

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Anthony Mata

SUBJECT: SEE BELOW

DATE: June 11, 2021

Approved



Date

6/11/2021

**SUBJECT: SAN JOSE POLICE DEPARTMENT INTERNAL AFFAIRS UNIT – 2020
DEPARTMENT INITIATED INVESTIATIONS REPORT**

RECOMMENDATION

Accept the San Jose Police Department's Internal Affairs Unit (IA) report on Department Initiated Investigations (DII) for calendar year 2020.

OUTCOME

Under the revised IA complaint process instituted in July 2008, the Department agreed to provide DII information to 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 2020.

BACKGROUND

This is the thirteenth 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 member of the public, 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 that it is 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 public 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 potential violation of the law or Department policy or procedure 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. DIIs 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 by the date 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 in 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.

In November of 2020, Measure G expanded the role of the IPA's office with DIIs. Effective, January 1, 2021, the IPA role in DIIs is now similar to that of Conduct Complaints. The IPA is now able to take part in both the investigation and review.

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, if appropriate.

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.

The following bullets summarize data points for DIIs conducted from calendar year 2016 through calendar year 2020. Comprehensive data for this period can be found in Attachment A: RECEIVED Department Initiated Investigations and Attachment B: COMPLETED Department Initiated Investigations.

- In 2020, the Department initiated 41 sworn DIIs, compared to 50 in 2019. The total number of DIIs between 2016 and 2020 fluctuated, with the high of 50 in 2019 and a low of 35 in 2017.
(See Attachment A - Chart I-A)
- In 2020, the Department initiated 6 non-sworn DIIs, a five-year low, compared to 11 in 2019.
(See Attachment A - Chart I-A)

- Of the 41 sworn DIIs initiated in 2020, there were a total of 210* misconduct allegations against sworn Department members, compared to 102 received in 2019. (A DII may include more than one allegation of misconduct.) The total number of allegations received against sworn staff between these years fluctuated, with the high of 210 in 2020 and a low of 58 in 2016. **Note that one DII from 2020 accounted for 148 of the 210 allegations, excluding this investigation there were a total of 62 misconduct allegations. (See Attachment A - Chart 1-B)*
- In 2020, the Department received 18 allegations against non-sworn members. The Department also received 18 allegations against non-sworn members in 2019. The total number of allegations against non-sworn members between these years fluctuated, with a high of 22 in 2018 and a low of 16 in 2016 and 2017. *(See Attachment A - Chart 1-B)*
- In 2020, the Department completed investigations of 91 allegations against sworn officers; 60 (66%) of the allegations were sustained. Between 2016 and 2020 the Department completed investigations of 453 allegations against sworn officers; 293 (65%) of the allegations were sustained. (Please note: Investigations may not be completed within the same calendar year they were received.) *(See Attachment B – Chart 2-B)*
- In 2020, the Department completed investigations of 34 allegations against non-sworn members; 20 (59%) of the allegations were sustained. Between 2016 and 2020 the Department completed investigations of 144 allegations against non-sworn members; 104 (72%) of the allegations were sustained. (Please note: Investigations may not be completed within the same calendar year they were received.) *(See Attachment B – Chart 2-B)*
- Between 2016 and 2020, 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 time frame. *(See Attachment B - Chart 2-D)*
- Between 2016 and 2020, the most common misconduct allegations for sworn and non-sworn Department members were, “Procedure” and “Conduct Unbecoming an Officer/Employee.” Listed below is the definition for each type of allegation: *(See Attachment B – Chart 2B)*

Procedure (P)

An allegation that an action taken by a Department member did not follow appropriate Department and/or City policies or procedures.

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.

DII Case Summaries

Attachment C provides Case Summaries of the 28 DIIs which resulted in a sustained finding. Based upon the 2014 IPA Year-End Report, in which the IPA recommended that the Department submit written reports describing the sworn DII investigation to the Mayor, City Council, and online for public viewing, the summaries from Attachment C can be found on the Department's website at www.sjpd.org.

