

CITY OF PALO ALTO OFFICE OF THE CITY CLERK

April 9, 2012

**The Honorable City Council
Palo Alto, California**

Independent Police Auditor Report for 2011

Please find attached the final report of the Independent Police Auditor for 2011.

ATTACHMENTS:

- : IPA Final Report (PDF)

Department Head: Donna Grider, City Clerk



POLICE AUDITOR'S FINAL REPORT – 2011

Presented to the Honorable City Council City of
Palo Alto March 28, 2011

Prepared by Michael Gennaco
& Robert Miller
OIR Group
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Palo Alto Independent Police Auditor's Final Report for 2011

I. Introduction

This report is the second of two reports covering the fifth 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 Interim Report for 2011 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 would also include the Auditor's review of all applications of the Taser by PAPD personnel in the course of detention and arrest of suspects during the last half year, but, for the third report period in a row, there have been no applications of the Taser.

Recommendation for Disclosure of PAPD Members Who Are Arrested

In our last report, we referred to the question of whether and when it is appropriate to release the name of an employee of the Department in the event that he or she is arrested. This has been a matter of discussion within the Police Department, the City, and the Palo Alto community. We recommended that the Department develop a clear protocol that could guide disclosure decisions in the future and we submitted a draft policy for consideration by the Department and the City. [See Police Auditor's Interim

Report for 2011.] Currently, the City and the Police Department are considering this proposal.

II. Complaints, Cases and Issues

1. Complaint of Excessive Force and Improper Search #C 2011-06

Synopsis: Officers were called to the scene of a verbal dispute between a man and a woman. An officer and an agent arrived and approached a couple yelling at each other in a pedestrian tunnel. The woman had a bandaged hand and the man had a bleeding lip. Based on the odor of alcohol and their appearance, they appeared to have been drinking. They did not separate or sit on the pavement when instructed to do so by the officer. The officer put his hand on the woman's shoulder to guide her away from the man. The woman did not move but pushed the officer in the shoulder. The officer grabbed the woman's hand as she pushed him and placed it in a wrist lock. With her free hand, the woman punched the officer in the jaw. The officer elbowed the woman in the jaw and took her to the pavement and handcuffed her. A sergeant arrived and helped restrain the woman who was kicking her feet, then helped stand her up and walk her out of the tunnel to a patrol car.

Meanwhile, the agent had approached the man, who started yelling that he was being harassed. The agent asked him to take his hand out of his pocket. When he did not comply, the agent grabbed his wrist and spun him around to attempt to handcuff him. The man tried to twist away. Since the officer was struggling with the woman at the time, the agent applied a wrist lock and ordered the man to the ground. When the man did not comply, the agent took him to the ground and struggled to handcuff him. With his free hand, the man appeared to be using his cell phone to try to photograph or video the struggle between the officer and the woman. The agent took the phone out of the man's hand and was able to handcuff him. The agent called for emergency assistance. Another officer arrived and helped the agent put the man on his feet and walk him to a patrol car. After the struggle, the man complained of pain in his wrists and ankles but did

not want any medical attention. The man was booked for public drunkenness and resisting/obstructing arrest and the woman for battery on a peace officer and resisting/obstructing arrest.

The day after the arrest, the woman went to the hospital and was examined in the emergency room, treated and released. She later turned over her hospital documentation to the police. It indicated that she had been diagnosed as having contusions in several places and an old laceration that was not sutured. Later that day, the woman and the man went to the police station to file a complaint and retrieve their personal property. The woman was wearing a neck brace. They were told by a lieutenant that their property would be returned to them except for the man's cell phone which was being retained as photographic evidence of the encounter. The lieutenant asked them to fill out a complaint form, which the man began to do, but then stopped and crossed out his name. The lieutenant asked to interview the man and woman separately, which they declined. He offered to interview them together. They refused to engage in a recorded interview at all saying they were distrustful of the police and insisted they needed to see the police reports before they would make statements. They both said they had been injured during the encounter. The woman at first offered to let the Department see and photograph the injuries, then rescinded this consent. The man would not allow a photograph of the bruise he described on his back. The woman claimed that she had been unnecessarily searched by a male officer who had touched her breasts. The man complained that the officers had not spoken to them in a professional manner. Before they left the station, the lieutenant gave the couple a computer printout showing the place, date, time and booking charges related to the incident and had the names of the involved officers hand written on the paper. The couple did not contact the department again about their complaints.

