

2023



Internal Affairs Unit Procedural Manual

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 2

INTRODUCTION	4
About the Internal Affairs Unit.....	4
Purpose.....	4
Mission Statement.....	5
Guiding Principles.....	5
Standard of Proof.....	5
COMPLAINT PROCESSING	6
Determining Proper Classification of a Complaint.....	6
Investigation Overview.....	7
Audio and Video Evidence Processing.....	8
Uploading CJIC, DMV, and other Police Data Base information into IA Pro.....	9
Exception to Investigating Cases.....	9
INTAKE/INVESTIGATIVE PROCESS	9
SUPERVISOR REFERRAL	10
NON MISCONDUCT CONCERN CASES	11
DECLINE TO INVESTIGATE	12
POLICY COMPLAINTS	13
CONDUCT COMPLAINTS	14
Conduct Complaints Involving High Ranking Members of the Department.....	15
IAPro DATABASE PROCEDURE	16
Traffic Accident Investigations.....	16
Firearm Investigations and Pursuits.....	16
Category III Use of Force.....	16
Conduct Complaints or Department Initiated Investigations.....	16
IA CASE CLOSING/MANAGEMENT PROCEDURE	18
Closing Letters.....	18
PITCHESS MOTIONS PROCEDURE	19
ON CALL SUPERVISOR RESPONSIBILITIES	20
OII call out.....	21
Responsibilities when placing personnel on Administrative Leave.....	21
INTAKE OFFICER OF THE DAY RESPONSIBILITIES	23
OFFICER-INVOLVED INCIDENT REVIEW PANEL	23
Purpose.....	25
Authority.....	25
Roll Out and Briefing Protocol.....	25
Criminal Investigation.....	27
Administrative Review.....	27
Officer-Involved Incident Training Review Panel.....	28
Panel Participants.....	28
Outcomes/Report.....	29
Confidentiality.....	29
IA Retention Periods.....	29
DISCIPLINARY REVIEW PANEL (DRP) PROCEDURE	30
DISCIPLINARY NOTIFICATION PROCEDURE	31
BRADY LIST NOTIFICATION PROCEDURE	33
INTERVENTION COUNSELING DEFINITION AND POLICY	33

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 3

DEFINITIONS.....33
Internal Affairs Unit Concepts.....33
Internal Affairs Case Types.....34
Internal Affairs Conduct Allegations.....35
Internal Affairs Authorized Findings.....36
Internal Affairs Unit Outcomes.....37
MISCELLANEOUS PROCEDURES.....37
SB 1421 & AB 748 – Public Records Act (PRA).....37
MEDIATIONS.....40
APPENDIX A.....48
Conflict of Interest Policy.....48

INTRODUCTION

About the Internal Affairs Unit

Consistent with Penal Code 832.5, all police departments in the State of California are required by law to have a process in place to investigate complaints by members of the public against the personnel of these departments or agencies.

The San José Police Department's Internal Affairs (IA) Unit is responsible for such processes and has established policies and procedures (contained in this manual) to handle complaints and non-misconduct concerns consistent with State regulatory requirements for law enforcement agencies. Internal Affairs personnel are assigned the responsibility to conduct investigations of Conduct Complaints, Policy Complaints and Non-Misconduct Concerns made against Department members to ensure Department procedures and actions are reasonable, effective, and provide efficient and fair attention to cases, including their resolution.

Conduct Complaints and Policy Complaints are subject to audit by the City's Independent Police Auditor (IPA) who reports directly to the City Council. The IPA issues annual reports regarding the citizen complaint process to the City Council.

The IA Unit reports directly to the Chief of Police.

These procedures apply to all members of the San José Police Department Internal Affairs Unit.

Purpose

The Internal Affairs Unit Procedural Manual establishes guidelines and procedures for:

- Receiving allegations from members of the public against members of the San José Police Department (SJPD)
- Investigating Conduct and Policy Complaints
- Conducting Department Initiated Investigations (at the direction of the Chief of Police)
- Preparing and Administering Disciplinary Actions

2023 Internal Affairs Unit

Guidelines

Page 5

- Acting as the Department Liaison with the Human Rights Commission (HRC)
- Responding to Pitchess Motion Requests
- Acting as the Custodian of Records for all Personnel Complaints involving members of the SJPD
- Convening the San José Police Department Officer-Involved Shooting (OIS) Training Review Panel
- Convening the San José Police Department In-Custody Death (ICD) Training Review Panel

Mission Statement

It shall be the policy of the Internal Affairs Unit to receive allegations from members of the public in a courteous and professional manner. Internal investigations shall be appropriately documented, promptly investigated, and conducted in a timely, legal and ethical manner, strictly adhering to procedural safeguards regarding employee rights. Internal Affairs employees shall demonstrate sincere responsiveness to concerns of members of the public, will inform members of the public that their allegations or concerns will be taken seriously, and shall meet legal and ethical requirements for taking and investigating complaints.

Guiding Principles

An Internal Affairs investigation starts with an alleged misconduct violation (i.e., violation of Department policy, procedure, rules, regulations or the law).

The IA Unit determines if the case contains sufficient evidence to initiate an investigation which, if proven to be true, may result in disciplinary action.

The IA Unit Commander will remain cognizant that a conflict of interest may arise when a complaint is made by or against a family member or close friend of an Internal Affairs Investigator. Cases will not be assigned to Internal Affairs Investigators who have, or appear to have, a significant conflict of interest in the outcome of the investigation.

Standard of Proof

The preponderance of the evidence (51%/49%) standard shall be applied to each allegation. The “preponderance of the evidence” is usually defined in terms of

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 6

probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth. This standard of proof means that the IA Unit determines that the existence of a fact is more probable than its nonexistence. If after weighing all of the evidence, if the IA Unit cannot decide that an allegation is more likely to be true than not true, the IA Unit must conclude that the allegation is not sustained.

COMPLAINT PROCESSING

The primary objective of the Internal Affairs Unit is to accept allegations willingly from any source for review, documentation, and investigation. Allegations shall be accepted in any form: in person, by telephone/fax, Independent Police Auditor (IPA) referrals, in writing, third party, via e-mail, or anonymously. (*SJPD Duty Manual section C 1700*)

The IA Unit Commander will immediately notify the Chief of Police of all criminal misconduct allegations or other serious misconduct allegations by Department members.

The Internal Affairs Unit Criminal Investigations Detail (CID) will investigate cases involving allegations of criminal misconduct. IA Administrative personnel will monitor the investigations and obtain copies of all criminal reports.

Internal Affairs shall be responsible for maintaining current data bases of all Conduct and Policy Complaints, Non-Misconduct Concerns, and Decline to Investigate Concerns. Regardless of whether the allegation is initially received by IA or at the Bureau level, IA will record the allegation as soon as practical after the allegation is received by IA staff.

Determining Proper Classification of a Complaint

When accepting a complaint, the classification must be determined. There are two classifications:

Sworn Personnel: Complaints involving sworn Department personnel will be classified as Conduct Complaints or Department Initiated Investigations. It is not necessary to add a classification, as it will be presumed that the complaint involves a sworn member unless it is classified as a Non-Sworn Conduct Complaint.

Non-Sworn Personnel: Complaints involving Department members that hold a non-sworn position (employees not covered by the Public Safety Officers Procedural Bill of Rights) will be entered as a Non-Sworn Conduct Complaint or

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 7

Department Initiated Investigation.

Investigation Overview

IA personnel are assigned the responsibility to conduct complete investigations involving misconduct allegations made against Department members. A thorough investigation of all allegations received serves to protect the public and Department against procedures or acts which result in misconduct by Department members. A thorough investigation further serves to protect the community, the Department and its personnel from allegations which are based on misunderstanding or invalid information.

All Conduct Complaints and Department Initiated Investigations must be completed within 300 days from acceptance to ensure the case review process can move forward unencumbered by time issues. The exemptions listed in Government Code Section 3304 shall toll these time constraints.

In the event the Department is considering extending or tolling the one year statute of limitations (Government Code Sections 3304 (d)(1-8) and 3508.1(a)(1-8), or reopening an investigation (Government Code Sections 3304(g) and 3508.1(d), the Department should first coordinate with the Office of Employee Relations and the City Attorney's Office. The final administrative decision to toll the statute of limitations is subject to a reasonableness review by the courts. This consultation should be sought as early in the course of the IA investigation as possible, so as not to prejudice the ability of the City to discipline the employee should the Department ultimately decide to issue a Notice of Intended Discipline in the event that the City decides that tolling is not appropriate. (see attached Memorandum in appendix A)

The Internal Affairs Unit investigators should remember that civilian Police Employees have the same protections as police officers with respect to: (a) the one year statute of limitations for completing an investigation of an allegation of misconduct and serving of the NOID and (b) The thirty day period for serving a written notice of decision to impose discipline (NOD), including the date that the discipline will be imposed ***if after*** investigation and any pre-disciplinary response or procedure, the public agency makes the decision to impose discipline.

A thorough, complete, and impartial investigation will be conducted. This investigation may include the taking of statements, gathering and preservation of physical evidence, and any other information relevant to the investigation. All elements of the investigation will be reduced to writing and will become a part of the case.

Supervisors assigned to complete CC or DI cases may collect additional evidentiary material, ensure subject officers are notified of IA cases, and conduct

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 8

follow-up interviews with witnesses and the subject officers when appropriate. The investigator will comply with California Government Code Section 3300 et seq. when interviewing subject officers. The Independent Police Auditor or his/her designee has the right to attend the interviews and ask direct questions of all subject officers and witnesses in Conduct Complaint Cases and DIIs (Agreement entered between the POA and The City of San Jose).

Upon completion, the entire case file is given to the IA Unit Commander for review and approval. On all allegations of Force, the completed case may be forwarded to the Assistant Chief of Police for review and approval before closing the case. Once a Conduct Complaint case has completed the approval procedure a notification of completion will be sent to the IPA. The IPA shall have two weeks to review the case. The IPA can approve of the case and agree to close it by notifying IA that they are in agreement with the investigation, or the IPA can send a disagreement memorandum to the Chief of Police (8.04.010 SJMC) within the two-week time period requesting further investigation. The Chief of Police will respond to the disagreement memorandum within two weeks. If any dispute cannot be resolved the IPA may forward the disagreement to the City Manager for final resolution.

