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OFFICE OF THE INDEPENDENT POLICE AUDITOR 2008 MID-YEAR REPORT

(Corrected version see pg 3.)

I. INTRODUCTION

This 2008 Mid-Year 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, 2008.

The IPA provides the community with increased accessibility and accountability of misconduct and policy issues involving the San José Police Department (SJPD). This report presents statistical information regarding complaints filed during the first six months of 2008 and an update on the progress of the most recent IPA recommendations.

Current events dictate that IPA activity occurring after June 30, 2008 be included in this report:

1. The report provides a description of the revised complaint process.
2. With the leadership of the IPA office in transition in January 2009, this report includes information regarding accepted minimum standards/necessary features for effective audit models of oversight of law enforcement.
3. Alleged unlawful SJPD arrests for drunk in public pursuant to California Penal Code §647(f) is an issue that has been the subject of many complaints and is a topic on which this office has made recommendations. A summary of the report submitted for the November 18, 2008 City Council meeting on 647(f) arrest complaints is included to reflect and document the IPA recommendations.
4. An issue has been raised regarding IPA retention of IA investigation reports; a summary of this issue is provided.

A. IPA MISSION AND GUIDING PRINCIPLES

The mission of the Office of the Independent Police Auditor is to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations. By providing outreach to the San José community and making thoughtful policy recommendations to the City Council, the IPA works to promote accountability and to strengthen the relationship between the San José Police Department and the community it serves.

IPA guiding principles:

- The IPA strives to ensure that all concerns reported by members of the public are classified and investigated at the appropriate level based upon the premise that any case brought forward containing misconduct issues will be classified as a complaint with associated allegations, findings and officer names tracked.
- The IPA reaches out to inform the community about the complaint process and to listen and respond to broader community concerns.

OFFICE OF THE INDEPENDENT POLICE AUDITOR 2008 MID-YEAR REPORT

- The IPA carefully considers aggregate data from complaints, community concerns and public policy in crafting recommendations aimed toward improving the quality services of the San José Police Department.

B. FUNCTIONS OF THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

The five primary functions of the IPA are:

- To serve as an alternative location to file complaints against San José police officers;
- 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 and to review officer-involved shooting and death-in-custody reports.

C. 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 actions taken; 2) analyze trends and patterns; and 3) make recommendations.

D. CONTENT OF THIS REPORT

This report covers complaint data for the first six months of the 2008 calendar year. It includes multi-year comparative data on complaint statistics and provides an update on policy recommendations made in the 2007 IPA Year End Report. A more comprehensive discussion of all complaint information and issues for 2008 will be presented in the IPA Year End Report. The report also includes a description of the new complaint process instituted July 2008, discusses the SJPD 2007 Annual Force Response Report released July 31, 2008, and outlines current issues relevant to the IPA.

II. UPDATE OF POLICY RECOMMENDATIONS MADE IN THE IPA 2007 YEAR END REPORT

Update to Recommendation #1.

IPA Recommendation: That the Mayor and City Council direct the City Manager to direct the SJPD to enter misconduct complaints into the shared database contemporaneous with the date of SJPD knowledge of the complaint to ensure accurate recording, reporting and tracking of all complaints.

The Council took no action regarding this recommendation. The SJPD has assured the IPA that efforts will be made to enter information on all complaints into the shared database in a timely manner. The IPA will continue to track this issue.

OFFICE OF THE INDEPENDENT POLICE AUDITOR 2008 MID-YEAR REPORT

Update to Recommendation #2.

IPA Recommendation: That the Mayor and City Council direct the City Manager to direct the SJPD to revise its policies to ensure that written notice is given of the property return/auction/disposal process to the owner at the time that property is booked.

In 2007 the IPA became aware of an issue regarding the return of property taken by the SJPD during the arrest process for safekeeping. When an officer arrests an individual, the individual may have possession of personal property which is booked by the SJPD for safekeeping. This property must be claimed within four months of booking or it is subject to destruction or public auction by the police department. Notification of the pending disposal is mailed to the last address of record. It is not unusual that the owner may still be in custody or has moved. The notification letter may not reach the owner in time for the owner to make arrangements for another person to claim his/her property. Because of space limitations, the property cannot be stored indefinitely; within four months the property may be sold at public auction and when the owner is released there is no property to retrieve.

The Council agreed with the IPA recommendation and directed the City Manager to direct the SJPD to review and potentially * revise policies to ensure that written notice is given of the property return/auction/disposal process to the owner at the time that property is booked.

Update to Recommendation #3.

IPA Recommendation: That the Mayor and City Council direct the City Manager and the City Attorney to standardize the processes used by San José City departments to provide notice to owners of the intention to tow a vehicle for violation of San José Municipal Code §11.56.020.

Through the complaint process the IPA was made aware of the absence of a uniform policy regarding the notice and towing of vehicles parked on a city street for more than 72 hours. Absent extenuating circumstances, fairness and protection of individual property rights requires that reasonable notice be given before property is seized. Several City departments share responsibility for enforcing this parking regulation, but no citywide standard has been articulated to ensure equal enforcement of this parking violation.

The Council agreed with the IPA recommendation and directed the City Manager to standardize the process by which San José City departments provide notice to owners of the intention to tow a vehicle for violation of the San José Municipal Code Section 11.56.020.

III. UPDATE ON THE REVISED COMPLAINT PROCESS

In July 2008 the IA and IPA offices began using a revised complaint system. Under this revised system the definitions of both complaint types and allegations were changed from those used under the prior process.

The prior process encompassed several types of complaints: citizen-initiated (external), department-initiated (internal), procedure, policy, command review and inquiry.

* The words "review and potentially" have been added to conform with corrected minutes of the 6/3/08 Council meeting.

OFFICE OF THE INDEPENDENT POLICE AUDITOR 2008 MID-YEAR REPORT

Under the revised system only two types of cases are deemed to be “complaints,” conduct complaints and policy complaints:

- A conduct complaint is defined as an expression of dissatisfaction that contains an allegation which demonstrates misconduct. Misconduct is defined as an act or omission by an SJPD member that is a violation of Department or City policy, procedure, rules, regulations or the law, which if proven true may result in disciplinary action. Officer names are tracked for this type of complaint.
- A policy complaint concerns a current SJPD policy which was properly implemented but which the complainant believes is inappropriate or not valid. These complaints reflect dissatisfaction with the policy itself, not with the officer implementing the policy; officer names are not tracked.

Under the new system, only allegations that may lead to discipline will be formally investigated. Allegations of conduct that may not lead to discipline are not classified as “complaints.” Instead these matters are called “non-misconduct concerns.” The names of the officers will not be tracked for inclusion in the early warning system; names will be unavailable to the IPA.

