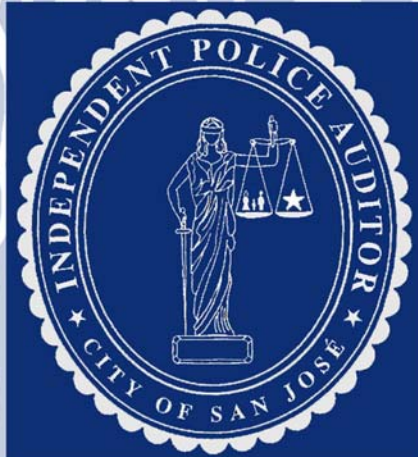


*Teresa Guerrero-Daley*

Independent Police Auditor

**2004  
MID-YEAR REPORT**



**January 1, 2004 - June 30, 2004**

*A Report to the San Jose City Council*

## **I. INTRODUCTION**

### **A. FUNCTIONS OF THE OFFICE OF THE INDEPENDENT POLICE AUDITOR**

The mission of the Office of the Independent Police Auditor (IPA) is to provide an independent review and to promote public awareness of the citizen complaint process; thereby, increasing greater police accountability by the San José Police Department (SJPD). The four primary functions of the IPA are:

1. To serve as an alternative location for citizens to file a complaint against a San José police officer;
2. To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
3. To conduct community outreach about citizen complaint process and the services the office provides to the community; and
4. To make policy recommendations to enhance and improve policies and procedures of the SJPD.

### **B. REPORTING REQUIREMENTS**

In 2001 the San José City Council directed the IPA to produce mid-year reports in addition to annual reports. The San José Municipal Code Section 8.04.010 mandates the IPA to submit reports to the City Council that 1) include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the action taken; 2) analyze trends and patterns; and 3) make recommendations.

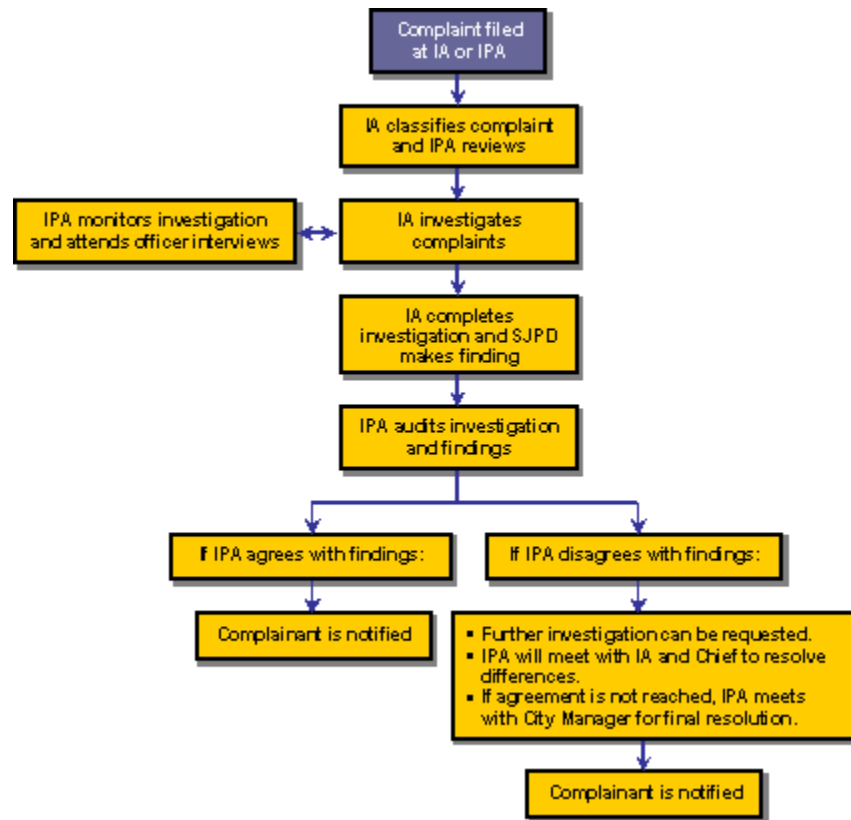
### **C. CONTENT OF THIS REPORT**

This report covers the activity of the first six months of the 2004 calendar year and includes an update on complaint statistics and the status of prior recommendations. The information covered in this report will be contained in more detail in the comprehensive year-end report encompassing all the activity of the IPA for the 2004 calendar year.

