

CITY OF SAN JOSÉ STUDY SESSION

Independent Oversight of San José Police Department

Led by the Office of the Independent Police Auditor

January 16, 2018

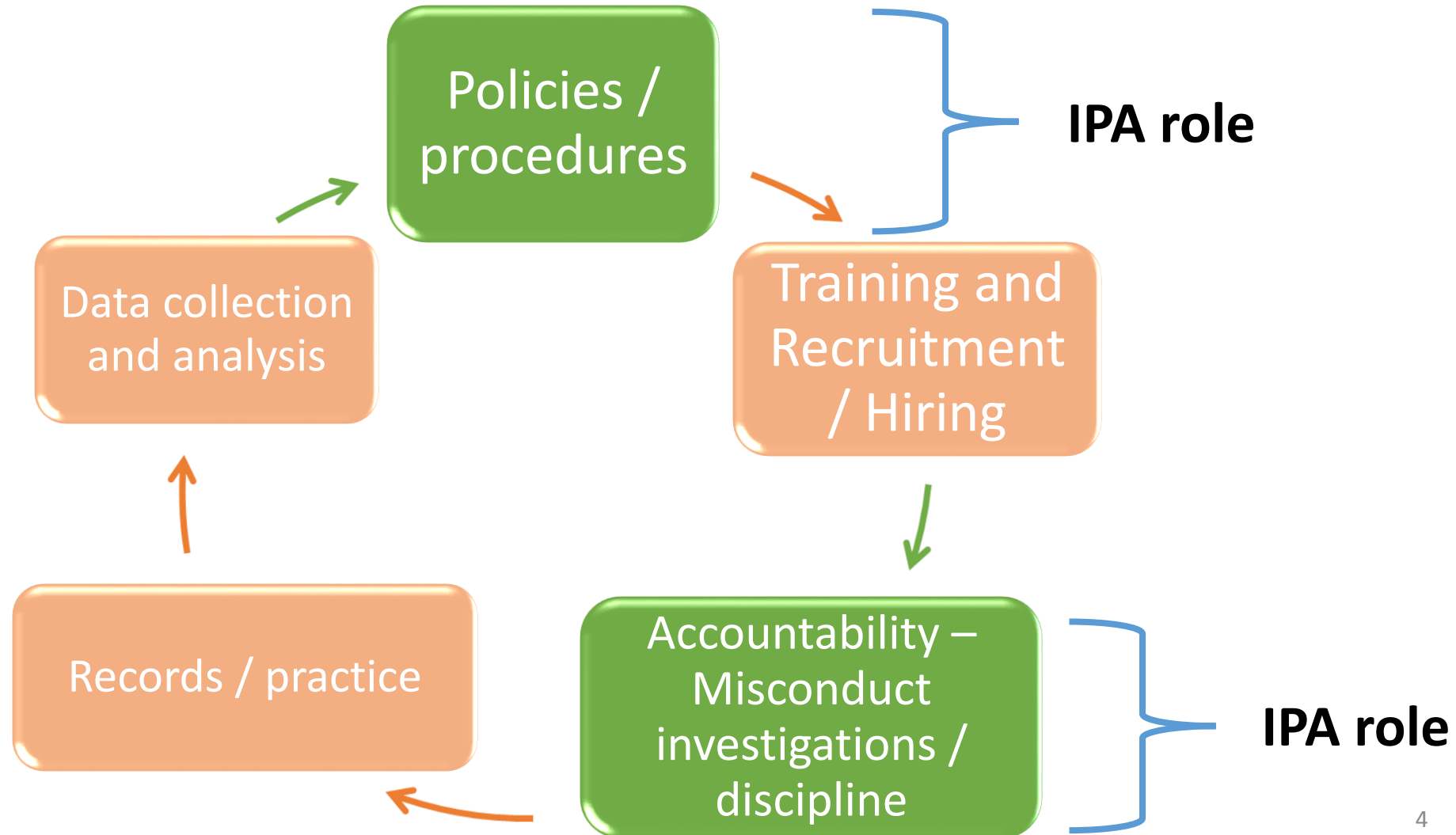
Overview: Structure of Study Session

1. IPA presentation – 15 minutes
 - a. IPA model and goals
 - b. IPA roles and responsibilities
2. IPA and panel of practitioners: Possible expanded authorities
 - a. Auditing – 30 minutes
 - b. Records – 25 minutes
3. SJPD – 20 minutes
4. Questions from Councilmembers – 45 minutes
5. Public comments – 45 minutes

Summary of Independent Oversight Models

- Inspector General: Broad access to records / systemic reviews of patterns
- **Auditor / monitor: Review Internal Affairs' misconduct investigations** } **San José IPA**
- Investigatory: Independent investigations of specific incidents (vs. auditing internal investigations)
- Citizen boards and commissions: Volunteers, public meetings
- Hybrids: Agencies that combine one or more of the above

Scope of oversight of police functions



IPA's Goals

- Ensure the process for addressing misconduct complaints is effective and reliable
- Promote transparency and accountability
- Strengthen relationship between SJPD and the community
- Promote constitutional policing / respect for civil rights
- Risk management / help prevent systemic issues or crisis in accountability or trust

History of IPA

- 1993: IPA Office established through city ordinance.
 - Limited IPA auditing authority to IA investigations of citizen *complaints*
- 1996: Voters amended City Charter to establish IPA as a permanent arm of the city government.
 - Reiterates limitations on auditing
 - Appointment / removal of IPA director
 - Does not discuss access to documents unrelated to auditing
- 1999: Ordinance amended to provide IPA with access to SJPD review panel for officer-involved shootings, including documents

Roles and Responsibilities: Overview

- Independence
- Outreach
- Reporting
- Policy making
- Complaints of officer misconduct
- Auditing Internal Affairs investigations
- Access to records outside of Internal Affairs



Areas for
possible
expansion of
IPA authority

Roles and Responsibilities: Independence

