

Baumb, Nelly

From: Winter Dellenbach <wintergery@earthlink.net>
Sent: Sunday, June 13, 2021 3:27 PM
To: Council, City
Subject: Memo - Item number 7 - for Council Members - City Council Meeting June 14
Attachments: WD IPA Scope of Services.docx

To: City Council Members
From: Winter Dellenbach
6-14-21 City Council Meeting

RE: Item #7 – Expand IPA Scope of Services

1. Complaints by Members of the Public and Internal Affairs Investigations

A. Add Supervisor Inquiry Investigations (SIIs) to the Scope of Services

Complaints from members of the public shall include Supervisor Inquiry Investigations, which are minor complaints that are sufficiently investigated and resolved through expedited review (formerly Informal Inquiry Reports).

B. My Comments: At some point SIIs were created by the PAPD, carved out from Citizen Complaints, removed from IPA oversight, and supposedly restricted to simple complaints of misunderstanding and discourtesy requiring little investigation.

However, someone on staff made a wise decision that IPA oversight was needed given the course that SIIs were taking in 2018, and it was imposed in 2019. By this time, SIIs were being used for more complex Complaints that generated multiple IPA recommendations for change within the PAPD. (See end of this memo for examples)*

Now go to the police accountability URL below and compare two complaint forms – a short one on the screen applying to several categories of employees including sworn officers. This form is likely the one most complainants will fill out since it is on the screen.

<https://www.cityofpaloalto.org/Departments/Police/Accountability/Employee-Complaint>

Next on the screen, click on the “Complaint Packet” above the green employee complaint box. You will see 7 pages about Citizen Complaints. These always have had IPA oversight, and as you can see by law must be retained for 5 years for officer accountability. The Complaints comprise data PAPD reports to the City yearly.

In contrast, there is no information about SIIs Complaints available to the public on this site or elsewhere, not even in the Police Policy Manual (that the public doesn’t much look at, though Citizen Complaints are mentioned four times there).

C. My Questions - our IPA thinks SIIs can be alright, but there are other concerns we should know and understand that Supervisor Inquiry Investigations must conform to:

Is there a SIIs Complaint form that’s different than the Citizen Complaint form or does it always start as a Citizens Complaint?

Who decides if a Citizen Complaint remains or becomes a SII, the PAPD or the Complainant?

Is a SII's Complaint always retained for 5 years, and if it was gleaned from a Citizen's Complaint, is that original Citizen's Complaint also retained for 5 years?

Are all SII's included in PAPD's data tracking for reporting purposes, just as are Citizen Complaints?

Are SII's used to monitor employees as a Performance Indicator by the PAPD?

Note: Informal Inquiry Reports served this function, the former term for SII's. (PAPD Policy 1020.4.4)

Is there a written process/policy for SII's? If so, post it for the public to see on the Police Portal. If not, City Council, please require it be created now with the above concerns (and others?) in mind.

Update the online Complaint filing site to better inform the public of this two-track Complaint protocol once there is a written process/policy.

2. Taser Deployment and Other Reviews

Added Use of Force Reports and Injuries in the Draft Scope of Services

Issue: If changes are not made, some of the most vital oversight expansions by Council could be severely undermined or entirely lost through poor wording.

A. What Council Passed:

“Direct Staff to amend and expand the current Independent Police Auditor's (IPA) scope of services to include all administrative use of force reports where a baton, chemical agent, TASER, less-lethal\ projectile, canine, or a firearm is used, **and all cases where the subject's injuries necessitate any** treatment beyond minor medical treatment in the field.”