## **II. ADMINISTRATION OF COMPLAINTS**

### **A. COMPLAINT PROCESS**

A complaint is defined as an act of expressed dissatisfaction, which relates to San José Police Department operations, personnel conduct or unlawful acts. A complaint involves an administrative process where training, counseling, or discipline may be imposed by the SJPD and should not be confused with criminal charges that may be filed by the District Attorney. A complaint can be filed in the Office of the Independent Police Auditor or the Internal Affairs Unit of the SJPD. The following flowchart provides the main steps involved in the complaint process.



## B. CLASSIFICATION OF COMPLAINTS

Internal Affairs classifies complaints to determine the most effective avenue to resolve the complaint. Classifying each complaint enables the IPA and IA to: (1) streamline the investigation process so that complaints that do not require a full investigation are resolved sooner while complex complaints requiring more investigation are given enough time to investigate; (2) track complaints as part of an “Early Warning” system that identifies those officers qualifying for Intervention Counseling; (3) comply with motions for discovery in criminal and civil proceedings; and (4) identify patterns or trends that may lead to recommendations to improve existing policies or procedures.

## III. MIDYEAR STATISTICS

In an effort to simplify the classification of complaints, this report distinguishes between external and internal complaints.

### A. EXTERNAL COMPLAINTS

External complaints are defined as any complaint initiated by a civilian expressing dissatisfaction or alleging misconduct, which relates to operations, conduct or unlawful acts by a member of the San José Police Department. These complaints encompass a wide range of allegations from procedural to discourtesy to unnecessary force. Minor complaints can be conciliated by Internal Affairs intake personnel or by the subject officer’s supervisor. Complaints with serious allegations receive a thorough

investigation by members of the IA Unit. The IPA reviews, monitors and audits external complaints regardless of the type.

**Table 1: External Complaints Filed**

<b>External Complaints</b>	<b>Number</b>
Formal	69
Command Review	17
Procedural	6
Policy	4
Inquiry	49
No Boland	9
Withdrawn	11
Pre-Classification	24
<b>Total</b>	<b>189</b>

Table 1 includes all external complaints filed between January 1 and June 30, 2004 by classification. Of the 189 external complaints, 66 were filed in the office of the IPA and the remaining 123 were filed at the IA Unit. These complaints are in one of the following stages: under investigation, pending an audit, or investigated and audited.

## **B. INTERNAL COMPLAINTS**

The Office of the Chief of Police initiates internal complaints after receiving information alleging a serious violation of Department policy or a violation of law by a member of the SJPD. The IPA does not audit most internal complaints because they only involve management and not misconduct issues. If an internal complaint alleges misconduct and has a nexus to a citizen, then the IPA also audits these internal complaints.

**Table 2: Internal Complaints Filed**

<b>Internal Complaints</b>	<b>Number</b>
Department Initiated	13
<b>Total</b>	<b>13</b>

Table 2 includes all internal complaints initiated by the SJPD between January 1 and June 30, 2004. These complaints are either being investigated or have been closed.

## **C. ALLEGATIONS FILED**

The number and type of allegations received during the first six months of 2004 are in Table 3. The total number of allegations do not necessarily equal the number of complaints filed because one complaint may include more than one allegation. Out of the 60 unnecessary force allegations, only seven resulted in serious injuries requiring immediate medical attention. As noted in the table, the two most common types of allegations are improper procedure and rude conduct.

**Table 3: Type of Allegations**

Allegations		
Improper Procedure	79	28.6%
Rude Conduct	68	24.6%
Unnecessary Force	60	21.7%
Unlawful Arrest	17	6.2%
Missing/Damaged Property	12	4.3%
Unofficer-like Conduct	12	4.3%
Unlawful Search	8	2.9%
Racial Profiling	7	2.5%
Failure to Take Action	4	1.4%
Policy	4	1.4%
Discrimination	3	1.1%
Excessive Police Service	1	0.4%
Harassment	1	0.4%
<b>Total Allegations:</b>	<b>276</b>	

**D. MULTIPLICITY OF COMPLAINTS RECEIVED BY OFFICERS**

The IPA tracks the number of complaints received by each officer. Table 4 shows that the number of officers receiving more than one complaint has decreased overall. However, the number of officers receiving complaints has increased in the last three years.

