



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Shivaun Nurre
Independent Police Auditor

**SUBJECT: REPORT ON POLICE
MISCONDUCT COMPLAINTS
RECEIVED DURING PERIOD
OF CIVIL UNREST**

DATE: July 30, 2020

Approved

Date 7/30/2020

RECOMMENDATION

Accept the report on the police misconduct complaints received by the Office of the Independent Police Auditor and the Internal Affairs Unit during the period of civil unrest

BACKGROUND

At the June 17, 2020 Joint Meeting for the Rules and Open Government Committee, the Independent Police Auditor (IPA) was directed to return to Council by August 2020 with a special report to Council on the quantity and type of complaints received by the IPA relative to the period of civil unrest and police response beginning on May 29, 2020 and ending when the Council rescinds the Emergency Declaration related to Civil Unrest.

ANALYSIS

The police misconduct complaint process allows individuals to file complaints with either the Independent Police Auditor's office or with the Internal Affairs (IA) Unit. The data below reflect complaints filed at both offices.¹

On May 29, 2020, there were clashes between demonstrators and police in the downtown area. The demonstrations and related police actions continued over the following days. On May 31, 2020, The Director of Emergency Services, David Sykes

- (1) proclaimed that a local emergency existed throughout the city, and
- (2) imposed a nightly curfew.

¹ The data does not reflect complaints initiated by the Department against one of its members; these are known as Department-Initiated Investigations (DIIs).

