



POLICE AUDITOR'S FINAL REPORT - 2010

Presented to the Honorable City Council
City of Palo Alto
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Palo Alto Independent Police Auditor

Final Report for 2010

I. Introduction

This report is the second of two reports covering the fourth year of the Independent Police Auditor's ("IPA") work with the Palo Alto Police Department. It reports on investigations initiated and complaints that have been considered since the publication of the fourth year Interim Report and provides updated information regarding investigations that had not been completely resolved at the time the last report was released. Additionally, this report updates the work the Auditor and the Police Department have engaged in with regard to systemic issues and policy revisions.

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 complies with the mandate of the Palo Alto City Council that the IPA expand its purview to include Taser-related incidents.

Since our last report, the Department has worked with the IPA to create or revise three policies significant to its field operations and interactions with the public. The first one, a revision of the field pat down search policy, has been revised along lines suggested by the IPA. The policy, which has now been implemented, mandates that officers who determine that it is necessary to perform a pat down search in the field take practical steps to ensure that the officer performing the search is the same sex as the person being searched. We attach a copy of the revised policy to this report.

Second, the Department and the IPA continue to work on developing a policy that would provide guidance and ensure consistency regarding requests for disclosure of the identity of PAPD employees who are arrested. Recently, other participants in the criminal justice process were brought into the discussion. The IPA will continue to report on the development of this policy.

Third, the Department is considering changes that will clarify the conditions under which an officer may accept additional employment outside of the Police Department and what type of employment is permitted.

II. Taser Incidents

Taser Policy

In our most recent report we described the revision of the Department's Taser use policy resulting from a dialogue between the IPA and the Chief of Police about clarifying the policy and bringing it into line with recent court opinions about law enforcement use of Tasers. The current policy requires that a suspect must pose an immediate threat of physical injury before firing a Taser is appropriate. As a result, "active resistance" as defined by the original policy no longer provides justification for use of a Taser. Additionally, before activating a Taser a second time, an officer must reevaluate the circumstances and not re-apply the Taser unless the suspect continues to pose an immediate threat.

All PAPD officers continue to carry Tasers on patrol. The new policy has been in place for several months and all officers have received training on the revisions. So far however, no PAPD officer has used a Taser on a suspect since the implementation of the revised policy. It would be entirely speculative to conclude whether this is the result of fear of criticism by officers, a misunderstanding of the policy, or simply the absence of appropriate circumstances in the field necessitating the use of a Taser. However, the revised policy's disallowance of Taser use for active resistance remains an important step to ensure that Tasers not be used where the threat level does not justify deployment of the weapon. We will continue to review all Taser uses and continue our dialogue with the Chief of Police about these issues of field tactics and policy.

The Taser use of force incident that we reviewed and comment upon below was mentioned in our last report. The documentation of the incident had just been completed prior to completion of the report so we postponed our review until the present report. This incident took place when the prior, unrevised Taser policy was the Department's standard and we thus apply the policy in existence at the time to the fact set presented. .

Taser Use of Force 2010-002

Officers responding to a car burglary call saw the suspect leave the burglarized vehicle and run into back yards. They attempted to contain the area and pursue the suspect for almost an hour, eventually deploying a police K-9. The suspect jumped from a roof, fell through a plastic carport and began to run from the K-9 handler despite warnings that the K-9 would be sent after him. The K-9 was released and caught up to the suspect in a small fenced in area filled with vegetation and detritus, biting him on the arm. The suspect fought with the dog, hitting him and choking him. The handler officer punched the suspect twice in the face and kned him in the head once in order to protect the K-9 and subdue the suspect. By this time, other officers were at the scene ordering the suspect to stop resisting and trying to get a grip on him within the tight confines of the fenced in area. After the dog disengaged from the suspect, the K-9 handler set the dog upon the suspect two more times to assist the effort to handcuff him. The suspect did not respond to the officers' orders and seemed oblivious to the pain from the dog biting him. He was sweating profusely, slippery and struggling vigorously with three officers and a sergeant for an unusually long time – an estimated seven minutes -- before officers successfully handcuffed the suspect. During this time, the sergeant fired Taser darts at the suspect's back but the Taser appeared to have no electrical power and no effect. Then a supervising officer fired her Taser at the suspect's chest and cycled it for 10 seconds. This had a minimal effect so she tried to disable the suspect more effectively by applying the Taser device in drive stun mode directly to his upper back. This did not work, but the officers were eventually able to handcuff the suspect and pull him out of the fenced in area. At that point, the suspect showed signs of breathing distress and appeared to have seizures. He was placed on his side as a precaution by the supervising officer who monitored him until paramedics arrived. When paramedics got there, the supervising officer told them that the suspect might be under the influence of a controlled substance, had been having seizures, and had been Tased by two different Tasers.