Per the legal requirement in the California Penal Code section 832.7(e) (law enforcement agencies are required to provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition) a closing letter will be sent to the complainant(s) before the 30 day time limit.

Audio and Video Evidence Procedure

In cases in which video or audio evidence exists (other than video or audio evidence captured by a Department member's body worn camera) the initial interview of a subject officer should occur before the officer has reviewed any of the audio or video recordings of the incident. A subject officer will have an opportunity to review recordings after the initial statement has been taken. Investigators should be mindful that audio or video recordings have limitations and may depict events differently than the events recalled by a subject officer. If the investigator shows any audio or video recording to a subject officer after the initial interview, the investigator has the discretion to admonish a subject officer about the limitations of audio or video recordings.

If body worn camera audio or video evidence is available the procedure documented in section 13, subsection D of the San Jose Police Department Body Worn Camera Policy will be followed, and officers will be allowed to view the footage with their representative outside the presence of an investigator or supervisor before any Internal Affairs interview is conducted.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 9

Any exceptions to this procedure shall be approved by the IA commander prior to the interview.

Uploading CJIC, DMV, and other Police Data Base information into IA Pro System

In cases where CJIC, DMV, or information from police data bases is used to support an analysis or finding, copies of the data base information used by the investigator will be loaded into IA Pro. The uploading of the information into secure data bases, such as IA Pro, is authorized by Penal Code Sections 11105(b)(11), 13300(b)(11), and 13202.

Exception to Investigating Cases

All allegations made by citizens will be received; however, cases which are received after a considerable amount of time has elapsed from the date of the incident are difficult to investigate in a thorough, fair, and complete manner. Allegations which are received after one year from the date of the incident will be reviewed by the Chief of Police who has the discretion to decide not to accept the allegations as a complaint for investigation. The Chief of Police may take into consideration in making this determination any policy or factual matters relevant to the particular case, including, but not limited to whether an investigation can still be conducted in a thorough, fair, complete, and efficient manner. (C 1738)

All allegations where it is a dispute-of-fact case and there is no independent information, evidence or witnesses available to support the complaint and there exists another judicial entity which is available to process the concerns of the complainant (Traffic citation disputes) will be referred to the judicial entity for resolution.

All allegations where a member of the public makes an allegation against a Department member and the allegation encompasses fact patterns that are clearly implausible or incredible will be classified as a Decline to Investigate Concern.

All cases with classification of "Other" represent duplicate complaints, errors in data entry, cases in which Internal Affairs and the Independent Police Auditor agree should be classified as "Other," and cases not involving department members.

INTAKE/INVESTIGATIVE PROCESS

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 10

The Internal Affairs Unit or the Independent Police Auditor's Office can accept Complaints for investigation. The IPA will enter all complaints as "Pre-Class." The following listed steps should be taken for every investigation:

1. IPA Intake

- a. Determine the proper classification of the complaint as a Sworn Conduct Complaint or a Non-Sworn Conduct complaint.
- b. Entered into IA Pro within 3 days as Pre-class
- c. Intake Supervisor assigns an Intake Officer to investigate (IPA intake is noted on the case management form)
- d. Intake officers should review the IAPro summary and any recorded IPA interview or attached file, letter, e-mail or fax (be sure the recording, letter, e-mail etc. is linked or a copy retained in the case file)
- e. Within 30 days change the status from Pre-Class to PC, CC, NMC, or DTI
- f. IPA notified of any Subject Officer interviews

2. IA Intake

- a. Determine the proper classification of the complaint as a Sworn Conduct Complaint or a Non-Sworn Conduct complaint.
- b. IA intake form completed
- c. Interview and record complainant's statement and link recording
- d. Complete a summary of the statement and provide a copy while the complainant waits, or by mail within three days
- e. Enter into IAPro within 3 days as Pre-class
- f. List the assigned investigating officer
- g. Link all known officers and allegations as soon as determined.
- h. Within 30 days change the status from Pre-Class to PC, CC, NMC, or DTI

Officers will investigate the complaint to the best of their ability by collecting any evidentiary material, conducting witness interviews and obtaining any resources necessary to assist in determining the facts surrounding incident.

IA Officers will determine the classification of the complaint by using the criteria found in the Duty Manual under sections C 1706, 1708 and C 1712. Using the Duty Manual criteria, the officers will then properly classify the complaint. The classification of all allegations will be approved by the IA Commander and shall be accomplished within 30 days of receipt of the case.

The investigating officer will complete the appropriate written investigation and submit it for approval through the chain of command. Investigations needing or requiring a subject officer interview will be assigned to a supervisor for completion.

DO NOT COPY

SUPERVISORY REFERRAL

A Supervisory Referral complaint is a citizen-initiated complaint which contains an allegation involving a minor transgression that may best be handled by bringing the matter to the attention of the subject member's supervisor and the chain of command. A Supervisory Referral will not require a formal investigation or investigatory questioning. See the objective criteria that must be met in order for a citizen-initiated complaint to be investigated as a Supervisory Referral in DM Section C 1707.5

IA investigators can recommend a case be referred to the member's supervisor and chain of command at any point prior to the completion of an investigation. Supervisor Referrals shall be approved by the IA Unit Commander and the IPA's office prior to initiating the referral.

NON-MISCONDUCT CONCERN CASES

If during the pre-classification process, it is determined that an allegation does not rise to the level of a violation of Department/City policy, procedure, rules, regulations, or the law, and the allegation is not a Policy Complaint, then the allegation will then be classified as a Non-Misconduct Concern. This classification will be based on the objective criteria identified in Section C 1706, C 1707 or C 1708.

The objective criteria used to classify a case a Non-Misconduct Concern: Is the complainant alleging a violation of Department/City policy, procedure, rules, regulations, or the law? Is the allegation related to a Department Member? Does the allegation, if found to be true, rise to the level of misconduct?

Perceptions or questions of Department member's conduct that is not an allegation regarding a violation of Department/City policy, procedure, rules, regulations, or the law is not a complaint and will be classified as a NMC. Every NMC will be approved of by the Unit Commander or his designee.

The Non-Misconduct Concerns will be stored as any other complaint in the IAPro database. The Officer(s) name will not be linked. They will be retained for the same length of time as Conduct Complaint case files.

Non-sworn Department Members will be held to the same standard for NMC as sworn officers.

2023 Internal Affairs Unit

Guidelines

Page 12

Closing NMC's in IAPro:

Unlink the officer's name and no officer/allegation is listed. Link all audio/photos and send closing letters when completed.

DECLINE TO INVESTIGATE CONCERNS

When a member of the public makes an allegation against a Department member and the allegation encompasses fact patterns that are clearly implausible or incredible, the Department will classify the allegation as a Decline to Investigate Concern.

During the pre-classification process, IA will determine if the allegation constitutes a Decline to Investigate Concern based upon the objective criteria in SJPD Duty Manual Section C 1706.5.

- The concern is patently hallucinatory and fantastical, and the investigator cannot ascertain an alternate set of facts that might explain the complainant's experience in a way that grounds it in reality.
- The complainant's description is grossly illogical and not capable of decomposition into discrete facts.
- The concern hinges on the existence of a broad conspiracy without articulating specific facts capable of investigation.
- The concern is identical to a previous complaint brought by the individual, against the same officer(s), and the previous complaint resulted in a finding of "Unfounded."

Note: Care and compassion must be exercised with a complainant who may have a mental illness. The presence of a mental illness does not necessarily make a person less able to perceive, to recall, or to report an incident. A complaint may be valid even if a complainant has difficulty communicating the essential facts. Staff should assume that a person with a developmental disability, a neurological disorder, or a physical impairment that makes it difficult to communicate is as credible and reliable as any other person.

Closing DTI's in IAPro:

Unlink the officer's name and no officer/allegation is listed. The allegation will be closed with a disposition of DTI. Link all audio/photos and send closing letters when completed.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 13

If the *civilian* expresses dissatisfaction with the proposed disposition of a Decline to Investigate Concern, the Department member will refer the complainant to the Commander of Internal Affairs (IA).

POLICY COMPLAINTS

When there is a concern regarding a current Department/City policy that was properly implemented by a Department member, but which the complainant believes is inappropriate or not valid, the Department will use the classification of Policy Complaint. The Department will also use the classification of Policy Complaint when a complainant's concern is that the Department lacks a policy on a particular topic.

During the pre-classification process, IA will determine if the concern constitutes a Policy Complaint based on the objective criteria in SJPD Duty Manual Section C 1708.

- These cases deal with complaints against current Department/City policy, not a member of the SJPD.
- These cases are not personnel complaints. Officers' names will not be tracked in the IA Pro Database.
- As directed by the Chief of Police, the case will be forwarded to the SJPD's Research and Development Unit for policy evaluation.
- Policy Complaints will be tracked and monitored for the purpose of identifying trends and patterns, as well as for identifying a possible need for training and/or policy/procedure changes.

IA will accept any Policy Complaints from members of the public, the IPA, or Department Members. (SJPD Duty Manual Section C 1718 Initial Processing States: *Department members receiving an allegation which is classified as a "Policy Complaint" will refer the complainant to the Office of the Chief of Police, Internal Affairs Unit.*)

IA personnel processing a Policy Complaint will complete the IA intake form. IA staff will attempt to include as much information as is available and then verify with the complainant, when possible, all information received (*SJPD Duty Manual Section C 1719*).

The interview should be recorded and a summary entered into the IPro Database. The summary of the intake does not need to be lengthy because the recorded interview will be available if additional details are required. No Officer

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 14

information should be entered into IAPro (not even unknown officer. No allegations shall be listed.)

The IA Bullpen sergeant will then coordinate with the IPA's office in order to confirm that a Policy Complaint is the proper classification for the complaint.

Once both offices are in agreement that a Policy Complaint is the proper classification, IA will forward the write up to Research and Development Unit. The following sentence will be included in the IA write up before it is sent to R&D:

"The complainant's concern constituted a Policy Complaint and as such, per Duty Manual Section C 1720 will be forwarded to the SJPD Research and Development Unit for a Policy evaluation."

The Research and Development Unit will research the policy contained in the complaint and author a write up which describes the current policy. The R&D commander will determine if the current policy appropriately addresses the topic or if the policy needs to be modified. If there is no specific policy related to the complaint, the R&D commander will determine if a policy needs to be created to address the matter.

