



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Edgardo Garcia

**SUBJECT: POLICE DEPARTMENT'S RESPONSE
TO THE INDEPENDENT POLICE
AUDITOR 2019 YEAR END REPORT**

DATE: September 28, 2020

Approved

Date

9/28/20

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

To provide the City Council with the Police Department's written response to the 2019 Independent Police Auditor Year End Report, the Independent Police Auditor 2019 Recommendations, and an update on the status of the 2018 Independent Police Auditor Recommendations.

BACKGROUND

This is the second written response the Police Department has prepared in conjunction with the release and presentation of the Independent Police Auditor (IPA) Year End Report. Traditionally, the Chief of Police would have provided the Department's response to the IPA Year End Report following the IPA presentation to City Council. However, the Department and City Manager's Office determined a written response is a more efficient manner to present feedback to the Council regarding the IPA Year End Report and Policy Recommendations.

ANALYSIS

The Department would like to start by acknowledging that 2020 is a pivotal year in our nation's history. Since the protests following the death of George Floyd, policing has been a topic of great interest and concern across the country. In San José, with leadership from the Mayor and City Council, we have created a Police Reform Work Plan that identifies work items that will assist the Department in its continuing commitment to strive for improvement. The Department would like to thank the IPA for her work and partnership over the past year, and looks forward to continued collaboration in implementation of the Work Plan.

On September 4, 2020, the IPA's Office produced a draft copy of their 2019 Year End Report for review by the Police Department. The Chief's Office met and reviewed the report. The Department felt the overall report was fair and represented the healthy dialogue between the Department and IPA.

There are several points in the Report the Department feels are worth noting:

- In 2019, the IPA noted that a total of 216 complaints were received; a 13 percent (13%) decrease in comparison to the complaints received in 2018. Additionally, in a five year review from 2015-2019 (Page-7), 2019 was the five year low with 216 complaints.
- In 2019, the IPA reported (Page 12) 21 individuals were filing more than one complaint, which represented 28% of the citizen-initiated complaints received in 2019. There was one individual who filed 14 complaints in 2018, 14 complaints in 2019, and to date in 2020, the same individual has filed 16 complaints. There have been no sustained findings associated with any complaints made by this individual thus far. Additionally, the Department is working closely with the IPA to adequately address this individual's concerns and provide any resources necessary to assist them.
- It should be noted the Department responded to 396,570 Calls for Service and Self-Initiated Events in 2018 and 399,371 in 2019. In 2018, .06% of calls resulted in a complaint and in 2019, only .05% of calls resulted in a complaint. It is important to note that an extremely high percentage of these Calls for Service and Self-Initiated Events involved a multi-officer response; calls for service are a minimum two-officer response. Conservative estimates show community contacts well over 800,000 contacts with the community.
- The IPA either agreed or agreed after further discussion in 90% of the closed IA investigations, meaning they believed the IA investigation was fair, thorough, complete, and objective. This figure has remained approximately the same over the last three years. We will continue to collaborate with the IPA to address the concerns that are brought to our attention. Our goal is for the Department and IPA to agree 100% of the time.
- In reviewing the Officer-Involved Shooting numbers on page 25 of the IPA Year-End Report, the number of officers involved shooting events is very low when compared to the number of calls for service. Officer-involved shootings are among the most impactful events for those interested. They have social, criminal, civil, and emotional consequences. The Department was involved in four such events in 2019; one fewer event than 2018 and eight fewer events compared to 2012. All four of the Officers Involved Shooting events in 2019 resulted from a call for service. If we look objectively at the numbers, in 2019, an officer was involved in a shooting event in 1 out of every

99,843 calls for service or .001%. It is worth noting that 12,344 calls out of the 399,371 calls in 2019 were typed as a Violent Crime event. These are among the most dangerous calls for officers to respond to.

POLICE DEPARTMENT RESPONSE TO 2019 IPA POLICY RECOMMENDATIONS

Recommendation # 1

Evaluate the Field Training Program

Police Department Response

The Department agrees to evaluate the Field Training Program (FTP). The Department believes the FTP has a significant impact on shaping the future of the Department; therefore, we will stay committed to ensuring the Field Training Program and Field Training Officers continue to evaluate the most effective way to train new officers.

