



INDEPENDENT POLICE AUDITOR'S INTERIM REPORT

Presented to the Honorable City Council
City of Palo Alto
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Prepared by Michael Gennaco
and Robert Miller

OIR Group
323-890-5425
www.laoir.com

Palo Alto Independent Police Auditor

Interim Report for 2007/2008

I. The First Report

This report is the first of two reports covering the second year of the Independent Police Auditor's work with the Palo Alto Police Department. It reports on investigations initiated and complaints considered since the publication of the first year Final Report and provides updated information regarding investigations that had not yet been fully resolved at the time the Final Report was released. Additionally this Report updates the work the Auditor and the Police Department have engaged in with regard to systemic issues. Included in that discussion are further assessments of ways to optimize the communication between the Department and the IPA.

Finally, this report also covers the Auditor's review of all applications of the Taser by PAPD personnel in the course of detention and arrest of suspects. This addresses the mandate of the Palo Alto City Council that the IPA expand its purview to include Taser-related incidents.

II. Taser Incidents

In May of 2007, the City Council accepted and approved the recommendation of the Taser Task Force, which the Council had appointed several months earlier, to authorize the purchase and use of Tasers by patrol personnel of the Palo Alto Police Department. Pursuant to Council approval, the Department purchased Tasers and put all personnel through a two-day training program in September 2007. Pursuant to the recommendations of the Taser Task Force, the Department also drafted an extensive

written policy to provide guidelines for use of the Taser, attention to the medical needs of suspects, and preservation and documentation of evidence.

We observed all aspects of the 17-hour Taser training. The training program had been designed by the Department and was taught entirely by PAPD training personnel. This combined the skills that PAPD trainers had previously learned from the manufacturer with their knowledge of the needs and specifics of their colleagues and the community, and the specific guidance and nuances of the PAPD Taser use policy. The practical portion of the training was scenario-based and focused on tactically sound as well as humane decision-making in the field under a wide variety of circumstances. Officers were given considerable time and hands-on experience to absorb the lessons and the opportunity to debrief the issues and discuss alternative scenarios. We were generally impressed with the care and thought that went into the planning and execution of this training process. Particularly impressive were the time and resources devoted to the Taser training. For example, we are personally aware of other law enforcement agencies that provide much less training, and in at least one instance only two hours of Taser training. The seventeen hours of training per officer that PAPD devoted will provide personnel with a strong foundation in the appropriate use of the Taser as a force option.

It is expected that three other important factors will assist the Department in minimizing tactical errors or other problems in the field. First, there are now a proportionally large number of qualified Taser trainers in the Department. This will make it easier for all personnel to maintain a high skill level. Second, the Department has acknowledged that Taser capability, like all weapons skills, is perishable and has committed to providing and requiring annual refresher training. Third, the Department has opted for the Taser model that has a built-in video camera. This provides an invaluable tool for reviewing tactical decisions and general circumstances in deployments of the Taser.

Since the introduction of the Taser as standard equipment for all Palo Alto PD patrol officers, Department members have applied the Taser in the field to two persons in

separate incidents. One has been fully reviewed [see below]; the second one was recent and is still pending.

In the first quarter, since the implementation of Tasers, in addition to one full application of the Taser, PAPD officers have displayed and pointed the Taser to assist an arrest on seven occasions. In these cases, suspects complied with police demands when they saw the Taser or the laser sight and no force was used beyond handcuffing.

Taser Use of Force #1 – Incident 07-6412

A man had been involuntarily committed to the hospital for a mental health evaluation. He was then discharged. Shortly after his discharge, hospital personnel, accompanied by PAPD, went to the man's home to request that he return to the hospital for medical treatment. The man refused and indicated that officers would have to shoot him before he would agree to return to the hospital. Because there was no involuntary commitment order in place, PAPD did not take any steps at that time to involuntarily take the man to the hospital.