A change regarding internal complaints will have a great impact on IPA reporting of misconduct allegations and resultant discipline. The new process no longer considers department-initiated complaints to be complaints, but “investigations.” This distinction appears to be wholly semantic since both “complaints” and “investigations” arise from allegations of misconduct. Accompanying the name-change decision was a determination that information about these “investigations” would no longer be available to the IPA. Since its inception the IPA has reported on department-initiated complaints. This change eliminates the ability of the IPA to report this information to Council and the community. This is significant because the majority of discipline meted out by SJPD results from department-initiated cases. Information on the types of allegations sustained, officers receiving multiple complaints, and discipline imposed in internal complaints will no longer be independently reported by the IPA.

The new process also includes revised names for allegations; it eliminated some allegations and added new allegations. The revised complaint process eliminated the distinction between Class I force and Class II force allegations; force allegations will no longer be distinguished by the seriousness of the injury alleged.

Old Allegations	New Allegations
Unlawful Arrest	Arrest or detention
Unlawful Search	Search or seizure
Unnecessary Force	Force
Rude Conduct	Courtesy
Failure to Take Action	Neglect of duty
Unofficer-like Conduct	Conduct unbecoming an officer
Discrimination	Bias-based policing
Racial Profiling	Bias-based policing
Improper Procedure	Procedure
Excessive Police Service	None - collapsed into procedure
Harassment	None - collapsed into procedure
Missing/Damaged Property	None - collapsed into procedure
Delayed/Slow Response	None - collapsed into procedure
Department Initiated only (new)	Workplace discrimination
Department Initiated only (new)	Workplace harassment

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

The revised process also prompted SJPD to make changes in its Duty Manual. An example is the changes made to §C1308 regarding courtesy. The new Duty Manual section no longer instructs officers to be courteous and tactful in their dealings with the community and allows profanity when appropriate.

Former SJPD Duty Manual §C1308 Courtesy	Revised SJPD Duty Manual §C1308 Courtesy
Department members will be courteous to the public and tactful in the performance of duties. Members will not use coarse, violent, profane or insolent language and will not express any prejudice concerning race, religion, politics, national origin, or similar personal characteristics.	Department members will not inappropriately use profane or derogatory language or use obscene gestures during a contact with a member of the public.

The revised process was implemented after the close of this reporting period. The IPA will be closely monitoring the changes to the process. Further information and assessment will be provided in the 2008 IPA Year End Report.

IV. CURRENT ISSUES

A. Effective Civilian Oversight of Police Misconduct Issues

With its decision declining renewal of IPA Barbara Attard’s contract, the council is charged with hiring a new police auditor. At this juncture, it is important to look at the historical context of the establishment of the Office of the Independent Police Auditor and to evaluate the present effectiveness of this entity.

In 1993, Mayor Hammer and the City Council, in response to strong, persistent community pressure to establish civilian oversight of the San Jose police department, attempted to strike a balance when forming the Office of the Independent Police Auditor. They established a state-of-the-art form of oversight, the auditor model, tasked with reviewing the police department’s internal investigations of community complaints. While not a strong investigative model of oversight, and not a civilian review board that involves members of the community in the oversight function, the strength of the Office of the Independent Police Auditor is its independence and the status of the police auditor as a council appointee. To ensure connectedness to the community, the police auditor invited community members to participate in an advisory capacity and the IPA Advisory Committee (IPAAC) was formed.

The importance of the independence of the auditor is emphasized in the **San Jose Municipal Code §8.04.020 Independence of the police auditor:**

- A. The police auditor shall, at all times, be totally independent and request for further investigations, recommendations and reports shall reflect the views of the police auditor alone.
- B. No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in Section 8.04.010, above. (Ord. 25213)

In order to be effective the IPA must have freedom and authority, and the support of the Mayor and City Council, to exercise the independence mandated in the Municipal Code. It is only with support and political will that civilian oversight of police misconduct can be successful.

OFFICE OF THE INDEPENDENT POLICE AUDITOR

2008 MID-YEAR REPORT

The 2006 IPA Year End Report included an analysis of persistent concerns regarding complaint classification trends; recommendations were put forth to improve the complaint process. The report also recommended that IPA authority should include limited investigative authority. After a lengthy meeting at which many leaders and members of the community and the IPA Advisory Committee voiced support for increased oversight, the Council elected not to expand IPA authority. Based upon a challenged opinion from the city attorney, the council withdrew the authority of the IPA to audit officer-involved shootings¹ at a subsequent Council meeting in September 2007. The City Attorney opined that the Mayor and Council did not have the authority to expand the authority of the IPA.

The San Jose IPA, a leader in the field when established in 1993, has fallen behind in the world of oversight today. Auditor offices established more recently have the authority to classify complaints and to investigate, if the police department is unwilling to conduct a thorough or unbiased investigation. Many auditor agencies are augmented by civilian review boards that provide valuable and considered input into the process. Many oversight agencies have independent counsel to advise them.²

The City of San Jose has a commitment to excellence and continuous improvement as one of its core values. In keeping with these ideals, it is time to update the authority of the IPA to give the agency the tools it needs to be effective and to restore its value to the community.

Core Principles of an Effective Police Auditor's Office **From "The New World of Police Accountability" by Sam Walker³**

INDEPENDENCE

A police auditor's office must be fully independent of the law enforcement agency which it audits. To assure independence, the auditor must only be removed via a clearly defined removal process and only for cause.

CLEARLY DEFINED SCOPE OF RESPONSIBILITIES

The scope of the responsibilities of a police auditor's office must be clearly defined by ordinance (or contract) and include specific language defining audit responsibilities, unfettered access to relevant records, formulating police recommendations, issuing public reports, and investigating critical incidents.

ADEQUATE RESOURCES

A police auditor's office must have adequate resources to ensure that all duties can be conducted effectively and efficiently. The size of an auditor's office staff should be based on a formula reflecting the number of full-time sworn officers. Adequate resources primarily include full-time professional and clerical staff.

UNFETTERED ACCESS

With the exception of files related to an on-going criminal investigation, a police auditor must have unfettered access to all documents and data in the law enforcement agency.

FULL COOPERATION

A police auditor must have the full cooperation of all employees of the law enforcement agency under its jurisdiction; such cooperation should be made a condition of their employment. With respect to potential self-incrimination, legal standards *shall* prevail.

SANCTIONS FOR FAILURE TO COOPERATE

¹ The authority to audit officer involved shootings was instituted in 2004 by the Council in response to public outcry after the 2003 Cau Thi Bich Tran shooting.

² Other cities include Boise, ID, Denver, CO; Los Angeles, CA; Portland, OR; Sacramento, CA.

³ Emeritus Professor of Criminal Justice, Sam Walker, author of 11 books on policing, criminal justice history and policy, and civil liberties is a nationally acknowledged expert on civilian oversight issues. He outlines in detail those conditions deemed necessary to the success of an auditor model of civilian oversight.

