



COUNCIL AGENDA: 8/13/19
FILE: 19-634
ITEM: 8.2

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Edgardo Garcia

**SUBJECT: SJPD INTERNAL AFFAIRS UNIT -
2018 DEPARTMENT INITIATED
INVESTIGATIONS REPORT**

DATE: August 12, 2019

Approved

Date

8/12/19

REPLACEMENT

REASON FOR REPLACEMENT

The purpose of the replacement memorandum is to correct some of the statistical data within the report.

RECOMMENDATION

Accept the San Jose Police Department's Internal Affairs Unit report on Department Initiated Investigations for calendar year 2018.

OUTCOME

Under the revised Internal Affairs Unit (IA) complaint process instituted in July 2008, the Police Department agreed to provide Department Initiated Investigations (DII) information to the City Council on an annual basis. This information was to be provided in conjunction with the release of the Independent Police Auditor's (IPA) Annual Report. Acceptance of this report will provide the City Council and the community with statistics related to DIIs for calendar year 2018.

BACKGROUND

This is the eleventh DII report issued by the Department. The Department initiates and conducts administrative investigations regarding potential misconduct by sworn and non-sworn Department members at the direction of the Office of the Chief of Police. For this report, a DII involves either a sworn or non-sworn Department member. This differs from the IPA's reporting, which only reflects sworn Department members.

There is a distinction between a Conduct Complaint, which is generated by a citizen, and a DII. A complaint will be classified as a Conduct Complaint when a member of the public files a complaint against a Department member and it is determined to be potential misconduct. The initial investigation must determine whether the facts stated in the complaint are such that, if sustained, would amount to a potential violation of the law or Department policies or procedures. A Conduct Complaint is synonymous with a citizen complaint. The distinction between a Conduct Complaint and a DII is that a DII is an internal investigation initiated by the Office of the Chief of Police. A DII is often based on an allegation which comes directly from a member of the Department who initiates an investigation based on a specific awareness of, or a belief that a Department policy or procedure or a potential violation of the law has occurred. Potential misconduct may be brought to the attention of the Chief of Police by a Department member, another police agency, or a judicial entity. DII's can be investigated by IA or the Department member's chain of command. IA is responsible for tracking and maintaining DII statistical data, including tracking the dates the DII was received and completed.

While the Police Department draws a distinction between a citizen complaint and a DII, a review of both categories gives the Department the ability to identify trends and patterns to improve Department training and supervision.

If at any time a citizen makes a complaint against a Department member, and the complaint is associated to an existing DII investigation, the DII will be reclassified as a Conduct Complaint. As with the case of any Conduct Complaint, the IPA will be notified and may audit the investigation.

ANALYSIS

The Department views DIIs as a priority and strives to complete them as soon as practicable. DIIs are prioritized by the date the Department is made aware of the allegation and the nature of the misconduct. A DII is considered complete when "Findings" are determined for each allegation and discipline has been imposed.

A DII may include investigations of more than one Department member and can contain multiple allegations of potential misconduct for each involved member. The Department utilizes a list of ten allegation categories for all Conduct Complaints and DIIs. Based on IA Unit statistics compiled for this report, the following data points for DIIs conducted during a five-year period from calendar year 2014 through calendar year 2018 are highlighted; (*See Attachments 1 & 2; Charts 1A – 2D*)

- In 2018, the Department initiated 43 sworn DIIs, compared to 35 in 2017. The total number of DIIs between 2014 and 2018 fluctuated, with highs of 43 in 2016 and 2018, and a low of 23 in 2015. (*See Attachment 1; Chart 1-A*)