The next day, the doctors determined that the man needed to be placed on a mental health hold since his psychiatric condition presented a danger to himself and they prepared the paperwork necessary for an involuntary commitment. A psychiatric nurse familiar with the man's mental health history arranged for paramedics to be present and asked the police to assist if necessary to execute the involuntary commitment. At first the man was cooperative, but he then refused to go. When police officers approached him, he became agitated. The officers backed off until a supervisor arrived. The officers approached again in an attempt to gain the man's confidence, but he lunged toward them and kicked the supervisor. As the officers backed away, another supervisor discharged the Taser and cycled it twice so that officers could handcuff the man. The man then complied with directions. EMT monitored his health during transport to the hospital. He was combative when he arrived and medical personnel sedated him so that he could be medically treated. The only injury suffered by the man was a Taser dart puncture.

The documentation of the incident was thorough. The Taser video was personally reviewed by the IPA and comported with the account of the incident documented in the written reports. This Taser application appeared to comply with Department policy. It was learned during the review that the responding officers and supervisor were not specifically informed of the man's medical condition. Had they been alerted more definitively to his medical background, his condition may have caused him to be considered "infirm" as defined by the PAPD's Taser use policy. Even if, however, the man had been considered infirm, the policy does allow for use of the Taser on "infirm" individuals under exigent circumstances. Since in this scenario the Taser was used as a defense to the man's unexpected kicking of the supervisor, the circumstances could well be considered as "exigent."

That said, it might have been prudent for responding PAPD officers to attempt to learn about the medical condition of the person that was being returned to the hospital. That discussion between medical staff and police personnel could have caused a helpful dialogue between medical experts and the police regarding the potential effect of Taser use on an individual compromised by a medical condition. Armed with that expert advice, responding PAPD personnel could then have considered the additional information in determining the appropriateness of the Taser as a force option.

Accordingly, we recommend that when PAPD officers deal with an individual believed to have a medical condition, they make a reasonable attempt to determine the precise nature of that condition and, when practicable, attempt to obtain a medical opinion about any impact the deployment of a Taser might have on that condition.¹ Under those guidelines, a more educated choice about force options and their potential ramifications can then be made. We also recommend that the Department use this episode as a briefing and teaching tool to communicate this premise to its personnel. We have

¹ It is important to note that federal and state medical privacy laws are among the obstacles that may make it impractical in many situations for officers to obtain the relevant medical information in a timely fashion. However, we would be surprised if the on scene nurse in this case would have refused on those grounds to answer a question from police officers about whether there was anything about the man's health that would contraindicate the deployment of the Taser.

discussed these recommendations with Chief Johnson and she has agreed to implement them.

Taser Use of Force #2 – Incident 08-1777

Responding to a citizen complaint, officers went to check on a parked van in which someone appeared to be living. The occupant showed signs of erratic behavior and intravenous drug use and began to fight with officers when they attempted to determine if he was under the influence. An officer fired a Taser at the man, but he continued to fight. The man stopped fighting after a second Taser application and was taken into custody.

At the time of publication of this report, PAPD has just finished its reports and review of this incident. The IPA is still in the process of reviewing the documentation and video of the incident.

II. Complaints, Cases and Issues

1. Complaint of Discourtesy from Other Law Enforcement Agency #IA-2007-001

Synopsis: An officer in another community pulled over an off duty PAPD supervisor in his personal vehicle for a traffic violation. The PAPD supervisor was immediately confrontational and discourteous to the traffic officer who issued him a ticket. He used profanity, made derogatory remarks about the officer's skills and stated that the officer would not receive any help or professional courtesy if he found himself in distress in Palo Alto in the future. The PAPD supervisor had a passenger who witnessed these events, another off duty PAPD officer who was one of his subordinates. A field sergeant of the local police department was required to go to the scene to help resolve this confrontation. This sergeant later complained to PAPD, resulting in the initiation of an

internal affairs investigation. When interviewed, the PAPD supervisor admitted his behavior and apologized for his poor judgment and unbecoming behavior.

Recommendation: The Auditor agreed with the Department that the supervisor should be found in violation of Department policies against exhibiting discourtesy or disrespect and against conduct that is unbecoming and tends to reflect unfavorably upon the Department.

Resolution/Corrective Action: The supervisor received formal discipline.