OFFICE OF THE INDEPENDENT POLICE AUDITOR 2008 MID-YEAR REPORT

The enabling ordinance of an auditor's office must specify sanctions for failure to cooperate with the work of an auditor.

PUBLIC REPORTS

A police auditor must issue periodic public reports. Such public reports shall be issued at least once a year and, ideally, more frequently.

NO PRIOR CENSORSHIP BY THE POLICE DEPARTMENT

Reports by the police auditor shall not be subject to prior censorship by the law enforcement agency.

COMMUNITY INVOLVEMENT

A police auditor must have the benefit of community involvement and input which can best be achieved through a diverse advisory board.

CONFIDENTIALITY / ANONYMITY

The work of a police auditor must respect the confidentiality of public employees. Violation of confidentiality shall be considered a serious breach of professional standards.

ACCESS TO THE POLICE CHIEF / SHERIFF

A police auditor must have direct access to the chief executive of the law enforcement agency under its jurisdiction. At a reasonable frequency and upon request, a police chief or sheriff must agree to meet with the police auditor.

NO RETALIATION

The enabling ordinance of an auditor's office must specify that there shall be no retaliation against the auditor for work done as a part of the auditor's responsibilities, including statements made in public reports.

B. IPA Retention of Complaint Records

An issue that has surfaced this year involves the authority of the IPA to retain complaint records. The IPA receives copies of IA complaint investigations to conduct audits. When the IPA office was established, the initial retention period for the IPA was set at three months through a meet and confer process with the Police Officers Association (POA). Through the years, this time frame was extended through agreements between the IPA and the IA Commander. For over eleven years the IPA has been on the same record retention and destruction schedule as the SJPD Internal Affairs Division—the complaint investigations are retained for six years, after which the documents are shredded. Retaining complaint investigation records for six years enables the IPA to produce annual reports that include five-year comparative analysis, as well as providing IPA access to complaints and police reports for pattern and practice reviews. At the time the IPA was established, the issue of completing 5-year comparative reports was not an issue and was not anticipated. The IPA also reviews and documents its complaint files for pattern and practice analysis.

The IPA was able to prepare the 647(f) report to Council, discussed below, in twelve days only because the IPA had immediate access to the past five years of investigations. In preparing that report, the IPA reviewed not only the complaint investigation but also supporting documentation, such as police reports, which allowed the office to assess the quality and the completeness of the evidence prepared by the officer contemporaneous with the arrest.

In meetings with the City Attorney and the POA, the POA has informally agreed to change the Memorandum of Understanding to allow the IPA to retain complaint records for six years with agreed upon conditions.

The IPA is bringing this file retention issue forward at this time to notify the City Council that the formal process needs to be completed to change the POA Memorandum of Understanding to reflect that the IPA will retain and destroy complaint investigation documents on the same schedule as IA.

OFFICE OF THE INDEPENDENT POLICE AUDITOR 2008 MID-YEAR REPORT

C. 647(f) Arrest Issues—A Summary of November 18, 2008 IPA Report to Council

Drunk in Public Arrests: Continued Concern about Selective Enforcement

News coverage starting in October 2008 brought attention to SJPD arrests for drunk in public pursuant to California Penal Code Section 647(f). The Mercury News reported that the San Jose Police Department made 4,661 drunk in public arrests last year and noted that this number is the highest in the state.⁴ A Mercury News editorial commented that “San José police charge people for public drunkenness in suspiciously high rates. . . . They could indicate the selective enforcement of a broadly worded law.”⁵

At the November 18, 2008 meeting, the City Council opened this issue to the public for comment. For that discussion, the IPA was requested to prepare a report about complaints that allege issues regarding drunk in public arrests.

IPA staff pulled citizen complaints from January 2003 through November 2008 in which the complainant was arrested for 647(f). A total of 68 cases were pulled and examined for patterns. The following patterns were identified:

- In 32 of the 68 cases, the complainant denied being drunk or intoxicated to the level that he/she was unable to care for himself/herself.
- Eleven complainants indicated that they had requested a test.
- Of these 68 cases, 39 arrests were made in the downtown area.
- In 29 of the 68 cases, the officer documented his/her actions and those of the arrestee on a multi-page police report; in the remaining 39 cases, there was a single-page sheet or no documentation.
- Nineteen arrests were made after police responded to a call for service.

Of the 68 cases, 33 appeared to contain some elements of an “attitude arrest.”⁶ An attitude arrest occurs when a person is arrested because the officer does not like the arrestee’s attitude and/or arrests of individuals who may be perceived as uncooperative.⁷

The IPA urged the Council to take timely affirmative steps to assure the community that its police officers were applying the drunk in public law in a fair and equitable manner. The IPA recommended to Council that the City Manager be directed to institute a policy that an officer making an arrest for 647(f) must complete a chemical test on that person.

1994 IPA Recommendations on Drunk in Public Arrests

⁴ Sean Webby, *Drunkenness Arrests in San Jose Outpace Other California Cities*, Mercury News, Oct. 18, 2008.

⁵ *Arrest Numbers Point to Over-Enforcement of Drunkenness Law*, Mercury News Editorial, Oct. 21, 2008.

⁶ This definition of “attitude arrest” was taken from the IPA *1994 Third Quarterly Report*, page 26.

⁷ The IPA cannot state with certainty whether the arrest was made in response to the arrestee’s attitude because there are too many subjective elements which are open to various interpretations or which are not adequately documented.

OFFICE OF THE INDEPENDENT POLICE AUDITOR 2008 MID-YEAR REPORT

The issue of arrests for drunk in public has been raised by the Office of the Independent Police Auditor in the past. In 1994, the IPA staff conducted a study of complaints which involved arrests for drunk in public. Staff reviewed 240 formal complaints received from 1991 to 1994, 23 of which indicated that the complainant had been charged with drunk in public. The report observed that:

- Typical conduct that led to a so-called “attitude arrest” for drunk in public was where a person questioned and/or confronted the officers, not cooperating or obeying the officer’s commands.
- In the police reports, there was “very little information” documenting substantiation of why the arrestees were deemed to be under the influence.
- Although the 23 complaints contained “some” information that the complainant had been drinking, only two cases had an explanation or documentation to substantiate why the officer concluded that the person may be so inebriated that he/she was unable to care for him/herself or others.

The 1994 audit revealed that officers were failing to adequately document the required information in the police reports when making arrests for drunk in public. At that time the IPA made a recommendation that, among other things, chemical testing should be an option for any person arrested for drunk in public if one was requested. In 2008 the issue is being raised again.

November 18, 2008 City Council Meeting

On November 18, 2008, Council heard testimony from the City Manager, the Chief of Police, the Assistant IPA, representatives of community groups and numerous individuals regarding the drunk in public issue.