- In 2018, the Department initiated 10 non-sworn DIIs. The same number of non-sworn DIIs was initiated in 2017. The total number of DIIs between 2014 and 2018 fluctuated, with highs of 11 in 2014 and 2016 respectively. *(See Attachment 1; Chart 1-A)*
- Of the 43 sworn DIIs initiated in 2018, there were a total of 83 misconduct allegations against sworn staff, compared to 100 in 2017. (A DII may include more than one allegation of misconduct.) The total numbers of allegations received against sworn staff between 2014 and 2018 fluctuated, with the 99 in 2017 being the high. *(See Attachment 1; Chart 1-B)*
- In 2018, the Department received 22 allegations against non-sworn members. 16 allegations against non-sworn members were received in 2017. The total number of allegations against non-sworn members between 2014 and 2018 fluctuated, with a high of 30 allegations in 2014. *(See Attachment 1; Chart 1-B)*
- In 2018, the Department completed investigations of 121 allegations against sworn officers; 88 (73%) of the allegations were sustained. Between 2014 and 2018 the Department completed investigations of 331 allegations against sworn officers; 214 (65%) of the allegations were sustained. (Please note: Investigations may not be completed within the same calendar year they were received. *(See Attachment 2; Chart 2-B)*
- In 2018, the Department completed investigations of 35 allegations against non-sworn members; 30 (86%) of the allegations were sustained. Between 2014 and 2018 the Department completed investigations of 137 allegations against non-sworn members; 105 (77%) of the allegations were sustained. (Please note: Investigations may not be completed within the same calendar year they were received.) *(See Attachment 2; Chart 2-B)*
- Between 2014 and 2018, Documented Oral Counseling was the most common form of discipline imposed for both sworn and non-sworn Department members. Documented Oral Counseling was imposed on a total of 75 occasions during this period. *(See Attachment 2; Chart 2-D)*
- Between 2014 and 2018, the most common misconduct allegations for sworn and non-sworn Department members were, "Procedure" and "Conduct Unbecoming an Officer / Employee". Listed below is the Duty Manual definition for each type of allegation: *(See Attachment 2; Chart 2-B)*
 - **Procedure (P)** An allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures, or guidelines.
 - **Conduct Unbecoming an Officer (CUBO)** An officer's conduct, either on or off duty, which adversely reflects on the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find such conduct was unbecoming an officer. For non-sworn member's, the City's Code of Ethics Policy (1.2.1) is utilized in lieu of CUBO.

In reviewing the DII statistical data, the following conclusion may be made: The number of alleged misconduct investigations received and the number of Department members who were the subject of alleged misconduct investigations fluctuates from year to year. To compare between calendar years 2017 and 2018, the Department noted an increase of 8 alleged misconduct investigations for sworn Department members and no change for non-sworn.

DII CASE SUMMARIES

In the 2014 IPA Year End Report, the IPA recommended the Department submit written reports describing the sworn DII investigations to the Mayor, City Council and posted online for the public. The summaries can be found on the Department's website at: www.sjpd.org/ (See Attachment 3)

EVALUATION AND FOLLOW-UP

No additional follow up action with the City Council is expected at this time.

PUBLIC OUTREACH

This report will be posted on the City's web site for the August 13, 2019 Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and City Manager's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/
EDGARDO GARCIA
Chief of Police

For questions, please contact Lt. Brian Matchett, Internal Affairs Unit Commander, (408) 277-4094.

ATTACHMENTS:

- 1- *RECEIVED* Department Initiated Investigations Charts
- 2- *COMPLETED* Department Initiated Investigations Charts
- 3- DII Summaries

ATTACHMENT 1: RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS**FIVE YEAR SUMMARY OF DIIS (2014-2018)****Chart 1-A**

Year	2014		2015		2016		2017		2018		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
DII totals	36	11	23	10	43	11	35	10	43	10	180	52
# of Department members involved	40	13	23	10	47	12	44	10	52	13	206	58
# of investigations containing multiple Department members	5	1	0	1	4	1	10	0	8	1	27	4
Department members w/more than one DII for listed year	3	2	0	1	1	1	5	0	0	0	9	4
Total # of allegations received	45	30	32	17	58	16	100	16	83	22	318	101

ATTACHMENT 1: RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS
(Continued)

BREAKDOWN OF ALLEGATIONS

Chart 1-B

Year	2014		2015		2016		2017		2018		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	29	26	21	5	32	14	84	15	63	10	229	70
Courtesy	0	1	0	0	3	0	2	0	1	1	6	2
CUBO	13	1	11	9	14	1	10	1	12	1	60	13
Neglect of Duty	1	2	0	1	6	1	0	0	3	0	10	4
Discrimination	0	0	0	0	0	0	0	0	0	4	0	4
Harassment	1	0	0	2	2	0	0	0	2	6	5	8
Search/Seizure	0	0	0	0	0	0	0	0	1	0	1	0
Force	0	0	0	0	1	0	3	0	1	0	5	0
Arrest or Detention	1	0	0	0	0	0	0	0	0	0	1	0
BBP	0	0	0	0	0	0	0	0	0	0	0	0
Total	45	30	32	17	58	16	100	16	83	22	317	101

*BBP = Bias Based Policing

ATTACHMENT 1: RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS

(Continued)