Prolonged Detentions

The FTO (Field Training Officer) Program is designed for a recruit officer who has had minimal training in the police academy to apply the necessary skills under the supervision of a training officer. One specific area and the primary role of FTO is to train a recruit on conducting basic investigations that are safe, lawful, and within policy. Considering a newer officer with less experience is more likely to take more time with an investigation, the amount of time should decrease with additional training. For example, recruit officers learn at a different pace and, therefore, may take extra time to navigate through contacts. The expectation of a recruit officer to complete an entire investigation within 20 minutes may be dependent on the challenges while learning, as well as the complexities of the situation. The FTO program encourages the FTOs to be mindful of the time it takes to train recruits, to comply with Department policy regarding lengths of detentions, and to be cognizant that prolonged periods should not infringe on any rights of persons detained.

The reasonable guideline stated in the Duty Manual that officers should detain a person only as is reasonably necessary to conclude the investigation, is about that of a seasoned and solo beat officer not in training. As stated earlier, it is reasonable to believe that as recruit officers become more proficient, the amount of time will decrease when conducting investigations. An FTO should be mindful when a recruit officer is struggling. It would be in the best interest of all for an FTO to consider whether it is appropriate to step in to speed up the length of time to consider options, whether to warn, document, cite, or arrest. Recently, a recruit officer was making numerous errors on a citation during a vehicle stop. After several corrections, the FTO stopped the recruit officer and apologized to the community member for the delay. He released him without a citation and documented the recruit's performance in the Daily Observation Report (DOR).

Unnecessary Use of Force

In regard to Use of Force and FTOs being reluctant to proactively engage with subjects to allow their recruits to master situations that require physical force, this topic was discussed in a meeting with the IPA on July 23, 2020. We discussed that an FTO's responsibility is to train and evaluate recruits throughout the sixteen weeks of FTO Program to assess their suitability to be a solo beat officer. Anytime throughout the FTO Program a recruit officer may be met with resistance when detaining or arresting a subject. It is in these situations that the recruit must demonstrate the use of his/her arrest control techniques.

In some cases, there are multiple recruits (fill officers) on the scene dealing with a subject. The FTOs allow the recruit officers to handle the situation to evaluate his/her (their) field performance and officer safety. The recruit officer must demonstrate that they can use the appropriate level of control, i.e., voice, hands, or appropriate level of force, to effect an arrest. We discussed that there had been times when the recruit officer and the fill officer attempted to control a subject for an arrest and could not use the techniques they have been trained on. In this moment, the FTO or any FTOs present should become involved, which could mitigate the use of force option or arrest control technique to subdue the subject. When the FTO steps in to use a reasonable force option based on their experience, it may lead to equal or a higher level of force due to the resistance the recruit(s) are encountering. Once the subject resists at the onset, an FTO being near or involved may help mitigate the level of force used. Each situation is dependent on the subject's decision to resist, to stop resisting, or to cooperate.

Discussions have taken place with sergeants and officers assigned to the FTO Program regarding de-escalation and use of force cases. The FTO can assess and evaluate recruit officers while being involved in the control of subjects when necessary. In many instances as displayed on body-worn camera footage after these discussions, FTOs have been seen assisting recruit officers when taking steps to control subjects sooner.

Questionable Citations:

The IPA recommends that FTOs must also be cognizant of when a citation appears retaliatory. In the Year-End Report, two different cases are noted where complainants alleged that recruits gave them citations because the complainants expressed dissatisfaction with the individual recruits conduct. While in each case, the allegation of retaliation was closed as Unfounded, the Year End Report notes the belief that body-worn camera evidence of the encounters revealed that the FTOs instructed the recruits to issue citations because the detainee might complain.

FTOs evaluate the recruit on their decision making and problem-solving skills on every incident the recruit handles. Whether a recruit issues a warning, citation, or an arrest, the FTO assesses the situation as to the most appropriate disposition with the recruit officer. The role of the FTO is to ensure the violation is handled lawfully and properly. Each FTO discusses with their recruit officer the most appropriate course of action based on the totality of the circumstances. The FTO Program and FTOs will not teach or train a recruit officer to retaliate against anyone based on

their decision to make a conduct complaint. FTOs are expected to train recruits on equal treatment regarding educating, warning, citing or arresting for a violation of the law when it becomes necessary or required.