This incident was well documented by participating PAPD personnel. Their individual reports display an appropriate level of detail about the step-by-step actions taken by the report writer as well as his or her observations of the actions of other

officers. They also document the evidence gathering process well, an often-neglected aspect of Taser use in other jurisdictions. One officer even had the presence of mind to use his Taser camera to document part of the struggle even though he chose not to activate the Taser as a weapon. Potential shortcomings in the report are not related to the Tasers but to the K-9. The handler's report does not sufficiently explain his reasons for re-deploying the dog on the suspect who was trapped in a confined space. The incident does raise the Taser-related issue of equipment maintenance and quality control. One of the two Tasers deployed did not seem to work at all. After the incident, there were problems downloading the data and getting an accurate time stamp on it. The Department has acknowledged these issues from previous Taser uses and we will continue to monitor its efforts to perfect maintenance and infrastructure for this weapon.

Department members who used their Tasers on the suspect appear to have done so appropriately under the guidelines set by the Department at the time. This was the conclusion of PAPD executives and the IPA concurs. That the second Taser was largely ineffective in disabling the suspect may point to a training deficit, but it is just as likely that the poor lighting conditions and the highly confined space rendered the appropriate and creative attempt to use the drive stun technique ineffective. Department members took timely action to get paramedics to the scene and provided appropriate precautionary measures and monitoring while waiting for them to arrive.

III. Complaints, Cases and Issues

1. Complaint of Discourteous and Disrespectful Treatment #C 2010-005

Synopsis: A woman came to the police station to report that she had been the victim of repeated sexual assaults by her father over a two-year period during her teen years. Two of these assaults had occurred in hotels possibly located in Palo Alto or Mountain View, but the majority of them had occurred at her home in a city in San Diego County. When the woman spoke to a PAPD detective specializing in sexual assault, he was confused by her belief that she had an appointment with him. He was unaware of any appointment, but talked to her about her allegations. Early in his discussion with her,

he asked her if she was sure she wasn't looking for the East Palo Alto Police station because he thought confusion over the correct station might be the source of the misunderstanding over the appointment. The woman, an African American, took offense to this because she believed the detective was assuming she should go to the East Palo Alto Station because she was African American and East Palo Alto has a large African American community. She did not say anything to the detective, however, to indicate her dismay. The detective took some of her factual information down and recommended that she contact the police in her home town since most of the sexual assaults had occurred there and had occurred over a long period. She indicated she would do that and that she was not interested in pursuing the possible Palo Alto incident criminally. During a telephone conversation with the woman later that same day, the detective confirmed that he would write up a courtesy report with the information he had so far and send it to the police in her home town. He also encouraged her to contact that police department directly and give her information face-to-face because it was more likely to result in an effective investigation. Mistaking the name of the hometown for one in Monterey County, the detective assumed that the woman could drive there in a short amount of time and admonished her to make the effort so that the police in that town could initiate the case. The woman found this admonishment "snappy and rude" both in content and delivery. She subsequently complained to the Department that she had found both of the detective's comments offensive.