EXPERIENCE OF INVOLVED OFFICERS(S)/NON-SWORN

Chart 1-C

	2014		2015		2016		2017		2018	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
0 – 3 Years experience	16	2	10	0	11	2	15	2	21	3
4 – 6 Years experience	2	2	0	3	0	0	5	2	3	5
7 – 10 Years experience	2	5	2	1	8	4	1	1	3	2
11 – 15 Years experience	7	2	2	5	3	3	4	2	5	0
16 – 20 Years experience	6	1	3	1	10	1	9	1	9	1
21 – 30 Years experience	7	1	6	0	15	2	10	2	13	2
Total	40	13	23	10	47	12	44	10	54	13

ATTACHMENT 2: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS***FIVE YEAR SUMMARY OF DIIS (2014-2018)****Chart 2-A**

Year	2014		2015		2016		2017		2018		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
DII completed investigations	36	13	23	9	33	10	38	13	45	8	175	53
# of Department members investigated	38	12	25	13	35	9	43	14	54	7	195	55
# of investigations containing multiple Department members	3	0	2	1	2	0	5	2	9	0	21	3
Department members w/more than one DII completed for listed year	1	1	1	2	1	1	3	1	3	1	9	6
Total # of Department members who received discipline	28	9	10	5	19	8	27	12	37	5	121	39

ATTACHMENT 2: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS*

(Continued)

ALLEGATIONS VS. SUSTAINED CASES**Chart 2-B**

Year	2014		2015		2016		2017		2018		Total	
	Sworn	Non Sworn Sworn	Sworn	Non Sworn Sworn	Sworn	Non Sworn Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	37/29	15/12	19/13	21/6	26/15	10/10	62/39	30/28	95/74	31/27	239/170	107/83
Courtesy	0/0	4/3	2/0	1/1	2/1	0/0	0/0	0/0	3/1	1/1	7/2	6/5
CUBO	10/4	4/3	12/5	2/1	18/9	8/7	12/6	1/0	15/10	2/2	67/34	17/13
Neglect of Duty	1/1	2/2	0/0	1/1	1/1	1/1	2/1	0/0	2/0	0/0	6/3	4/4
Discrimination	0/0	0/0	0/0	0/0	0/0	0/0	1/0	0/0	0/0	0/0	1/0	0/0
Harassment	1/1	0/0	1/0	1/0	0/0	1/0	0/0	0/0	2/1	1/0	4/2	3/0
Search/Seizure	0/0	0/0	1/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	1/0	0/0
Force	0/0	0/0	0/0	0/0	0/0	0/0	1/1	0/0	3/1	0/0	4/2	0/0
Arrest or Detention	0/0	0/0	1/0	0/0	0/0	0/0	0/0	0/0	1/1	0/0	2/1	0/0
BBP	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0
Total	49/35	25/20	36/18	26/9	47/26	20/18	78/47	31/28	121/88	35/30	331/214	137/105

ATTACHMENT 2: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS*

(Continued)

EXPERIENCE OF INVOLVED OFFICER(S)/NON-SWORN***Chart 2-C**

	2014		2015		2016		2017		2018	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
0 – 3 Years experience	18	0	11	2	5	1	11	1	21	4
4 – 6 Years experience	1	4	2	3	0	1	3	1	4	1
7 – 10 Years experience	1	1	4	3	7	2	4	6	1	1
11 – 15 Years experience	5	4	5	2	2	4	3	2	6	1
16 – 20 Years experience	5	1	0	1	9	0	8	2	9	0
21 – 30 Years experience	7	2	3	2	12	1	12	2	13	0
31+ Years experience							1	0	0	0
Unknown*	1	0	0	0	0	0	1	0	0	0
Total	38	12	25	13	35	9	43	14	54	7

**Unknown reflects an investigation where the Department member's tenure with the Department was not tracked in the incident file. Typically, this occurs with Non-Misconduct Concern Incidents when the involved Department member does not have an existing profile in the Internal Affairs records database.*

ATTACHMENT 2: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS*

(Continued)

DISCIPLINE IMPOSED

Chart 2-D

Discipline Imposed	2014		2015		2016		2017		2018	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Training or Counseling	9	1	1	2	2	1	8	1	15	0
Cease Secondary Employment Activities	0	0	0	0	0	0	1	0	0	0
Documented Oral Counseling (DOC)	15	3	6	2	6	5	15	6	16	1
Letter of Reprimand	0	2	1	1	2	0	4	3	8	1
Disciplinary Transfer	0	0	0	0	0	0	1	0	0	0
10-hours Suspension	1	0	0	0	1	0	1	0	0	0
20-hours Suspension	2	2	1	0	1	0	1	0	0	0
30-hours Suspension	0	0	0	0	0	0	0	0	0	0
40-hours Suspension	1	1	0	0	3	1	0	0	2	1
Greater than 40-hours Suspension	1	0	2	0	2	0	0	0	5	0
Demotion	0	0	0	0	0	0	0	1	0	0
Termination	0	0	0	0	2	1	2	0	1	1
Associated Department Investigation Outcomes										
Retirement before investigation concluded	0	0	1	0	2	0	0	0	0	0
Resigned in lieu of discipline	1	0	1	0	0	1	0	0	1	0
Officers receiving more than one discipline	1	1	1	0	0	0	2	1	6	1
Retired prior to discipline on a sustained case	0	1	0	0	1	0	1	0	1	0
Settlement Agreement*	2	1	2	0	1	1	0	0	4	0
Other**	0	0	0	1	1	0	0	1	0	2