Improper Searches:

FTOs have been reminded of the legal requirements for pat-searches and the corresponding Duty Manual sections that address these requirements. The FTOs are in a position to instruct recruits when a pat search should be lawfully conducted and their articulation of whether the person meets the criteria for a pat search. FTOs are reminded to discuss and articulate that not all persons may be subject to a pat search just for the sake of practicing search techniques.

In every circumstance, the FTO is required to maintain their own safety and the safety of their recruit; therefore, it is critical when these discussions take place. In many instances, an FTO may see an officer safety concern that needs to be addressed immediately, and action is required. In these instances, an explanation is better served at the end of the event for safety reasons. If immediate action for officer safety is not present, a pat search for weapons should be discussed prior to such action and a determination of whether other options (such as consent) could be applied.

Improper Behavior

The Department will continue to carefully consider whether FTO candidates who have multiple complaints, combined with the nature of those complaints, are suitable to be an FTO.

The FTO Selection Process encompasses a stringent application process:

- Patrol officers with 3 years or more experience
- Lateral officer with 2 years SJPd experience
- Positive recommendation by current and two prior supervisors
- Review of IA history for past 18 months
- Personnel files with yearly evaluation of "Meet Standard" or above
- Review of candidate for work ethic and writing skills
- Sergeant interview with applicant for suitability

A review of IA sustained cases in the prior 18 months for suitability to be an FTO is conducted by the FTO Commander. Violations of Department policies or conduct are reviewed on a case-by-case basis for selection. In 2019, there were 116 Field Training Officers and 129 Recruits assigned to the Field Training Program. There were no sustained conduct complaints in 2019 against any Field Training Officer or Recruit.

The FTO Program provides all FTOs with a 40-hour POST (Peace Officer Standards Training) mandated Field Training Officer course. Every three years thereafter, FTOs are required to attend additional training to stay in compliance with POST regulations. Although the FTO

program may be 40 years old, California Peace Officers Standards and Training dictates the required material. Additionally, San Jose Police Department specific policies and procedures are added to the training course. The training course has been updated with current case studies, legal trends, ethical decision making, and adult learning techniques before every course. The FTO Program has made significant changes since March 2019. The prior FTO Satellite Program had challenges that consisted of a lack of supervision of FTOs and recruits. FTOs worked throughout the City, and the FTO Sergeant was not necessarily in direct supervision of the FTOs. This created a break down in FTO supervision and input on training. The FTO Program was changed back to having 15 FTO teams in designated districts with designated days off. All 15 teams are supervised by an FTO Sergeant who has direct contact with and supervision of a team's FTO and recruits. This model has helped with overall consistency among FTOs.

Department's Recruit Training in line with 21st Century Policing

Before graduating from the Police Academy, every recruit officer successfully completes the following courses that are in line with 21st Century Policing recommendations:

- Fair & Impartial Policing Training
- Procedural Justice Training
- De-Escalation Training
- Policing in the Community
- Cultural Diversity
- Racial Profiling

Once they graduate to the Field Training Program, additional training is completed:

- Crisis Intervention Team (CIT) Training
- Policing in the Current Political and Social Climate (College Course)

Recommendation # 2

Provide Direction When Officers Must Obtain Translation of Written Material from Certified Personnel or Contracted Translation Services

Police Department Response

The Department agrees and maintains a Language Access Plan Duty Manual policy (C 1317.1), which addresses this topic. We believe the existing policy is sufficient. In 2019, there was a circumstance in which an investigator did not follow the current Duty Manual policy. Therefore, we recognize the value in reminding our personnel that while online tools serve as an expedient method for getting a sense of the facts, they do not provide sufficiently reliable translation to support Probable Cause. Therefore the Department published a Training Bulletin in June of 2020 (Bulletin #2020-012) reminding officers that if a foreign language text is to be used to form the basis of a search/arrest warrant or an affidavit of probable cause, the investigating officer shall seek out appropriate translation services pursuant to the existing Duty Manual policy.

