



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: June 16, 2025

TO: Scott Wahl, Chief, San Diego Police Department

FROM: Douglas Case, Chair, Commission on Police Practices *ONC*
via Bart Miesfeld, Interim Executive Director *BM*

SUBJECT: **Recommendations to Improve the SDPD Complaint Investigations System**

Last year, the Commission on Police Practices (CPP) hired an outside auditor, Jerry Threet, an attorney and nationally recognized expert in the civilian oversight of law enforcement, to review 153 cases which the interim CPP was unable to review because the cases had exceeded the one-year deadline imposed by the Peace Officers Bill of Rights. His scope of work was to review these cases to determine trends and systemic issues. His report, *Independent Civilian Audit of San Diego Police Department Complaint Investigations for the Commission on Police Practices 2020-2023*, is attached. The report made 60 findings (recommendations), most of which have been referred to the CPP Policy Committee since those findings relate to issues the committee has on its work plan. The first seventeen findings relate to Internal Affairs; the first 15 are proposed recommendations to the SDPD; the other two are recommendations to the CPP.

The CPP considered these recommendations at our meeting on June 2, 2025. For reference, please see the attached report I prepared, with input from the Executive Committee, with an analysis of the report's findings. At the meeting, the CPP voted to forward recommendations regarding Findings 1, 2-11, and 13-15. No recommendation was made regarding Finding 2, and the CPP voted to further study options for Finding 12.

Additionally, Commissioner Armando Flores recently took the initiative to conduct a review of the SDPD's online complaint portal. Commissioner Flores is a Release Validation Engineer with more than a decade of experience in accessibility design, training, and compliance across education, nonprofit, and enterprise software environments. He identified several deficiencies regarding functionality and accessibility and proposed specific solutions. (Refer to his analysis report, as well as

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a 2008 Department of Justice memorandum to former Chief Landsdowne addressing language services compliance, both of which are attached.) Commissioner Flores also identified issues with CPP's own online complaint form, which we will be addressing.

Below are the recommendations approved by the CPP on June 2. For those that relate to Jerry Threet's audit report, his finding number is indicated in parentheses for your reference:

1. (Finding 1) The informal complaint resolution option should only be offered for Category II allegations.
2. (Finding 1) The Department should develop a standard script (to be reviewed by the CPP) to be used for Internal Affairs (IA) investigators to neutrally explain the difference between formal and informal processes to complainants.
3. (Finding 3) The Department's policy on intake of complaints should allow the complainant to make a choice of whether to file the complaint with a supervisor on the scene or request another supervisor to be called to take the complaint.
4. (Finding 4) Department memoranda that document a document as being "frivolous" should be provided to both the complainant with a copy to the CPP.
5. (Finding 5) The Department should provide written notification of the classification of "miscellaneous" complaints to the complainant, with a copy to CPP.
6. (Finding 6) IA should make every possible attempt to interview complainants, even when the investigator believes that the original complaint provides sufficient information.
7. (Finding 7) The Department should promptly secure and analyze all evidence material for a complaint investigation, including interviews of all material witnesses to a complaint, as well as all records of any kind that could affect the outcome of the investigation.
8. (Finding 8) The Department should always conduct all investigative interviews using neutral (i.e. not leading), open-ended questioning of interview subjects, designed to elicit all relevant information known to the interviewee. The IA investigator should encourage the witness to remember and provide all of the information they may be aware of. This has been an ongoing issue for many years, communicated multiple times to IA, including with the former Community Review Board on Police Practices, and appears to be a training issue. All IA investigators should be required to attend a course periodically on effective interview techniques. New investigators should attend the course before being assigned cases. Retraining should be required if inadequate or inappropriate interviews are identified.

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9. (Finding 9) The Department should use investigative interviews to clarify discrepancies within a witness's statements and between the witness's statement and other evidence collected by the investigator. Where there are such conflicts, the IA investigator should conduct a credibility analysis to help resolve those inconsistencies objectively.
10. (Finding 10) All IA investigators should be trained on techniques for effectively interviewing complainants who exhibit mental health issues. Retraining should be required if deficiencies in handling complainants with potential mental health issues are identified.
11. (Finding 11) The Department should ensure that its policies, practices, and training specific to complaint investigations prohibit any officer or Department official from acting in an investigative or decision-making role for any complaint investigation that may implicate their personal, familial, or professional interests.
12. (Finding 13) The Department should develop a realistic work plan to meet the Department's written internal deadlines to complete an investigation and periodically conduct a systemic audit of investigations for deviations from those deadlines. Corrective actions should be taken as needed.
13. (Finding 14) At the conclusion of every complainant interview, the IA investigator should be required to list all of the allegations, verbatim as they will be included in the investigation report. The investigator should have the complainant explicitly confirm that the list of allegations is both accurate and complete. The Department should periodically conduct a systemic audit of its complaint investigations to ensure that all relevant issues are identified and investigated to the greatest possible extent.
14. (Finding 15) The Department should audit complaints that have been closed out with a memo and not fully investigated due to insufficient evidence identifying a subject officer to assess whether the initial investigation to identify the officer was sufficient and whether the investigation was appropriately closed.

The following recommendations stem from the analysis of the SDPD complaint portal:

1. The mobile upload icon is partially off-screen. Most residents file from their phone; if they can't tap the paper-clip icon, they can't attach evidence at all. Repair the mobile UI so the attachment icon stays in view on all phone sizes.
2. There is a limit of three attachments (250 MB each). Raise the cap (e.g., 10 files or 2 GB total) and allow ZIP archives or cloud-links.
3. Send an automatic follow-up link in the confirmation email so complainants can

upload additional media later.

4. PDF forms are untagged and printer-dependent; no large-print/Easy-Read versions. Individuals who are blind, low-vision, or without a printer face an immediate barrier. Bring the page to WCAG 2.1 AA: add alt-text, high-contrast colors, keyboard focus, and fully tagged, large-print/Easy-Read forms.
5. There is a lack of visible ADA/TTY/VRS information and non-Spanish translations. Deaf/HoH or non-English speakers may abandon the process before it begins. Post a clear ADA and language-assistance banner (email, voice/TTY number, 24/7 VRS, and top-five language options). Complaint forms should be available in multiple languages, including Spanish, Tagalog, Vietnamese, Chinese, Korean and Arabic.
6. The Complaint Form narrative has a 1500 Character limit (roughly 250 words). This is insufficient to fully explain complex incidents and should be substantially increased.
7. Provide a simple status-tracking email or dashboard mirroring the City's "Get It Done" model—to keep complainants engaged.
8. Designate and publicly identify a Language Access Liaison Officer, as required by Department Procedure 1.47, and provide the CPP with all past and future quarterly and biannual reports on language-access efforts.

Attachments:

1. Independent Civilian Audit of San Diego Police Department Complaint Investigations for the Commission on Police Practices 2020–2023
2. Proposed Commission Responses to the Section 1 Findings (SDPD Complaint Investigations System (May 29, 2025)
3. Analysis of SDPD Online Complaint Portal
4. January 8, 2008 Department of Justice Memorandum to Chief Landsdowne addressing language services compliance

Independent Civilian Audit of San Diego Police Department Complaint Investigations for the Commission on Police Practices 2020-2023



October 2024
Law Office of Jerry Threet

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INTRODUCTION

In the summer of 2020, the City of San Diego experienced a series of protests concerning policing and an intense public discussion about policing issues, as was true for much of the nation. Local public attention on policing increased dramatically in the wake of George Floyd's killing by Minneapolis police officers in May of 2020. And the Black Lives Matter protests that swept the nation also occurred at the local level. While the immediate catalyst for such attention was the Floyd killing, local demonstrations also related to San Diego County's own history of incidents involving local law enforcement agencies. One result of that discussion was the placement of Measure B on the 2020 election ballot for consideration by San Diego voters. Measure B was approved by San Diego voters by a margin of 74.6% during one of the highest voter participation elections since the 1950s.

Measure B strengthened both the independence and authority of civilian oversight of the San Diego Police Department (SDPD). The City of San Diego had an established civilian oversight agency and Commission known as the Community Review Board (CRB). However, many community members believed it had not fulfilled its purpose and needed to be reformed to be more effective. Measure B reconstituted the CRB as the Commission on Police Practices (CPP). The newly reconstituted CPP was expanded to 25 members and was given greater authority to accomplish its missions.

Among other things, the CPP serves as an investigatory body of the City, operating independently of the Police Department and Mayor. Commission staff include an Executive Director, appointed by the Council, to serve at the direction and will of the Commission. The Commission has its own legal counsel, independent of the City Attorney. The Commission has the power to subpoena witnesses and documents, enforceable through contempt proceedings under state law. The Commission is required to investigate all deaths occurring while a person is in Department custody, all deaths resulting from interaction with a City police officer, and all City officer-related shootings. The Commission must also receive and review all complaints against City police officers except in specified circumstances. The Commission may also investigate allegations against officers of inappropriate sexual conduct, physical assault, and domestic violence. Equally important, the CPP is empowered to audit SDPD and analyze departmental patterns and practices.

Following the passage of Measure B, it took several years for the City to establish the CPP, pass an implementing ordinance, appoint CPP members, and make it operational. During that interim period, the Commission suffered from vacancies in membership, as well as impacts of COVID restrictions, and was thus unable to keep current with reviews of San Diego Police Department investigations within its purview. A backlog of investigations increased significantly over this time.

Once the new Commission was seated and began work in 2023, it considered how to handle SDPD investigations that had passed the one-year statute of limitations for imposing discipline on an officer for sustained misconduct. Commissioners were reluctant to let these investigations go without any review, but were advised by legal counsel that the time for CPP findings against

individual officers had passed. After much discussion, the CPP decided to hire an independent auditor to review the 153 investigations that had passed that deadline to see what might be learned. The process of contracting with an auditor began in the summer of 2023 and was completed in February 2024.

In consultation with the contracted auditor and mindful of time and resource limitations, the Commission crafted a scope of review that included multiple stages: 1) a general review of all 153 investigations, 2) a deeper audit of a subset of investigations, and 3) potential findings concerning policies and procedures. The intention was to reveal any trends and systemic issues common to these investigations and any policy and procedure lessons that could be gleaned from a review of 153 investigations. With that guidance, the auditor began work in late March of 2024.

This report is the product of that effort. It was prepared by Jerry Threet, an experienced attorney specializing in reviewing police practices and the civilian oversight of law enforcement. Mr. Threet is the retired director and founder of the Sonoma County Independent Office of Law Enforcement Review & Outreach (IOLERO) and served from 2020 until recently as an independent investigator of alleged police misconduct for the Richmond, California Community Police Review Commission. Mr. Threet has consulted with City officials and community members in jurisdictions across the state to review police policies, practices and training, and to advised on setting up an appropriate civilian oversight entity for their police departments. He regularly presents civilian oversight training for the National Association for Civilian Oversight of Law Enforcement. He has presented several trainings on community policing for cadet classes at the Santa Rosa Junior College Public Safety Training Academy.

EXECUTIVE SUMMARY

As discussed below in more detail, this review's results are generally mixed, with multiple areas of concern and suggestions for improvement. SDPD and its investigators do many things right and are to be commended overall for their commitment to a robust accountability system with strong procedures and policies in many key areas. The Department's accountability systems nevertheless would benefit from strengthening in several respects. The Department's administrative investigations of possible employee misconduct or violations of policy should be more timely, complete, and objective, for the benefit of all stakeholders.

General Review Findings

The general review of 153 investigations from 2020-2023¹ found significant racial disparities in the rate of complaint allegations about use of force, racial discrimination, unlawful detentions and searches, and discourtesy. These disparities were even more pronounced when these allegations were made in connection to traffic and pedestrian stops, suggesting that such stops may have a negative impact on relationships between the Department and San Diego communities of color. In addition, this review found that for allegations of racial discrimination and discourtesy, the Department overwhelmingly issued a finding of "unfounded," meaning that the evidence showed that the alleged conduct did not occur. The general review also found that the Department seldom met its own guidelines for completion of Category 1 (CAT I) and Category II (CAT II) investigations, although it did meet statutory deadlines in all but one complaint for a finding within one year of learning of the allegations.

Deeper Review Summary

The deeper review of 20 investigations identified issues common to those reviews and the more general review of 153 investigations. All 20 of these reviews revealed investigations that were incomplete in some way and less than fully objective. These same issues were present in many but not all of the 153 investigations. The deeper look also suggested that traffic and pedestrian stops were heavily focused on Black and Hispanic community members and reinforced the impression that such stops may negatively impact relations with communities of color. In addition, this review found that the Department's over-reliance of a finding of "unfounded" for allegations of racial discrimination and discourtesy was inappropriate and not consistent with the evidence in almost every case. For some allegations in this group, the auditor concluded that the evidence supported findings of "sustained" instead of the negative findings made by the Department. Finally, there were cases where conflicts of interest undermined the appearance of objectivity of the investigation.

¹ This review included two investigations from 2019 and one investigation from 2024. The remaining 150 investigations reviewed were from 2020-2023. Therefore, the auditor uses the latter date range in order to more accurately describe the time period reviewed.

Policy Findings Summary

Based on the review of these 153 investigations, the auditor made findings intended to increase the integrity, fairness, objectivity, completeness, and timeliness of the complaint investigation process. In addition, findings were made for policies, practices, and training in the areas of use of force, bias-free policing, traffic and pedestrian stops, detentions and searches, protest policing, and other miscellaneous areas.

INDEPENDENT REVIEW METHODS

This review focused on 153 investigations conducted by SDPD, each involving alleged officer misconduct or policy violation(s), and spanning incidents from 2020 through 2023. Notably, these are investigations that did not undergo CRB/CPP review. Despite being completed and findings being made by SDPD's investigators, the CRB/CPP had no opportunity to provide their insights before the cases were closed and decisions were made. Hence, this audit marks the first and only instance of these investigations being subject to civilian review. This independent review process was conducted in multiple stages.

The City contracted with the auditor as a consultant for the City over the course of several months beginning in the summer of 2023. As the contracting process neared completion, the auditor met with the CPP Cabinet on February 3, 2024, to discuss this project's scope. Following that meeting, the CPP approved a scope of work to guide the audit project. The City signed the consultancy contract on February 12, 2024. The auditor also signed a confidentiality agreement with the City on February 19, 2024. On February 29, 2024, the CPP director issued the auditor an Authorization to Proceed with Review and Auditing Consulting Services.

The next step was providing the auditor access to confidential SDPD records necessary for the review. In early March, the auditor was provided with an official City of San Diego email to access the secure online sources of records related to each investigation. The auditor then accessed Google drives containing the investigative files for the 153 investigations to be reviewed. In addition, he accessed investigative interviews of the subject officers in an investigation through Evidence.com upon request. Because the files in the Google Drives were in "view only" mode, the auditor was restricted to viewing them in the Google Viewer and could not print any of the documents nor copy any text from the documents for use in this report. This approach slowed the auditing process and, thus, the number of investigations that could receive a deeper review.

The auditor began work in earnest in late March 2024. The investigations were reviewed in isolation, meaning the auditor was not able to question SDPD's investigators but instead relied solely on the records provided in the investigative files for each complaint. Evidence such as body-worn camera video was occasionally missing from these files, necessitating follow-up requests to obtain it. Each request resulted in providing the requested records within a few days.

The review itself took place in three stages. The first stage took place in April and involved a review of all 153 investigations to document data in multiple categories, such as demographics of officers and contactees, reasons for initial police contact, types of allegations made, police divisions involved, and issues raised by the investigations. This data was then analyzed to reveal trends or common issues among the investigations. This general analysis required some level of review of all evidence in the file to ensure these investigations' integrity. The auditor documented this information in a spreadsheet to facilitate the compilation of data and analysis of trends.

From this first level of review, the auditor identified investigations with more concerning issues for a deeper review in the next stage of the project. In mid-May, the auditor again met with the

CPP Cabinet to discuss the status of the work and preliminary impressions at that point. In addition, the auditor sought and received additional guidance on focusing the remainder of the deeper review.

Due to resource constraints, not all investigations could receive a deeper level of attention. The auditor focused on 20 investigations for a deeper review, all of which raised serious concerns warranting more analysis. These 20 were selected to be representative of issues that existed in the broader group of investigations, and while they were not the only ones that warranted a deeper analysis, they were what could be reviewed within the resource constraints of the project.

Finally, the auditor began analyzing the resulting data further and writing this report. While the auditor drafted parts of this review incrementally, he turned his full attention to preparing this report throughout June and into August. During each stage of the review, the auditor noted any issues related to existing policies or procedures that might warrant recommendations for change. Additional revisions took place in consultation with the CPP staff and leadership between September and October, 2024.

The auditor offers thanks to the leadership team of the Commission on Police Practices, including Interim Director Darnell Scarborough, newly appointed Executive Director Paul Parker, Chief Investigator Olga Golub, and the following members of the CPP Cabinet: Chair Gloria Tran, Vice Chair Dennis Brown, and Second Vice Chair Douglas Case. Their collaboration and assistance were vital in facilitating this independent review and the resultant report. The author sincerely hopes it proves helpful to the City, SDPD's newly hired Police Chief, the CPP, and the San Diego community.

OVERVIEW OF THE SAN DIEGO POLICE DEPARTMENT

The City of San Diego Police Department was established in 1889 and has existed for 135 years. Over that time, SDPD has become a large, sophisticated organization with over 2,687 budgeted positions and over 1800 sworn officers, covering a geographic area of over 372 square miles inhabited by a diverse community of over 1.38 Million. The Department is organized into 9 area commands, a Traffic Division, and a Police Plaza. The Department provides neighborhood patrols, traffic enforcement, investigation, records management, permits and licensing, laboratory, Multi-Cultural Storefront, and other support services. The Department's proposed 2024-25 annual budget totals over \$658 Million.

The Department has had some form of civilian oversight in place since at least 1988, when voters approved a ballot measure to create the Citizen's Review Board on Police Practices. The form, mission, and authority of this body was twice amended at the ballot in 2016 and 2020.

INTERNAL COMPLAINT INVESTIGATIONS

SDPD's Complaint Investigations System

Every police department must rely on its employee complaint investigations as a critical component of employee and organizational accountability, both internally and to the public. A department may have the best policies and procedures in the nation on paper, but they have little worth unless there is meaningful accountability for employee violations of their provisions. This is especially true concerning the most consequential departmental policies, such as the use of force, bias in policing, violations of constitutional rights, abuse of authority, body-worn camera operation, dishonesty, and the like. A vital measure of a department's effectiveness and community engagement is how well it responds to community complaints alleging officer misconduct. The public has a right to expect that when it makes known a violation of such policies, explicitly designed to protect the public, there will be serious consequences for employees who commit such offenses.

A well-functioning accountability system communicates to the public that a police department takes seriously any complaint that a community member may raise about unsatisfactory behavior by an agency employee. It does this through welcoming complaints, treating complainants with fairness, respect, and courtesy, evaluating the evidence objectively, communicating transparently with the public on the outcomes of complaints, and imposing meaningful discipline for employees who have violated departmental policies or the law. And even where an employee's action may not violate a policy, an investigation nevertheless provides an opportunity for both the Department and its employees to consider how they could improve interactions with community members and improve policies and procedures. Thus, a well-functioning complaint investigation system helps enhance community relationships and the functioning of the Department.

Almost as important, police officers have a right to expect that misconduct allegations will be investigated in a fair, unbiased, and timely manner based solely on the evidence. Other factors extraneous to the investigation, such as relationships or favoritism within a department or external political pressure, should play no role in such a system. Also, employees should expect that consequences for sustained misconduct findings will be applied fairly among employees and that discipline for a violation will be reasonably predictable. Such a system reflects procedural justice principles, leading to greater employee satisfaction, higher employee morale, and greater compliance by employees with departmental policies.

To evaluate SDPD's employee accountability system, the auditor reviewed a group of 153 complaint investigations conducted by the Department from 2020-2023. This population of investigations was no longer available for the CPP to sit and make recommendations on findings for individual officers, as the statute of limitations for imposing any discipline set out under state law had already expired in each of them.

All 153 of these investigations were individually reviewed with an eye toward any trends or systemic issues that might be identified, such as types of complaints, types of police contacts that resulted in complaints, timeliness, completeness, percentages of each type of finding, and

accuracy of classification of complaint type. In every investigation, the auditor reviewed the complaint and all associated narratives. In addition, the Investigation Report created by the SDPD complaint investigator was thoroughly examined for internal consistency, review of all issues raised by the complaint, and thorough review and analysis of the investigative evidence and issues raised by that evidence. In some cases, an initial review of associated video also was undertaken. This initial, broader review only drew conclusions on substantive issues about the investigation, such as bias, conflict of interest, or validity of findings, when those conclusions were obvious.

Following this broader review, the auditor undertook a deeper review of a subgroup of investigations where the initial review revealed more significant concerns. This additional review included a thorough viewing of associated video footage and in many cases also a review of recorded interviews. For this set of 20 investigations, the auditor drew additional conclusions concerning potential bias, completeness, conflict of interest, validity of findings, and the like. In undertaking this review, the auditor also examined the complaint intake and investigation process.

Governing Law and Policy for Complaint Investigations

The SDPD Internal Affairs Unit Operating Manual sets out the Department's official complaint investigation process thoroughly and comprehensively. In addition, all complaint intakes and investigations are governed by California Penal Code Sections 832.5, 832.7, and 832.8, as well as Government Code Sections 3303-3305.5 (the "Peace Officer Bill of Rights"). There also are established "best practices" for administrative complaint intake and investigations for police officers found, for example, in standard Internal Affairs Investigations training approved by the California Commission on Peace Officer Standards and Training, which are relevant to this review.

The IA manual establishes a complaint investigation process that divides complaints into CAT I, CAT II, and "informal" complaints. CAT I complaints are defined in SDPD Policy 1.10 as including all allegations against Department members involving any of the following: arrest, criminal conduct, discrimination, unreasonable force, use of a slur, or an unreasonable search. CAT II complaints are defined to include allegations involving service, courtesy, procedure, conduct or some other category not included in CAT I. The SDPD policy defines an "informal" complaint as one where a complainant is offered the opportunity to resolve the matter without a formal investigation and "voluntarily" opts for that process. Informal complaints result in a memo to file and are not referred to the CPP upon completion. There appears to be no policy or procedure restriction regarding what type of allegations can be processed informally.

When an agency has a category of "informal" complaints, it can mean that such complaints are not subject to a formal investigation with findings, as appears to be the case at SDPD. Yet, Penal Code Section 832.5(a)(1) mandates that every police agency in the state "establish a procedure to investigate complaints by members of the public against [] personnel[.]" The language of this provision does not make an investigation of a complaint optional but rather mandatory. Penal Code Section 832.7(f)(1) further requires that a "department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the

disposition.” Again, this language does not allow a department to choose not to investigate the complaint; otherwise, the Department could opt not to provide a finding to the complainant.

The Complaint Investigation Process in Practice

Complaint Intake

SDPD’s approach to external complaints against employees has many positive aspects. To its credit, SDPD provides multiple opportunities for members of the public to access its complaint process, including in person, by phone, online, and through the CPP. Complainants may also file complaints anonymously. These positive features can make a complainant feel that SDPD values their concerns.