The investigation will be linked in the IAPro database so that the Independent Police Auditor's Office can review the completed investigation. The IPA can ask for clarification, if necessary, and then the case can be closed. It should be noted that there will be no section titled "Finding" in the write up. The Policy Complaint will be closed in IAPro with the outcome listed as "Policy Complaint."

If during the policy evaluation by R&D it is determined that possible misconduct has occurred by a Department member, the R&D commander or the Internal Affairs commander can initiate a Department Initiated Investigation. If a DII is initiated, it would not change the policy complaint to a conduct complaint.

In the event that a Policy Complaint is alleged along with a NMC or a CC, the Policy Complaint will be separated out and given its own IA case number. The case numbers will be cross referenced.

CONDUCT COMPLAINTS

If during the pre-classification process, it is determined that an allegation contains, or appears to contain misconduct (SJPD Duty Manual Section C 1705 States: Misconduct, for the purpose of the SJPD complaint classification process, is an act or omission by a Department member that is a violation of Department or City policy, procedure, rules, regulations, or the law, which if proven true may result in disciplinary action,) the allegation will be classified as a Conduct Complaint or a Non-Sworn Conduct Complaint.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 15

The definitions of allegations found in section SJPD Duty Manual Section C 1710 States: "Procedure, Search Or Seizure, Arrest Or Detention, Bias-Based Policing, Courtesy, Conduct Unbecoming an Officer, Force, Neglect of Duty, Workplace Discrimination, Workplace Harassment" will be used to characterize the allegations. The intake and investigation procedure found in SJPD Duty Manual Section C 1715 will be followed by the IA member receiving the complaint.

A case with both a NMC and a Conduct Complaint will not be separated. The NMC will be *addressed* within the Conduct Complaint investigation. If a person alleges or raises an issue that does not rise to the level of misconduct it will not receive a finding. However each allegation the complainant makes that appears to contain misconduct will be investigated and the findings listed as stated in DM Section C 1723 (Unfounded, Exonerated, Not Sustained, No Findings, Complaint Withdrawn, or Other)

If the Conduct Complaint investigation is complete without any Department Member interviews, the case will be documented in writing by the intake officer and forwarded to the Unit Commander for approval and completion of the closing process. But if the case is in need of a Department Member Interview, the interviews of Department members will be conducted by a supervisor and will not be conducted by intake officers. The supervisor's case will be documented in writing and submitted to the Unit Commander for approval and closing.

A Non-Sworn Conduct Complaint will be documented in writing by the intake officer. The intake officer will only document the complainant's allegations and then forward them to the intake supervisor. The intake supervisor will forward the complaint for investigation to the Unit Commander that supervises the non-sworn member's bureau.

Internal Affairs Unit investigators will not "Sustain" any allegation. Instead, they will forward the written investigation to the subject officer's assigned commander to review for Findings and Recommendations (C 1724). Additionally, when a case is forwarded to the subject officer's Bureau Chief for findings and recommendations, IA will retain the original copy of the investigation. Any time a complaint is received and it is both a Conduct Complaint and a Policy Complaint, the Intake officer will separate the case "Types" and create a separate case number for the Policy Complaint. The IA case numbers will be cross referenced.

Conduct Complaints Involving High Ranking Members of the Department

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 16

Conduct Complaints involving high ranking members of the Department will be investigated by the Office of Employee Relations. The Office of Employee Relations may request the assistance of the Internal Affairs in order to ensure that the investigation conforms to the statutory regulations contained in the Penal Code and Peace Officer Bill of Rights.

IAPro DATABASE PROCEDURE

Traffic Accident Investigations

All traffic cases entered into IAPro will be closed with the disposition of "Traffic Preventable" "Traffic Non-Preventable" or "Traffic Other."

Firearm Investigations and Pursuits

All Firearm Investigations and Pursuits entered into IAPro will be closed with the disposition of "Within Policy" or "Not-Within Policy." If the case is closed as "Not-Within Policy" a "Conduct Complaint, or Department Initiated Investigation may be opened. The IAPro numbers should be cross referenced. IA does not normally receive pursuit investigations that are found to be within policy.

Category (III) Use of Force

Refer to DM section L2605.5. Once a command review has been completed, the memorandums and supporting documentation shall be routed to the Internal Affairs Unit for logging and retention. The documents shall be logged as official Department correspondence and shall not be placed into a Department member's Internal Affairs file or Personnel file, absent a Department Initiated Investigation or a formal citizen complaint. Canine apprehensions (dog bites) are considered a Category (III) Use of Force and shall be logged in the same manner.

IA will log the UOF by the subject's name.

Conduct Complaints or Department Initiated Investigations

All closed CC and DII cases will have a disposition entered into the "disposition" field in IAPro. The following guidelines will be used to determine the correct disposition of cases with multiple findings:

Sustained- If any of the allegations alleged in a complaint has a finding of "Sustained," the case disposition will be listed as "Sustained" in IAPro. (e.g. A Citizen Complaint which has an allegation of Courtesy (C) with a finding of "Not Sustained," and allegation of Force (F) with a finding of "Sustained," and an allegation of Bias Based Policing (BBP) with a finding of "Unfounded" would be closed with a disposition of "Sustained" in the IAPro database.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 17

Not Sustained- If any of the allegations alleged in a complaint has a finding of “Not Sustained,” and there is not a “Sustained” finding, the case disposition will be listed as “Not Sustained” in IAPro. *(e.g. A Citizen Complaint which has an allegation of Procedure (P) with a finding of “Not Sustained,” and allegation of Force (F) with a finding of “Not Sustained,” and an allegation of Bias Based Policing (BBP) with a finding of “Unfounded” would be closed with a disposition of “Not Sustained” in the IAPro database.*

Exonerated- If any of the allegations alleged in the complaint has a finding of “Exonerated,” and there is not a “Sustained” or “Not Sustained” finding, the case disposition will be listed as “Exonerated” in IAPro. *(E.g. A Citizen Complaint which has an allegation of Arrest Detention (AD) with a finding of “Exonerated,” and allegation of Force (F) with a finding of “No Finding,” and an allegation of Bias Based Policing (BBP) with a finding of “Unfounded” would be closed with a disposition of “Exonerated” in the IAPro database.*

No Finding- If any of the allegations alleged in the case has a finding of “No Finding” and none of the findings are closed as “Sustained, Not Sustained, or Exonerated,” the case disposition will be listed as “No Findings” in IAPro.

Complaint Withdrawn- If any of the allegations alleged in the case has a finding of “Complaint Withdrawn” and none of the remaining findings are closed as “Sustained, Not Sustained, Exonerated, or No Findings,” the case disposition will be listed as “Complaint Withdrawn” in IAPro.

- When a citizen withdraws a complaint against a known department member, the department member’s name will be unlinked in IAPro and “UNKNOWN OFFICER” will be linked with the appropriate allegations and the finding will be Complaint Withdrawn.
- When a citizen withdraws a complaint against unknown department members, only one Unknown Officer will be linked in IAPro with all known allegations and the finding will be Complaint Withdrawn.

Unfounded- If any of the allegations alleged in the case has a finding of “Unfounded” and none of the findings are closed as “Sustained, Not Sustained, or Exonerated, No Findings, or Complaint Withdrawn,” the case disposition will be listed as “Unfounded” in IAPro.

Other- Entries classified as “Other” and not involving department members, or as directed by the Chief of Police, SJPD Duty Manual Section C 1738 States:

- All cases received beyond the one year time limitation and closed with a finding of “Other” will include a synopsis of the Complainant’s statement, a

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 18

summary of all investigative documents received, a basic analysis of the case and the decision of the Office of the Chief of Police. Subject Officers names will be linked in IAPro.

A Conduct Complaint or Department Initiated Investigation will *not* have the disposition listed as No Misconduct Determined, Within Policy or Not within Policy.

IA CASE CLOSING/MANAGEMENT PROCEDURE

After the Assistant Chief of Police, the Internal Affairs Unit Commander, or their designee, reviews a "Conduct Complaint" or a "Policy Complaint," and approves the investigation, the case will be closed. A copy of the case file will be available to the IPA unless the case is a Non-Sworn Conduct Complaint.

- If the IPA agrees with the closing of the case a closing letter will be sent to the complainant.
- If the IPA does not agree with the findings of the case, the IPA has two weeks to issue a disagreement memorandum to the IA Unit Commander.
- The IA Unit Commander has two weeks to address the IPA concerns and may choose to have the case opened for further investigation.

Per the legal requirement in the California Penal Code section 832.7(e) (law enforcement agencies are required to provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition) a closing letter will be sent to the complainant(s) before the 30 day time limit.

If for any reason a case is re-opened after a complainant and or the officer has been notified of its closing by letter the complainant and or the officer will be notified as soon as possible that the case has been reopened.

In all Conduct Complaints, Policy Complaints, Non Misconduct Concerns, and Decline to Investigate Concerns where a complainant is listed, provided the Internal Affairs Unit has an address on file, the complainants will be sent a closing letter that explains the IA process and the resolution to their case.

In Conduct Complaint and Department Initiated Investigations when any of the findings are listed as Not Sustained, Exonerated, No Finding, Unfounded, or Other each subject officer will be sent a closing notification letter.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 19

Closing Letters

The officer or supervisor assigned to the investigation at its closing date will distribute the appropriate closing letters to the subject officers and complainants. If the investigating officer or supervisor is no longer assigned to the Internal Affairs unit the closing letters will be assigned by the Unit Commander or his designee for completion.

PITCHESS MOTIONS PROCEDURE

The Intake Officer or IA Office Personnel receiving the Pitchess Motion will complete the following:

- Date stamp the Motion when received.
- Enter into IAPro to get an assigned Pitchess Motion case number.
- Enter the Pitchess Motion into the Excel Pitchess Court Log spreadsheet.
- Fax the City Attorney a copy with a cover sheet as notification of receipt of a Pitchess Motion.
- Send a notification to the involved officer.
- Prepare a court folder.
- Assign Pitchess Motion to officer in IAPro.

All subpoenas for Internal Affairs records received at the Internal Affairs Unit office will be coordinated through the Office of City Attorney.

If the assigned "Pitchess Officer" is not scheduled to work, these duties will be completed by another officer. If the second officer is unavailable, the duties will be completed by the Intake officer of the day.

