

# Palo Alto Police Auditor

## Final Report for 2006/2007

### **I. The Second Report**

This report is the second of two reports covering the first year of the Police Department Auditor pilot project. It reports on investigations initiated since the publication of the Interim Report and provides updated information regarding investigations that had not yet been fully resolved at the time the Interim Report was released.

The Auditor completed the first year of the pilot project using similar methods and procedures discussed in the Palo Alto Police Auditor Interim Report (“Interim Report”). Additionally, since the publication of the Interim Report, the Police Department has worked out procedures for transmitting audio and video files to the Auditor when needed for the evaluation of an investigation.

Finally, 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 how the Department has addressed racial profiling allegations and suggested ways to increase transparency, increase the Auditor’s profile so that more persons can be aware of and take advantage of the program, and provide more user friendly ways for the public to file complaints and commendations and learn about the outcome of any complaint.

## II. Complaints, Cases and Issues

### 1. Complaint of Reckless Driving - #C-2007-001

**Synopsis:** A resident observed an officer driving an unmarked police car up a main thoroughfare at high speed at mid day. The car had activated its siren and some lights, but was driven recklessly, in the opinion of the resident, who complained to the Department. The Department reviewed the emergency call, the conditions of the road (which was under construction), the officer's driving pattern, and concluded that the complaint was, in part, justified. The officer was responding to a request for assistance from a neighboring police department which had sighted a man with a gun in the vicinity of a suspected robbery. The officer engaged in emergency driving procedures but failed to follow some Department emergency policies and continued to drive in emergency mode even after he got lost.

**Recommendation:** The investigator conducted a particularly timely and thorough investigation in this case, collecting all the appropriate documents and videotapes and interviewing the complainant and the officer. An investigation with ample evidence from which Department managers could fairly evaluate the complaint was completed within two weeks of the incident. This sets a laudable example and high bar for other Department investigations of this nature. The investigator also discovered limitations in the in-car video system (Mobile Activated Video "MAV") that make it difficult to determine average speed. Nevertheless, Department managers were able to conclude that the officer had violated policies and training by failing to clear intersections properly, passing slower traffic without using required procedures and remaining in emergency driving mode while searching for the correct location.

We recommend that the Department determine the best methodology for using the MAV system to assist speed estimates as this may be a promising source of evidence in standard criminal and traffic investigations.

We concurred with the Department's findings and discipline decision and recommended that the officer receive re-training in the emergency driving and the response to calls policies. We also recommended that the complainant be contacted and

informed of the Department's response to the complaint, consistent with the disclosure restrictions imposed by law.

**Resolution/Corrective Action:** The Department imposed a formal written reprimand on the officer, agreed to fashion appropriate re-training in line with the Auditor's recommendation and to confirm that the complainant was informed of the results of the investigation.

## **2. Complaint of Racial Profiling - #C-2007-002**

**Synopsis:** An officer on traffic duty drove behind a truck and observed it make a lane change without signaling. The officer pulled the truck over and issued the driver a citation. The two occupants of the truck were African American men. The driver felt that the vehicle code violation was a pretext for the stop and that he had been pulled over because of his race. He related this to the officer and later came to the police station and lodged a complaint with the Chief of police. The Department commenced an investigation of the complaint. A week later the officer and the complainant happened to meet and had a brief conversation which led to a formal meeting at the station three weeks after that. In the course of these meetings the complainant indicated that he did not want to pursue the complaint, but still felt wronged. Nevertheless, the Department completed the investigation.

**Recommendation:** The investigator did a thorough job assembling the pertinent documents and videotape. She also took full advantage of the Department's statistical database and enlisted a crime analyst to assemble an extensive archive of the officer's voluntary stops and citations over a three and one half month period prior to the incident. These were further broken down by the apparent race of the person contacted. With respect to the officer in question, the results showed no pattern of disproportionate attention to a particular race and demonstrated that in fact his stop and citation pattern exhibited a wide distribution among races. This statistical material in conjunction with the video and audio recordings of the officer's stop in this case as well as the subsequent interviews of the complainant and the officer, provided Department decision-makers with

sufficient bases to make a conclusive finding in this case. The Department found the allegation of racial profiling to be unfounded. The Auditor concurs with that finding.