At the end of the public hearing, City Council voted unanimously to create a task force to address public intoxication arrests. This task force, with the inclusion of key stakeholders, is to consider identifying non-criminal options to arrests, and the feasibility of sobering stations and requiring objective testing for those arrested. As stakeholders, the IPA has requested inclusion of IPA staff and IPAAC members on the task force.

In future reports, the IPA will review the progress on this matter and report on changes proposed and implemented by the SJPD and the City of San Jose that result from these actions.

IPA Recommendation made at the November 18, 2008 Council Meeting

The Independent Police Auditor recommends that Council take action to direct the City Manager to direct the Police Department to institute a policy that an officer making an arrest for California Penal Code Section 647(f) must complete a chemical test on that person. If the arrestee is unwilling or unable to complete such a test, this should be documented in the police report. While requiring an objective test may be seen as a burden, the relative costs of imposing such action may be warranted given the current questions surrounding the propriety of such arrests.

V. 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

OFFICE OF THE INDEPENDENT POLICE AUDITOR

2008 MID-YEAR REPORT

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 and 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 IA for classification. Internal Affairs then reviews each case and classifies it as formal, command review, policy, procedural, or inquiry. This report covers the first six months of 2008; the classifications of formal, command review and inquiry will not be used after July 1, 2008 under the revised complaint process. (See section III, page 3 for more information about the revised complaint process.

“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.

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 an abbreviated investigation—while the complainants and some witnesses are interviewed, subject officers are not questioned. There has been a rise in the use of the procedural classification—24% of the complaints received in the first six months of 2008 were classified as procedural, the highest percentage in the last five years.

Complaints classified as “inquiry” are “immediately resolved by the intake officer to the satisfaction of the citizen.” (*IA Unit Guidelines*) The percentage of complaints classified as inquiries has decreased in the first six months of 2008 after a rise in this classification as reflected in the mid-year reports 2005-2007. Inquiries are not tracked as formal or informal complaints, may receive limited investigation, and are not recorded in officer records as misconduct complaints.

Tracking Officer Names in Inquiries

In response to IPA concerns about the loss of important indicators regarding behavior issues caused by failing to track officer names in inquiries, SJPD established a pilot program of tracking officer names in inquiries for a six month period beginning April 2007. A report on this pilot project was given at the January 29, 2008 City Council meeting. After tracking officers named in inquiries for nine months SJPD reported that:

- 33.5 % of the officers had additional complaints filed against them in 2007
- 28.5% of the officers had additional complaints filed against them that were over a year old
- 38% of the of the officers had no previous complaints

Policy complaints register a complainant’s dissatisfaction with an existing policy. The No Boland classification is no longer used following a U.S. Supreme Court decision in May 2006.⁸

⁸ The U.S. Supreme Court Decision held unconstitutional, as violative of the First Amendment and equal protection clause, California Penal Code §148.6 which required that complainants sign a Boland Admonishment form informing them that they could be prosecuted for a misdemeanor violation if they knowingly filed a false complaint.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

Table 1: External / Citizen-Initiated Complaints Received

External Complaints	Mid-Year 2004			%	Mid-Year 2005			%	Mid-Year 2006			%	Mid-Year 2007			%	Mid-Year 2008			%
	IPA	IA	Total		IPA	IA	Total		IPA	IA	Total		IPA	IA	Total		IPA	IA	Total	
Formal: Citizen-Initiated	16	52	68	36%	20	33	53	32%	26	25	51	22%	33	46	79	32%	30	58	88	32%
Citizen Nexus to Internal Complaints	0	1	1	1%	0	1	1	1%	0	2	2	1%	0	4	4	2%	0	0	0	0%
Informal: Command Review	6	11	17	9%	3	4	7	4%	0	1	1	0%	0	0	0	0%	0	0	0	0%
Procedural Complaints	2	4	6	3%	5	13	18	11%	22	6	28	12%	2	7	9	4%	20	44	64	24%
Policy Complaints	2	2	4	2%	1	0	1	1%	1	1	2	1%	3	0	3	1%	2	1	3	1%
Inquiry	15	34	49	26%	30	41	71	43%	29	100	129	56%	30	70	100	40%	13	64	77	28%
No Boland	6	3	9	5%	4	2	6	4%	1	9	10	4%	0	0	0	0%	0	0	0	0%
Withdrawn	8	3	11	6%	1	2	3	2%	0	0	0	0%	3	1	4	2%	4	7	11	4%
Pre-Classification	11	13	24	13%	6	0	6	4%	4	3	7	3%	19	30	49	20%	20	9	29	11%
Total Complaints Filed	66	123	189	100%	70	96	166	100%	83	147	230	100%	90	158	248	100%	89	183	272	100%
Citizen Contacts (Not SJPD)	9	8	17		15	6	21		26	20	46		25	10	35		6	18	24	

Table 1 reports five years of mid-year external complaints filed by classification. At mid-year 2008, 272 complaints from members of the public were filed, a 10% increase from mid-2007. Of the external complaints received, 89 were filed through the office of the IPA and 183 were filed at the IA Unit. At mid-year 2008, 88 of 272 complaints, 32% of the total complaints received, were classified as formal complaints; this is the same percentage as mid-2007.

At mid-year 2008, 29 complaints, approximately 11% of the cases received, were listed as “pre-classification.” The 2008 IPA Year End Report will provide updated information about the classification determination of these 29 “pre-class” complaints.

There was a large rise in the total number and percentage of cases classified as “procedural” at mid-year 2008: 64 complaints, 24% of the total; as compared with mid-year 2007, 9 complaints, 4% of the total; and at mid-year 2006, 28 complaints, 12% of the total. Complaints in the procedural classification receive an abbreviated investigation and subject officers are not interviewed.

**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 2008 the population of the City of San José reached 989,500, a 3.6% increase over a two-year period, from 953,700 in 2006.

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 2008, members of the SJPD handled 217,064 calls for service from the public, a slight increase over the number of calls at mid-year 2007, 213,799. These contacts can cover a wide range of issues, from responding to life-threatening situations, to issuing traffic citations, to responding to false alarms.

The number and percentage of complaints classified as inquiries decreased at mid-2008 from the two previous years. In the past the IPA raised issues with these numbers. The ratio of complaints classified as inquiries at mid-2008 is similar to the ratio of complaints classified as inquiries in 2004, a 40% reduction in the number of inquiries since mid-year 2006. This is a positive trend, as complaints classified as inquiries receive little or no investigation and information identifying the subject officer is removed from the record.

OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT

B. INTERNAL / DEPARTMENT-INITIATED COMPLAINTS

The Office of the Chief of Police initiates internal complaints after receiving information from SJPD staff alleging that an SJPD employee may have violated a Department policy or the law. The IPA does not audit most internal complaints because they primarily involve administrative issues that may not directly impact members of the public. The IPA audits internal complaints alleging misconduct if the complaint has a nexus to a citizen. **Table 2** reports that 21 internal complaints were initiated by the SJPD in the first six months of 2008.

Table 2: Internal / Department-Initiated Complaints

Internal Complaints	Mid-Year 2004	Mid-Year 2005	Mid-Year 2006	Mid-Year 2007	Mid-Year 2008
Department-Initiated	13	17	19	23	21
Total	13	17	19	23	21

C. ALLEGATIONS FILED

Issues raised in both internal and external complaints are 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. 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.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

Table 3: Types of Allegations Received⁹

Allegations Received Formal/Informal Cases	Mid-Year 2005		Mid-Year 2006		Mid-Year 2007		Mid-Year 2008	
	#	%	#	%	#	%	#	%
Improper Procedure	86	34%	69	26%	130	32%	195	34%
Unnecessary Force	59	23%	58	22%	82	20%	86	15%
Rude Conduct	33	13%	38	14%	52	13%	92	16%
Unlawful Arrest	22	9%	36	14%	38	9%	46	8%
Unlawful Search	12	5%	13	5%	38	9%	42	7%
Unofficer-like Conduct	11	4%	5	2%	13	3%	21	4%
Missing/Damaged Property	7	3%	10	4%	16	4%	25	4%
Failure to Take Action	11	4%	10	4%	8	2%	19	3%
Racial Profiling	3	1%	6	2%	7	2%	18	3%
Discrimination	4	2%	10	4%	8	2%	14	2%
Excessive Police Service	3	1%	1	0%	2	0%	2	0%
Harassment	3	1%	4	2%	4	1%	14	2%
Policy/Procedural	0	0%	3	1%	7	2%	2	0%
Delayed/Slow in Response	0	0%	1	0%	2	0%	1	0%
Total Allegations	254	100%	264	100%	407	100%	577	100%

Allegations Received Inquiries	Mid-Year 2005		Mid-Year 2006		Mid-Year 2007		Mid-Year 2008	
	#	%	#	%	#	%	#	%
Improper Procedure	40	44%	76	47%	59	44%	34	43%
Unnecessary Force	6	7%	11	7%	5	4%	4	5%
Rude Conduct	24	27%	51	31%	43	32%	18	23%
Unlawful Arrest	4	4%	5	3%	3	2%	4	5%
Unlawful Search	5	6%	3	2%	9	7%	3	4%
Unofficer-like Conduct	2	2%	3	2%	2	1%	3	4%
Missing/Damaged Property	2	2%	1	1%	6	4%	3	4%
Failure to Take Action	3	3%	4	2%	3	2%	1	1%
Racial Profiling	0	0%	2	1%	1	1%	0	0%
Discrimination	0	0%	2	1%	1	1%	5	6%
Excessive Police Service	1	1%	1	1%	0	0%	0	0%
Harassment	2	2%	3	2%	1	1%	4	5%
Policy/Procedural	1	1%	0	0%	1	1%	0	0%
Delayed/Slow in Response	0	0%	1	1%	1	1%	0	0%
Total Allegations	90	100%	163	100%	135	100%	79	100%

Table 3 tracks the number and types of allegations received in both internal and external complaints during the first six months of the years 2005 through 2008. There were 656 total allegations received in the first six months of 2008, as compared to 542 allegations received at mid-2007, 427 received at mid-2006, and 344 at mid-2005. The increase in allegations is due in part to the increased number of complaints filed as well as a slight increase in allegations per complaint in the last two years, from 1.86 average allegations per complainant in 2006, to 2.18 in 2007, to 2.41 at mid-2008. The lower number of allegations recorded in inquiries in the last two years reflects the lower number of complaints classified as inquiries at the close of the reporting period.

The three most common types of allegations continue to be improper procedure, rude conduct and unnecessary force. Improper procedure allegations¹⁰ increased in number and percentage of the total allegations, 229 allegations, 40% of the total at mid-2008, as compared to 189, 35% of all allegations received at mid-2007. There was a rise in racial profiling, discrimination, and harassment allegations received at mid-year 2008. The percentage of allegations in each of these classifications increased from approximately 1% to 3% from mid-2007 to mid-2008. Racial profiling and discrimination allegations are used to delineate similar issues; together these allegations increased from 17 to 37 between mid-2007 and mid-2008.

D. UNNECESSARY FORCE COMPLAINTS

Table 4 reflects the number of external complaints reporting unnecessary force and **Table 5** reports the number of unnecessary force allegations within those complaints. Unnecessary force complaints and allegations are divided into two categories: Class I and Class II. A Class I allegation involves

⁹ Types of allegations in complaints have only been accessible for reporting since 2005 due to the change in database tracking of complaints; therefore, only four years of allegation data are itemized in this report.

¹⁰ Improper procedure covers a wide range of misconduct, e.g. refusing to provide name & badge number, failure to supervise, any kind of improper handcuffing and failure to properly document an incident.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

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.

At mid-year 2008, 57 complaints containing at least one allegation of unnecessary force had been received; 53 were classified as formal/informal complaints and four were classified as inquiry. The percentage of formal/informal unnecessary force external complaints filed by mid-year 2008, 19% of the total number of external complaints, has not changed significantly from the data in preceding years.

Table 4: Unnecessary Force External Complaints Filed

Period	Formal/Informal Complaints				Inquiry Complaints			Total Number of Complaints
	UF Class I Complaints	UF Class II Complaints	Total UF Complaints	% Total Complaints	UF Class I Inquiry Complaints	UF Class II Inquiry Complaints	Total UF Inquiry Complaints	
Mid-Year 2004	5	35	40	21%	N/A	N/A	N/A	189
Mid-Year 2005	6	32	38	23%	0	6	6	166
Mid-Year 2006	9	33	42	18%	3	7	10	230
Mid-Year 2007	9	41	50	20%	0	5	5	248
Mid-Year 2008	5	48	53	19%	0	4	4	272

Allegations in Unnecessary Force Complaints

The number of unnecessary force allegations can be higher than the number of unnecessary force complaints because a complaint may contain more than one force allegation. **Table 5** shows the number of unnecessary force allegations in all external complaints filed at mid-year 2008. A comparison of the data from 2004 through 2008 reveals a slight increase in the number of unnecessary force allegations; at mid-year 2008, the number of unnecessary force allegations was 90 compared to 87 filed at mid-year 2007 and 69 filed at mid-year 2006. The force allegations as a percentage of the total allegations has dropped slightly in 2008, 14%, down from 16% in the previous two years.

