.

1) That the SJPD Establish an Expanded Shooting at Vehicles Policy

During the past several years many major law enforcement agencies have recognized the ineffectiveness and inherent dangers to the public and officers themselves created by shooting at moving vehicles. Many departments have adopted strict policies that either ban such shootings or more narrowly define the circumstances under which shooting at vehicles would be within policy.¹ The more restrictive policies against shooting at vehicles emphasize that an officer's first response should be to get out of the way of the vehicle. Officers are informed that experience has proven that bullets are unlikely to stop moving vehicles, and that vehicles driven by incapacitated drivers may crash and cause injuries to officers or other innocent persons.

Although San José has not experienced a significant increase in incidents involving officers shooting at moving vehicles, there have been three cases since 2003. One case is particularly troubling because it could have caused a greater tragedy. After being shot by an officer, the driver sped away from a residential neighborhood, reaching estimated speeds of 50 to 60 miles per hour, before finally losing consciousness and crashing into a tree on a major street about a half-mile from the scene of the shooting.

The existing SJPD policy regarding shooting at moving vehicles is contained in section L2641 of the SJPD Duty Manual. It states: *"Firearms will not be discharged under the following circumstances: ... At moving or fleeing vehicles involved in violations of the Vehicle Code (including felony violations such as 20001, 10851, 23105) unless necessary to defend the life of the officer or another person."*

¹ Other cities reviewed by the IPA that have established more restrictive shooting at vehicles policies include: Los Angeles, CA; San Francisco, CA; San Diego, CA; Seattle, WA; Philadelphia, PA; Cleveland, OH; Boston, MA; and Washington D.C.

OFFICE OF THE INDEPENDENT POLICE AUDITOR 2006 MID-YEAR REPORT

The IPA recommended that the SJPD establish a policy advising officers that shooting at moving vehicles is dangerous, generally ineffective, to be avoided, and that the moving vehicle itself shall not presumptively be considered a deadly weapon. Officers should be instructed to move out of the path of the vehicle and refrain from discharging a firearm at the vehicle unless there is no reasonable or apparent means of escape. The policy should continue to allow officers discretion to shoot at moving vehicles only if the officer has an objectively reasonable belief that it was necessary to defend the life of the officer or another, within the above stated parameters.

The intent of this policy is to raise the standard that determines when an officer would be justified in shooting at a moving vehicle. The recommended policy would direct officers to first move out of the way of an oncoming vehicle and reinforce the concept that shooting at the vehicle may actually increase the risk of death or injury to officers as well as the suspect and members of the public. Such a policy would better serve San José police officers, and the larger San José community, by encouraging the officers to remove themselves from dangerous situations involving approaching vehicles, and reduce or eliminate the possibility of injured drivers losing control of their vehicles.

The Council action taken on this recommendation was: San José Police staff was directed to consider establishing an expanded Shooting at Vehicles Policy and report back to the City Council with the IPA's 2006 Mid-Year Report.

2) That the SJPD Continue to Train Officers to Wait for Backup, When Practical, in Situations Where There are Reasonable, Objective Indicators that the Situation Could Escalate to Violence

In two officer-involved shootings reviewed by the IPA, the officer approached the suspect alone without waiting for backup to arrive. Although the IPA was able to review these cases with the benefit of hindsight, it appeared that there were objective and visible factors indicating that the situation could turn violent. The IPA recommended that the SJPD continue to provide regular training that instructs officers to wait for backup in situations that have the potential for becoming violent. **This recommendation was adopted as recommended.**

Other Council Action:

The Independent Police Auditor was directed to consider including additional comparative data in future reports such as: comparison of annual calls for police service in San Jose, as well as changes in San Jose population, and comparable data from similar cities and other national standards, where available.

In order to better contextualize the information presented in the IPA Year End Reports, the Council directed the IPA to consider including comparative data from similar cities. The IPA agrees that this information is valuable and will seek out criteria and comparisons to bring forth useful data. The IPA will research this information for inclusion in the 2006 Year End Report. The SJPD is in the process of conducting an "Internal Affairs Study," results of which may include some of the information requested by Council. The study is projected to be completed by February 2007.

OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT

III. MID-YEAR STATISTICS

A. EXTERNAL / CITIZEN-INITIATED COMPLAINTS

A complaint records a statement of dissatisfaction that relates to police operations, personnel misconduct, or unlawful acts. All complaints from the public that involve a San José police officer are registered through either the office of the IPA or Internal Affairs (IA) and are documented in a shared IA/IPA database. Complaints from members of the public are “external” complaints. These complaints encompass a wide range of allegations ranging from simple procedural violations, to disrespectful behavior, to serious unnecessary force.