Recommendation # 3

Provide Clear Direction About Reporting to Adult Protective Services

Police Department Response

The Department agrees with this recommendation. A Duty Manual policy already requires cross-reporting to Adult Protective Services (APS). Specifically, it requires officers to immediately contact APS by phone when an elder or dependent adult has been taken into custody on an emergency mental health hold. This is mentioned in the section governing cross-reporting and outside agencies. The Department recognizes that there have been recent instances of personnel failing to make such notifications. Therefore, we see the value in repeating this already existing requirement in the policy section that governs the taking of persons into custody for emergency mental health holds. The Department published a memorandum adding that language to the Duty Manual in June of 2020 (Memo# 2020-027).

Recommendation # 4

When IA Opens an Investigation into Criminal Conduct, A Corresponding Administrative Complaint Should Also Be Opened

Police Department Response

The Department agrees in principal with the recommendation that with every Criminal Conduct complaint there should be a corresponding Administrative Complaint. The IA Unit's Criminal Investigations Detail (CID) is responsible for conducting criminal investigations on Department members suspected of committing a crime. CID will also monitor criminal investigations conducted on our Department members by other police agencies.

Currently, almost half of criminal cases are transferred to an administrative investigation for a disciplinary review or action against a Department member. In 2019, CID investigated 26 cases. Of the 26 cases, 12 (46%) cases were transferred to an administrative investigation for disciplinary action or review.

However, there are two limited categories of CID cases which the Department does not initiate an administrative investigation after the close of criminal investigations:

- **CASES CLOSED AS UNFOUNDED:** When the criminal investigation reveals the allegation was UNFOUNDED. The Department closes matters as UNFOUNDED when "The investigation proved either that the criminal act or acts complained of did not occur, or that the Department member named in the criminal allegation was not involved in the criminal act or acts, which may have occurred." Criminal cases investigated by CID on Department members, or by other police agencies on Department members, which are

closed as UNFOUNDED by either CID or another police agency will not be investigated administratively.

- **OFFICER NOT EMPLOYED WITH SJPd:** When the criminal investigation reveals the officer engaged in the criminal act or acts is no longer employed by the Department or was never employed by the Department. In these cases, CID will work with the DA's Office for filing of charges. However, there will be no administrative investigation due to the officer no longer being employed, or ever being employed with the Department.

The Department believes the initiation of an administrative investigation after the closing of a criminal case in the above two narrowly tailored categories would not be an effective or efficient use of resources. The IPA recommendation will be implemented with the exception of these two categories.

Recommendation # 5

Intentional Acts of Force Utilizing Police Vehicles Should Be Investigated as Force Allegations

Police Department Response

The Department agrees and maintains a Legal Intervention Duty Manual policy (L 2635.5), which addresses the use of a vehicle as a means of force.

Recommendation # 6

Provide Guidance About Individuals Riding Bicycles on Sidewalks

Police Department Response

The Department agrees with this recommendation. We recognized this need and published a Training Bulletin on the topic in November of 2019 (Bulletin # 2020-016).

POLICE DEPARTMENT PROGRESS UPDATE TO 2018 IPA POLICY RECOMMENDATIONS

Recommendation # 1

The IPA recommends that the SJPd track and document when an officer points a firearm at a person as reportable force. This excludes unholstering or holding a firearm at the low-ready position.

Police Department Initial Response

The Department agreed with tracking when an officer points a firearm at an individual. This does not include instances where the officer removes his firearm from the holster and carries it at the low-ready or when an officer has a firearm slung on his person. The Department does not agree with treating the pointing of a firearm at an individual as a reportable use of force.

Progress Update

The City has drafted a policy and tracking template that have been provided to the POA for review.

Recommendation # 2

Create a more robust early warning system by incorporating current best practices and then implementing such system.

Police Department Initial Response

The Department agreed with this recommendation and has allocated funds for the system. Soon, vendors will be sought through an approved request for proposal (RFP).