The number of Class I allegations contained in formal/informal complaints filed in the first six months of 2008 was 6, lower than in previous years. The number of force allegations identified as Class II rose by 19. The distinction between Class I and Class II force allegations will not be available in future reports. In the revised complaint process implemented in July 2008 there is no differentiation between serious and minor force allegations. (See Section III, page 3 for more information about the revised complaint process.)

Table 5: 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	Total UF Allegations in Inquiry Complaints
Mid-Year 2004	7	53	60	N/A	N/A	N/A
Mid-Year 2005	8	52	60	0*	6*	6*
Mid-Year 2006	9	49	58	4	7	11
Mid-Year 2007	21	61	82	0	5	5
Mid-Year 2008	6	80	86	0	4	4

* 10 inquiries recorded in 2005 had no allegations delineated

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

Table 6 shows a breakdown of the dispositions of unnecessary force allegations in complaints closed by Internal Affairs at mid-year 2004 through 2008. The majority of force allegations over the last five years have been exonerated; one unnecessary force case was sustained by IA in 2007.

Table 6: Disposition of Unnecessary Force Allegations in External Complaints

Disposition	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006		Mid-Year 2007		Mid-Year 2008	
	UF Class I	UF Class II	UF Class I	UF Class II	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	0	1	0	0
Not Sustained	0	7	0	3	0	13	0	9	1	4
Exonerated	3	49	6	27	0	27	6	28	4	32
Unfounded	0	3	0	6	0	4	1	9	2	9
No Finding	1	4	0	4	1	14	0	11	0	6
Within Procedure	0	1	0	6	0	8	2	13	0	6
No Misconduct Determined	0	0	0	6	0	2	0	0	0	0
Total Allegations	4	64	6	52	1	68	9	71	7	57

The IPA tracks the level of injury alleged in unnecessary force complaints. **Table 7** shows the level of injury reported by complainants in the first six months of 2004 through 2008.

Table 7: Complainant's Level of Injury

Degree of Injury	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006		Mid-Year 2007		Mid-Year 2008	
	#	%	#	%	#	%	#	%	#	%
Major	2	5%	2	7%	1	3%	4	10%	5	12%
Moderate	5	13%	3	10%	4	11%	2	5%	6	14%
Minor	22	55%	24	80%	29	81%	24	57%	20	48%
None	4	10%	1	3%	2	6%	7	17%	9	21%
Unknown	7	18%	0	0%	0	0%	5	12%	2	5%
Total	40	100%	30	100%	36	100%	42	100%	42	100%

E. OFFICERS NAMED IN ONE OR MORE COMPLAINTS

The IPA tracks subject officers in complaints. **Table 8** provides an overview of this breakdown. The number of complaints and the number of officers receiving complaints is higher in 2008 than in the previous four years due to two factors: 1) the overall increase in the number of complaints received; and 2) the increase in the number of investigated cases in which officer names are recorded and/or retained and the corresponding decrease in complaints classified as inquiries in which officer names are not recorded.

Table 8: Officers Named in One or More Complaints 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
Jan - June 2007	134	18	4	0	156	144
Jan - June 2008	188	26	3	1	218	184

*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.

OFFICE OF THE INDEPENDENT POLICE AUDITOR

2008 MID-YEAR REPORT

SJPD 2007 Annual Force Response Report

In July 2008, the SJPD released its 2007 Annual Force Response Report (Report) covering the 2007 calendar year¹¹. The Report provided data obtained from a compilation of completed "Force Response Reports," a form which attempts to track all reportable uses of force by SJPD officers (i.e. use of Taser, batons, handguns, pain compliance holds, etc.). This form also allows for the officer to report suspect information (age, injuries, race, etc.).

The data does not specify if multiple force applications were used on an individual suspect. The Report documented 1,037 incidents involving reportable force and 35,998 arrests and citations in 2007. A total of 2,480 force applications ranging from control holds to Tasers were used on 1,156 suspects.

The arrest rates of Hispanic suspects and Caucasian suspects and the rate at which force was used against Hispanic suspects and Caucasian suspects were closely matched.¹² There was disparity in the arrest rates of African-American suspects and the rate at which force was used against them.

- Of the 1,156 suspects against whom force was used, 624, 54%, were Hispanic. In 2007, 19,080 Hispanic suspects were arrested by the SJPD, 53% of total arrests.
- Of the total number of suspects against whom force was used, 171, 15%, were African American. There were 3,568 African-American suspects arrested by the SJPD, 10% of total arrests.
- Of the total number of suspects against whom force was used, 222, 19%, were Caucasian. There were 6,935 Caucasian suspects arrested, 19% of the total arrests.

The percentages compiled by the SJPD regarding ethnicity and use of force were similar to the percentages regarding ethnicity and unnecessary force complaints reflected in the 2007 IPA Year End Report.¹³ A review of the Force Response Report and the 2007 IPA Year End Report reflected that Hispanic/Latino suspects were represented in half of the arrests made in 2007 and 54% of all reported force. Hispanic/Latino suspects filed 48% of the unnecessary force complaints in 2007 in which ethnicity data was available. The percentage of reportable force used on African-American suspects was 15%; this group comprised 10% of arrests made in 2007. African-American complainants filed 23% of the unnecessary force complaints in 2007 in which ethnicity data was available.

The 2007 Force Response Report provided data on the variety of force options available to the officer. These options include control holds, takedown, batons, Tasers and pepper spray. The Report reflects that officers utilized their hands and/or feet 1,893 times, 76% of the 2,480 total number of force applications. Tasers were used in 9% of the force applications. These numbers correspond to figures in the 2007 IPA Year End Report which showed that, of the 158 applications of force alleged to be unnecessary, 105, 66%, involved use of hands/feet/handcuffs. The unnecessary use of Tasers was alleged in 13, 8% of unnecessary force applications.

The Report revealed that 19% of force incidents occurred within the police district that contains the Entertainment Zone. Of the 1,156 suspects against whom force was used, 226 suspects were in the Entertainment Zone; thus 20% of all suspects against whom force was used were in this area. The Report stated that nearly 30% of the 1,156 suspects against whom force was used were non-San Jose residents. Residence data for these suspects was not reported.

¹¹ At the time that Tasers were deployed to all patrol officers in 2004 SJPD committed to collect and report on the use of this new weapon. In 2007 Chief Davis elected to expand the report to include collection of data on all types of force, and committed to provide this information to the public on an annual basis.

¹² SJPD data on race/ethnicity is based on the perception of the officer completing the force response form.

¹³ Information on the ethnicity of complainants was obtained on 385 complainants; this is not reflective of the total number of 491 complaints filed in 2007 because the ethnicity of some suspects filing complaints is not known. IPA data on the race/ethnicity of complainants is based on voluntary surveys/intake forms.

