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Independent Police Auditor Annual Report

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Executive Summary

The Independent Police Auditor for the City of Santa Cruz (IPA) is pleased to provide its second annual report on its work, findings, and recommendations. Our oversight role with the City affords us the opportunity to review the Santa Cruz Police Department's investigations of complaints filed by members of the public, internally generated complaints, and administrative investigations of significant incidents such as in-custody deaths and vehicle pursuits. Upon completion of its investigations, Santa Cruz Police Department ("SCPD") provides its investigative file and conclusions for IPA review. This annual report addresses IPA's review of thirteen formally investigated public complaints, administrative investigations involving an in-custody death and a vehicle pursuit, and two additional concerns about SCPD performance.

Many of the files we reviewed reflected thorough investigations and sound conclusions. We observed the Department using individual incidents as an opportunity for making thoughtful recommendations to improve the performance of individual officers and the agency as a whole.

Our review also identified areas of the Department's accountability systems that should be strengthened. Our twenty-six recommendations address these concerns. Some public complaints involved significant investigative delays that would have precluded discipline had actionable misconduct been identified. The Department should develop a system to accurately log in, track and monitor complaint investigations to ensure their timely completion. The Department's complaint policy should be revised to require prompt interviews of complainants. The Department's notification to complainants about the Department's investigation's conclusion should be timely and when appropriate, describe any reform or learning that resulted from the complaint.

We also identified aspects of the Department's investigation and review of critical incidents that can be improved. The Department's policy on Officer-Involved Shootings and Deaths would be enhanced by requiring interviews of involved and witness officers before the end of their shift. We also recommend (at least for deadly force incidents and other critical incidents) that the Department (pursuant to current policy) convene a Use of Force Review Board for critical incidents so that the Department has a formal process to discuss, monitor and

implement recommendations and action steps arising from the Board's assessment. Finally, our review of an incident at a rental storage locker provided an opportunity to address the role "bias by proxy"¹ may have played in the original call for service and the subsequent interaction the complainant and her two companions had with SCPD officers. We recommended that the Department revise its Biased-Based Policing policy to address bias by proxy and develop training for officers, supervisors and dispatchers.

Below is our summary of cases we reviewed and key recommendations.

Case Summary	Allegations	SCPD Finding	Auditor Recommendations
An individual arrested for being under the influence of drugs became unresponsive when removed from the police vehicle. Officers promptly summoned medical care. He was transported to the hospital and died shortly thereafter.	Review for compliance with SCPD policy	In policy; SCPD recommended discussion with the District Attorney about delayed interviews and monitoring of non-seat-belted arrestees.	Timely interviews of involved and witness officers. Monitor handcuffed, non-seat belted arrestees during transport. Require In-car video recording during arrestee transport. Implement a Use of Force Review Board. Debrief officers post-Review Board. Debrief officers in this case about their incorrect assumption that the arrestee was feigning his medical distress. (IPA Recommendations 1-8)
In response to a report of a gun brandishing during a road-rage incident, SCPD officers stopped a car matching the suspect vehicle. investigation determined the driver was the victim, not the perpetrator of the gun threat. Numerous officers were involved in the high-risk felony stop.	Excessive force, discourtesy, racial profiling	In policy; SCPD recommended dispatch records be preserved; 911 caller should have been interviewed; number of officers in high risk stop should be reassessed; officer counseled for not activating his body worn camera.	Ensure post-incident recommendations are considered and implemented. Document time, date and manner SCPD receives complaints. Require approval and documentation of significant investigative delays. Monitor complaint investigations through status updates to the Chief. Require tolling exception to one-year statute of limitations be approved & documented. Describe any reform or learning from complaint when notifying the complainant of the investigation's conclusion. (IPA Recommendations 9-14)

¹ Bias by proxy occurs "when an individual calls the police and makes false or ill-informed claims about persons they dislike or are biased against." Fidel, Producing Bias-Free Policing: A Science-Based Approach (2017) Springer International Publishing, p. 90.

Case Summary	Allegations	SCPD Finding	Auditor Recommendations
<p><i>SCPD officers contacted complainant and companions who were helping her load boxes from her rental storage unit into a van. Complainant alleged the officer was rude and threw his business card on the ground when his contact information was requested. The call for service did not describe criminal or suspicious behavior and the complainant and companions questioned why their lawful presence resulted in police response.</i></p>	Discourtesy	Sustained	<p>Re-evaluate this complaint in light of bias by proxy principles. Develop policy and training on bias by proxy. Retain complainant's notification letters. Require complainants be interviewed about each allegation and investigate accordingly. Notify the complainant of SCPD's investigative conclusions and explain its policy and training efforts on bias by proxy.</p> <p>(IPA Recommendations 15-19)</p>
<p>An internal complaint concerning an officer driving to a call for service in an unsafe manner and initiating a pursuit on Highway 17 in an extremely dangerous manner.</p>	<p>Driving unsafely initiating pursuit without justification, driving in a pursuit that threatened public safety; continuing to engage in a pursuit when ordered to terminate it</p>	Sustained	<p>IPA found the investigation thorough and resulting in timely remediation.</p>