Persons seeking discovery of police officer complaint information may file a Pitchess Motion. It is their responsibility to serve properly the City Attorney, District Attorney, and the Police Department that the motion has been granted with a copy of the moving papers.

Note: Typically, a courier serves the Department at the Information Center front desk or here at IA. *The attorney must serve the moving papers no less than twenty-one days prior to the hearing.* EC §1045 (a) / C.C.C §1005 (b)

The Pitchess Officer or Office Personnel will:

- Enter into IAPro to get an assigned Pitchess Motion case number.
- Enter the Pitchess Motions into the Excel Pitchess Court Log spreadsheet.
- Fax a "Pitchess Motion Cover Sheet" to the City Attorney to ensure timely notification to that office.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 20

- Send a notification to the subject officer that a Pitchess motion has been filed.
- Research IAPro for all complaints.
- Create a folder in the G-Drive under Pitchess Motion Folder.
 - The folder must have the Pitchess Motion case number.
 - Create subfolder for each officer listed in the motion.
 - Each officer subfolder will contain all relevant complaints.
 - Each complaint will have its own file with IA case number.
- Scan relevant material to file created for each IA investigation.
 - IA Summary Report page
 - IA write-up
 - Police report / citation
- Copy completed digital Pitchess Motion folder to CD and place in Pitchess Cabinet until day of the hearing.
- Note the hearing date, time, location, and assigned intake officer on the Pitchess Motion master calendar in the back intake office.
- Take the appropriate CD containing files to court and meet with the City Attorney representative.
- If the judge grants a motion, accompany the City Attorney representative and court reporter into chambers for the in-camera hearing. No other attorneys are allowed.
- Be prepared to brief the judge on each case or allow him/her to read the material.
- If the court orders information released to the defense, return to the office and prepare the material for disclosure.
- Only that information that was ordered released by the Judge hearing the motion should be disclosed.
 - That information may include the IA case number, allegation category, location and date of occurrence, and the name, address and phone number of any complainants and/or witnesses.
- Copies of the disclosed information per the Judge's order must be sent within ten days.
- If information is released at an In-Camera Hearing it is sent Certified Mail.
 - When the Certified receipt is returned to IA, place the receipt inside the associated Pitchess Motion CD envelope and return CD to the storage cabinet.
- Pitchess Motion files will be retained for a period of five years, per the City Attorney.

DO NOT COPY

ON CALL SUPERVISOR RESPONSIBILITIES

During working and non-working periods, the on-call IA Sergeant will be on a stand-by status and available to monitor the investigation of officer-involved shootings that result in injury or death. The On-Call IA Unit Sergeant shall ensure the IA Unit Commander is notified when he/she is called out to respond to an event.

The following incidents will result in a response by an On-Call IA Unit Sergeant:

- OIS situations
- ICD situations
- When an officer's use of force, or a police action, results in death
- When necessary as determined by the Chief of Police or the IA Unit Commander

On-call assignments run for one week at a time and start on Tuesday at 0800 and end on the following Tuesday at 0800.

When assuming on-call duties, the On-Call IA Unit Sergeant is responsible for updating Communications of his/her cellular telephone number.

On-call personnel will collect and deliver IA mail from Records, the Chief's Office, and the BFO Deputy Chief's office (A.M., P.M., and as needed).

Oll call-out

The IA Unit Commander will notify the Independent Police Auditor and respond to the scene. The IPA will meet the IA Unit Commander at the outer perimeter of the crime scene. The IPA and the IA Unit Commander will be briefed on the details of the shooting by on-scene personnel.

The responding on-call IA Unit Sergeant will:

- Monitor the criminal investigation
- Inspect the crime scene
- Place involved officer(s) on paid administrative leave

After the criminal investigation is completed, a separate, administrative investigation will be conducted and will include:

- An examination of the complete criminal investigation
- Physical evidence
- Coroner's report

2023 Internal Affairs Unit

Guidelines

Page 22

A report will be completed using the Department format and will document the administrative investigation and any actions taken. This report will be reviewed and approved by the Chief of Police.

Responsibilities when placing personnel on Administrative Leave

IA Unit Sergeants have the responsibility to place Department members on Administrative Leave when authorized by the Chief of Police or the Assistant Chief of Police.

The IA Unit Sergeant will advise the Department member of the reason(s) for this action. The Department member will be advised that the officer's work schedule while on Administrative Leave will be adjusted to Monday through Friday, 0800 to 1700 hours. Additionally, the officer will be instructed to contact Internal Affairs on a daily basis while on Administrative Leave. Members will be informed that they are not to act in any official capacity while on Administrative Leave or perform outside employment without authorization of the Chief of Police.

Court attendance during this period will be cleared through the Office of the Chief of Police. Sworn department members mandated to attend court will be escorted by the Internal Affairs supervisor assigned to their investigation.

The IA Unit Sergeant will sign a memorandum explaining these items, and it will be given to the Department member at the time the officer is placed on Administrative Leave. A copy will be included in the IA file.

The IA Unit Commander or IA Unit on-call Sergeant assigned to the case will notify the unit secretary of the involved officer as soon as possible (via IA generated memorandums which require the signature of the Chief of Police), to ensure timely notifications to the City Manager, Police Personnel and Employee Services.

Supervisors who are called upon to place employees on Administrative Leave will complete the following tasks:

- Complete Administrative Leave paperwork
- Obtain the following items from sworn personnel who are subject to a disciplinary investigation (does not apply to OIS.)
 - Badge
 - Identification Card
 - PAB key
 - Parking Pass

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 23

- City issued duty weapon and magazines
- Taser

Obtain the following items from non-sworn personnel:

- Identification Card
- PAB key
- Any special keys used for their assignment (Communications key, records back door key, etc.)
- Parking pass

Notify the Intake Supervisor so the Administrative call-in list can be updated.

Secure any weapons received into the range, or into the safe in the IA Commanders office, until they can be secured into the Range.

Secure all other items in a sealed envelope, and lock it in the Internal Affairs safe.

Update the safe and computer drive log.

INTAKE OFFICER OF THE DAY RESPONSIBILITIES

During normal work hours, the Intake Officer of the day will be available to handle allegations, particularly those from complainants who are in custody or where there is an immediate need to gather evidence.

Telephone and Walk-in Duties

The Intake Officer of the day is assigned to telephone and walk-in duty. Responsibilities include receiving allegations during the workday and retrieving voice mail messages left on the Unit's message center.

Other Intake Officers should work closely with the designated officer of the day so there is coordinated coverage to ensure prompt and professional interaction with citizens at all times.

When leaving the office during the workday, proper relief must be arranged and approved by the Intake Supervisor or the Unit Commander. The administrative staff should be advised of any changes so they may notify appropriate personnel.

DO NOT COPY

OFFICER-INVOLVED INCIDENT TRAINING REVIEW PANEL

In June 2015, the San José Police Department established the Officer-Involved Incident Training Review Panel (OII Training Review Panel). The panel combined and replaced the existing Officer Involved Shooting and In-Custody Death Training Review Panels. The OII Training Review Panel is responsible for reviewing officer involved shootings, in-custody death cases, and any act by an officer, including but not limited to any use of any other deadly or dangerous weapon by an officer, which proximately causes an injury likely to produce death to another.

For the purpose of these guidelines, the definitions for the officer-involved incidents reviewed by the panel are the following:

Officer-Involved Shooting

The definition of an officer involved shooting (OIS) is the discharge of a firearm by an officer which proximately causes the death of, or injury of another.

In-Custody Death

The definition of in-custody death (ICD) is the death of a person while in the custody of a sworn member of the San Jose Police Department (SJPD). In-custody, for the purpose of these guidelines, means the arrest or detention of the person by a sworn member of the SJPD. This definition does not include calls for medical emergencies or traffic accidents.

Custody ends when a person is released from the custody of the San José Police Department.

The Chief of Police has the discretion to decide on a case-by-case basis to refer for review by the OII Training Review Panel any case where the person dies after the person was released from the custody of the San Jose Police Department and reportable force was used by a San Jose police officer on the person prior to the person's release from the Department's custody.

Cases involving any act by an officer, including but not limited to any use of any other deadly or dangerous weapon by an officer, which proximately causes an injury likely to produce death to another:

The definition of any act by an officer, including but not limited to any use of any other deadly or dangerous weapon by an officer, which proximately causes an injury likely to produce death to another is an act by an officer that creates a

2023 Internal Affairs Unit

Guidelines

Page 25

substantial risk of death or serious bodily injury in another. Examples of such injuries would include, but not be limited to: damage to internal organs which are deemed life threatening by medical professionals; severe brain injuries resulting in brain damage confirmed by medical professionals; paralysis or other serious neurological impairment; a use of force that results in a person going into cardiac arrest or having a heart attack; injuries resulting in substantial loss of blood either internally or externally which is deemed life threatening by medical professionals, or other major bodily injury requiring the person to be admitted to the hospital.

Purpose

The purpose of the OII Training Review Panel is precautionary and remedial in nature. The panel will receive a factual synopsis of the incident and investigation for the purpose reviewing Department policy and procedures, training and tactics, officer safety, equipment and communication. The panel will recommend any training that should be provided or policies and procedures that may require review and revisions as a result of the incident. Unlike review of citizen's complaints, which are governed by the City's Charter and Municipal Code, Panel member participation does not include an "audit" review or independent investigation of any Department investigation. Panel member participation also does not include a determination of whether policies, procedures or laws were violated by any involved officers.

Authority

The Panel can make recommendations to the Police Chief that identify issues and needs regarding training and tactics, equipment, communication, and officer safety, as well as identifying Departmental policies and procedures that may require review and revision based upon its review of OII cases.

Roll Out and Briefing Protocol

Officer-Involved Shootings:

The Internal Affairs Unit Commander will notify the Independent Police Auditor immediately after an officer-involved shooting. The San Jose Police Department Communications Unit is responsible for providing notification to the City Attorney's Office, District Attorney's Office and Coroner's Office.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 26

The IPA may respond to the scene of the officer-involved shooting and contact the IA Unit Commander at the outer perimeter of the crime scene where they will both be briefed as to the details of the incident by on-scene personnel.

The responding On-call IA Unit Sergeant and IA Unit Commander will:

- Monitor the criminal investigation
- Provide a briefing to the Chief of Police
- Place involved officer(s) on paid Administrative Leave

Investigators from the City Attorney's Office and District Attorney's Office will be notified and may respond to the scene.