OFFICE OF THE INDEPENDENT POLICE AUDITOR

2008 MID-YEAR REPORT

The Report did not capture data pertinent to which SJPd units or individual officers generated the larger number of force applications. Such data would be useful to determine whether individual officers, certain units, or their supervisors would benefit from additional supervision and/or training.

The SJPd has committed to collect and analyze reportable force used by members of the SJPd and to report such information to the public on an annual basis. This action is commendable and the IPA anticipates that further analysis of reported force will prove beneficial to the Department and the community.

F. OFFICER-INVOLVED SHOOTINGS / CRITICAL INCIDENTS

There were no officer involved shootings in the first six months of 2008.

There was one fatal critical incident, an in-custody death in which a suspect ingested drugs after being taken into police custody and died several days later. Reports are pending on this incident.

G. COMPLAINTS CLOSED BY INTERNAL AFFAIRS

Table 9 indicates the number and types of complaints closed by IA during the first six months of 2004 through 2008. The number of complaints closed may include complaints that were filed in the prior year. In the first six months of 2008 IA closed 287 cases, 261 citizen-initiated/external complaints and 26 internal complaints. At mid-year 2008 the number of cases closed as inquiries dropped by 18% as compared with mid-2007; the number of investigations closed as procedural complaints, in which no officers are interviewed, increased by 14%. The number of internal complaints closed doubled during the same period.

Table 9: Types of Complaints Closed

External Complaints	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006		Mid-Year 2007		Mid-Year 2008	
	#	%	#	%	#	%	#	%	#	%
Formal: Citizen-Initiated Complaints	71	40%	36	29%	45	23%	64	28%	84	32%
Citizen Nexus to Internal Complaints	0	0%	0	0%	0	0%	1	0%	5	2%
Informal: Command Review Complaints	21	12%	7	6%	5	3%	0	0%	2	1%
Procedural Complaints	11	6%	18	14%	15	8%	38	17%	80	31%
Policy Complaints	3	2%	0	0%	1	1%	4	2%	3	1%
No Boland/Withdrawn	24	14%	10	8%	10	5%	12	5%	10	4%
Inquiry	46	26%	54	43%	122	62%	108	48%	77	30%
Total Complaints Closed	176	100%	125	100%	198	100%	227	100%	261	100%

Internal Complaints	Mid-Year 2004	Mid-Year 2005	Mid-Year 2006	Mid-Year 2007	Mid-Year 2008
Department-Initiated	18	16	22	13	26
Total	18	16	22	13	26

H. FINDINGS OF INTERNAL AFFAIRS INVESTIGATIONS

Tables 10 and 11 detail the findings of IA complaint investigations of allegations contained in external and internal complaints respectively. There are no findings made in inquiry cases. The standard used by IA is “preponderance of evidence.” This means that for a sustained finding the evidence must indicate that it is more likely than not that a violation occurred, i.e. a weight of 51%.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

Table 10 shows that at mid-year 2008, 13 allegations, 3%, were sustained in nine of 171 external citizen-initiated cases closed. As indicated by **Table 11**, in internal department-initiated cases 27 allegations, 63%, were sustained in 20 of 26 cases closed.

Table 10: 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								9					4		13	3%
Not Sustained				1	4			18	8	23	1		1	3	59	12%
Exonerated	7	1		4	32	1		39	4	2	1	18	2	123	25%	
Unfounded		7		2	9	1	8	12		5	2		2	48	10%	
No Finding					6	1	2	24	8	14	1	6	3	73	15%	
Within Procedure		2			6	7		63	6	4	3	18		117	23%	
No Misconduct Determined						1		5	2	44	6	2		60	12%	
Command Review								1		2				3	1%	
Within Policy								5						5	1%	
Formal/Informal Allegations Closed	7	10		7	57	11	10	176	28	94	14	44	12	31	501	100%
Allegations in Closed Inquiries	0	6	0	0	5	1	4	32	3	18	1	4	3	3	80	
Total Allegations Closed	7	16	0	7	62	12	14	208	31	112	15	48	15	34	581	

Table 11: 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								20	3				4		27	63%
Not Sustained								2					5		7	16%
Exonerated								3							3	7%
Unfounded		1					1								2	5%
No Finding							1	1		1			1		4	9%
Within Procedure																0%
No Misconduct Determined																0%
Command Review																0%
Within Policy																0%
Total Allegations	0	1	0	0	0	0	2	26	3	1	0	0	10	0	43	100%

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

I. SUSTAINED COMPLAINTS

Complaints are resolved differently based upon the classification of the complaint. **Table 12** indicates that of 171 external complaints closed in classifications in which officer names are tracked, nine complaints were sustained, resulting in a 5% sustained rate for the first half of 2008. Of the internal department-initiated complaints closed, 20 of 26 were sustained. This reflects a 77% sustained rate, a lower percentage than in the last five years. The “sustained rate” is based upon the number of sustained complaints among those classified as formal, command review, or procedural.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

Table 12: Formal/Informal Complaints and Sustained Cases

Period/Type of Complaints	Closed Investigated 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%
2007 Mid-Year/External Complaints	103	3	3%
2007 Mid-Year/Internal Complaints	13	11	85%
2008 Mid-Year/External Complaints	171	9	5%
2008 Mid-Year/Internal Complaints	26	20	77%

J. AUDITING COMPLAINTS

IPA audit of the Internal Affairs investigation is the final step in the processing of a complaint; the audit is conducted prior to notifying the complainant or the subject officer of the findings. Audits involve a critical analysis by the IPA of the IA investigation to assess whether it was thorough and objective. The auditor reviews the circumstances leading to the misconduct complaint and all the evidence provided by the investigation to support the conclusions reached.

Through audits, perceived deficiencies in an investigation and/or concerns about the objectivity of the analysis in an IA investigation are identified. An audit results in agreement to close the case, request for additional investigation, or disagreement with the thoroughness or objectivity of the investigation. If there is disagreement, the issue is first raised with the IA commander. If the IPA and IA are unable to resolve their differences a formal memorandum is presented to the Chief of Police detailing IPA concerns and supporting analysis. Meetings may be held to discuss, explain and debate the merits of the issues. If no consensus can be reached with the Chief of Police, the IPA may write a formal memorandum to the City Manager for final resolution.

Table 13: Types of Complaints Closed and Audited

External Complaints	Mid-Year 2008	
	IA Closed	IPA Audited
Formal: Citizen Initiated Complaints	84	86
Citizen Nexus to Internal Complaints	5	4
Informal: Command Review Complaints	2	2
Procedural Complaints	80	69
Policy Complaints	3	4
No Boland/Withdrawn	10	8
Total Complaints Closed	184	173

Table 13 delineates types of complaints closed and audited during the first six months of 2008. **Table 14** reflects complaints audited during the first six months of 2008, compared with mid-2004 through mid-2007. In the first six months of 2008, of the 173 investigated complaints

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

audited, the IPA agreed with the Internal Affairs analysis in 147 cases, 85%, after the first review. During this period, 56 complaints were identified by the IPA as warranting additional discussion or investigation. The IPA closed seven cases as “Agree after Further Action” following review of additional information. The IPA closed 19 investigations as “Disagree” after reviewing additional materials; 30 cases submitted for audit were still under review at mid-year 2008. The number of investigated complaints closed and audited during this six month period is substantially greater than in years past; the percentage of investigations with which the IPA agreed has also increased.