We find it commendable that both the Department and the officer were receptive to the complainant's request to talk directly to the officer about the substance of the complaint. This type of informal mediation provides no guarantees of a mutually satisfactory resolution, and in this case it was only partially successful. The officer believed that he gained useful perspective from the meeting and the complainant expressed sympathy for the officer and asked to withdraw his complaint. However, as a result of the discussion alone, the complainant appeared to remain convinced that he was racial profiled by the officer. In view of the lingering concerns expressed by the complainant, we recommend that the Department explore ways to share its statistical research on the officer's pattern of stops with the complainant. We discuss this recommendation further in the Conclusions section below.

We note that, in the course of this investigation, the investigator sometimes joined in debate with the complaining party and seemed to advocate on behalf of the officer. This may have been motivated by a well-intentioned effort to informally mediate the issue and resolve the complaint at an early stage. While some efforts to clarify the complaint or provide information about the basics of police procedure may be appropriate at the intake stage, the investigating officer must be careful during the fact gathering stage of an investigation not to cross the line from providing information to advocacy. Accordingly, we recommend that Internal Affairs clarify its procedures for complaint investigations and make sure that investigators do not form or articulate an opinion before completing the fact gathering phase.

**Resolution/Corrective Action:** The Department finding on the charge of racial profiling was "unfounded." The Auditors concurred with this finding. The Department additionally agreed to counsel the investigator of this complaint regarding the need for separation of fact gathering and resolution efforts in investigations of this type. The Department also agreed to evaluate the Auditor's proposal to share the gist of the results of its statistical analysis of officer contacts with the complainant in racial profiling cases.

### 3. **Complaint of False Statements in a Traffic Collision Report - #C-2007-003**

**Synopsis:** A transit system bus and a private SUV had a minor collision. The officer who responded to the scene took a report, evaluated the accident, and concluded that the bus driver was the party at fault. One bus passenger was treated at the scene for an injury. The officer did not issue any citations in connection with the incident. The bus driver sent a letter of complaint about the officer's report, alleging that he had done sloppy work and pre-judged the whole situation and asserting that the officer's supervisor had been indifferent to his concerns and engaged in a cover up. Additionally, the bus driver alleged that the officer had bullied the injured passenger out of asking for medical attention. The complainant pointed out that, since he was on probationary status as a new bus driver, the consequences of the assignment of fault were significant to his career. The Department assigned a complaint investigator who interviewed Department personnel, went to the scene with a traffic collision expert from another agency, and attempted to interview the complainant. The complainant declined to participate in an interview. Later in the investigation, the Department discovered that there was an in-bus video that may have recorded some of the incident. Department investigators were ultimately able to obtain the video tape of the incident recorded by the transit system's passive surveillance system. The video was consistent with the officer's evaluation of the accident. It also showed a passenger being attended by medical personnel at the scene.

**Recommendation:** This case demonstrates that even routine police work can have a significant effect on the lives of the people involved. We were impressed in this case that the Department understood this principle. Investigators and managers sought expert opinion from another agency which specializes in collision analyses as a reality check on its own work. The Department also agreed with the expert that the officer had cited an inappropriate Vehicle Code section in his report: "[Failing to] yield the right of way from an alley or private driveway." The more accurate section was "Unsafe Start." This did not, however affect the ultimate question of fault for the collision. The Department determined the complaints of false statements in a report by the officer and indifference and cover up by the supervisor to be unfounded.

The Auditor concurred with these findings. The assignment of fault in a traffic incident often involves a judgment call. While it is conceivable that informed people could differ in their conclusions about the accident, there is no indication that the officer was either deceptive or unprofessional in his evaluation of the accident. The finding by the Department was buttressed by the work and assessment of the outside agency. During the course of the investigation, the citing officer was counseled with regard to citing the incorrect Vehicle Code section in his report.