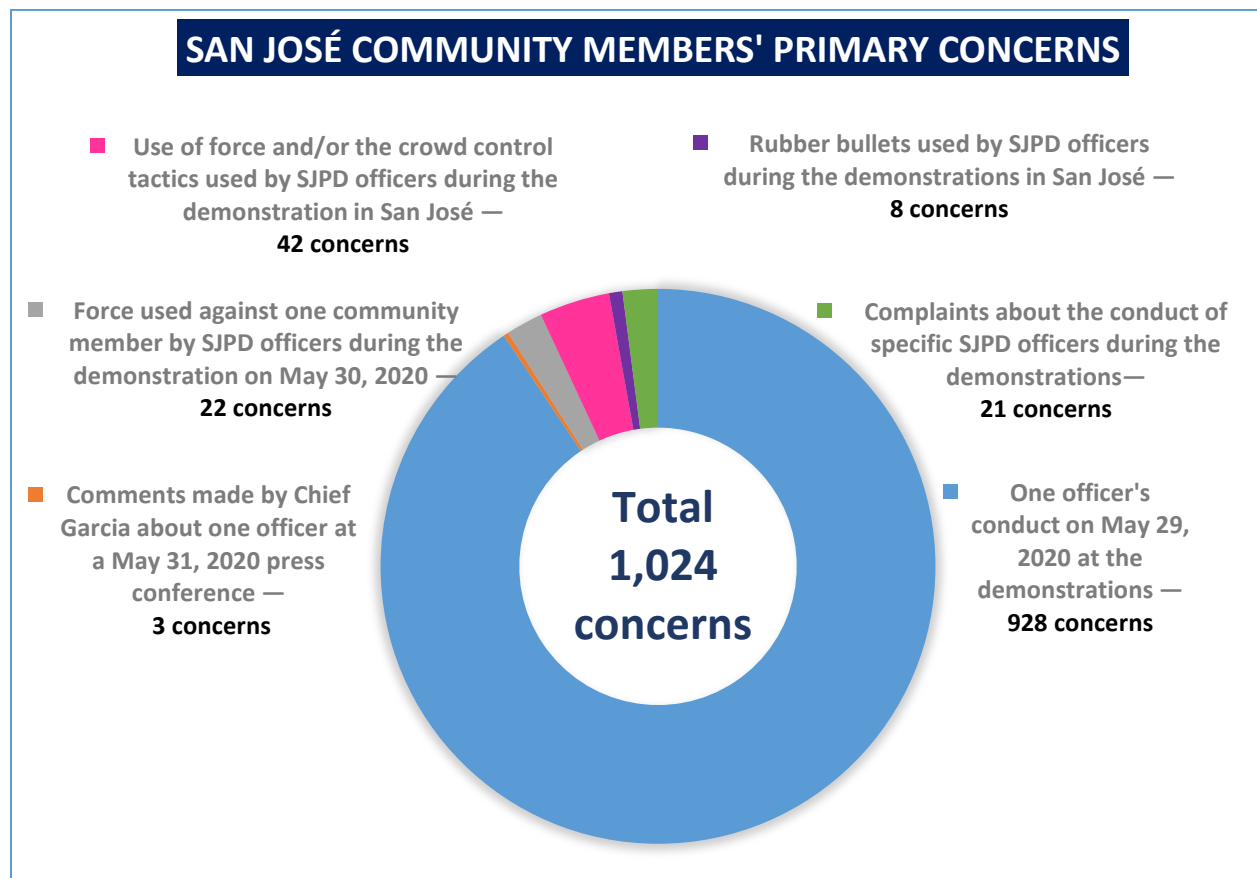
On June 2, 2020, the City Council

- (1) ratified and continued the emergency proclamation, and
- (2) declared that the curfew would sunset on June 4, 2020.

As of the date of this memo, the emergency proclamation is still in effect. In order to provide a concise dataset that could be verified by both the IPA and IA, the IPA determined that a timeframe from May 29, 2020 through and including June 30, 2020 would be both reasonable and meet the general goals of Council's direction.

Community Contacts with the IPA office

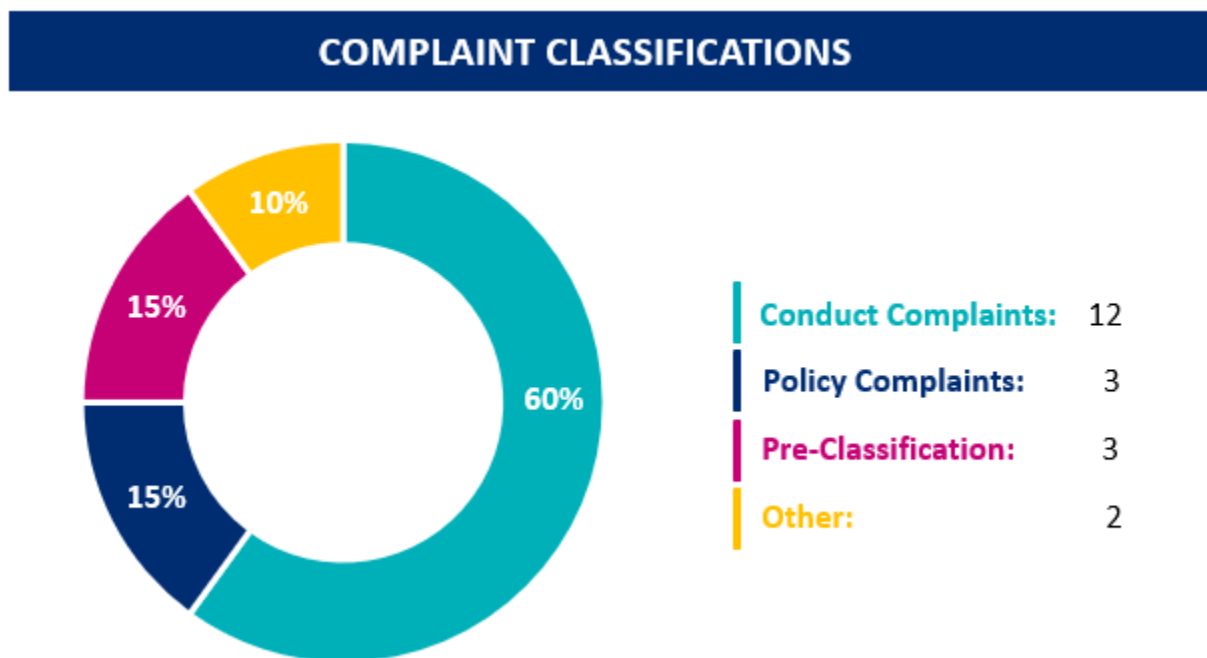
Between May 29, 2020 and June 30, 2020, approximately 1,024 persons contacted the IPA office regarding interactions between the police and demonstrators or police policy focused on demonstrators. These contacts were received via the IPA general e-mailbox, the IPA on-line complaint form, and phone calls. The numbers below reflect only community contacts to the IPA office. It does not include the number of community members who voiced their concerns directly to the IA Unit, to the Police Chief's office, to the City Manager, or to Mayor and Councilmembers. Of the contacts received during the period of civil unrest, the IPA identified these general categories of concern:



Complaint Classifications and Data:

IPA staff reviewed every contact to ensure that each concern about misconduct was captured and classified.² IPA staff also sent an acknowledgement of receipt if contact information was provided. The IPA and IA staff worked together to move the concerns into enumerated complaints and to eliminate duplications of incidents. For example, although many people complained about one officer, those numerous concerns were consolidated into three complaints that will be investigated to determine whether his conduct on May 29, 2020 was within policy.