**Table 4: Complaints Received by Individual Officers in a six month period**

	Officers Receiving 1 Complaint	Officers Receiving 2 Complaints	Officers Receiving 3 Complaints	Officers Receiving 4 Complaints	Total Officers Receiving Complaints
Jan – June 2002	116	13	0	1	<b>130</b>
Jan – June 2003	91	5	0	0	<b>96</b>
Jan – June 2004	169	5	1	0	<b>175</b>

**E. FREQUENCY OF COMPLAINTS FILED BY THE SAME PERSON**

The IPA additionally tracks the number of complaints filed by each complainant. Table 5 shows that of the 189 external complaints filed in the last six months, only three of the complainants filed two separate complaints. No complainant filed more than two separate complaints in this reporting period. The data indicates that the perception that complainants file multiple complaints is not common practice.

**Table 5: Complaints Filed by each Complainant** In a six month period

	Complainants Filing 1 Complaint	Complainants Filing 2 Complaints	Total Complainants Filing Complaints
Jan - June 2004	186	3	189

**F. COMPLAINTS CLOSED BY INTERNAL AFFAIRS**

Table 6 shows the complaints closed during the first six months of 2004; however, some of these complaints were filed in the previous year.

**Table 6: Closed Complaints**

Type of Complaint	2004 Mid-Year
External Complaints	176
Internal Complaints	18
<b>Total</b>	<b>194</b>

**G. COMPLAINTS SUSTAINED**

As mentioned earlier, each complaint is resolved differently; therefore, not all complaints can result in officer discipline. Table 7 indicates that of the 194 complaints closed by IA, only 89 were the type of complaints where discipline could be imposed. Of those 89 complaints, 31% were sustained.

**Table 7: Sustained Complaints**

Type of Complaints	Closed Complaints	Sustained Complaints	
		Number	Rate
External Complaints	71	11	15%
Internal Complaints	18	17	94%
<b>Total</b>	<b>89</b>	<b>28</b>	<b>31%</b>

**H. OFFICER DISCIPLINE**

The type of discipline that is imposed on officers varies from counseling and training to termination. The allegations in the complaint and the disposition of the investigation will determine the type of discipline imposed. Table 8 provides a breakdown of the action taken and of the type of discipline imposed during the first six months of the year.

**Table 8: Discipline Imposed on Officers**

Discipline	External Complaints	Internal Complaints	Total	
Training and/or Counseling	12	2	14	37%
Documented Oral Counseling	6	7	13	34%
Letter of Reprimand	0	2	2	5%
Retired (RBD)	0	0	0	0%
Resigned (RBD)	1	0	1	3%
10- Hour Suspension	0	1	1	3%
20- Hour Suspension	0	0	0	0%
40- Hour Suspension	0	2	2	5%
80- Hour Suspension	0	0	0	0%
160- Hour Suspension	0	0	0	0%
Disciplinary Transfer	0	0	0	0%
Termination (TBD)	1	3	4	11%
Settlement Agreement	0	1	1	3%
<b>Total Discipline Imposed:</b>	<b>20</b>	<b>18</b>	<b>38</b>	

## I. DISPOSITION OF UNNECESSARY FORCE ALLEGATIONS

Unnecessary force (UF) allegations are divided into two categories: class I and class II. A class I allegation involves serious bodily injury requiring immediate medical care. A class II allegation is an incident where the complainant did not receive serious bodily injuries and did not require immediate medical care. Table 9 shows a breakdown of the disposition of UF allegations.

**Table 9: Disposition of UF Allegations**

Disposition	UF Class I	UF Class II
Sustained	0	0
Not Sustained	0	7
Exonerated	3	49
Unfounded	0	3
No Finding	1	4
Within Procedure	0	1

An area the IPA tracks is the level of injury in unnecessary force complaints. Table 10 compares the level of injury complainants alleged between the first six months of 2003 and 2004.