Complaint Classifications and Trends

The IPA reviews, monitors, and audits all types of external complaints to ensure that they are classified correctly and the investigation is thorough, objective and fair. Complaints received by the IPA are entered into a shared database and forwarded to Internal Affairs for classification. IA then reviews each case and classifies it as formal, command review, policy, procedure, or inquiry.

Minor rude conduct or procedural violations may be classified as “command review.” If the officer does not have a pattern of similar allegations the complaint may be addressed by a review with the officer, the officer’s supervisor and the IA command officer. *IA Unit Guidelines*.

“Formal” complaint investigations include interviews of subject officers and are concluded with a finding of whether or not the evidence is sufficient to support the allegation. If supported, a finding of “sustained” is made and discipline may be imposed.

The use of the “inquiry” classification has increased dramatically over the past year. The definition of an inquiry is that “the complaint is immediately resolved by the intake officer to the satisfaction of the citizen.” However, many complainants have reported to the IPA that they have been discouraged from filing formal complaints by IA staff. Inquiries are not counted as formal or informal complaints, may receive limited investigation, and are not recorded in officer’s records as misconduct complaints. For more information about the impact of the expanded use of the inquiry classification, see the textbox on page 7.

There has been a significant increase in the last two years in the use of the “procedural” classification as well. Procedural complaints are, by definition, complaints in which the assigned IA investigator determines, after an initial review, that the “officer acted reasonably and within policy and procedure given the specific circumstances and facts of the incident, and there is no factual basis to support the misconduct allegation,” or, there is “a dispute of fact wherein there is no independent information, evidence or witnesses available to support the complaint and another judicial entity is available to process the concerns of the complainant.” *IA Unit Guidelines*. Cases in this classification receive a truncated investigation—the complainants and some witnesses are interviewed, however officers are not questioned. In a procedural case, IA has decided, without interviewing the subject officer, that no misconduct has occurred. The investigation report often reads as if the investigating officer has substituted his or her perceptions or understanding for that of the subject officer. The IPA has audited completed procedural investigations and has raised issues with many cases in this classification because findings were reached without the benefit of critical information that could have been gleaned from an interview of the involved officer.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

Table 1: External / Citizen-Initiated Complaints Filed

External Complaints	Mid-Year 2004			Mid-Year 2005			Mid-Year 2006		
	IPA	IA	Total	IPA	IA	Total	IPA	IA	Total
Formal: Citizen Initiated Complaints	16	53	69	20	34	54	26	27	53
Informal: Command Review Complaints	6	11	17	3	4	7	0	1	1
Procedural Complaints	2	4	6	5	13	18	22	6	28
Policy Complaints	2	2	4	1	0	1	1	1	2
Inquiry	15	34	49	30	41	71	29*	100	129
No Boland	6	3	9	4	2	6	1	9	10
Withdrawn	8	3	11	1	2	3	0	0	0
Pre-Classification	11	13	24	6	0	6	4	3	7
Total Complaints Filed	66	123	189	70	96	166	83	147	230
Citizen Contacts (Not complaints vs. SJPD)	9	8	17	15	6	21	26	20	46

*Of these 29 complaints, 12 were classified as inquiries by the IPA and 17 were classified by IA.

Table 1 reports three years of mid-year external complaints filed by classification. Of the 230 external complaints, 83 were filed in the office of the IPA and 147 were filed at the IA Unit. The IPA forwarded 71 complaints to IA for classification in the first six months of 2006; of these cases, 17 were classified by IA as inquiries, and 22 were classified as procedural. Nearly half of the complaints filed with the IPA office were classified at IA into classifications which would receive abbreviated or no investigation and in which no misconduct could be found.

The total number of complaints classified as inquiries has increased by 82% this year: 129 inquiries by mid-2006 compared to 71 filed at mid-year 2005. The increase in complaints classified as inquiries over the last two years at mid-year has been a striking 163%, from 49 complaints classified as inquiries at mid-year 2004 to 129 at mid-year 2006. Classifying complaints as inquiries resulted in little or no investigation and information identifying the subject officer being removed from the record.