Table 14: IPA Audit Determinations of Closed Complaints Closed

Audit Determination in Investigated Cases	Mid-Year 2004		Mid-Year 2005		Mid-Year 2006		Mid-Year 2007		Mid-Year 2008	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	79	75%	54	95%	41	60%	70	61%	147	85%
Agreed after Further Action	24	23%	3	5%	20	29%	17	15%	7	4%
Disagreed after Further Action	3	3%	0	0%	7	10%	28	24%	19	11%
Total Complaints Audited	106	100%	57	100%	68	100%	115	100%	173	100%
Audits in Progress	0	N/A	7	N/A	23	N/A	17	N/A	30	N/A

K. OFFICER DISCIPLINE

Discipline may be imposed on an officer when an allegation is sustained in either an internal or an external complaint. The type of discipline ranges from training and/or counseling to termination. **Table 12** reports the total number of cases that were closed and the number of investigations that were closed with at least one sustained allegation. **Table 15** presents a five-year comparison of the number of officers that received discipline in the first six months of each year and the type of discipline imposed.

There continues to be a noticeable discrepancy between internal and external complaints and the corresponding number of complaints that have been sustained within each category. Of 261 external complaints closed in the first six months of 2008, eight officers received counseling, training or discipline in nine citizen-initiated/external cases. One officer resigned before discipline after a combination of both internal and external complaints were sustained. In one complaint the IPA took issue with the fact that one allegation was unfounded (conclusively proved that the acts complained of did not occur) yet counseling was imposed. Imposing discipline in a complaint without a sustained allegation generates questions about the investigation and results.

In contrast, in the 26 internal department-initiated cases closed there were 27 sustained allegations in 20 complaints that had been sustained at mid-year 2008; in these cases 21 officers were disciplined or received counseling as documented in **Table 15**.

**OFFICE OF THE INDEPENDENT POLICE AUDITOR
2008 MID-YEAR REPORT**

Table 15: Discipline Imposed on Officers

Discipline Imposed	Mid-Year 2004				Mid-Year 2005				Mid-Year 2006				Mid-Year 2007				Mid-Year 2008			
	Officers in External Comps.	Officers in Internal Comps.	Total	%	Officers in External Comps.	Officers in Internal Comps.	Total	%	Officers in External Comps.	Officers in Internal Comps.	Total	%	Officers in External Comps.	Officers in Internal Comps.	Total	%	Officers in External Comps.	Officers in Internal Comps.	Total	%
	Training or Counseling	0	0	0	0%	0	0	0	0%	1	0	1	3%	0	0	0	0%	2	0	2
Training & Counseling	12	2	14	37%	7	1	8	30%	3	2	5	16%	0	0	0	0%	0	1	1	3%
Documented Oral Counseling (DOC)	6	7	13	34%	3	7	10	37%	2	9	11	34%	2	10	12	71%	2	12	14	47%
Letter of Reprimand	0	2	2	5%	0	0	0	0%	1	2	3	9%	0	1	1	6%	2	2	4	13%
10- Hour Suspension	0	1	1	3%	0	2	2	7%	0	7	7	22%	0	0	0	0%	1	2	3	10%
20- Hour Suspension	0	0	0	0%	0	1	1	4%	0	0	0	0%	0	0	0	0%	1	0	1	3%
30- Hour Suspension	0	0	0	0%	0	1	1	4%	0	0	0	0%	0	2	2	12%	0	1	1	3%
40- Hour Suspension	0	2	2	5%	0	0	0	0%	0	2	2	6%	0	1	1	6%	0	1	1	3%
60- Hour Suspension	0	0	0	0%	0	0	0	0%	0	0	0	0%	0	0	0	0%	0	1	1	3%
160- Hour Suspension	0	0	0	0%	0	0	0	0%	0	0	0	0%	0	0	0	0%	1	0	1	3%
Settlement Agreement	0	1	1	3%	0	2	2	7%	1	1	2	6%	0	0	0	0%	0	0	0	0%
Demotion	0	0	0	0%	1	0	1	4%	0	0	0	0%	0	0	0	0%	0	0	0	0%
Termination	1	3	4	11%	0	0	0	0%	1 *	0	1	3%	1	0	1	6%	0	0	0	0%
Retirement before Discipline	0	0	0	0%	0	1	1	4%	0	0	0	0%	0	0	0	0%	0	0	0	0%
Resigned before Discipline	1	0	1	3%	0	1	1	4%	0	0	0	0%	0	0	0	0%	0	1	1	3%
Total Discipline Imposed	20	18	38	100%	11	16	27	100%	9	23	32	100%	3	14	17	100%	9	21	30	100%

* The termination in the 2006 Mid-Year report was reversed in arbitration and a 30-hour suspension was imposed.

OFFICE OF THE INDEPENDENT POLICE AUDITOR

2008 MID-YEAR REPORT

VI. CONCLUSION

The filing of this 2008 IPA Mid-Year Report comes at a time of transition for the Office of the Independent Police Auditor and when issues regarding selective enforcement in policing in San Jose have surfaced. The report discusses the importance of independence, and the need for political support, to ensure the success of the auditor model of oversight. At a time when there is public concern and scrutiny of drunk in public arrests, the report documents IPA recommendations in this area.

Statistical information regarding complaints filed during the first six months of 2008 and an update on the most recent IPA recommendations are presented. During this time period, two IPA recommendations were adopted by the City Council. The SJPD was directed to revise Department policies to ensure adequate notice regarding property issues; the City Manager was directed to standardize the notice provided to an owner before a vehicle is towed.

A revised complaint process was launched on July 1, 2008. Information concerning the impact of the new complaint process will be discussed in the next comprehensive year-end report, encompassing the activity of the IPA for the full 2008 calendar year.

At mid-year 2008, the total number of complaints filed by members of the public was 272, a 10% increase from mid-2007. The complaint numbers have risen steadily over the last four years, greatly impacting the work of the IPA and Internal Affairs. Although the number of complaints closed and audited during the first six months of 2008 is substantially greater than in years past, the percentage of investigations with which the IPA disagreed is lower than in 2007.

We would like to acknowledge the excellent work of the women and men of the San José Police Department. In addition, we would like to thank the Internal Affairs Unit for their cooperation and collaboration, and for the provision of information needed to complete the work of the IPA.

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