CONCLUSION

In reviewing the Experience of Involved Officer(s)/Non-Sworn Chart, officers with 1-3 years of experience are most likely to be subjected to a DII, followed by officers with 21-30 years of experience. Procedure remains the most common allegation when investigating alleged misconduct. Documented Oral Counseling is most often the discipline imposed. DIIs continue to sustain at a higher rate compared than Conduct Complaints.

PUBLIC OUTREACH

This report will be posted on the City's web site for the June 22, 2021 Council Agenda.

EVALUATION AND FOLLOW-UP

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

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San Jose energy, water, or mobility goals.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

Subject: San José Police Department Internal Affairs Unit – 2020 Department Initiated Investigations Report

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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.



ANTHONY MATA
Chief of Police

AM:MB

ATTACHMENTS:

Attachment A: *RECEIVED* Department Initiated Investigations Charts

Attachment B: *COMPLETED* Department Initiated Investigations Charts

Attachment C: Department Initiated Investigation Summaries of Completed Investigations Resulting in a Sustained Finding

For questions, please contact Lieutenant. Mario Brasil, Internal Affairs Unit, (408) 277-4094.

Attachment A: RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS

FIVE YEAR SUMMARY OF DIIS (2016-2020)

Chart 1-A

Year	2016		2017		2018		2019		2020		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
DII totals	43	11	35	10	43	10	50	11	41	6	212	48
# of Department members involved	47	12	44	10	52	13	54	12	102*	7*	299	54
# of investigations containing multiple Department members	4	1	10	0	8	1	6	1	2	0	30	3
Department members w/more than one DII for listed year	1	1	5	0	0	0	3	0	6	0	15	1
Total # of allegations received	58	16	100	16	83	22	102	18	210	18	553	90

**Note that one DII from 2020 involved 73 Sworn and 1 Non-Sworn Department members. When removing this one particular DII, the total number of DIIs would adjust to 37 Sworn and 6 Non-Sworn in 2020.*

BREAKDOWN OF ALLEGATIONS

Chart 1-B

Year	2016		2017		2018		2019		2020		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	32	14	84	15	63	10	71	7	190*	16	440	62
Courtesy	3	0	2	0	1	1	4	3	2	0	12	4
CUBO	14	1	10	1	12	1	20	2	15*	2	71	7
Neglect of Duty	6	1	0	0	3	0	5	0	0	0	14	1
Discrimination	0	0	0	0	0	4	0	2	0	0	0	6
Harassment	2	0	0	0	2	6	1	4	0	0	5	10
Search/Seizure	0	0	0	0	1	0	0	0	0	0	1	0
Force	1	0	3	0	1	0	1	0	3	0	9	0
Arrest or Detention	0	0	0	0	0	0	0	0	0	0	0	0
BBP	0	0	0	0	0	0	0	0	0	0	0	0
Total	58	16	99	16	83	22	102	18	210	18	552	90

**Note that one DII from 2020 accounted for 146 of the 190 Procedural and 2 of the 15 CUBO allegations.*

Attachment A: RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS

(Continued)

EXPERIENCE OF INVOLVED OFFICERS(S)/NON-SWORN

Chart 1-C

	2016		2017		2018		2019		2020	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
0 – 3 Years' experience	11	2	15	2	21	3	17	8	64	5
4 – 6 Years' experience	0	0	5	2	3	5	9	2	8	0
7 – 10 Years' experience	8	4	1	1	3	2	2	0	6	1
11 – 15 Years' experience	3	3	4	2	5	0	4	2	4	0
16 – 20 Years' experience	10	1	9	1	9	1	7	0	4	0
21 – 30 Years' experience	15	2	10	2	13	2	15	0	14	0
Unknown*							1	0	2	1
Total	47	12	44	10	54	13	55	12	102	7

*Unknown reflects an investigation where the Department member had an unknown number of years due to Complaint withdrawn

Attachment B: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS*

FIVE YEAR SUMMARY OF DIIS (2016-2020)

Chart 2-A

Year	2016		2017		2018		2019		2020		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
DII completed investigations	33	10	38	13	45	8	52	11	35	8	203	50
# of Department members investigated	35	9	43	14	54	7	57	13	39	8	228	51
# of investigations containing multiple Department members	2	0	5	2	9	0	4	3	3	0	23	5
Department members w/more than one DII completed for listed year	1	1	3	1	3	1	2	0	3	0	12	3
Total # of Department members who received discipline	19	8	27	12	37	5	43	10	32	5	158	40

