



Mission Statement

***“We Care for Our Residents by Working Together to Build a
Better Community for Today and Tomorrow.”***

**CITY OF ROHNERT PARK
CITY COUNCIL AGENDA REPORT**

Meeting Date: August 10, 2021

Department: Administration

Submitted By: Darrin Jenkins, City Manager

Prepared By: Darrin Jenkins, City Manager & Tim Mattos, Director of Public Safety

Agenda Title: **Recommendations for Increased Law Enforcement Accountability and
Improved Police/Community Relations**

RECOMMENDED ACTION:

Review staff's recommendations regarding the City Council's Strategic Priority of Police/Community Relations and Accountability and provide further direction on the suggested recommendations.

The recommendations are as follows:

1. Retain an Independent Police Auditor to review public safety investigations into civilian complaints.
2. Adopt a Public Safety Presentation Calendar for regular opportunities for the City Council and the community to provide feedback on Public Safety matters.
3. Create a community roundtable to obtain feedback from a diverse group of stakeholders representing underrepresented minority people groups.
4. Implement an alternative response model—using CAHOOTS as a basis—to provide enhanced crisis intervention, mental health, and homeless assistance services.
5. Restart the Civilian Public Safety Academy when it is safe to do so and there is sufficient interest from the public.
6. Continue to expand trainings regarding explicit and implicit bias, sensitivity, de-escalation, LGBTQ+, and racial profiling. Invite non-public-safety staff and City Councilmembers to partake in trainings when appropriate.
7. Augment existing staff resiliency programs with the addition of 24/7 counseling services on demand accessed through a phone application.
8. Continue existing officer stewardship and mentoring methods.
9. Engage the community stakeholders regarding the Council's direction for enhanced public safety accountability and community relations measures.

If the Council ultimately enacts the recommended measures, the City of Rohnert Park will have the most comprehensive system of police accountability and community relations in Sonoma County.

BACKGROUND:

On January 7, 2021, a special meeting was held to discuss City Council strategic priorities moving forward with the newly sworn-in Council. During the meeting the City Council identified three new additional goals and priorities to focus Council and staff attention. The new goals and priorities identified were Climate Change, Homelessness, and Police/Community Relations and Accountability, (to include increasing the image of Public Safety, building trust, and increasing accountability).

On Tuesday, May 11, 2021, City Council received a report from Public Safety Director Tim Mattos including an update on laws, policies, practices, and procedures currently being reviewed or enacted to address police accountability. In addition, City Manager Jenkins provided use of force and traffic stop statistics organized by race for the Department of Public Safety.

During the discussion of how to address police accountability and increase police/community relations, City Council, by majority consensus, directed staff to return with information in seven areas as follows:

1. What a public safety audit would look like;
2. Quarterly City Council updates on police matters;
3. Advisory board/round table for the chief;
4. Extensive training for the entire Public Safety Department on explicit and implicit bias, sensitivity, BIPOC (black, indigenous, people of color), LGBTQ+, racial profiling including the possibility of sitting side-by-side with City Council;
5. Resiliency training for officers to support their physical and mental health;
6. Information regarding Public Safety one-on-one stewardship or mentorship between officers and supervisors;
7. Options regarding community engagement.

This report provides responses to each of the seven areas identified by the City Council. The report also includes two additional suggested community relations measures – alternative response model (CAHOOTS) and the Civilian Public Safety Academy.

Also during the May 11 discussion, a councilmember requested an update on the 2020 Listening Session project. The listening sessions were held to obtain input from the public regarding any City policies or practices that may result in disparate treatment based on race. Attachment 1 provides an update on that project.

ANALYSIS:**Police Oversight**

Police oversight is often suggested as a way to increase police accountability. The National Association for Civilian Oversight of Law Enforcement (NACOLE) is a professional association of practitioners of police oversight. NACOLE provides the following as the definition of civilian oversight of law enforcement:

In its simplest meaning, civilian oversight may be defined as one or more individuals outside the sworn chain of command of a police department who take

up the task of holding that department and its members accountable for their actions.

NACOLE also states:

There is no one-size-fits-all approach to police oversight. There are more than 200 oversight entities across the United States. No two are exactly alike. There are civilian review boards, monitors, auditors, and inspectors general, among the models. The “best” approach continues to be a subject of debate. In part, this is because so many different factors influence what particular agencies and communities need and can sustain.

Rohnert Park currently has “one or more individuals outside the sworn chain of command of a police department who take up the task of holding that department and its members accountable for their actions.” Namely, the City Manager, City Attorney, Human Resources Director, outside independent investigators, the District Attorney, and now the State Attorney General.

Nevertheless, we can always improve and this report recommends additional measures for increased civilian oversight of law enforcement.

Existing Department Accountability Practices - The Rohnert Park Department of Public Safety has a rigid process of oversight on all members of the agency. Because this is within the sworn chain of command, it does not meet NACOLE’s definition of civilian oversight. However, it is a critical part of maintaining accountability for our officers. Department policies and state law govern the complaint and discipline process as well as review and disposition of personnel actions. All formal citizen complaints are logged, investigated, and a determination is made and provided to the complainant.

Existing Internal Police Oversight - The City Attorney’s office and Human Resources Department provide another form of review of the Public Safety Department. The City Attorney and Human Resources Department are both outside the police chain of command and these two departments work together in providing another independent, separate review of complaints and usually take the lead in conducting internal investigations involving police officers.

Existing External Police Oversight - The Department adheres to the Sonoma County Law Enforcement Chief’s Association Critical Incident Protocol which requires an outside law enforcement agency investigate all critical incidents, (e.g. officer involved shooting, in-custody death, use of force leading to great bodily injury, etc.). At the completion of the outside agency investigation, a review of the case is completed by the Sonoma County District Attorney’s Office to determine whether criminal charges will be filed on the officers involved. Using this system, two former Rohnert Park Public Safety Officers were successfully prosecuted for criminal misconduct.

In addition, in critical incidents, an independent administrative review by an outside investigator is completed to determine if any policy or procedure violation occurred, or whether updated policies are warranted.

During the last legislative session, Assembly Bill 1506 was passed and became law on July 1, 2021. This bill requires a state prosecutor from the Attorney General’s office to investigate any incident where an officer-involved shooting resulted in the death of an unarmed civilian – defined as any person not in possession of a deadly weapon.

So, some critical incidents will be investigated and reviewed four times – by an outside law enforcement agency, by the Sonoma County District Attorney, by an outside independent investigator, and by the California State Attorney General. Other critical incidents will receive all those same reviews except the automatic review by the Attorney General.

Additional Civilian Oversight of Law Enforcement:

Independent Police Auditor - At the May 11, 2021, meeting the Council directed staff to report back what a police auditor would look like. In order to provide an open and transparent view of Public Safety, the City can adopt a police oversight model utilizing an outside Independent Police Auditor (IPA) to review civilian complaints. Unlike some oversight models, this Independent Police Auditor would have full access to all evidence, investigations, documents, body worn camera footage, and other materials needed to conduct its review. After reviewing the department's investigation of complaints, the IPA will generate its own report, which includes recommendations to the Director of Public Safety regarding whether the investigation into civilian complaints was adequate and followed department processes and policies. **That report would be provided to the City Council and published as a public document for our community to review.**

The City of Palo Alto uses this model. The program is described in the attached staff report (Attachment 2) and the attached scope of work (Attachment 3) from Palo Alto. Also attached is one of their annual reports (Attachment 4). These documents are provided as examples. We would propose to develop our own scope of work if the Council directs us to pursue the Independent Police Auditor model.

In terms of expected costs, we can estimate based on population and officers. Palo Alto's population is around 67,000 and it has 90 sworn officers. Rohnert Park's population is around 43,000 and we have 73 sworn officers. The cost estimate for Palo Alto is \$25,000 per year, which serves as a good preliminary estimate of what such an auditor might cost in Rohnert Park.

Recommendation: Retain an Independent Police Auditor to review public safety investigations into civilian complaints.

Public Safety Presentation Calendar - The City Council is the ultimate authority in civilian oversight of law enforcement under our form of government. Unlike a county sheriff model, Councilmembers are civilians and are outside the police chain of command and independent, meeting the NACOLE definition for civilian oversight of law enforcement. Working with and through the City Manager the Council determines policy, law, goals, and a vision for policing our community. On May 11, 2021, the Council directed staff to research implementing a regular calendar for the City Council to review Public Safety reports and policies. These reports might include use of force by race, traffic stops by race, all detentions by race, police policy changes or adjustments, number of complaints received by the department, Independent Police Auditor report, program updates, (e.g., Alcohol Beverage Service Ordinances, Alarm Ordinance, Loud and Unruly Gatherings Ordinance), traffic safety, property and evidence audits, and yearly crime statistics. This is only a sampling of the reports which could be placed on the calendar. These reports would also be published as public documents for our community to review.

A presentation calendar would provide the City Council and the community an opportunity to receive ongoing briefings and presentations from the Public Safety Department. **Civilians interested in law enforcement matters may speak directly to the Council regarding these matters in a public forum.** The City Council would retain the ability to add or remove items from the calendar from time to time to continually receive pertinent and relative information regarding the operations of the Public Safety Department.

Recommendation: Adopt a Public Safety Presentation Calendar for regular opportunities for the City Council and the community to provide feedback on Public Safety matters.

Increased Community Relations:

Chief's Community Round Table - On May 11, 2021, the City Council directed staff to look at a round table of civilians to provide feedback to the Director of Public Safety. To improve, everyone needs feedback. We want feedback on how our Public Safety Department is perceived in the community, particularly by minority population groups. By strengthening our relationship, we will understand better how to improve our service to the community as well as providing additional transparency. It is imperative that Public Safety hear from the community regarding our level of service, what we are doing well, what we are not doing well, and how we can improve. In order to open lines of communication and obtain feedback, we can create a platform which will provide a safe environment that creates trust and confidence. **We need a group of individuals, from underrepresented people groups, to meet directly with our Police Chief, not an intermediary, to provide honest feedback.** This venue may also provide additional access to department operations, as well as a better understanding of policies, and procedures. The Chief's Community Round Table, (CCRT) could consist of a diverse group of individuals, of a manageable size, who ideally represent ethnic, social, economic, and diverse stakeholder groups in the community. The team will consist of residents of Rohnert Park and individuals employed in Rohnert Park. Staff would propose that we invite the Sonoma NAACP and the Rohnert Park Latino Alliance and other groups as they express interest to nominate representatives to the round table.