In-Custody Deaths:

In-Custody Death cases often lack a static crime scene and the nature of in-custody death cases are predominantly transitory in nature (meaning that an individual dies while being transported to a hospital, at a hospital/medical facility, Department of Corrections, Juvenile Hall, Processing Center or any other outside public agency). In addition, the Chief of Police exercises his/her discretionary authority to refer for review by the OII Training Review Panel any case where the person dies after being released from the custody when reportable force was used by a San Jose police officer prior to the person's release.

Roll Out and Briefing Protocol applicable only to SJPD in-custody death cases as defined above.

The Internal Affairs Unit Commander will notify the Independent Police Auditor immediately after an in-custody death.

The IPA may respond to the scene of the in-custody death and contact the IA Unit Commander at the outer perimeter of the crime scene where they will both be briefed as to the details of the incident by onsite Homicide Commander, or Incident Commander.

The responding On-Call IA Unit Sergeant and IA Unit Commander will:

- Monitor the criminal investigation.
- Provide a briefing to the Chief
- Place involved officer(s) on paid Administrative Leave when directed by the Chief of Police.

Investigators from the City Attorney's Office and District Attorney's Office will be notified and may respond to the scene.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 27

Cases involving any act by an officer, including but not limited to any use of any other deadly or dangerous weapon by an officer, which proximately causes an injury likely to produce death to another:

The Internal Affairs Unit will monitor an investigation related to cases involving an act by an officer, including but not limited to any use of any deadly or dangerous weapon by an officer, which proximately causes an injury likely to produce death to another.

At the direction of the Chief of Police, the Internal Affairs Commander and the On-Call IA Unit Sergeant will respond to the scene to:

- Monitor the criminal investigation.
- Provide a briefing to the Chief
- Place involved officer(s) on paid Administrative Leave when directed by the Chief of Police.

Investigators from the City Attorney's Office and District Attorney's Office may be notified and may respond to the scene.

Criminal Investigation

The SJPD Homicide Unit is responsible for conducting the criminal investigation of OIS and ICD cases, including the preservation and security of the scene(s), collection of evidence at the scene(s), and from the involved officer(s), including equipment and/or vehicles, when appropriate.

The IA Unit and investigators from the City Attorney's Office and the District Attorney's (DA) Office may respond to the incident and monitor the criminal investigation.

At the conclusion of the criminal investigation, the DA's Office, when deemed appropriate, will issue an independent report whether the officer actions were within the law, or if there is cause for indictment of the involved officer(s).

Administrative Review

The IA Unit shall be responsible for conducting an administrative review to determine whether the involved officer(s) acted within Department policy, procedures, and regulations. This review shall include a thorough examination of the completed criminal investigation and a review of Department policies, procedures & regulations. This review is not a citizen complaint investigation.

The City's Charter and Municipal Code define the duties and responsibilities of the IPA. The IPA has the power and duty to:

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 28

- Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective, and fair.
- Make recommendations with regard to Police Department policies and procedures based upon the IPA's review of investigations of complaints.
- Conduct public outreach to educate the community on the role of the IPA and to assist the community with the process and procedures for investigation of complaints against police officers.

IPA authority to review an Officer-Involved Incident case is therefore based upon the filing of a citizen complaint under the Charter and the Municipal Code. Thus, an IPA review of the IA investigation of an officer-involved shooting, in-custody death, or any other event which is classified as an officer-involved incident does not occur unless a citizen complaint has been filed.

Officer-Involved Incident Training Review Panel

The Internal Affairs Unit Commander will convene the Officer-Involved Incident Training Review Panel within 90 days of the incident to determine and recommend any training that should be provided as a result of the incident. This meeting shall occur even though the District Attorney's Office has not issued its final report. Since the City Attorney participates in the OII Training Review Panel, these sessions are subject to the attorney-client privilege and thus the discussions are confidential. Within 10 working days prior to convening the Panel, the Homicide Unit Commander or Investigative Unit responsible for the investigation will provide Panel participants access to the investigation file for the purpose of preparing for the Panel discussion. Additionally, within 10 working days the Homicide Commander or the commander of the investigative unit investigating the incident will also provide the Independent Police Auditor and the Office of the City Attorney with a copy of the investigation reports. Copies of the investigations will be collected by the Homicide Commander or the Commander of the Investigative Unit responsible for the investigation at the conclusion of the review.

Panel Participants

OII Training Review Panel members serve at the invitation of the Chief of Police. Typically, Panel participants will include:

- Chief of Police
- Assistant Chief of Police

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 29

- Deputy Chief of Bureau of Investigations
- Deputy Chief of the involved officer's bureau
- Homicide Unit Commander
- Case Investigator(s)
- Research and Development Unit Commander
- Internal Affairs Unit Commander
- Training Unit Commander
- Captain of Person Crimes Division
- Independent Police Auditor or Assistant Independent Police Auditor
- City Attorney, Assistant City Attorney and/or Deputy City Attorney

Panel Presentation

Homicide Unit Investigators, or the designated unit investigators assigned to the case, will present a factual synopsis of the incident and investigation to the Panel for the purpose of reviewing Department policy and procedures, training and tactics, officer safety, equipment and communication.

Outcomes/Report

The following two reports will be produced:

1. At the conclusion of the Review, the Training Unit Commander will prepare a report with the Panel's recommendations to the Chief of Police.
2. On an annual basis, the Chief of Police will provide a public summary in narrative format to the Mayor and City Council that will summarize the Panel's deliberations and recommendations. This summary will not identify individual officers or other involved persons.

Confidentiality

Since the City Attorney participates in the OII Training Review Panel, these sessions are subject to the attorney-client privilege and thus the discussions are confidential. This shall not restrict the Chief of Police from issuing reports and recommendations to the City Council or City Manager.

IA RETENTION PROCEDURES

Non-Misconduct Concerns will be indexed in the IAPro data base for a period of two (2) years.

Conduct Complaints will be retained in the IAPro data base for a period of six (6) years unless the complaint is determined to be sustained resulting in the retention of the complaint for sixteen (16) years.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 30

Policy Complaints will be retained in the IAPro data base for a period of six (6) years.

Retention Schedule

- Conduct Complaints
Policy Complaints
Department-Initiated Investigations
Decline to Investigate Concerns 6 years
- Sustained Conduct Complaints 16 years
- Officer-Involved Shooting (OIS) Training Review Panel 10 years
- Firearms Cases/ OIS Investigations 10 years
- In Custody Death Training Review Panel 10 years
- In Custody Death Investigations 10 years
- Police Vehicle Traffic Accidents 3 years
- Out of Policy Vehicle Pursuits & Legal Interventions 2 years
- Category III Use of Force Investigations
Including Canine Bites 2 years
- Non-Misconduct Concerns (Hard Copy file only) 2 years
- Pitchess Motion files 5 years

*** Retention Schedules are subject to review pending civil litigation and/or PRA requests which may be required to be kept past the mandated retention schedule.**

DISCIPLINARY REVIEW PANEL (DRP) PROCEDURE

Any misconduct complaint, that after investigation and a sustained finding appears to merit discipline that is higher than a Letter of Reprimand, will be routed through the officer's Chain of Command to the Disciplinary Review Panel (DRP). A simple example is where an officer, who is off duty, is arrested for DUI. The criminal investigation is completed by the arresting agency and at its conclusion a Department-Initiated investigation is begun. This investigation may be performed by the Internal Affairs Unit or may be investigated by the involved

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 31

officer's chain of command. Since the investigation is administrative in nature, the investigators are fact finders only. If misconduct is determined the entire investigation is sent back to the involved officer's chain for Findings and Recommendations.

The officer's command officer reviews the investigation including the officer's "Lybarger" statement and, per SJPD Duty Manual Section C1716, conducts a second interview with the subject officer to address any issues that he/she felt were not addressed by the administrative investigation. The subject officer is allowed a Police Officer's Association (POA) representative at each interview. The lieutenant then would typically sustain the Conduct Unbecoming an Officer (CUBO) allegation and recommend that the case be sent to the DRP for a recommendation of discipline.

The IA Unit then makes copies of the entire investigation for each member of the officer's chain of command from sergeant up to the Chief of Police, and the DRP is scheduled through the Chief's Office. At the DRP, the Chief will begin by reminding the panel that discipline is imposed for two reasons:

1. To correct the officer's behavior
2. To set a standard for the San Jose Police Department

Then, the IA Unit Commander provides the panel with an overview of the officer's personnel and IA Unit files, to include: age and service time with SJPD, the last three years' appraisal ratings, number of letters of commendation/appreciation the officer has received, and any disciplinary actions that the Department has previously taken against this officer.

The case is then discussed by the panel and after discussions and questions, the Chief will ask each member of the panel for their discipline recommendation, beginning with the sergeant and going up through the Assistant Chief of Police.

After each member of the panel has given his/her recommendations, the Chief of Police (COP) will ask the IA Unit Commander what the Department standard is for similar transgressions. The COP will make the final recommendation as to the appropriate discipline, which is then implemented by the IA Unit Commander via the Notice of Intended Discipline (NOID) process. Once the department member receives his/her NOID, he/she has seven (7) calendar days to appeal the NOID via a Skelly conference.

DISCIPLINARY NOTIFICATION PROCEDURE

Once approved by the Chief of Police, disciplinary action will proceed. Informal discipline consisting of training, informal counseling and documented oral counseling can be imposed immediately.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 32

Formal discipline (Letter of Reprimand or higher) requires pre-disciplinary due process and administrative appeal rights.

In the case of a Letter of Reprimand, the IA Unit Commander will prepare a Notice of Intent to Issue a Letter of Reprimand. The subject officer will then be served and given a complete copy of the administrative investigation. The IA Unit Commander will complete a proof of service verification. The subject officer has seven (7) calendar days to request a Skelly conference via the Chief's office. After a Skelly conference, the Chief's office will notify IA as to whether the discipline was modified or upheld. The discipline will be served on the subject officer by his/her chain of command.

The Skelly conference is scheduled by the secretary of the Assistant Chief of Police. In cases involving a Letter of Reprimand, the conference will be attended by the subject officer, his POA representative, the IA Unit Commander, and the Assistant Chief.

In cases where the level of discipline is a suspension or higher, the Director of Employee Relations and the Deputy City Attorney who reviewed the NOID will also attend the Skelly conference.