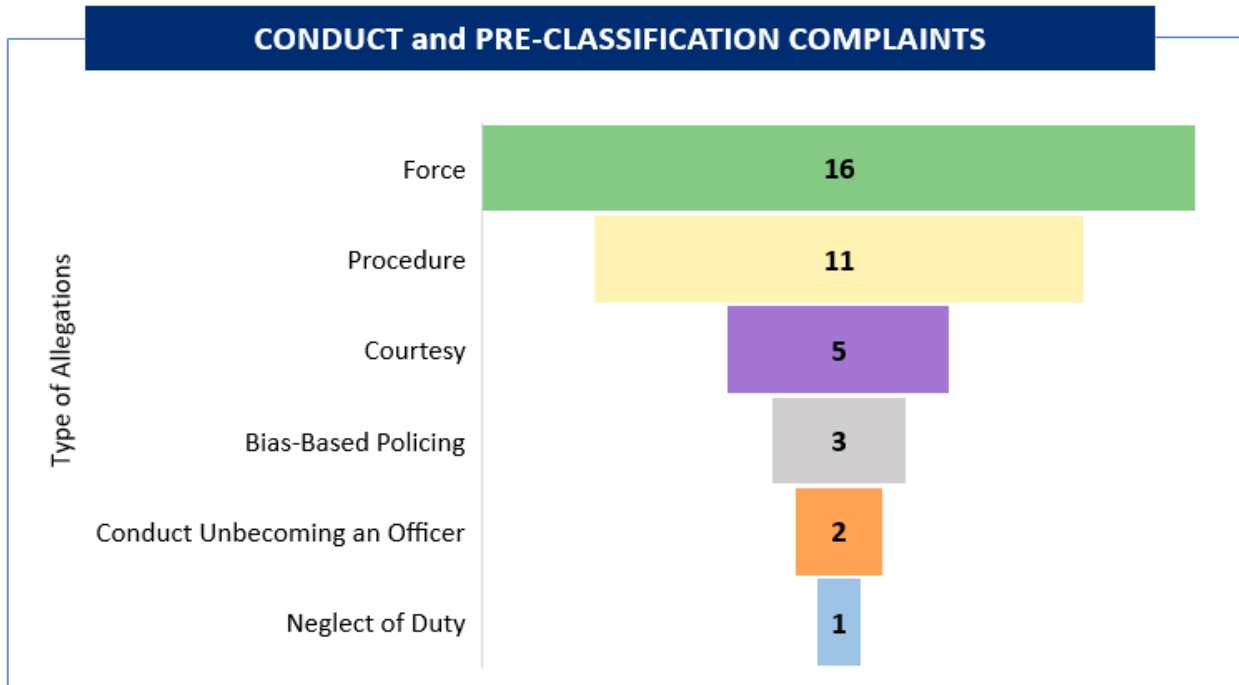
Twenty complaints were entered in the shared database for classification.



Conduct and Pre-Classification Complaints

The fifteen conduct complaints, i.e., complaints against individual SJPD officers, contained these 38 allegations:

² These numbers do not reflect complaints initiated by the Department against one of its members; these are known as Department-Initiated Investigations (DIIs). The concerns reflected in these complaints may or may not reflect misconduct connected to the civil unrest that has been alleged in tort claims or civil lawsuits filed against the City.



<h3>ALLEGATION DEFINITIONS</h3> <p>An allegation is an accusation that a member of the SJPD violated Department or City policy, procedure, rules, regulations, or the law. Only Conduct Complaints contain allegations. There are eight types of allegations.</p>		
<p>FORCE — 16 allegations</p> <p>The amount of force the officer used was not “objectively reasonable,” as defined by SJPD Duty Manual section L 2602.</p>	<p>PROCEDURE — 11 allegations</p> <p>An officer did not follow appropriate policy, procedure, or guidelines.</p>	<p>COURTESY — 5 allegations</p> <p>The officer used profane or derogatory language, was not tactful, lost his/her temper, became impatient, or was otherwise discourteous.</p>
<p>CONDUCT UNBECOMING OFFICER — 3 allegations</p> <p>A reasonable person would find the officer’s on or off duty conduct to be unbecoming a police officer, and such conduct reflected adversely on the SJPD.</p>	<p>BIAS-BASED POLICING — 2 allegations</p> <p>An officer engaged in conduct based on a person’s race, color, religion (religious creed), age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.</p>	<p>NEGLECT OF DUTY — 1 allegation</p> <p>An officer neglected his/her duties and failed to take action required by policies, procedures, or law.</p>
<p>A Conduct Complaint can have more than one allegation. When IA finishes a Conduct Complaint investigation, IA issues a finding on each allegation.</p>		

The details provided below come from initial allegations. At the intake stage, these allegations are accusations whose validity has not yet been determined. IA investigators will obtain documents³ that will provide additional details, including those which may corroborate or conflict with the initial details.