Recommendation: The IPA reviewed the evidence in this investigation and agreed with the Department that the detective did not violate any department policies in his interaction with the complainant. There was, in fact, very little dispute between the complainant and the detective as to what was said during their conversations. It was clear that the complainant had found a few of the detectives questions or remarks to be off putting, but it seemed just as clear that the offensive qualities inferred by the complainant were inadvertent and did not arise from bias, discourtesy or disrespect on the part of the officer. The Department concluded that the detective should be deemed "exonerated" of the allegations because the alleged statements were in fact, made by the detective, but the statements did not violate Department policy.

Resolution/Corrective Action: The complainant was informed of the results of

the administrative investigation by letter.

2. Complaint of Rudeness and Intimidation #C 2010-006

Synopsis: A community member riding a bicycle complained that two PAPD officers had driven an unmarked car past him in excess of the speed limit and made a “fast rolling stop” through a stop sign. He asserted that when he confronted the two officers at the coffee shop where they stopped, they both admitted their excessive speed and stated that they were in a hurry to get to a meeting. The complainant averred that he was very sensitive about speeding because he frequently rides his bicycle. One of the officers paused to talk to the complainant in the parking lot of the coffee shop while the other officer went into the shop. When he came out, the complainant was still talking to the partner officer. Later that day, the complainant phoned a complaint into the Department.

Recommendation: The IPA reviewed the interviews of the complainant and the two involved officers in this case. There were no audio or video recordings of the incident. While there were a few uninvolved civilian witnesses in the coffee shop parking lot who evidently stopped to watch the conversation between the complainant and the officers, none were identified at the time. This is understandable since the officers did not then know that the encounter would engender an administrative investigation. The case presents two starkly different views of the facts. The complainant said the car “flew past” him and “blew” the stop sign. The officers said they drove at a normal rate, did not ignore the stop sign, and that they did not see the complainant or his bicycle anywhere along the route. The complainant saw a brown car. The officers say they were driving a red car. The officers said they were in no hurry to get to their meeting. The complainant said they both admitted to being in a hurry. The complainant said he had a “frank discussion” with one of the officers. The officers described him as very angry, spitting, and “going off.”

During his conversation with the officers, the complainant told the officers that they had “almost run him over.” The complainant did not, however, make any mention of direct danger to himself during his Internal Affairs interview or in his complaint call to the Department.

We also note that Internal Affairs arranged for a formal interview of the complainant on the same day that he phoned his complaint in to the Department and that this complaint investigation was completed in less than a month. We hope the Department can emulate this commendable swiftness with complaints of this type in the future.

Resolution/Corrective Action: The Department concluded that the complaint is not sustained. In light of the diametrically opposed nature of the statements and the fact that there is no other ready source of evidence that can be explored in addition to the statements of the three participants, the IPA recommends that it would be more appropriate to categorize this complaint as unresolved.

3. Complaint of Traffic Stop Without Cause #C 2010-007

Synopsis: A motorist was pulled over by a PAPD officer on traffic duty. The officer explained that he found the registration tag on the motorist's license plate faded and difficult to read. He asked the motorist to get the tag replaced at the DMV when it was convenient. While the encounter was brief and cordial, the motorist did not believe that the officer had stopped her for the reason he stated. After arriving at her destination, she examined the tag and found it normal and readable in her judgment. She thereafter complained to the Chief of Police when she encountered him at a public event. During the ensuing investigation, Department investigators examined the license plate tag and found it somewhat faded. They interviewed the motorist and the officer and determined that the officer had initially pulled the motorist over because he had observed her travelling a few miles over the speed limit. When he approached the car he noticed that the license tag was faded and mentioned only this to the motorist. In his interview, he remarked that he often only mentions some of the observed violations to a motorist because he does not want to unnecessarily demean the motorist.