Cases classified as “procedural” increased threefold from mid-year 2004 to mid-year 2005, and increased another 55% by mid-year 2006. The overall increase is from six cases in this classification at mid-year 2004, to 18 at mid-year 2005, to 28 at mid-year 2006. In procedural investigations officers are not interviewed.

The level of complaints classified and tracked more formally have remained consistent in the first six months of 2006 as compared with this point in 2005, however they are down significantly from 2004: 140 at mid-2004, 95 at mid-2005, and 101 complaints at mid-2006. This two-year trend shows a 28% decrease in complaints classified as cases to be fully investigated with officer’s names tracked.

**Other Statistics to Consider:
City of San José Population and
Police Contacts**

The City of San José is the tenth-largest city in the United States and continues to grow. Population increase could generate an increase in police contacts, which may have an impact on the number of police complaints. According to the California Department of Finance, in 2006 the population of the City of San José reached 953,700, a 2.4% increase over a two-year period, from 931,250 in 2004.

Allegations of police misconduct should be considered with the understanding that most San José police officers successfully resolve calls without issues being raised. In the first six months of 2006, members of the SJPD handled 249,751 calls for service from the public. These contacts can cover a wide range of issues, from responding to life threatening situations, to issuing traffic citations, to responding to false alarms.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

**The Santa Clara Civil Grand Jury Report
“Racial Profiling by SJPD—Perception vs. Reality”**

The Santa Clara Civil Grand Jury reviewed allegations from individuals and community organizations that SJPD officers had engaged in racial profiling. The Grand Jury Report issued on May 19, 2006, found that there is not a “systematic sanctioned” program of racial profiling, but stated that they believe that there are “legitimate concerns” regarding individual excesses. The Grand Jury made eight findings and recommendations summarized below:

1. that SJPD officers should provide business cards to individuals in all vehicle and pedestrian stops;
2. that an additional conduit for communicating complaints in confidence be established;
3. that the IPA role and responsibilities be expanded to include some level of investigation;
4. that a task force explore and determine if a Civilian Review Board would be an effective additional mechanism for handling complaints;
5. that SJPD should continue to participate in community outreach programs;
6. that SJPD reassess its current overtime shift schedules for policing the Entertainment Zone (EZ);
7. that the City and SJPD should continue to work with EZ club owners to establish a more synergistic relationship to solve issues in the EZ; and,
8. that the City and SJPD work with community organizations to encourage parental responsibility in overseeing youth activities and promote adherence to curfew ordinances.

**The City of San Jose Response to the Civil Grand Jury Report—
A Study of Internal Affairs Best Practices and Racial Profiling Programs in Other Cities**

At the August 15, 2006, City Council Meeting, responses to the Grand Jury Report were heard and discussed. In response to the concerns raised by the Grand Jury regarding the expanded use of the inquiry classification by SJPD, the Council authorized the SJPD to conduct a study of best practices of internal affairs units in other police agencies. The IPA has provided input to define the scope of the study and will work collaboratively with SJPD to review the findings. The study will provide a basis for evaluation of the concerns raised regarding the inquiry classification and other issues. The study will also look at racial profiling definitions and how these issues are handled in other jurisdictions. The study is projected to be completed by February 2007. It is anticipated that this study will also provide valuable comparative data that will be incorporated into the IPA annual report.

B. INTERNAL / DEPARTMENT-INITIATED COMPLAINTS

The Office of the Chief of Police initiates internal complaints after receiving information alleging a violation of Department policy or a violation of law by a member of the SJPD. The IPA does not audit most internal complaints because they primarily involve management and not misconduct issues. If an internal complaint alleges misconduct and has a nexus to a citizen, the IPA audits the internal case as well. **Table 2** reports that 19 internal complaints were initiated by the SJPD in the first six months of 2006. This represents an increase over the last two years. One department-

initiated case filed during the first six months of 2006 had a “citizen-nexus” and was audited by the IPA.

Table 2: Internal / Department-Initiated Complaints Filed

Internal Complaints	Mid-Year 2004	Mid-Year 2005	Mid-Year 2006
Department Initiated	13	17	19
Total	13	17	19

OFFICE OF THE INDEPENDENT POLICE AUDITOR

2006 MID-YEAR REPORT

C. ALLEGATIONS FILED

Each complaint, whether initiated by the Chief of Police or a member of the public, is analyzed and categorized into descriptive allegation types. The total number of allegations is greater than the number of complaints filed because a single complaint may include more than one allegation.