2. **Complaint of Misuse of Police Powers #C-2007-009**

Synopsis: Police received a 911 call of an attempt suicide by overdose. Two officers arrived along with Fire Department paramedics. They spoke to the man who had called and to his girlfriend whom he said had told him that she had taken a fatal dose of medication. The officers questioned the suspected suicidal woman and received inadequate and evasive answers about the dosage and timing of her medication. The officers conferred with the fire and paramedic personnel, then decided to take the woman to a medical facility for evaluation under a provision of State law that provides for an involuntary 72-hour mental health evaluation. The woman was taken in an ambulance, evaluated by hospital personnel and released in a few hours. She filed a complaint with the IPA alleging that one of the PAPD officers had threatened her, pushed her, misused police power to make a 72-hour commitment, and was discourteous.

Recommendation: The IPA received the initial complaint in this case and recommended that the Department investigate the allegations of improper use of police powers, unnecessary force, discourtesy and using inappropriate communication. Commendably, the Department agreed to do an in depth investigation. The Internal Affairs investigator conducted a thorough and professional investigation despite the unique challenge of the complainant refusing to be interviewed except by e-mail. We have reviewed the investigation and concur with the Department that the charges are unfounded. The responding officers made a reasonable decision under the circumstances and used the resources available to them, consulting with the paramedics before reaching a conclusion. The minimal use of force was appropriate given the credible suicide threat.

There was insufficient corroborative evidence to support the allegation regarding inappropriate language or tone of voice.

Resolution/Corrective Action: The Internal Affairs division sent a letter explaining its conclusions to the complainant. The Auditor also met with the complainant to explain the Department's process and conclusions.

3. Complaint of Mistaken Forfeiture of Car #C-2007-010

Synopsis: A car was stolen and used in a crime in an adjacent agency's jurisdiction. While PAPD conducted the initial arrest of the suspect, the vehicle was eventually transferred to the custody of the other police department. When the owner tried to claim the car, she found that it had been sold at auction. The complainant alleged that she was not provided sufficient notice regarding the selling of her vehicle. PAPD conducted an investigation of this matter and the Auditor has reviewed the investigation, but will not report or comment on the investigation until the pending court case stemming from the original crime has been resolved.

4. Complaint of Possible Suspicious Circumstances Death -- No number

Synopsis: A woman sent an e-mail request to the IPA seeking help obtaining information about the recent death of her father. She made no reference to the police, but simply felt that a relative was acting odd and might be withholding information and that an autopsy might be appropriate. We responded to the request by describing other possible sources of information and referred the woman to the County Coroner's office. She later informed us that she had received satisfaction from the Coroner's office and did not wish us to inquire any further.

Recommendation: The IPA did not refer this matter to PAPD.

Resolution/Corrective Action: N/A

5. Complaint of Multi-Agency Conspiracy -- No number

Synopsis: The Auditor received a letter from the complainant describing numerous allegations of multi-agency criminal conspiracies, judicial violations, and matters relating to misuse of local library services and mental health services. The

Auditor spoke to the complainant to attempt to determine whether there was some aspect to these concerns that could be addressed by the Police Department. The auditor was unsuccessful and concluded that the complainant had no cognizable complaint that called for an investigation by the Department.

Recommendation: As a result of the above conclusion, the Auditor did not refer the matter to the PAPD.

Resolution/Corrective Action: None

6. Complaint of Irregularities in the Course of an Investigation #C-2007-1841

Synopsis: A former suspect in a harassing telephone calls case contacted the PAPD to complain that the officer who had investigated his case had tampered with evidence, omitted evidence and made other mistakes. He did not give any details and failed to provide any further information by phone or alternatively to talk to Internal Affairs as he stated that he intended to do. After attempting during a month's period to re-establish contact with the complainant, Internal Affairs decided to close out the complaint with a "no finding."

Recommendation: The Auditor concurred with the decision to close the complaint.

Resolution/Corrective Action: No finding.

7. Suspicious Circumstances #C-2007-738-4

Synopsis: In this matter, the complainant alleged that while he was outside police headquarters a person walked out of the building wearing a police badge. According to the complainant, the man then entered into a vehicle at which time the complainant stated to the person that he might be a "child molester." According to the complainant, the person then drove close to the complainant and almost knocked him off of his bike. The allegation of "attempted vehicular manslaughter," as framed by the complainant, was investigated by the Palo Alto Police Department. As part of the investigation, the Department reviewed the video camera positioned to capture the police department doors and did not develop any potential subjects. In addition, Department investigators contacted DMV and requested all matches for the partial license plate provided by the

complainant. The investigator also checked the registered owners of the possible license plates against city employees and found no matches.