The CCRT will be designed to assist in building a bridge between the community and the Rohnert Park Department of Public Safety. It will be designed to facilitate and enhance communication and the relationship between the Police Department and the community. The team will assist in informing the Director of Public Safety of the broader community's concerns and views regarding public safety.

The CCRT will review and make recommendations to the Director on matters pertinent to the Public Safety Department. These areas include community issues, program review, and community outreach assistance. Development of the CCRT will greatly enhance Public Safety's ability to understand how policies and procedures are perceived and how they affect all community members.

Recommendation: Create a community roundtable to obtain feedback from a diverse group of stakeholders representing underrepresented minority people groups.

Mental Health Response -The City is currently moving forward on the "Alternate Response Model" (CAHOOTS) to address mental health and homelessness issues. The new program will provide the City a new tool to address mental health and homelessness issues, while reducing the need to place law enforcement officers into situations that do not necessitate a law enforcement response. We have

witnessed, nationwide, how these encounters have resulted in the loss of life which may have been avoided if mental health specialists had responded instead of a uniformed officer. This program is designed to lessen the unnecessary contact between individuals experiencing a mental health issue and law enforcement.

Recommendation: Implement an alternative response model using CAHOOTS as a basis to provide enhanced crisis intervention, mental health, and homeless assistance services.

Civilian Public Safety Academy – Our Public Safety Department has had great results from holding civilian public safety academies, both for adults and high school aged attendees. A Civilian Academy provides an inside look in to how a police department works, and why certain procedures and policies are in place. In addition, Public Safety staff benefit from the program by having a better understanding how community members think, their perception of law enforcement, and what they expect from their police department. When the COVID-19 pandemic abates to a safe level, we intend to restart our annual Civilian Public Safety Academy.

Recommendation: Restart the Civilian Public Safety Academy when it is safe to do so and there is sufficient interest from the public.

Public Safety Training:

Training for Department Personnel Addressing Explicit and Implicit Bias, Sensitivity, BIPOC, LGBTQ+, and Racial Profiling – State law requires specific training for public safety officers. Training requirements are legislatively mandated and required topics are provided by Peace Officer Standards & Training (POST). Topics of Racial Profiling and Explicit/Implicit Bias are combined under Penal Code 13519.4 Racial and Cultural Diversity Training; Racial Profiling. This training is mandated every 5 years. The course is also included in the police academy. The initial training requirement is 5 hours and refresher training is 2 hours. All officers are current on this mandate. Instructor training is also legislatively mandated and presented through the Museum of Tolerance. Our current POST certified outline for the training is available on the City's website at

<https://records.rpcity.org/WebLink/Browse.aspx?id=366590&dbid=0&repo=CityOfRohnertPark>

Sensitivity training is conducted through a variety of course topics:

Crisis Intervention Behavioral Health Senate Bill 11 and Senate Bill 29 trainings. Our Department has a POST certified 4 hour course and uses both a sworn officer and a community member subject matter expert to instruct. Training requirements are legislatively mandated and required topics are provided by POST. Our current outline is available on the City's website at

<https://records.rpcity.org/WebLink/Browse.aspx?id=366594&dbid=0&repo=CityOfRohnertPark>

We last held Crisis Intervention Behavioral health training in 2019. We have scheduled Get Safe to present their POST-certified Crisis Intervention & De-escalation 8-hour training on two separate days in September to ensure all officers are able to attend and plan to offer the training to our professional staff. The course complies with Assembly Bill 392, Senate Bill 230, Penal Code 835a, Senate Bill 11, Senate Bill 29 and Strategic Communication Perishable Skills training requirements for our officers. Get Safe will be presenting the course to our department under a POST grant.

Strategic Communications training is a new legislative requirement this year and replaces the Tactical Communication every 2 year perishable skills training requirement. A new 2 hour Strategic Communications virtual course is being developed for the POST Learning portal. Over the years, many of our officers have also attended a 32 hour Crisis Intervention course offered by the Sonoma County Sheriff's Office and Sonoma County Behavioral Health.

In addition, our Department "Learning Management Software", Target Solutions, allows us to assign our officers a variety of courses including Calibre Press's, The Essential Component of De-Escalation and Conflict Resolution and Implicit Bias: Facts & Myths.

All Sergeants and Public Safety Officers have taken, or are scheduled to take these trainings. Each training attended provides our officers with 2 hours of training credit. Nine officers attended a 16-hour Practical De-escalation and Tactical Conduct training course which was offered at Sonoma State University earlier this year. We are currently in discussions to bring the training to the Department for all personnel.

The Public Safety Department hosted an 8-hour "Critical Incident Response, Use of Force, & De-escalation" training in June, and sent officers to a 10-hour Threat Assessment and De-escalation strategies course in 2020.

In addition to our public safety officers, our dispatchers will be attending an 8-hour De-escalation for Dispatch course later this year. The Public Safety Department is scheduled to host an 8-hour De-escalation training taught by "Procedural Justice" in October 2021.

POST offers a variety of online courses on its Learning Portal which are assigned through our Target Solutions software. During the past two years, our officers have attended Bias and Racial Profiling, Hate Crimes, Use of Force, Tactical Communications and many other trainings online through the Learning Portal. Each training attended provides our officers with 2 hours of continuing professional training credit.

LGBTQ+ training is offered as LGBT Community Awareness Training through Napa Valley College Criminal Justice Training Center as a 4-hour online course. In addition to the Napa Valley training course, a "Train the Trainer" course is also available in order to allow agencies to develop in-house instructors. The Department is currently looking for an interested employee to send through this course to become a trainer.

Lastly, we have reached out to "Game Changer", an organization who has obtained a POST innovative grant to offer a POST certified Community Policing course. The mission of "Game Changer" is to bring about changes in perceptions and behavior among members of law enforcement, the general public and elected officials. The desired behavior change is to bring about more peaceful outcomes between law enforcement and the communities they serve as a result of consistent exposure and education.

The Department understands the need to train personnel in an effort to see continued growth and understanding. Sharing different training opportunities with City staff and our elected City Council is

also an important growth opportunity. As training topics become available which will help Public Safety, City staff, and City Council provide better service to our community, the Public Safety Department Training Coordinator will make every attempt to open training to all.

Recommendation: Continue to expand trainings regarding explicit and implicit bias, sensitivity, de-escalation, LGBTQ+, and racial profiling. Invite non-public-safety staff and City Councilmembers to partake in trainings when appropriate.

Resiliency Training for Department Personnel - The Rohnert Park Department of Public Safety has an active Peer Support Team, in addition to a supportive Employee Assistance Program. Following critical incidents, the Department conducts Critical Incident Stress Debriefs with all of the individuals involved, from the call taker to the responding police and fire personnel. The Debrief is facilitated by a Clinical Police Psychologist and non-involved Peer Support Team Members attend as well. The individuals that are involved in the incident are identified by the Peer Support Team and are given extra support if needed. Those that wish to have additional meetings with a police psychologist are forwarded to Human Resources and introduced to the services available through the Employee Assistance Program. The Peer Support Team has worked closely with the Human Resources Department to ensure that there are Public Safety minded psychologists available to the DPS Staff.

The Department has also implemented a Wellness Program that introduces different avenues of addressing mental, emotional, physical, and spiritual health. When the training schedule permits, the Department hosts wellness training days, which includes subject matter experts in mental, emotional, physical, and spiritual health. As a Department we have provided team building exercises that are done away from the Department. The emphasis on the Wellness Training Days is to introduce new and/or different things that will help break down the proverbial walls that often time rise while working in the public safety profession. This program is for all department staff and does not exclude anyone. Lastly, The Peer Support Team has taken a proactive approach to the growing concern of supporting mental and physical health by sending out frequent emails and posting Peer Support Information.

In addition the Peer Support Team and the City EAP Program, the Department of Public Safety is also looking into an additional option to provide personnel with immediate access to mental health professionals in the palm of their hand through an App based platform. Cordico is a leader in wellness technology for high-stress professions, providing trusted, confidential, 24/7 proactive and preventative wellness support specially developed for law enforcement, firefighters, dispatchers, medical professionals, and others serving in the most demanding and critical roles.

Recommendation: Augment existing resiliency programs with the addition of 24/7 counseling services on demand accessed through a phone application.

One-on-One Mentorship:

Stewardship and Mentoring - The Department of Public Safety completes a shift rotation every six months. The shift rotations take place during the beginning of February and August. At the beginning of each rotation, each shift sergeant sits with each of their assigned personnel to discuss and document the officer's goals for the rotation, schools and training the officer would like to receive, as well as

longer term goals such as working toward a specialty assignment or promotional opportunities.

During the rotation, the sergeants periodically sits down with the officers to determine the officers are on track, and to determine if there are additional or different priorities the officers are interested in pursuing. Officers have unlimited access to their chain of command, including the Chief.

In addition to mentorship from sergeants, lieutenants, deputy chiefs, and the chief, new officers are assigned a peer mentor when they begin the police academy. The peer mentor is assigned to help the trainee with anything that comes up during the academy. The peer mentor is also available to the trainee after graduating the academy and is often the first person the new officer will go to even after completing the field training program.

Recommendation: Continue existing officer stewardship and mentoring methods.