We recommended that the Department ensure that the complainant receive a copy of the collision report prepared by the outside agency. We also recommended that the Department offer to show the video to the complainant. We further recommend that the Department establish procedures with the relevant transit companies so that it can be informed of and obtain surveillance videos at the earliest stage of any investigation involving public transit. Finally, we recommended that the Department seek to develop protocols with those public transit companies so that transit company managers can ensure cooperation of their employees in any internal (or any other type) of investigation conducted by Palo Alto PD.

**Resolution/Corrective Action:** The Department agreed to pursue all of our recommendations.

#### **4. Complaint of Excessive Force - #C-2007-004**

**Synopsis:** Police officers were called to a hospital by medical personnel when an elderly 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. 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. The woman later filed a civil claim against the city alleging that the officers had used force on her, injured her, falsely arrested her then released her. When Department executives became aware of the claim, they decided to initiate an investigation. That investigation is still ongoing at the time of the writing of this report.

**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. Claims and lawsuits are often, in essence, simply a police misconduct complaint from a community member with a price tag attached. Viewed as such, they should be treated as formal complaints that allege misconduct in the same way as if the complainant had visited the Police Department directly. Moreover, prompt fact collection by the Department into the claim or lawsuit will leave the City better prepared to deal with any ensuing litigation, regardless of the outcome of the internal investigation.

##### **5. Complaint of Racial Profiling - #C-2007-005**

**Synopsis:** A bystander watched an officer get out of his police car and make contact with two young African American men on a bicycle. He saw the officer frisk the young men, converse with them and release them. The bystander then approached the young men and asked them why they thought they had been stopped. One of them said it was because of his race. The bystander wrote a letter to a local newspaper about the incident. When Department managers read the letter in the paper, they decided to treat it as the equivalent of a citizen complaint of racial profiling and launched an investigation. The investigation included a thorough review of the detention of the two men and the reasons for it. The investigator also compiled a large base of statistics surveying the ethnic pattern of hundreds of contacts initiated by the officer in question over a 3 ½ month period. The Department then responded directly to the complainant and shared some of the results of the investigation. The complainant was ultimately satisfied that there was a legitimate reason for the detention as opposed to being racially motivated and expressed regret over his initial conclusion.

**Recommendation:** The Auditor found the investigation thorough. A conscientious racial profiling investigation usually calls upon the investigator to examine both the circumstances and details of the detention in question and the officer's general pattern of detentions. The investigator probed both of these issues sufficiently to provide a relatively clear factual picture in a subject area that often remains frustratingly murky.

The Department found no basis for concluding that the officer had engaged in racial profiling. The Auditor concurred with this result because the evidence showed there were legitimate legal reasons to briefly detain the young men, the officer was courteous during the stop, the detention was professional and not unduly intrusive, and the officer who initiated the stop did not have a pattern of detentions that indicated racial bias.

**Resolution/Corrective Action:** The Auditor noticed some factual errors in the assisting officer's report (not materially affecting the racial profiling question) and recommended that those be researched and corrected so that all information about the incident could be accurately reported. The Auditor further recommended that these factual mistakes be brought to the attention of the report writer. The Auditor also recommended that the Department share the results of its statistical survey of detentions – within the confines of legal disclosure – with this and other racial profiling complainants in the future. The Department agreed to all of the Auditor recommendations.

#### **6. Miscellaneous Complaint - No Number**

**Synopsis:** A community member has made numerous complaints alleging misconduct and substandard service by the Department, among these that he was falsely investigated for a sex crime, that he is not being properly protected from an aggressive and threatening neighbor, and that the Department has not responded properly to his lawful subpoena and information requests. At times, the Department appears to have engaged the community member in constructive dialogue about these issues but to date has not opened up any formal complaint investigations.