Prior to any Skelly conference, the IA Unit Commander will retrieve the subject officer's Personnel File and deliver it to the Assistant Chief for his review. At the hearing, the officer and/or his/her representative provide information to the Assistant Chief for his consideration before his recommendation to uphold or modify the discipline. Any of the attendees may ask questions of the subject officer at the conference. Once the A/C has made a recommendation on the discipline, the approving authority (OER) will approve the A/C's recommendation.

In cases involving more severe discipline, a Notice of Intended to Discipline (NOID) will be prepared and served. In cases involving all suspensions, demotions, disciplinary transfers, and dismissals involving members of the Police Officer's Association (POA), and cases recommending dismissal of civilian personnel, the NOID will be routed to the Office of Employee Relations (OER) and the City Attorney for review and approval prior to service. Cases recommending a suspension, demotion or salary step reduction for civilian employees require review by the Office of Employee Relations only, except in certain cases where Employee Relations request the assistance of the City Attorney's Office. The Director of Employee Relations will sign for the City Manager for all discipline involving suspensions, demotions, or terminations. After their approval, the member will be provided with a complete copy of the administrative investigation, and the IA Unit Commander will complete a proof of service verification.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 33

After the administrative appeal process is completed, the Chief of Police will approve a final recommendation and a Notice of Discipline (NOD) will be prepared and served on the involved Department member. If the NOD is for a suspension of three days or less, it may be signed by the Chief of Police. If the suspension is for more than three days, a salary step reduction, a demotion, or a dismissal, then the NOD must be signed by the Director of the Office of Employee Relations prior to it being served on the subject officer.

The Notice of Discipline will designate the level of discipline and when the discipline will be imposed. The IA Unit Commander will coordinate with the subject officer's Chain of Command to schedule suspension dates, demotions or terminations.

The subject officer's chain of command will be immediately notified by the IA Unit Commander upon the service of the Notice of Discipline.

BRADY LIST NOTIFICATION PROCEDURE

Federal law requires prosecutors to provide the defense in criminal cases with exculpatory evidence that is material to either guilt or punishment. (*Brady v. Maryland* (1963) 373 U.S. 83, 87.) An officer's lack of credibility may qualify as exculpatory evidence. The Santa Clara County Office of the District Attorney maintains a record of officers whose credibility has come into question, and whose identity they will release to the defense. The record is known as the Brady List.

When the Department receives notification from the Office of the Santa Clara County District Attorney that a Department member has been placed on the Brady List, it shall be the responsibility of the IA Unit Commander to notify that Department member of the District Attorney's decision.

INTERVENTION COUNSELING DEFINITION AND POLICY

The Intervention Counseling Program is used as an "early warning system" to track police officers with significant complaint histories for the purpose of identifying potential problems and providing guidance. To receive Intervention Counseling, the subject officers must have received the following:

- Five or more Conduct Complaints (CC) and/or Department-Initiated (DI) complaints within a twelve month period.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 34

- Three or more Conduct Complaints (CC) and/or Department-Initiated (DI) complaints containing the same allegation within a twelve month period.
- "Unfounded" cases are excluded.

During Intervention Counseling, the subject officers meet with the Deputy Chief of their assigned Bureau, the IA Unit Commander, and their immediate supervisor for an informal counseling session. This session involves a review of the complaints against the subject officer, whether sustained or not, in an attempt to assist him/her with identifying potential deficiencies in comportment or style of service delivery. No formal record is made of the substance of the informal counseling session.

DEFINITIONS

Internal Affairs Unit Concepts

Allegation: An unproven accusation that a member of the Police Department violated Department or City policy, procedure, rules, regulations or the law.

Misconduct: Misconduct, for the purpose of the San Jose Police Department complaint classification process, is an act or omission by a Department member that is a violation of Department or City policy, procedure, rules, regulations or the law, which if proven true may result in disciplinary action.

Complaint: A complaint is an expression of dissatisfaction that either contains an allegation which, if true, demonstrates misconduct that is later classified as a Conduct Complaint, or contains an allegation regarding a City/Department policy that the citizen believes to be inappropriate or not valid, that is later classified as a Policy Complaint.

Discrimination or Harassment: Discrimination or harassment by Department members toward members of the public shall be characterized as an allegation of Biased Based Policing (BBP). The definitions of Discrimination and Harassment only apply to workplace interactions between city employees and to Department Initiated Investigations that arise from allegations of workplace discrimination and harassment. The procedures for reporting and investigating allegations of workplace Discrimination and Harassment are found in Sections C 1313 – 1316 of this Manual.

Other: Duplicate complaints (cross referenced), errors in data entry, cases not involving department members and cases where the Internal Affairs Unit and the Independent Police Auditor agree upon such classification.

DO NOT COPY

Internal Affairs Case Types

Conduct Complaint: The initial investigation determines that the facts stated in the allegation are such that, if sustained, would amount to a significant violation of the law or of the Department policies, procedures, rules, or regulations, i.e., one that could result in disciplinary action.

Non-Sworn Conduct Complaint: The initial investigation determines that the Department member involved in the complaint is not a sworn police officer and that the facts stated in the allegation are such that, if sustained, would amount to a significant violation of the law or of the Department policies, procedures, rules, or regulations, i.e., one that could result in disciplinary action.

Policy Complaint: When there is an allegation regarding a current Department/City policy that was properly implemented by a Department member, but which the complainant believes is inappropriate or not valid, the Department will use the classification of Policy Complaint.

Non-Misconduct Concern: During the pre-classification status, if a person alleges or raises an issue that does not rise to the level of violation of Department/City policy, procedure, rules, regulations, or the law, the Department will classify the concern as a Non-Misconduct Concern.

Decline to Investigate Concern: When a member of the public makes an allegation against a Department member and the allegation encompasses fact patterns that are clearly implausible or incredible, the Department will classify the allegation as a Decline to Investigate Concern.

Department Initiated Investigation: Investigations initiated by the Office of the Chief of Police.

Other: Duplicate complaints (cross referenced), errors in data entry, cases not involving department members and cases where the Internal Affairs Unit and the Independent Police Auditor agree upon such classification.

Internal Affairs Conduct Allegations

Procedure (P): An allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures or guidelines.

Search Or Seizure (SS): An allegation that a search or seizure was conducted by a Department member in violation of the 4th Amendment.

2023 Internal Affairs Unit

Guidelines

Page 36

Arrest or Detention (AD): An allegation that an arrest lacked probable cause or a detention lacked reasonable suspicion.

Bias-Based Policing (BBP): An allegation that a Department member 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 identify, medical condition, or disability.

Courtesy (C): An allegation that a Department member was discourteous or unprofessional to a member of the public.

Conduct Unbecoming an Officer (CUBO): An allegation that a member's conduct, either on or off duty, was conduct that a reasonable person would find unbecoming a police officer or could reflect adversely on the Department.

Force (F): An allegation that the amount of force used by a Department member was not objectively reasonable as defined by the SJPD Duty Manual, Section L2602.

Neglect of Duty (ND): An allegation that a Department member neglected his/her duties and failed to take action as required by Department and/or City policies or procedures and/or state or federal law.

Workplace Discrimination (WD): See City Policy Manual Section 1.1.1 and Duty Manual Sections C1311-1316

Workplace Harassment (WH): See City Policy Manual Section 1.1.1 and Duty Manual Sections C1311-1316

Internal Affairs Authorized Findings

Unfounded (U) The investigation proved, by a preponderance of the evidence, that either that the act or acts, which provided the basis for the allegation or complaint did not occur, or that the Department member named in the allegation was not involved in the act or acts, which may have occurred.

On Bias Based Policing allegations, when an officer's actions are shown to be based on reasonable and articulable facts consistent with department policy, procedures and the law and no bias is indicated, a finding of Unfounded shall be made.

Exonerated (E) The act or acts, which provided the basis for the allegation or complaint, occurred, however, the investigation revealed they were justified, lawful, and proper. The finding of Exonerated will not relieve Department supervisors or commanders from the responsibility for counseling or training subordinate personnel (Duty Manual Section C 1812).

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 37

Not Sustained (NS) The investigation failed to prove, by a preponderance of the evidence, that the act or acts, which provide the basis for the allegation made in the complaint occurred. The finding of Not Sustained will not relieve Department supervisors or commanders from the responsibility for counseling or training subordinate personnel (Duty Manual Section C 1812).

Sustained (S) The investigation proved, by a preponderance of the evidence, that the act or acts which provided the basis for the allegation made in the complaint occurred. The finding of Sustained may result in disciplinary action ranging from Counseling or Training up to and including dismissal from the Department.

No Finding (NF) The complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues, or the subject Department member is no longer employed by the Department before the completion of the investigation.

Complaint Withdrawn (CW) The complainant affirmatively indicates the desire to withdraw his/her complaint. The department member's name will be unlinked in IAPro and UNKNOWN OFFICER will be linked with the appropriate allegations and the finding will be Complaint Withdrawn. Complaint Withdrawn cases are tracked and monitored for the purpose of identifying trends and patterns as well as for identifying training, policy or procedure changes. The final authority as to whether a case is closed out as a "CW" shall rest with the Chief of Police or his designee, regardless of the member of the public's decision to withdraw the complaint.

Other (O) Cases not involving department members, Investigations outside the one year time limitation as directed by the Office of the Chief of Police. A circumstance not covered by the other listed closing outcomes.

It is the responsibility of the IA Unit Commander to ensure that cases are properly categorized based on the objective criteria.

Internal Affairs Unit Outcomes

An Outcome is the official result after an investigation of a Non-Complaint (specifically Non-Misconduct Concern cases that result in Mediation and Policy Complaints).

Cmplt WD/ Mediation (Cmplt WD/ Mediation) with mutual agreement by all involved parties (e.g., Chief of Police, member(s) of the Police Department, and

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 38

member of the public), the case was mediated and resolved in a non-disciplinary manner.

Policy Complaint (PC) A determination that the allegation constituted a Policy Complaint. These cases deal with complaints against Department/City policy, not a member of the SJPD. As directed by the Chief of Police, copies of these cases will be forwarded to the SJPD's Research and Development Unit for policy evaluation. Policy complaints will be tracked and monitored for the purpose of identifying trends and patterns, as well as for identifying a possible need for training and or policy/procedure changes.