Recommendation: The Auditor reviewed the evidence in this investigation including witness interviews and MAV video of the stop and found that it sufficiently addressed the issues presented by the complainant's allegation. Traffic stops by police should be conducted in a consistent and fair manner free from bias and arbitrariness. At a

minimum, each stop must be based on an officer's objectively reasonable suspicion that a law has been broken. But it is axiomatic that each motorist only experiences his or her stop and does not experience the officer's or the Department's broad pattern conducting traffic stops. The officer in this incident met this basic requirement because of the motorist's observed speed. Nevertheless, the motorist was informed only that her registration tag was a little hard to read. The law does not require an officer to explain all of his observations, hunches or suspicions. He must merely have at least one legally viable reason for the stop but, good practice and constructive community relations instructs that it is often beneficial for the officer to explain more of his reasoning to the person he is detaining, even if briefly. This motorist left the encounter feeling inconvenienced and deceived. If she had been warned about her speed, she may have been less inclined to perceive an ulterior motive.

We believe it is important to note that this investigation was pursued in an efficient yet thorough manner. Even when the interviews and physical evidence established that the officer's actions satisfied the minimal requirements of the law, the investigator went the extra mile to do two things: (1) consult with the prosecutor and (2) conduct a straightforward statistical breakdown of this officer's pattern of traffic stops. The first provided expert quality control on the legal conclusions reached by the Department and, in this case, corroborated those conclusions. The second corroborated the officer's estimates that the majority of his traffic stops were based on equipment violations (slightly over half, in fact) and that he most often gave motorists a verbal warning (more than two thirds of the time, in fact). These types of simple yet illuminating extra steps can allow the Department to stand more firmly by its findings in administrative investigations and may occasionally provide an early warning of officer behavior or procedures that require correction or training.

Resolution/Corrective Action: The IPA agrees with the Department's finding that the allegation of improper use of police powers to stop a motorist without cause is not sustained. We do recommend however that the Department counsel the officer to explain the basis for his stops more fully to motorists so as to avoid misunderstandings in the future. The complainant was notified of the results of the investigation.

4. **Complaint of Discriminatory Traffic Stop #C 2010-008**

Synopsis: A male African American motorist was stopped by a PAPD officer for having an illegible month tab on his rear license plate. The officer approached the driver, informed him about his license plate tab and obtained identification information. The officer then ran a routine records check through the dispatch operator and was informed that the motorist was on active probation for assault with a deadly weapon and resisting arrest and had a “search clause,” meaning that, as a condition of his probation, he could be searched without a warrant. The officer then contacted the driver and asked him if he was in fact on probation. The motorist said no. The officer and his partner requested further information from dispatch and were told that the probation status was actually under the name of an alias of the motorist. The officer then asked the motorist if he knew anyone by the name of the given alias. The motorist said no. The officer then took the information provided by dispatch and used it to pull up a booking photo of the suspected probationer on his patrol car computer. He also received information from dispatch regarding a visible tattoo on the probationer. He returned to the motorist and used this identifying material to determine that the motorist was not the probationer after all. At that point, the motorist stated that the person with the named alias was actually his brother and had used the motorist’s name during a prior arrest. The MAV videotape shows that this process took fifteen minutes, after which the officer allowed the motorist to depart without a citation.

Later that evening, the motorist lodged a complaint with the police department. He said he believed that the stop was racially motivated and that the officer asked him unnecessary questions.

Recommendation: The IPA reviewed the interviews of the complainant and the two officers as well as the MAV videotape, photos of the motorist’s car and the relevant vehicle code statutes. This allegation of racial profiling suggests two separate phases of inquiry: (1) Was the initial traffic enforcement stop based on racial bias or appropriate policing criteria? (2) Was the conduct and tone of the subsequent investigation based on racial bias or appropriate policing criteria?

The stop: When the motorist was interviewed by Internal Affairs, he brought his vehicle and showed it to the investigators. The rear license plate was missing a month tab and

showed only a faint impression of the month letters from the underlying metal plate. The complainant stated that he did not know a month tab was required. The vehicle code requires a visible month tab and its absence provides an adequate basis for a traffic enforcement stop. We found nothing in the statements of the officer or the complainant to Internal Affairs or in the officer's conversation and interaction with the motorist during the stop to indicate a racially biased motivation for the stop.