The number and type of allegations received during the first six months of 2005 and 2006 are enumerated in **Table 3**. There were 427 total allegations received in the first six months of 2006 as compared to 344 at mid-2005. The large increase in allegations in mid-2006 is due in part to the increased number of complaints filed and in part to a change in statistical recording in 2005. In order to more accurately determine the nature of all complaints presented, in 2005 the IPA and IA agreed to begin delineating allegations contained in inquiry complaints—this was a new procedure and was not fully in effect in the early months of 2005. Ten inquiries recorded in early 2005 did not have allegations delineated. Due to the change in reporting data from previous years, only two years of allegation classifications are itemized in this report.

The Problem with Inquiries

In the 2005 Year End Report the IPA discussed the significant increase in the use of the inquiry classification over the previous year. This trend has continued at an extraordinary rate. The numbers of complaints classified as inquiries has increased 163% over three years, from 49 at mid-year 2004 to 129 at mid-year 2006.

Why it matters: Complaints from the community serve as a quality control measure of officer misconduct for SJPd and the community. The complaint process provides a mechanism to track individual officer's misconduct records and determine if a particular officer is developing a pattern of problematic behavior. The Complaint Intervention Program was developed to identify particular problem situations and help to correct the problem. The IPA also tracks officer's complaint records and reports findings to the Council.

The expanded use of the inquiry classification undermines these programs because officer's names are not recorded or tracked, and there is no investigation as to whether the allegations are founded or not. The inquiry classification should be used for cases in which complainants have policy or procedural questions, not for cases with misconduct issues. Review of complaint statistics over the past three years at the mid-year point shows that in spite of an increase in complaints filed, the recorded number of named officers receiving complaints has dropped by nearly 50%. When complaints are classified as inquiries, the officer's complaint records are not available for tracking by the IPA, or by the SJPd for the Department's Complaint Intervention Program, (at mid-2006 two officers had been counseled as part of this program), or for *Pitchess* motions (discovery in criminal cases).

Complainants have reported being dissuaded from filing a formal complaint and encouraged by IA investigators to select the inquiry path of resolution. Some complainants have reported having made the decision to accept the inquiry classification without having a clear understanding of the differences in the process and record retention.

Correcting the problem: Upon completion of the SJPd study of best practices of internal affairs units in other jurisdictions, the IPA will review the findings and the data in conjunction with SJPd and make recommendations regarding changes to definitions and the classification process. (See the textbox on page 6 for more information about the study.)

OFFICE OF THE INDEPENDENT POLICE AUDITOR 2006 MID-YEAR REPORT

Allegations recorded in inquiries increased by 81% at mid-2006 to 163, up from 90 allegations recorded in inquiries at mid-year 2005. The large increase in allegations in inquiries at mid-2006 reflects a rise in the number of calls to IA and the IPA. The SJPD has asserted that inquiries are different from and do not rise to the level of complaints; however, the nature of the allegations in many of the inquiries audited indicates that many cases classified as inquiries reflect citizen dissatisfaction with the conduct and procedures of SJPD officers and should be recorded as complaints. Had allegations in inquiries not been recorded, information about a large number of community concerns would have been lost.

The three most common types of allegations continue to be improper procedure, unnecessary force and rude conduct. Improper procedure allegations in investigated complaints decreased at mid-year 2006, but increased in complaints classified as inquiries. At mid-year 2006 there were 69 improper procedure allegations in investigated cases and 76 allegations in inquiries; at mid-year 2005 there were 86 improper procedure allegations in investigated cases and 40 in cases classified as inquiries. There was a dramatic 112% increase in rude conduct allegations in complaints classified as inquiries from 24 at mid-2005 to 51 at mid-2006. The 51 rude conduct allegations classified as inquiries in 2006 did not record the officer's name and therefore cannot be used to identify problem behavior or trigger the Department's Complaint Intervention Program.²

Also of concern, but reflecting a smaller increase, are the numbers of allegations of unnecessary force, racial profiling and discrimination recorded as of mid-2006. There is a full analysis of the unnecessary force complaints and allegations received on pages 11-12. The numbers of racial profiling and discrimination allegations received doubled from mid-2005 to mid-2006 in formal/informal cases, from three (3) to six (6) racial profiling allegations and from four (4) to ten (10) discrimination allegations. In cases classified as inquiries, racial profiling and discrimination allegations increased from zero to two (2) allegations in both categories.