Recommendation: The Independent Police Auditor found the investigation into this matter very thorough and because no subjects were identified, agreed with PAPD's decision to close out the matter.

Resolution/Corrective Action: The investigation was placed on inactive status.

8. Complaint of Failure to Close a Criminal Case – No number

Synopsis: This is a complaint that emanates from allegations of actions that preceded the existence of the IPA. The complainant was the suspect in a spousal sexual assault investigation by PAPD. When the case was referred to the District Attorney's Office, the alleged victim left the country and did not return. The prosecutor had not decided whether to file charges and have held their decision in abeyance pending the possible return of the spouse. Consequently, PAPD has not closed their file either.

Recommendation: The Auditor agrees with the Department that the decision on the current status of this criminal case is within the discretion of the District Attorney and it would not be appropriate for the Department to issue any kind of statement of final resolution to the suspect as requested by the complainant.

9. Complaint of Search and Seizure Violations and Damage to Credit – No number

Synopsis: This is a complaint about actions that preceded the existence of the IPA. During the course of a spouse sexual assault investigation, PAPD officers bought a conventional landline telephone for the complainant's spouse and gave it to her so that she would be sure to have access to a phone if she needed to contact the police. With her permission, the investigators installed the telephone. The complainant objected to the installation of the phone in his house without his permission and he refused to pay the ensuing phone bills.

Recommendation: The Auditor found that this issue has already been amply investigated by the Department and agrees with the Department that the investigators' actions with the consent of the spouse did not violate either the law or departmental

policy. The Auditor did suggest to the Department however, that there might be reasons why providing a telephone directly to a crime victim in similar circumstances could be inadvisable. The Auditor recommended that officers who want to improve victim access to phones be given guidance to take advantage of victim/witness assistance programs in the future. The Department has agreed to explore the practicability of this recommendation.

10. Complaint of Abetting Theft – No number

Synopsis: This involves a complaint from allegations that predate the existence of the IPA. In the course of separating from the complainant, a spouse wanted to move some clothes and other property out of their shared house. She requested a police standby during this process. The Department agreed to provide what is a routine service where there is the possibility of further domestic dispute. The complainant alleged that his wife removed many items that she should not have.

Recommendation: The Auditor agreed with the Department that the “standby” was appropriate and that, in these circumstances, it is unreasonable to expect the responding officers to act as referees in the division of presumably jointly owned property in anticipation of a marriage separation.

11. Complaint of Slander by a City Employee – No number

Synopsis: This is a complaint that emanates from actions that predate the existence of the IPA. The complainant brought a small claims case against the City for losses from the phone bill referenced above. A City employee who was not a member of the Police Department testified on behalf of the City.

Recommendation: Because there was no allegation of police misconduct with regard to this complaint, the Auditor did not recommend an investigation into this matter.

12. Request for Issuance of Restraining Order – No number

Synopsis: The complainant in this matter requested assistance of the IPA to issue a restraining order against his neighbor.

Resolution: Because the complainant did not make a colorable complaint of misconduct against any member of the Palo Alto Police Department that would result in a violation of Police Department policies, and because obtaining a restraining order is beyond the contractual responsibilities of the IPA, we informed the complainant that we were taking no action with regard to this matter.

13. Complaint of Improper Prosecution to Coerce Civil Settlement #C-2007-013

Synopsis: A landlord got into a dispute with a prospective tenant who changed her mind and wanted her security deposit back. The landlord felt that she had lost the opportunity to rent out the room for the short period agreed upon and would not return the deposit. The prospective tenant's father sent demands to the landlord, and then requested an investigation by the PAPD. An officer interviewed the parties and concluded that there was no intent to defraud, but referred the reports to the District Attorney's Office for review per usual procedure in such cases. The DA contacted the landlord and allegedly stated that she would not be prosecuted if she gave the deposit back to the prospective tenant. The landlord did so. The DA then rejected the case for criminal filing. The landlord complained to the PAPD, concerned that she would have a criminal record. A supervisor explained the DA's role and that the landlord would not have a criminal record. The supervisor also advised the landlord that, if she felt paying the deposit money back was wrong, she could file a civil small claims action against the prospective tenant. We requested no further investigation into the matter.