**Recommendation:** The Auditor will continue to monitor these expressions of dissatisfaction and will recommend that the Department commence an investigation if a colorable complaint is made and that can be appropriately handled through internal investigations mechanisms rather than the courts.

#### **7. Miscellaneous Complaint - No Number**

**Synopsis:** A community member has contacted the Auditor on several occasions regarding a complaint that appears to relate to Department activity. The complainant,



however, has provided very little information and has not responded to questions. The information relates to a workplace violence situation that had been handled by Department personnel a few years ago and may have involved the arrest of the complainant. The only identified officer named by the complainant has retired from the Department. The Auditor will continue to attempt to communicate with this complainant and endeavor to discern if there is a tangible matter that can be referred to Department investigators.

#### **8. Retirement of Officer Following Misdemeanor Arrest - No Number**

**Synopsis:** While off duty, an officer returning from a vacation was stopped for speeding by an outside law enforcement agency and ultimately arrested for driving under the influence of alcohol. In accordance with Department policy, the officer informed the Department of the arrest. Ten days later, the officer also informed the Department that he would be retiring immediately. The criminal DUI case proceeded but the Department did not actively pursue an administrative investigation or discipline in view of the officer's imminent retirement.

**Recommendation:** The Auditor concurred with the Department's decision not to initiate an administrative investigation so long as a memorandum memorializing the circumstances of the pending criminal case was placed in the officer's permanent personnel file.

**Resolution:** The Department placed a memo describing the circumstances at the time of the officer's retirement in his permanent personnel file.

### **III. Cases Pending from Interim Report**

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

**Synopsis:** In preparation for his vandalism trial, a defendant reviewed his arrest report and complained that the arresting officer's report omitted crucial facts about the prosecution witnesses' ability to observe the alleged crime. The complaint was referred

to Internal Affairs. IA informed the complainant that it could not open an investigation that concerned the essential facts of a crime, while the crime was being prosecuted. The complainant contacted the Auditor directly and we agreed to confer with the Department about the feasibility of proceeding with the complaint investigation.

**Recommendation:** The Auditor agreed with the Department that an active investigation of this nature while the criminal case against the complainant was progressing would be counterproductive and might interfere with the District Attorney's preparation for trial and with the pretrial discovery processes. It is problematic to conduct an investigation into allegations that go directly to the integrity of the evidence of the crime while that prosecution is ongoing. Moreover, the ongoing criminal proceedings themselves provide a vehicle with which the complainant can attack and address the concerns he has registered about the arrest report. Finally, if the criminal proceedings uncover issues surrounding the allegations raised by the complainant, that information can become the basis with which the Department can review the allegations without the attendant risk of compromising or unduly influencing the then-concluded criminal proceedings.

That being said, we felt it important that the Department open an investigative file in the matter but hold the investigation in abeyance until the resolution of the criminal case in court, and that it inform the complainant in writing of its intentions. The Department agreed with our recommendations and plan of action.

**Resolution/Corrective Action:** The Department informed the complainant of its plan to hold the investigation in abeyance. The auditor also contacted the complainant and explained this action and the underlying reasons for it. As of this writing, the underlying criminal case trial is still pending before the court. Pretrial motions are before the appellate courts. This complaint investigation, therefore, remains in abeyance pending the criminal litigation.

#### **10. Complaint of Discourtesy - # C-2006-011**

**Synopsis:** In the course of the complainant's dialogue with the Police Department regarding the above complaint, the complainant felt that one of the

supervisors he talked to treated him rudely and dismissively. When he sought to file a discourtesy complaint against the supervisor, the Department expressed reluctance to immediately proceed on this complaint for the same reasons that forestalled an active investigation in the above-noted case. The Department discussed the matter with the auditor and the complainant again contacted the auditor directly.

**Recommendation:** We concluded that there was no practical or legal bar to proceeding immediately on the investigation of this second complaint because, unlike the initial complaint, the alleged misconduct was not dependent on nor intertwined with the underlying facts of the complainant's arrest. Since the allegation was segregable from the criminal proceedings, we recommended that the Department proceed with the investigation.