Table 3: Types of Allegations Received³

Allegations Received Formal/Informal Cases	Mid-Year 2005		Mid-Year 2006	
	#	%	#	%
Improper Procedure	86	34%	69	26%
Unnecessary Force	59	23%	58	22%
Rude Conduct	33	13%	38	14%
Unlawful Arrest	22	9%	36	14%
Unlawful Search	12	5%	13	5%
Unofficer-like Conduct	11	4%	5	2%
Missing/Damaged Property	7	3%	10	4%
Failure to Take Action	11	4%	10	4%
Racial Profiling	3	1%	6	2%
Discrimination	4	2%	10	4%
Excessive Police Service	3	1%	1	0%
Harassment	3	1%	4	2%
Policy/Procedural	0	0%	3	1%
Delayed/Slow in Response	0	0%	1	0%
Total Allegations	254	100%	264	100%

Allegations Received Inquiries	Mid-Year 2005		Mid-Year 2006	
	#	%	#	%
Improper Procedure	40	44%	76	47%
Unnecessary Force	6	7%	11	7%
Rude Conduct	24	27%	51	31%
Unlawful Arrest	4	4%	5	3%
Unlawful Search	5	6%	3	2%
Unofficer-like Conduct	2	2%	3	2%
Missing/Damaged Property	2	2%	1	1%
Failure to Take Action	3	3%	4	2%
Racial Profiling	0	0%	2	1%
Discrimination	0	0%	2	1%
Excessive Police Service	1	1%	1	1%
Harassment	2	2%	3	2%
Policy/Procedural	1	1%	0	0%
Delayed/Slow in Response	0	0%	1	1%
Total Allegations	90 *	100%	163	100%

*10 inquiries recorded in 2005 had no allegations delineated.

² One officer and one supervisor were counseled during the first six months of 2006 through the Complaint Intervention Program.

³ The large increase in allegations in mid-2006 is due in part to the increased number of complaints filed and in part to a change in statistical recording in 2005.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

D. MULTIPLE COMPLAINTS RECEIVED BY INDIVIDUAL OFFICERS

The IPA tracks the number of complaints received by each SJPd officer. **Table 4** provides an overview of this breakdown. The impact of the increase in complaints classified as inquiries and the decrease in complaints in classifications in which officer's names are tracked is readily apparent in this comparative table. The number of officers recorded as receiving complaints has dropped significantly over the past two years—this change correlates with the rise during this period of cases classified as inquiries in which officer's names are not recorded and/or retained. Even with the reduction of the number of named officers in the last two years, the number of officers receiving multiple complaints has increased since 2004.

Table 4: Complaints Received by Individual Officers in a Six-Month Period

Period	Officers Receiving 1 Complaint	Officers Receiving 2 Complaints	Officers Receiving 3 Complaints	Officers Receiving 4 Complaints	Total Officers Receiving Complaints	Total Numbers of Complaints *
Jan - June 2004	169	5	1	0	175	120
Jan - June 2005	103	7	2	2	114	86
Jan - June 2006	76	9	1	0	86	91

*This total includes the following types of classified citizen complaints that are recorded in officer's personnel records: Formal/Citizen Initiated, Command Review, Procedural, and Policy.

E. COMPLAINTS CLOSED BY INTERNAL AFFAIRS

Table 5 compares the number of complaints closed by IA during the first six months of 2004 through 2006. The number of complaints closed may include complaints that were filed in the prior year. In the first six months of 2006, IA closed 220 cases, 198 citizen-initiated/external complaints and 22 internal complaints; at mid-year 2005, 141 cases were closed, 125 citizen-initiated/external complaints, and 16 internal department-initiated complaints; at mid-year 2004 194 complaints had been closed, 176 citizen-initiated/external complaints and 18 internal complaints. There was a rise in the number of complaints closed at mid-year 2006, however 122 of the 198 external complaints closed (61%) were closed as inquiries and were not fully investigated.

Table 5: Closed Complaints

Type of Complaints	Mid-Year 2004	Mid-Year 2005	Mid-Year 2006
External Complaints	176	125	198
Internal Complaints	18	16	22
Total Complaints Closed	194	141	220

External Complaints	Mid-Year 2004	Mid-Year 2005	Mid-Year 2006
Formal: Citizen Initiated Complaints	71	36	45
Informal: Command Review Complaints	21	7	5
Procedural Complaints	11	18	15
Policy Complaints	3	0	1
No Boland/Withdrawn	59	10	10
Inquiry	11	54	122
Total Complaints Closed	176	125	198

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

F. FINDINGS OF INTERNAL AFFAIRS INVESTIGATIONS

Tables 6 and 7 detail the findings of IA complaint investigations for each allegation contained in either an internal or external complaint. There are no findings made in inquiry cases. The standard of proof used by IA, and most police departments, for misconduct cases is “preponderance of evidence.” This means that a finding of “sustained” requires that the weight of the evidence supports the conclusion that it is more likely than not that the misconduct occurred.