**Table 10: Complainants' Level of Injury**

Degree of Injury	2003 Mid-Year		2004 Mid-Year	
Major	0	0%	2	6%
Moderate	6	15%	5	14%
Minor	17	43%	22	61%
Non-visible	11	27%	4	11%
Unknown	6	15%	3	8%

## J. COMPLAINTS AUDITED BY THE INDEPENDENT POLICE AUDITOR

After complaints are investigated they are forwarded to the IPA for audit. The IPA audits external complaints to ensure that the investigation was conducted thoroughly, objectively and fairly. The following statistics reflects complaints audited during the first six months, however, the complaints could have been filed in different reporting periods.

Table 11 indicates that of the 106 complaints audited by the IPA in the first six months, the IPA requested further action on 19% of the investigations.

**Table 11: Audited Complaints**

IPA Requests	Audits	
IPA Requested Further Action	20	19%
No Further Action Requested	86	81%
<b>Total Complaints Audited</b>	<b>106</b>	

#### IV. INDEPENDENT POLICE AUDITOR DISPOSITION OF AUDITS

After closely auditing each complaint the Independent Police Auditor (IPA) either agrees or disagrees with the disposition reached by Internal Affairs. Table 12 reveals that of the 106 complaints audited, the IPA agreed with 75% of IA's disposition during the first review.

**Table 12: IPA Determination of Audited Complaints**

IPA Determination	Audits	
Agreed at First Review	79	75%
Agreed after Further Action	24	23%
Disagreed after Further Action	3	3%

Following is a synopsis of the complaints and allegations where the IPA disagreed with IA.

##### A. CASE #1

**Allegations:** Complainant stated that as he and his wife were walking downtown they witnessed an unrelated police shooting. Fearing they may be shot, they ran and took cover in the doorway of a business. Shortly thereafter, they and other bystanders were ordered to lie on the ground by the police. The complainant alleges that he attempted to tell the police that preexisting injuries made it difficult for him to lie on the ground however the police allegedly ignored his explanation and used profanity when ordering him to be quiet. Complainant alleges that he laid on the ground for half an hour, was ordered to walk towards the police and in the process excessive force was used when a leg sweep caused him to fall, face first, on the ground. He also alleged that the police put a knee to the back of his neck, was handcuffed very tight, and was detained unlawfully as he was not involved in any wrong doing and was cooperating with the police.

**Auditor's Finding:** The IPA agreed with the investigation and disposition of the allegations involving excessive force and improper procedure. The investigation of those allegations was objective, thorough, and fair. The IPA disagreed with the finding of unfounded for the rude conduct allegation. In order to have arrived at an unfounded disposition, the investigation needed to have conclusively proved that the allegation did not occur. In this case there were no independent witnesses and the complainant's version of the facts involving the officer's use of profanity should have not been discounted without some proof. A not sustained finding was appropriate in this case.

##### B. CASE #2

**Allegations:** The complainant, while at the school principal's office, attacked another student. The subject officer, in an attempt to restrain the complainant, allegedly hit the complainant on the head with a walkie-talkie radio causing cuts to the forehead and head.

**Auditor's Finding:** The IPA agrees with the Internal Affairs investigation, which revealed that the subject officer could have used other options in his attempt to restrain



the complainant. SJPD policy does not authorize the use of a radio as an impact weapon nor is the head a part of the body where an officer is taught to strike with an instrument that could cause serious bodily injury or death. However, the officer's chain of command opted to change the unnecessary force allegation to an improper procedure allegation and thereby sustained the technical violation of using a radio as an unauthorized impact weapon. The use of force allegation should have been sustained.

### **C. CASE #3**

**Allegations:** Complainant and his friend stated that they were walking past a local bar downtown when the bouncers engaged them in an argument. Officers arrived and allegedly used profanity to order them to leave the area. A victim of an unrelated assault was at the time lying on the ground in front of the bar. Complainant alleges that one of the officers unnecessarily struck him on his back with a baton. The officer disputes the strike to the back and alleges that he used his baton to push the complainant away from him. The officer failed to document any use of force.