However, the Department could improve other aspects of the intake process. For example, the instructions provided with the form could be revised to encourage community members to express their concerns about the services they receive from an SDPD employee. Currently, the form places a prominent warning on the second page, stating that the complainant could be criminally prosecuted if they “make an allegation against an officer knowing that it is false.” While it is true that Penal Code 148.6 requires this advisory to be on the form, that statutory provision is of questionable constitutionality.² In light of this, and because this provision could discourage complaints from community members who distrust the Department, SDPD should consider eliminating this provision from its complaint form, considerably lessening its prominence, noting its questionable continued legality, and/or emphasizing that complaints are valuable and welcomed by the Department.

² There are two state laws enacted at the behest of police unions related to the part of this statement that warns of possible legal repercussions from filing a complaint. Civil Code § 47.5 was enacted in 1982 to overrule a court decision holding that complaints against the police were absolutely privileged and thus not subject to civil lawsuits: *Imig v. Ferrar*, 70 Cal. App. 3d 48 (2nd Dist. 1977). Stats. 1982, Ch. 1588. Penal Code § 148.6, Stats 1995 Ch. 590 § 1 (AB 1732), was enacted for the express purpose of curbing the increased number of civilian complaints against officers stemming from the Rodney King “incident” in March 1991. See Assembly Committee on Public Safety, Analysis of AB 11732, at 1–2 (Feb. 24, 1995).

Court decisions are conflicting as to whether the California statutes remain good law at all. The California Supreme Court upheld Penal Code § 148.6 against a constitutional attack in the *Stanistreet* decision, but the Ninth Circuit disagreed with *Stanistreet*, and held that “the statute impermissibly regulates speech on the basis of a speaker’s viewpoint.” *Chaker v. Crogan*, 428 F.3d 1215, 1228 (9th Cir. 2005), *cert. denied*, 547 U.S. 1128 (2006). Cf., *Los Angeles Police Protective League v. City of Los Angeles*, 78 Cal.App.5th 1081 (2022, Second Appellate District), petition review granted, 297 Cal.Rptr.3d 111 (2022) [enjoining LAPD from accepting complaints against police officers without requiring a signed advisory proscribed in Pen. Code Section 148.6, following *Stanistreet*.]

Civil Code § 47.5 was also found unconstitutional because it “impermissibly regulates speech based on the content of the speech.” *Walker v. Kiouisis*, 93 Cal. App. 4th 1432, 1437 (4th Dist. 2001). But a subsequent decision upheld the law as constitutional, based on the *Stanistreet* decision. *Loshonkohl v. Kinder*, 109 Cal. App. 4th 510 (4th Dist. 2003). A federal court found the law to be unconstitutional. *Haddad v. Wall*, 107 F. Supp. 2d 1230 (C.D. Cal. 2000), but that decision was vacated by the Ninth Circuit for lack of jurisdiction. *Haddad v. Wall*, 48 F. App’x 279 (9th Cir. 2002). The bottom line of these decisions is that there is good reason to question the continuing validity of these two laws that have been held unconstitutional by the Ninth Circuit..

Interacting with a community member who is upset over an interaction with an SDPD employee can be challenging for the Department's employees. A complainant can sometimes be upset and accusatory toward SDPD's representative and may not always accurately perceive what happened during an incident. Nevertheless, such interactions have inherent value and provide an opportunity to strengthen relationships between the Department and the community when handled appropriately. Informally addressing a complaint might sometimes be effective and appropriate and clarify misunderstandings efficiently. However, a suggestion by a Department employee that a complaint should be handled informally can easily be perceived as dismissiveness or hostility toward the complainant. Even an apparently "unreasonable" complaint merits some investigation to ensure that there is no more to the situation than initially assumed by an SDPD employee. By doing so, the Department communicates that it takes community concerns seriously. And every legitimate complaint deserves investigation, even if an initial conversation with an intake supervisor mollifies the complainant.

Complaint Investigation

The California Commission for Peace Officer Standards and Training ("POST") identifies several basic tenets of a valid internal affairs investigation process, including 1) neutral questioning designed to elicit all information a witness has observed through personal observation; 2) respectful treatment of all witnesses; 3) collection of all evidence material to the outcome of the investigation; 4) findings that reflect unbiased, fact-based analysis of the evidence, without regard to any allegiance to agency or officer; and 5) investigations conducted by a neutral party with no personal or professional interest in the outcome. The Department's policies and procedures mirror these requirements, although this review has found they are not always honored in practice, as explained below in more detail.

CAT I complaints are handled by investigating sergeants in the SDPD Internal Affairs Unit, with multiple reviews by managing supervisors. They are then reviewed independently by the CPP, which makes recommendations, before they come back to SDPD for final decision. CAT II complaints typically are handled by a sergeant in the Division in which the subject officer is assigned. Some CAT II allegations are investigated by IA when they involve officers from more than one division or where they are complex or high profile. In either case, the investigation is subject to review by SDPD managing supervisors and then referred to the CPP for its review. However, unlike CAT I complaints, CAT II investigations do not wait for CPP recommendations before they are finalized by the Department.

"Informal" complaints result in a memo documenting resolution, rather than an Investigation Report. These memos are not referred for review to the CPP and complainants receive a letter with no findings, an acknowledgement that the complaint was informally resolved, and a statement that no further investigation will take place. As noted above, this process is not sanctioned by statute.

Issues with the Conduct of Investigations

Completeness of Investigations

The issue of completeness of an investigation takes at least two forms. First, whether the investigator obtained and considered all evidence that might materially³ affect the outcome of the investigation. Second, whether the investigation analyzed all issues raised by the evidence, including both those raised by the complainant and those raised by the evidence or circumstances that may not have occurred to the complainant.

An investigator should move quickly to identify any evidence that should be obtained and witnesses that should be interviewed. Evidence must sometimes be preserved quickly to avoid its loss. This is particularly true regarding video or audio evidence that may only be preserved if a need for it is identified and acted upon. Similarly, witness statements will likely have greater clarity and credibility when obtained close to the time of an incident. Reluctant witnesses may need to be convinced of the value and desirability of providing their statement. They may need assurances that there will be no possibility of retaliation for providing evidence implicating an officer in misconduct. The failure to contact and interview a witness to an incident leaves a gap in the investigative evidence and calls into question the validity of the findings. Particularly when the allegations involve officers' subjective perceptions (such as unreasonable force or racial bias), interviews of subject officers are especially necessary for a full investigation, to the extent possible.

All issues a complainant identifies should be investigated and analyzed without exception. Where it is unclear what allegation a complainant is making, every effort to clarify that allegation should be made upfront. Complainants cannot be expected to be familiar with the full range of policies and procedures the Department has in place and thus cannot reasonably identify those provisions when making their allegations. Therefore, the Department's investigators should consider all policies and provisions that alleged facts may implicate in conducting a complete investigation. For similar reasons, complainants may observe facts without realizing they implicate possible policy and procedure violations and, therefore, not emphasize those facts. A complete investigation will nevertheless explore those facts more fully and analyze any potential violations raised by them.

One critical determinant of an effective accountability system is how a department handles evidence of a potential violation that a complaint did not allege. A well-functioning, nimble IA system follows the evidence where it leads. The entire purpose of such investigations is to ensure employees follow policies and training designed to guide their actions and ensure they operate effectively, responsibly, and safely.

Complete investigations ensure that the community understands their concerns are taken seriously and that the Department values their input. Incomplete investigations leave the possibility that potential misconduct is unaddressed and that valid complaints will receive an

³ The concept of materiality in evidence means that the evidence may contribute to proving or disproving a fact that is of consequence to the outcome of the investigation.

incorrect outcome. Such outcomes are not in the interest of the community, the Department, or its employees.

Timeliness of Investigations

A persistent issue in the complaint investigations audited was the timeliness of the investigative outcomes. In some cases, investigations took a very long time to complete, with little obvious explanation in the file. While it is true that state law allows a department up to one year, in most circumstances, to issue potential discipline after learning of alleged misconduct, no department should use that one year as its guideline for timeliness. To its credit, SDPD's operating manual provides that all CAT I investigations should be completed within 90 days, and all CAT II investigations should be finished within 60 days. However, as noted below, it is rare for SDPD administrative investigations to satisfy these guidelines.

For a police officer who is the subject of an IA investigation, the process can be fraught with uncertainty and anxiety. It is unlikely the Department will consider an employee for a promotion or coveted collateral assignment during this process. Depending on the seriousness of an allegation, potential disciplinary consequences could significantly impact employee lives and livelihoods, including loss of pay and termination. For community members concerned enough to file a complaint, every day of delay is one in which they may question whether it was worth filing the complaint.

From a management perspective, unnecessary delays between a complaint and resulting discipline attenuate the constructive value of corrective action. And significant delays in investigative outcomes may preclude a department from imposing any consequence on an employee, undermining the entire accountability system. For everyone involved, timely outcomes are the pathway to limit anxiety, communicate respect, and ensure the system's effective functioning. Therefore, SDPD should prioritize ensuring that it completes every complaint investigation in a timely manner by adhering to internal timelines to complete investigations.

Level of Discipline

While discipline is a crucial issue in the functioning of an effective accountability system, this review was unable to evaluate that factor. The files available to the auditor included only the Investigation Report and investigation evidence but no information about disciplinary recommendations or decisions. To reasonably consider the appropriate level of discipline for an employee, the auditor would need to become familiar with several factors, including the historical practice of the Department in issuing employee discipline and the disciplinary history of subject officers with sustained findings. Nevertheless, this section is offered for general consideration in light of the CPP's authority to recommend discipline in specific cases.

Several factors are relevant to a discussion of appropriate discipline. Employee discipline for violation of policies and training generally should be aimed at correcting deviations from those standards rather than punishing employees, *per se*. Subject to appeal, the Chief holds discretion about what level of discipline is appropriate for such violations, considering a range of factors

like prior violations, contrition, performance evaluations, and other contextual knowledge gleaned from managing the Department. Most departments use a progressive discipline approach, under which discipline generally should start at a lower range for first offenses and escalate for subsequent sustained violations and aggravating factors.

Nevertheless, overly lenient consequences for serious misconduct can create challenging dynamics for any police agency. Overall, disciplinary outcomes communicate to all employees the consequences of their actions, with minor discipline communicating that the agency does not take the violated standard very seriously. For example, if excessive force goes without any consequence, officers receive the message that a department generally condones the use of force without regard to whether it is reasonable. Suppose a department finds against bias allegations without a thorough investigation and analysis. In that case, officers learn that agency leaders are not serious about delivering fair and impartial policing to all community members. Also, where a department imposes minor discipline for a serious offense, an employee could contest the imposition of significant discipline in the future for not being consistent with past practice under a progressive discipline system.

In addition, consistent disciplinary outcomes are essential to employee perceptions of internal procedural justice. If favored employees receive less scrutiny or lesser disciplinary consequences for similar misconduct than less favored employees, this communicates that the system is not fair for everyone. Such outcomes can damage morale and lessen general respect for policy and procedure, to the detriment of employees and the public. Hopefully, future CPP reviews of this issue will be able to examine these types of concerns more concretely, with examples from actual investigations.

GENERAL AUDIT OF SDPD INTERNAL INVESTIGATIONS

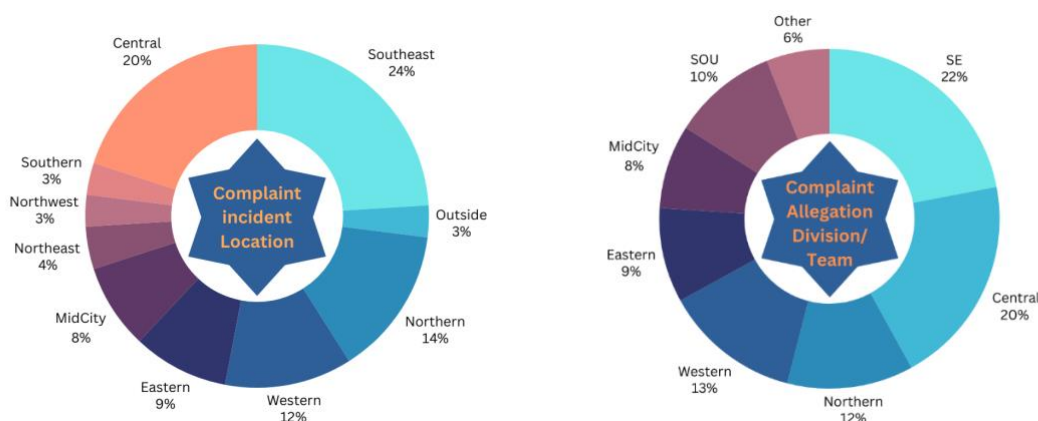
Overview of Audit Conclusions

As mentioned previously, the initial review of 153 investigations allowed the auditor to draw certain conclusions about internal administrative investigations from 2020-2023. These general findings are presented here.

General Complaint & Allegations Data

There were 153 complaints that had expired and were reviewed in this analysis, including 613 total allegations. 95 of the complaints were CAT I investigations and 58 were CAT II investigations. 330 of the allegations involved more serious CAT I subjects (unreasonable force, discrimination, criminal conduct by an officer, unlawful search/seizure, unlawful detention, unlawful arrest). 283 of the allegations involved CAT II subjects that are generally considered less serious (discourtesy, procedural errors, etc.), although 149 of these 283 allegations were a part of a CAT I investigation that included other, more serious allegations. These 613 allegations involved around 243 separate officers, with some officers subject to multiple complaint allegations during the time period in question.

Of the 153 total complaints, 24% came from incidents occurring in the Southeast (SE) Division of the Department, with 20% from Central Division, 14% Northern, 12% Western, 9% Eastern, 8% MidCity, 4% Northeast, 3% Northwest, and 3% Southern. 1% were unknown and 3% involved incidents outside the city.⁴ Of the 613 allegations, the distribution by SDPD Division/Team was as follows: 22% Southeast, 13% Western, 12% Northern, 10% Special Operations Unit (SOU), 9% Eastern, 5% MidCity, and the remainder distributed over more than 20 other divisions/teams.



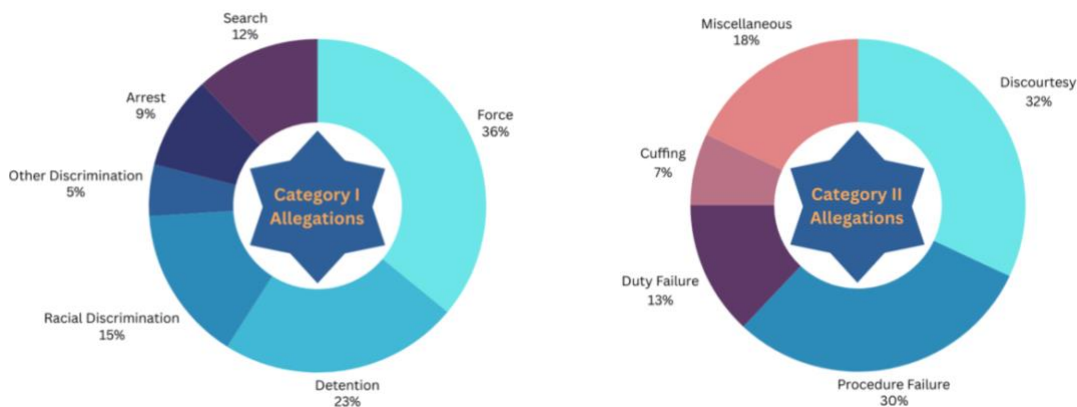
⁴ For purposes of the graphic illustration of locations of complaint incidents, the unknown category was excluded.

Allegations Made by Complainants

This section examines what type of allegations were most frequent among the complaints filed. Because the Department generally classified investigations according to the type of allegation, this section will split the data into two categories, CAT I and CAT II for reporting purposes.⁵

For CAT I allegations, the rates at which they were lodged are listed in descending order of prevalence: unreasonable/excessive force 36%, unlawful detention 23%, racial/ethnic discrimination 15%, unlawful search 12%, unlawful arrest 9%, transgender discrimination 2%, other discrimination 2%.

For CAT II allegations, the prevalence of allegations did not fall into larger categories so easily due to the great variety of allegations made. The exceptions were for discourtesy at 32%, and cuffing too tightly at 7%. There were a variety of specific allegations that could be generally described as failure to correctly perform procedures that amounted to 30% of the CAT II total, and failure to perform a duty that accounted for 13% of the CAT II total. The remainder included: conduct unbecoming 3%, refusal to share officer identification 3%, improper impounding of property 3%, dishonesty 2%, traffic violation 2%, failure to take a complaint against an officer 1%, failure to call a supervisor upon request 1%, failure to use BWC properly 1%, improper conduct 1%, and parking violation 1%.

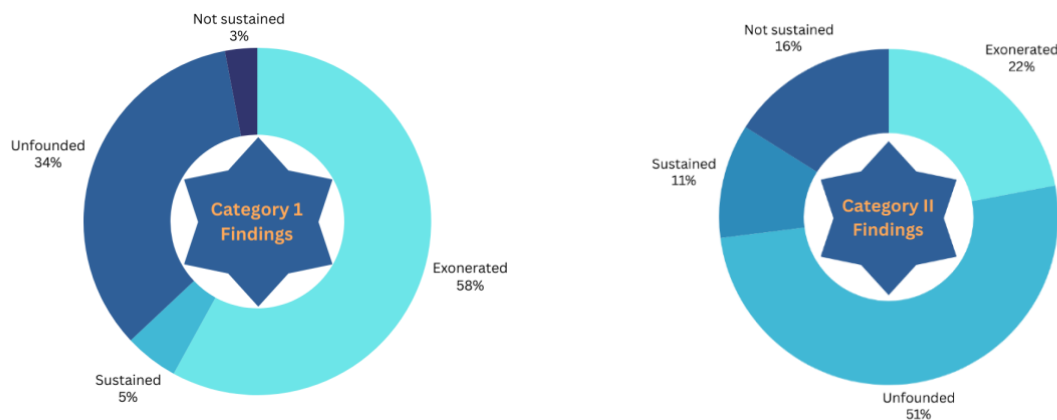


SDPD Investigative Findings

This section examines what findings were made by SDPD for allegations, generally. Looking at the entire universe of allegations for all investigations reviewed, SDPD reached the following findings: exonerated 51%, unfounded 37%, sustained 6%, and not sustained 6%. These percentages differed, however, when considering CAT I investigations and CAT II investigations separately. For CAT I investigations, SDPD reached findings at these rates:

⁵ This split does not exactly mirror the investigations because CAT II type of allegations are sometimes lodged together with more serious CAT I allegations. When that happens, Internal Affairs (IA) investigates the associated CAT II allegations as part of the CAT I investigation. In the reporting in this section, all CAT II allegations are grouped together regardless of whether investigated by IA. In addition, some of the 283 CAT II allegations were not lodged by complainants but instead were based on facts observed by the investigator during their investigation of the complaint. This section looked only at allegations lodged by complainants.

exonerated 58%, unfounded 34%, sustained 5%, and not sustained 3%. For CAT II investigations, the rates were as follows: exonerated 22%, unfounded 51%, sustained 11%, and not sustained 16%. As this data shows, officers were cleared at higher rates by Internal Affairs investigations than by investigations performed by division sergeants. However, division sergeants were significantly more likely to reach a finding of unfounded in their investigation of allegations.



Timeliness

The Department sets an ambitious schedule to complete CAT I and CAT II investigations. Compliance with the 90-day and 60-day deadlines for these investigations serves the interest of both employees and the public. However, for the most part, the Department failed to meet these deadlines in the investigations reviewed here. This analysis will consider both the percentage of investigations and the percentage of allegations investigated that met the deadlines for findings.

27% of these investigations were completed within the deadlines prescribed in the Internal Affairs Operating Manual. Looking at the population of individual allegations investigated, 20% received findings within these deadlines. Considering the categories separately, 23% of CAT I investigations were completed within the 90-day deadline, while 34% of CAT II investigations were completed within the 60-day deadline. However, only 17 % of allegations in CAT I investigations received findings by the deadline, while 32% of allegations in CAT II investigations did.

Notably, there was only one investigation involving eight allegations that was not completed within the one-year deadline provided under state statute for imposing disciplinary consequences on an officer for misconduct. This CAT I investigation involved a traffic stop, and the complainant made allegations of an illegal detention and search, lack of courtesy, and racial discrimination. However, multiple investigations approached that one-year deadline, even considering tolling periods allowed under the statute. Nevertheless, SDPD completed administrative investigations in a timelier manner than many other departments across the state.

Demographic Data

These 153 investigations also provide a window into the demographics of incidents that generated complaints concerning the behavior of San Diego police officers. The reader should be cautious in interpreting this data, as the set of incidents investigated during this period is not necessarily representative of all incidents involving officers of the Department. In fact, one would expect that the population of incidents that generated complaints would exhibit more negative characteristics than those where no complaint was filed. The Department has reported that its officers conducted over 152K stops in 2020, more than 130K in 2021, and more than 96K in 2022.⁶ These 153 incidents, which included at least 613 separate allegations, were ones in which a member of the public was dissatisfied enough to file a formal complaint about the behavior of an officer or officers.

In addition, the context of police community relations must also be considered when interpreting the data. It is a truism that in many cities, including San Diego, communities of color as a group hold less trusting views of police officers than those held by White or White-aligned communities. Given this, one might expect a reluctance by Black or Hispanic community members to file complaints against police officers. Such a reluctance could be due to a fear (whether based on fact or not) that negative consequences might follow or result from a fatalistic expectation that a police officer will not provide satisfactory service to a member of one's community. If these assumptions are accurate (and further study in San Diego would be necessary to reveal if they were), then the numbers of actual complaints by Black and Hispanic individuals would be expected to underestimate the number of their actual unsatisfactory experiences with officers. Likewise, one might expect White community members generally to expect good service from an officer and feel more comfortable filing a complaint when those expectations are unmet.

With that context, the auditor analyzed the actual data.

All Complaints

Looking at the entire population of 153 complaints, the breakdown for racial category of the person contacted by police during incidents complained about was as follows:

- White 30%
- Black 47%
- Hispanic 15%
- Asian 1%
- Unknown/not applicable⁷ 1%

⁶ See <https://voiceofsandiego.org/2023/04/24/police-stops-have-fallen-dramatically-in-the-last-three-years/>

⁷ In some complaints, there was no incident where an officer contacted a community member. One example was a complaint involving an officer's social media posts. In those cases, there is not demographic data for a contactee.

