



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Edgardo Garcia

**SUBJECT:** SJPD INTERNAL AFFAIRS UNIT - **DATE:** May 1, 2018  
**2017 DEPARTMENT INITIATED**  
**INVESTIGATION REPORT**

Approved

Date

5/10/18

## RECOMMENDATION

Accept the San Jose Police Department's Internal Affairs Unit report on Department Initiated Investigations for calendar year 2017.

## OUTCOME

Under the revised Internal Affairs Unit (IA) complaint process instituted in July 2008, the Police Department agreed to provide Department Initiated Investigations (DII) information to Council on an annual basis. This information was to be provided in conjunction with the release of the Independent Police Auditor's (IPA) Annual Report. Acceptance of this report will provide the City Council and the community with statistics related to DIIs for calendar year 2017.

## BACKGROUND

This is the tenth DII report issued by the Department. The Department initiates and conducts administrative investigations regarding potential misconduct by sworn and non-sworn Department members at the direction of the Office of the Chief of Police. For this report, a DII involves either a sworn or non-sworn Department member. This differs from the IPA's reporting, which only reflects sworn Department members.

There is a distinction between a Conduct Complaint, which is generated by a citizen, and a DII. A complaint will be classified as a Conduct Complaint when a member of the public files a complaint against a Department member and it is determined to be potential misconduct. The initial investigation must determine whether the facts stated in the complaint are such that, if sustained, would amount to a potential violation of the law or Department policies or procedures. A Conduct Complaint is synonymous with a citizen complaint. The distinction between a Conduct Complaint and a DII is that a DII is an internal investigation initiated by the Office of the Chief of Police. A DII is often based on an allegation which comes directly from a member

of the Department who initiates an investigation based on a specific awareness of, or a belief that a Department policy or procedure or a potential violation of the law has occurred. Potential misconduct may be brought to the attention of the Chief of Police by a Department member, another police agency, or a judicial entity. DIIs can be investigated by IA or the Department members chain of command. IA is responsible for tracking and maintaining DII statistical data, including tracking the dates the DII was received and completed.

While the Police Department draws a distinction between a citizen complaint and a DII, a review of both categories gives the Department the ability to identify trends and patterns to improve Department training and supervision.

If at any time a citizen makes a complaint against a Department member, and the complaint is associated to an existing DII investigation, the DII will be reclassified as a Conduct Complaint. As with the case of any Conduct Complaint, the IPA will be notified and may audit the investigation.

## **ANALYSIS**

The Department views DIIs as a priority and strives to complete them as soon as practicable. DIIs are prioritized by the date the Department is made aware of the allegation and the nature of the misconduct. A DII is considered complete when "Findings" are determined for each allegation and discipline has been imposed.

A DII may include investigations of more than one Department member and can contain multiple allegations of potential misconduct for each involved member. The Department utilizes a list of ten allegation categories for all Conduct Complaints and DIIs. Based on IA Unit statistics compiled for this report, the following data points for DIIs conducted during a five-year period from calendar year 2013 through calendar year 2017, are highlighted. This data and additional information can be found in Charts 1A through 2D of the Appendix.

- In 2017, the Department initiated 35 sworn DIIs, compared to 43 in 2016. The total number of DIIs between 2013 and 2017 fluctuated, with a high of 43 in 2016 and a low of 12 in 2013. *(See Appendix - Chart 1-A)*
- In 2017, the Department initiated 10 non-sworn DIIs, compared to 11 in 2016. The total number of DIIs between 2013 and 2017 fluctuated, with highs of 11 in 2014 and 2016 respectively. *(See Appendix - Chart 1-A)*
- Of the 35 sworn DIIs initiated in 2017, there were a total of 99 misconduct allegations against sworn staff, compared to 58 in 2016. (A DII may include more than one allegation of misconduct.) The total numbers of allegations received against sworn staff between 2013 and 2017 fluctuated, with 2017 having the highest total. *(See Appendix – Chart 1-B)*