MISCELLANEOUS PROCEDURES/Legislative Mandates

SB 1421, SB 16, AB 748- Public Records Act (PRA), & SB 2

Effective January 1, 2019, SB 1421 amends Government Code Section 832.7 to generally require disclosure of records and information relating to the following types of incidents in response to a request under the CPRA:

- Records relating to the report, investigation, or findings of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- Records relating to the report, investigation or findings of an incident in which the use of force by a peace officer or custodial officer against a person results in death or great bodily injury.
- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public. "Sexual assault" is defined for the purposes of section 832.7 as the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or any other official favor, or under the color of authority. The propositioning for or commission of any sexual act while on duty is considered a sexual assault.
- Records relating to an incident in which a sustained finding of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction of evidence or falsifying or concealing of evidence.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 39

SB 16 was signed on September 30, 2021 and expanded public access to police misconduct records. SB 16 allows records on officers who have **sustained** findings to be disclosed:

- Records relating to the report, investigation, or findings of an incident involving Biased Based Policing by a peace officer
- Records relating to the report, investigation, or findings of an incident involving unlawful arrests or searches by a peace officer
- Records relating to the report, investigation, or findings of an incident involving Excessive Use of Force by a peace officer
- Records relating to the report, investigation, or findings of an incident involving failure to intervene by a peace officer during a use of force.

AB 748 requires agencies, effective July 1, 2019, to produce video and audio recordings of “critical incidents,” defined as an incident involving the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury, in response to CPRA requests.

SB 2 requires agencies to report, within 10 days, any allegation of serious misconduct to the POST Commission. The Commission has defined serious misconduct as the following:

- Dishonesty
- Excessive Use of force
- Biased Based Policing
- Sexual Assault
- Acts that Violate the Law
- Failure to Cooperate in an Administrative Investigation
- Abuse of Power
- Participating in a Law Enforcement Gang
- Failure to Intercede

During the course of the administrative investigation agencies are required to periodically update the Commission on the status of the investigation and at the conclusion of the investigation, the complete investigation and its findings.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 40

IA Background

Internal Affairs established the following procedure to remain in compliance with SB 1421, SB 16 AB 748 & SB2:

- IA identified all cases pertinent to SB 1421, SB 16, and SB 2
- Created a category section in IA Pro to document if case is related to 832.7
 - Discharge of Firearm
 - Force which resulted in GBI
 - Sustained cases of sexual assault
 - Dishonesty
 - Biased Based Policing
 - Conducted Unlawful arrests or searches
 - Excessive Use of Force
 - Failed to Intervene
 - Sexual Assault
- Case will be flagged and logged

Procedure

- Officer or Sergeant receives case
- Document if case pertains to 832.7
- Admin updates SB 1421, SB 16, or SB 2 case log

Procedures upon PRA request

Review and redact only the information relating to the Internal Affairs investigation

- IA Write-Up
- Audio
- Notifications
- Memos
- Emails
- Photos

The following information will be redacted from the IA investigations (witnesses and complainants):

- Names
- DOB
- Address
- Phone number
- Pictures
- Identifying marks

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 41

- Driver License
- License Plate
- All other identifying information

AB 481 – Military Equipment

On September 30, 2021 Assembly Bill 481 was signed into law requiring protocols for law enforcement agencies regarding the funding, acquisition, use, and reporting of specified law enforcement equipment items. The bill added Government code 7070 and designated numerous vehicles, weapon systems, and munitions as “military equipment”.

IA Background

Internal Affairs established the following procedure to remain in compliance with AB 481.

- Created a category section in IA Pro to document if case is related to AB 481.
- Case will be flagged and logged

Procedure

- Officer or Sergeant receives case
- Document if case pertains to AB 481
- Admin updates AB 481 case log

DO NOT COPY

**Voluntary Mediation Program
Internal Affairs Unit Guidelines**

The San Jose Internal Affairs Unit, in conjunction with the Office of the Independent Police Auditor, has devised the following mediation protocol. The goal of the mediation program is to give both civilians and officers a forum to discuss the complainant's perceptions of events in front of neutral mediators. In 2010, Judge Cordell revamped the mediation program which now relies upon the generosity of retired judges who volunteer as mediators.

1. **Purpose:** The purpose of mediation is to provide a safe and confidential venue in which to discuss the circumstances of the complaint, and to arrive at an understanding of the parties' respective points of view, with the assistance of a mediator. The type of complaint tends to be Courtesy violations, but have occasionally encompassed other allegations as well.
2. **Confidentiality:** What is said in the mediation session by the police officer, the complainant and the mediator is confidential and may not be divulged to anyone. Nothing that is said in the mediation can be used in any forum, including, but not limited to administrative, civil and criminal court proceedings. Only the fact that the mediation has taken place and the parties' opinions about the mediation may be disclosed. Under no circumstances can the identities of the officer and the complainant as participants in the mediation be disclosed unless the subject officer or complainant chooses to reveal his/her own identity. The name of the mediator is not confidential and may be disclosed by any of the participants in the mediation.
3. **Agreement:** Each party and the mediator must sign a confidentiality agreement at the start of the mediation and will be provided with copies of the signed agreement. The original of the agreement will be kept in the Office of the Independent Police Auditor with a copy provided to the Internal Affairs Unit (IA).
4. **Voluntary:** Mediation is entirely voluntary. Neither the officer nor the complainant can be compelled to participate in mediation, and no pressure may be placed upon either party to participate. There is no penalty for refusing to engage in mediation.
5. **Good Faith:** Parties who participate in mediation are expected to participate in good faith and to be respectful and civil to one another and to the mediator.
6. **Status of the Complaint:** The complaint must be withdrawn by the complainant prior to the start of mediation. The complainant will sign an agreement to withdraw the complaint in the presence of the mediator. A copy of this agreement is attached to this protocol. The original of the signed agreement to withdraw the

2023 Internal Affairs Unit

Guidelines

Page 43

complaint will be kept with the Office of the Independent Police Auditor, with a copy provided to the Internal Affairs Unit.

IAPro Entries: Administratively, the complaint will remain a Conduct Complaint in IAPro. The officer's name will be removed and "Unknown Officer" will be listed. The associated allegations will be entered under the Unknown Officer and each allegation will have a disposition of "Cmplt WD/ Mediation." The final disposition of the case will also be "Cmplt WD/ Mediation."

A separate spreadsheet is maintained by the Internal Affairs Unit. This allows us to ensure an officer does not exceed one mediation in a year, unless approved by the Internal Affairs Unit and the Office of the Independent Police Auditor.

Flow: The Internal Affairs Unit and the Office of the Independent Police Auditor are constantly scanning active cases to determine suitability for mediation. Once both offices agree a case is suitable, the Internal Affairs Unit will contact the officer and determine if he/she is willing to go to mediation. Once accepted, the complainant is contacted by the IPA Office with the same offer. If both parties accept, the IPA's office coordinates a date for the mediation and schedules the mediator.

If there are two or more subject officers and one of those officers does not agree to mediation, the following procedure will be followed: (1) the complaint will be mediated for the subject officer(s) who agree to mediation and the complaint against them will be withdrawn by the complainant;(2)with respect to the officer who does not participate in the mediation, IA will investigate the complaint against that officer through the conventional IA process.

The mediations take place in a conference room located at the San Jose City Hall. The IPA Office is responsible for scheduling the room.

The complainant and officer respond to the conference room at City Hall. The complainant signs a complaint withdrawn agreement and then the mediation commences. If the complainant refuses to sign the complaint withdrawn form, the mediation will cease and the complaint will continue to be investigated/handled by the Internal Affairs Unit.

After each mediation, the parties complete surveys about the mediation process. The completed surveys are maintained by the IPA's office with copies provided to IA. This proves the mediation occurred and all were in agreement that the case was withdrawn.

Mediators: The IPA's office has a list of approved mediators who volunteer as a community service to our City.

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 44

Compensation: Officers who are requested and agree to participate in mediation will be compensated under the same guidelines provided for court attendance in the MOA.

Audio/Video Recordings: No party to a mediation is permitted to record the proceedings, unless all parties to the mediation agree.

Officer Preparation: Officers are entitled to the IA case number, the event number associated, and the IA summary of the citizen's complaint. Officers are authorized to retrieve associated CAD events, crime/incident reports, and associated files (I.E. DCS.)

Common Questions:

What if the complainant is not happy with the mediation? Can they make another complaint related to the same incident? No. Once the complaint withdrawn is signed and the mediation occurs, a separate complaint will not be worked. This second complaint would be facilitated as an "Other" duplicated case and closed out by the Internal Affairs Unit.

What record will the officer/complainant have proving the complaint was withdrawn? The Internal Affairs Unit will send closing letters to both the involved officer and the citizen confirming the successful resolution via the mediation program.

Does either party have a right to representation during the mediation? No. This is not a process that will lead to disciplinary action against the officer. Likewise, in order to maintain a peaceful environment, complainants will not have additional support persons in the mediation unless approved by all parties.

What if mediation breaks down in the middle of the process? The complaint withdrawn is still effective and the case will be closed.

What if the complainant/officer does not show up? If the complainant does not show up, the case will be handled through Internal Affairs as a regular case.

Officers will be provided written notice of the mediation from the Internal Affairs Unit. Similar to a court notice, officers will send their response back to the Internal Affairs Unit in order to confirm their attendance.

Officers agreeing to the mediation process at the decided time/date of attendance shall appear in court attire and conduct themselves as if they were testifying in court. Officers may be subject to discipline should they fail to attend the agreed upon mediation event. Mediations fall under the same directions as SJPD Duty Manual L 7600: Court Appearances. If there are reasonable excuses (sick,

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 45

funeral) related to either party's absence, the IPA's office and IA have the option to reschedule the mediation.

The mediators are voluntary and have given their time in order to facilitate mediations for our Department and the civilian complainants.

The IPA Office provides the mediator a summary and contact information for the involved parties.

The following templates are provided to the officer, complainant and the mediator:

- 1. Confidentiality Agreement (2 pages)**
- 2. Agreement to Withdraw Complaint Form (1 page)**
- 3. Satisfaction Survey (1 page)**

For any clarification related to the process or flow of a mediation, please contact the Internal Affairs Unit.