All Allegations

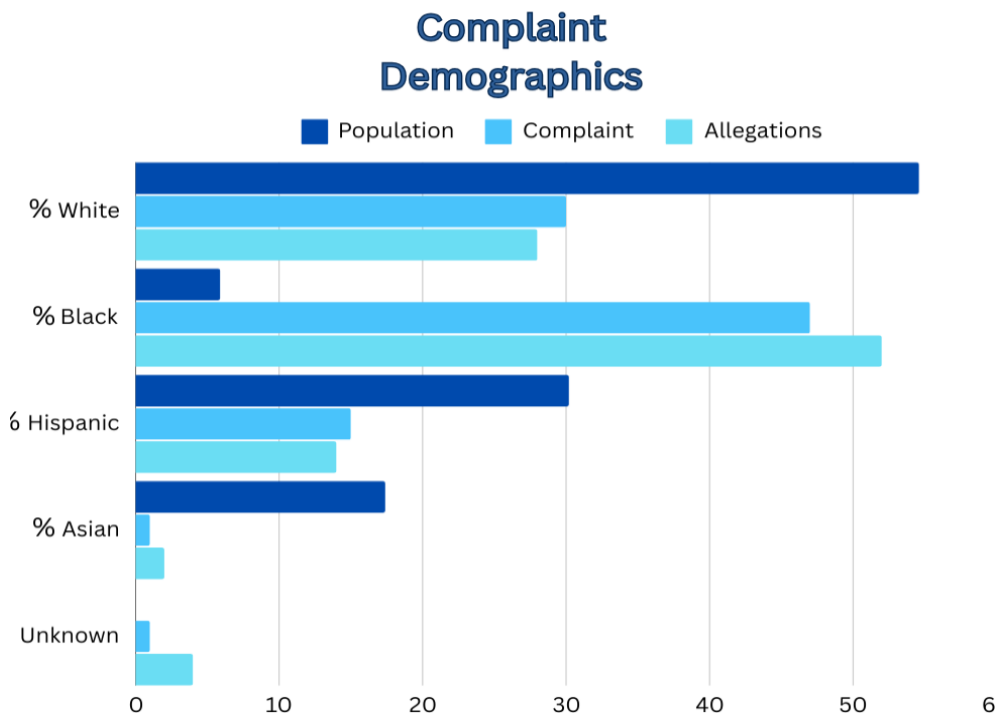
Looking at the entire population of 613 allegations, the breakdown for racial category of the person contacted by police during incidents complained about was as follows:

- White 28%
- Black 52%
- Hispanic 14%
- Asian 2%
- Unknown/not applicable 4%

City of San Diego Population

These percentages contrast to the racial demographic for residents of the City of San Diego from the 2022 census update, which follows:⁸

- White Monoracial Population: 54.6%
- Hispanic Population: 30.2%
- Population Asian Alone: 17.4%
- Multiracial Population: 12.8%
- Black Monoracial Population: 5.9%



⁸ One caution that should be noted is that census data is based on self-reported racial information, while police data depends on the racial category assigned to a person by the officer during the incident. While this data may be verified by reference to police databases in some instances, that is not always guaranteed.

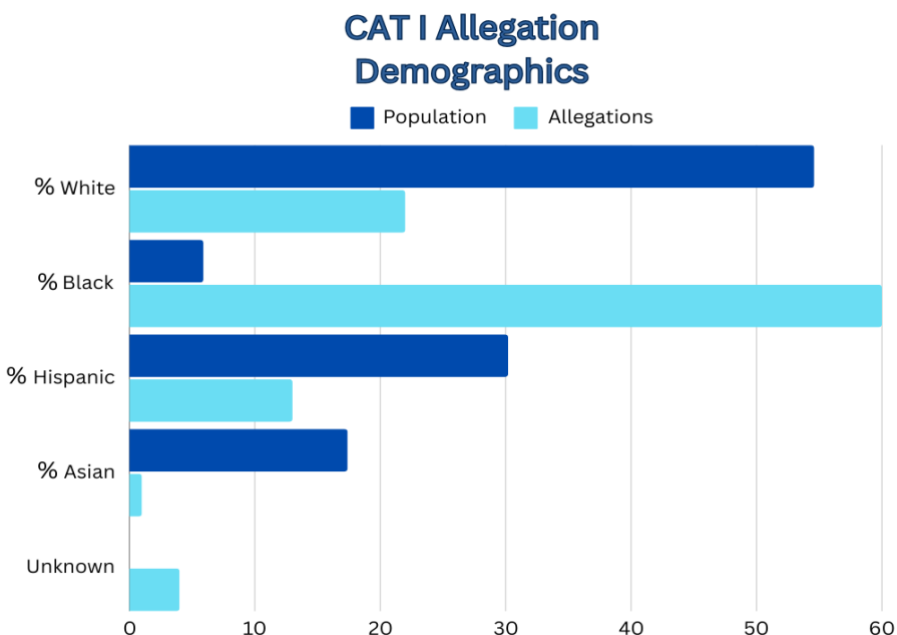
As is evident from this data, complaints concerning interactions between San Diego officers and Black community members are far higher than what might be expected given the small percentage of Black residents of the City. Allegations against officers involving Black community members occurred at rates almost nine times their percentage of the population. In contrast, allegations involving Hispanic community members occurred at less than half of their percentage of the population. Notably, White community members made allegations at rates a little more than half of their percentage of the population. Asian community members made allegations at rates that were a small percentage of their share of the population. One reasonable interpretation of these discrepancies is that Black community members are much less satisfied with police services in the City of San Diego than other demographic groups.

In terms of gender, about 69% of allegations involved officer interactions with male community members, while about 27% involved females and 3% involved trans females. The city's population is about evenly divided between males and females. Just under 1% of the San Diego County adult population identified as transgender or gender non-conforming, although there appears to be no good data at the city level for this population.

CAT I Allegations

Looking at the subgroup of 479 CAT I allegations, the breakdown for racial category of the person contacted by police during the incident complained about was as follows:

- White 22%
- Black 60%
- Hispanic 13%
- Asian 1%
- Unknown 4%



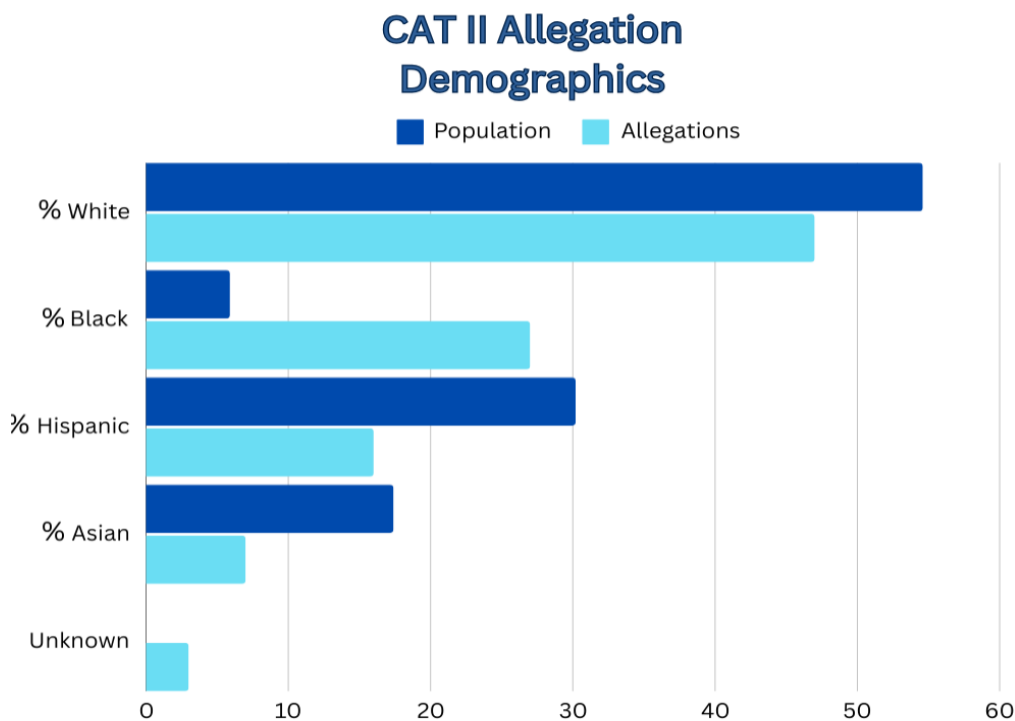
As this data shows, the above-noted racial disparities increased when complaint allegations concerned more serious officer misconduct. Rates of complaints by Black community members relating to interactions with San Diego officers are even higher for these types of allegations, rising to more than 10 times their percentage of the population. However, the percentage of allegations made by all other racial groups dropped for these more serious types of allegations. A reasonable interpretation of this data is that Black community members are much more likely than any other racial group in San Diego to have unsatisfactory experiences with officers involving perceived uses of excessive force, racial discrimination, or illegal detentions, arrests, and/or searches.

In terms of gender, about 71% of CAT I complaint allegations involved officer interactions with male community members, while about 23% involved females and 3% involved trans females. Thus, the percentages skewed a bit more toward male and trans female when it came to these more serious types of allegations.

CAT II Allegations

Looking at the subpopulation of 135 CAT II allegations, the breakdown for racial category of the person contacted by police during the incident complained about was as follows:

- White 47%
- Black 27%
- Hispanic 16%
- Asian 7%
- Unknown 3%

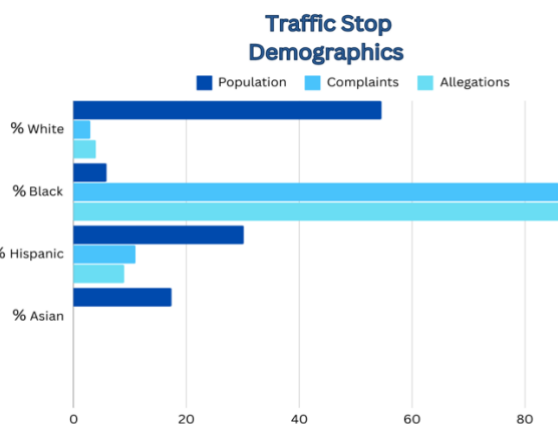


As this data shows, the racial disparities noted above decreased when complaint allegations concerned less serious officer misconduct. While rates of allegations by Black community members concerning these types of interactions with San Diego officers are still higher than their percentage of the population, they are five times higher rather than more than ten times higher. In contrast, the rate of allegations made by all other racial groups increased for these less serious types of allegations. This data again suggests that Black community members are much more likely than any other racial group in San Diego to have unsatisfactory experiences with officers even when less serious types of indignities are involved, such as rudeness or failure to take a report. However, it also suggests that these types of alleged behaviors are more likely to be experienced and raised by those of other races. Another possible interpretation of this data is that Black people are less likely to complain about such police behavior, while people of other races are more likely to make such allegations.

In terms of gender, about 56% of CAT II complaint allegations involved officer interactions with male community members, while about 39% involved females and none involved trans females. Thus, the percentages came closer to matching overall population percentages for gender for these less serious types of allegations.

Traffic & Pedestrian Stops

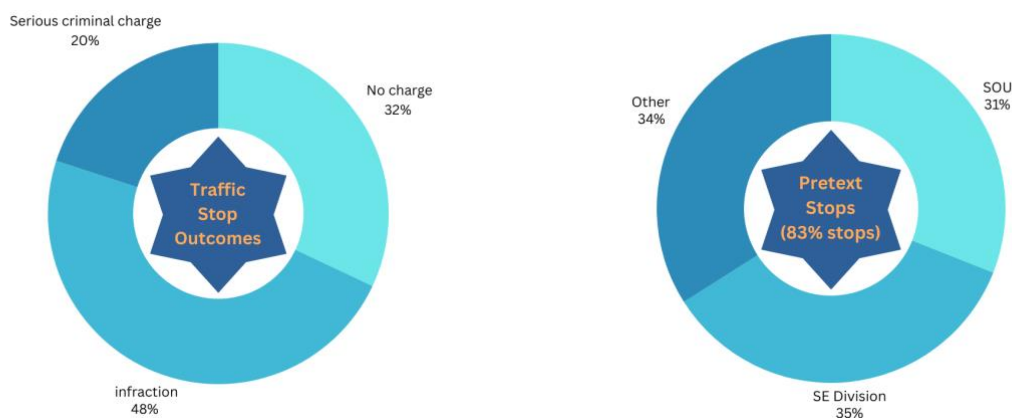
At the request of the CPP, the auditor also has focused on data from a high-level review of complaints about traffic and pedestrian stops. These types of police contacts generated 160 of the 613 allegations reviewed or about 26%. 152 of these 160 allegations, or 90%, were more serious CAT I type allegations. The most common allegation of these complaints was illegal detention, at 29%, followed by unlawful search (15%), racial discrimination (14%), discourtesy (14%), and unreasonable force (8%). 86% of these complaints and 87% of the allegations involved a stop of a Black person, followed by 11% of complaints and 9% of allegations for Hispanic contactees, and 3% complaints and 4% allegations for White contactees. This means that during these particular stops, Black people were stopped at a rate almost 15 times their share of the population of the City.



The most common outcome of such stops was that the person was cited for an infraction or minor misdemeanor (48%), followed by a serious criminal charge (32%), and no violation issued (20%). Breaking down the serious criminal charges further as a percentage of all outcomes, 6% were for illegal firearms, 11% for narcotics, 5% for both firearm and narcotics, and 11% for resisting, delaying, or impeding an officer in their performance of their duties. Separately from the charging decision, officers impounded vehicles in 20% of the stops, including stops for which the officer issued no criminal charge or citation.

A closer review of these complaint allegations and the associated investigative evidence raises several issues for consideration by SDPD and the CPP. Many of these stops appear to be what are known as ‘pretextual stops.’ The California Racial and Identity Profiling Advisory (RIPA) Board describes pretextual stops as occurring “when an officer stops someone for a [. . .] traffic violation or minor infraction with the intention to use the stop to investigate a hunch regarding a different crime that by itself would not amount to reasonable suspicion or probable cause.”⁹ Using this definition, it appears that about 83% of complaint allegations resulting from these stops were from pretextual stops.

About 31% of all these stops were conducted by the Special Operations Unit, or SOU, a specialized team focusing on “proactive enforcement” strategies. As the officers themselves described these strategies during investigations of their decisions, this proactive approach is designed to make as many stops as possible in the area of focus and search vehicles where possible to take illegal guns and other contraband off the streets. Another 35% of the stops occurred in the Southeast (SE) Division of the city and often were conducted by the Crime Suppression Team of that Division. Again, the strategy employed was proactive enforcement saturation in an area of geographic focus. Taken together, that means 2/3 of these stops were a part of a focused, proactive enforcement strategy.



As the RIPA Board has noted, pretextual stops often involve a significant degree of officer discretion in deciding whether to conduct a stop and whether there is “reasonable suspicion” to conduct a pat down of a person or vehicle for weapons. Such discretion may lead to significant racial disparities in how such stops are initiated and unfold. Indeed, there are substantial racial

⁹ 2023 RIPA Board Annual Report, p. 11.

disparities in this set of data. However, unlike the results of the RIPA analyses, which look at all stops rather than just those that generate complaints and found many resulted in no criminal charge or citation, many of these stops resulted in some criminal charge or citation.

Although pretext stops and attendant detentions and searches are often constitutional, many community members may not have a nuanced understanding of what is allowed under the Fourth Amendment in this context. Many mistakenly believe such stops and searches require either consent or probable cause and a warrant. Thus, such stops can engender a perception that pretext stops, detentions, and searches are illegal even when allowed under Fourth Amendment case law. A community's belief that stops are arbitrary, unlawful, or discriminatory erodes community perceptions of procedural justice by a Department. This perception can lead to less cooperation by those stopped and searched, which can cause officers to escalate the situation further to gain compliance.

Although it was not possible here to do the type of detailed factual analysis necessary to determine compliance with the Fourth Amendment in all of the complaint investigations reviewed, the auditor agreed with the finding of "exonerated" in most of the complaint allegations involving illegal detention, arrest or search during these stops. However, where this group of investigations mostly found allegations of racial discrimination "unfounded," the auditor did not agree with the appropriateness of that finding in most of these incidents.¹⁰ Of the 23 racial discrimination allegations in these stops, the auditor found 17 "not sustained," 2 "sustained," and 4 "exonerated." In comparison, SDPD found 19 "unfounded," and 4 "not sustained."

An overreliance on a finding of "unfounded" for allegations of racial discrimination in policing tends to undermine public trust in a police department, particularly among Black and Hispanic communities that have experienced a history of racially motivated over-policing. With the exception of incidents where it is clear from the evidence that the alleged officer behavior did not occur, SDPD would be wise to reach a finding of "unfounded" only very cautiously for allegations of racial discrimination by an officer.

For example, consider a hypothetical complaint where a Black community member experiences a White officer speaking sharply to them and feels disrespected during a targeted, "proactive" enforcement situation in a predominately Black neighborhood. It can be challenging to discern whether an officer's manner of speaking to the community member was influenced by conscious or unconscious bias in such a situation. Yet, a finding of "unfounded" may be received by community members as completely discounting their experience in favor of the statements of the

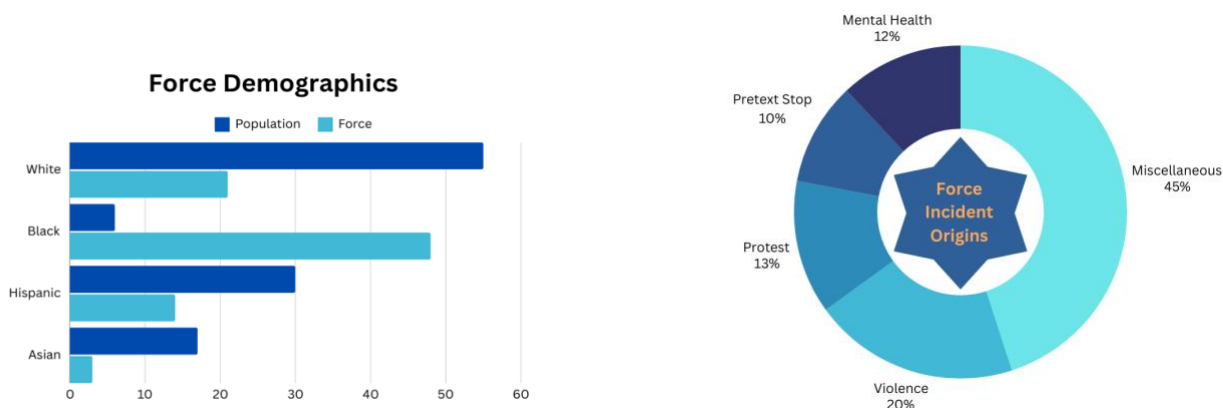
¹⁰ The finding of "unfounded" is typically defined to mean that the evidence showed that the alleged conduct did not occur. In many if not most allegations of discrimination, there is little dispute about whether the alleged facts occurred and considerable dispute over the interpretation of those facts. In an administrative investigation of discrimination, a key factor often is whether an officer's subjective motivation for an enforcement action included race, either unconsciously or consciously. The contextual evidence can often raise a question of whether an officer was motivated by race, but seldom can definitively prove that issue. Where contextual evidence is too conflicted to prove whether race played a role, the best finding in such a circumstance is "not sustained," rather than "unfounded."

White officer. Such a dynamic makes the Department's efforts to build community trust more challenging.

Excessive Force Complaint Investigations

The auditor also reviewed and analyzed CAT I complaint investigations alleging unreasonable or excessive force during an incident. This type of police contact generated 122 of the 613 complaint allegations examined or about 20%. About 48% of these complaint allegations involved force against a Black person, followed by 21% White, 14% Hispanic, and 3% Asian.¹¹ This means that during these particular incidents, Black people were subject to force at a rate over eight times their share of the population of the City, while White people were subject to force at rates just over 38% of their share of the population. Officers used force against Hispanics at rates of about 46% of their share of the population, with force against Asians at rates of about 14% of their share of the population.

Of the 122 excessive force allegations, the great majority (>20%) of the incidents were initiated due to a call for service that involved alleged violence or the threat of violence. However, a significant minority of the incidents began with a First Amendment protest (13%) or pretext stops (10%), and most of the force used in pretext stops was against Black individuals. Mental health-related calls accounted for about 12% of the complaint allegations concerning excessive force.

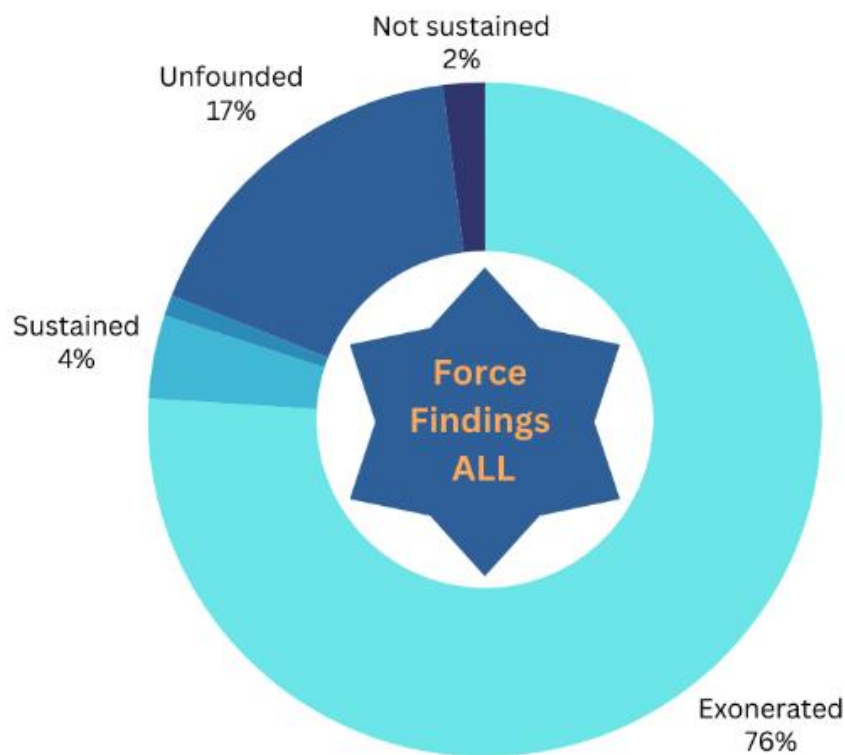


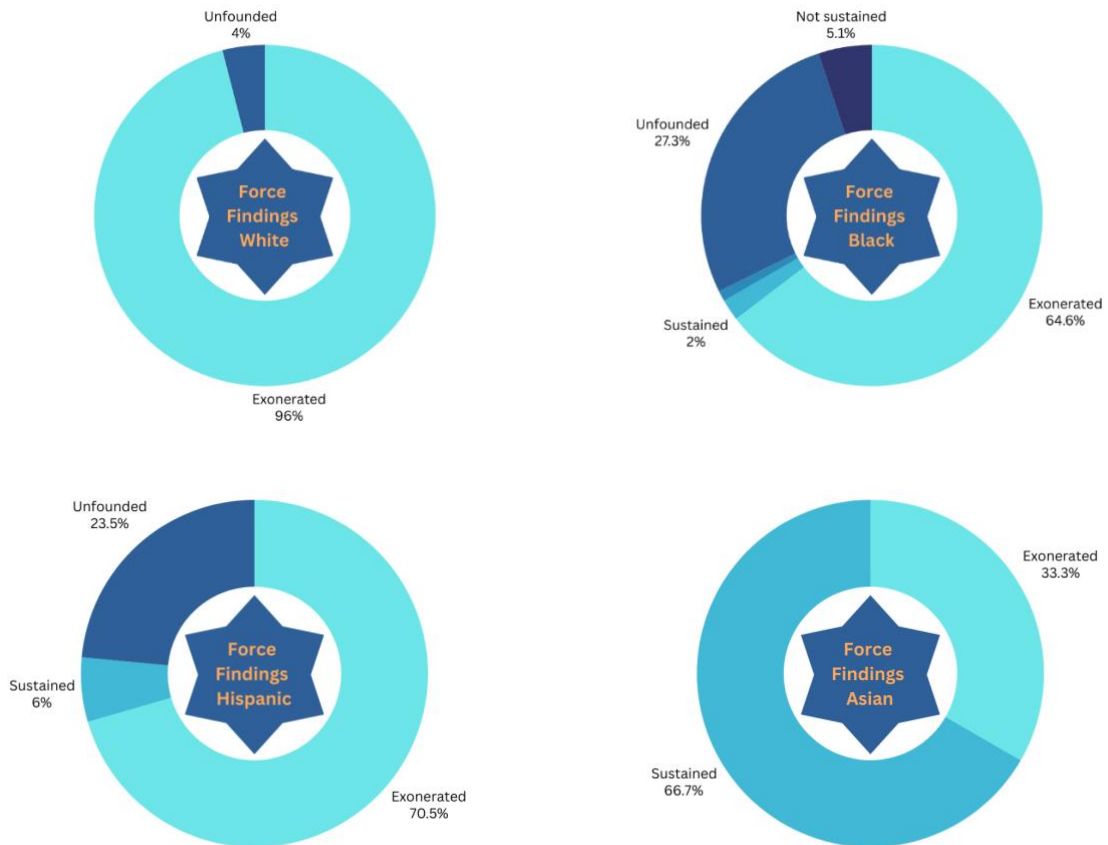
With regard to SDPD findings on complaints of excessive force, 76% were found “exonerated,” 17% were “unfounded,” 4% were “sustained,” 2% were “not sustained,” and one complaint allegation was not analyzed, and thus there was no finding issued by the investigation. Because a force review involves a highly fact-intensive analysis, the auditor could not evaluate whether the IA findings were correct for every allegation of excessive force in this batch of complaint

¹¹ These numbers include 16 complaint allegations of excessive force during a single protest where the race of the people on whom force was used was not reported in the Complaint Investigation Report. This left the race unknown for 14% of the people on whom force was used in these force allegations. If those 16 are removed from the calculations, then the relevant percentages reported above would remain unchanged for Asian and Hispanic, but the percentages for Black people would increase to 56% and the percentages for White people would decrease to 25%.

investigations. However, as can be seen in the section on a deeper review of selected investigations, there were several instances where the auditor concluded that findings of “exonerated” or “unfounded” were not justified by the facts, and some allegations where the allegation of unreasonable force should have been but was not sustained.