Recommendation: The auditor reviewed the police reports, medical reports and the complaint intake documentation of Internal Affairs. While the man and woman appeared to be intent on filing a complaint when they went to the police station, they refused to make a statement, fill out a complaint form, engage in separate recorded interviews, or engage in a recorded interview together. None of these things is indispensable to the complaint filing process, but neither complainant would explain what they were alleging until they obtained copies of the police reports in the case. They were

appropriately refused because the case had not yet been submitted to the district attorney for filing yet. The man and woman left, stating that they would pursue the complaint through other means. After waiting a few days, a Department executive decided to suspend the complaint investigation. The Auditor concurs with this decision for the time being, but as has been PAPD's policy in the past, if the complainants decide in the future to follow through with the process and enumerate their allegations, the Department should re-open and complete the complaint investigation. In the meantime, the Department should return the cell phone as soon as it is no longer required for evidentiary purposes.

2. Complaint of Discourtesy, Improper Application of the Law and Unprofessional Conduct #C 2011-07

Synopsis: Theater employees called 911, alleging that a man was handing out pamphlets in front of the theater door, harassing patrons and creating a disturbance. Officers talked to the pamphlet distributing man and theater employees, determined that there was no illegal activity and departed. The pamphleteer later complained that he had been threatened with arrest and treated in a rude and unprofessional manner by officers. The complaint investigation by Internal Affairs is ongoing. The Auditor will review the case when it is completed.

III. Cases Pending from Prior Report

1. Complaint of Biased Enforcement and Improper Search #C 2011-001

Synopsis: An officer on patrol at night observed a car without a working license plate illuminator light and pulled the car over. The officer approached the car, informed the driver of the missing light and asked him for a license and identification. The officer also asked the driver if he was on probation or parole. It is not clear whether the driver answered that question, but the officer returned to his patrol vehicle to learn the driver's license status. He received information that the driver was currently on active probation and that one of the conditions of probation was that the probationer was required to

submit to a search when requested by law enforcement officers. The officer took this information back to the driver who insisted that his probation did not in fact carry a search condition. The officer nevertheless asked the driver to step out of the vehicle so that he could perform a probation compliance search. The officer performed a brief search of the interior of the car while a partner officer who had arrived shortly after the stop did a pat down search of the driver and a search of his pockets. The searches did not produce anything of interest to the officers and when the lead officer was told he could not open the car trunk without a screw driver, he did not pursue it any further. This officer filled out a fix it ticket for the license plate light and sent it to the registered owner of the car, who was not the driver. The driver was given his identification and belongings and allowed to depart in the car.

Later that day, the driver filed a complaint on line with the Police Department indicating that he felt that he had been pulled over only because he was driving a 1976 Chevrolet Nova and is African American. The complaint was assigned shortly thereafter and the driver was interviewed by Internal Affairs a week after the traffic stop incident.

We note that, in following up on the citizen's complaint, the investigator completed a thorough investigation and notified the complainant of the Department's findings within less than two months following the complaint. During the interview, the investigator also showed the MAV video of the entire stop to the complainant and gave him a copy of the computer record that the original officer had viewed in order to determine that the driver's probation status carried a search condition.