Force Complaints:

Eleven complaints alleged that officers used excessive force. Of these 11 complaints:

- five involved the use of rubber bullets and one involved the use of batons,
- five included the allegation that the use of force resulted in a described injury.

Identity of Subject Officers:

Sometimes a complainant does not know the name of the officers who are engaging in the alleged misconduct. Generally, if sufficient detail is provided, the IA Unit is able to identify those officers through records such as reports, dispatch, and/or body-worn camera video.

- In five complaint incidents, community members were able to provide the name of the subject officer at the time of filing.
- In six complaint incidents, community members made allegations against individual unknown officers and IA has been able to identify those officers.
- In four complaint incidents, IA has not yet been able to identify the subject officers.

Complaints regarding one officer

As enumerated above, many people raised concerns about the actions of one officer. Five formal complaints were entered regarding this officer's conduct either directly or indirectly.

- Three separate complaints were filed about this officer's conduct on May 29, 2020.
- One complaint was filed about the failure of this officer's supervisor to provide adequate supervision.
- One complaint was filed about comments made by Chief Garcia about this officer at a May 31, 2020 press conference.

Policy Complaints

Policy complaints are not directed against any individual officer; they are complaints about SJPD polices or the lack thereof. Policy complaints are typically forwarded to SJPD's Research and Development Unit for review and evaluation to determine if changes need to be made to the SJPD Duty Manual.

³ Documentation may include police reports/citations, dispatch logs, body-worn camera video, photographs, privately-owned surveillance camera video, use of force response reports, medical records, statements of complainants, witnesses, witness officers and subject officers.

Three policy complaints were received:

- Two policy complaints contained several elements objecting to SJPD policies regarding demonstrators and onlookers, including the use of force [including rubber bullets, flash bangs and teargas], failure to de-escalate, enforcement of curfew and concerns about violations of civil rights, Free Speech rights and the right to assemble, and concerns addressing bias-based enforcement.
- One complaint raised concerns about the use of the SJPD helicopter.

CONCLUSION

Between May 29, 2020 and June 30, 2020, approximately 1,024 community members contacted the IPA office directly to relay concerns about SJPD policy and complaints about SJPD officers.

The concerns raised were categorized into allegations and classified as complaints.

Conduct complaints are generally investigated by SJPD's Internal Affairs Unit. The complaint filed against the Chief of Police will be investigated by the City of San José's Office of Employee Relations.

In the course of the IA investigations, the IPA and the Assistant IPA may attend interviews of subject officers. When the investigation is completed, a finding⁴ is made for each allegation based on a preponderance of evidence standard. The complete file, with supporting evidence, is then provided to the IPA for review. The IPA audits each investigation to ensure that it is fair, thorough, complete and objective. If the investigation does not meet that threshold, the IPA may request additional investigation or use the appeal process to the Police Chief and City Manager.

Under Government Code section 3304, investigations of police misconduct generally must be completed within 365 days of the filing of the complaint. Exceptions to this general timeline include, investigations which involve more than one employee and require a reasonable extension, or the investigation involves a matter in criminal prosecution or civil litigation.

EVALUATION AND FOLLOW-UP

The IPA will provide additional information about these complaints in the 2020 IPA Annual Report.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the August 11, 2020 Council Agenda.

⁴ The available findings for each allegation are: sustained, not sustained, exonerated, unfounded, no finding, complaint withdrawn, supervisory referral and other.

HONORABLE MAYOR AND CITY COUNCIL

July 30, 2020

Subject: Report on Police Misconduct Complaints Received During Period of Civil Unrest

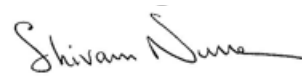
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COORDINATION

The memorandum has been coordinated with the City Manager's Office, the City Attorney's Office and the San Jose Police Department.

CEQA

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment.

A handwritten signature in black ink that reads "Shivaun Nurre". The signature is written in a cursive style with a horizontal line extending to the right.

Shivaun Nurre
Independent Police Auditor

For questions, please contact Erin O'Neill, Assistant IPA at (408) 794-6226