IPA Independence

Independent of police department command structure

Appointment term – four years

Super-majority vote to remove IPA – 10 City Council members; due process

IPA makes staffing decisions

Roles and Responsibilities: Outreach

Goals of outreach:

1. Inform the community about the complaint process (charter)
2. Listen and respond to broader community concerns, e.g., through policy recommendations

Outreach methods:

1. Town halls, listening sessions, community meetings
2. Website, social media
3. IPA Advisory Council (IPAAC)
4. Media

Roles and Responsibilities: Reporting

Requirement (per ordinance)

Annual public reports to City Council

Statistical analysis: Complaints by category, complaints sustained, the actions taken

Analyze trends and patterns

Make policy recommendations

Roles and Responsibilities: Policy Making

IPA makes policy recommendations based on:

1. IPA's review of investigations of complaints (charter)
2. Community concerns
3. Public policy

Additional informal IPA involvement in policy making:

1. SJPD is required to respond to IPA policy recommendations
2. IPA reviews some draft policy changes
3. IPA reports status of previous year's policy recommendations

Roles and Responsibilities: Citizen complaints

Authority / Requirement

Any person may file a complaint about officer misconduct

Complaints address **police officer** misconduct

Updates regarding progress of the IA investigation are provided to complainant upon request

Roles and Responsibilities: Auditing

IPA audits IA's misconduct investigations of citizen complaints to determine if the investigation is complete, thorough, objective, and fair

Authority / Requirement	SJ IPA ordinance
Number of complaints to be reviewed annually	<ul style="list-style-type: none">• ALL use of force complaints are reviewed• At least 20% of all other complaints are reviewed
Civilian interviews	May interview
Officer interviews	May attend interviews and suggest questions
Appeal process re IA determination	Shall ask Chief to direct further investigation / analysis
Appeal process re Chief's determination	Shall ask City Manager to direct further investigation / analysis