Community Engagement:

Once the City Council provides direction on which of the recommendations above it wishes to pursue, staff can engage with stakeholders as we develop the programs. These stakeholders would include interested residents, representatives from community groups, public safety association representatives, and others. The types of engagement would be a combination of the following:

Consult – Obtain input and feedback from stakeholders on the programs;

Inform – Provide balanced and objective information through various channels;

Collaborate – Partner with stakeholders where they provide advice and recommendations.

Once the Community Engagement process is complete, staff would come back to the City Council with final versions of some of the programs for formal adoption. For some of these programs, this process could take up to six months.

Recommendation: Engage the community stakeholders regarding the Council's direction for enhanced public safety accountability and community relations measures.

STRATEGIC PLAN ALIGNMENT:

This report reflects the Strategic Plan's goals of developing a vibrant community, delivering effective public services, and practicing participative leadership.

FISCAL IMPACT/FUNDING SOURCE:

In the Fiscal Year 2021-22, the City appropriated \$100,000 for accomplishing the Strategic Priority around Police Accountability and Community Relations discussed in this report. Total costs for activities presented here are likely around the budgeted amount. Staff will account for the costs of the activities described and if additional appropriations are needed for Administration, City Attorney, and Public Safety Department in order to support and implement the selected programs, we will return to the City Council.

Department Head Approval Date: July 30, 2021

City Attorney Approval Date: August 2, 2021

City Manager Approval Date: August 4, 2021

Attachments:

1. Update on Listening Sessions
2. Palo Alto Auditor Staff Report
3. Palo Alto Auditor Scope of Work
4. Palo Alto Annual Audit Report

Attachment 1 – Update on Listening Sessions

In 2020, the City conducted listening sessions with the community to hear concerns of racial or ethnic prejudice or bias within City policies or practices. The goal was to learn whether policies practices adopted by the City hindered our residents based on race or ethnicity.

A total of three listening sessions were held virtually to comply with COVID19 protocols on July 22, 2020, July 27, 2020 and August 12, 2020. All three listening sessions were attended by a Spanish interpreter, and attendees were given the option to participate in English or in Spanish. Attendance was modest: approximately 20 community members (non-City/non-Listening Session moderators) attended the July 22 session; approximately 10 community members attended the July 27 session, and approximately 35 community members attended the August 12 session.

City department heads and managers attended the sessions as listeners only. In an effort to obtain as much community input as possible, community participants were offered the respectful space to share their stories and concerns. The listeners did not converse or problem-solve in the sessions. (Due to Brown Act restrictions, Councilmembers observed the recorded sessions which are also posted to the Equality Policy and Practice Review page of the City’s website).

In general, the participants shared the belief that persons of color experience Rohnert Park differently than its white residents. Most stories focused on the police, the perceptions of being observed by the police, feelings of suspicion, or differential treatment from those with white skin. Some attendees expressed the desire for greater transparency on police policies and availability of race data in police reports.

There was also criticism that the City does not engage communities of color; perceptions that the older sections of the city, which happen to be the areas of higher Latino resident density, are disregarded; and complaints that some residents feel marginalized as “not really belonging to the city.”

Some talked about mistreatment attached to being a person of color by businesses or private citizens. Although these experiences are not affected by City policy, they may affect how a resident experiences the community in which they live.

In addition to the listening sessions, 38 emails of public input were collected relating to the project—35 comments were submitted as public comment during City Council meetings and 3 emails were received at policyreview@rpcity.org. The verbal and written comments generally fell into six topic areas, and most submissions were related to police reform. Following is a count of the comments by topic:

- Creation of a police oversight committee: 15
- City policy reform: 9
- Police reform more generally: 6
- Increased diversity in public discourse: 5
- Support of Rohnert Park Police: 2

- Black community engagement: 1

The collected public comments and Recordings of the Listening Session can be found on the Equality Policy and Practice Review page of the City's website.

Discussion

During the listening sessions, questions and comments were heard from community members regarding a variety of topics. The primary themes staff heard were as follows:

Racial Bias - Speakers provided comments where they felt police actions were racially motivated. Information from speakers was limited as to actual personal encounters or events leading them to their conclusions. We want additional feedback and conversation to better understand where this feeling comes from and how we can act in a way that minimizes people feeling that police actions are racially motivated.

Policies - Largely directed at use of force policies, speakers questioned the use of Lexipol policies as "boiler plate" policies. Questions were raised regarding the Lexipol use of force policy concerning deadly force. The Rohnert Park Department of Public Safety (RPDPS) strives to maintain policies that are in accordance with the most recent case law and state law as well as modern police practices. The Rohnert Park Department of Public Safety utilizes a policy manual produced by Lexipol, which is used by 93% of the law enforcement agencies in California. Authoring policy requires continued tracking of hundreds of legislative actions each year along with following court decisions that become case law. Further, input from subject matter experts is important in assuring policies are written in alignment with modern, best practice strategies in mind. All policy utilized by the Rohnert Park Department of Public Safety is under the control of the department. No policy issued by Lexipol is implemented without vetting by Department Command Staff, and where necessary, review by the City Attorney's Office. If amendments are desired, staff may amend the policy prior to implementation. **Rohnert Park staff have reached out to the Lexipol board and confirmed that Lexipol is doing a comprehensive review our police policies for racial bias or potential related systemic issues.**

Transparency - Participants requested a higher level of transparency regarding race related enforcement data. **The Public Safety Department has created and maintained a Transparency page located on the department's website.** The Transparency page provides monthly activity reports for both the Fire and Police Divisions, Annual Reports, and Historical Crime Data. The goal is to provide access to all information releasable per Senate Bill 1421 and Assembly Bill 748 on the Transparency page. (To refresh memories, Senate Bill-1421 became effective January 1, 2019, and increased the ability of the public and the media to obtain some previously confidential police personnel records. Senate Bill 1421 amended Penal Code section 832.7 to broadly allow the release of the following:

- Records relating to the report, investigation or findings of an incident involving the discharge of a firearm at a person by a peace officer or a custodial officer.
- Records relating to the report, investigation or findings of an incident in which the use of force by a peace officer or a custodial officer against a person results in death or great bodily injury.
- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer.

In addition, AB 748 became effective July 1, 2019 and is viewed as something of a companion statute to SB 1421. This bill requires that law enforcement agencies produce, in response to Public Records Act requests, video and audio recordings of “critical incidents,” which are defined as incidents involving the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury). During the May 11, 2021 council meeting, City Manager Darrin Jenkins provided statistical data regarding Use of Force and traffic enforcement as it relates to race and demographics in the City of Rohnert Park.

Police Oversight - A number of speakers shared their belief of a need for additional police oversight. The Council discussed the issue on May 11, 2021 and will be discussing again on August 10, 2021.



CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

December 16, 2019

The Honorable City Council
Palo Alto, California

Approval of a Contract With the OIR Group in the Amount of \$75,000 for Independent Police Auditing Services for a Three-year Period

Recommendation

Staff recommends that Council approve and authorize the Clerk to execute a contract with the OIR Group in the amount of \$75,000 for independent police auditing services for a three-year period (Attachment A).

Background

The Palo Alto Police Department (PAPD) receives and investigates complaints that are made from time to time by members of the public against police officers. State law requires all police agencies to have such a process (Cal. Penal Code §832.5.). PAPD also investigates potential policy violations of uniformed officers that come to the attention of the Chief, even when a complaint is not filed. The investigative function of the PAPD is generally referred to as “internal affairs.”

Since approximately 2006, Palo Alto has contracted with an outside firm to act as Independent Police Auditor (IPA). The IPA performs several functions for Palo Alto. First, the IPA provides independent review of PAPD internal affairs investigations. Department management confers with IPA periodically as investigations are opened and in process. When the Department’s investigation is complete, the IPA conducts a secondary review and assesses “thoroughness, objectivity and appropriateness” of the investigation and disposition. Where appropriate, the IPA provides recommendations for training, procedural adjustments or other follow-up actions. Second, the IPA reviews every deployment of a taser device and the PAPD’s use of force review of that deployment, regardless of whether a citizen complaint is filed. Twice a year, the IPA produces a written public report to the City Manager and City Council summarizing the IPA’s conclusions and comments.

The City’s contract with the IPA states that the IPA must provide these services in a manner that complies with the Public Safety Officers Procedural Bill of Rights Act and provisions of the California Penal Code that provide procedural and privacy protections to sworn personnel. (See Penal Code § 832.7; Govt Code §§ 3300 *et seq.*) These laws provide procedural and privacy protections for uniformed officers that are greater than those for public employees generally. Accordingly, the IPA must refrain from naming or including any information that identifies officers in any public report. The City’s contract with the IPA requires the IPA to send drafts of its reports to the City Attorney and Chief of Police for the purpose of review for compliance

with state law. Prior to finalizing its report, the IPA is also directed to discuss identified problems with PAPD and the City Manager and attempt to reach consensus as to solutions. Once final, the IPA reports are made available to the public via a Council Informational Item.

Independent review of police investigations is not required by law. A program of independent review is entirely discretionary, and where one is developed, it is up to the individual city to define its parameters. Many large metropolitan areas work with an independent auditor. It is rare for a small city to retain a police auditor.

Since the inception of the IPA program in 2006, the IPA has reviewed investigations regarding sworn personnel, almost always while engaged in policing activities, such as conducting investigations, issuing citations, and making arrests. This year, a question arose regarding whether the IPA should also review and comment on City investigations of internal personnel matters not involving policing activities or members of the public. This type of matter could include complaints by PAPD personnel with respect to their supervisors or co-workers regarding unfair or discriminatory treatment in areas such as assignments, overtime, training, promotions, or interpersonal conduct. Throughout the City, the Human Resources Department investigates or supervises the investigation of these matters. In the Police Department, such matters could involve sworn or non-sworn personnel, such as dispatchers, Community Safety Officers, or administrative staff.

In 2014, the City issued a Request for Proposals for independent police auditor services. Three firms submitted proposals. The City selected the Michael Gennaco dba Office of Independent Review (OIR Group) as the most qualified to perform the services. The contract between the City and the OIR Group expired in October 2019 and is due to be renewed.