Breaking the data down further, it is evident that there are differences in finding rates when considering the race of the person on whom force was used. In these complaints, there were 26 allegations of excessive force used on a White person, with 96% of those resulting in a finding of exonerated and the remainder resulting in a finding of unfounded. There were 59 allegations of excessive force against Black individuals, with 64% resulting in a finding of exonerated, 27% unfounded, 5% not sustained, 2% sustained, and one allegation not analyzed. There were 17 allegations of excessive force against Hispanic individuals, with 70.5% resulting in a finding of exonerated, 23.5% resulting in a finding of unfounded, and 6% sustained. Of the three allegations of excessive force against Asians, 2/3 were sustained, and 1/3 were exonerated.





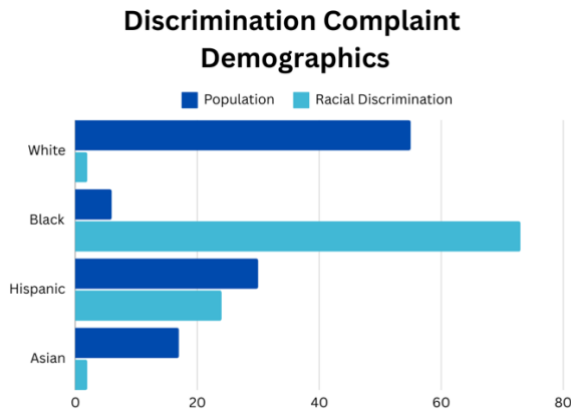
In terms of gender, 71% of the complaint allegations involved force against a male, with 26% involving a female and 4% involving a transgender female.

Racial Discrimination Complaint Investigations

The auditor also reviewed and analyzed CAT I complaint investigations alleging racial discrimination during an incident. This type of police contact generated 51 of the 613 complaint allegations examined or about 8%. About 73% of these complaint allegations involved discrimination against a Black person, followed by 24% Hispanic, 2% Asian, and 2% White. This means that during these particular incidents, discrimination against Black people was alleged at a rate over 12 times their share of the population of the City. Complaints alleged discrimination against Hispanics at rates approximately $\frac{3}{4}$ of their share of the population. Complaints alleged discrimination against Asians and Whites at rates of about 11% of their share of the population.

In these complaints, 92% of the racial discrimination allegations resulted in investigative findings of “unfounded,” while 8% resulted in findings of “not sustained.”

80% of the racial discrimination allegations involved male contactees, while 20% involved females. Of the females, $\frac{1}{2}$ were transgender.

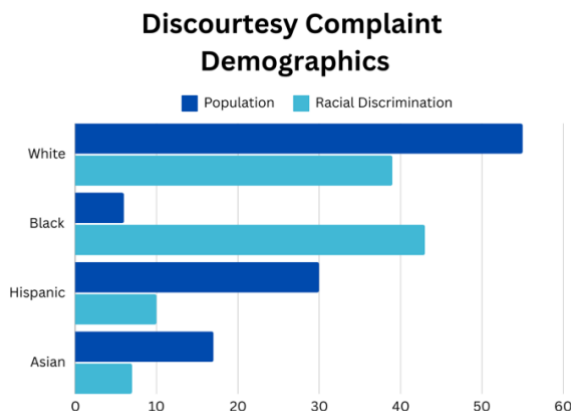


Discourtesy Complaint Investigations

The auditor also reviewed and analyzed CAT I and CATII complaint investigations alleging discourtesy during an incident. This type of police contact generated 87 of the 613 complaint allegations reviewed or about 14%. About 43% of these complaint allegations involved discourtesy against a Black person, followed by 39% White, 10% Hispanic and 7% Asian. This means that during these particular incidents, allegations of discourtesy against Black people were lodged at a rate over 7 times their share of the population of the City, while allegations of discourtesy by White people occurred at rates just under 71% of their share of the population. Allegations of discourtesy against Hispanics were lodged at rates 1/3 of their percentage of the population. Asians lodged such complaints about equal to their share of the population.

80% of discourtesy allegations resulted in findings of “unfounded,” followed by 8% “not sustained,” 6% “exonerated,” and 6% “sustained.”

57% of these allegations involved alleged discourtesy against a male contactee, while 43% involved females. These rates are relatively aligned with the population rates for gender, although slightly over-representative of males.



DEEPER AUDIT OF SELECT INTERNAL INVESTIGATIONS

Overview of Audit Conclusions

As mentioned previously, the initial review of 153 investigations allowed the auditor to draw certain conclusions about SDPD administrative investigations from 2020-2023. Based on impressions from this initial audit phase, the auditor chose a subgroup of 20 investigations to take a deeper look. In collaboration with the CPP Cabinet, the auditor focused primarily on investigations that raised significant questions that justified a deeper look and implicated issues seen in other investigations.¹² Nevertheless, because of this negative selection bias, the auditor cautions against using this section to draw firm general conclusions about complaint investigations conducted by the Department. Where a deeper audit in this section implicates issues spotted in multiple investigations not included in this group, the auditor will note that. Still, the issues discussed in this section deserve scrutiny, both by the Department and the CPP, and future complaint investigations should be examined closely to ensure that troubling issues do not recur.

This section will discuss significant issues spotted in auditing this group of 20 investigations and how they may relate to the whole group of 153 investigations. These deeper audits looked at several standard issues for each audit, along with specific issues raised by that particular type of investigation. Each deeper audit considered whether the investigation was complete, objective, and reached valid findings. Where conflict of interest, de-escalation, or body-worn camera issues were evident, they are noted and discussed.

As used in these deeper audits, “completeness” has several aspects. The first is whether the investigation collected and analyzed all evidence relevant and material to the resolution of the complaint allegations. The second considers whether the investigation pursued all potential issues raised by the evidence, regardless of whether the complainant specifically flagged them. Another is whether the investigation thoroughly analyzed the issues identified.

The issue of bias or objectivity in an investigation can be a sensitive one, both for complainants and subject officers, as well as for the investigators conducting the investigation. When this audit suggests bias in an investigation, it is not meant to indicate that an investigator has intentionally favored officer(s) over the community member(s) that were the subject of the incident. Instead, it suggests that the investigation failed to objectively collect, review, and analyze all aspects of the material investigative evidence. While this could be due to an investigator’s explicit bias in favor of officers, it could as easily be attributed to time pressures, unconscious biases attendant to working as an officer, or other less alarming reasons. Nevertheless, a lack of objectivity in complaint investigations harms officer accountability and community relations and should be addressed, whatever its root causes.

¹² The auditor flagged about 100 investigations in the initial review that would have benefited from a deeper review. However, the limitations of time and resources made prioritizing necessary, so the review was focused on 20 that raised the most significant questions. This neither suggests that further review of the remaining 80 flagged for review would have confirmed concerning problems, nor that they were issue free. It does suggest that concerning issues were not uncommon among these investigations.

Systemic Investigative Issues

Several issues evident from this group of investigations are common to many of the remaining 153 investigations that were not as deeply reviewed. Among them are examples of lack of completeness and bias in the investigation. Another recurrent issue is that, in the auditor's opinion, findings did not always reflect an objective consideration of the totality of the evidence. Some investigations featured conflicts of interest that may undermine confidence in their findings.

Completeness

Each of the 20 investigations subject to a deeper review was found incomplete in some way, a trend also observed in many of the 153 investigations reviewed. While not always leading to a different finding, this incompleteness cast doubt on the validity of the findings in some cases. Confidence in the integrity and credibility of complaint investigations is greatly enhanced when every effort is made to conduct a complete investigation.

In some investigations, no attempt was made to interview the person who was the subject of the incident with the officer(s) against whom a complaint was made. This absence left the investigator to rely solely on the statements of the subject and witness officers. Where community members were interviewed and gave accounts that conflicted with that of officers, there often was no attempt at a credibility analysis to determine which witness accounts best matched the other evidence. Instead, officer statements were often explicitly credited, and community member statements were implicitly discounted, sometimes with little or no explanation. When community members were interviewed, investigators made little effort to flesh out their account of the incident with follow-up questions on specific factual issues. Where inconsistencies were evident in officer statements, investigators rarely attempted to question the officer about them or to analyze the import of those discrepancies. Instead, such differences generally were ignored.

Multiple complaints involved evidence suggesting possible violations other than those directly alleged, but these sometimes were neither investigated nor analyzed. (There were also other examples where investigators identified, analyzed, and sustained issues the complainant did not raise.) Indirect evidence relevant to allegations was sometimes not even addressed by the investigative analysis, especially when racial discrimination or discourtesy allegations were involved. In some cases, witnesses identified material evidence that was never obtained or reviewed in the investigation.

In addition, some investigators reframed allegations in ways that distorted the complainant's concerns and the consequent analysis. For example, in one investigation subject to a deeper review, the contactee complained about the officer keeping his gun at low ready while approaching his vehicle for a traffic stop for tinted windows. This complaint was not analyzed as a potential use of force violation nor any other type of violation, although it was the main focus of the complaint. In another investigation, the complainant alleged dishonesty by the subject officer to justify a citation issued in retaliation for the complainant's non-deferential attitude toward the officer. The investigator reframed the allegation to be one about illegal detention, a

narrower question that avoided issues of potential racial discrimination and retaliation. While it sometimes makes sense for an investigator to consider underlying issues included in a complainant's allegations, that does not justify ignoring other issues specifically called out in the complaint. These issues also occurred in investigations that were not subject to deeper review.

Lack of Objectivity in Investigations

Similarly, each of these 20 investigations exhibited examples of a lack of objectivity in collecting and analyzing (or not collecting and analyzing) evidence relevant to the allegations. These issues were also present in many of the 153 investigations subject to general review. This is not to say that the investigations lacked any objectivity or that the examples of bias necessarily changed the finding reached in the investigation in all cases where it existed. Still, the integrity and credibility of the investigative process depend in part on ensuring it remains objective, and every effort should be made to adhere to that goal. The examples of bias were varied in this group of investigations.

Investigator questioning of officers sometimes lacked objectivity in multiple ways. In several instances, investigators questioned subject officers in a directive "yes or no" manner, leading them to responses that supported negative findings on the complaint allegations. In one instance, an investigator allowed a subject officer's attorney to make substantive statements on his behalf multiple times during the investigative interview in clear violation of department procedures governing such investigations. The attorney was also repeatedly allowed to ask the subject officer extremely leading questions, soliciting an affirmative answer designed to support negative findings on the allegations.

Investigators sometimes asked no questions about inconsistencies or ambiguities between officer statements and BWC video evidence. Investigators never asked questions about whether an officer accused of racial discrimination would have taken the same action if the contactee was of another race. Nor did they ask for examples of times the officer took similar enforcement action in a White neighborhood or with a White contactee. In some examples, the investigator ignored evidence supporting the allegations and entirely credited an officer's account in conflict with that evidence. In fact, in one case, a BWC video directly refuted an officer's statement, but the investigator never even mentioned that video in the resulting Investigation Report.

Finally, in multiple investigations, the investigator's questioning of the subject officer was so curt, directive, and short in duration that it was obvious the investigator was not approaching the process with curiosity and an objective frame of mind. Rather, it appeared the investigative interview was a formality to be conducted quickly so that the investigation could be concluded.

Excessive Force Investigations

Unreasonable or excessive force was one of the most common allegations among the 153 complaints and 613 allegations reviewed, accounting for about 20% of those allegations. It is also considered among the most serious types of allegations that can be investigated by a police department and has significant impacts on policed communities. The manner in which such

allegations are investigated and analyzed can have a significant impact on perceptions of a department's legitimacy among the communities in which a department often patrols.

Several common issues were identified by the deeper review of SDPD investigations of excessive force that were reflected in the larger group of 153 investigations. Overall, these investigations tended to use a "cookie cutter" approach where the exact text from the SDPD use of force procedures was cited verbatim up front, emphasizing the discretion allowed to officers facing potentially threatening situations. Seldom was there any reference to SDPD Policy 1.04, which limits an officer's discretion in a meaningful manner: "[m]embers shall not use more force than is **reasonably necessary** under the circumstances." [*Emphasis added.*] Having framed the force review in this manner, the analyses in these investigations focused on the more nebulous and accommodating concept of general "reasonableness," wholly ignoring the concept of necessity in the use of force. Such an analytical focus tends to allow greater discretion by an officer than what SDPD's policy allows and thus is not entirely consistent with that policy.

One of the most common issues in these investigations was a need for a complete analysis of the instances of force about which complaints were made. In many of the investigations, the investigator considered the force used from an overall perspective rather than looking in detail at the totality of circumstances at the point when a particular instance of force was used by an officer. Such a generalized approach is contrary to Fourth Amendment case law, which requires each instance of force to be separately justified under the circumstances as they existed at that moment.

For example, a level of force may be reasonable when a suspect is actively resisting, but once that resistance subsides, that same level of force may become unreasonable. In addition, some investigations grouped force used by several officers and analyzed reasonableness from that group perspective rather than looking at what each officer reasonably perceived at the moment that officer used force. Again, this is not an appropriate approach.

In addition, the seminal Supreme Court case analyzing the reasonableness of force, *Graham v. Connor*, sets out multiple criteria to examine in deciding whether any particular use of force was reasonable. An analytically sound review of an allegation of unreasonable force would carefully review and apply the *Graham* criteria to the totality of the particular facts present when that particular officer used a particular force. However, such a particularized factual analysis of force was relatively rare in the investigations reviewed in this group, despite the Department's procedures setting out many of these criteria to guide uses of force.

Also, it was extremely rare for any force investigation in this group to focus on and analyze whether there was a reasonable opportunity for an officer or officers to utilize de-escalation techniques to avoid the necessity of force. This is despite the requirement since 2021 in state law that "officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible." In addition, SDPD Procedures since 2020 have required officers to attempt to use de-escalation techniques where feasible to avoid the need for force.¹³ Every complete

¹³ SDPD Procedure 104, Section V.B., provides that "[b]efore approaching a subject, when given the time and opportunity, and based on the totality of circumstances, officers shall use de-escalation strategies or techniques consistent with Department Procedure 1.55, De-escalation, to persuade the subject to voluntarily comply or to

force investigation of an incident after January 1, 2021 should at least discuss why it was not feasible to employ de-escalation techniques prior to resorting to force.

There were exceptions reviewed by the auditor that demonstrated that investigators in the SDPD Internal Affairs Division were aware of and could capably analyze force allegations in a complete and appropriate manner. Indeed, in one force investigation, the investigator did a model job of reviewing the particularized facts and applying the relevant criteria in finding that an officer's use of force was not compliant with policy in certain respects, yet was compliant in others. And those few investigations that employed a use of force expert within the Department tended to be of higher quality than those that did not. So, the question left unanswered is why an appropriate analysis of force did not happen in every instance. The Department would be well advised to emulate its force investigations that modeled these approaches in every case.

Racial Discrimination Investigations

Racial discrimination was another common allegation among the 153 complaints and 613 allegations reviewed, accounting for about 8% of those allegations.¹⁴ It is also considered among the most serious types of allegations that a police department can investigate, with significant impacts on policed communities. The manner in which such allegations are investigated and analyzed can significantly impact perceptions of a department's legitimacy among the communities in which a department patrols.

Several common issues identified by the deeper review of SDPD investigations of racial discrimination were reflected in many of the larger group of 153 investigations. The most prevalent issue observed in both groups was how the allegation was interpreted and analyzed. Investigators tended to conceptualize racial discrimination as consisting of direct, overt, and intentional officer statements or actions based on the race of the contactee. When questioning subject officers and officer witnesses, investigators asked a standard series of questions about whether the subject officer mentioned the race of the contactee or used derogatory or racially charged terms during the incident. Officers were commonly asked if they took the enforcement action due to the suspect's race, and the investigator simply accepted their negative response without further questioning about contextual facts that may have supported the allegation.

Such an approach misses many potential facts that can illuminate whether implicit bias may have affected an officer's decision-making. It also tends to artificially narrow the scope of the Department's policies and procedures on racial profiling. SDPD Policy 9.31 provides that officers "shall not base any enforcement action, ***in whole or in part***, on race, color, ethnicity,

reduce the need to use a higher level of force." Procedure 1.55 further elucidates the procedures to be used by officers in such de-escalation attempts.

¹⁴ The auditor believes there may be a relationship between allegations of racial discrimination and allegations of discourtesy in some cases. This review revealed that in many cases, the complainant alleging discourtesy felt seriously disrespected by an officer's statements or actions during an incident. For this reason, the number of incidents in which a complainant alleged discrimination may not fully represent the number of incidents where the complainant felt racial bias was present. Whether or not this is true, it would be wise for an investigator to question complainants alleging discourtesy about whether they felt the officer's discourteous actions or statements may have reflected racial bias.

religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics, while conducting any law enforcement activity, including stops and detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group.” [*Emphasis added.*] Thus, the policy forbids enforcement action that is even partly based on the race of a contactee. It does not include any requirement that an officer must consciously consider race in making an enforcement decision. Thus, where there is indirect evidence suggesting that an officer may be unconsciously influenced by the race of the person contacted in making enforcement decisions, that evidence should be fully explored and analyzed. This aspect is generally missing from SDPD investigations of racial bias allegations.

Nor is it sufficient to conclude that an enforcement action was justified by objective evidence of a criminal act if the same or similar action would not have been taken for a person of a different race under those circumstances. Yet, many of these investigations reached a finding based mainly on evidence that there was a criminal act without going further. None of these investigations included an exploration of an officer’s pattern or practice of enforcement in similar situations. Such an exploration can have significant probative value in considering whether racial bias may have influenced an officer’s enforcement decisions in a specific incident.

For example, suppose an officer stops Black drivers for car equipment violations but not White drivers. In that case, there is at least some indirect evidence that enforcement action may be based in part on racial bias, implicit or explicit. Similarly, when an officer’s actions with a Black male contactee seem perhaps overly aggressive, questions about whether the officer would take the same approach with a White contactee may be probative. Also, follow-up questions seeking examples of cases in which an officer took that approach with a contactee of another race can be helpful. These types of investigatory queries did not occur in these investigations.

Finally, allegations of racial bias may involve subtle relational dynamics, including a tendency by perpetrators of biased actions to be blind to their racial impacts. This can be especially true when a power imbalance exists, such as in police enforcement encounters. In almost every investigation of racial bias reviewed by the auditor, the officer made the statement or took the action alleged by the complainant. The dispute, then, was over the meaning of those officer statements and actions. The complainant believed they revealed racial bias, while the officer believed bias played no part in their decision. In such a situation, a finding of “unfounded” is wholly inappropriate. An “unfounded” finding generally is defined by police departments to mean that the evidence showed that the alleged conduct did not occur and this is the definition used by SDPD.

Yet, most racial discrimination allegations in these investigations (92%) resulted in findings of “unfounded.” The more appropriate finding for investigations that conclude that alleged acts or statements were made but were not discriminatory is “exonerated.” In addition, a finding of “unfounded” signals to the complainant and the broader community that their perceptions of discrimination at the hands of officers are discounted and not valued. This approach can be perceived as a second form of disrespect by those who experienced perceived discrimination by

officers of the Department and took the step of making this known to the Department. The auditor therefore suggests that this approach be carefully reconsidered.

Automobile & Pedestrian Stop Investigations

This audit also focused on investigations in which the initial contact came from an officer proactively stopping an automobile driver or pedestrian for perceived minor violations of law, such as equipment violations or jaywalking. These stops typically preceded the officer detaining the driver, cuffing the detainee, and then patting down the detainee and their vehicle. If an arrest of the detainee was made, the car was typically towed, and a complete inventory search of the vehicle was conducted. About 22% of such stops resulted in charges for illegal firearms and/or narcotics.

As noted earlier, the auditor concluded that many, if not most, of these stops constituted “pretextual stops.” Indeed, the officers interviewed in these investigations sometimes described their assignment as making as many stops as possible to detect and remove illegal guns or other contraband from the streets of San Diego. The data show that almost all of these stops focused on Black and Hispanic community members, with the greatest percentage stopping Black people (87%).

Such stops often left contactees concluding that they experienced racially motivated, illegal detentions and searches. Due to the great discretion that Fourth Amendment case law allows an officer to cuff then pat down a stopped person, such actions are often legal and constitutional, even if they may harm community relations. However, officer discretion in these situations is not unlimited. Fourth Amendment case law requires that to detain a person, the officer must observe particularized facts sufficient to create a “reasonable suspicion” that a crime has occurred or is about to occur. Being in a high-crime area during the stop is not sufficient to create a “reasonable suspicion.”