Recommendation: While we requested no further investigation into the matter, the Auditor reviewed the file and documentary history of the landlord/tenant dispute as well as the complaint previously made to the Department. The Auditor was concerned that the prospective tenant's father might have had undue influence in this case because he is a police chief in another state. We found, however, that the original investigation of the fraud allegation by the department was evenhanded and factual and the case was simply referred to the DA's Office for review per customary procedure rather than presented to the DA with a request for a criminal filing. Any subsequent decisions about the case or allegedly coercive demands to the complainant did not involve the police department. The Auditor observed however, that remarks made by the police investigator

and the supervisor who responded to the landlord's complaint could have been interpreted as supportive of the DA's alleged demand that repayment be made to avoid a criminal filing. Prior to the prosecutor's decision on whether there will be a criminal filing, police officers should be wary of giving advice to one party that might encourage restitution or civil settlement under perceived threat of criminal prosecution. The IPA recommended that PAPD managers clarify this sometimes-murky legal issue for patrol officers through a training bulletin. Chief Johnson has agreed to implement this recommendation.

Resolution/Corrective Action: The Auditor contacted the complainant to explain the result of this review.

14. Discourtesy Complaint #C-2007-012

Synopsis: In this matter, the complainant alleged that he was in his car when he noticed that the street of his residence had been barricaded to prevent through traffic during a Stanford football game. As he traveled around the barricade, the complainant felt that he was treated discourteously by a Palo Alto police officer manning the barricade.

Recommendation: The auditor found the investigation into this complaint to be thorough. Because an independent witness largely corroborated the account of the police officer that he was not discourteous during the verbal exchange with the complainant, the Auditor concurred with a disposition of unfounded.

Resolution/Corrective Action: The matter was deemed unfounded. During the investigation, the investigating sergeant recommended that the Mobile Activated Vehicle ("MAV") function, to the degree practicable, also be used for football game details. While the MAV function may not be always positioned to pick up the video of every officer-citizen encounter for football game details, even an audio recording of such encounters would be helpful to assess any future complaints or concerns. The Auditor and Chief Johnson have discussed this issue and the Chief has agreed to explore with her personnel the feasibility of using the MAV at future football game deployments.

15. Complaint of Disparate Treatment Based on Race #C-2007-014

Synopsis: Four young people ranging in age from 15 to 23 were pulled over in a car for a broken taillight. The officer smelled marijuana smoke and asked the front passenger, who also owned the car, about it. She said that she had smoked some recently and offered to let the officers search the car, which they did. First, however, they asked the young people to get out of the car and patted them down and told them to empty their pockets. A pipe with a small amount of marijuana in it was found on one of them. Two of the young people, who are sister and brother, later complained that the stop and search was part of a pattern of harassment aimed at their family and possibly attributable to the fact that PAPD officers were aware that a third sibling is incarcerated. They also believed that the officers who pulled them over had treated the Caucasian girl in the group differently from the other three occupants of the car, who were African-Americans. They observed that, during the search, the Caucasian girl was separated from them and allowed to stand while they were required to sit on the curb.

Recommendation: The Auditor recommended that the Department investigate the allegation of disparate treatment based on race and the allegation of harassment. The Department assigned a supervisor to investigate the complaint and conducted interviews and a review of the video and audio recorded by the patrol vehicle MAV system during the traffic stop. The Department concluded that the Caucasian female was treated differently, but that it was not because of her race but rather because she was the only one found to be in possession of illegal paraphernalia. Since she was also a juvenile and her case might be referred for prosecution, she was arrested and separated from the other three until she could be released to a family member. The other young people were allowed to leave in their car. We reviewed the investigation and concurred with the Department that there was ample evidence to show appropriate race neutral behavior by the officers.

Resolution/Corrective Action: None.