Analysis

After careful consideration, staff recommends that Council approve the attached contract with the OIR Group (Attachment A), which confirms and clarifies the longstanding traditional scope of IPA review: PAPD internal affairs investigations and taser deployments. Personnel matters that arise in the PAPD will not be included in the IPA process; rather, they will continue to be investigated and resolved by the Human Resources Department, or under its direction.

There are several reasons for continuing the current scope. Sworn personnel perform critical public safety services that can place them and their families at risk. The City has an overriding interest in protecting the privacy of sworn personnel so that these employees can do their work without concern about risk or intrusions into their personal and family affairs. In addition, the City has an obligation to maintain a confidential human resources system, so that employees feel safe coming forward to make complaints or to provide information in an investigation that involves their co-workers or supervisors. According to established policies and procedures, the City's Human Resources department investigates and resolves personnel complaints in all departments throughout the City. The City does not publicly report on human resources matters. While we recognize that secondary review and reporting of Human Resources

investigations in PAPD offers some potential for additional insights, the risks to personal privacy and a safe and confidential human resources complaint system weigh in favor of continuing to handle these matters confidentially under the direction of the Human Resources Department.

Resource Impact

Departmental budgets include adequate funding for this contract.

Policy Implications

Approval of this contract affirms current and longstanding City policy regarding police oversight and reporting.

Environmental Review

Approval of this contract is not a project for the purposes of the California Environmental Quality Act. No environmental review is required.

Attachments

A: Agreement Between the City of Palo Alto and Michael Gennaco DBA OIR Group for Professional Services

B: Exhibit A to the Agreement, with strikeouts and underlines showing changes from prior Scope

ATTACHMENTS:

- Attachment A : 2019 Contract with Michael Gennaco dba OIR Group for Professional Services_FINAL.docx (PDF)
- Attachment B : CMR 10924 Exhibit B - Redlined Changes Scope of Services - IPA contract_CPA (PDF)

Department Head: Molly Stump, City Attorney

EXHIBIT “A” SCOPE of SERVICES

Independent Police Auditor Services

CONSULTANT shall perform the following services:

1. Complaints by Members of the Public and Internal Affairs Investigations

Intake – The CONSULTANT may receive complaints directly from members of the public. The CONSULTANT will forward a summary of the complaint and contact information for the complainant directly to the Department. If the Department received the complaint directly or initiates an internal investigation regarding sworn personnel, they will notify the CONSULTANT within (3) working days about the nature of the allegation(s). The Department and the CONSULTANT will review each complaint by a member of the public/internal investigation to determine whether a criminal component exists and proceed accordingly. Complaints and investigations of internal personnel or human resources matters are not part of these Independent Police Auditor Services.

Investigative Plan – As needed, the CONSULTANT will discuss the investigative plan with the Personnel & Training Coordinator and arrange for a mutually convenient way to update CONSULTANT on the progress of the investigation.

Review – The CONSULTANT will review each complaint by a member of the public and internal affairs investigation to determine thoroughness, objectivity and appropriateness of disposition within (10) working days.

Follow-up – After reviewing the completed investigations, the CONSULTANT will confer with the Personnel & Training Coordinator to evaluate results and discuss any suggestions for additional follow-up.

Disposition – When all aspects of the investigation are complete, the CONSULTANT will confer with the Police Chief to resolve any issues about the process, the disposition or the recommendations outlined in the investigation. Disposition shall be defined as “Sustained”, “Not Sustained”, “Unfounded” or “Exonerated”.

Status and Tracking – The CONSULTANT will track each case through its conclusion to ensure that each investigation is completed in a timely manner.

Semi-Annual Reporting – Twice a year, the CONSULTANT will produce a written report to the City Manager and City Council. The report will contain a statistical breakdown of the number of complaints/investigations and any developing trends. The report will also contain the initial allegation(s), the findings and the number and type of recommendations made to the Police Chief. The report will not contain any specific information that would identify the involved officers either internally or externally.

CONSULTANT Meetings – If requested by the City, the CONSULTANT will meet with the City Council, City Manager and/or Police Chief in order to discuss any trends.

2. Review Taser Deployment

The Department will promptly notify the CONSULTANT of each Taser deployment. Once completed, the CONSULTANT will review the Use of Force investigation related to the use of the Taser. The CONSULTANT will make any recommendations on the investigation and findings. The CONSULTANT may also make recommendations to the Police Chief regarding training and policy modifications.

The CONSULTANT will include a brief summary of each Taser deployment in their semi-annual report including the findings and any recommendations.

3. Transmittal of Reports

CONSULTANT will produce two reports during each year summarizing its findings and reporting on each investigation and disposition. The CONSULTANT will produce reports which comply with the Public Safety Officers Procedural Bill of Rights Act ("POBR"), California Government Code 3300 and California Penal Code 832.7. CONSULTANT will provide a draft of the report to the City Attorney's Office and the Chief of Police of the Palo Alto Police Department at least 14 days prior to its final submission for the purpose of review for compliance with state law. CONSULTANT will consider any suggestions from the City Attorney's Office and the Chief of Police regarding the information contained in the report.

Prior to finalizing each report, it shall be the CONSULTANT's practice to discuss significant identified problems and recommendations with the Police Department and the City Manager. CONSULTANT will solicit the Police Department's response to the report's analysis and attempt to reach a consensus as to solutions. CONSULTANT will document the Department's investigation into the incident and response to suggested solutions in its reports.

4. Definitions

Sustained – There is sufficient credible evidence to believe that the subject officer committed the act charged in the allegation and thereby engaged in misconduct.

Not Sustained – The available evidence is insufficient to determine whether the officer did or did not commit misconduct.

Unfounded – There is sufficient credible evidence to believe that the subject officer did not commit the alleged act.

Exonerated – The subject officer was found to have committed the act alleged but the officer's actions were determined to be lawful and proper.



CITY OF PALO ALTO OFFICE OF THE CITY MANAGER

March 22, 2021

The Honorable City Council
Palo Alto, California

2019 Independent Police Auditor's Report and Supplemental Report From the City Manager

INTRODUCTION

Since approximately 2006, Palo Alto has contracted with an outside firm to act as Independent Police Auditor (IPA). The IPA performs several functions for Palo Alto. First, the IPA provides independent review of PAPD internal affairs investigations, including both investigations of complaints by members of the public and department-initiated investigations that involve a member of the public. Police Department management confers with the IPA periodically as investigations are opened and in process. When the Police Department's investigation is complete, the IPA conducts a *secondary* review and assesses "thoroughness, objectivity and appropriateness" of the investigation and disposition. Where appropriate, the IPA provides recommendations for training, procedural adjustments or other follow-up actions. Second, the IPA reviews every deployment of a Taser device and the PAPD's use of force review of that deployment, regardless of whether a citizen complaint is filed. It should be noted that based on City Council action in November 2020, future IPA reports will include additional categories of operational review, as noted below. In addition, in conjunction with the next written report, City Council will have an opportunity to confer with the IPA at an open-session meeting.

Typically, the IPA produces a written public report to the City Manager and City Council twice per year summarizing the IPA's conclusions and comments. Attached to this memo is the written public report by the IPA for calendar year 2019. All IPA reports issued since 2006 are posted and available on the City's website, here:

www.cityofpaloalto.org/gov/depts/pol/auditor.asp. In addition, for details about other accountability measures within the Police Department, go here:

www.cityofpaloalto.org/policeaccountability.

PROCESS TO FILE A COMPLAINT

The Chief of Police is responsible for overseeing the complaint process. An explanation of the complaint process and a complaint form can be found at:

https://www.cityofpaloalto.org/gov/depts/pol/report/employee_complaint.asp.

Complaints may also be directed to the Independent Police Auditor through the following:

Contact: Mr. Mike Gennaco Phone: (323) 412-0334 Email: Michael.gennaco@oirgroup.com	Or mail to: OIR Group 1443 E. Washington Blvd., #234 Pasadena, CA 91104
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IPA REPORT RELEASED FOR CALENDAR YEAR 2019

A contract renewal process resulted in delays in the IPA's work for a portion of 2019, causing an interruption in the development of the written public report for that year. For that reason, the standard reporting period of twice per year was adjusted and a single report covering the full calendar year for 2019 is published for City Council review and public information. Following City Council's receipt of the 2019 report, the next IPA report will come to the City Council after the City Council summer break, later in 2021.

SUPPLEMENTAL REPORTING OF PERSONNEL AND HUMAN RESOURCES INVESTIGATIONS

In addition to the IPA report, the City Manager's Office provides a supplemental reporting of investigations not included in the IPA's scope of work as of the 2019 IPA contract amendment adopted by the City Council. The City Manager's supplemental reporting includes personnel and Human Resources matters that do not directly involve police activities with the public and are not initiated by members of the public. Personnel and Human Resources matters are defined as workplace conflicts. These matters include, but are not limited to, investigations of human resources and personnel matters regarding sworn officers relating to assignments, evaluations, promotions, demotions and similar issues, and allegations of harassment, discrimination, and retaliation. Under State and Federal labor laws, these issues are subject to review by State or Federal agencies set up to provide third party review of labor-related matters in addition to City-administered reviews and potential appeals and grievance procedures.

For the current 2019 calendar year reporting period, the City Manager's Office is reporting one investigation as follows:

Supplemental Reporting of Personnel and Human Resources Matters		
Allegation	Allegation Summary	Determination*
Disparaging remark or conduct	Employee made an inappropriate comment during a staff meeting.	Supported.

* Definitions of "Determination" Terms

- *Unsupported* - the investigation failed to disclose evidence sufficient to prove or disprove the allegation by a preponderance of the evidence.
- *Supported* - the investigation disclosed evidence sufficient to prove the allegations by a preponderance of the evidence.
- *No finding* - the complainant failed to provide necessary information to further the investigation; the complainant failed to cooperate; the incident was reported to the Police Department after the statute of limitations for the Police Department to initiate a disciplinary investigation had expired; the investigation revealed that another agency was involved, and the complaint has been referred to that agency; or the complainant withdrew the complaint.