**Resolution/Corrective Action:** The Department agreed with our recommendation and the investigation as to the discourtesy allegation was completed. The investigation was sufficient, but hampered by the fact that some of the conversations between the supervisor and the complainant were recorded, but one was not. In the recorded conversations, the supervisor is cordial and informative. As to the unrecorded telephone conversation, the supervisor's and the complainant's recollections differ starkly as to what was said and how it was said. In view of the evidentiary impasse, we recommended that the Department reach a finding of "not sustained" on the allegation rather than their tentative finding of "unfounded." We also recommended that the Department clarify its telephone interview procedures for conducting complaint investigations. We suggested that those procedures should discourage unrecorded calls to complainants except in urgent or unusual circumstances, recordings should include a contemporaneous statement of date and time of call on the tape, and interviewers should avoid being drawn into discussions of the merits of related criminal cases or issues of criminal discovery. The Department has agreed to these recommendations.

#### **11. Complaint Regarding Inadequate Response – No Number**

**Synopsis:** A community member contacted the Auditor because she felt that the Police Department was unlikely to be receptive to her complaint. She alleged that she

has an extremely loud and disturbing neighbor who conducts band practice and loud parties next door. She has called the police many times over the last three years. They respond but do not resolve the situation. The complainant feels that the police are biased in favor of the neighbor, and that in one instance, a supervisor “laughed off” her problem.

**Recommendation:** The Auditor took the information from the complainant, conveyed it to Internal Affairs and requested that the Department investigate the complaint and determine whether there have been previous offers of mediation facilitated by the Department. In the course of reviewing this and other complaints from the complainant, the Department determined that it would be more constructive to provide a consistent liaison to the complainant than to simply review one instance of dissatisfaction with police service. A sergeant was assigned as a liaison to the complainant who would be familiar with her concerns. Currently, this sergeant responds to the scene whenever police are called to the complainant’s location. The auditor, after conferring with the department on this matter and with the assigned Sergeant liaison, agreed that this approach might be a more meaningful way of addressing the complainant’s concerns. The auditor will continue to monitor this creative resolution.

**Complaint and Internal Affairs Investigations Reviewed by the  
Auditor  
March 2007 through August 2007**

Case No.	Case/Investigation Type	Allegation	Results of Investigation	Resolution
C-06-011	Citizen Complaint	Discourtesy	Not Sustained	Complainant informed of results
No Number	Citizen Complaint	Inadequate service	Sergeant Liaison assigned in lieu of investigation	Monitoring ongoing

C-07-001	Citizen Complaint	Reckless Driving	Two of three charges founded	Written Reprimand and re-training
C-07-002	Citizen Complaint	Racial Profiling	Unfounded	Officer met with complainant.
C-07-003	Citizen Complaint	False Statements in Traffic Collision Report; Cover up by Supervisor	Unfounded	Department will inform Complainant and provide documentation; Department will propose establishment of standard procedures to transit companies
C-07-004	Citizen Complaint	Excessive Force	Investigation ongoing	Pending
C-07-005	Citizen Complaint	Racial Profiling	Unfounded	Complainant met with supervisor
No Number	Citizen Complaint	Miscellaneous	No formal investigation	Monitoring ongoing
No Number	Citizen Complaint	Possible False Arrest	No investigation pending	Insufficient information to commence investigation
No Number	Potential Internal Affairs Investigation	Driving Under the Influence	Investigation not activated because of retirement of officer	Memo re circumstances of retirement and potential IA investigation placed in file

#### IV. Policy/Practices Revision

In our Interim Report, we recommended that the Department develop a standard protocol for reviewing mobile audio and video (MAV) tapes of an officer's contacts and detentions following an accusation of racial profiling. The incident tapes reviewed should be a random representative sample occurring close in time to the incident in question. The Department has yet to develop a draft protocol to standardize this aspect of these investigations. That said, it should be noted that the Department has done an exemplary job with its racial profiling investigations during the pilot project year. We would urge Department executives to finalize this protocol which is potentially relevant to a large fraction of public complaint investigations.