Introduction of IPA/monitor panelists

Authority	BART (2010)	Denver (2005)	Sonoma (2016)	San José (1993)
INDEPENDENCE				
Term of appointment			X	X
Super-majority to remove director				X
MISCONDUCT COMPLAINTS: Anyone may file			X	X
AUDITING IA'S MISCONDUCT INVESTIGATIONS				
Can sit in on IA interviews		X		X
Audits Department-Initiated Investigations	X	X	X	
Audits IA investigations of ofcr-involved shootings	X	X	X	
RECORDS: Access to use of force records	X	X		

Expanding IPA Authority: Overview

- 1. AUDITING:** IPA's authority to review Internal Affairs investigations of potential officer misconduct / officer's compliance with policy *absent a citizen complaint*
 - Department-Initiated Investigations
 - Officer-involved shootings
- 2. RECORDS:** IPA's access to use-of-force records for systemic review of patterns and trends (e.g., officers' reports, body-worn camera footage)

Expanded IPA Authority: Auditing

Type of IA investigation (per Duty Manual)	Current IPA auditing authority	Charter change required?
Citizen complaint re any alleged misconduct	Full access (per charter)	N/A
Department-Initiated Investigations (DIIs) (SJPD-generated IA cases)	None	YES
Officer-involved shootings and other deadly force <i>where no complaint filed</i>	None	YES
Other in-custody deaths, <i>where no complaint filed</i>	None	YES

NOTE: The Charter LIMITS IPA access to IA investigations of *complaints*

Auditing: Department-Initiated Investigations

Overview of Department-Initiated Investigations (DIIs):

- 33 DIIs in 2016: No use of force cases
- 20 DIIs “sustained”: Nine were CUBO cases
- Examples of DII cases that were unfounded, exonerated, or not sustained include:
 - “Investigation into concerns of possible on-duty, alleged sexual assault by an unknown officer”
 - “Officer’s family member alleged the officer made criminal threats to a family member”
 - “Officer alleged that his supervisor created a hostile work environment and consumed alcohol while on duty”

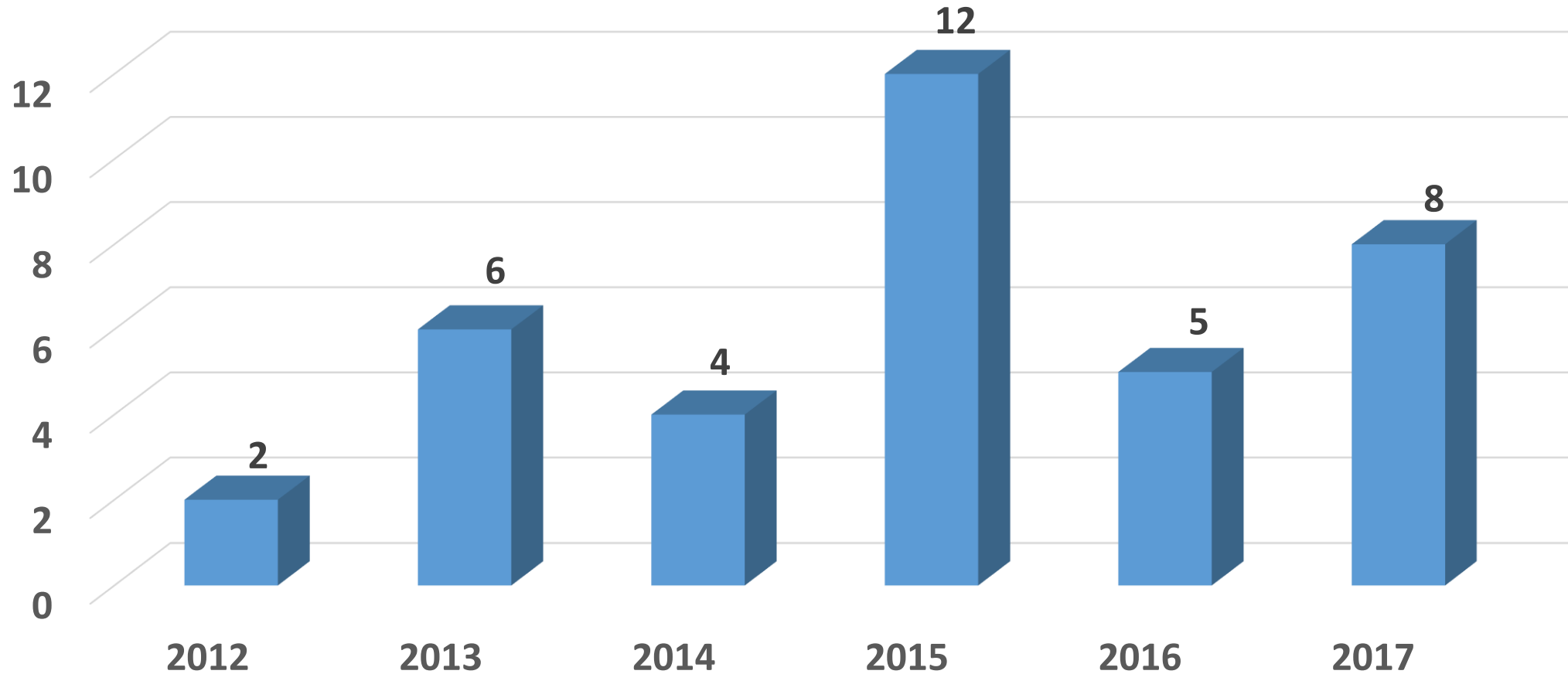
Auditing: Department-Initiated Investigations