As noted, complaints and investigations of internal personnel and human resources matters are not included in the City's current independent police auditing program and the OIR (IPA) existing contract. As discussed later in this memo, under the framework of the City Council's

adopted priorities on Race and Equity, the Policy and Services Committee will consider if the IPA's scope of work should be expanded to include review and reporting of instances involving sworn officer personnel and human resources matters such as the case above.

IPA TO REVIEW INFORMAL INQUIRIES

In some instances, members of the public make informal inquiries (called "Informal Inquiry Review" or "IIRs") that are not filed as formal complaints and do not require a full formal investigation; however, the IIRs are still examined by the Police Department. These matters are typically resolved after review of police records and policies. Informal inquiries may include matters such as misunderstandings or minor issues of discourtesy. Historically, these informal inquiries have not been included in the IPA's scope of work and as a result were not included in the 2018 IPA reports issued, but were included in the City Manager's Supplemental Reporting. However, beginning with the attached IPA report for calendar year 2019, and moving forward, these inquiries will be included in the IPA's review. As a result of the IPA report review, there is no IIR chart listed in this supplemental reporting of calendar year 2019. The attached IPA report includes two IIRs for the reporting period of calendar year 2019.

RACE AND EQUITY WORK RELATED TO THE INDEPENDENT POLICE AUDITOR

In November 2020, following several months of intensive work on issues related to Race and Equity, the City Council adopted a set of directives (link pages 4-5: <https://www.cityofpalalto.org/civicax/filebank/documents/79566>) covering a number of areas, including police policies and practices. Several of the directives are related to the IPA role and contracted scope of work. Those directives and relevant updates are listed here.

City Council Direction to Staff Related to Independent Police Auditor

City Council Adopted Direction (November 2020)	Timeline
1. "Expand IPA scope to include all administrative use of force reports where a baton, chemical agent, Taser, less-lethal projectile, canine, or a firearm is used, and all cases where the subject's injuries necessitate any treatment beyond minor medical treatment in the field."	<p>Taser deployments are already included in the IPA review and reports. The contract is being amended to include the additional uses of force. The additional uses of force will be included in any IPA report that covers investigations which occurred after January 1, 2021.</p> <p>Contract amendment for consideration by the City Council is anticipated by late Summer 2021.</p>

2. "IPA to provide an audit workplan to the City Council for approval."	Contract amendment for consideration by the City Council is anticipated by late Summer 2021. This directive is being discussed with the IPA as part of the contract amendment.
3. "Refer to the Policy and Services Committee consideration of IPA oversight of internal complaints regarding misconduct related to harassment, discrimination, or retaliation resulting in city investigation of uniformed officers."	This directive is related to the workplace conflicts/internal complaints which are currently investigated by HR. This item is tentatively scheduled to the Policy and Services Committee in April 2021.
4. "Amend the contract to require the Independent Police Auditor (IPA) to meet with the City Council in open session twice a year with each report" and "Direct Staff to maintain an every six (6) months schedule for IPA reports to City Council containing reviews ready at the time of the report. "	Contract amendment for consideration by the City Council is anticipated by late Summer 2021. Staff is coordinating with the IPA to tentatively release their next report in August 2021.
5. For future supplemental memorandums: Direct Staff to include use of force information to the regular Supplemental Report submitted to the City Council as a cover memorandum to each IPA report.	The use of force (UOF) information for Jan. 1, 2015 – June 1, 2020 is available online (https://tinyurl.com/4kwwy6xb). The next UOF report will be included in the January 2022 Supplemental Report in order to include a full year of data.

For other updates on the timeframes listed above or other Race and Equity work at the City, visit the recent staff report that went to the Policy and Services (P&S) committee on March 9, 2021. Link: <https://www.cityofpaloalto.org/civicax/filebank/documents/80509>.

ATTACHMENTS:

Attachment A: Palo Alto Independent Police Auditors' (IPA) Report: Review of Investigations Completed in 2019 (PDF)

ATTACHMENTS:

- Attachment A: Palo Alto Report Confidential Draft 2 25 21 (PDF)

- Attachment A-Palo Alto Independent Police Auditors Report-Review of Investigations Completed in 2019 (PDF)

Department Head: Ed Shikada, City Manager

INDEPENDENT POLICE AUDITORS' REPORT: Review of Investigations Completed in 2019

Presented to the Honorable City Council

City of Palo Alto

March 2021

Prepared by: Michael Gennaco and Stephen Connolly
Independent Police Auditors for
the City of Palo Alto



Introduction

This report addresses materials received by the Independent Police Auditor (“IPA”) for review from the second half of 2019. It includes five cases that were investigated by the Palo Alto Police Department (“PAPD”) and completed during that time period. Though our past practice has been to issue reports that cover six months of investigation activity at a time, and though our most recent report addressed the second half of 2018, we have skipped ahead for the simplest of reasons: there were no cases finished by the city during the first portion of the year.

The report includes the review of one Taser case and four allegations of misconduct. The Taser incident involved the detention – and ultimately the arrest – of a man who was stopped on his bicycle for traffic violations and quickly became angry with the officer. The Taser activation was brief and oddly effective: though the probes did not penetrate the man’s layered clothes, he did rock back into a seated position and remained there until backup officers arrived, as if deferring to the weapon’s potential as much as its physical effect. While concurring with the Department’s finding that the force was justified and in policy, we note some peripheral issues for consideration.

As for the misconduct allegations, they fall into two related categories. All of them originated with complaints from members of the public about how they had been treated during contacts with Department officers, with three of them including allegations of excessive force. However, while two of them were investigated in the traditional way, two were characterized as “Informal Inquiry” matters. This meant that the Department assessed the complaint and found that it was able to reach a resolution regarding its merits without going through a full-scale investigation process (including, most significantly, interviews of witnesses and subjects).

Though agencies call it different things, and may follow slightly different protocols, the *idea* behind the Informal Inquiry approach is one we have seen with other departments. It combines an appropriate deference to “due diligence” and accountability with a recognition that some complaints lend themselves to efficient disposition. This could be because the substance of the complaint, even if true, does not constitute a policy violation or even an individual performance issue; a hypothetical example would be a person who admits to a traffic violation but complains that the Department should have better things to do than writing tickets). Or it could be because there is sufficiently definitive evidence to establish what occurred in the encounter at issue, thus rendering further investigation or interviews unnecessary.

Here, both of the complaints at issue pertained to incidents for which there were recordings of what happened, and these were central to the ultimate determination that a more complete workup was not necessary. While we have minor concerns that we discuss below, PAPD’s version of the concept seems like a legitimate approach. We also appreciate the added accountability the Department has imposed on itself by offering the cases for our assessment.

Taser Incident

The scope of our auditing responsibilities in Palo Alto includes any use of force involving a Taser. This has been the case for several years and is responsive to community concerns about this particular force option. PAPD had one relevant incident in 2019. It involved an adult male whom a PAPD officer spotted while driving on patrol.

Factual Overview:

The man was on a bicycle on the wrong side of the road, in violation of traffic rules. When the officer initially pulled up alongside the man and made contact from within his vehicle, the man reacted by yelling and pedaling slowly away. This prompted the officer to engage his car lights and make a more earnest effort to detain the man.

After a short distance, the cyclist stopped, threw down his bike, and turned toward the officer in obvious anger as the officer got out of his car and approached. A standoff ensued in which the man berated and challenged the officer, who called for backup and removed his Taser from its holster. The officer gave increasingly heated commands for the man to get on the ground; eventually the man bent into a crouched position but refused to comply fully and remained verbally belligerent. Much of his frustration seemed related to a belief that, as an African American, he was being unfairly singled out for “profiling” and harassment.

Some seconds later, as the officer moved slightly closer, the man began to lean forward in a way the officer interpreted as aggressive and perhaps the prelude to an assault. This caused him to activate the Taser. The probes hit the man’s outer clothing and appeared to knock him back into a seated position without fully “working” in terms of muscular incapacitation. The Taser did seem to make an impression on the man – if more psychological than physical – and he stayed in place (while maintaining his verbal challenges to the officer) until backup units arrived. The additional officers took the man into custody without significant additional struggle – although his attempts to kick caused them to wrap his legs in a special restraint device.

The man was briefly evaluated by medics at the scene; they determined that he had no injuries, which matched the man’s own assertions. He was booked into jail on charges of resisting/obstructing an officer in performance of his duties.

Outcome and Analysis:

In keeping with established protocols, the Department’s review of the use of force involved several steps. These included a supervisor’s interview with both the subject of the force and the involved officer, a downloading and analysis of the Taser data, written reports from the primary and backup officers, and evaluation of available recordings (including in-car video and body-worn cameras).

Unfortunately, while in-car video was helpful, the primary officer's body camera lens was blocked by his own jacket until after his Taser use— a seemingly foreseeable situation that officers have found ways to avoid. While the problem was acknowledged in the sergeant's original memo, no remediation of it is cited in the materials.

RECOMMENDATION ONE: The Department should address (through documentation and counseling) performance issues that interfere with body-worn camera recordings when they come to the attention of supervisors.

The handling sergeant and the reviewing lieutenant ultimately determined that the use of force was justified and in policy. They based this on considerable evidence of the man's agitated, uncooperative, and hostile state from the outset of the encounter. (It should also be noted that the officer had a valid legal basis for detaining the man.) The Taser activation itself was preceded by warnings (in compliance with policy), short in duration, and responsive to an objectively reasonable threat assessment by the officer.

We found this answer to the "bottom line" policy question to be well-supported by available evidence. We also noted some additional issues – some of which the Department addressed as part of its review, and some which we introduce here.