We believe that it may be constructive to extend one of our recommendations in case numbers 2 and 5 above to all future investigations that arise from complaints of racial profiling. Racial profiling allegations formed the single most prominent feature of citizen complaints during the first year of the police auditor project. It is important to emphasize that the cases we have evaluated do not show evidence of a pattern of racially motivated enforcement activity by Department members. In our view, though, the Department could be more effective in demonstrating to persons who make racial profiling allegations the extraordinary means that it has gone to either prove or disprove the allegations. One of the most straightforward ways to do this would be, in cases where the allegation of racial profiling has not been established, to share with the complainant after the investigation is complete a redacted version of the results of the demographic survey of an officer's stops and citations. In any case where the investigation did result in a finding that the officer was policing in a discriminatory way, the Department would take action against the officer and the Department and/or the Auditor would be able to report that circumstance out to the complainant. Such willingness to "show the work" of the Department to the complainant would demonstrate the lengths to which the Department is willing to go to assess these serious allegations and ultimately increase the public's confidence in the way the Department handles them.

## **V. Auditor Outreach**

Since the publication of the Interim Report, the Auditor has met with concerned citizens of Palo Alto, and, in particular the City's Human Relations Commission. At a recent regular HRC meeting, the Auditor presented a brief synopsis of its Interim Report and was available to answer questions and receive comments from HRC members.

One topic of conversation of interest to HRC members and members of the public in attendance at the meeting was to find ways to increase the Auditor's profile. One suggestion that was proposed was to include information about the Auditor and contact information to the City's and Police Department's website. The Auditor has had preliminary discussions with the Chief about this suggestion, and we are pleased to note that the recently redesigned City of Palo Alto website has an e-mail link to the auditors.

Another suggestion raised at the meeting was to provide information to the public on the Police Department's website about how persons may file a complaint. It was also suggested that the website contain a downloadable complaint form. The Auditor has had preliminary discussions with the Chief about the possibility of including on the Department's website information about how to file a complaint as well as how to file a commendation, and to have both downloadable complaint and commendation forms available on line. We are currently informed that this material is in the process of being implemented on the city's new website.

A third suggestion made at the HRC meeting was to have the Department telephonically or personally contact the complainant at the end of any investigation to convey the results of the investigation rather than simply sending out a letter. The Auditor has engaged in preliminary discussions with respect to this suggestion as a way for the Department to become even more "customer friendly".

## **VI. Assessment of PAPD's Response to Citizen Complaints**

Over the course of the year, Department managers have developed a very broad definition of what constitutes an actionable complaint from a member of the community. We strongly encourage this view. In case number 4 of this report, for instance, the Department's decision to view the letter to the editor as a "complaint" is commendable.

An expression of significant dissatisfaction with Department action can constitute a plausible complaint regardless of the conduit through which the Department becomes aware of it. In our experience, sometimes other police agencies do not begin investigations unless a complainant actually travels to the station and insists that a supervisor take a formal written complaint. However, as this Report indicates, Palo Alto PD leadership recognizes that information about officer misconduct can be gleaned in other ways – civil claims, lawsuits, media reports, telephonic complaints, anonymous letters – and uses its internal investigative machinery to address concerns raised through those other information sources as well.

## **CONCLUSION**

As stated in our Interim Report, we continue to be impressed with the Palo Alto Police Department's willingness, under Chief Johnson's leadership, to work toward continuing to promote a positive relationship between the Auditor and the Department. We find perhaps the best evidence of that circumstance in the Chief's support of the transparency we provide in our Reports in order that the citizens of Palo Alto can digest them and adjudge for themselves how the Department is responding to allegations of misconduct. It has been our privilege, to the degree we have assisted the Department in ensuring robust and fair investigations and been in a position to recommend systemic change, to have been involved in this one year police Auditing pilot project.