At the mid-year point in 2006, seven (7) allegations were sustained in six (6) of 198 external citizen initiated cases closed. In internal cases 28 allegations were sustained in 22 cases closed.

Table 6: Disposition of Allegations: External/Citizen-Initiated Complaints

Disposition	Allegations														Total
	ES	D	DR	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	
Sustained								4		1			1	1	7
Not Sustained		1			13			2		12					28
Exonerated					27			15				20		4	66
Unfounded					4			6	2	2	1				15
No Finding	1	4		1	14	3	1	25	2	11	1	9	1	1	74
Within Procedure					8	1		11						1	21
No Misconduct Determined		4			2			2		10	1				19
Command Review								1		4					5
Within Policy								1							1
Total Allegations	1	9	0	1	68	4	1	67	4	40	3	29	2	7	236

Table 7: Disposition of Allegations: Internal/Department-Initiated Complaints

Disposition	Allegations														Total
	ES	D	DR	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	
Sustained								15	5				8		28
Not Sustained															
Exonerated															
Unfounded															
No Finding															
Within Procedure															
No Misconduct Determined															
Command Review															
Within Policy															
Total Allegations	0	0	0	0	0	0	0	15	5	0	0	0	8	0	28

Legend of Allegations			
D=	Discrimination	IP=	Improper Procedure
DL=	Delay in Response/Slow Response	MDP=	Missing/Damaged Property
ES=	Unofficer like Conduct	RC=	Rude Conduct
FA=	Failure to Take Action	RP=	Racial Profiling
F1=	Unnecessary Force (w/medical)	UA=	Unlawful Arrest
F2=	Unnecessary Force (w/o medical)	UC=	Unofficer like Conduct
H=	Harassment	US=	Unlawful Search

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

G. SUSTAINED COMPLAINTS

Complaints are resolved differently based upon the classification of the complaint. **Table 8** indicates that of 65 external complaints closed in classifications in which officers names are tracked, six complaints were sustained, resulting in a 9% sustained rate for the first half of 2006. The “sustained rate” is calculated based upon the number of sustained complaints among those classified as formal, command review, or procedural. The number of sustained external cases has increased slightly from the four cases sustained in 2005, but is down significantly from the 11 complaints sustained in 2004.

Table 8: Formal Complaints and Sustained Cases

Period/Type of Complaints	Closed Complaints	Sustained Complaints	Sustained Rate
2004 Mid-Year/External Complaints	102	11	11%
2004 Mid-Year/Internal Complaints	18	17	94%
2005 Mid-Year/External Complaints	61	4	7%
2005 Mid-Year/Internal Complaints	16	14	88%
2006 Mid-Year/External Complaints	65	6	9%
2006 Mid-Year/Internal Complaints	22	22	100%

H. UNNECESSARY FORCE COMPLAINTS

Unnecessary force allegations are divided into two categories: Class I and Class II. A Class I allegation involves serious bodily injury requiring immediate medical care. Class II force is alleged when the complainant reports no injuries or the injuries were not serious enough to require immediate medical attention.

Table 9 indicates that the number of unnecessary force **complaints** filed by mid-2006 has increased over the last two years, with 52 unnecessary force complaints filed in 2006, 42 force complaints in investigated cases, and 10 force complaints classified as inquiries.

Table 10 shows that the number of unnecessary force with serious injury **allegations** in all complaints filed increased to 13 in 2006, up from eight at this time in 2005, and seven at mid-year 2004.