Officer Tactics and Communication

The officer was alone in dealing with the subject for several minutes before other officers arrived. He did some things commendably well, including calmly and promptly calling for backup. He also controlled his Taser effectively – including turning it off and back on to "re-arm" it if needed after the first activation – and with some measure of restraint. Once the subject had ended up seated, the officer held his position patiently until the additional officers arrived.

There were, however, other aspects of officer performance that were more questionable. One of these was the officer's heated and repeated use of profanity in his exchanges with the subject. The policy prohibiting the use of "obscene, indecent or derogatory" language does contain a relevant exception: for a "deliberate verbal tactic" intended to gain compliance and/or avoid a physical confrontation with an individual who is "non-compliant, hostile, or aggressive."

To the Department's credit, the sergeant's report accurately documented the officer's language, and the lieutenant analyzed the issue in his own memorandum on the incident – and determined that it was consistent with the exception cited above. We find this reasonable in the context of the encounter as it played out, and it did seem as though the officer was in control of his own emotions (as opposed to seeming angry or gratuitously abusive).

On the other hand, the recordings raise broader questions about the *efficacy* of the officer's verbal approach. He appears to quickly match the subject's pugnacious demeanor with his own, and makes no attempt to defuse or de-escalate the situation by explaining his own actions or otherwise addressing the man's anger over being stopped. Once the Taser had been activated and

the man was seated on the ground and somewhat neutralized (at least as a physical threat), the officer's tone shifted into more of a glib condescension. He addressed the (older) man several times as "bro," for example, which did little to mitigate the man's resentment or establish a more constructive footing for the interaction.

Again, the lieutenant's memo addresses the issue by recommending a debrief with the involved officer, with a particular focus on approaches to de-escalating "tense encounters." Assuming that this session actually occurred, this constitutes the sort of "next level" supervisory intervention that we have long advocated, and that is a clear advantage of the more direct and formal involvement of lieutenants in the review process for these incidents.

Also puzzling from a tactical perspective was the decision to move *closer* to the man that seemed to precipitate a reaction from him – and in turn prompted the Taser activation. There is no question that the man was both agitated and verbally belligerent. The officer's decision to remove the Taser from his holster and give commands for the man to get on the ground seemed justified as well, and he provided clear warnings as guided by policy. Perhaps the goal was to ensure the effectiveness of a Taser deployment that the officer had (reasonably) decided upon *before* moving in. But it seemed like a specific question worth addressing in the analysis.

Investigative Steps

A PAPD supervisor did conduct an interview with the subject as to his perceptions of the incident. This did not provide significant insight as to the Taser use – the man's remarks were rambling and seemed only tenuously related to particulars of the force. However, the man alleged racial bias and lack of probable cause at various points in the interview. And, while patiently accepted during the interview, these claims were not pursued or formally addressed.¹

There was nothing malicious about this: the objective evidence did establish a legal basis for the stop, and the sergeant was clearly focused on the force to the exclusion of other issues. But the issue – inherently sensitive and worthy of careful attention – was relevant in the broader sense. The man's initial anger at being stopped was based at least in part on a perception of racial discrimination, and he chose to amplify this when the sergeant provided the opportunity. Accordingly, some forum for addressing this "complaint" as it emerged in the supervisor's force interview would have been appropriate, even though that had not been the original purpose behind taking the statement.

RECOMMENDATION TWO: The Department should evaluate, investigate as needed, and document its response to racial bias allegations, even when they emerge through avenues outside the traditional complaint system.

¹There was a similar failure to address the racial bias allegation in a complaint investigation discussed below.

Impressively, the Department also sent officers to canvas the immediate surroundings for possible witnesses. While this did not yield useful results, it showed creditable due diligence by the responding parties.

Misconduct Investigations

Case 1: Allegation of Excessive Force After an Initial Consensual Encounter

Factual Overview:

This complaint came from an individual who was challenging different aspects of his arrest for obstructing/resisting officers in the performance of their duty. The incident in question had begun under circumstances that were later disputed: the complainant was waiting at a bus terminal in the early morning hours and got the attention of an officer who was passing by in his radio car. His intent was either to offer a friendly hello (his version) or to summon the officer (which was the officer's claimed understanding). The officer parked and approached, and the encounter deteriorated from there.

For his part, the man seemed bothered by the officer's demeanor and aggressive reaction to a pleasant wave; the officer, on the other hand, found the man's behavior strange and came to believe he was under the influence of alcohol or drugs. The officer detained the man and called for backup, which further antagonized the complainant.

When the second officer arrived, the misunderstanding/confrontation escalated. The man was uncooperative with requests to show his identification, did not comply with other directions, and made aggressive statements and gestures. The officers sought to take physical hold of the man, and later reported that he offered significant resistance, including a punch to the face of the initial officer as well as a persistent struggle once he was taken to the ground.² A total of five officers were eventually involved in handcuffing him and taking him into custody.

The man was eventually charged with four misdemeanor counts, including battery on the officer, in conjunction with the incident. Six months after his arrest, he filed a written complaint with the Department. He also filed a claim with the Palo Alto City Attorney. From these materials, the Department identified two central allegations: that the detention and arrest were unlawful, and that he had been subjected to excessive force in the form of an unwarranted punch to the face that left a "permanent scar."

²The body camera footage depicts what was clearly a struggle to get the man in cuffs, but as oftentimes with "hands on" events, the particulars are difficult to discern.

Outcome and Analysis:

Ultimately, the Department determined that the allegations were unsupported. It took the position that the detention and arrest had been legally justified, and that the man's claim of a punch – necessary or otherwise – was unfounded.

For the most part, we found the complaint investigation to be thorough and thoughtful, and the outcome to be reasonable; as discussed below, some of the investigative resourcefulness was particularly noteworthy. But we also noted a couple of shortcomings in the Department's approach.

Investigative Steps

Early in his review, the investigating sergeant attempted to interview the complainant in order to supplement the written complaint with a more detailed version of events. The man was reluctant to cooperate with this process on the advice of his civil lawyer, but they nonetheless ended up speaking on the phone for more than a half hour.³

This made for an odd hybrid: the repeated references to the lawyer made the first part of the conversation cumbersome, as the sergeant attempted to clarify the initial complaint. Then the sergeant persevered with a series of follow-up questions that the man willingly answered, but that seemed out of sync with his stated preferences to follow his lawyer's advice. While the sergeant drew repeated distinctions between the legal claim and his own responsibilities, and while his intentions seemed much more related to thoroughness than any attempt to "trick" or take advantage of the man, the obvious overlap in issues – particularly with regard to fact-gathering and the significance of the man's own version – perhaps warranted a revised approach.

Ideally, some outreach to the attorney might have been a useful way to bridge the communication gaps, get a more definitive version from the complainant, and ensure that a represented party's legal rights were being protected.⁴ Moreover, the man alluded briefly to a security guard witness who had supposedly agreed in a conversation with that lawyer that the actions of the police officers were hard to understand; this would have been an interesting angle to pursue.

While attorneys often decline to facilitate the cooperation of their clients in administrative reviews, a better practice would have been to get the lawyer's contact information and reach out

³He also directed the PAPD supervisor to a YouTube video in which he was informally interviewed about the incident in question and offered his version of events in more detail; the sergeant did watch this as well.

⁴Our understanding is that criminal charges were also still pending at that point, which heighten the concerns about engagement with represented individuals.

to get confirmation of this decision. Doing so would have shown enhanced due diligence at the very least and may have led to a more thorough exploration of events.

RECOMMENDATION THREE: When complainants are represented by counsel, the Department should coordinate with that person before proceeding with an interview in pursuing the best available evidence as to what occurred.

One important source of information was a third-party witness: a transit system security officer who witnessed the arrest and had himself encountered the complainant prior to the first officer's arrival.⁵ The security officer had provided the man with bus directions and found him to be in a cheerful but peculiar mood. He saw the complainant get the officer's attention and watched the officer approach in a casual manner that seemed a reasonable response to the complainant's actions. He described the event as shifting in tone when the officer asked for the man's identification, which clearly provoked him. Though he did not see the man punch the first officer, he did confirm that the man had taken an aggressive physical stance and eventually lunged at the officer; this led to his being taken to the ground. The security guard did not see any of the officers punching the man, justifiably or otherwise, and found them to be controlled and matter of fact in their handling of the incident.⁶

PAPD's investigating sergeant also took pains to pursue physical evidence relating to the allegation of a "permanent scar" the man claimed to have received from being punched in the face. This included asking for copies of his medical reports from the jail (which did not make reference to a facial injury), acquiring a copy of his driver's license photo, and requesting a booking photo from a prior arrest of the complainant in another part of California. These materials were inconclusive. (While the man appeared to have a relevant mark on his face after his arrest, its nature and source were unclear. Nor did any other evidence – including the contemporaneous recorded statements of the man himself – offer corroboration for his claim.) The finding and analysis of them, however, reflect impressive thoroughness on the investigator's part.

⁵The investigator was directed toward this witness when inquiring about possible surveillance cameras operated by the transit center. Although the cameras were apparently not operational at the time of the incident, the emergence of the witness was a significant development. Curiously, though, he claimed to have not been previously contacted by the complainant or his lawyer, which leaves an open question about the complainant's assertions during his interview.

⁶This interview, which was quite helpful to PAPD, became somewhat "leading" at times, with the sergeant prompting the security guard as to his recollection of specific actions discernible from the body camera videos. This is not ideal as an investigative practice. But some of it was attributable to the passage of time as being an understandable impediment to complete recollection.

The reports from the prior arrest were instructive in other ways as well. They featured allegations of erratic and belligerently uncooperative behavior that were doubly relevant: first as corroboration of the demeanor the officers claimed to have experienced, and second as a counterweight to the complainant's claim that his initial actions had been a gesture of benign politeness that the officer inexplicably misunderstood. While we are sometimes leery of complainant's "prior acts" being used to undermine the legitimacy of later assertions – since a spotless history should not be a prerequisite for fair, objective consideration – in this case the earlier police encounter had specific overlaps with the claims at issue here.