To justify patting down a detainee for weapons, an officer must observe particularized facts sufficient to create a “reasonable suspicion” that this particular detainee is armed with a weapon and dangerous. A hunch based on recent weapons arrests in the area is not sufficient to create such “reasonable suspicion.” This is equally true whether the pat down is conducted on the detainee or the detainee’s automobile. In several of these investigations, there was serious doubt whether there were facts sufficient to justify an officer’s claim that they had a “reasonable suspicion” that the detainee was armed and presented a danger to the officer or others. Instead, it seemed that some officers believed that they were preemptively entitled to conduct a pat down based simply on their subjective concerns for officer safety in a stop. This is not the Fourth Amendment standard for constitutional policing in this situation.

In both the investigations more deeply reviewed and in other investigations of stops alleging illegal detentions and searches, the officers mainly presented general evidence of recent illegal gun seizures and/or gang violence in the area of the stop and an uncooperative attitude of a detainee, as justifications for their pat down of both the detainee and the vehicle. While the officers may have offered more particularized evidence if asked, this generally did not occur. Without such particularized facts, a pat down is not constitutional.

In addition, several of these stops resulted in allegations of racial discrimination by complainants. The racial disparities in these stops alone should raise (but not fully answer) the issue of whether racial profiling was implicated in the stops, detentions, and searches of these individuals. However, that information was never reviewed nor considered by investigators in reaching findings of “unfounded” for most of these allegations.

Discourtesy Investigations

Department investigations of discourtesy allegations suffered from some of the same challenges as those for racial discrimination. This similarity makes some sense, as both allegations relate to perceived disrespect by an officer toward a person contacted by the officer. Where the contactee is Black or Hispanic and feels the officer’s words or actions were disrespectful, the question of racial bias may be implicated, even if not alleged. Discourtesy allegations represented 13% of all allegations made in these 613 allegations in 153 complaints. 80% of discourtesy allegations resulted in findings of “unfounded,” followed by 8% “not sustained,” 6% “exonerated,” and 5% “sustained.”

Similar to discrimination cases, most discourtesy allegations revolved around specific statements and behavior of officers that the complainant found disrespectful. In nearly all these cases, the alleged statements and/or actions were confirmed. The crux of the matter was the interpretation of these statements or actions as discourteous or courteous. The complainants perceived them as discourteous, while the officers believed otherwise. While the determination of discourtesy is inherently subjective, the auditor’s review revealed multiple cases where the complainant’s allegations were supported by a preponderance of the evidence, yet were not sustained.

In most cases where discourtesy was investigated, the investigator took a narrow view of what was considered “discourtesy” and focused solely on the illustrative examples offered in the Department’s Courtesy policy. The Department policy on courtesy begins with a simple statement that officers “shall be courteous to all persons.” It then enumerates a series of actions officers shall and shall not do. Investigations of discourtesy allegations focused solely on the prohibitions enumerated in the policy and reached negative findings if the officer’s actions did not violate those enumerated prohibitions. These prohibitions focus mainly on offensive or contentious statements by officers, leaving aside even obviously disrespectful behaviors. This investigative focus artificially circumscribed the analysis of whether the subject officer exhibited discourtesy.

The frequent use of “unfounded” findings in these investigations may send a disheartening message to complainants and the community. It may suggest that their experiences of disrespect and lack of common courtesy are being discounted and undervalued. When the evidence confirms the alleged statements and/or behavior of an officer, a finding of “unfounded” is usually not appropriate. If the evidence shows the statement or behavior was courteous, then the appropriate finding would be “exonerated.” The use of an “unfounded” finding in these circumstances can be perceived as a second form of disrespect by those who have experienced perceived disrespect by officers and made this known to the Department. The auditor therefore recommends a reevaluation of this approach.

Conflict of Interest Issues in Investigations

Two of the investigations that received a deeper review revealed “conflict of interest” issues that deserve attention. In one investigation, the subject officer was a close relative of a member of the Department command staff. In another investigation, one of the subject officers was a high-ranking supervising officer. Both of these investigations featured interviews of the subject officers that were highly deferential to the officer and failed to explore conflicts between the subject officer’s statements and other available evidence. Each of the investigations was also significantly incomplete in multiple ways. Each of them also exhibited bias in favor of the subject officer.

Putting an investigator, who is a sergeant, in a situation where they must make findings in a complaint against a person of significantly higher rank in their employing organization creates an inherent conflict of interest for that investigator. The investigator must worry that an adverse finding against the high-ranking officer could negatively affect their career within the Department. In addition, such a situation creates a significant appearance of conflict for the investigator, undermining public trust in the investigative process. The auditor recommends that the Department strengthen its policies and practices to avoid such situations in the future. Should a complaint be filed against a high-ranking SDPD official, perhaps the best option is to refer such an investigation to an outside investigator with a sound public reputation for integrity and independence.

Miscellaneous Discrete Investigative Issues

Several of the investigations given a deeper review revealed issues that are not necessarily systemic, but nevertheless deserve attention and are mentioned briefly here. Many, if not all, of these issues could be grouped under the category of “conduct unbecoming” of an officer, as they involved officer actions that tended to bring the Department into disrepute or otherwise interfered with its ability to accomplish its missions. Yet, each was a discrete example of how conduct could have that public effect. Each of these is summarized in a bullet point, below.

- During a sexual assault investigation, the officer explored contradictions in the victim’s statements as if the victim were a criminal lying to escape accountability, rather than a victim affected by trauma. The victim withdrew from cooperation with the investigation. No allegations were sustained by the complaint investigation.
- An officer posted allegedly offensive comments about a high-profile police killing on a social media platform. This behavior was excused as encouraging public discussion of an important public issue. No allegations were sustained by the complaint investigation.
- An officer wore Thin Blue Line attire while investigating a crime, causing offense to the victim’s family. No violations were sustained by the complaint investigation.
- An officer claimed a criminal gang affiliation in a public exchange with a community member. This behavior was excused as an attempt to de-escalate the situation. No allegations were sustained by the complaint investigation.
- An officer was alleged to have driven recklessly in violation of traffic laws despite not responding to an emergency call for service. Similar allegations were made in other complaints. No allegations were sustained by the complaint investigations.

- An officer was alleged to have violated a valid custody order by allowing the transfer of custody of a child. Neither the officer nor the investigator correctly assessed the validity of the order, nor consulted a legal expert. The officer exhibited gender bias in favor of the father. No allegations were sustained by the complaint investigation.
- Officers in several complaints were alleged to have shown disrespect and made denigrating comments about community activists. No allegations were sustained by the investigations of these allegations.

FINDINGS: DEPARTMENT POLICIES, PROCEDURES, AND PRACTICES

Perhaps the most critical aspect of ensuring officers police the community in ways that conform to community expectations is including the community in creating policies to guide those efforts. For this reason, one of the first pillars of the Final Report of the President’s Task Force on 21st Century Policing (“President’s Report”) focuses on this process in discussing how a law enforcement agency can build and maintain trust and legitimacy with the public. The President’s Report states, “In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures.” This is particularly important with regard to policies of significant focus and attention by the public. Several policy areas fall into this category.

Policies that guide the investigation of misconduct complaints are essential to ensure that such investigations reflect integrity and respect for the public. Policies on officer use of body-worn cameras help ensure that officers use these tools appropriately and that video is available for investigations of both crime and officer misconduct, helping build trust with the community. Policies on the use of force and biased policing typically are of great importance to the community. And this review has revealed that policies guiding officer courtesy are important in San Diego. In these areas, SDPD should employ a robust process for community members and leaders to provide input in shaping policies that guide local policing, with the CPP playing a role in that process.

This review has identified Department policies and practices that could benefit from review and discussion, and the auditor has made findings about the policies mentioned above. These findings are gathered here for ease of review. In general, the auditor has limited findings to issues that arose in connection with this review of SDPD investigations and has not conducted a broader review of Department policies and practices. The one exception is in the area of complaint investigation policies, as that process is foundational to an effective accountability system. Therefore, this review includes findings on the complaint investigation system that go beyond issues identified by specific investigations reviewed.

SDPD Complaint Investigations System

FINDING 1: The Department policy allowing civilian complaints to be designated as “informal” allows a complaint not to be fully investigated and no finding made. State law does not support this process, which could create police pressure on civilian complainants to avoid a full investigation. The clearest way to address this is to eliminate the “informal” complaint category from the Department’s complaint investigation process.

FINDING 2: The warnings and instructions to complainants about possible consequences of filing a false complaint on the Department’s complaint forms make the complaint process less than welcoming and suggest negative consequences could follow from filing a complaint. The Department could greatly lessen this deterrent effect by eliminating these warnings and instructions from the complaint forms.

FINDING 3: The Department's policy on intake of complaints is unclear as to whether supervisors on the scene of an incident should handle a citizen complaint or call another supervisor to handle the intake of the complaint. Clarifying this policy could eliminate confusion by complainants seen in some investigations.

FINDING 4: The Department's policy on civilian complaints allows SDPD to conduct a preliminary analysis of the allegations and evidence and determine that the complaint is "frivolous" and therefore need not be fully investigated. Such complaints result in no investigation report and no formal findings and are not referred to the CPP for review. This provision of SDPD's policy is not consistent with the requirements of state law. The Department could comply with state law by requiring all complaint allegations to be fully investigated as long as sufficient evidence exists.

FINDING 5: The Department does not provide complainants with official findings on complaints when it designates the complaint as "informal" or "miscellaneous," despite state law requiring a finding for every complaint allegation lodged. SDPD should provide complainants with a written notice of findings for any complaint filed.

FINDING 6: While the Department's policy requires complaint investigators to make repeated efforts to contact and interview complainants throughout the investigation, this is not always done in practice. The Department should consider whether its training is sufficient to ensure that an investigator makes every reasonable effort to interview every complainant. Doing so will help ensure that the investigator fully understands the nature of the complaint and the complainant's view of the available evidence and convey to the complainant that the agency takes all complaints of employee misconduct seriously.

FINDING 7: The Department's complaint investigators do not always obtain and preserve all evidence that may be material to an investigation. SDPD should promptly secure and analyze all evidence material for a complaint investigation, including interviews of all material witnesses to a complaint, as well as all records of any kind that could affect the outcome of the investigation.

FINDING 8: The Department's complaint investigators do not always use neutral, open-ended questioning of witnesses, nor fully explore the witness' knowledge and perceptions of the incident being investigated. SDPD should conduct all investigative interviews using neutral, open-ended questioning of interview subjects, designed to elicit all relevant information known to the interviewee. The investigator should encourage the witness to remember and provide all of the information they may be aware of.

FINDING 9: The Department's complaint investigators seldom conduct explicit credibility analyses of witness statements, including when there are internal discrepancies within those statements and with other conflicting evidence. SDPD should use investigative interviews to clarify discrepancies within a witness's statements and between the witness's statement and other evidence collected by the investigator. Where there are such conflicts, the investigator should conduct a credibility analysis to help resolve those inconsistencies objectively.

FINDING 10: The Department's complaint investigators sometimes do not fully explore the allegations of a complainant who exhibits mental health issues. Where a complainant exhibits potential mental health issues, the investigator should endeavor to broadly interpret the allegations of their complaint so that potentially valid issues are not missed due to the misperceptions of the complainant.

FINDING 11: The Department's complaint investigation system in practice allows Department officials to investigate an incident in which they may have a personal, familial, or professional interest. SDPD should ensure that its policies, practices, and training specific to complaint investigations prohibit any officer or Department official from acting in an investigative or decision-making role for any complaint investigation that may implicate their personal, familial, or professional interests.

FINDING 12: SDPD should consider outsourcing complaint investigations to a trained and experienced civilian investigator in circumstances of Department conflicts of interest, in order to provide neutrality, eliminate actual and perceived conflicts of interest, and to provide the public greater confidence that such investigations are objectively conducted.

FINDING 13: The Department typically misses its internal deadlines for completing complaint investigations set out in policy. SDPD should develop a realistic work plan to meet the Department's written internal deadlines to complete an investigation and periodically conduct a systemic audit of investigations for deviations from those deadlines.

FINDING 14: The Department's complaint investigators sometimes do not fully identify and review all issues relevant to the incident. SDPD should periodically conduct a systemic audit of its complaint investigations to ensure that all relevant issues are identified and investigated to the greatest possible extent.

FINDING 15: The Department's complaint investigation system allows investigators to close an investigation with a memo and no findings where the investigator concluded there was insufficient evidence to identify a subject officer. The Department should consider auditing complaints that have been closed out with a memo and not fully investigated due to insufficient evidence identifying a subject officer to assess whether the initial investigation to identify the officer was sufficient and whether the investigation was appropriately closed.

FINDING 16: The CPP should consider auditing SDPD investigations periodically to help ensure that all relevant issues are identified and investigated to a reasonable extent.

FINDING 17: The CPP should consider a focused audit of SDPD investigations to determine the circumstances under which allegations may be excluded from full investigation and analysis by the Department and whether this was appropriate.

Use of Force

FINDING 18: The Department's complaint investigators usually do not explicitly analyze force according to state and federal legal requirements that force be objectively reasonable and the minimal amount necessary to achieve a lawful objective. Although SDPD Policy 1.04 requires that force used by an officer be "reasonably necessary," that criterion is not explicitly employed by investigators in evaluating complaints of excessive force. Nor do investigators measure the reasonableness of force against the multiple criteria of federal case law governing force. The Department's use of force policy, procedures, and training should emphasize that any force used must be objectively reasonable and the minimal amount necessary to accomplish a lawful policing objective. (See SDPD Policy 1.04; California Penal Code Section 835a; *Graham v. Connor* (1989) 490 US 386).

FINDING 19: The Department's Use of Force policy requires that an officer use only that force that is reasonably necessary under the circumstances, but fails to define "necessary." SDPD should consider clarifying its Use of Force (UOF) policy and procedure to include a definition of "necessary" as it applies to force. One option would be to define it as meaning that a lower level of force (or no force) likely would not have achieved the lawful objective in question.

FINDING 20: The investigations reviewed suggest that there are racial disparities in force used against suspects by Department officers. SDPD's UOF policy should provide that, overall, force used by the Department should comply with principles of fair and unbiased policing, so that there is no disparate rate of force used against any demographic category of persons under similar circumstances.

FINDING 21: The Department's complaint investigators tend to evaluate force by examining the overall circumstances of the incident, rather than conducting a particularized assessment of the changing factual circumstances as the incident unfolds. The UOF policy should provide that officers and force investigators must continually re-assess the situation to evaluate the necessity of force or continued need for force as circumstances change.

FINDING 22: The investigations reviewed suggest that Department officers approach incidents with a "command and control" orientation that may not adequately consider a suspect's emotional or cognitive ability to understand and comply with commands during a very stressful incident. Special consideration should be given in both UOF policy and training for vulnerable populations, including those for whom there is evidence or suspicion of mental/emotional/behavioral health challenges, those under the influence of drugs or alcohol, pregnant women, the elderly, those who are cognitively divergent, and the young. Where feasible, this should include efforts at de-escalation for these populations.

FINDING 23: The investigations reviewed suggest that Department officers often rely first on verbal and physical escalation to gain compliance with their orders. Officer training under the UOF policy should emphasize increased reliance on good communication skills to minimize escalation of emotional reactivity and the need for use of force.

FINDING 24: The investigations reviewed suggest that Department officers sometimes make no attempt to use de-escalation techniques before moving to force options to gain compliance with orders. Likewise, complaint investigators usually do not evaluate an officer's failure to attempt de-escalation in assessing a complaint of excessive force. The Department's UOF policy, procedure, and training should require that evaluation of use of force incidents include whether the officer exhausted other reasonable alternatives before resorting to the force used and whether de-escalation techniques were reasonable and employed.

FINDING 25: The Department's complaint investigators tend to evaluate force used by reference solely to standards of "reasonableness" and without reference to the concept of "necessity." Likewise, investigations seldom analyze force according to the individual factors laid out in federal case law. SDPD should consider training its complaint investigators that every UOF investigation must refer to its UOF policy, which forbids any force beyond what is "reasonably necessary" to the situation. In addition, each analysis of UOF should separately analyze each instance of force and employ the factors laid out in the seminal Supreme Court case of *Graham v. Connor* to guide such an analysis.

FINDING 26: The investigations reviewed suggest that when officers use force beyond that which is reasonably necessary under the circumstances, other officers do not intervene to attempt to halt such uses of force, as required by policy and law. The Department may wish to consider undertaking Active Bystander training to shift the culture of the organization toward embracing such interventions by team members.

FINDING 27: The CPP should consider regularly auditing Department UOF investigations to ensure that the above relevant standards are appropriately employed in those investigations.

Bias-Free Policing

FINDING 28: The investigations reviewed suggest that Department officials believe that the Department's policy prohibiting discrimination in policing applies only to express, intentional discrimination and not to practices reflecting implicit or systemic biases. The Department should consider clarifying its policy by including illustrations of the limited circumstances in which demographic characteristics of individuals may be considered in policing decisions, such as discretionary stops.

FINDING 29: The investigations reviewed suggest that Department officials may rely on remote associations between a person and a racial or ethnic street gang to justify detention and other enforcement actions that require reasonable suspicion of criminal activity to be constitutional. SDPD should carefully delineate when association with or membership in a racial or ethnic street gang is a justified consideration for the use of racial or ethnic characteristics in an enforcement action.

FINDING 30: The Department should consider providing specific examples in its policy where bias in policing may arise, such as decisions to search a person or a vehicle, and explain that such practices are not allowed. The Department may wish to incorporate such criteria around bias in scenario-based training and incorporate them in its evaluations for promotional opportunities.

FINDING 31: The Department’s policy on bias in policing should include a mandate that officers intervene when they see an example of biased policing and report any observed violation of the policy.

FINDING 32: The investigations reviewed suggest that complainants may allege only discourtesy in situations where bias may influence the level of respect displayed by an officer toward a suspect. Where facts alleged in a complaint suggest potential bias may be involved in an incident, the complaint investigation should separately analyze possible biased enforcement, whether or not the complainant alleges it.

FINDING 33: The investigations reviewed suggest that Department officials believe that the policy prohibiting bias in policing applies only to express, intentional discrimination and not to practices reflecting implicit or systemic biases. SDPD should emphasize in its training for officers and complaint investigators that discrimination allegations do not depend solely on direct evidence of explicit discriminatory animus to be well founded, but can be shown through indirect evidence of enforcement actions influenced by implicit bias.

FINDING 34: The Department should consider committing the agency to an anti-racist operational philosophy that seeks to counter the influences of racism in society, generally, on officers’ actions. Such an approach would go beyond simply prohibiting intentionally biased behavior and strive to eliminate disparate racial/ethnic impacts of SDPD’s policing strategies, policies, practices, and training. It might also involve offering support to other government programs that seek to address the social and economic causes of crime in under-resourced neighborhoods.

FINDING 35: The Department should consider incorporating racial disparity data in early warning systems that indicate issues that suggest the need for additional training or closer evaluation of officer conduct.

Proactive Policing Stops

FINDING 36: The investigations reviewed suggest that Department officials believe that generalized facts, such as presence in a “high-crime area,” rather than specific facts particular to a suspect may support reasonable suspicion to detain a person. Through its policies, procedures, and training, the Department should ensure that officers understand the requirements for constitutional policing with regard to reasonable suspicion to detain a person.

FINDING 37: The investigations reviewed suggest that Department officials believe that generalized facts, such as recent shootings in a high crime area, rather than specific facts particular to a suspect, may support reasonable suspicion to pat down a suspect or vehicle. Through its policies, procedures, and training, the Department should ensure that officers understand the requirements for constitutional policing with regard to reasonable suspicion to pat down a person or their car.

FINDING 38: The investigations reviewed suggest that some officers believe that a person’s loose association with members of a criminal street gang may create a reasonable suspicion of

criminal activity by that person or of the person being armed and dangerous. The Department should carefully consider when and if a person's association with criminal street gang members can contribute to such reasonable suspicions. The Department should also clearly define what the terms "associate" and "member" mean in this context and what evidence is sufficient to justify using those terms.

FINDING 39: The investigations reviewed suggest that the Department's continued use of a vigorous, proactive policing approach focused on minor offenses in neighborhoods populated primarily by racial or ethnic minorities negatively impacts relationships with those communities. The Department should carefully consider whether an aggressive enforcement approach for alleged minor criminal infractions is consistent with its commitment to community-oriented, unbiased policing.

FINDING 40: The Department should consider clarifying that any proactive, focused enforcement strategy for minor violations must be implemented without discriminating on the basis of the demographic characteristics of those targeted by the enforcement.

FINDING 41: The investigations reviewed suggest that Department officers sometimes use their discretion to tow vehicles without allowing the driver to have a friend or family member take custody of it. The Department should carefully consider whether it should allow officers the discretion to tow vehicles without first offering a driver the opportunity to have another licensed driver take custody of their vehicle.

Policing of First Amendment Demonstrations

FINDING 42: The investigations reviewed suggest the Department's policing of protest activity does not always prioritize the protection of First Amendment rights of demonstrators. In addition, while the Department's current policy acknowledges that one goal of police involvement in First Amendment activity is to facilitate the safe exercise of First Amendment rights, the policy places that goal behind others that emphasize preserving the peace, preventing criminal activity, and controlling traffic. SDPD should ensure that its policies, procedures, practices, and training addressing First Amendment protests include a clear commitment to prioritize the protection of the First Amendment Rights of demonstrators to freely assemble and express themselves in public spaces.

FINDING 43: The investigations reviewed suggest the Department's policing of protest activity does not adequately emphasize de-escalation prior to resorting to lawful force. The Department's policies, procedures, practices, and training on policing First Amendment demonstrations should emphasize de-escalation as a core approach to effective crowd management.

FINDING 44: The Department's policies, procedures, practices, and training addressing First Amendment protests should include a general limitation on force to circumstances where it is necessary to avoid harm to officers or others or significant destruction of property.

FINDING 45: The Department's policies, procedures, practices, and training addressing First Amendment protests should include limits on the amount and type of force that officers may use

to prevent the destruction of property. One option would be to include a general limit on force to those options unlikely to cause serious bodily injury or worse. The current policy includes very fine-grained guidance on multiple force options that, without more general guidance, may prove too complex for effective application under the stress of a rapidly unfolding event.

FINDING 46: The investigations reviewed suggest the Department's policing of protest activity may too readily resort to mass arrests of protesters without discrimination as to whether protesters are involved in criminal activities. The Department's policies, procedures, practices, and training addressing First Amendment protests should include a prohibition on mass arrests, limiting arrests to individuals for which individualized probable cause exists to justify an arrest.

FINDING 47: The investigations reviewed suggest the Department's policing of protest activity has too readily moved to dispersal of a crowd alleged to be unlawfully assembling. The Department's First Amendment Protest Policy should include limits on crowd dispersal to circumstances that immediately threaten public safety, or where widespread violence or significant property destruction is occurring or reasonably appears imminent.