Considerations as to whether IPA should audit Department-Initiated Investigations (DIIs):

	Against expanded authority	For expanded authority
Transparency	SJPD publishes summaries of all Department-Initiated Investigations, per Council direction	SJPD summaries are vague
Accountability	Most Department-Initiated Investigations are “sustained”	No independent scrutiny of findings or discipline issued
Data	Department-Initiated Investigations are a small number of the overall incidents / IA investigations	Numerous incidents involve serious misconduct
Force	Department-Initiated Investigations include very few uses of force	More DIIs of uses of force may now take place under new policy on Command-Level review of serious uses of force

Auditing: Officer-involved shootings

Officer-involved shootings



Auditing: Officer-involved shootings

Allegations / outcomes in 2016 audited complaints:

	Arrest / detention	Bias	Courtesy	CUBO	Force	Procedure	Search / seizure	Total	%
Sustained	0	0	2	1	1	32	1	37	5%
Total	97	59	120	29	116	302	49	772	100%

IPA pushed back in nearly a third of use-of-force cases and ultimately disagreed or had concerns in nearly a fifth of such cases

Auditing: Officer-involved shootings

Overview of 2017 officer-involved shootings (eight total):

- **Citizen complaints:** On one of the incidents
- **Fatalities:** Four of the shootings were fatal
- **Race:** At least five appear to involve persons of color
- **Suspect's weapon:** None indicated in one; axe; vehicle; two involved a knife; caulking gun and vehicle; two involved firearms
- **Mental health:** Six reportedly involved individuals in mental health crisis

Auditing: Officer-involved shootings

Considerations as to whether IPA should audit Internal Affairs' investigation of shootings, deaths, and deadly force:

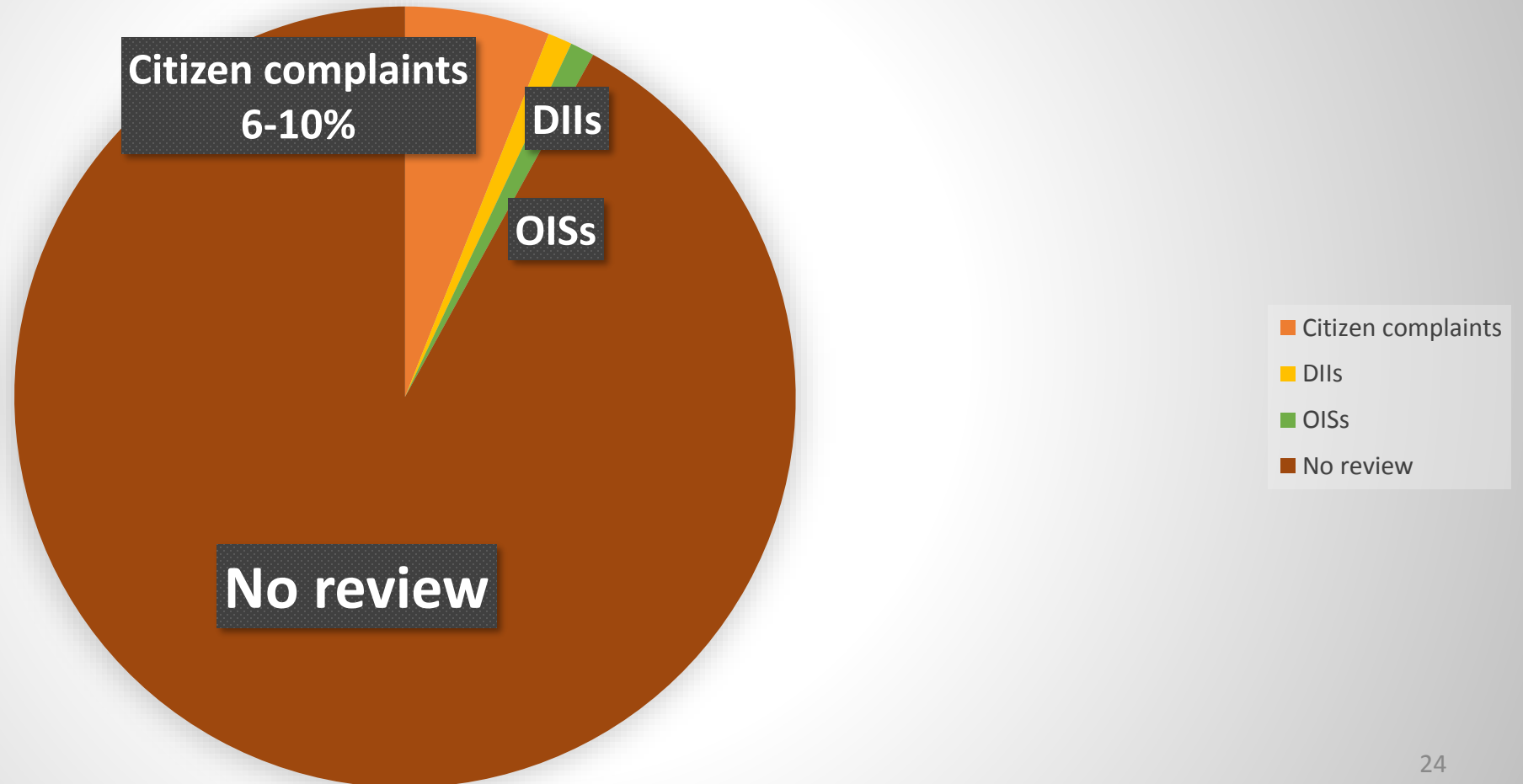
Against expanded authority	For expanded authority
District Attorney's Office investigates and publishes a detailed report on every fatal officer-involved shooting (OIS)	<ol style="list-style-type: none">1. DA conducts only a criminal investigation (IA does its own investigation)2. DA publishes only regarding <i>fatal</i> incidents3. SJPD and DA co-lead the investigation
IPA has some access to documents on shootings for the policy review session	90-day review session pertains only to policy, not officer misconduct; sessions are closed/confidential
SJPD issues a press release about every officer-involved shooting	The press releases are issued before a full investigation occurs and often describe circumstances or use language that indicates the shooting was justified
	Responsive to community concerns regarding the most serious incidents, strengthens focus on accountability

Auditing: Comparison to other IPAs

Authority	Charter change?	BART	Denver	Sonoma	San José
AUDITING					
Audits Department-Initiated Investigations	YES	X	X	X	
Audits IA investigations of officer-involved shootings	YES	X	X	X	

Access to records for systemic review

Uses of force NOT subject to Internal Affairs review



Access to records for systemic review

What does access to records mean?