**Auditor's Finding:** The IPA finds that the investigation of the rude conduct and improper procedure allegations was objective, thorough, and fair and agrees with the finding. The IPA disagrees with the exonerated finding of the use of force allegation. The facts as stated by the complainant and subject officer about the use of force are in contradiction, the complainant claims he was struck in the back with the baton while the officer claims he pushed the complainant on the chest with the baton. An exonerated finding requires that the evidence prove that the use of force did occur but it was justified, lawful, and proper. In this case, there was no preponderance of evidence to support either the complainant's or the subject officer's version of the facts, therefore a not sustained finding would be more appropriate.

## **V. UPDATES ON PRIOR RECOMMENDATIONS**

In the 2003 Midyear Report the Office of the Independent Police Auditor presented seven recommendations related to the policies, procedures and investigation process related to officer-involved shootings that result in the injury or death of a person. Following is an update on each recommendation.

### **A. Recommendation #1**

The IPA recommended that a written policy be drafted and implemented that designates personnel whose primary focus would be to serve as the liaison to the family of the person injured or killed as the result of an officer-involved shooting.

In response, the SJPD designated the Homicide Unit Commander as the liaison for the family of a person injured or killed in any officer-involved shooting or fatal incident involving a San José police officer. The liaison designation will be made a part of the Homicide Unit's written guidelines.

### **B. IPA Recommendation #2**

The IPA recommended that the SJPD improve dissemination of information to the public by developing and providing written materials that describe the process, agencies and

general information that address frequently asked questions about officer-involved shootings or fatal incidents involving public safety officers.

The SJPD will develop and provide written material to the general public that describes the officer-involved shooting investigation process, the agencies involved and their roles, and answers to frequently asked questions about officer-involved shootings or fatal incidents involving a public safety officer.

Additionally, the IPA has continued to coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPD will ensure that it participates in these forums.

### **C. IPA Recommendation #3**

The IPA recommended that the SJPD prepare an annual report about the findings of the Officer-Involved Shooting Review Panel detailing any policy, procedures, training or other measures that were generated during its deliberations.

The SJPD has agreed to provide an annual report summarizing the recommendations from the Officer-involved Shooting Review Panel to the Mayor and City Council in conjunction with the IPA's mid-year report.

### **D. IPA Recommendation #4**

The IPA recommended that the SJPD should refrain from making any statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.

The SJPD agreed that to the extent consistent with the SJPD's general obligation under the Public Records Act to publicly disclose specified information about arrests and incident investigations, the Department will attempt to avoid making statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.

### **E. IPA Recommendation #5**

The IPA recommended that the IPA should be part of the roll-out team to the scene of an officer-involved shooting.

The SJPD agreed to the following:

- The IPA will be notified immediately after an officer-involved shooting by the IA Commander.
- The IPA may respond to the scene of the officer-involved shooting and contact the IA Commander at the outer perimeter of the crime scene.
- On-scene personnel will then brief the IPA and IA Commander as to the details of the incident.

#### **F. IPA Recommendation #6**

The IPA recommended that the IPA's review of officer-involved shootings where no citizen complaint is filed should be as thorough as its review of officer-involved shootings where a citizen complaint is filed and should mirror the oversight of citizen complaints.

The SJPd agreed that the IPA will be provided with a copy of the IA administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation.

#### **G. IPA Recommendation #7**

The IPA recommended that the San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.

The IPA agreed to work with the City Manager or the City Attorney as the case may be, to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint. In the event of a disagreement, or the need for services, which cost in excess of \$100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.

## **VI. CONCLUSION**

The Office of the Independent Police Auditor (IPA), in conjunction with the San José Police Department (SJPd), addressed serious issues and recommendations during this reporting period. In addition to statistics, this report includes the outcome of recommendations made by the IPA in its 2003 Midyear Report, and which came into fruition during the 2004 Midyear reporting period. The IPA recommendations sought to provide greater oversight of police related shootings by involving the IPA soon after a police shooting happens, by bringing greater transparency to the review of police shootings, and by clarifying the role of the IPA as it relates to the review of officer-involved shooting investigations. These changes will assist in the subsequent review of the four police shootings that took place between January 1, 2004 and June 30, 2004.