Recommendation: The Auditor reviewed the reports and documentation related to the traffic stop as well as the internal affairs investigation documents and reviewed the MAV video. The traffic stop appears to be based on a minor, but clear-cut violation of the requirement to have functioning license plate illumination. The officer told the driver at the outset that this was the reason for the stop. The subsequent investigation was performed in a courteous and business-like manner by the officer. It is not surprising that the officer would act on the information that the probation search condition allowed a search of the driver without a warrant, probable cause or consent. Probation search conditions are based on the tenet that persons on probation do not have the full panoply of Fourth Amendment rights that citizens who are not on probation have. Federal and

California courts have recently affirmed this principle and imposed few restrictions on law enforcement's pursuit of a probation search. PAPD policy however does place some important restrictions on an officer's motives and actions during such an encounter. First, the stop must be based on objective facts that point to a possible violation of law and not on race or ethnicity. Among other requirements, the officer must remain courteous, inform the driver of the reason for the stop before asking him for license and registration, and not prolong the detention any more than necessary. [Palo Alto Police Department Policy 402.2]

Our review of the MAV video and other materials makes it clear that the officer turned his headlights off momentarily to determine that the license plate lamp was out before he pulled the driver's car over. Both involved officers also conformed to the Department's other requirements. Moreover, the entire stop took approximately sixteen minutes.

It is also notable that the complaint investigation was completed quickly. This is an important way for the Department to show members of the community who object to specific actions by officers that the Department is responsive and serious in addressing the citizen complaints. Another benefit of thorough but rapid investigations of citizen complaints is that, when investigations show shortcomings in procedures or officer behavior, Department managers can remediate the problem or seek accountability close in time to the incident.

Resolution/Corrective Action: The Department has notified the Complainant of the results of this investigation.

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**Table of Complaint and Internal Affairs Investigations
Reviewed by the Auditor August 2011 Through January
2012**

Case No.	Case/Investigation Type	Allegation	Results of Investigation	Resolution
C-2011-01	Citizen Complaint	Improper vehicle stop; biased enforcement	Unfounded	Complainant informed of results
C-2011-06	Citizen Complaint	Excessive Force and Improper Search	Complaint deemed withdrawn	N/A
C-2011-07	Citizen Complaint	Discourtesy, Improper Application of the Law and Unprofessional Conduct	Investigation not yet complete	Pending

Conclusion

We mentioned in our last report that a number of managers in the Department would be retiring soon, including the lieutenant in charge of Internal Affairs. We anticipated that this might challenge the ability of PAPD to maintain quality and continuity in internal affairs investigations. We are pleased to observe that recent investigations appear to be of good quality and have been completed promptly. Internal Affairs has evidently experienced some transitional confusion and, due in large part to the transfer of IA functions to new personnel, has been somewhat tardy in its communications with the Auditor. We are hopeful that these minor problems will prove to be ephemeral.

Gonsalves, Ronna

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

12 MAR 29 PM 5:31

From: Grider, Donna
Sent: Thursday, March 29, 2012 9:01 AM
To: Council, City
Cc: Keene, James
Subject: FW: IPA Final Report for 2011
Attachments: POLICE AUDITOR'S FINAL REPORT - 2011.pdf

Attached please find the latest report from the Police Auditor. It will be included in the packet going out next Wednesday.

Donna



Donna J. Grider, MMC, City Clerk
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Please think of the environment before printing this email – Thank you

From: mccune.miller@gmail.com [mailto:mccune.miller@gmail.com] **On Behalf Of** Robert Miller
Sent: Wednesday, March 28, 2012 9:01 PM
To: Keene, James
Cc: Burns, Dennis; Grider, Donna; Larkin, Donald; michael.gennaco@oirgroup.com
Subject: IPA Final Report for 2011

Jim,

Here is the final report of the Independent Police Auditor for 2011. This covers the PAPD investigations we have reviewed over the six months since our last report, which came out in September. Please let us know if you have any questions or if the City Council would like us to appear on the report. I have sent a previous draft to Chief Burns. We have also copied Don Larkin and the City Clerk, Ms. Grider so that she may include it in the the next City Council packet, as per past procedure.

Thanks

Rob Miller

Michael Gennaco

IPA for City of Palo Alto