ALLEGATIONS VS. SUSTAINED CASES

Chart 2-B

Year	2016		2017		2018		2019		2020		Total	
	Sworn	Non-Sworn	Sworn	Non-Sworn	Sworn	Non-Sworn	Sworn	Non-Sworn	Sworn	Non-Sworn	Sworn	Non-Sworn
Procedure	26/15	10/10	62/39	30/28	95/74	31/27	80/55	11/5	64/47	29/19	327/230	111/89
Courtesy	2/1	0/0	0/0	0/0	3/1	1/1	2/2	6/0	3/2	0/0	10/6	7/1
CUBO	18/9	8/7	12/6	1/0	15/10	2/2	25/14	2/1	17/9	2/0	87/48	15/10
Neglect of Duty	1/1	1/1	2/1	0/0	2/0	0/0	7/0	0/0	5/1	1/1	17/3	2/2
Discrimination	0/0	0/0	1/0	0/0	0/0	0/0	0/0	1/0	0/0	1/0	1/0	2/0
Harassment	0/0	1/0	0/0	0/0	2/1	1/0	1/0	4/2	0/0	1/0	3/1	7/2
Search/Seizure	0/0	0/0	0/0	0/0	0/0	0/0	1/1	0/0	0/0	0/0	1/1	0/0
Force	0/0	0/0	1/1	0/0	3/1	0/0	1/0	0/0	2/1	0/0	7/3	0/0
Arrest or Detention	0/0	0/0	0/0	0/0	1/1	0/0	0/0	0/0	0/0	0/0	0/1	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	47/26	20/18	78/47	31/28	121/88	35/30	117/72	24/8	91/60	34/20	453/293	144/104

Attachment B: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS

(Continued)

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

Chart 2-C

	2016		2017		2018		2019		2020	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
0 – 3 Years of Experience	5	1	11	1	21	4	16	6	18	5
4 – 6 Years of Experience	0	1	3	1	4	1	7	5	5	1
7 – 10 Years of Experience	7	2	4	6	1	1	3	1	2	0
11 – 15 Years of Experience	2	4	3	2	6	1	7	1	1	2
16 – 20 Years of Experience	9	0	8	2	9	0	9	1	4	0
21 – 30 Years of Experience	12	1	12	2	13	0	14	2	7	0
31+ Years of Experience			1	0	0	0	0	0	1	0
Unknown*	0	0	1	0	0	0	1	0	1	0
Total	35	9	43	14	54	7	57	16	39	8

*Unknown reflects an investigation where Department member had an unknown number of years due to *Non-Misconduct Concern* designation

Attachment B: COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS

(Continued)

PRIMARY DISCIPLINE IMPOSED

*Settlement Agreement discipline combined for 2 DII's with the same employee or Settlement Agreement Violation

**Other: Discipline currently under administrative process or review

Note: "Resigned prior to Discipline" is documented under "Retried Prior to Discipline"

Note: "Rejection from Probation" is documented under "Termination"

Chart 2-D

Discipline Imposed	2016		2017		2018		2019		2020	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Training or Counseling	2	1	8	1	15	0	10	2	7	1
Cease Secondary Employment Activities	0	0	1	0	0	0	0	0	0	0
Documented Oral Counseling (DOC)	6	5	15	6	16	1	10	2	10	4
Letter of Reprimand	2	0	4	3	8	1	11	2	2	0
Disciplinary Transfer	0	0	1	0	0	0	1	0	1	0
10-hours Suspension	1	0	1	0	0	0	2	0	1	0
20-hours Suspension	1	0	1	0	0	0	3	1	2	0
30-hours Suspension	0	0	0	0	0	0	0	0	0	0
40-hours Suspension	3	1	0	0	2	1	0	0	4	0
Greater than 40-hours Suspension	2	0	0	0	5	0	5	0	7	0
Demotion	0	0	0	1	0	0	0	0	0	0
Termination	2	1	2	0	1	1	2	2	5	0
Associated Department Investigation Outcomes										
Retirement before investigation concluded	2	0	0	0	0	0	0	0	1	1
Resigned in lieu of discipline	0	1	0	0	1	0	0	0	0	0
Officers receiving more than one discipline	0	0	2	1	6	1	4	0	3	0
Retired prior to discipline on a sustained case	1	0	1	0	1	0	2	1	1	1
Settlement Agreement*	1	1	0	0	4	0	1	0	2	0
Other**	1	0	0	1	0	2	0	0	0	0