16. Complaint of Violation of Free Speech Rights #C-2008-001

Synopsis: During the customary public comment period of a City Council meeting, a member of the public made remarks to the council criticizing aspects of city

government. His comments were vociferous and made reference to the ethnicity of the council member. Some time during his allotted three minutes, the Council took action to turn off the public comment microphone. The speaker completed his remarks and remained audible within the council chambers though not on the TV or radio broadcast of the meeting. Shortly after that, the Chief of Police informed the speaker's probation officer of what had happened. The speaker alleged that the probation officer then called him and warned him to desist. He further complained that he had been inappropriately cut off and discouraged from exercising his free speech rights in the future.

Recommendation: The Auditor listened to a tape of the Council session, spoke with the complainant and determined that, even if all of the above were assumed as true, the complainant's allegations would not constitute a violation of PAPD policy by police personnel. This was because, (1) the cutting off of the microphone was decided upon and executed without police department involvement, (2) there are no violations of policy implicated by the Chief's call to the probation officer, and (3) the question of whether the complainant will have future access to the free speech forum at Council meetings is ultimately a City Council decision, not a police decision. The IPA, therefore, defers to the City Council's decision, in consultation with the City Attorney, as to what time, place or manner restrictions are constitutionally appropriate for public comment during Council meetings. For all of the above reasons, the Auditor did not recommend that the Department open an investigation in this matter.

Resolution/Corrective Action: None.

17. Complaint of Denial of Free Speech Rights #C-2008-004

Synopsis: A resident observed an outdoor fair occurring in a neighborhood park. She decided to set up a table at the fair to distribute political literature and solicit signatures for a petition. She was approached by the event organizer and then by a PAPD officer and informed that she would have to remove her table and stop her petition activities or leave the park. Eventually she complied and moved her table to a spot outside the park. The Auditor evaluated this complaint and recommended that the Department investigate the original documentation of the incident to determine whether

the police intervention complied with a valid city ordinance applicable to the situation. The Department did so.

Recommendation: After reviewing the reports and the city ordinance the Auditor concurred that the alleged actions by a Palo Alto Police Officer complied with Department policies and the city ordinance. As to the validity of the city code section, it appears to the Auditor to put reasonable restrictions on time, place and manner of the exercise of free speech rights and we defer to the ultimate analysis of the Palo Alto City Attorney that the ordinance is, in fact, constitutional.

Resolution/Corrective Action: The Internal Affairs division sent a letter explaining its conclusions to the complainant through her lawyer.

18. Parking Citation Complaint -- No number

Synopsis: The complainant in this matter was concerned about a parking ticket he received in Palo Alto for parking in a restricted space. The complainant indicated that neither he nor his three passengers noticed this particular sign but did pay the ticket he was issued.

Resolution: The City reviewed the complaint and reported back to the complainant that the parking lot signs complained of were posted at a State mandated height for best visibility. The letter to the complainant further indicated recognition that failing to observe the signs in that particular lot seemed to be a fairly common error. The letter further reminded the complainant of the contest and appeal provisions in place when a person believes the citation was issued incorrectly. Our follow up contact with the complainant indicated no further questions or concerns about the matter. He expressed appreciation for the follow up contact.

19. Complaint Regarding Inappropriate Investigation In Public School -- No number

Synopsis: We received an e-mail from the complainant indicating a concern with the Department investigating incidents in the school. We attempted to follow up on specifics with the complainant but did not receive particulars or any further correspondence from him.

Recommendation/Resolution: The complainant's unwillingness to continue the dialogue prevented any development of specifics to investigate. Therefore the complainant was notified that we would take no further action with respect to this matter. We did not refer the matter to PAPD.

20. Complaint Regarding Allegations of Racial Profiling -- No number

Synopsis: The complainant alleged in an e-mail eventually received by the Police Department that he had been pulled over three times in three months and believed that he had been the subject of racial profiling. The Department tried on several occasions to investigate the stops but had no further communication from the complainant. We also tried to communicate to the complainant but also had no response from him.

Recommendation/Resolution: Because the Department and the Auditor did not gain sufficient cooperation to investigate the allegations, we concurred with the Department's decision to close the matter.