- In 2017, the Department received 16 allegations against non-sworn members. The same number was received in 2016. The total number of allegations against non-sworn members between 2013 and 2017 fluctuated, with a high of 30 in 2014. *(See Appendix - Chart 1-B)*
- In 2017, the Department completed investigations of 78 allegations against sworn officers; 47 (60 percent) of the allegations were sustained. Between 2013 and 2017 the Department completed investigations of 253 allegations against sworn officers; 158 (62 percent) of the allegations were sustained. (Please note: Investigations may not be completed within the same calendar year they were received.) *(See Appendix – Chart 2-B)*
- In 2017 the Department completed investigations of 31 allegations against non-sworn members; 28 (90 percent) of the allegations were sustained. Between 2013 and 2017 the Department completed investigations of 110 allegations against non-sworn members; 82 (74 percent) of the allegations were sustained. (Please note: Investigations may not be completed within the same calendar year they were received.) *(See Appendix – Chart 2-B)*
- Between 2013 and 2017, the most common misconduct allegations for sworn and non-sworn Department members were, “Procedure” and “Conduct Unbecoming an Officer / Employee”. Listed below is the Duty Manual definition for each type of allegation: *(See Appendix – Chart 2B)*
  - **Procedure (P)** An allegation that an action taken by a Department member did not follow appropriate Department and/or City policies, procedures, or guidelines.
  - **Conduct Unbecoming an Officer (CUBO)** An officer’s conduct, either on or off duty, which adversely reflects on the Department is deemed to be conduct unbecoming an officer. Each case of misconduct will be examined to determine if the act was such that a reasonable person would find such conduct was unbecoming an officer. For non-sworn members, the City’s Code of Ethics Policy (1.2.1) is utilized in lieu of CUBO.
- Among the 43 sworn investigations completed in 2017, 12 involved officers with 21 to 30 years of experience, while 11 involved officers with 0-3 years of experience. For non-sworn employees, in 2017, six of the 14 DIIs involved employees with seven to 10 years of experience. *(See Appendix – Chart 2-C)*
- Between 2013 and 2017, Documented Oral Counseling was the most common form of discipline imposed for both sworn and non-sworn Department members. Documented Oral Counseling was imposed on a total of 65 occasions during this period. *(See Appendix - Chart 2-D)*

In reviewing the DII statistical data, the following conclusion may be made: The number of alleged misconduct investigations received and the number of Department members who were the subject of alleged misconduct investigations fluctuates from year to year. To compare between calendar years 2016 and 2017, the Department noted a 19 percent decrease in alleged misconduct investigations for sworn Department members and a 9 percent decrease for non-sworn.

#### **DII CASE SUMMARIES**

In the 2014 IPA Year End Report, the IPA recommended the Department submit written reports describing the sworn DII investigations to the Mayor and City Council, and post those reports online for the public. The summaries, which are detailed in Chart 3 of the Appendix, can be found on the Police Department's website at: [www.sjpd.org](http://www.sjpd.org).

#### **EVALUATION AND FOLLOW-UP**

No additional follow up action with the City Council is expected at this time.

#### **PUBLIC OUTREACH**

This report will be posted on the City's web site for the May 22, 2018 Council Agenda.

#### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office.

#### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/  
EDGARDO GARCIA  
Chief of Police

For questions, please contact Lt. Brian Matchett, Internal Affairs Unit Commander, (408) 277-4094.

Attachments: Appendix, Charts 1A-3

# APPENDIX

## RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS

### FIVE YEAR SUMMARY OF DIIs (2013-2017)

Chart 1 - A

Year	2013		2014		2015		2016		2017		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
DII totals	12	1	36	11	23	10	43	11	35	10	149	43
# of Department members involved	12	1	40	13	23	10	47	12	44	10	166	46
# of investigations containing multiple Department members	0	0	5	1	0	1	4	1	10	0	19	3
Department members w/more than one DII for listed year	0	0	3	2	0	1	1	1	5	0	9	4
Total # of allegations received	15	1	45	30	32	17	58	16	100	16	250	80

**RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS**  
(Continued)

**BREAKDOWN OF ALLEGATIONS**

Chart 1-B

Year	2013		2014		2015		2016		2017		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	10	0	29	26	21	5	32	14	84	15	176	60
Courtesy	0	0	0	1	0	0	3	0	2	0	5	1
CUBO	4	1	13	1	11	9	14	1	10	1	52	13
Neglect of Duty	0	0	1	2	0	1	6	1	0	0	7	4
Discrimination	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	1	0	1	0	0	2	2	0	0	0	4	2
Search/Seizure	0	0	0	0	0	0	0	0	0	0	0	0
Force	0	0	0	0	0	0	1	0	3	0	4	0
Arrest or Detention	0	0	1	0	0	0	0	0	0	0	1	0
BBP*	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>15</b>	<b>1</b>	<b>45</b>	<b>30</b>	<b>32</b>	<b>17</b>	<b>58</b>	<b>16</b>	<b>99</b>	<b>16</b>	<b>249</b>	<b>80</b>

\*BBP = Bias Based Policing

**RECEIVED-DEPARTMENT INITIATED INVESTIGATIONS**

(Continued)