Attachment C: Department Initiated Investigation Summaries of Completed Investigations Resulting in a Sustained Finding

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

#	Allegations	Incident Summary	Findings
1.	<ul style="list-style-type: none"> • Procedure 	Officer failed to properly document the collection of evidence.	Sustained
2.	<ul style="list-style-type: none"> • Procedure 	Officer failed to activate body worn camera during a pursuit.	Sustained
3.	<ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Procedure 	Officer was off duty and intoxicated when he attempted to enter a public venue. The officer was in possession of his badge and gun at the time of the incident.	Sustained
4.	<ul style="list-style-type: none"> • Procedure 	Officer ignored the directive of a supervisor to comply with grooming standards.	Sustained
5.	<ul style="list-style-type: none"> • Procedure 	Officer left his badge and gun in the unlocked console of his personal vehicle which was later burglarized. Both were recovered.	Sustained
6.	<ul style="list-style-type: none"> • Procedure 	Officers failed to properly document the incident and did not document nor review body worn camera when necessary.	Sustained
7.	<ul style="list-style-type: none"> • Procedure 	Officer left his personal firearm in an unsecured location.	Sustained
8.	<ul style="list-style-type: none"> • Procedure 	Officer failed to follow procedure when initiating an emergency response.	Sustained
9.	<ul style="list-style-type: none"> • Procedure 	Officer lost personal property belonging to an arrestee.	Sustained
10.	<ul style="list-style-type: none"> • Procedure 	Officer mishandled an explosive device.	Sustained
11.	<ul style="list-style-type: none"> • Procedure • Conduct Unbecoming an Officer 	Officer failed to take a mandatory report and was dishonest during the internal investigation.	Sustained

12.	<ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Procedure 	Officer was off duty and was under the influence of alcohol while operating an unmarked City Vehicle.	Sustained
13.	<ul style="list-style-type: none"> • Procedure 	Officer failed to report to duty for assigned shift without proper leave permission.	Sustained
14.	<ul style="list-style-type: none"> • Procedure 	Officer accidentally discharged duty weapon, causing a minor injury to another officer.	Sustained
15.	<ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	Officer engaged in conducting unbecoming an officer in Domestic Violence investigation	Sustained
16.	<ul style="list-style-type: none"> • Force • Courtesy • Procedure 	Officer used unnecessary force and was discourteous with an arrestee.	Sustained
17.	<ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	Officer was dishonest regarding a sustained injury.	Sustained
18.	<ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	Officer was off duty and was under the influence of alcohol while operating a vehicle.	Sustained
19.	<ul style="list-style-type: none"> • Procedure 	Officer failed to adhere to body worn camera policy.	Sustained
20.	<ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Procedure 	Officer solicited gratuities.	Sustained
21.	<ul style="list-style-type: none"> • Procedure 	Officers failed to properly secure evidence.	Sustained
22.	<ul style="list-style-type: none"> • Procedure 	Officer accidentally discharged Projectile Impact Weapon.	Sustained
23.	<ul style="list-style-type: none"> • Procedure 	Officer failed to immediately report on-duty vehicle collision.	Sustained
24.	<ul style="list-style-type: none"> • Procedure 	Officers failed to properly secure citizen's property.	Sustained
25.	<ul style="list-style-type: none"> • Procedure 	Officers mishandled and did not properly dispose of a suspicious package	Sustained
26.	<ul style="list-style-type: none"> • Procedure 	Officer failed to follow proper tactical conduct during a stolen car investigation.	Sustained
27.	<ul style="list-style-type: none"> • Procedure 	Officer accidentally discharged duty weapon, no one was injured.	Sustained
28.	<ul style="list-style-type: none"> • Procedure 	Officer accidentally discharged Projectile Impact Weapon.	Sustained