21. Complaint of Excessive Force and Unprofessional Conduct -- No number yet

Synopsis: PAPD officers assisted a police agency from another city in executing an on-view arrest and a search warrant at a house in Palo Alto. The arrestee was a murder suspect staying as a guest in the house. Members of the family that lived in the house complained that they were treated roughly and discourteously by PAPD officers, that two of them were pushed to the ground, that they were forced to lie on their front yard in handcuffs for an excessive period of time, that guns were pointed and profanities shouted at them, that the officers wore no name tags and would not identify themselves, and that they were kept out of their home and confined on their porch or front yard for an excessive period of time.

Recommendation: While not the originating agency of the search warrant or arrest, PAPD played a significant role in their execution. The Auditor recommended that the Department review the incident for possible discourtesy, excessive detention and failure to identify oneself in violation of PAPD policies. The Department has agreed to investigate this matter.

Resolution/Corrective Action: Pending.

22. Complaint of Harassment -- No number.

Synopsis: The Auditor was referred to a letter to the editor in a local newspaper describing an unpleasant interaction with a PAPD officer after being stopped by the officer for no good reason. The writer asserted that he had been similarly harassed on previous occasions. The Auditor brought this to the attention of the Department and was pleased to note that Internal Affairs had already taken steps to reach out to the letter writer. An investigator spoke to the complainant who stated that he was pleased to have the opportunity to discuss the matter with the Department. He also stated that he understood why his unique physical appearance gives some people the mistaken impression that he is a drug addict and that this sometimes attracts the attention of law enforcement. He told the investigator that he did not wish to file a citizen complaint at this time but might contact the Department in the future.

Recommendation: The Auditor found the Department's proactive approach in this case commendable. Per the wishes of the complainant, the Auditor does not recommend opening an investigation at this time.

Resolution/Corrective Action: None.

III. Cases Pending from Year 1 Final Report

23. Complaint of False Statements and Omissions in Arrest Report #C-2006-010

Synopsis: A civil litigant was charged with felony vandalism against the opposing party when PAPD investigators concluded that he had scratched the other party's car with a metal object after losing in civil court. The prosecution of the vandalism case has been delayed by procedural writs that continue to work their way up to higher courts of appeal. The vandalism defendant has complained to the Department that the officer who investigated the vandalism made biased statements and omitted evidence in his report.

Recommendation: The Auditor recommended that the department hold any investigation of the complaint until after the resolution of the criminal case. Any other course of action would be disruptive to the court proceedings. The Department agreed.

Resolution: Pending.

24. Complaint of Excessive Force #C-2007-004

Synopsis: Medical personnel called Police officers to a hospital when a woman in a wheelchair refused to leave the premises. The officers were unable to persuade the woman to leave and arrested her for trespass and transported her to a jail facility. She was able to walk with minimal assistance. The jail facility refused to accept the woman because they believed she showed symptoms of a communicable disease. The police officers eventually released the woman and transported her to a location of her choice. The woman later filed a civil claim against the city alleging that the officers had used unnecessary force on her, injured her, falsely arrested her, and then released her. When the Department became aware of the claim, they decided to initiate a complaint investigation.

Recommendation: We commend the Department for screening this civil claim and concluding that it presented issues that warranted a personnel investigation, even though no formal complaint had been made directly to the Police Department. The complaint investigation in this case was thorough and objective. All involved officers were interviewed as well as several civilian witnesses from the hospital who were able to recall the incident in detail. The complainant refused to be interviewed. The IPA concurs with the Department's conclusion based on substantial and consistent evidence in the record that the allegations of false arrest and use of unnecessary force should be deemed unfounded.

Resolution: Allegations were deemed unfounded as to the involved officers.

Complaints and Internal Affairs Investigations Reviewed by the Auditor
September 2007 through March 2008

Case No.	Case/Investigation Type	Allegation	Results of Investigation	Resolution
IA-07-001	Internal Affairs Investigation	Discourtesy to another officer	Sustained	Discipline imposed
C-07-009	Citizen Complaint	Misuse of police powers	Unfounded	Complainant informed of results
C-07-010	Citizen Complaint	Loss of property	To be announced (pending resolution of a criminal trial)	Pending
No number	Citizen Complaint	Request for autopsy	Referral to Coroner's Office	Request withdrawn
No number	Citizen Complaint	Multi-agency conspiracy	No investigation recommended	None
C-07-1841	Citizen Complaint	Irregularities in criminal investigation	No investigation recommended	None
C-07-738-4	Citizen Complaint	Suspicious circumstances driver	Investigation unable to identify a subject	Inactivated
No number	Citizen Complaint	Failure to close criminal case	No investigation recommended	Complainant informed of results.
No number	Citizen Complaint	Search and seizure; damage to credit	No further investigation recommended	Procedural recommendations to Department
No number	Citizen Complaint	Abetting theft	No investigation recommended	Complainant informed of results.
No number	Citizen Complaint	Slander	No investigation	Complainant informed of results.