Progress Update

The Department contracted with Benchmark Analytics for an 18-month Early Warning System pilot program. They are collaborating with our Systems Development Division to begin data compilation. The Early Warning System that we envision will function as a pro-active, non-disciplinary, researched-based early identification and intervention program designed to identify and positively influence conduct, correct performance-related problems, and to recognize exemplary performance. The end product should collect, manage, and report information related to established thresholds and provide supervisors, commanders, and managers the ability to review their subordinates' performance.

Recommendation # 3

Record all interviews and interrogations.

Police Department Initial Response

The Department agreed with this recommendation. The Department will draft policy requiring all sworn personnel including Reserve Officers to digitally record interviews and interrogations of suspects, victims, and witnesses regardless of age.

Progress Update

The Policy was revised to require digital recording and uploading of all statements taken in a criminal investigation. The requirement applies to statements made by all suspects, victims, and witnesses regardless of age. These revisions apply both when the officer is working on-duty or in a uniformed secondary employment capacity. The Department published a related memorandum in August of 2020 (Memo# 2020-034).

Recommendation # 4

Provide in some written format, a public report / memo outlining what steps have been taken to implement each of UTEP recommendations.

- a. The SJPd should consider implementing the data collection recommendations found in Appendix B and contracting with an outside analysis team on an annual or semi-annual basis to analyze the data for aggregate patterns of racial / ethnic disparity.
- b. The SJPd should consider developing the capacity, either internally or through a contracted analysis team, to identify racially or ethnically disparate stop patterns by individual officers and to proactively address such patterns if they emerge through early intervention and training.
- c. The SJPd should evaluate and adopt evidence-based training for improving police-citizen interactions and reducing the influence of discriminatory factors, such as race and ethnicity, in contacts with citizens.
- d. The SJPd should develop and disseminate better and more relevant information about crime patterns and trends in the city, including citizen calls for service, and how those patterns intersect with race and ethnicity. These crime and race/ethnicity patterns may not be well-understood by some community stakeholders in San José, yet they are highly relevant to who the police stop and arrest for certain crimes in certain areas of the city. The SJPd should develop the capacity to produce analyses of race/ethnicity, crime, and calls for service data for distribution and discussion with community members.
- e. Assuming the SJPd continues to collect and analyze stop data, it should produce an annual or biannual report that outlines the findings from its yearly analyses and discusses its ongoing efforts (training, policy-approaches, accountability efforts) to reduce racial and ethnic disparities in its contacts with citizens.

Police Department Initial Response

- a. The Department agreed with this recommendation and has engaged the University of Texas - San Antonio to conduct an audit and analysis of the 2019 data collected as part of the Racial and Identity Profiling Act of 2015 (AB 953). The Department is in the process of determining the appropriate frequency for future analyses of this type.

- b. The Department agreed with this recommendation. This type of data would be considered when developing a more robust early intervention system.
- c. The Department agreed with this recommendation. Consistent with the President's Task Force on 21st Century Policing, the Department provided Fair and Impartial Policing and Procedural Justice training to Department members. The Department will continue to seek out evidence-based training to improve Police-Community interactions.
- d. The Department currently provides crime data to the public through crimemapping.com and crimereports.com. The Department will continue to seek out best practices for release of additional information to the public consistent with this recommendation.
- e. The Department agreed with this recommendation in principal but will need to conduct further analysis before determining the content and regularity of such reports.

Progress Update

- a. Implement data collection recommendations from Appendix B.

The data collection required under *Racial and Identity Profiling Act of 2015 (AB 953)* is similar and/or exceeds the recommendations from the 2017 UTEP Detention Demographic Study. The data is collected via the California Department of Justice Website via a secured connection. The data is stored with California Department of Justice.

The *Racial and Identity Profiling Act of 2015 (AB 953)*, passed by the California Legislature, requires the reporting of detailed data regarding all stops, which AB 953 defines as detention or search, including a consensual search, to the California Department of Justice. The San Jose Police Department started collecting and reporting this data beginning January 1, 2019.

Duty Manual Section *L 5109 DOCUMENTING DETENTIONS PURSUANT TO THE RACIAL AND IDENTITY PROFILING ACT OF 2015 (AB 953)* has been created to ensure the Department complies with AB 953. This section is in addition to L 5108, which requires Department members to document detentions during self-initiated pedestrian and/or vehicle stops using our own CAD system.