Council Action Minutes, 11-16-20, Motion as Amended Passed: 7-0

B. Compare your wording to this Draft Scope of Services language, pg. 2, (a) (b):

The Department will promptly notify the CONSULTANT of each Taser deployment when any of the following occurs, regardless of whether a complaint is filed or the Department initiates an internal affairs investigation:

(a) an officer deploys a Taser in an interaction with the public; **and**

(b) an officer uses a baton, chemical agent, less-lethal projectile, canine, firearm **or other force resulting in injury requiring treatment beyond minor medical care in the field.** [SEP]

C. My Comments:

The draft Scope of Services substantially changes Council’s intent for the IPA to provide oversight of more use of force categories as listed in your action minutes above. You list “injury” as a separate added category, not as a qualification needed for the other categories to apply. If this is not changed it will greatly undermine the increase in police accountability this offers under some critical circumstances.

For example, a person or group of people subjected to tear gas, or being shoved back with batons may not be injured to the point of requiring off-site treatment, but surely we can agree we would want the IPA’s oversight of such an incident.

To fix this:

To make the Draft Scope of Services align with Council intent is to either stick with Council’s original wording (easiest), or make the following changes:

In **(a)**, the word “**and**” should be deleted and replaced with “**or**” to better clarify that the list in **(b)** has no relevancy to a Taser being deployed or not.

For **(b)**, the clause in **bold** should be deleted and replaced by the wording passed by Council as seen in the above action minutes of November 16, 2020.

3. Timing, Review and Transmittal Publication of Reports

A.What Council Passed: Timely IPA Reports

Direct Staff to maintain an every six (6) months schedule for IPA reports to City Council containing reviews ready at the time of the report.” *Council Action Minutes, 11-16-20, MOTION AS AMENDED PASSED: 7-0*

B.Compare above to the Draft Scope of Services language, pg. 2:

“Department [Police] and CONSULTANT [IPA] acknowledge that accountability and public trust are served by prompt, accurate and thorough Departmental investigations and CONSULTANT reviews. Department and CONSULTANT also acknowledge that the time required for investigation and review varies depending on the facts and circumstances, including availability of witnesses, investigative resources, complexity, and the existence of collateral proceedings. Department and CONSULTANT commit to use diligence and reasonable efforts to complete investigations, reviews and public reporting in a timely manner. ^[1]_[SEP]”

CONSULTANT will produce two reports during each year summarizing its findings and reporting on each investigation and disposition. Effective June 1, 2021, CONSULTANT’S reports will be published as a City Council Information Report in February and August, except upon mutual agreement where unusual circumstances require. ^[1]_[SEP]By December 1 for the February report, and by June 1 for the August

report, CONSULTANT will transmit a Draft Report to the Department containing all matters CONSULTANT has completed since CONSULTANT’S most recent previous report. [L][L]
[SEP][SEP]

CITY and CONSULTANT will coordinate and use reasonable efforts ensure the Draft is reviewed and finalized for publication in February and August.

CITY reviews are for the purpose of completeness, accuracy, and compliance with law and procedure. CONSULTANT will consider CITY’s comments and will confer with CITY and attempt to reach a consensus. CONSULTANT will have final authority over the contents of the Final Report. If substantial issues arise with any matter, CONSULTANT shall consider pulling that matter for further work and publication in a subsequent report.

C. My Comments: Enough with the Excuses and Lukewarm Assurances

The truth is that it is exceedingly rare there is a legitimate reason for an entire IPA Report to be late. We saw it happen in 2019 because of the HR/IPA jurisdiction issue. Then things got bogged down which is why the Council wisely set a twice a year schedule for release of the IPA Report to it [and the public] – now February and August.

The IPA can’t finish a Report if others hold it up. The litany of excuses here would have been better left out. Just meet the deadlines – staff meets deadlines all the time. If a case really can’t be released in its “year”, it doesn’t excuse holding up the IPA Report that typically includes several types of case reviews, not just one. After your Monday meeting, it should contain even more.