			recommended	
No number	Citizen complaint	Request for restraining order	No role for IPA	Complainant informed.
No Number	Citizen Complaint	Civil coercion	No further investigation recommended	Complainant informed of results. Training recommendation to Department
C-07-012	Citizen Complaint	Discourtesy	Unfounded	Procedural recommendation
C-07-014	Citizen Complaint	Disparate treatment based on race	Unfounded	Complainant informed of results
C-08-001	Citizen Complaint	Interference with free speech	No investigation recommended	Complainant informed of results
C-08-004	Citizen Complaint	Denial of free speech	No investigation recommended	Complainant informed of results
No number	Citizen Complaint	Unfair citation	Unfounded	Complainant informed of results
No number	Citizen Complaint	Inappropriate investigations in schools	No investigation recommended. No response from complainant.	Complainant informed of results
No number	Citizen Complaint	Racial profiling	No investig. recommended. No response from complainant.	None
No number yet	Citizen Complaint	Excessive force & detention, unprofessional conduct	Pending	None
No number	Citizen Complaint	Harassment	Complainant did not wish to file a complaint. No	None

			investigation recommended.	
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Cases Pending from Year 1

C-06-010	Citizen Complaint	Biased police report	Pending resolution of criminal case	Pending
C-07-004	Civil Claim/Citizen Complaint	Excessive force, false arrest	Unfounded	Complainant informed of results

V. Policy/Practices Revision

Both the Department and the IPA have noted indications that complainants sometimes feel frustrated with the Department about the lack of information they receive about the progress of citizen complaint investigations. The IPA suggested that the Department could begin to address this issue by sending complainants an acknowledgement letter once the complaint had been received and assigned an investigator. The Department accepted this recommendation.

The IPA and the Department have recently implemented a regular schedule of frequent telephone conferences to facilitate more reliable and immediate communication about case status and other issues.

VI. Auditor Outreach

As noted in our final report for 2007, when we met with the City's Human Relations Commission, it was suggested that information about the Auditor and contact

information be included in the City of Palo Alto's website. As a result of subsequent discussions with City officials, information about the function of the Independent Police Auditor and contact information is now available on the City's website. It is expected that this increased visibility will educate City residents about the function and availability of the IPA.

Since our last report, the IPA again met with the HR commission in order to dialogue about PAPD data collection, records retention and other matters of common interest.

VII. Assessment of PAPD's Response to Citizen Complaints

The PAPD has continued to adjust well to two new features that have a potentially significant impact on citizen complaints: the Taser now carried by all patrol officers and the dashboard mounted video camera in patrol vehicles. Department supervisors have found that the MAV system is a helpful tool to evaluate the quality and professionalism of police action in the field. It has also become a standard first step in responding to citizen complaints. On several occasions, watch commanders have been able to sit down with the complaining party and watch the video together and discuss the basis for concern. This helps put the discussion on a rational footing and allows the Department to respond more rapidly and transparently to citizen concerns.

Tasers are still a controversial law enforcement weapon and will probably remain so for the near future. In view of this, the Department has taken a wise course to insure that its Taser use policy is detailed and explicit and, more importantly, that all officers who carry the Taser receive extensive training.

VIII. Conclusion

In September of 2007, the Palo Alto City Council concluded that the just completed one-year pilot program had demonstrated the utility and value of an

independent police auditor. The Council asked us to continue to function as the IPA and entered into a contract for two more years. Additionally, the Council asked the IPA to monitor and review each use of the Taser by PAPD officers in the field. We are gratified by the renewed commitment on the part of the City and the Department to the principle of police oversight. We look forward to continuing to provide that oversight as well as transparency into how the Department investigates its own when allegations of misconduct arise.