FINDING 48: The investigations reviewed suggest the Department's policing of protest activity has not included an effective method of ordering the dispersal of an unlawfully assembled crowd. However, it does appear that the Department's current First Amendment Protest Policy includes adequate requirements that dispersal orders be delivered in such a manner that they are audible to an entire crowd and are repeated before efforts to enforce the dispersal order. The policy also requires that the audible announcement include realistic avenues for the crowd to disperse.

Body-Worn Cameras

FINDING 49: The investigations reviewed strongly suggest that officers need to have a clearer understanding of when BWCs should be activated and remain activated, and thus BWCs sometimes miss parts of incidents about which complaints are made. The Department should require officers to activate their BWC at the moment it is clear that they will interact with a member of the public in any official capacity.

FINDING 50: Once BWC are activated, the Department should require officers to maintain their BWC in an active state until the officer's participation in the incident has ceased and the suspect is no longer in the presence of the officer.

FINDING 51: The investigations reviewed strongly suggest that the use of a buffer in BWC recording where no audio is captured results in the loss of crucial evidentiary information that may be crucial in resolving investigative issues. The Department should consider setting all cameras so that they capture audio during the pre-event buffer period.

FINDING 52: The Department's BWC policy should include a notice that the failure to activate a BWC where required, and without a reasonable explanation for such failure, is considered serious misconduct and will result in discipline.

Courtesy

FINDING 53: The investigations reviewed strongly suggest that Department officers and complaint investigators erroneously consider the illustrative examples of the Courtesy Policy to be the only actions proscribed by that policy. The Department should clarify that the examples offered in its Courtesy policy are exemplary only and that investigators should examine allegations of discourtesy against the full definition of discourtesy, however it may be exhibited by officers. The Department also should consider offering a full definition of “discourtesy” in its policy.

FINDING 54: The Department’s policies, practice, and training should ensure that Department officials understand that the examples offered in its Courtesy policy are illustrative only and that officers are expected and required to avoid discourteous statements and behaviors, regardless of whether they meet the specific criteria of the policy’s examples.

Miscellaneous Findings

FINDING 55: The investigations reviewed suggest that some officers respond to community members recording incidents with a range of unnecessary negative actions, such as making disrespectful comments, aggressively insisting that they move far away, and taking away their cell phones. The Department should consider additional guidance and training to its officers and complaint investigators that the recording of incidents by community members is legal and constitutional and that officers should make no negative comments nor make negative assumptions about the motivations of community members engaged in such behavior. Nor should officers take a phone from a community member absent some indication that it will likely be used as a weapon.

FINDING 56: The investigations reviewed suggest that some officers may not fully understand a trauma-informed approach to conducting sexual assault investigations. The Department should ensure that its sexual assault investigators are fully trained in and understand best practices in approaching such investigations in a trauma-informed manner.

FINDING 57: The investigations reviewed suggest that officers and complaint investigators do not fully appreciate how their behavior on social media may bring into question their integrity and professionalism and that of the Department. The Department should consider adopting a clear policy on employees’ use of social media or other public statements or behavior, both on and off duty, and clarify that behavior that negatively impacts the Department’s mission, function, or capabilities constitutes conduct unbecoming and is a serious instance of misconduct. The Department should also clarify that this includes an employee’s speech.

FINDING 58: The Department should consider giving detailed guidance to officers concerning their use of profiles on dating or sex apps or websites and how Department policies, procedures, or guidelines may affect such use.

FINDING 59: The investigations reviewed strongly suggest that the Department’s current policies, practices, and training are inadequate to avoid injury to all suspects during cuffing. The

Department should consider amending its policies, procedures, and training on cuffing detainees and arrestees so that due consideration is given to body factors that may affect the comfort and experience of the person cuffed. For example, cuffs may seem relatively pain-free when a suspect's arms are pulled back for the cuffing process, but a suspect's large body size or tight shoulder muscles may cause the cuffs to cut into their wrists once the officer releases the tension pulling back their arms.

FINDING 60: The Department should consider the benefits of a “trauma-informed policing” approach, both for its officers and the community members they encounter during incidents. Training to understand and accommodate the effects of trauma on both officers’ and community members’ emotional and cognitive abilities has great potential to increase positive outcomes and avoid further trauma.

**PROPOSED COMMISSION RESPONSES TO THE
SECTION 1 FINDINGS (SDPD COMPLAINT INVESTIGATIONS SYTEM)
OF JERRY THREET’S AUDIT REPORT**

Prepared by Douglas Case, CPP Chair – As Revised May 29, 2025

Background

At the December 11, 2024 Commission meeting, outside consultant Jerry Threet presented his “Independent Civilian Audit of San Diego Police Department Complaint Investigations for the Commission on Police Practices 2020-2023.” The report made 60 findings (recommendations), most of which have been referred to the CPP Policy Committee since those findings relate to issues the committee has on its agenda and will be considered by the Commission when the Policy Committee addresses those topics. The first seventeen findings relate to Internal Affairs operations and are addressed below. The first 15 are proposed recommendations to the SDPD; the other two are recommendations to the CPP. This draft was presented to the Executive Committee for discussion on May 28, and revised to reflect their input.

Additionally, Commissioner Armando Flores recently took the initiative to audit the SDPD’s complaint portal. He identified several deficiencies and proposed solutions. Those were added to the end of this report. (Refer to his audit summary, attached.)

The recommendations will be voted on at the June 4 CPP meeting, After the CPP provides guidance, the Chair will prepare a memorandum from the CPP to be sent to the Chief of Police with recommendations.

FINDING 1: *The Department policy allowing civilian complaints to be designated as “informal” allows a complaint not to be fully investigated and no finding made. State law does not support this process, which could create police pressure on civilian complainants to avoid a full investigation. The clearest way to address this is to eliminate the “informal” complaint category from the Department’s complaint investigation process.*

The SDPD policy defines an “informal” complaint as one where a complainant is offered the opportunity to resolve the matter without a formal investigation and voluntarily opts for that process. Informal complaints result in a memo to file and are not referred to the CPP upon completion. The CPP implementation ordinance explicitly states that the Commission may not review and evaluate complaints when the complainant requests that it be handled without an investigation [(Municipal Code § 26.1107(a)(4)].

The Commission’s General Counsel reviewed Penal Code Sections 832.5(a)(1) and 832.7(f)(1) cited by in the audit report and concluded that the statute does not preclude a informal review, provided the Department has procedures for the handling of those complaints. The SDPD’s Internal Affairs Unit Operation Manual (<https://www.sandiego.gov/sites/default/files/internalaffairsopsjuly2020.pdf> pp. 24-25) describes how the Department handles informal complaints. As the audit report notes, however, there appears to be no policy or procedure restriction regarding what type of allegations can be processed informally.

Many complainants only want to be heard and want their concerns shared with the subject officer(s) and have no desire for a formal investigation or for the officer to be disciplined. Additionally, the informal resolution process saves substantial resources by not requiring an expensive process that the complainant does not want.

Although recordings of complainant interviews reviewed by the CPP as part of the case review process show that while the investigating officer normally makes it clear that the choice of whether to handle a complaint formally or informally is at the sole discretion of the complainant, some describe the formal process ominously which can indirectly pressure complainants to choose the informal option.

Recommendations:

- (1) The informal resolution option should only be offered for Category II allegations.
- (2) The Department should develop a standard script (reviewed by the CPP) to be used for investigators to neutrally explain the difference between formal and informal processes to complainants.
- (3) When the CPP Performance Auditor is hired, the Auditor should periodically review Department records (including recording of complainants) to ensure that the decision of proceeding with a formal or informal process was properly explained to complainants in an unbiased fashion.

FINDING 2: *The warnings and instructions to complainants about possible consequences of filing a false complaint on the Department's complaint forms make the complaint process less than welcoming and suggest negative consequences could follow from filing a complaint. The Department could greatly lessen this deterrent effect by eliminating these warnings and instructions from the complaint forms.*

The CPP General Counsel agrees with our former Outside Counsel that the Department is required by recent case law [*Los Angeles Police Protective League v. City of Los Angeles*, 78 Cal.App.5th 1081 (2022, Second Appellate District)], to include the verbatim statement specified in Penal Code § 148.6 (2):

A law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type: YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CIVILIANS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CIVILIAN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS. IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understand the above statement.

Because all complaints filed with the CPP must be transmitted to the SDPD, the CPP uses the same required statement. A bill introduced in the California Assembly in 2023 to modify (soften) the required language failed to pass.

Recommendation: Do not request a change in the SDPD complaint form.

FINDING 3: *The Department's policy on intake of complaints is unclear as to whether supervisors on the scene of an incident should handle a citizen complaint or call another supervisor to handle the intake of the complaint. Clarifying this policy could eliminate confusion by complainants seen in some investigations.*

Recommendation: The policy should allow the complainant to make a choice of whether to file the complaint with a supervisor on the scene or request another supervisor to be called to take the complaint.

FINDING 4: *The Department's policy on civilian complaints allows SDPD to conduct a preliminary analysis of the allegations and evidence and determine that the complaint is "frivolous" and therefore need not be fully investigated. Such complaints result in no investigation report and no formal findings and are not referred to the CPP for review. This provision of SDPD's policy is not consistent with the requirements of state law. The Department could comply with state law by requiring all complaint allegations to be fully investigated as long as sufficient evidence exists.*

CPP General Counsel advises that classifying a complaint as "frivolous" is permissible provided that there is a written procedure. The SDPD Internal Affairs Unit Operation Manual (pp. 23-24) does have detailed criteria and procedures for classifying a complaint as "frivolous," which must be documented in a memorandum to the file.

Recommendation: Memoranda for frivolous complaints should be provided to the CPP and the complainant.

FINDING 5: *The Department does not provide complainants with official findings on complaints when it designates the complaint as "informal" or "miscellaneous," despite state law requiring a finding for every complaint allegation lodged. SDPD should provide complainants with a written notice of findings for any complaint filed.*

"Miscellaneous" complaints include those that are determined to be frivolous or where a specific SDPD officer cannot be identified. The SDPD Internal Affairs Unit Operation Manual does require that a memorandum be sent to complainants who desire that their complaint be handled informally to confirm their choice. The Manual requires that a memorandum to the file be prepared for miscellaneous complaints, but there is no reference of written notification to the complainant.

Recommendation: The Department should send written notifications to the complainant for all

miscellaneous complaints, with a copy provided to the CPP.

FINDING 6: While the Department's policy requires complaint investigators to make repeated efforts to contact and interview complainants throughout the investigation, this is not always done in practice. The Department should consider whether its training is sufficient to ensure that an investigator makes every reasonable effort to interview every complainant. Doing so will help ensure that the investigator fully understands the nature of the complaint and the complainant's view of the available evidence and convey to the complainant that the agency takes all complaints of employee misconduct seriously.

Recommendation: The Department should require that the investigator make every possible attempt to interview complainants, even when the investigator believes that original complaint provides sufficient information.

FINDING 7: The Department's complaint investigators do not always obtain and preserve all evidence that may be material to an investigation. SDPD should promptly secure and analyze all evidence material for a complaint investigation, including interviews of all material witnesses to a complaint, as well as all records of any kind that could affect the outcome of the investigation.

Unfortunately the report did not give specific examples, presumably because the scope of work required that individual cases not be referenced.

Recommendation: This finding should be forwarded to the SDPD.

FINDING 8: The Department's complaint investigators do not always use neutral, open-ended questioning of witnesses, nor fully explore the witness' knowledge and perceptions of the incident being investigated. SDPD should conduct all investigative interviews using neutral, open-ended questioning of interview subjects, designed to elicit all relevant information known to the interviewee. The investigator should encourage the witness to remember and provide all of the information they may be aware of.

This has been an ongoing issue for many years, communicated multiple times to Internal Affairs, including with the former CRB, and appears to be a training issue.

Recommendation: All IA investigators should be required to attend a course periodically on effective interview techniques. New investigators should attend the course before being assigned cases. Retraining should be required if inadequate or inappropriate interviews are identified.

CPP Reviewers have noticed that copies of the original complaint form submitted by the complainant are occasionally missing from the case folder submitted to the CPP. It is essential that the Reviewers receive and review each complaint form to ensure that IA has accurately identified all allegations.

FINDING 9: The Department's complaint investigators seldom conduct explicit credibility analyses of witness statements, including when there are internal discrepancies within those statements and with other conflicting evidence. SDPD should use investigative interviews to clarify discrepancies within a witness's statements and between the witness's statement and other evidence collected by the investigator. Where there are such conflicts, the investigator

should conduct a credibility analysis to help resolve those inconsistencies objectively.

Recommendation: All IA investigators should be trained on credibility analysis of witness statements.

FINDING 10: *The Department's complaint investigators sometimes do not fully explore the allegations of a complainant who exhibits mental health issues. Where a complainant exhibits potential mental health issues, the investigator should endeavor to broadly interpret the allegations of their complaint so that potentially valid issues are not missed due to the misperceptions of the complainant.*

Recommendation: All IA investigators should be trained on techniques for effectively interviewing complainants who exhibit mental health issues. Retraining should be required if deficiencies in handling complainants with potential mental health issues are identified.

FINDING 11: *The Department's complaint investigation system in practice allows Department officials to investigate an incident in which they may have a personal, familial, or professional interest. SDPD should ensure that its policies, practices, and training specific to complaint investigations prohibit any officer or Department official from acting in an investigative or decision-making role for any complaint investigation that may implicate their personal, familial, or professional interests.*

Recommendation: The CPP should request that the Department implement this proposed policy.

FINDING 12: *SDPD should consider outsourcing complaint investigations to a trained and experienced civilian investigator in circumstances of Department conflicts of interest, in order to provide neutrality, eliminate actual and perceived conflicts of interest, and to provide the public greater confidence that such investigations are objectively conducted.*

Recommendation: Allegations involving members of the SDPD command staff, IA staff, or members of their immediate families, should be investigated by someone independent of IA. The Executive Committee was unable to come to a consensus on who should conduct the investigation. Options discussed include: the City Attorney's Office, an outside investigator contracted by the City Attorney's Office (not SDPD), another law enforcement agency, or POST. The CPP Policy Manager is researching how other the police departments in other California cities handle such conflicts of interest; although as of this writing he has not identified any departments with a specific policy on handling such conflicts of interests.

FINDING 13: *The Department typically misses its internal deadlines for completing complaint investigations set out in policy. SDPD should develop a realistic work plan to meet the Department's written internal deadlines to complete an investigation and periodically conduct a systemic audit of investigations for deviations from those deadlines.*

Failure to meet these deadlines can result in the CPP not having sufficient time to review and evaluate the IA investigation.

Recommendation: This finding should be forwarded to the Department for implementation, with

the addition of “corrective action should be taken as needed.”

FINDING 14: *The Department’s complaint investigators sometimes do not fully identify and review all issues relevant to the incident. SDPD should periodically conduct a systemic audit of its complaint investigations to ensure that all relevant issues are identified and investigated to the greatest possible extent.*

This has also been an ongoing issue brought to the attention of IA by the CPP and CRB many times. Often, investigators try to put allegations into convenient “boxes” and/or fail to include allegations the investigator does not feel are relevant or significant.

Recommendation: At the conclusion of every complainant interview, the investigator should be required to list all of the allegations, verbatim as they will be included in the investigation report. The investigator should have the complainant explicitly confirm that the list of allegations is both accurate and complete.

FINDING 15: *The Department’s complaint investigation system allows investigators to close an investigation with a memo and no findings where the investigator concluded there was insufficient evidence to identify a subject officer. The Department should consider auditing complaints that have been closed out with a memo and not fully investigated due to insufficient evidence identifying a subject officer to assess whether the initial investigation to identify the officer was sufficient and whether the investigation was appropriately closed.*

Recommendation: Forward this finding to the Department for consideration.

FINDING 16: *The CPP should ~~consider auditing~~ audit SDPD investigations periodically to help ensure that all relevant issues are identified and investigated to a reasonable extent.*

Recommendation: The CPP Case Reviewers are expected to do this for each misconduct investigation conducted by the Department that they review. A separate section should be added to CPP case review report for this purpose.

FINDING 17: *The CPP should consider a focused audit of SDPD investigations to determine the circumstances under which allegations may be excluded from full investigation and analysis by the Department and whether this was appropriate.*

Recommendation: This is an appropriate project for the CPP Performance Auditor once hired.

ISSUES IDENTIFIED IN THE AUDIT OF THE SDPD COMPLAINT PORTAL:

1. Mobile upload icon is partially off-screen. Most residents file from their phone; if they can’t tap the paper-clip icon, they can’t attach evidence at all.
2. Limit of three attachments (250 MB each). A single 4-K phone clip or Ring segment can be 200–300 MB. After three files, a complainant must either merge footage (losing quality) or leave evidence out.
3. No way to add files later. If new video surfaces a day after submission, the resident must start a brand-new complaint or figure out how to mail a USB stick.
4. PDF forms are untagged and printer-dependent; no large-print/Easy-Read versions.

Individuals who are blind, low-vision, or without a printer face an immediate barrier.

5. Lack of visible ADA/TTY/VRS information and non-Spanish translations. Deaf/HoH or non-English speakers may abandon the process before it begins.
6. Complaint Form narrative has a 1500 Character limit (roughly 250 words). This is insufficient to fully explain complex incidents.

Recommendations:

1. Repair the mobile UI so the attachment icon stays in view on all phone sizes.
2. Raise the cap (e.g., 10 files or 2 GB total) and allow ZIP archives or cloud-links. 250MB was okay back in 2007, but 1080p and 4k are the current standard. For example, a complainant can upload three 1 minute 4k or 5-7 minute 1080p videos before filling out the form again. There is no guidance on submitting more evidence, not even under frequently asked questions.
3. Send an automatic follow-up link in the confirmation email so complainants can upload additional media later.
4. Bring the page to WCAG 2.1 AA: add alt-text, high-contrast colors, keyboard focus, and fully tagged, large-print/Easy-Read forms.
5. Post a clear ADA and language-assistance banner (email, voice/TTY number, 24/7 VRS, and top-five language options). Complaint forms should be available in multiple languages.
6. Provide a simple status-tracking email or dashboard mirroring the City's "Get It Done" model—to keep complainants engaged.

Analysis of the SDPD Online Complaint Portal

I. Why This Audit Demands Immediate Action

To understand how well San Diego’s Police Department serves residents who need to report officer misconduct, we conducted a **comprehensive accessibility and usability audit** of the Department’s online intake pathway, specifically the “File a Complaint” landing page and its SeamlessDocs web form. The assessment combined three methods:

1. **Device Testing:** We tested the complaint process on current-generation iPhone, Android, and desktop browsers, observing where controls disappeared or failed.
2. **Assistive-Technology Simulation:** Using screen-reader software (VoiceOver, NVDA), switch-control emulators, and keyboard-only navigation, we verified whether a user with visual, hearing, or mobility impairments could complete each step.
3. **Standards Benchmarking:** We measured the portal against WCAG 2.1 AA (web accessibility), Title II ADA (disability rights), Title VI and the Dymally-Alatorre Act (language-access laws), and best practices from leading oversight bodies such as NYC CCRB and Chicago COPA.

Key Definitions for Non-Specialists

- **WCAG 2.1 AA:** International web-accessibility guidelines that specify, for example, text contrast and screen-reader labels.
- **TTY/VRS:** Telephone services that let Deaf or Hard-of-Hearing users communicate via text (TTY) or video sign language (VRS).
- **POBRA One-Year Rule:** California law (Gov. Code § 3304(d)) that bars police discipline if an investigation drags beyond one year after the agency first learns of the allegation.
- **Limited-English-Proficient (LEP):** Residents who speak English “less than very well” and thus require information in their primary language.

Our findings show the portal “frozen” in a desktop-era design that systematically blocks or discourages entire user groups:

- **Deaf/Hard-of-Hearing residents:** No TTY or VRS number, and the form offers no interpreter prompt.
- **Blind/Low-Vision users:** Screen readers cannot locate the unlabeled upload icon; the form’s PDF is actually a flattened image, so text cannot be read aloud or selected. Images do not have Alt text (Image description for VoiceOver)
- **Mobile-only households (≈ 70 % of city residents):** The attach button disappears on common iOS and Android viewports. A single one-minute 4-K clip already exceeds the 250 MB per-file limit, and merging or compressing videos is not possible on most phones.
- **Residents with mobility impairments:** Switch-control (a pressure sensor used to navigate, line by line), navigation stalls on non-standard buttons; links embedded in images are unreachable.

- **LEP communities (Tagalog, Vietnamese, Chinese, Korean, Arabic):** The form is English- and Spanish-only, contrary to state and federal language-access rules.

These barriers are not abstract. They **delay evidence collection**, pushing cases toward the POBRA one-year expiration; **inflate overtime** as investigators chase missing uploads or schedule second interviews; and **expose the City to ADA and Title VI litigation**, liabilities that have cost peer jurisdictions hundreds of thousands of dollars.

Although the page displays a link to the Commission on Police Practices (CPP), that link does **not** resolve the problem; CPP runs a separate intake workflow and does not rely on this obsolete SDPD form. In fact, the CPP address embedded in the SDPD form is out-of-date, creating additional confusion.

Until SDPD replaces this inaccessible portal with a mobile-first, multilingual, ADA-compliant interface, complaints will continue to stall at the front gate, investigations will drag, and public confidence will erode. Put plainly: the current system is not merely inefficient, it is inequitable. Every day it remains online the City's legal and moral debt deepens.

