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GROUP

POLICE AUDITOR'S FIRST REPORT - 2014

Presented to the Honorable City Council

City of Palo Alto

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I. Introduction

This is the first of two reports covering the eighth year in which the Independent Police Auditor (“IPA”) has monitored the internal review processes of the Palo Alto Police Department (“PAPD”). It covers activity from the first half of 2014. Though these reports

regularly include analysis of Taser deployments by PAPD officers, there were none during this period of time.¹

The report features discussion of three allegations of misconduct that were investigated internally by the Department and completed within the audit period. The first related to a man's dissatisfaction with how Palo Alto officers resolved a parking lot confrontation to which he had been a party; the second involved an allegation of inappropriate sharing of a photograph from an arrestee's cell phone; and the third stemmed from a traffic stop that led the involved motorist to complain. The cell phone case led to discipline for the involved detective; in the other two investigations, the officers were cleared of wrongdoing.

The IPA reviewed the completed case files in keeping with its usual protocol. It found that, in all three instances, the Department had framed the issues appropriately and investigated them thoroughly. The IPA also concurred with the Department's resolution of each case, based on its own assessment of the available evidence. The findings and conclusions are covered in more detail below.

The report also describes the IPA's limited role in responding to an internal survey conducted by the union that represents PAPD's officers. The survey, which was taken in January of 2013, only recently came to the attention of the media, and generated brief attention based on inside (if anonymous) criticisms of Department management. The IPA consulted with the Department about the need for/viability of further investigation in light of the allegations that the survey seemed to generate. Ultimately, with full concurrence by the IPA, no additional investigations were initiated, but the survey did result in a constructive dialogue between the union and Department executives.

¹ The Department's first Taser use of the year occurred in late August, and the Department has completed its review. That incident will be covered in the next IPA report, which will address the final six months of 2014.

II. Case Review

Case # 1

Factual Overview:

In the fall of 2013, a male requested PAPD's response to an incident in a parking lot. He was walking to his car with his wife and son and became involved in a confrontation with a female driver who was attempting to exit the lot. The exchange began when the driver honked her horn at the man's wife. The wife was apparently videotaping license plates with her phone, at her husband's request, and had been standing for several seconds when the honking occurred.

The driver was pulling forward and at some point the complainant blocked her path in reaction to what had already occurred. In the meantime, the wife approached the driver's window and yelled her displeasure; she eventually banged on the window as well. Through some maneuvering, the driver was eventually able to get around the man in spite of his efforts to speak with her and get her to stay, and she left the lot.

A total of four officers (including two trainees) responded to the scene. They investigated for approximately an hour, interviewing the parties and an independent witness.

The two sides had different interpretations of what had occurred. The couple asserted that the woman tried to run them over with her car; she denied this and said she was just trying to leave. Meanwhile, an independent witness found the behavior of all the parties to be questionable, but did not believe there had been any intent to commit an assault.

The complainant's wife captured some aspects of the encounter on her phone's video feature, and provided that to authorities. The officers took a report. The complainant also returned to the parking lot to create a simulation of the incident, which he recorded and submitted for consideration. Eventually, PAPD submitted the matter for review by the District Attorney; the handling Deputy District Attorney declined to file charges and supported that decision with a written analysis.

Nearly two months after the incident, the man (who had been in periodic contact with the Department) filed a formal complaint against one of the handling officers. He took particular exception to the assertion by the officer that – instead of an attempted assault with a deadly weapon by the female motorist – the crime at issue might well have been false imprisonment on his part, for deliberately blocking the driver’s path as she tried to leave in her car. He also alleged possible racial discrimination against him as an Asian.

Outcome and Analysis:

The Department appears to have worked closely with the complainant in the aftermath of the incident itself. For his part, the complainant proved to be very pro-active about seeking prosecution and pursuing his version of events. This took the form of e-mail correspondence and telephone calls, as well as an interview at the station that a sergeant used as the basis for a supplemental crime report.

In short, PAPD made a concerted effort to ensure that the complainant’s side of the story would be presented to the District Attorney. This seemed to address the substance of the man’s initial concern and dissatisfaction: namely, that the officers had assessed the scene incorrectly and had mishandled the initial investigation. Nonetheless, he pressed forward with his complaint a few weeks later, and the Department interviewed him again and framed specific issues for further review. These primarily concerned the legitimacy of the handling’s officer’s legal analysis of the event.

After interviews with the relevant personnel, the Department determined that the evidence did not support any contentions that the call had been mishandled. (This included the allegations of racial discrimination, which the complainant himself had not corroborated with specific examples of bias or explanations for his perception.) The IPA concurred, and was impressed with the investigation’s substantive and procedural thoroughness.

Several factors contributed to the conclusion that the allegations were unfounded. First, the original cell phone recording (which the IPA had the chance to review) offers important objective evidence. It depicts a relatively minor incident that was seemingly elevated by the participants into something more significant. As sincere and persistent as the complainant may

have been in vindicating his point of view, the recording does not reflect an incident in which one party is definitively at fault.