Additionally, both of the primary officers involved in the arrest were interviewed as subjects pursuant to the complaint investigation – and later arriving officers were treated as witnesses.

The initial officer's body-worn camera shows the initial encounter, tense dialogue, and eventual efforts to subdue the man as additional officers arrived. Unfortunately, though, camera angles and movements make it hard to discern what specifically occurred once the two officers closed distance to take the man to the ground.⁷

Use of Force Review

One gap in the Department's review process was the lack of a supervisory review of force, or detailed reporting about force from the involved officers. On the contrary, the responding supervisor seemed quick to accept the representations that no force requiring a formal workup had occurred, in spite of the fact that several officers had responded and had been physically involved in handcuffing the man – and in spite of the fact that one of the officers had a visible injury to his eye that he attributed to the suspect's aggression.

The Department's relevant policy includes several circumstances in which a supervisor's report is required, and it is true that none of those technically applied in this case. (The subject's assertions about his facial injury were not made at the time, and he was not cooperative with questioning after his arrest.). Still, the physical effort actions required to subdue the man surely constituted "force" within the Department's definition, and therefore at least warranted a detailed accounting from involved officers – which is required by a separate policy. Instead, only one officer apparently wrote a report, and his description was both brief and somewhat vague. This one in spite of the fact that, as he wrote, "It took five (5) officers to gain compliance and gain control of his hands and take him into custody."

This lack of conclusive documentation – particularly from the officer whom the subject later alleged to have punched him – was a deficiency in the investigative record of the complaint that should have been avoided at the time of the incident.

⁷It was also unfortunate that two of the on-scene officers' cameras failed to capture the takedown at all, for fairly technical reasons that were explored in a lieutenant's memo concerning the case.

RECOMMENDATION FOUR: The Department should use this case as a forum for assessing whether lower-level force incidents are being appropriately documented by its personnel and assessed by its supervisors.

Case 2: Allegation of Excessive Force After Arrest and Handcuffing

Factual Overview

A PAPD officer observed a female cross the intersection in downtown Palo Alto against traffic and detained her for further investigation. Because the woman appeared unsteady and showed symptoms of intoxication, the officer detained her to conduct an “intoxicated in public” investigation. Based on his observations and the woman’s conduct, he decided to take her into custody, advised her she was under arrest, and handcuffed her.

The woman was verbally resistant while the initial officer handcuffed her. Another officer assisted, and the two officers then began to escort her to the police car. At some point as the three were walking, the woman turned and bit the second officer in the upper arm. Observing this action, the initial officer pulled the woman away from the officer and then both officers took her to the ground. The woman struck her face on the sidewalk, causing her nose to bleed.

Medical attention was requested on scene, paramedics responded, and the woman was transported to the hospital for further treatment.

Later, the woman complained that the officer had arrested her for no reason and had used unnecessary force against her. PAPD conducted an investigation and determined that there was sufficient cause for the arrest and the use of force was within policy.

IPA Analysis of Allegations

IPA has reviewed the complaint, the investigative materials, and the body-worn camera footage relating to this incident and agree that there was a sufficient basis to effectuate a detention and that the use of force was within policy. However, IPA identified the following issues that are deserving of further discussion:

Confusion regarding identification requirement

A point of strong contention between the on-scene officers and the woman was whether she was required to obey their instructions to produce identification after she repeatedly rebuffed her entreaties to do so. When the woman advised that she had no reason to provide them with her identification, one of the backup officers said “actually, you do.” When the woman asked why she would have to produce identification, the initial officer told her that when you are detained in the United States, you have to identify yourself.

The officers’ statements to the women are actually misstatements of the law in California. While the failure to identify oneself may have further implications in that it will increase the likelihood

that an individual will be arrested or even taken to jail because of the heightened suspicion caused when an individual fails to identify oneself, there is no law requiring that a pedestrian who is detained provide identification to an inquiring officer. PAPD should regularly advise its officers about the limits of their authority on this point, as it is frequently a point of confusion among law enforcement.

Unprofessional remark by arresting officer

Appropriately, a PAPD supervisor responded to the location and conducted an inquiry into the incident. In describing the incident, the initial officer told the supervisor he observed the woman bite his colleague and said: “then we dumped her.” The way in which the officer described his use of force was inconsistent with the professionalism PAPD appropriately expects of its police officers. Even though it was an internal conversation and not made in a mocking or celebratory way, the characterization not only seems callous on its face, but also occurred in a public setting. It is the sort of comment that reflects poorly when the public hears, or when recordings are produced to the public for one reason or another. This description of the use of force incident should have been identified by the supervisor who conducted the investigation as an opportunity for course correction.

Activation of Body-Worn Camera in Hospital Setting

The initial officer continued to activate his body worn camera as he walked through the hospital, capturing employees and patients as he traveled through the halls to speak with the woman in her hospital room. At one point, the officer asked a supervisor whether he should have his camera activated and was told that police officers were exempt from any privacy concerns. Current PAPD policy regarding activation of body-worn cameras does not provide any guidance to officers regarding this issue.

Hospital patients and workers have an expectation of privacy that their activity or conversations will not be tape recorded by police officers unless there is an official reason for doing so. Certainly, it is appropriate to use the taping capability of the body-worn cameras to record an interview in a confined hospital room of an individual who has been subjected to a use of force. But officers should be instructed through policy to minimize their intrusion into hospital space by de-activating their cameras as they walk through the hospital corridors and activate them only when interacting with the interviewee.

We have been advised that the local hospital has identified the issue and now routinely advises officers that they should not walk through the corridors with their body-worn cameras activated. Despite this initiative by the hospital, it would be important to align PAPD policy with hospital expectations to ensure privacy concerns are not impacted.

RECOMMENDATION FIVE: PAPD officers should regularly advise its officers on the right of individuals not to identify themselves and how they should respond when an individual declines to do so.

RECOMMENDATION SIX: PAPD should advise the supervisor who reviewed the body camera footage of this incident about the missed opportunity for course correction regarding the officer's unprofessional description of his actions.

RECOMMENDATION SEVEN: PAPD should counsel the officer about the need to use professionalism in describing any use of force.

RECOMMENDATION EIGHT: PAPD should modify its body-worn camera policy to provide further guidance to its officers regarding activation in hospital settings.

Case 3: Allegation of Excessive Force During a Pat Down Search

Factual Overview

A PAPD officer conducted a traffic stop when he noticed that the vehicle had failed to come to a full stop at a stop sign and the car was missing appropriate license plates. After his approach to the vehicle, the officer recognized the driver as having a felony warrant for theft. When asked, the driver provided someone else's identity.

The officer wrote in his arrest report that he placed the driver unhandcuffed in the back of his patrol vehicle for officer safety purposes, because he was going to have the other two occupants exit the vehicle so he could search it incident to an arrest, and there was only one additional officer on-scene. The report indicated that the officer observed multiple sets of clothes with clothing security tags on them in the back seat of the vehicle in plain view. The police officer also wrote that multiple family members of the vehicle occupants arrived on scene and started causing a disturbance.

The officer wrote that upon a search of the vehicle, he found more clothes with metal detector clips on them in the backseat of the vehicle. The officer wrote that, believing that the driver was in possession of stolen property, he then conducted a probable cause search of the vehicle's trunk and discovered additional clothing with clothing security tags on them.

The officer wrote that while the driver was in the back of his patrol vehicle, he asked her about the clothes that he had located inside of the car but that she was not under arrest for possessing stolen property. The officer wrote that the driver said she bought the clothes from someone that she knows steals clothes.

The officer wrote that he arrested the driver for false impersonation (for providing him with a false identity) and the outstanding warrants.

The officer said he asked the driver out of the vehicle and then arrested her.

The complainant, who was seated in the front passenger's seat of the vehicle and was the driver's sister, prepared a complaint form. She was also interviewed by a supervisor assigned to conduct an inquiry and made the following allegations in writing and/or during the intake interview:

- The officer was rude by opening the door after approaching the car.
- The officer placed her sister in the rear of his police car without Mirandizing her.
- The officer searched the car "for no reason".
- The officers asked them if there were any weapons in the car because they were African American.
- The officer left with an arrestee not in handcuffs.

According to the supervisor assigned to conduct the inquiry into the allegations, the complainant told her that PAPD could "do what they wanted" with the complaint and that she was satisfied just letting the supervisor know about her feelings regarding the police contact and arrest of her sister. The supervisor concluded that the opening of the door by the officer was understandable considering the facts that the driver did not attempt to roll down her window to speak with him and that there was obvious damage to the car. The supervisor further determined that placing the arrestee in the back of the patrol car unhandcuffed and without reading a Miranda advisement was a discretionary procedure. The supervisor found no violations of policy with regard to the allegations.

IPA Analysis of allegations

The officer was rude in opening the car door. A review of the body camera footage shows that as the officer approaches the driver's side, he politely asks if he can open the driver's door and then proceeds to do so. There is nothing objectively rude about the officer's actions.

As noted above, the supervisor's assessment was that the officer's actions were reasonable since the driver did not attempt to roll down her window to speak with him and the obvious damage to the car door. But these explanations are limited in their persuasiveness. The officer did not ask the driver to roll down her car window, which would seemingly have been a useful intermediary step. (Indeed, later in the encounter, he did ask her to roll down the driver door window and she immediately complied.) Nor did the damage to the car explain why the officer chose to open the driver's door; the car damage was all on the right side of the vehicle.

To reiterate: we did not find the officer's opening of the driver's door to be "rude" or inappropriate to the circumstances. But it was inherently more intrusive than a more commonplace traffic stop dialogue through a window, and the supervisor's justification for the officer's action is not borne out by the body camera footage. It is imperative that supervisors are accurate when using evidence to account for officer behavior. Ideally, a slightly more nuanced response – and an acknowledgment of possible bases for the complainant's perceptions – would have occurred here.