II. Findings at a Glance

Critical Dimension	Current State	Daily Community Impact	Investigative Impact
Mobile Evidence Upload	Attachment icon clipped off-screen; no keyboard/ARIA	Mobile-only users (majority in Districts 4, 8, & 9) abandon upload	IA starts without key videos; must schedule retrieval
File Quota	3 files × 250 MB; GoogleDrive and Box access - DropBox access is not functional	Ring clips and 4-K phone videos exceed limit	Extra 7 hrs investigator time; +21 days delay
Narrative Limit	1 500 characters (~250 words)	Trauma survivors & LEP complainants forced to omit details. Translations from English to Spanish add 15-30% more characters on average.	Follow-up interview adds 4 hrs; +14 days delay
Accessibility	No alt-text, low-contrast links, untagged PDFs, no TTY/VRS banner	Blind/low-vision & Deaf/HoH residents cannot complete form unaided	Potential ADA suit; missing complaints community members with Accessibility needs.
Language Access	English/Spanish only	Tagalog, Vietnamese, Chinese, Korean, Arabic speakers (>5 %) effectively barred	Title VI exposure; under-reporting in key patrol areas
Status Transparency	Seamless Docs Portal	Tracking Portal link is not available on the complaint portal landing page. There is no complaint number generated for third-party reference or way to submit complaint without making a seamless docs account.	Repeat inquiries clog IA admin queue. Common questions must be addressed early on and the process must be fully transparent and accessible. Not truly anonymous

Officer Fields	<ul style="list-style-type: none"> • Single officer; no space for CHP, Sheriff, ICE, campus PD. • No description field or photo upload is available. • No note field to input officers relevance in allegation. 	<ul style="list-style-type: none"> • Multi-agency encounters (border task forces, protests) under-documented. Field should allow for description of officer/officer uniform. Note field added to allow complainant area to describe the involvement of officer. • How to document, out of Jurisdiction enforcement by SOU not mentioned. • Form must allow for notes on witnesses to encounter, allow field for how many officers were on scene. If supervisor was involved (conflict of interest). • Differentiate Formal vs Informal investigations. • Inclusion of Traffic violations by officer - field to add License plate of vehicle/ motorcycle with allegation details. 	<p>Mis-ID causes misclassified findings (“unfounded”) Add all relevant information for navigating these situations to FAQ.</p> <p>Complainants should be able to provide as much information about the subject officer and all officers at the scene during intake process.</p>
Empower Complainants	No current resource on Allegation, US-of Force Matrix or link to policy manual on complaint page.	Many residents do not know policing jargon (“ <i>Category I vs. Category II</i> ,” “ <i>unreasonable search</i> ”). A short, plain-language menu “ Excessive Force ,” “ Bias ,” “ Failure to Provide Medical Aid ,” etc. helps them articulate concerns accurately.	<ul style="list-style-type: none"> • Fewer vague narratives (“The officer was rude”) • Faster triage by Internal Affairs • Higher complainant confidence that the issue is understood
Assist Vulnerable Populations	Allow resource on Allegation to be thoroughly vetted for ADA & Title VI compliance	LEP, Deaf/HoH, and cognitively impaired users benefit from structured choices and clear definitions; screen readers can easily announce labeled checkboxes.	<ul style="list-style-type: none"> • ADA & Title VI compliance • More complete complaints from communities that historically under-report

III. Legal Imperatives

1. POBRA §3304(d) – One-Year Discipline Clock

California courts (*Mays*, *Pedro*, *Garcia*) void discipline if notice is not served within one year of **the agency’s discovery** of misconduct. Portal-induced delays (table above) add ≈ 63 days per Category-I case, pushing median timelines to ~ 300 days, leaving a razor-thin margin before the 365-day cutoff. The CPP audit already logged a Category-I case that breached the limit and “dozens that approached it.” Consider how many complaints are tossed out due to lack of information on intake as well as the necessary follow-up on every complaint because of the constraints. We must also consider that the SDPD is the highest funded department in San Diego and has existed since 1889. This complaint process should have been refined years ago and needs to be reassessed regularly to ensure compliance.

2. ADA & Web Accessibility

Title II guarantees “*effective communication*.” Cases like *NFB v. Lamone* and *Payan v. LACCD* confirm that non-WCAG portals constitute discrimination, inviting DOJ consent decrees and six-figure settlements. The current form fails every WCAG 2.1 AA criterion for non-text content, keyboard access, color contrast, and language tagging.

3. Title VI & Dymally-Alatorre Act

Agencies receiving federal funds must provide “meaningful access” to LEP users. Tagalog, Vietnamese, and Chinese exceed the 5 % trigger in multiple SDPD divisions; yet no translated form exists. DOJ settlements with Denver PD (2022) and Alameda County Sheriff (2024) show the financial and supervisory consequences of non-compliance.

IV. UI/UX Failure Points (Designer’s Lens)

Jakob Nielsen, a pioneer in human-computer interaction, identified **10 universal “heuristics”- simple rules of thumb that define good interface design**. They are widely taught in design schools and used by companies like Apple, Google, and Microsoft as a checklist for usability audits. Below are the five heuristics most relevant to SDPD’s complaint portal, each followed by the specific way the site violates that rule.

Nielsen Heuristic	Plain-English Definition	Violation in SDPD Portal
1. Visibility of System Status	The system should always keep users informed about what is going on, through timely feedback.	Confirmation e-mail gives no follow-up link, case number, or assigned investigator. Users cannot tell if additional files can be added later or how to add those files. FAQ does not provide this information or describe the difference between formal and informal investigations.
2. Match Between System and the Real World	Use familiar language and concepts; do not force users to translate computer jargon.	PDF instructs users to “Print and sign, at the bottom” implying online submission isn’t valid, and complainant must also go into department to file the complaint, this contradicts modern mobile expectations.
3. User Control and Freedom	Users need a clearly marked “emergency exit” to undo mistakes.	1500-character box cuts off text without warning; no option to expand or undo, forcing a full rewrite. Translation into Spanish adds 15-30% more characters. Most languages translated from English follow the same logic.
4. Flexibility and Efficiency of Use	The interface should work for both novices and experts, and adapt to different needs.	No interpreter toggle, contrast mode, or large-print option; fixed English UI.
5. Error Prevention	Better than good error messages is a design that prevents a problem from occurring.	Attachment icon clipped off-screen on iOS/Android; unlabeled buttons make it impossible for screen-reader or switch-control users to upload evidence in the first place.

Because these heuristics are foundational, each violation compounds friction, turning the complaint portal into a *maze* rather than a *funnel*. This is exactly the opposite of what an accountability interface should do.

V. Operational & Fiscal Consequences

Cost Center (Five Years)	Exposure Without Fix	Cost with Modernization
ADA / Title VI litigation & monitoring	\$1.3 M–\$2.0 M	\$40 K one-time + <\$10 K/yr
Investigator overtime (follow-ups)	\$450 K	≈ \$90 K (80 % reduction)
Federal consent decree monitor	\$1.75 M	Avoided
Total	≈ \$3.5 M	≈ \$100 K

VI. Existing City Resources Untapped

1. **Office of ADA Compliance & Accessibility** – Can support with compliance
2. **City Language Access Program** – Translates Council agendas into eight languages; SDPD can ask for translation of document and ensure compliance.
3. **IT & Digital Services** – ‘Get It Done’ status-tracker can be cloned for complaint milestones by IT in < 30 days, using existing micro-services. The code for this should already exist - we are not reinventing the wheel.

VII. 90-Day Action Matrix

Category	Specific Action	Key Benefit / Outcome
Mobile & Evidence Intake	<ul style="list-style-type: none"> • Anchor attachment button; add <code>aria-label="Attach evidence"</code>; include in keyboard tab order • Raise quota → ≥ 10 files or 3 files × 2 GB; accept ZIP & Google/ Dropbox links • Mirror change in Citizen Online Reporting (current 20 MB cap, no video) • Auto-confirmation e-mail with secure follow-up upload link 	Ensures mobile, screen-reader, and keyboard users can attach all evidence; eliminates repeat retrieval trips; aligns report portal with complaint portal; preserves chain of custody for late-found media
Narrative & Officer Detail	<ul style="list-style-type: none"> • Remove 1 500-character cap; add expandable autosave field • Provide repeatable officer blocks (≥ 4) with transport mode & uniform description • Add section for non-SDPD officers (CHP, Sheriff, CBP/ICE, campus PD) plus direct links to their complaint sites 	Captures full sequence of events in one submission; prevents mis-identification; documents multi-agency incidents; reduces follow-up interviews and statute-clock risk
Accessibility & Language Access	<ul style="list-style-type: none"> • Conduct full WCAG 2.1 AA audit & remediation; tag PDFs; add large-print/ Easy-Read versions • Install ADA banner with voice hotline, TTY, RTT, VRS, and accommodation request form • Translate entire portal and documents into Spanish, Vietnamese, Tagalog, Chinese, Korean, Arabic; add interpreter hot-key 	Achieves ADA Title II and WCAG compliance; meets Title VI & Dymally-Alatorre mandates; enables Deaf/ Blind and LEP residents to file independently
Transparency & Trust	<ul style="list-style-type: none"> • Launch public status tracker (case #, milestones) leveraging <i>Get It Done</i> infrastructure • Produce ASL explainer video with open captions and downloadable transcript 	Provides real-time procedural visibility; boosts community trust; satisfies procedural-justice best practice
Social-Media Evidence Workflow	<ul style="list-style-type: none"> • Add dedicated “Social-Media URL” input • Publish #SDPDComplaintEvidence guidance in FAQs and confirmation e-mails 	Captures TikTok/Instagram/YouTube evidence; zero-cost storage; preserves provenance of user-generated content

VIII. Timeline, Overtime, and Statute Risk Addendum

Portal delays add \approx **28 investigator hours** and **63 calendar days** per complex Category-I case:

Delay Driver	Added Hours	Added Days
Evidence retrieval (file cap)	+7 h	+21 d
Narrative re-interview	+4 h	+14 d
Officer mis-ID research	+3 h	+10 d
Follow-up upload workaround	+6 h	+18 d
LEP interpreter redo	+8 h	+28 d
Total	+28 h	+63 d

SDPD routinely approaches the one-year statutory limit as found by Audit recently conducted by Jerry Threet, thus inviting disciplinary nullification.

IX. Conclusion & Call to Action

The existing complaint portal dissuades residents daily, especially those who are mobile-only, Deaf, Blind, or Limited-English-Proficient. It stifles evidence at the front door, inflates investigative timelines, and exposes the City to multimillion-dollar liabilities. By investing **0.01 % of the Department's annual budget**, SDPD can transform a liability into a national model of accessible, mobile, multilingual, and transparent policing oversight simultaneously safeguarding discipline, reducing overtime, and honoring San Diego's smart-city promise.

Immediate executive direction is the only missing element. The internal ADA, translation, and IT resources exist; the legal mandate is clear; the fiscal logic is overwhelming. Acting within 90 days will align SDPD with federal law, city policy, and community expectation, demonstrating that accountability begins not with a badge number but with a usable, inclusive digital doorway.

Respectfully submitted,

Armando Flores

Commissioner, Commission on Police Practices



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

CERTIFIED-RETURN RECEIPT REQUESTED

January 8, 2008

William Landsdowne, Chief
San Diego Police Department
1401 Broadway
San Diego, CA 92101-5729

Re: San Diego Police Department Compliance Review (06-OCR-0055)

Dear Chief Landsdowne:

I am writing to report the findings of the Compliance Review of language services at the San Diego Police Department (SDPD), conducted by the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice. The OCR would like to thank your staff, especially Sergeant Roberto Casillas, for assisting OCR attorney JuanCarlos Hunt during his February 28 to March 2, 2006, onsite visit.

In my letter of January 9, 2006, I wrote to inform you that OCR had selected the SDPD for a compliance review under Title VI of the Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act) and their implementing regulations. As I noted at that time, OCR limited the scope of the compliance review to the SDPD's provision of services to people with limited English proficiency (LEP). A LEP person is an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English.

In June of 2002, the U.S. Department of Justice published guidance for its financial aid recipients on taking reasonable steps to provide meaningful access to programs and activities for LEP persons in accordance with Title VI and the Safe Streets Act. See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002) [hereinafter DOJ Guidance]. Using the technical assistance standards in the DOJ Guidance, OCR initiated this compliance review to determine the extent to which SDPD is providing language services to its LEP population.

After a thorough evaluation of the SDPD=s services and activities, including SDPD=s responses to our data request, OCR's discussions with representatives from LEP communities, and the

information Mr. Hunt gathered during his onsite visit, which included interviews with the command staff, sworn officers, and firsthand observations, we sent you a draft report on September 26, 2007, in accordance with 28 C.F.R. §§ 42.107(d)(2) and .206(e). In a letter dated January 2, 2008, you stated that SDPD discovered two minor factual inaccuracies in the draft report, and requested that OCR amend the draft report to address these inaccuracies. The OCR amended the report accordingly on pages two and seven of this final Compliance Report.

In regard to the limited scope of our review, we conclude that SDPD appears to be taking steps to provide LEP persons with meaningful access to police services. However, the following Compliance Report contains recommendations based on DOJ guidance for how the SDPD may improve its services to LEP persons, beginning with developing a comprehensive written language assistance plan.

Compliance Review Report

This Compliance Review Report closely tracks the DOJ Guidance: first assessing the SDPD's obligation to provide LEP services and then reviewing the elements that the SDPD would include in a more effective plan for offering language assistance to LEP persons.

I. Assessing the Obligation to Provide LEP Services

According to the DOJ Guidance, a recipient's obligation to take reasonable steps to ensure meaningful access to its programs and activities for LEP persons requires an assessment that balances four factors: (1) the number or proportion of LEP persons that are the likely beneficiaries of a recipient's services; (2) the frequency with which LEP persons come into contact with the recipient's programs or activities; (3) the nature and importance of the program, activity, or service provided; and (4) the resources available to the recipient and the related costs. 67 Fed. Reg. 41459-61. In considering the application of these four factors to the SDPD, OCR offers the following observations and recommendations.

A. The Number or Proportion of LEP Individuals in the Service Population

In its data response, the SDPD provided OCR with a map demonstrating that it divides the City of San Diego (City) into the following eight divisions: Northern, Northeastern, Eastern, Southeastern, Central, Western, Southern, and Mid City. Subsequent to OCR's onsite visit, the SDPD notified OCR that it has added a ninth division, the Northwestern Division. The SDPD further explained in its data response that it operates a Headquarters building, nine decentralized area commands, and over 20 storefront offices. The SDPD provided a breakdown of the Northern, Northeastern, Eastern, Southeastern, Central, Western, Southern, and Mid City divisions' race and ethnic compositions, demonstrating that the City's Hispanic population appears to be concentrated in the Southeastern, Southern, Mid City, and Central divisions, and the City's Asian population largely resides in the Northeastern, Northern, Southeastern, and Mid

City divisions. The SDPD stated that it does not have information on the languages spoken in each division.

Based on the United States Census Bureau's 2005 American Community Survey, in 2005, the City had an estimated population of 1,114,932 residents age five and older; of this group, 231,337 spoke Spanish, and almost half of this number (114,015) spoke English less than "very well," which OCR considers LEP. U.S. Census Bureau, American FactFinder, San Diego city, California at <http://factfinder.census.gov>. Other City populations with more than 1,000 individuals age five and older speaking a language at home other than English include the following: Vietnamese (24,358, with 16,723 speaking English less than "very well"); Chinese (24,116, with 12,361 speaking English less than "very well"); Persian (7,659, with 3,372 speaking English less than "very well"); Japanese (6,339, with 3,262 speaking English less than "very well"); German (6,183, with 565 speaking English less than "very well"); Korean (5,946, with 3,848 speaking English less than "very well"); Arabic (5,674, with 2,698 speaking English less than "very well"); French (5,501, with 1,153 speaking English less than "very well"); Russian (5,330, with 2,572 speaking English less than "very well"); African languages (4,706, with 2,111 speaking English less than "very well"); and Laotian (4,648, with 2,266 speaking English less than "very well"). Id.

Recommendation

The SDPD should review the latest data from the Census Bureau to determine more accurately the language assistance needs of its service population. Many police departments have also found helpful the data collected by local school districts on the languages spoken by enrolled students in a given area. This data provides information on the foreign language groups in a particular area and their relative size. The SDPD also should track its LEP population to monitor population shifts.

B. Frequency of Contacts with LEP Persons

To respond to emergency telephone calls from LEP persons, the SDPD's Communications Division utilizes the services of Network Omni, a private vendor that provides telephonic interpreting services. For non-emergency calls, the SDPD utilizes the telephonic interpreting services of Language Line. The SDPD provided OCR with the most recent report it received from Language Line, summarizing the language services that Language Line provided to the SDPD. Based on accounting data that the SDPD provided to OCR during the onsite visit, OCR understands that this report covers services provided during the period of November 29, 2005 to February 15, 2006. According to this report, the SDPD used Language Line 291 times; 255 of these calls (approximately 88%) utilized a Spanish interpreter, 14 calls (approximately 5%) utilized a Vietnamese interpreter, and the remaining calls involved interpretation in Farsi, Somali, Amharic, Japanese, Polish, Portuguese, Russian, Laotian, Mandarin, Tagalog, Greek, and Urdu. The SDPD did not provide any reports from Network Omni.

The SDPD's Arrest/Juvenile Contact Report form includes a space for a SDPD employee to note whether the individual being arrested needs an interpreter and, if yes, for what language. The SDPD does not otherwise collect information on contacts with LEP individuals.

Language Line data underestimates significantly the SDPD's frequency of contact with LEP individuals. Language Line only captures the non-emergency telephone calls for service when the SDPD used Language Line; it does not capture emergency calls from LEP persons, most field encounters and walk-ins with LEP persons, or the non-emergency calls from LEP persons where the SDPD did not use Language Line. During the onsite interviews, several SDPD telephone dispatchers stated that they often resolve telephonic encounters with LEP persons without using Language Line or Network Omni, such as using their own language skills, the language skills of co-workers, or the language skills of friends or family members of the LEP individual. Consequently, the SDPD does not have reliable information about the number of requests for language assistance from LEP persons.

Recommendation

The SDPD should establish reliable systems for gathering information on contacts with its LEP service population. If it does not already do so, the SDPD should obtain periodic reports from Network Omni. The SDPD should also establish procedures for gathering data on all calls from LEP persons not referred to Language Line or Network Omni, including information on the nature of the call, the language requested, and the length of time a bilingual dispatcher or other interpreter spent with the LEP caller. Additionally, the SDPD should develop procedures for gathering data on face-to-face contacts with LEP persons that do not result in an arrest, either by modifying its existing reporting forms or by creating a new form. However the SDPD decides to do this, it should be sure to include information on the language spoken by the LEP person and the SDPD's response to the need for language assistance. The SDPD should then tabulate all of this data on an annual basis to determine the language needs of its LEP service population.

C. Important Public Services to LEP Individuals

1. Emergency and Non-Emergency Calls

The SDPD does not have any written policies on providing language services to LEP persons, other than a February 27, 2001, memorandum on its now-defunct Volunteer Police Interpreters Program.^{1,2} The SDPD's Communications Division handles both emergency and non-emergency

¹ This memorandum from the Chief of Police to All Personnel reminds employees that bilingual volunteers to the SDPD are available to provide language assistance services during investigations, and instructs employees to contact the Communications Division to obtain these services. Based on the information obtained during the onsite visit, OCR understands that the Volunteer Police Interpreters Program no longer exists.

² In its data response, the SDPD also provided a March 2, 1999, SDPD Order regarding the use of sign language interpreters; however, the SDPD should be aware that the term "limited English proficiency" does not encompass

calls for police service. The call distributor Symposium initially receives emergency calls and then routes them to the Communications Division telephone dispatchers. During the onsite visit, Communications Division employees told OCR that emergency callers have the option to proceed in English or in Spanish; OCR understands that if a caller elects to proceed in Spanish, the call is routed to a Spanish-speaking dispatcher if one is available.

The Communications Division employees with whom OCR spoke stated that when a telephone dispatcher receives an emergency or non-emergency call from a LEP person, if the dispatcher speaks the appropriate language then the dispatcher will solely handle the call. If the telephone dispatcher does not speak the language of the LEP caller, the dispatcher relies on a bilingual co-worker to interpret, asks the LEP caller if the caller has a friend or family member nearby who can provide interpretation, or contacts a telephonic interpretation service. As previously stated, the SDPD obtains telephonic interpretation services from Network Omni for emergency calls, and from Language Line for non-emergency calls.

Once the telephone dispatcher assesses the needs of the LEP individual, if it is an emergency call, the telephone dispatcher formats an incident report and forwards it to a radio dispatcher for response; if it is a non-emergency call, the telephone dispatcher transfers the call to the appropriate office or division. One telephone dispatcher told OCR that she notes in the incident report if it is a LEP caller along with the relevant language. The telephone dispatchers with whom OCR spoke stated that the SDPD has not provided training on responding to LEP callers, but rather dispatchers learn through hands-on experience.

During the onsite visit, SDPD employees also reported receiving non-emergency phone calls from LEP persons at SDPD storefront offices and other SDPD facilities. The SDPD employees told OCR that they assist LEP callers by using bilingual SDPD employees, friends or family members of LEP callers, or Language Line.

2. Field Encounters and Walk-Ins

In its data response, the SDPD stated that it has numerous bilingual employees who speak a variety of languages and can provide language assistance. According to the SDPD, if an employee comes across a LEP person in the field or during a walk-in encounter, the employee can request the services of a bilingual employee either over the radio or through the Communications Division. The SDPD explained that the SDPD Communications Division, Human Resources Division, and Watch Commander's Office all have a list of bilingual SDPD employees who have been certified by the City to be fluent in a language other than English. The SDPD also noted that it has two multicultural storefront offices where bilingual officers can provide language assistance; later in its data response, the SDPD discusses a storefront office

staffed by officers fluent in Laotian, Vietnamese, Cambodian, Hmong, and African languages.³ The SDPD further explained in its data response that if an appropriate bilingual SDPD employee cannot be located, the Communications Division has access to two fee-based translation providers; OCR understands that these providers are the telephonic interpretation providers Language Line and Network Omni. The SDPD also stated that officers use friends and family members of LEP persons to interpret in field situations where the use of these individuals “would not compromise a criminal investigation or enforcement action.”

During the onsite interviews, SDPD officers and civilian employees told OCR that when they encounter a LEP individual, they first try to locate a bilingual SDPD employee to interpret, either by calling the Communications Division, requesting a bilingual officer over the radio themselves, or contacting a storefront office. Officers further stated that they access Language Line through the Communications Division in the rare instances where they cannot locate an officer or cannot identify the language being spoken. All of the SDPD employees with whom OCR spoke reported using friends or family members of LEP persons or third-party bystanders, including minors, to interpret. Several officers identified situations where they would not use a friend, family member, or bystander to interpret, such as during a domestic violence situation; if the situation involved a major crime; if an officer needed to take a statement from the LEP person; or if the situation was very sensitive and the family member was a child. Additionally, several officers and civilian employees told OCR that they try to communicate with LEP individuals using hand gestures or having the LEP person speak in broken English.

3. Interrogations and Arrests

When interrogating or arresting LEP persons, SDPD officials and officers stated that they rely on bilingual SDPD employees and Language Line to provide language assistance. In its data response, the SDPD stated that it provides officers with written Miranda Rights translated into numerous languages, and officers with whom OCR spoke reported carrying Miranda Rights translated into Spanish and reading these translated rights to Spanish-speaking arrestees. During the onsite visit, OCR obtained a copy of the SDPD’s arrest contact report; one section of this report asks whether an interpreter is required and, if yes, for what language.

4. Bookings and Detention

In its data response, the SDPD explained that once SDPD officers make an arrest, the SDPD detains arrestees who violate state law in facilities under the jurisdiction of the San Diego County Sheriff’s Department (Sheriff’s Department); the SDPD detains violators of federal law in a

³ Based on the information gathered during the onsite visit and OCR’s review of the SDPD’s website at www.sandiego.gov/police, OCR understands that the two multicultural storefront offices that SDPD referred to constitute the Multicultural Storefront Office located in the Mid City Division. The OCR further understands that the Multicultural Storefront Office services the City’s Laotian, Vietnamese, Cambodian, Hmong, and African communities.

facility run by the Federal Bureau of Prisons. During OCR's onsite visit of the jail operated by the Sheriff's Department, Sheriff's Department employees told OCR that SDPD officers conduct the initial booking of arrestees and then transfer custody to the Sheriff's Department. According to the Sheriff's Department employees, Spanish is the language spoken most frequently by LEP inmates. The Sheriff's Department employees stated that they use bilingual employees, other inmates, or friends and family members of LEP inmates, including minors, to provide language assistance. The employees also reported contacting the Sheriff's Department's Communications Center to obtain telephonic interpreting services.