*Settlement Agreement; Discipline combined for 2 DII's with the same employee

**Other: Transfer before discipline; At will employee; Discipline not finalized

ATTACHMENT 3: DII Summaries

This section was added in 2016 to comply with recommendations from the Independent Police Auditor's 2014 Annual Report:

Recommendation # 2: Require written reports describing the DII investigations be annually submitted to the Mayor, City Council and posted online for the public; and

Recommendation #3: Include in the annual Department Initiated Investigation (DII) Report descriptions of the misconduct that gave rise to each of the sustained findings.

COMPLETED – SWORN DEPARTMENT INITIATED INVESTIGATIONS RESULTING IN A SUSTAINED FINDING

Chart 3

	Allegation(s)	Summary	Finding(s)
1	Procedure / Conduct Unbecoming an Officer (CUBO)	Officer was off duty and drove a motor vehicle while under the influence of alcohol	Sustained
2	Procedure / Conduct Unbecoming an Officer (CUBO)	Officer lost Department issued property and failed to notify the Department of its loss	Sustained
3	Procedure	Officer failed to properly activate a Body Worn Camera	Sustained
4	Procedure	Officer failed to properly document a criminal incident	Sustained
5	Procedure / Conduct Unbecoming an Officer (CUBO)	Officers violated Department procedures regarding a vehicle pursuit and discharged a firearm and Taser at a moving vehicle.	Sustained
6	Procedure	Officers violated Department procedure regarding a vehicle pursuit	Sustained
7	Procedure	Officer failed to properly process evidence	Sustained

ATTACHMENT 3: DII Summaries

(Continued)

8	Procedure / Conduct Unbecoming an Officer (CUBO)	Officer provided false testimony and failed to follow procedures during a vehicle stop	Sustained
9	Procedure	Officer made inappropriate comments toward a co-worker	Sustained
10	Conduct Unbecoming an Officer (CUBO) / Procedure	Officers failed to follow policy regarding overtime reporting	Sustained
11	Procedure	Officer lost Department issued property	Sustained
12	Procedure	Officer failed to properly activate a Body Worn Camera	Sustained
13	Procedure	Officer lost Department issued property	Sustained
14	Procedure	Officer failed to follow policy regarding a vehicle pursuit	Sustained
15	Procedure	Officer failed to properly investigate a criminal incident	Sustained
16	Procedure	Officer lost Department issued property	Sustained
17	Procedure	Officer lost Department issued property	Sustained
18	Procedure	Officer made inappropriate comments toward a co-worker	Sustained
19	Procedure / Conduct Unbecoming an Officer (CUBO)	Officer made inappropriate comments toward a co-worker	Sustained
20	Procedure	Officer failed to properly activate a Body Worn Camera	Sustained
21	Procedure	Officer accidentally discharged a firearm	Sustained
22	Procedure	Officer failed to properly document a criminal incident	Sustained
23	Procedure	Officer accidentally discharged a less lethal weapon	Sustained
24	Procedure	Officers failed to follow procedure after being involved in a vehicle collision	Sustained

ATTACHMENT 3: DII Summaries

(Continued)

25	Procedure	Officer violated policy regarding treatment of offenders and was discourteous	Sustained
26	Procedure	Officer improperly handled a firearm and failed to properly activate a Body Worn Camera	Sustained
27	Procedure	Officer failed to properly activate a Body Worn Camera and was inconsistent in reporting its use	Sustained
28	Procedure	Officers failed to follow procedure and a prisoner escaped	Sustained
29	Procedure	Officer failed to properly activate a Body Worn Camera	Sustained
30	Procedure	Officer lost Department issued property	Sustained
31	Procedure	Officer accidentally discharged a Taser	Sustained
32	Procedure	Officer failed to follow procedure and a prisoner escaped	Sustained
33	Conduct Unbecoming an Officer (CUBO)	Officer was intoxicated off duty and committed a criminal act.	Sustained