A.What Council Passed: Twice Yearly Public Meetings with IPA after Reports

“Amend the contract to require the Independent Police Auditor (IPA) to meet with the City Council **in open session twice a year with each report.**” *Council Action Minutes, 11-16-20, MOTION AS AMENDED PASSED: 7-0*

B.Compare to the Draft Scope of Services language:

“Beginning in the second half of 2021, CONSULTANT shall meet with the City Council two times per year to discuss trends in criminal justice and policing, policy and training matters, recommendations made by CONSULTANT, and other Council concerns. CONSULTANT’S conferences with Council are not for the purpose of elaborating on published reviews of specific incidents and shall not include discussion of personnel matters prohibited by law. Semi-annual conferences shall be

scheduled after publication of the CONSULTANT'S report, according to availability of Council and the CONSULTANT." [L]
[SEP]

C. My Comment:

Write into the Scope of Services to make it totally clear: "...City Council meets in open session twice a year with each report".

****See above, 1. A. 2nd section, examples of SIIs reports***

City Manager Supplemental Report, 6-12 2018 Informal Inquires report:

Officer Conduct - An officer stopped the arrestee for a lawful traffic violation

Due to arrestee's evasive driving and uncooperative behavior, the arrestee was detained at gunpoint. Based on the circumstances of the stop, the officer's actions were consistent with Department policy.

Excerpt from 2019 IPA Report – Informal Inquiry Complaint Report

Allegation of Excessive Force During a Pat Down Search

The complainant, who was seated in the front passenger's seat of the vehicle and was the driver's sister, prepared a complaint form. She was also interviewed by a supervisor assigned to conduct an inquiry and made the following allegations in writing and/or during the intake interview:

- The officer was rude by opening the door after approaching the car.
- The officer placed her sister in the rear of his police car without Mirandizing her.
- The officer searched the car "for no reason".
- The officers asked them if there were any weapons in the car because they were African American.
- The officer left with an arrestee not in handcuffs.

RECOMMENDATION NINE: The supervisor should be briefed about the need to address every allegation raised by a complainant in his review and the need to base any justification for officers' actions on the evidence available.

Additional Issues Complainant interview not tape-recorded It is standard internal investigative practice to tape record interviews of complainants so that there is the "best record" of what was alleged and the fullest account of the complainant's narrative. In this case, the supervisor did not tape record the conversation and there is no explanation in the file for why this did not occur. PAPD should devise protocols to ensure that complainant interviews are recorded.

RECOMMENDATION ELEVEN: PAPD should devise protocols to ensure that all intake and follow-up interviews of complainants are tape recorded, and if extenuating issues make

this not feasible (such as complainants' refusal to be recorded), there should be documentation explaining this.

Notification Letter In advising the complainant of the disposition of this matter, PAPD sent a form letter with no information about what the Department did to investigate the complaint. It is an approach common among law enforcement agencies, largely because of confidentiality and efficiency concerns. But the downside to the lack of detail is that it easily contributes to skepticism about the thoroughness of the review and the legitimacy of the outcome. We have seen agencies address this dynamic by providing specific information that personalizes the response and reflects the due diligence that occurred. And those departments include language thanking the complainant for engaging and acknowledging the importance of public feedback. We mentioned this issue in our last report – in the context of encouraging PAPD to share its efforts in a case that it had reviewed quite carefully and thoughtfully. Providing additional information will make the process more meaningful to complainants and, given the small volume of cases.

RECOMMENDATION TWELVE: Whenever a review of an incident identifies gratuitous profanity being spoken by an officer to a civilian, supervisors should ensure an appropriate remediation.

RECOMMENDATION THIRTEEN: PAPD should consider providing more information and context in its closing letters, such as advising the complainant what investigative steps were taken and what sources of information contributed to the Department's conclusion.

Informal inquiries may include matters such as misunderstandings or minor issues of discourtesy. Historically these informal inquiries have not been included in the IPA's scope of work and as a result were not included in the 2018 IPA reports issued, but were included in the City Manager's Supplemental Reporting. However, beginning with the attached IPA report for calendar year 2019, and moving forward, these inquiries will be included in the IPA's review.