Instead, the IPA believed the recording lent itself to interpretations that were contrasting at the very least, and arguably unfavorable to the complainant as the aggressor in any sort of criminal misconduct. Moreover, it lends itself to the potential alternative criminal violation of “false imprisonment” that became a source of contention. It is important to note that this perspective seems to have been shared by the District Attorney’s Office, which declined prosecution. Finally, there was a lack of objective evidence to support the claim of racial discrimination, and nothing specific (apart from the unwanted outcome) seems to have driven that allegation.

The investigation package as a whole supports the result reached by PAPD, and also reflects an impressive level of thoroughness and “customer service.”

Case # 2

Factual Overview:

This matter involved an arrestee in an alleged burglary case. During the custodial interrogation, one of the detectives assisting on the case was reviewing the arrestee’s cell phone in an effort to locate the person that she was transferring some of the stolen goods to or other photographic evidence that might assist the investigation. On the cell phone, the detective located a photograph of the arrestee in which she was scantily clad. He then sent that photograph by text message to an acting supervisory detective who was also working on the investigation. The arrestee got her phone back and was then asked to assist with the location of identifying information about the person to whom she had supplied some of the stolen property. While reviewing her cell phone, the arrestee discovered the “texting” of the photograph and complained to an uninvolved detective.

More than two weeks after the arrest, the acting supervisory detective reported the “texting” incident to the Sergeant. The Sergeant counseled the detective about the delay in reporting the incident to him and of the need to report such incidents promptly. The detective acknowledged that waiting was not the appropriate course of action, and assured the Sergeant

that he would promptly report such incidents in the future. Upon receipt of this information, the Sergeant opened an internal investigation into the “texting” incident.

Outcome and Analysis:

At the end of the investigation, PAPD concluded that there was no legitimate law enforcement reason for the detective “texting” the photograph in the way and manner that he did, and that, in fact, the conduct could have easily left someone with the impression that it was sent as a joke. PAPD concluded that the detective exercised poor judgment by sending the photograph, that the act was unbecoming for an officer and disrespectful to the arrestee, and that it reflected unfavorably upon the Department and its members. PAPD found that the detective had violated Department policy and held him accountable for the transgression.

IPA found the PAPD investigation thorough and agrees with the Department’s analysis and findings. In addition to the underlying action, IPA was concerned about the delay of the acting supervisory detective in reporting the incident to the Sergeant. Ideally, when the “texting” was discovered, the acting supervisor should have immediately informed command staff at the station of the incident so that an investigation into the incident could have proceeded immediately.

To their respective credit, the Sergeant immediately counseled the detective about the need to promptly report and the detective affirmed that he would not delay such reporting in the future. Additionally, the failure to timely report is mitigated somewhat by the fact that the detective was an “acting” supervisor and there were apparently non-overlapping work schedules between him and his sergeant that accounted for some of the delay. Nonetheless, the gap was problematic and worth managerial attention. The IPA has discussed this concern with command staff at PAPD and it is clear that the leaders of the Department share the concern. The IPA recommends that the need to promptly report such activity should be personally reinforced to the acting supervisory detective by the highest levels of PAPD command staff.

There were two other aspects of the investigation that came to light as a result of the IPA review. First, when the acting supervisory detective informed his Sergeant of the “texting,” he was instructed by the Sergeant to delete the photograph from his cell phone. The Sergeant explained that he did so in order to prevent any further unintentional dissemination of the

photograph. While the Sergeant's intentions were good, it would have been preferable to obtain a "screen shot" or some other evidentiary preservation of the photograph before deleting it. At the time this request was made it was not clear whether the fact that the detective had "texted" the photograph would be contested. After IPA brought this issue to the attention of PAPD, it acknowledged the legitimacy of the point for future reference. The Department did, however, also offer counter-arguments relating to the importance of preventing any additional circulation, and the potential "retrievability" of the image in the event of a denial.

Second, as noted above, at some point the detectives returned the phone to the arrestee and asked her to assist them in locating information about a confederate. However, as the detectives admit and the cameras in the station demonstrate, the arrestee was not closely supervised as she scrolled through her phone. During this period, she could have deleted information from the phone that possessed evidentiary value. The opportunity to delete potential evidence showed a laxity of vigilance by the on-duty detectives. When the IPA discussed this matter with PAPD, they agreed that there should have been close supervision of the arrestee if the phone was going to be returned to her. The IPA recommends that PAPD handle this matter as a training issue with its detectives.

Case # 3:

Factual Overview:

A PAPD traffic motor officer observed a motorist using a cell phone while driving, conducted a traffic enforcement stop and issued the motorist a citation for the violation. After the stop, the motorist complained to PAPD that the officer had used the complainant's first name in dealing with him, asked for his address, and explained the options the complainant had with regard to the citation that he issued. As a result of the motorist's request, PAPD initiated an investigation into the allegations.