The California Department of Justice plans on adding additional data requirements for each officer in the next few years.

- b. Develop the capacity to develop racially or ethnically disparate stop patterns by officers and proactively address such patterns as they emerge.

The Department is currently developing a data collection module (see section e) and will hire a consultant to analyze the data.

- c. Adopt evidence-based training for improving police-citizen interactions and reducing the influence of discriminatory factors.

The Department agrees and continues to research and develop training curriculums for improving police-members of the public interactions and reducing the influence of discriminatory factors.

Some examples of training, programs, and committees already in place are:

1. LGBTQ Committee
2. Community Advisory Board
3. Coffee/Boba with a Cop
4. Body Worn Cameras
5. De-Escalation Training
6. Crisis Intervention Team (CIT) Training
7. Procedural Justice Training
8. Fair & Impartial Policing Training
9. As of 2019, (AB 953 Racial Profiling) data input for the California Department of Justice

- d. Develop and disseminate better and more relevant information about crime patterns and trends in the City.

Internally, our Department's Crime Analysis Unit, through the use of a Crime View Dashboard, provides quarterly reports identifying trends related to violent crimes, gang-related crimes, and burglaries to each captain assigned to the Bureau of Field Operations who shares this with their chain of command. Currently, Race and Ethnicity analyses are available for Departmental use, City Committees, and for the Public as needed. We would need to have further discussions to determine how best to disseminate the information.

Cityprotect.com, formally crimereports.com, is an online mapping and analysis service. Cityprotect.com combines the value of police calls for service data with the ease-of-use of Google-based mapping and an analytics module so that members of the public can view police data in a high-impact map or summary descriptive format. Members of the public may also sign up to receive free email alerts based on user-defined parameters (e.g., geography, crime types, frequency, etc.).

CrimeMapping.com is an online mapping and analysis service that provides the public with information about reported crime activity in their neighborhood. Crime data is extracted daily from the Police Department's records system so that the information being viewed through a Web browser is the most current available. This data is verified for

accuracy, and all address information is generalized by block to help ensure privacy is protected.

- e. Presuming the continued collection and analysis of stop data, the Department should produce an annual or bi-annual report outlining the findings and any continued efforts to reduce racial and ethnic disparity.

The Department is currently working with our current Computer Aided Dispatch (CAD) system vendor to incorporate the required (AB953) "stop data." into our CAD computer system. We would still have the ability to transfer the data to the California Department of Justice as required by law. Our Department or a hired consultant could then analyze the data. The CAD incorporated "stop data" project is dependent on a funding source as this upgrade will cost over \$100k.

Under AB953, the State of California produces an annual report for each California Police Agency summarizing the "stop data." The challenge in interpreting this data is that there is no context, and some of the data definitions differ from the San Jose Police Department.

Recommendation # 5

The IPA recommends that a video surveillance system be installed at the Substation before any evidence is placed into the evidence room.

Police Department Initial Response

The Department agreed with this recommendation but noted that the Substation was being operated as a training facility and no longer had an evidence room.

Progress Update

The Police Substation is still a training facility with no evidence room or evidence processing capacity. However, the Department did install a camera surveillance system in the evidence room of the main campus where Central Supply is located. When evidence facilities are restored to the Substation, a similar system will be included.

PUBLIC OUTREACH/INTEREST

This response will be posted on the City's web site for the September 29, 2020 Council Agenda.

HONORABLE MAYOR AND CITY COUNCIL

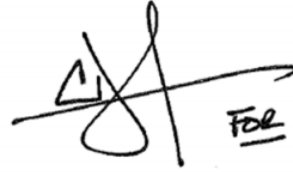
September 28, 2020

Subject: Police Department's Response to IPA 2019 Year End Report

Page 14

COORDINATION

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

A handwritten signature in black ink, appearing to be 'Edgardo Garcia', with a stylized 'E' and 'G' and the letters 'FOR' written below it.

EDGARDO GARCIA

Chief of Police

By Acting Chief of Police

DAVE KNOPF

For questions, please contact Lt. Stan McFadden, Internal Affairs Unit Commander, at (408) 277-4094