**EXPERIENCE OF INVOLVED OFFICERS(S)/NON-SWORN**

**Chart 1-C**

	2013		2014		2015		2016		2017	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
0 – 3 Years experience	0	0	16	2	10	0	11	2	15	2
4 – 6 Years experience	0	0	2	2	0	3	0	0	5	2
7 – 10 Years experience	3	0	2	5	2	1	8	4	1	1
11 – 15 Years experience	2	1	7	2	2	5	3	3	4	2
16 – 20 Years experience	4	0	6	1	3	1	10	1	9	1
21 – 30 Years experience	3	0	7	1	6	0	15	2	10	2
<b>Total</b>	<b>12</b>	<b>1</b>	<b>40</b>	<b>13</b>	<b>23</b>	<b>10</b>	<b>47</b>	<b>12</b>	<b>44</b>	<b>10</b>



**COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS\***

**FIVE YEAR SUMMARY OF DIIs (2013-2017)**

Chart 2-A

Year	2013		2014		2015		2016		2017		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
DII completed investigations	25	5	36	13	23	9	33	10	38	13	155	50
# of Department members investigated	24	4	38	12	25	13	35	9	43	14	165	52
# of investigations containing multiple Department members	0	0	3	0	2	1	2	0	5	2	12	3
Department members w/more than one DII completed for listed year	1	1	1	1	1	2	1	1	3	1	7	6
Total # of Department members who received discipline	19	4	28	9	10	5	19	8	27	12	103	38

**COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS**

(Continued)

**ALLEGATIONS VS. SUSTAINED CASES**

Chart 2-B

Year	2013		2014		2015		2016		2017		Total	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Procedure	26/18	4/4	37/29	15/12	19/13	21/6	26/15	10/10	62/39	30/28	170/114	80/60
Courtesy	0/0	0/0	0/0	4/3	2/0	1/1	2/1	0/0	0/0	0/0	4/1	5/4
CUBO	17/14	4/3	10/4	4/3	12/5	2/1	18/9	8/7	12/6	1/0	69/38	19/14
Neglect of Duty	0/0	0/0	1/1	2/2	0/0	1/1	1/1	1/1	2/1	0/0	4/3	4/4
Discrimination	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	1/0	0/0	1/0	0/0
Harassment	1/0	0/0	1/1	0/0	1/0	1/0	0/0	1/0	0/0	0/0	3/1	2/0
Search/Seizure	0/0	0/0	0/0	0/0	1/0	0/0	0/0	0/0	0/0	0/0	1/0	0/0
Force	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	1/1	0/0	1/1	0/0
Arrest or Detention	0/0	0/0	0/0	0/0	1/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0
BBP	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0
<b>Total</b>	<b>44/32</b>	<b>8/7</b>	<b>49/35</b>	<b>25/20</b>	<b>36/18</b>	<b>26/9</b>	<b>47/26</b>	<b>20/18</b>	<b>78/47</b>	<b>31/28</b>	<b>253/158</b>	<b>110/82</b>

**COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS**

(Continued)

**EXPERIENCE OF INVOLVED OFFICER(S)/NON-SWORN\***

Chart 2-C

	2013		2014		2015		2016		2017	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
0 – 3 Years experience	1	0	18	0	11	2	5	1	11	1
4 – 6 Years experience	1	1	1	4	2	3	0	1	3	1
7 – 10 Years experience	4	1	1	1	4	3	7	2	4	6
11 – 15 Years experience	7	2	5	4	5	2	2	4	3	2
16 – 20 Years experience	8	0	5	1	0	1	9	0	8	2
21 – 30 Years experience	3	0	7	2	3	2	12	1	12	2
31+ Years experience									1	0
Unknown*	0	0	1	0	0	0	0	0	1	0
<b>Total</b>	<b>24</b>	<b>4</b>	<b>38</b>	<b>12</b>	<b>25</b>	<b>13</b>	<b>35</b>	<b>9</b>	<b>43</b>	<b>14</b>

\*Unknown reflects an investigation where the Department member's tenure with the Department was not tracked in the incident file. Typically, this occurs with Non-Misconduct Concern Incidents when the involved Department member does not have an existing profile in the Internal Affairs records database.