Prior to receiving the complaint, the PAPD officer contacted his sergeant and informed him about a traffic stop he had made and that he thought the motorist was intent on complaining about his conduct. The officer also informed the sergeant that there were two witnesses who had observed the contact and that he had been able to obtain contact information for those witnesses.

When the motorist was interviewed, he complained that the officer had referred to him by his first name rather than “Sir” or “Mr. [last name].” The motorist claimed that such conduct was arrogant and unprofessional. The motorist was also concerned that the officer asked him whether the address on his license was current. Finally, the motorist was unhappy that the officer explained to him the options about how to handle the citation.

As part of the investigation, the uninvolved witnesses were interviewed. One witness said that the officer was polite in dealing with the motorist and that he had really “admired” how the officer had dealt with the problematic motorist. The second witness said that he thought the officer had acted professionally during the enforcement stop and that he “just did his job”.

The involved officer explained that after he stopped the motorist, he asked for the motorist’s driver’s license and asked him if the address on the license was current. The motorist did not answer and when the officer asked him the same question a second time, the motorist said that he was not going to answer any of the officer’s questions. The officer explained to the motorist that he wanted the address so the courtesy notice sent by the court would be sent to the correct location, at which time the motorist confirmed that the address was current. The officer then told the motorist he was going to return to his motorcycle to complete the citation.

When the officer returned, he said that the motorist told him he should not be referring to him by his first name. The officer admitted referring to the motorist by his first name and said that he routinely does so because he has found that it makes the stop more personable. He also pointed out that first names are usually easier to pronounce, and that the gesture tends to make the contacts go more smoothly.

According to the officer, the motorist signed the citation and then asked the officer for his business card. The officer said he had no business cards but offered to write any information the complainant wanted on a piece of paper. The motorist then asked for the officer’s name and badge number and the officer provided the information to the motorist.

The officer explained that he routinely tells people the process for handling a citation. He said that many of the people he contacts have never previously received a citation. The officer said he made it a point to explain all the options so that individuals being cited will be able to take care of the citation in whatever way they choose.

PAPD concluded that the officer had not committed any violations of policy. The IPA agrees with this determination. The IPA did speak to PAPD about the officer's practice of routinely referring to individuals by their first name. The IPA suggested that a better practice might be for the officer to first request whether the officer could refer to the individual by their first name rather than presume that the contacts would appreciate the informality. PAPD noted that they had identified the same issue and had counseled the officer on this preferable approach.

The IPA also discussed the fact that the officer lacked business cards. It recommends that all officers have business cards that could be produced upon request.

Finally, PAPD also notified the IPA that officers assigned to motorcycles have been assigned body cameras recently and are now routinely wearing them. As a result, there will be video evidence from body cameras in similar future traffic enforcement stops that can be reviewed as part of any official inquiry. This additional source of investigative information will complement the in-car videos PAPD has had for years and will provide an important evidentiary source of information when motorists question the propriety of officer conduct.

III. The IPA and "The Survey"

During this reporting period, the IPA was contacted by a local media outlet regarding a survey that had been conducted by the Palo Alto Police Officers' Association (PAPOA) in January 2013, and that had come to the media's attention. It was the first information the IPA received about this event.

In response to the inquiry, the IPA reviewed the survey, which contained a number of anonymous comments by respondents regarding their opinions about various aspects of the Department, their work, and leadership. Eventually, the survey led to a media story that focused on some officers' contention that they were being pressured to meet "unofficial" ticketing quotas.

The IPA assessed the survey responses to determine whether there were any specific allegations of policy violations that warranted follow up investigation. That review determined that it was not necessary or feasible for the Department to initiate formal investigations in response. This was for a few reasons: because the anonymous allegations lacked specific

information and investigative leads; because the general allegations were anonymous, and therefore did not lend themselves to further exploration of the claimants' perspective; and because well over a year had already passed. An important additional factor was the knowledge that PAPD command staff had already appropriately reached out to Association leadership as a result of the survey. The parties had apparently engaged in dialogue regarding issues of common interest that the survey touched upon. It should also be noted that current management of the Association disavowed the survey repeatedly and did not give credence to its substance.

As one additional step, the IPA reached out to a PAPOA leader to inform him of the results of the independent review and to learn whether there were any lingering concerns. The IPA also indicated its willingness to serve as a resource for Association members in ensuring that PAPD management took future allegations seriously and conducted appropriate investigations when warranted.

We reported our analysis and review back to the media outlet before it "broke" the story, but the outlet declined to note our involvement and conclusions in its report.

III. Conclusion

Thank you for the continued opportunity to monitor PAPD on behalf of the community it serves. Please feel free to contact us at your convenience with questions or other feedback.