

INDEPENDENT POLICE AUDITOR'S YEAR-
END REPORT --- 2012

Presented to the Honorable City Council
City of Palo Alto
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I. Introduction

This is the second of two reports covering the sixth year in which the Independent Police Auditor (“IPA”) has monitored the internal review processes of the Palo Alto Police Department. It covers activity from the second half of 2012. During that period, the Department conducted two citizen complaint investigations and reviewed two different uses of force involving the Taser. The Department has completed its initial investigation into all four of these incidents. Two are discussed in detail below. For the other two, the IPA has requested further information, and a discussion of the relevant final outcomes and recommendations will appear in our next Report.

II. Taser Deployments

A. T2012-02

Factual Overview

Officers responded to a call for service at a large public park in the late afternoon. The park was hosting a festival that attracted a substantial crowd (several hundred people). A security guard at the park had called “911” call, concerning vandalism in the parking lot. A male suspect was allegedly intoxicated and breaking mirrors of parked cars.

Upon arriving at the scene, the officers met up with the security guard, who pointed out the suspect to them. When the officers attempted to detail the suspect, he allegedly fled from them, then “squared off” with the officers and physically resisted their attempts to take him into custody – including punching one of the officers in the head.

Though the officers – aided by the security guard – managed to take the suspect to the ground, he continued to struggle, and the officers were initially unable to handcuff him. Meanwhile, a significant portion of the crowd began to take an interest in the proceedings; this intensified the officers’ sense that a quick resolution would be beneficial.

It was at that point that one of the officers made the decision to deploy his Taser for one 5-second application. Shortly thereafter, the officers were able to cuff the suspect, though he remained uncooperative and verbally belligerent as they attempted to place him in a radio car and remove him from the scene.

The Taser probes landed in the suspect’s sweatshirt and apparently did not break the skin. Nonetheless, he was evaluated by paramedics and eventually transported to the hospital, where he was cleared for booking. He suffered minor

scrapes and abrasions in the struggle; he also took an alcohol-screening test that revealed a considerable level of intoxication.

The Department conducted its standard review of the Taser deployment, which included the officers' reports, a taped interview with the suspect, numerous witness interviews, and a variety of recordings – including camera footage taken by the Taser itself. It determined that the force was reasonable and in-policy – a decision with which the IPA concurs.

IPA Analysis

The suspect turned out to be a juvenile (17 years old) – a fact which was not known to the officers at the time of arrest, and which may have affected the determination to use the Taser. However, the size (listed in reports at six feet, 190 pounds and strength of the suspect, in conjunction with his level of aggression, contributed plausibly to their belief that he was older. These same factors, of course, also contributed to the validity of the officers' perception about the need for the Taser.

The officer who deployed the Taser did not provide a verbal warning prior to doing so, though Department policy calls for such a warning to be given “when practicable” so as to give the suspect an opportunity to respond. The involved officer addressed this decision in his report and offered legitimate rationales for believing he had to move quickly in an effort to resolve the situation.

The involved officers' in-car camera systems did not capture the actual use of force. This was a function of the distance between where they parked and where they actually encountered the suspect. In the case of the officer who used the Taser, his system shut down abruptly and completely while he was still in the parking lot and before he located the suspect. This seems to have been a mechanical issue that the officer could not have helped, and does not suggest any intent to avoid the accountability provided by recordings.¹ Moreover, the numerous eyewitness versions of this event are largely consistent, and the suspect himself made several statements acknowledging his intoxication and failure to cooperate.

Conclusions:

The Department's review was extremely thorough. It covered all aspects of the incident in a thoughtful and methodical way, and touched on the relevant standards and requirements of the Taser policy. The conclusions it reached were

¹ As for the Taser camera itself, there are approximately two minutes of footage that are of marginal quality, with considerable rolling around on the ground from an inconclusive vantage point. The audio does reflect the suspect's vehemence and the crowd's consensus that he needed to calm down and stop resisting.

legitimate and supported by a substantial body of evidence. In short, it reflected rigorous scrutiny in balance with fairness to the officer who deployed the Taser.

B. T2012-03

During this reporting period, there was an additional activation of a Taser during an apprehension of an individual believed to have stolen or received stolen property. Because IPA has requested additional information with regard to this incident, we will report on PAPD's investigation and review of this use in our next semi-annual report after we have received and considered the additional information.

III. Complaint Investigations

A. Case # C2012-03

Palo Alto officers responded to a call for service involving a domestic disturbance between an adult male and his adult female guest. The dispute revolved in part around the man's concern that the woman was not in a condition to drive after having consumed alcohol during the evening. The parties were able to resolve the situation and the woman left in a cab; no criminal report was taken.

The next day, the woman returned to the same location and discussed the matter with the man. Both were embarrassed by what had occurred and by having inconvenienced the police. Accordingly, she contacted one of the handling officers to express her remorse about the incident. Since the officer was not working, she left a voicemail message for him that included her cell phone number.

Several days later, she received a text message from the officer that accepted her apology and included an offer to join him for "Drinks?" The woman asserted that this text message offended her, since it had not been her intention to cultivate a personal relationship with the officer. Both she and the man from the original incident ended up filing a complaint with the Department.

The Department's investigation revolved around an interview with the involved officer. He acknowledged having sent the text message at issue. Though he believed (apparently incorrectly) that his invitation would be well received, it was deemed inappropriate and a violation of Department policy. He was formally counseled by Department management. OIR considered this an appropriate resolution under the circumstances.

IPA Analysis and Recommendation:

The Department moved quickly and appropriately in responding to this complaint. It conducted a thorough and effective investigation into the allegation, and reached a legitimate conclusion in determining that the employee had violated

policy. While the involved officer's actions were not particularly egregious (and went no further than the single text message), and while the call for service at issue had been resolved with no further loose ends, the message moved a professional encounter into a personal realm in a way that reflected unfavorably on the Department and turned a positive impression into a negative one.

The IPA did ask the Department about the relevant policy regarding the "solicitation of a personal or sexual relationship while on duty or through the use of one's official capacity." The policy turns on the solicitation having been "unwelcome." In the IPA's view, it is potentially problematic for a citizen's subjective reactions to dictate the Department's approach in this arena. In other words, even a *welcome* solicitation of a relationship that originates in a police contact is likely to create an unprofessional dynamic, particularly if and when the relationship goes bad.

Given the woman's stated reaction to the message, the outcome was not affected in this case. The Department also has a "catch-all" policy for unbecoming conduct that does reflect an objective standard, and could be used where necessary. Additionally, the Department has represented to the IPA that the policy has not created an issue or confusion in the past.

Nonetheless, the IPA encourages the Department and the City Attorney to revisit the history behind the relevant policy, and consider whether clarification or other change might be beneficial.

B. Case #C2012-02

During this reporting period, there was a complaint of discourtesy against an officer who was responding to an assault call. Because IPA has requested additional information with regard to this incident, we will report on PAPD's investigation and review of this complaint in our next semi-annual report after we have reviewed and considered the additional information.

IV. Conclusion

The IPA had the opportunity to meet in December with Chief Burns and some of the new supervisors with responsibility for complaint investigations. The IPA also met with the City Attorney, City Manager, and representatives of the police union. These exchanges were helpful in clarifying areas of concern as well as establishing lines of communication as the monitoring process continues into its seventh year.