1. Officers' police reports, including use of force response reports
2. Supervisor's use-of-force investigation report, including photos
3. Body-worn camera footage of use of force
4. Body-worn camera footage of supervisor's investigation, including interviews with officers and suspect
5. Command-level review memos

Access to records for systemic review

L 2605.5 - COMMAND OFFICER RESPONSIBILITY BY USE OF FORCE CATEGORY (Oct. 2017)

- **Category I Use of Force:** “Supervisors shall investigate”
- **Category II Use of Force:** Command officer responds to the scene, documents, and **may direct** transmittal of Command Review memo for review by Chief or Assistant Chief.
 - E.g., TASER, impact weapons, OC spray.
- **Category III Use of Force:** “The command officer **shall complete and submit a Command Review memorandum . . . up the chain of command**”
 - E.g., impact weapon or projectile impact weapon to the head; kicks to the head; four or more officers use force; bone fracture; dog bite; carotid restraint; loss of consciousness; hospital admission.
- Category IV: “Officer-involved incidents,” e.g., shootings

NOTE: IPA does not have access to these Command Review memos.

Access to records for systemic review: Critical Incident Review

“The police auditor shall participate in the police department’s review of officer involved shootings.” (Ordinance)

Authority / Requirement

Notification: IPA is notified of an incident, can respond to the scene and be briefed by IA Commander

Review panel: IPA can participate in shooting review panel. **IPA is provided with pertinent documents.** The purpose of the panel is to determine whether training or equipment needs exist or if changes to SJPD policies are warranted.

NOTE: As with access to these shooting-related documents, access to other records would be unrelated to auditing misconduct investigations. The CHARTER does not speak to such access.

Access to records for systemic review: Purposes

How does greater access enhance IPA's oversight?

- **Transparency / reporting:** Allows IPA to analyze trends and patterns
- **Policy:** Aids IPA policy making role through trend / pattern analysis
- **Outreach:** Aids IPA responsiveness to community suggestions / concerns
- **Accountability:** IPA can flag incidents that should receive additional review by SJPD

Access to records for systemic review

Considerations as to whether IPA should have additional access to records:

Against expanded authority	For expanded authority
Data: SJPd has recently published comprehensive quantitative data / data “dashboard” regarding use of force	<ol style="list-style-type: none">1. Data will be quantitative / aggregate, not narrative2. Much of the data published at SJPd discretion3. No independent review of reliability of data
New policy on high-level review of serious uses of force (Categories I-IV)	New policy on high-level review of serious uses of force could change; limited to most serious force
Oversight: IPA has been effective in policy, outreach, and reporting functions	Much larger set of records aids in IPA’s policy, outreach, and transparency/reporting roles

Expanded IPA authority: Resources

Can the IPA take on these additional responsibilities?

- IPA already undertakes substantial data analysis – IPA would shift to using broader dataset rather than just the complaint data
- IPA could have discretion in evaluating which Department-Initiated Investigations to audit (e.g., those that are exonerated or unfounded)
- IPA currently audits 100% of citizen complaints, though it is required to audit only 20% of all non-force complaints

Summary of possible additional authorities

Authority	Charter change?	BART	Denver	Sonoma	San José
AUDITING					
Audits Department-Initiated Investigations	YES	X	X	X	
Audits IA investigations of officer-involved shootings	YES	X	X	X	
RECORDS: Access to use of force records	?	X	X		