Table 9: Unnecessary Force External Complaints Filed

Period	UF Class I Complaints	UF Class II Complaints	Total UF Complaints	Total Number of Complaints	UF% of Total Complaints	UF Class I Inquiry Complaints	UF Class II Inquiry Complaints
Mid-Year 2004	5	35	40	189	21%	N/A	N/A
Mid-Year 2005	6	32	38	166	23%	0	6
Mid-Year 2006	9	33	42	230	18%	3	7

Table 10: Unnecessary Force Allegations Filed in External Complaints

Period	UF Class I Allegations in Complaints	UF Class II Allegations in Complaints	Total UF Allegations in Complaints	UF Class I Allegations in Inquiry Complaints	UF Class II Allegations in Inquiry Complaints
Mid-Year 2004	7	53	60	N/A	N/A
Mid-Year 2005	8	52	60	0	6
Mid-Year 2006	9	49	58	4	7

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

Table 11 shows a breakdown of the dispositions of unnecessary force allegations in complaints closed by IA at mid-year 2004 through 2006. At mid-year 2006, one case with two unnecessary force allegations had been sustained in the last three years; these allegations were sustained in late 2004 and are not reflected in the mid-year table below.

Table 11: Disposition of Unnecessary Force Allegations in External Complaints

Disposition	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006	
	UF Class I	UF Class II	UF Class I	UF Class II	UF Class I	UF Class II
Sustained	0	0	0	0	0	0
Not Sustained	0	7	0	3	0	13
Exonerated	3	49	6	27	0	27
Unfounded	0	3	0	6	0	4
No Finding	1	4	0	4	1	14
Within Procedure	0	1	0	6	0	8
No Misconduct Determined	0	0	0	6	0	2
Total Allegations	4	64	6	52	1	68

The IPA tracks the level of injury alleged in unnecessary force complaints. **Table 12** shows the level of injury reported by complainants in the first six months of 2004 through 2006. There has been no significant change in level of injuries over the last few years.

Table 12: Complainant's Level of Injury

Degree of Injury	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006	
	Number	%	Number	%	Number	%
Major	2	5%	2	7%	1	3%
Moderate	5	13%	3	10%	4	11%
Minor	22	55%	24	80%	29	81%
None	4	10%	1	3%	2	6%
Unknown	7	18%	0	0%	0	0%
Total	40	100%	30	100%	36	100%

I. OFFICER-INVOLVED SHOOTINGS / CRITICAL INCIDENTS

Two non-fatal officer-involved shooting incidents occurred during the first six months of 2006. According to procedures developed in 2004, the IPA was called to the scene of the incidents for a briefing regarding the circumstances of the shooting. Because neither case resulted in a fatality, there were no Grand Jury hearings. One case has been closed as “within policy” and the second is pending administrative review.

Table 13: Officer-Involved Shootings in the first Six Months of 2006

Case	Ethnicity	Mental Illness History?	Citizen Armed?	Type of Weapon	Citizen Shoot at Officer?	Prior Criminal Record?	CIT at Scene?	Citizen's Injuries	Within Policy?	Other Weapons Used
1	Hispanic	Unknown	No	Vehicle	No	Unknown	No	Wounded	Yes	No
2	Unknown	Unknown	Gun	Vehicle	No	Yes	No	Wounded	Unknown	No

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

Table 14 provides information about two fatal critical incidents that involved SJPd. At this time the IPA has no jurisdiction and no ability to review reports of these incidents. These cases are being considered by the IPA for policy recommendations in the 2006 IPA Year End Report.

Table 14: Critical Incidents Resulting in Death in the first Six Months of 2006

Case	Ethnicity	Mental Illness History?	Person Armed?	Police Weapon Used?	Cause of Death?	Within Policy?
1	Hispanic	Unknown	Garden hoe	Baton, pepper spray, TASER	Blunt impacts of the head and torso with skull, rib and sternal fractures, intracranial hemorrhages, and brain injuries. Contributory cause: Status post multiple Taser device applications Manner of Death: Homicide (Physical altercation with assailant(s) and subsequent physical altercation with police).	Unknown
2	Hispanic	Unknown	No	TASER	Bronchopneumonia complicating penetrating chest injury. Manner of Death: Accident (passenger of motor vehicle which struck wrought iron fence while evading police).	Unknown

J. AUDITING COMPLAINTS

Auditing by the IPA is the final step in the processing of a complaint, and is conducted prior to notifying the complainant or the subject officer of the findings. Audits involve a critical analysis of the circumstances leading to the misconduct complaint and evaluation of the quality of the investigation. The audit process is in place to provide assurance to the community that complaints are taken seriously and examined thoroughly, impartially, and without preconceived conclusions. The audit determines whether the case should be closed or considered for additional investigation or analysis; these determinations are documented in an internal IPA database for statistical purposes. The following statistics reflect complaints audited during the first six months of 2006, as compared with mid-2004 and mid-2005.