While touring the jail, OCR observed several signs translated into Spanish, including signs listing rules and regulations, contact information for the Mexican consulate, and information on obtaining medical assistance. The Sheriff's Department employees told OCR that the Sheriff's Department has an inmate orientation video in English and Spanish.

5. Complaints

The SDPD provided OCR with its written complaint procedures; however, these procedures do not address the receipt of complaints from LEP individuals. See SDPD Procedure 1.10-12/20/2005. Briefly, members of the public can lodge a complaint against SDPD at any SDPD facility, at the City's Administration Building, at several community-based organizations, or with any member of the SDPD. Complaints may be in writing (by letter, fax, or email), in person, or by telephone. Upon receipt of a complaint, an authorized SDPD official completes a Complaint Control Form and forwards it to the SDPD Internal Affairs Unit. The Internal Affairs Unit sends the complainant an initial letter explaining the complaint process, a copy of the Complaint Control Form, and the California Penal Code 148.6 Admonishment Form; this form advises complainants that it is against the law to make a false complaint and requires complainants to sign and return the form to the SDPD.⁴ The Internal Affairs Unit then determines, based on SDPD Procedure 1.10, whether to investigate the complaint or refer it to the relevant command for investigation.

During the onsite visit, Internal Affairs Unit employees told OCR that the Internal Affairs Unit has Spanish-speaking officers to handle complaints from Spanish-speaking LEP persons, and that it locates a bilingual SDPD employee from a storefront office for other languages. The Internal Affairs Unit employees further stated that if they cannot locate an appropriate bilingual employee, they obtain language assistance from San Diego State University. Additionally, the

⁴ Please note that the IACP National Law Enforcement Policy Center advises law enforcement agencies that it is not a good general practice to inform complainants of the penalties for filing a false complaint, as it creates a chilling effect on the filing of complaints and could be perceived as an attempt to intimidate potential complainants. Additionally, a law enforcement agency's failure to fully document all complaints from the public can create a perception that the agency is covering up some officer misconduct. See the Model Policy on Investigation of Employee Misconduct and its accompanying Concepts and Issues Paper, published by the IACP National Law Enforcement Policy Center (revised October 2001).

employees reported using family members or friends of a LEP complainant to interpret. In its data response, the SDPD provided OCR with copies of the initial letter sent to complainants and the California Penal Code 148.6 Admonishment Form that have been translated into Spanish and which are sent to Spanish-speaking complainants. The SDPD also provided a copy of the Complaint Control Form; this Form contains a space for the SDPD completing official to indicate whether the complainant requires an interpreter and in what language.

The SDPD stated in its data response that the SDPD Internal Affairs Unit employee who manages complaints does not recall receiving any complaints alleging ineffective communication with a LEP person during the past six years.

6. Community Outreach

The SDPD reaches out to LEP groups through the operation of a multicultural storefront office and through participation in community group meetings and events. In its data response, the SDPD stated that it operates a storefront office specifically to interact with the City's concentrated African, Laotian, Vietnamese, Cambodian, and Hmong communities, and that it staffs this facility with officers fluent in the language and culture of these communities. As previously discussed in this Compliance Review Report, OCR understands that this storefront office is the Multicultural Storefront Office located in the Mid City Division.

During the onsite visit, SDPD employees told OCR that officers staffing the Multicultural Storefront Office have attended meetings at local mosques, temples, synagogues, and churches to address issues affecting these communities, and have conducted recruiting at local fairs to attract employees from these LEP communities. The employees also said that the Multicultural Storefront Office operates two youth programs primarily geared toward children of refugees. The Mid City Division's page on the SDPD's website contains information on periodic multicultural community meetings that the SDPD holds with advisory boards and organizations representing LEP communities. These groups include the Hmong Advisory Board, Vietnamese Advisory Board, Lao Advisory Board, Cambodian Advisory Board, East African Advisory Board, San Diego Asian Youth Organization, and East African Youth Organization. The Mid City Division also posted a flyer announcing monthly Police Advisory Board Community meetings, where residents can gather and discuss concerns with the SDPD about issues in their neighborhood.

In addition to the activities of this multicultural storefront office, officers with whom OCR spoke reported attending other meetings and events with LEP communities. Several Spanish-speaking officers said they have given presentations to community groups in Spanish, including presentations on gang activity, narcotics, graffiti, and public safety issues. Officers also reported conducting meetings in Cambodian and Vietnamese on public safety issues. Based on OCR's onsite discussions with SDPD officials and officers, OCR understands that the SDPD may

provide interpreters at meetings with LEP communities, or community groups may provide their own interpreters.

SDPD officers with whom OCR spoke also reported working with ethnic media to discuss the SDPD's services and activities. One Spanish-speaking officer from SDPD's Internal Affairs Unit told OCR that he spoke on a Spanish radio station regarding the activities of this unit, and other officers said that they have appeared on Spanish and Vietnamese radio and television stations, including Saigon and Univision. Additionally, one officer said that the SDPD runs advertisements in a Filipino newspaper. During the onsite visit, the SDPD provided OCR with a tape of a public service announcement entitled "Undocumented Persons Policy" that the SDPD translated into Spanish, Vietnamese, Tagalog, and Arabic, along with Arabic, Somalian, and Vietnamese versions of a cassette tape on Family Harmony.

The OCR understands that the SDPD appoints officers to serve as liaisons with various ethnic groups; OCR spoke with one Spanish-speaking officer who serves as a liaison to migrant workers, many of whom are LEP. Additionally, the SDPD stated in its data response that the SDPD Domestic Violence and Elder Abuse Units partner with the City Attorney, Children's Hospital, and other advocacy groups to run the San Diego Family Justice Center, an organization designed to prevent domestic violence, elder abuse, sexual abuse, and child abuse in San Diego communities.

In its data response, the SDPD identified several community organizations representing LEP individuals that the SDPD has worked with. The OCR had difficulty reaching many of these organizations; some of the telephone numbers were disconnected or rang repeatedly without being answered, and a number of the organizations did not return OCR's phone call. The OCR was able to speak with representatives of several of the listed organizations, and these individuals said that the SDPD is taking steps to reach out to LEP communities. All of the representatives with whom OCR spoke praised the SDPD's Multicultural Storefront Office, noting that the office provides a means for bilingual SDPD employees to interact with LEP communities and respond to the communities' needs. One representative told OCR that members of the LEP community that he represents attend meetings with the SDPD at the Multicultural Storefront Office, and another representative told OCR that the SDPD conducts community forums where interested community members can meet with the Chief of Police to discuss any concerns or issues.

7. General Language Services

To provide the foregoing public services to its LEP population, the SDPD offers both oral and written language assistance.

a. Oral Language Services

The SDPD officials and employees identified three ways in which the SDPD provides oral language assistance to LEP individuals: (1) through Language Line and Network Omni; (2) through bilingual SDPD employees; and (3) through friends or family members of LEP individuals or third-party bystanders.

As previously noted in this Compliance Review Report, the SDPD uses Language Line and Network Omni to respond to telephone calls from LEP persons, and SDPD employees may use these services during face-to-face encounters. While Language Line and Network Omni appear to be useful in responding to emergency and non-emergency calls, it seems that few employees other than the telephone dispatchers use this service.

For non-telephonic encounters with LEP persons, employees attempt to locate a bilingual employee for language assistance or utilize a friend, family member, or bystander on scene to interpret. The SDPD explained in its data response that it designates certain positions as bilingual positions, and that it fills all bilingual positions with individuals who have obtained certification from the City by passing a foreign language fluency examination. The SDPD further explained that this certification only means that the employee is fluent in the foreign language, and does not mean that the employee is a certified interpreter. The SDPD provided OCR with a list of approximately 506⁵ bilingual SDPD employees, out of approximately 2,725 SDPD employees, listing each employee's name, rank, language spoken, and certification date.⁶ Some of the employee listings do not contain a certification date; therefore, OCR understands that not all of the bilingual employees on this list have been certified as fluent by the City. According to this list, the approximately 506 bilingual SDPD employees speak a total of 28 foreign languages. The majority of employees (431) speak Spanish, and other spoken languages include Vietnamese, Laotian, Tagalog, Cambodian, and Thai. During OCR's onsite visit, OCR spoke with several officers who are not included on this list but said they sometimes provide language assistance services to LEP individuals.

The SDPD stated in its data response that since the City has a very diverse population, the SDPD seeks out individuals who are bilingual and encourages them to apply. As discussed previously in this Compliance Review Report, officers working at the Multicultural Storefront Office conduct recruiting in immigrant communities. The SDPD stated that while it makes officer assignments on a volunteer basis, officers with language skills often request to work with or are sought out by SDPD commands serving LEP populations.

⁵ Several of the 506 employees are listed more than once, as they speak more than one foreign language.

⁶ This list contains an additional 30 employees who are proficient in American Sign Language; as previously discussed in this Compliance Review Report, proficiency in American Sign Language is not encompassed by the OCR's review of services to LEP individuals.

In its data response, the SDPD explained that it provides additional compensation to bilingual SDPD employees serving in job assignments that require the ability to communicate in specified foreign languages on a continuing basis; OCR understands that SDPD is referring to the designated bilingual positions discussed above. For sworn officers, the foreign languages eligible for ongoing bilingual compensation are Spanish, Tagalog, Korean, Chinese, and Indochinese; for civilian employees, the eligible languages include the above-listed languages, plus Arabic and Farsi. City-certified bilingual employees in these job assignments receive an additional 70 cents per hour in pay; based on the documentation gathered during the onsite visit, OCR understands that sworn officers alternatively may receive an additional 3.5% of base pay. Additionally, if SDPD requests an officer or civilian to provide temporary language services in a language that is not eligible for ongoing bilingual compensation, SDPD pays the officer or civilian an additional 70 cents per hour for the entire pay period during which the employee provides assistance.

Regarding the use of family members, friends, and bystanders to interpret, as previously discussed in this Compliance Review Report, SDPD officials and officers report regularly using these individuals to interpret. Additionally, several officers reported using hand gestures to communicate with LEP persons or requiring LEP individuals to speak in broken English. One officer told OCR that language assistance services may not be necessary because often LEP persons “pretend they don’t speak English but really can get by.”

The SDPD does not have a written policy on providing oral language assistance to LEP persons, and almost all of the SDPD employees with whom OCR spoke said that the SDPD has not provided training on this issue. One employee did recall the SDPD instructing employees to contact the Communications Division to access language assistance services, and several employees recalled receiving cultural diversity training. Numerous employees told OCR that they learned on the job how to provide assistance to LEP individuals. In its data response, the SDPD provided documentation showing that recruit officers complete a 34-hour course on Basic Spanish for Law Enforcement, and the SDPD stated that it allows tenured officers to attend Spanish immersion courses if staffing permits. During OCR’s onsite visit, OCR obtained a guide that the SDPD prepared for employees on Southeast Asian and African cultures.

b. Written Language Services

In its data response, the SDPD stated that most of its informational items or application packets are printed only in English, and that it translates documents into other languages based on an ongoing request for information. The SDPD explained that materials relating to safety and crime prevention are available at its 20 storefront offices, Headquarters building, and nine decentralized area commands, and provided OCR with 18 safety and crime prevention materials that the SDPD has translated into languages other than English. These materials include the following: pamphlets on child abuse, elder abuse, personal protection, and a home security manual translated into Spanish; pamphlets on vehicle theft, child abuse, and curfew translated into

Somali; and documents on safety for the Southeast Asian elderly, when and how to call 911, residential robbery, tobacco and alcohol in the Southeast Asian family, sexual assault, personal safety for Southeast Asians, domestic violence, and home security, all translated into Hmong, Vietnamese, Cambodian, and Laotian. The SDPD also provided a document on bullying prevention translated into Spanish and Chinese, a document on child safety translated into Spanish, Tagalog, and Korean, and a pamphlet on preventing hate crime translated into Spanish, Hindi, Chinese, Armenian, and Arabic.

The SDPD also enclosed with its data response informational sheets on solicitor and peddler permits that have been translated into Spanish; however, the SDPD explained that all permit application forms are only in English to allow proper processing by SDPD and City personnel. Additionally, the SDPD enclosed eight documents translated into Spanish relating to family violence that are available at the San Diego Family Justice Center. During the onsite visit, OCR obtained the following additional materials that the SDPD has translated into Spanish: a document on how to obtain a police report, a child identification kit, child protection information, a sheet on what to do if your car is stolen in Mexico, a guide to domestic preparedness, a pamphlet on senior safety, two pamphlets on calling 911, and a community alert regarding a male suspect peeping into homes. As previously discussed in this Compliance Review Report, the SDPD has translated into Spanish the initial letter that is sent to citizen complainants and the California Penal Code 148.6 Admonishment Form. The SDPD said in its data response that it supplies officers with forms in numerous languages for the admonishment of Miranda Rights or obtaining consent to search vehicles or residences; however, OCR does not have copies of these forms in any foreign languages.

In its data response, the SDPD stated that it relies on City-certified bilingual SDPD employees to translate documents into foreign languages, and that many translated documents are obtained from the State Attorney General's Office. To ensure the accuracy of translated materials, the SDPD said that it relies on the skills of the City-certified employees, and that it assumes that documents obtained from government sources such as the State Attorney General's Office are accurate. The SDPD explained that it distributes translated materials at meetings or presentations, by giving the materials to community organizations to distribute, or by making materials available at SDPD facilities. The SDPD officers with whom OCR spoke also reported distributing translated documents at community fairs and events. The SDPD stated in its data response that when bilingual employees are interacting with LEP individuals, the employees might inform LEP persons of the availability of translated materials.

During OCR's onsite visit, OCR observed many of the above-referenced translated documents at the SDPD's Multicultural Storefront Office; however, OCR observed few translated documents at the other SDPD facilities that OCR toured. Based on OCR's interviews with SDPD patrol officers, it does not appear that many officers regularly carry translated materials with them to distribute in the field. Although some officers reported carrying translated information on

domestic violence, crime prevention, and home protection, several other officers said they do not carry any translated materials with them.

The SDPD website, www.sandiego.gov/police, is entirely in English.

Recommendation

While the SDPD is currently taking steps to provide services to LEP persons, such as employing bilingual individuals who have been certified as fluent by the City and translating some materials into frequently-encountered languages, the SDPD should build on these steps to provide more effective language assistance to LEP individuals. As an initial matter, the SDPD should establish a comprehensive written policy on providing services to LEP persons in a variety of contexts, including field and walk-in encounters, interrogations, arrests and bookings, complaint processing, and community outreach. In this policy, the SDPD should advise employees to obtain language assistance services from qualified bilingual employees or contract interpretation services, and that employees should use family members, friends, or bystanders to interpret only in unforeseen, emergency circumstances while awaiting a qualified interpreter.

Once the SDPD has developed this policy document, it should immediately train all employees on the policy to ensure that employees are aware of the proper procedures for providing language assistance services. Following this initial training, the SDPD should establish annual training sessions focused specifically on providing language assistance services to LEP individuals, and should include this issue in its new recruit training. As part of its employee training, the SDPD may wish to show the enclosed DVD *Breaking Down the Language Barrier: Translating Limited English Proficiency into Practice*. Other law enforcement agencies have found this DVD particularly helpful in training employees on how to provide services effectively to LEP populations.

The SDPD is making an effort to ensure that its language assistance services are accurate and reliable by requiring that designated bilingual positions be filled with individuals certified by the City as being able to communicate fluently in a foreign language. However, the skill of communicating with another person in a foreign language is different from the skill of interpreting, which requires listening to something in one language and orally conveying its meaning into another language. Therefore, the SDPD should work with the City to expand the City's current testing process to specifically assess a bilingual employee's skill of interpreting in a foreign language. Alternatively, the SDPD may wish to develop and administer these tests on its own. This testing process does not need to involve a formal certification in interpretation. The testing process should also assess an employee's ability to translate written materials, which involves rendering written communication in one language into another language. The SDPD should maintain a list of all employees who have successfully completed the testing process, specifically noting whether the employee has the ability to interpret and/or translate in a

particular language. The SDPD should ensure that this list is constantly updated and distributed to all SDPD employees.

The SDPD is currently taking positive steps to recruit bilingual employees by providing additional compensation for certain language skills. The SDPD may wish to expand the languages that are eligible for ongoing bilingual pay to include other frequently-encountered languages such as Persian, Japanese, German, and French, and should add Arabic and Farsi to the list of eligible languages for sworn officers. The SDPD should continue to conduct recruitment activities with immigrant communities to increase the number of bilingual employees and further improve its services to LEP communities.

In regard to written materials, while the SDPD has taken steps to make various documents and resources available to frequently-encountered LEP populations, it should take additional steps to ensure compliance with Title VI. The Department of Justice encourages recipients to satisfy the “safe harbor” provision in the DOJ Guidance when determining what documents to translate. See DOJ Guidance, 67 Fed. Reg. 41464. This provision states that recipients should translate “vital documents” for LEP groups that comprise five percent or 1,000, whichever is less, of the eligible service population. Id. Whether a document is “vital” depends on the “importance of the program, information, encounter, or service involved, and consequence to the LEP person if the information in question is not provided accurately or in a timely manner.” Id. at 41463. Examples of documents that may be “vital” are consent and complaint forms; intake forms; written notices of rights; denial, loss, or decrease of benefits; notices of disciplinary actions; written tests for a license, skill, or job for which knowing English is not required; applications to participate in a program or activity; and applications to receive a benefit or service. Id.

In accordance with the DOJ Guidance, the SDPD should perform an inventory of all of its written materials, identify the documents it considers “vital,” and translate these documents into the languages that meet the safe harbor threshold. The SDPD should also implement quality control measures to ensure the accuracy of translated materials and to make sure that all of the information is being conveyed to LEP persons. As explained above, the ability of an individual to speak a foreign language does not necessarily mean that the individual has the skills to translate a document from English into the foreign language. The accuracy of translated materials could be ensured by having a second, independent translator, such as a bilingual officer, professor from a local university, or employee from a local government agency, to verify the work of the primary translator. The SDPD may also wish to use “back translation,” where the primary translator can translate the document, and a second, independent translator could translate it back into English to ensure that the appropriate meaning has been conveyed. Once the SDPD translates the “vital documents” and ensures their accuracy, it should then develop a strategy for distributing the materials to the relevant LEP communities.

The SDPD also should post a sign(s) in the primary languages of the largest LEP populations in the lobby of its police stations and other places of public contact stating that on request, free

language services are available. The SDPD should request that the Sheriff's Department post a similar sign in its detention facilities. The SDPD should make sure that important information available in English on its website is also available in the primary languages of the largest LEP populations.

The SDPD is currently taking steps to build relationships with LEP communities, such as maintaining a multicultural storefront office and regularly holding meetings with LEP community groups. To ensure that its community outreach efforts are effective, the SDPD should establish a mechanism for gathering community feedback on its provision of services to LEP individuals. For example, the SDPD may want to develop a written survey of community groups serving LEP populations, or to convene a focus group of LEP individuals. The SDPD should work with ethnic media outlets to publicize these meetings and to inform LEP persons of the availability of free language assistance services and other important resources.

D. Available Resources

The SDPD's fiscal year runs from July 1 through June 30. According to SDPD's data response and its Organizational Financial Status Department Summary Reports, its total operational expenditures in Fiscal Years 2004 and 2005 were \$281,910,282 and \$321,009,026, respectively. As previously discussed in this Compliance Review Report, bilingual SDPD employees serve as the SDPD's principal resource for communicating with LEP persons, and the SDPD provides additional compensation for bilingual employees providing ongoing or temporary language assistance services. The documentation provided by the SDPD indicates that the SDPD expended a total of \$994,150 on bilingual pay in Fiscal Year 2004 and \$1,110,881 on bilingual pay in Fiscal Year 2005. The SDPD attempts to attract bilingual officers by recruiting in immigrant communities, and the SDPD recruiting materials list bilingual pay as an employee benefit.

The SDPD also incurs expenses for the telephonic interpreter services provided by Language Line and Network Omni. The Organizational Financial Status Department Summary Reports show that the SDPD expended \$18,978.02 on Language Line services from August 5, 2004 to February 15, 2006. The SDPD did not provide OCR with any documentation showing expenditures made for services from Network Omni.

During the onsite visit, one officer told OCR that the San Diego Police Foundation, a non-profit organization that provides support for local law enforcement programs and activities, partially compensated her for attending a foreign language class. In its data response, the SDPD stated that it allows tenured officers to attend Spanish immersion classes during duty hours if staffing permits.

The SDPD stated that it obtains some translated material from outside sources, such as the California State Attorney General's Offices. During OCR's onsite visit, SDPD employees reported using San Diego State University for interpretation services.

Recommendation

The SDPD should undertake a review of its human and capital resources in assessing how well it is responding to the needs of its LEP populations. One part of this review should include gathering feedback from the local LEP service population on how the SDPD can provide more effective language assistance services. Some law enforcement agencies have developed community feedback surveys in the languages of its LEP service populations for this purpose, while others have convened focus groups with LEP populations. The SDPD should also work with community groups serving LEP populations to determine what additional steps it can take to attract more bilingual employees capable of providing language assistance services. The SDPD may also wish to consult with community groups to identify all of the community resources that are available to provide cost-effective and reliable language assistance services to the City's LEP populations. The SDPD should build upon its current efforts to recruit bilingual employees, particularly individuals who speak Vietnamese, Chinese, Tagalog, Korean, and Loatian.

II. Developing an Effective Plan on Language Assistance for LEP Persons

According to DOJ Guidance, an effective plan for providing language assistance to LEP persons has five elements: (1) identifying LEP individuals who need language assistance; (2) providing information on effective language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the plan.

Recommendation

The SDPD should develop a comprehensive, written language assistance plan that incorporates the five elements referenced above and addresses the concerns raised in this Compliance Review Report. In doing so, the SDPD may wish to consult the DOJ Guidance, along with the following documents: (1) Planning Tool for Creating a Language Assistance Policy and Plan in a Law Enforcement Agency; (2) Limited English Proficiency Resource Document: Tips and Tools from the Field; and (3) a sample written language assistance plan. These documents are available online at <http://www.lep.gov>, and should assist the SDPD in preparing a language assistance plan or a general order on services to LEP persons.

Conclusion

This letter serves as notice that OCR has made a preliminary determination that the SDPD appears to be taking steps to provide meaningful access to its programs and activities to LEP persons. However, the SDPD should build on these steps to ensure compliance with Title VI.

Chief William Landsdowne
January 8, 2008
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On request, the OCR is available to provide technical assistance in implementing its recommendations and formulating a written language assistance plan. **Immediately upon receipt of this letter, we ask that a responsible SDPD official contact Attorney Advisor Shelley Langguth to develop a timeline and goals for developing a written language assistance plan.**

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Langguth at (202) 305-2353.

Yours very truly,

/s/
Michael L. Alston
Director

Enclosure

cc: Captain Robert Kanaski
San Diego Police Department