The officer placed her sister in the rear of his police car without Mirandizing her. The supervisor concluded that the decision of the officer to place the arrestee in the back of the patrol car and not Mirandize her was discretionary. Both assertions are correct. However, the report indicates that, after the sister was detained, the officer then asked her about the clothing and she made an admission. The officer intimated in his police report that since the arrestee had not been arrested at that point, at least with regard to the suspected stolen clothing, he did not need to Mirandize her before asking her about them.

At the time of the questioning, the arrestee was clearly not free to leave and arguably under arrest. Even if the preliminary reasons for her arrest were for the felony warrant and failure to correctly identify herself to him, by the time the officer questioned her about the clothing, he had suspicion that the clothing was stolen. If the officer wanted to ask her about the clothing, it would have been better practice to avoid running afoul of Miranda to have advised her of her Miranda rights before questioning her about the clothing. The supervisor should have identified this issue in his review of the allegations.

The officer searched the car for no reason. As indicated in the arrest report and borne out by the body-worn camera footage, there was clothing in plain view in the car which had clothing security tags still on the clothing. That observation formed sufficient suspicion for the officer to then search the remainder of the car. When the officer found additional clothing in the back seat with clothing security tags intact, he had sufficient cause to search the trunk of the car.

In his inquiry report, however, the supervisor did not address this allegation. Best practice in complaint review requires separate and direct attention for each allegation that is raised, even when the objective facts show that it is unfounded.

The officers asked the occupants if there were any weapons in the car because they were African American. There is no evidence that the officer's on-scene investigation and questioning was racially motivated. However, again, it is imperative that any review of complaint allegations address each of them. While there is actual notation made presumably by PAPD that there was a racial component to the handwritten complaint, the supervisor did not address this allegation in his analysis. He should have.

The officer left with an arrestee not in handcuffs. The arresting officers chose not to handcuff the arrestee until they arrived at the police station. Under current PAPD policy, the decision whether to handcuff arrestees is discretionary as stated by the supervisor who conducted the inquiry. Despite the discretion provided officers on whether and when to handcuff individuals who are under arrest, it is our understanding that the Department's strong preference and presumption is that individuals who are under arrest will be handcuffed, especially if they are to be transported to the station. While we have been advised that the first contact officer is no longer with PAPD, a review of the body camera footage indicates that the decision not to

handcuff the arrestee was suggested by the secondary officer. That officer should be briefed on Department expectations.

RECOMMENDATION NINE: The supervisor should be briefed about the need to address every allegation raised by a complainant in his review and the need to base any justification for officers' actions on the evidence available.

RECOMMENDATION TEN: The on-scene officer who suggested not handcuffing the arrestee in this case should be briefed on PAPD practice and expectations.

Additional Issues

Complainant interview not tape-recorded

It is standard internal investigative practice to tape record interviews of complainants so that there is the "best record" of what was alleged and the fullest account of the complainant's narrative. In this case, the supervisor did not tape record the conversation and there is no explanation in the file for why this did not occur. PAPD should devise protocols to ensure that complainant interviews are recorded.

RECOMMENDATION ELEVEN: PAPD should devise protocols to ensure that all intake and follow-up interviews of complainants are tape recorded, and if extenuating issues make this not feasible (such as complainants' refusal to be recorded), there should be documentation explaining this.

Use of profanity

In his initial encounter with all of the three occupants of the vehicle, the arresting officer is polite and professional. He does not assume a commanding or demeaning presence and uses a tone that effectively keeps tensions low. The officer gives the occupants significant leeway and patiently explains to them why he is doing what he is doing and why he is asking them to do certain things. However, at one point, he tells the arrestee repeatedly "this is bull****" when he believes that she is not telling him the truth. The comment seems both discordant and unnecessary in relation to the overall tone of the encounter. While these remarks were not part of the sister's complaint, she would likely not have been within earshot of them.⁸ But the reviewing supervisor presumably would have encountered the comments on the recording and should have identified them as a basis for remediation.

⁸They occurred outside the patrol car, while the complainant was still inside the subject vehicle.

Notification Letter

In advising the complainant of the disposition of this matter, PAPD sent a form letter with no information about what the Department did to investigate the complaint. It is an approach common among law enforcement agencies, largely because of confidentiality and efficiency concerns. But the downside to the lack of detail is that it easily contributes to skepticism about the thoroughness of the review and the legitimacy of the outcome. We have seen agencies address this dynamic by providing specific information that personalizes the response and reflects the due diligence that occurred.⁹ And those departments include language thanking the complainant for engaging and acknowledging the importance of public feedback.

We mentioned this issue in our last report – in the context of encouraging PAPD to share its efforts in a case that it had reviewed quite carefully and thoughtfully. Providing additional information will make the process more meaningful to complainants and, given the small volume of cases.

RECOMMENDATION TWELVE: Whenever a review of an incident identifies gratuitous profanity being spoken by an officer to a civilian, supervisors should ensure an appropriate remediation.

RECOMMENDATION THIRTEEN: PAPD should consider providing more information and context in its closing letters, such as advising the complainant what investigative steps were taken and what sources of information contributed to the Department's conclusion.

Case 4: Allegation of Excessive Force During a Search Incident to an Arrest

Factual Overview

An officer stopped a vehicle with expired registration. During the investigation, the driver exhibited signs of intoxication. The officer decided to arrest the man for being under the influence of illicit drugs. Just before searching the man incident to this arrest, the officer instructed the individual to spread his legs and when the individual did not immediately comply, used his foot to spread the man's legs farther apart.¹⁰ The man immediately screamed about the action, said that he had been injured and that a pre-existing medical condition had been

⁹ Clearly, a summary of the allegations and a description of the investigative steps/sources of evidence fall outside the confidentiality restrictions imposed by the Peace Officer's Bill of Rights.

¹⁰ In his police report, the officer described his actions as follows: "While searching [the man] incident to arrest, I asked him to separate and he refused. I lightly moved his left foot with my right foot so I could properly search him. [The man] began to complain of pain and PAFD medics were called to the scene".

aggravated by the officer's action. As a result of the man's complaint, he was taken to a local hospital for evaluation and treatment.

While on-scene, the man's level of cooperation with law enforcement went from initially cooperative to argumentative, belligerent, and slow to cooperate as the incident proceeded – especially after the officer asked him questions like: “When was the last time you used?” When the officer asked the man to perform sobriety tests, the man was partially cooperative but indicated that he could not perform some of them due to a pre-existing physical infirmity. After the officer's action with the foot, the man's belligerence significantly increased and continued during his time at the hospital, with the man threatening the officer with harm.

The District Attorney agreed to file charges against the man for being under the influence of an illicit substance and for possession of an illegal billy club that was discovered in the man's vehicle during the investigation.

Later the man submitted a written complaint alleging that the officer “kicked” his feet apart, causing him injury. The supervisor who was on-scene during the incident endeavored to contact the man to interview him about his complaint, but was unable to locate him despite repeated attempts. The supervisor, who was on scene during the search, did review the body camera footage and the case report; he concluded that the officer's use of his foot in searching the man was an approved defensive tactic technique and consistent with PAPD policy.

IPA Analysis of Allegations

Concepts of De-Escalation

Recently, PAPD worked in conjunction with the other City stakeholders regarding its policies on use of force. As a result of those conversations, PAPD revised its policies to require a supervisor to “describe any de-escalation techniques employed or an explanation for why such techniques were not feasible”. In addition to revising the policy, PAPD revised its use of force cover sheet to require information regarding the use of de-escalation techniques.¹¹ Since that time, state law now requires police agencies in California to integrate de-escalation concepts in its use of force policies and training.

As a result of the new policy, whenever an encounter between police officers and the public results in a complaint about excessive use of force, PAPD will now evaluate the encounter not only in terms of whether the officer's use of force is consistent with its policies, but also whether the officer's use of de-escalation practices is also consistent with the new policy.

¹¹ We have also been advised that the Department has also proactively offered to generate a Use of Force report to be submitted to City Council as a cover memorandum with each IPA report. This report will contain information on use of force incidents and will specifically address the use and effectiveness of de-escalation techniques by officers.

While this incident pre-dated the recent change in PAPD policy, the concepts of de-escalation have been long featured in PAPD's training. In this case, the officer indicated that he instructed the suspected intoxicated man to spread his legs further apart. When there was no immediate compliance, he used his foot to "assist" the man, causing the resulting allegations of injury, the need for medical attention, and conflict that escalated over the next several hours.

Had the officer been a bit more patient with the man, asked him if he was able to do what the officer was requesting (the man had already complained about a pre-existing medical condition that hampered his ability to complete some of the field tests given to him), and given him more time to either respond or comply, the escalated conflict and the subsequent complaint of excessive force may well have been avoided. Moreover, in this situation, there was time to deploy such a strategy: the man was handcuffed, a back-up officer was on scene, and no significant threat level was presented requiring immediate action. Police departments are recognizing how important consideration of de-escalation approaches prior to resorting to force and how effective deployment of them can work to the benefit of both the civilian and the officer alike.

In the spirit of the new policy, PAPD should begin to embrace the de-escalation concepts recently adopted.

RECOMMENDATION FOURTEEN: PAPD should counsel the involved officer on how de-escalation efforts should be deployed whenever practicable, using this incident as an example.

Systemic Issues: Adding Reporting Component to New De-Escalation Policy

We appreciate the swiftness with which PAPD modified its policy in response to community sentiment and impending state law. While the new reviewing requirement noted above will ensure that de-escalation techniques (or the lack thereof) will be considered, we also believe it should be incumbent on the officer who uses force to describe any efforts to de-escalate a situation or why such efforts were not feasible.

RECOMMENDATION FIFTEEN: PAPD should devise policy that instructs officers who use force to include a narrative about any attempts to use de-escalation prior to the application of force, and to explain why such options were not feasible if no de-escalation efforts were deployed.