Through audits, perceived deficiencies in an investigation and/or disagreements with findings reached by the IA investigator are determined. An audit results in closure of the case, request for additional investigation, or disagreement with the outcome of the investigation. **Table 15** indicates that in the first six months of 2006, of the 91 investigated complaints audited, the IPA agreed with the dispositions of IA in 41 cases after the first review (45%). During this period, 50 complaints were identified by the IPA for further discussion or investigation of which 23 were still under review as of June 30, 2006; seven cases resulted in disagreement between the IPA and IA regarding findings and/or classification. During this period, the IPA audited 44 inquiry complaints in addition to the investigated complaints audited.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT**

Table 15: IPA Audit Determination

Audit Determination in Investigated Cases	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006	
	Audits	%	Audits	%	Audits	%
Agreed at First Review	79	75%	54	84%	41	45%
Agreed after Further Action	24	23%	3	5%	20	22%
Disagreed after Further Action	3	3%	0	0%	7	8%
Audits in Progress	0	0%	7	11%	23	25%
Total Complaints Audited	106	100%	64	100%	91	100%
Total Inquiries Audited	N/A	N/A	N/A	N/A	44	N/A

K. OFFICER DISCIPLINE

The type of discipline that is imposed on officers varies from counseling and training to termination. **Table 16** provides a breakdown of the actions taken and of the type of discipline imposed during the first six months of the year. Of 198 closed complaints in the first six months of 2006, there were seven sustained allegations in six citizen-initiated/external cases; nine officers were disciplined or received training during this period.

In sharp contrast, in internal Department-initiated cases there were 28 sustained allegations in 22 sustained complaints closed at mid-year 2006; in these cases 23 officers were disciplined or received training during this period.

Table 16: Discipline Imposed on Officers

Discipline	Mid-Year 2004				Mid-Year 2005				Mid-Year 2006			
	Officers in External Complaints	Officers in Internal Complaints	Total	%	Officers in External Complaints	Officers in Internal Complaints	Total	%	Officers in External Complaints	Officers in Internal Complaints	Total	%
Training	0	0	0	0%	0	0	0	0%	1	0	1	3%
Training and Counseling	12	2	14	37%	7	1	8	30%	3	2	5	16%
Documented Oral Counseling (DOC)	6	7	13	34%	3	7	10	37%	2	9	11	34%
Letter of Reprimand	0	2	2	5%	0	0	0	0%	1	2	3	9%
10- Hour Suspension	0	1	1	3%	0	2	2	7%	0	7	7	22%
20- Hour Suspension	0	0	0	0%	0	1	1	4%	0	0	0	0%
30- Hour Suspension	0	0	0	0%	0	1	1	4%	0	0	0	0%
40- Hour Suspension	0	2	2	5%	0	0	0	0%	0	2	2	6%
Settlement Agreement	0	1	1	3%	0	2	2	7%	1	1	2	6%
Demotion	0	0	0	0%	1	0	1	4%	0	0	0	0%
Termination	1	3	4	11%	0	0	0	0%	1	0	1	3%
Retirement before Discipline	0	0	0	0%	0	1	1	4%	0	0	0	0%
Resigned before Discipline	1	0	1	3%	0	1	1	4%	0	0	0	0%
Total Discipline Imposed	20	18	38	100%	11	16	27	100%	9	23	32	100%

OFFICE OF THE INDEPENDENT POLICE AUDITOR
2006 MID-YEAR REPORT

IV. CONCLUSION

Review of IA investigations and classification has been a major focus of the work of the IPA during the first six-months of 2006. Trends noted in the classification of complaints include more complaints placed into classifications that will not receive full, if any, investigation. The IPA has analyzed complaints in these classifications more closely than in previous years and has challenged the classifications of more of these cases. The increased number of complaints classified as inquiries in which officers names are not tracked hampers the ability of the IPA and the SJPD to determine whether officers are receiving multiple complaints and may be engaged in problematic behavior.

During this period the City Council authorized a study of best practices of internal affairs units of other cities to provide a basis of evaluation of these issues. The IPA has provided recommendations for the scope of the study and looks forward to a collaborative effort in reviewing the findings of the study upon completion. The study will also look at racial profiling definitions and how these issues are handled in other jurisdictions.

We would like to take this opportunity to acknowledge the continued cooperation of the San Jose Police Department and, specifically, the efforts of the Internal Affairs Unit in providing the needed information and documentation to make the work of the IPA possible.