The encounter after the stop: Upon running a standard law enforcement check of the motorist's identification, the officer received information that contradicted what the motorist stated, namely that he was not on probation. Rather than assume that the dispatch information was accurate and the motorist was lying, the officer checked further. When the motorist denied any knowledge of the alleged alias, the officer did further research with the tools at hand. He was thus able to confirm that the initial dispatch information was inaccurate. Finally, the motorist's admission that he was aware that the alias was his brother's name and that his brother sometimes used the motorist's name, explained the discrepancy. This interaction and the officer's entire line of inquiry appear to demonstrate conscientious and systematic police work.

The Department found that the allegations that the stop was based on racial bias and that the subsequent investigation was discriminatory were not sustained by the evidence. The IPA reached the same conclusion.

Resolution/Corrective Action: The complainant was informed of the results of the investigation.

5. Complaint of Police Action: Show of Force [No number assigned]

Synopsis: During this review period, the IPA received a concern from a Palo Alto resident about the show of force during a PAPD operation. The action started when a suspect asked a victim (not the concerned resident) to borrow his cell phone to make a call. Once the victim obliged, the suspect ran from the victim with the phone. The victim contacted police and personnel were deployed. The first arriving officer observed the suspect but the suspect ran from her. PAPD then set up a perimeter in the hopes of locating the suspect. During the operation, a Sheriff's helicopter was deployed to assist with the search. The suspect was never again located.

The concern raised by the resident was that the show of force may have been unnecessary, considering the nature of the crime. There was also a concern raised that the show of force and deployment of the helicopter may have been influenced by the fact that the suspect was African-American.

Recommendation: The Department conducted a review of this incident and found no evidence to indicate that the size of deployment was because the suspect was African-American. With regard to the helicopter, the original belief was that the Sheriff's helicopter had made initial contact with PAPD and offered to assist. However, a more comprehensive review revealed that the request for the air ship had emanated from a PAPD dispatcher, unbeknownst to PAPD field supervisors. As a result of this incident, the Department's Air Support Policy for officers and dispatchers was modified, requiring them to notify the watch commander and/or the field supervisor prior to asking for future air support from outside agencies.

The IPA concurs with PAPD's actions. There is insufficient evidence to establish that the response was out of synch with similar responses. There is also no evidence to conclude that the response was unnecessarily enhanced because the suspect was African-American. The IPA further concurs with the change in policy requiring the approval of the watch commander or field supervisor before a request is made for air support. Such a request should require approval from the incident commander before it is made.

Resolution/Corrective Action: The complainant was informed by IPA of the results of this inquiry.

IV. Cases Pending from Prior Report

6. Complaint of Intimidation and Conflict of Interest #C 2009-004

Synopsis: A tenant at an apartment complex complained that a PAPD supervisor worked there in a private capacity as a security officer and used intimidating tactics against him. He also objected to a possible conflict of interest with the supervisor's Departmental responsibilities. During this incident, the complainant was investigated by

PAPD for possible extortion of the company that owned the apartment complex, but no charges were filed in the case.

Recommendation: This matter was referred by the Police Department to an outside investigator. The investigator found that there was evidence to support a finding that the supervisor violated policy by disclosing his status as an employee in a way that could reasonably be perceived as an attempt to gain influence or authority for non-Department business. This finding was supported by evidence that the supervisor behaved in at least a quasi-official role as a Department member when interacting with another law enforcement agency over business involving his outside work. The finding was further supported by requesting that an allegation of extortion stemming from his outside employment be investigated by a special unit within PAPD. The investigator further found that the evidence supported a finding that the supervisor violated the Department's outside employment policy when he worked, in part, as a de facto security officer. Findings were sustained by the Department, yet no discipline accrued to the supervisor because by the time the investigation was completed, the employee was no longer working for the City of Palo Alto.