DO NOT COPY

Confidentiality Agreement Form:

CONFIDENTIALITY AGREEMENT

The parties to this Agreement agree to participate in confidential mediation. So that we may speak freely, we agree to keep this mediation completely confidential and not divulge to any person any statements made during the mediation.

Further, we acknowledge that California Evidence Code Sections 703.5 and 1115 *et seq* apply to this mediation. Accordingly, we understand that

1. We may not call the mediator to testify about information obtained in mediation and may not seek to compel the production of any of her records or name her as a party in any proceeding of any kind;
2. Unless we agree otherwise, statements or admissions made in the mediation or any documents created for the mediation may not be introduced into evidence or made the subject of discovery in any legal or administrative proceeding;
3. Evidence Code Section 1119, does not preclude us from discovering and introducing evidence that is otherwise available to us outside of mediation in any legal or administrative proceeding; and
4. In the event the mediation does not fully resolve the dispute in the initial session, the participants agree that the confidentiality provisions of Sections 1115 through 1128 and this Agreement continue in full force and effect past the 10 calendar day period set forth in Evidence Code Section 1125(a)(5), unless the mediation is terminated through any of the mechanisms set forth in Section 1125(a)(3) and (4) or (b)(1) and (2).

We do not intend Evidence Code Section 1123 to prevent us from introducing this Agreement or any signed Settlement Agreement into evidence where relevant and otherwise admissible in any subsequent legal or administrative proceeding.

Because we, the participants, are disclosing information in reliance on this Agreement, any breach of this Agreement would cause irreparable injury for

which monetary damages would be inadequate. Consequently, any party this Agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this Agreement.

We acknowledge that we have read this Agreement, understand it and intend it to be fully binding upon us and anyone representing us in a legal or administrative proceeding of any kind. Further, we have reviewed the Protocol for Mediation of Rude Conduct/Courtesy Complaints, attached hereto, and agree to the terms and conditions in the Protocol.

Dated:

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

2023 Internal Affairs Unit

Guidelines

Page 48

Agreement to Withdraw Complaint Form

AGREEMENT TO WITHDRAW COMPLAINT

I agree to withdraw my rude conduct/courtesy complaint (# _____) because the officer against whom I have complained has agreed to participate with me in a mediation sponsored by the Office of the Independent Police Auditor and the Internal Affairs Unit of the San Jose Police Department. The mediation will be facilitated by a retired Superior Court Judge who has no interest in or connection to any of the parties to this mediation or to the facts giving rise to my complaint.

I, therefore, withdraw my complaint freely and voluntarily, with the understanding that I will not be permitted to re-file this complaint.

Dated:

Printed Name

Signature

DO NOT COPY

Satisfaction Survey



IPA/SJPD MEDIATION SURVEY



This survey asks you some questions about your mediation. Your responses will help us monitor and improve this process. Your answers are private and confidential. Thank you for your participation and assistance.

Instructions: For each statement about your experience with mediation, please check the box that indicates how much you agree or disagree.

	Strongly Agree	Somewhat Agree	No Opinion	Somewhat Disagree	Strongly Disagree
1. I am satisfied with the mediation session.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. I am satisfied with the outcome of the mediation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. The mediation helped me understand the actions of the other party during the incident.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. I learned things that would likely cause me to behave differently in a similar situation in the future.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. I recommend mediation to others.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. The mediation process was fully and clearly explained to me before the mediation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. I had an opportunity to explain my point of view.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. I think the other party understood my point of view.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. The mediation staff was professional and helpful.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. The mediator was fair and impartial.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. The mediator was helpful in reaching a satisfactory conclusion.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. What is your gender: M – F (Circle one)	13. What is your age: _____
14. Your ethnicity: _____	
15. For Police Officers: Years of service _____	

16. Comments on the mediator(s) or the mediation process (Please use the back of this page if you need additional space):

Thank you for taking time to fill this out. Your feedback will help us improve our services!

Case Number: _____

Date: ____/____/____

Appendix A

CONFLICT OF INTEREST POLICY

PURPOSE AND SCOPE

The purpose of this Policy is to set forth the internal process of the Internal Affairs Unit (IA) for checking for and handling conflicts of interest in the investigation of Internal Affairs complaints filed against San Jose Police Department employees.

DEFINITIONS

- **Close Friend:** A person who is considered a close personal friend by an employee of the Internal Affairs Unit. The determination of whether a person is a Close Friend will be at the discretion of the IA Commander.
- **Complainant:** The individual or individuals who filed the citizen complaint that is the subject of the Internal Affairs investigation.
- **Domestic Partner:** A domestic partner recognized by any California government entity.
- **Family Member:** A spouse, domestic partner, child, stepchild, parent, or sibling.
- **Material Witness:** A person whose credibility and description of the incident are critical to the investigation.
- **Relative:** A grandparent, grandchild, uncle, aunt, cousin, nephew, niece, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, or son-in-law and any equivalent relatives of a domestic partner.
- **Subject Officer:** An officer against whom allegations have been made in the citizen complaint and for whom findings were made in the Internal Affairs investigation.

GUIDELINES

Disqualifying Conflicts of Interest

1. Financial conflicts

Under the Political Reform Act (PRA), no City officer or employee may participate in any City decision in which the individual has a financial interest as defined in the PRA. Such interests may include the following relationships: landlords, tenants, business partners, roommates, investment partners, etc. If the Commander of the Internal Affairs Unit or a subordinate Internal Affairs employee believes such a conflict may exist, he or she shall consult with the City Attorney's Office to conduct a PRA conflicts analysis. If the employee of the Internal Affairs Unit has a financial conflict of interest, the individual will be disqualified from conducting or participating in any portion of the investigation.

2. Party bias conflicts

If an employee of the Internal Affairs Unit holds a bias for or against a particular Complainant, Material Witness, or Subject Officer that is sufficient to impair one's impartiality, or if based on reasonable and objective criteria, there is a serious risk of actual bias, that employee will be disqualified from conducting or participating in any portion of the investigation. Sufficient risk of actual bias to warrant employee disqualification will be presumed in the following circumstances:

- If an employee of the Internal Affairs Unit is a Family Member of the Complainant or Subject Officer, the employee will be disqualified from conducting any portion of the investigation connected to that Complainant or Subject Officer.
- If an employee of the Internal Affairs Unit is a Family Member of a Material Witness, the employee will be disqualified from conducting any portion of the investigation connected to that Material Witness.
- If an employee of the Internal Affairs Unit is a Family Member of the Complainant, Material Witness, or Subject Officer, that employee will be disqualified from conducting any portion of the investigation.
- If an employee of the Internal Affairs Unit is a Relative, former spouse, former Domestic Partner or Close Friend of the Complainant, Material Witness, or Subject Officer, that employee will be disqualified from conducting or participating in any portion of the investigation.

2023 Internal Affairs Unit

Guidelines

Page 52

- If an employee of the Internal Affairs Unit has supervised a Subject Officer or Complaining Officer within a two year period, the employee will be disqualified from conducting any part of the investigation connected to that Subject Officer or Complaining Officer.

The table below summarizes the information in this section:

WHO	CONNECTION	TO WHOM	RESULT	WHAT HAPPENS
The Internal Affairs Investigator or Intake Officer	Family Member	Complainant or Subject Officer	Investigator or Intake Officer Disqualification	Alternate Investigator or Intake Officer Assigned
The Internal Affairs Investigator or Intake Officer	Family Member	Material Witness	Investigator or Intake Officer Disqualification	Alternate Investigator or Intake Officer Assigned.
The Internal Affairs Investigator or Intake Officer	Family Member	Complainant , Subject Officer, or Material Witness	Investigator or Intake Officer Disqualification	Alternate Investigator or Intake Officer Assigned.
The Internal Affairs Investigator or Intake Officer	Relative	Complainant , Subject Officer, or Material Witness	Investigator or Intake Officer Disqualification	Alternate Investigator or Intake Officer Assigned.
The Internal Affairs Investigator or Intake Officer	Close Friend	Complainant , Subject Officer, or Material Witness	Investigator or Intake Officer Disqualification	Alternate Investigator or Intake Officer Assigned.
The Internal Affairs Investigator or Intake Officer	Former Spouse or Former Domestic Partner	Complainant , Subject Officer, or Material Witness	Investigator or Intake Officer Disqualification	Alternate Investigator or Intake Officer Assigned
The Internal Affairs Investigator or Intake Officer	Other bias for or against a Complainant, Subject Officer, or Material Witness that is sufficient to impair one's	Complainant , Subject Officer, or Material Witness	Investigator or Intake Officer Disqualification	Alternate Investigator or Intake Officer Assigned

DO NOT COPY

2023 Internal Affairs Unit

Guidelines

Page 53

WHO	CONNECTION	TO WHOM	RESULT	WHAT HAPPENS
	impartiality, or create a substantial risk of bias			
The Internal Affairs Investigator or Intake Officer	Financial conflict of interest under the Political Reform Act		Investigator or Intake Officer Disqualification	Alternate Investigator or Intake Officer Assigned.

The list of disqualifying party bias conflicts above does not encompass all potential conflicts of interest. Employee disqualification will be required if other interests rising to a common law conflict of interest exist, and may be warranted if there is a strong appearance of a conflict that would reasonably undermine the neutrality of the investigation. The City Attorney's Office shall be consulted in determining whether a common law conflict of interest exists.

Conflicts Check Procedure

Upon initial receipt of a complaint and prior to assigning it to an investigator, a conflict of interest check should be conducted. Consistent with this policy, the check should ascertain whether the assigned investigator has (1) a financial conflict, or (2) any of the disqualifying relationships between the Internal Affairs Unit employee and a Subject Officer, a Material Witness, or Complainant. If there is any question on the existence of a conflict, the Internal Affairs Unit Commander should consult with the City Attorney's Office.

If a financial conflict or disqualifying relationship exists for an assigned investigator, the Internal Affairs Unit employee shall inform the Internal Affairs Unit Commander, and the investigation shall be reassigned. If a financial conflict or disqualifying relationship exists for the Internal Affairs Unit Commander, then depending on the nature of the conflict, the Internal Affairs Unit Commander shall take the steps to disqualify or remove him or herself from participation in the matter.

Employee Disqualification

A disqualified person may not conduct or participate in the investigation or be present during the portion of any discussion regarding the investigation. The disqualified person shall refrain from discussing the substance of the investigation with other unit employees.

DO NOT COPY