# COMPLETED-DEPARTMENT INITIATED INVESTIGATIONS

(Continued)

## PRIMARY DISCIPLINE IMPOSED

Chart 2-D

Discipline Imposed	2013		2014		2015		2016		2017	
	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn	Sworn	Non Sworn
Training or Counseling	2	1	9	1	1	2	2	1	8	1
Cease Secondary Employment Activities	0	0	0	0	0	0	0	0	1	0
Documented Oral Counseling (DOC)	6	1	15	3	6	2	6	5	15	6
Letter of Reprimand	1	0	0	2	1	1	2	0	4	3
Disciplinary Transfer	0	0	0	0	0	0	0	0	1	0
10-hours Suspension	1	0	1	0	0	0	1	0	1	0
20-hours Suspension	3	1	2	2	1	0	1	0	1	0
30-hours Suspension	0	0	0	0	0	0	0	0	0	0
40-hours Suspension	2	0	1	1	0	0	3	1	0	0
Greater than 40-hours Suspension	4	0	1	0	2	0	2	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	1
Termination	0	0	0	0	0	0	2	1	2	0
<b>Associated Department Investigation Outcomes</b>										
Retirement before investigation concluded	0	0	0	0	1	0	2	0	0	0
Resigned in lieu of discipline	2	0	1	0	1	0	0	1	0	0
Officers receiving more than one discipline	0	0	1	1	1	0	0	0	2	1
Retired prior to discipline on a sustained case	0	0	0	1	0	0	1	0	1	0
Settlement Agreement*	8	1*	2	1	2	0	1	1	0	0
Other**	0	1	0	0	0	1	1	0	0	1

\*Settlement Agreement, discipline combined for 2 DII's with the same employee

\*\*Other: Transfer before discipline; At will employee; Discipline not finalized

### **DII Summaries**

This section was added in 2016 to comply with recommendations from the Independent Police Auditor's 2014 Annual Report:

- Recommendation # 2: Require written reports describing the DII investigations be annually submitted to the Mayor, City Council and posted online for the public; and
- Recommendation #3: Include in the annual Department Initiated Investigation (DII) Report descriptions of the misconduct that gave rise to each of the sustained findings.

### **COMPLETED – SWORN DEPARTMENT INITIATED INVESTIGATIONS RESULTING IN A SUSTAINED FINDING**

#### **Appendix-E**

	<b>Allegation(s)</b>	<b>Summary</b>	<b>Finding(s)</b>
1	Force	Reserve officer violated policy for placing his foot on the back of a subject's neck after detaining him during a robbery investigation	Sustained
2	Procedure	Juvenile suspect escaped custody from a patrol officer while handcuffed	Sustained
3	Procedure	Supervisor worked consecutive secondary employment assignments without allowing for travel time	Sustained
4	Procedure	Officer discharged his firearm at a vehicle in violation of policy	Sustained
5	Conduct Unbecoming an Officer (CUBO) / Procedure	Officer ignored order by a supervisor and was in violation of a requirement set forth in Performance Improvement Plan	Sustained
6	Conduct Unbecoming an Officer (CUBO) / Procedure	Officer called in sick from work to attend a party and set off illegal fireworks	Sustained
7	Procedure	Officer drove a city vehicle while off duty and consumed an alcoholic beverage	Sustained
8	Conduct Unbecoming an Officer (CUBO) / Procedure	Officer accessed confidential database information and provided it to known gang members	Sustained
9	Neglect of Duty (ND)	Officer failed to respond to a request for assistance	Sustained
10	Procedure	Officer failed to document chain of evidence in a report	Sustained
11	Procedure	Officer used an inappropriate term when communicating with employee of the opposite sex	Sustained

12	Conduct Unbecoming an Officer (CUBO)	Officer used controlled substance on duty and lied during an Internal Affairs Investigation	Sustained
13	Procedure	Officer accidentally discharged a round from a projectile impact weapon	Sustained
14	Procedure	Officer accidentally discharged the prongs from a Department issued Taser while arc testing it	Sustained
15	Procedure	Officer failed to obtain medical clearance for a suspect immobilized by a projectile impact weapon	Sustained
16	Procedure	Supervisor failed to follow City travel policy	Sustained
17	Procedure **Two employees	Supervisors failed to follow City travel policy	Sustained
18	Procedure	Officer failed to properly safeguard City property	Sustained
19	Procedure	Officer accidentally discharged a Department issued Taser	Sustained
20	Procedure	Out of policy pursuit	Sustained
21	Procedure	Officer accidentally discharged the Taser prongs from a Department issued Taser while arc testing it	Sustained
22	Procedure	Officer failed to report for his patrol shift	Sustained
23	Procedure	Officer accidentally discharged the prongs from a Department issued Taser while arc testing it	Sustained
24	Procedure	Officer lost Department issued property	Sustained
25	Procedure	Officer lost Department issued property	Sustained
26	Procedure	Out of policy pursuit	Sustained