The investigator further found that there was sufficient evidence from the investigation to find that another PAPD supervisor violated policy when, during the extortion investigation, the supervisor permitted a taped copy of a pretext call to be released to the alleged victim company so that the tape could be readily transcribed. However, once the company gained possession of the tape, in addition to transcribing the tape recording, representatives of the company publicly released the contents of the tape. The investigator found that the supervisor violated the Department's policy on the release of confidential information. The Department sustained this violation of policy and held the supervisor accountable for this violation.

The IPA agreed with the handling of the case. The internal investigation was hampered by the refusal of certain key witnesses outside the Department to cooperate and be interviewed by the investigator. The investigation was otherwise thorough and objective.

Resolution/Corrective Action: Following this investigation, the IPA has encouraged the Department to revise and clarify its policy setting the allowable limits for

Police Department personnel to maintain employment outside the Department without coming into conflict with the interests of the Department and the City. PAPD is currently developing this policy.

7. Complaint of Unnecessary Force # C 2009-011

Synopsis: A woman who was detained after a traffic violation complained that she sustained injuries when officers tried to restrain her.

Resolution/Corrective Action: We reported previously that we had recommended that the Department notify the complainant of the results of the investigation by letter, offer to review the evidence with her, and provide her any further appropriate guidance on resolving her issues with the DMV. The lieutenant in charge of Internal Affairs has since met with the Complainant to accomplish the recommended process.

8. Complaint of Unjustified Arrest [No number assigned]

Synopsis: A community member complained to the IPA that she had been falsely arrested and charged with child endangerment.

Recommendation/Disposition: The IPA previously asked the Department to send the complainant a letter explaining the complaint investigation process. The Department did so and received a response from the complainant that she was ready to re-engage with the complaint investigation process. The Department assigned a special investigator to the case who made contact with the complainant and arranged to meet for a formal interview. The complainant failed to show up for this appointment and a new one was arranged. After some repetition of this pattern, the complainant failed to respond to inquiries and appears to have abandoned the investigation. The IPA agreed with the Department that it was appropriate to close the investigation.

**Table of Complaint and Internal Affairs Investigations
Reviewed by the Auditor
August 2010 through January 2011**

Case No.	Case/Investigation Type	Allegation	Results of Investigation	Resolution
C-2010-005	Citizen Complaint	Discourtesy and disrespectful treatment	Unfounded	Complainant informed of results
C-2010-006	Citizen Complaint	Rudeness and intimidation	Unfounded	Complainant informed of results
C-2010-007	Citizen Complaint	Traffic stop without cause	Unfounded	Complainant informed of results
C-2010-008	Citizen Complaint	Discriminatory traffic stop	Unfounded	Complainant informed of results
None	Citizen Complaint	Show of force	Unfounded	Complainant informed of results

Cases Pending from Previous Reports

C-2009-004	Citizen Complaint	Intimidation off duty & conflict of interest	Founded for main subject as well as supervisor	Main subject no longer with PAPD; supervisor received discipline
C-2009-011	Citizen Complaint	Unnecessary force	Unfounded	Complainant reviewed evidence
No number	Citizen Complaint	Unjustified arrest	Investigation re-activated but abandoned by complainant	Investigation closed

Conclusion

The PAPD has been extremely responsive to our suggestions that certain policies and procedures of the Department are in need of revision or clarification. It has also acknowledged that it simply does not have policies to address some significant issues and has worked with the IPA to address those gaps. In recent months, the Department has taken a fresh look at five major policies. At IPA's behest policies relating to Taser deployment in the field and pat downs of suspects, have been substantially revised and implemented. The air support policy was modified and improved on the Department's own initiative. The other two are still works in progress. We commend the Department on its resourceful and forward-moving attitude towards policy making. We will continue to monitor and write about these beneficial systems improvements as they are developed and implemented.