Case Summary	Allegations	SCPD Finding	Auditor Recommendations
The complainant and her boyfriend alleged they were wrongly arrested for possession of a stolen vehicle, the officer used excessive force by pointing a firearm at her and threatening to kill her dog.	Unlawful arrest Excessive Force	Unfounded	<p>Revise SCPD's complaint policy to require timely interviews of complainants. (IPA Recommendation 20)</p> <p>The investigation did not conclude until almost two years after complaints were filed, providing further support for Recommendations 10-13 that address the timely completion of investigations.</p> <p>IPA found investigative conclusions were sound and supported by body-worn camera footage and a confirmed stolen vehicle report.</p>
The complainant alleged that officers damaged his watch while he was in custody.	Damage to property	Unfounded	IPA noted the Department made reasonable efforts to investigate this complaint though there were significant delays during the investigation.
SCPD officers responded to a disturbance call that resulted in the complainant's arrest.	False arrest; refusal to provide name & badge number; ordered to stand; failure to provide reason for arrest; kicked during a search; handcuffs too tight; injury to shoulder; seatbelt too tight; refused access to restroom; refused to accept citizen arrest	<p>Allegations resulted in exonerated, unfounded or not sustained findings.</p> <p>Command staff noted the need to complete investigations within a year and recommended that having a complainant view video of the incident could assist during the complaint process.</p>	<p>In appropriate cases permit complainants to view the body-worn camera footage of the incident that gave rise to their complaint. (IPA Recommendation 21).</p> <p>The investigation did not commence until ten months after receipt of the complaint and was not completed until two weeks after the one-year statute of limitations had run, providing further support for Recommendations 10-13.</p> <p>Body worn camera video supported investigation's conclusions that the officers' actions were within policy.</p>

Case Summary	Allegations	SCPD Finding	Auditor Recommendations
Complainant alleged that an officer improperly parked in the bike lane and was discourteous.	Illegal parking Discourtesy	Exonerated Not sustained	
The complainant alleged that the officer was rude, pushed his skateboard into a puddle and drove the wrong way on a one-way street when pursuing him.	Unsafe driving Rudeness	Sustained SCPD noted that rudeness, aggression and professional demeanor were recurring issues for this ranger who is no longer a SCPD employee.	
The complainant alleged that the ranger was rude while issuing a citation.	Discourtesy	Exonerated	Consider implementing a procedure that identifies and offers mediation for low level complaints. (IPA Recommendation 22)
The complainants alleged that the ranger was rude, hostile and aggressive.	Discourtesy	Sustained SCPD notified complainants that their complaint resulted in further training.	
The Department initiated an investigation after a social media posting of a picture claimed that a named SCPD officer was standing next to an individual making a Hitler salute.		SCPD investigation concluded that that the individual in the photo was not the named SCPD officer nor any other SCPD officer.	

Case Summary	Allegations	SCPD Finding	Auditor Recommendations
Complainant alleged that SCPD officers failed to enforce a court-issued restraining order and that the officers' failure was in retaliation for filing of a previous complaint involving the same officer from a previous incident.	Refusal to serve a civil restraining order; failure to cite or arrest the restrained party; retaliation for prior complaint	Unfounded on all allegations	<p>Issue roll call training on Civil Harassment Restraining Orders After Hearing.</p> <p>Implement a system that captures accurate and sufficient detailed information regarding the intake, status and disposition of complaints.</p> <p>Re-evaluate the findings in this case and consider issuing the complainant a new disposition letter. (IPA Recommendations 23-25)</p>
Complainant alleged that a SCPD officer unlawfully towed his car and failed to appear at a post-storage hearing.	Improper Tow Failure to appear at post-storage hearing	Unfounded	The investigation was thorough and timely; the complainant did not provide further requested information about the post-storage hearing and thus, no further investigation occurred on this allegation.
Anonymous complaint that an officer engaged in racist conduct 40 years ago, is an alcoholic and drinks on the job.	Biased policing; alcohol and drug-free workplace; conduct unbecoming	Unfounded	The investigation was thorough and timely.
IPA and the Chief received a letter from a parent concerning the Department's social media posting of their son's name and circumstances of the arrest. The parent pointed out that in other social media posts by the Department involving arrests on the same charges the arrestee's identity was not included.		The Department removed the posting.	Develop policy to address the circumstances for including or excluding the identity of an arrestee in its social media postings. (IPA Recommendation 26).

Case Summary	Allegations	SCPD Finding	Auditor Recommendations
<p>SCPD officer arrested the complainant for vandalism after he used liquid chalk to paint in the middle of the street. He was handcuffed, transported by patrol car to the parking lot of the jail, and cited and released from the scene without incident. The arrest and release were captured on the officers' body-worn cameras. The District Attorney reviewed the incident and concluded there was no basis for criminal charges against the involved officers.</p>			<p>IPA reviewed the incident and concluded the officers complied with Department policy.</p>

Outreach to City and Community

IPA Michael Gennaco has continued to meet with community members and advocacy groups, with most meetings virtual as a result of the COVID pandemic. IPA has participated in ACLU sponsored fora and participated in panels convened by the NAACP and UC Santa Cruz advocacy groups

Since our first reporting period, IPA Gennaco and IPA team member Samara Marion have both met with the Chief and his command staff. Ms. Marion also attended the Chief's Advisory Committee meeting.

On April 19, 2021, IPA attended a virtual meeting organized by the Chief and Santa Cruz Police Department to discuss the Department's preparations to support and manage anticipated protests concerning the verdict in the Derek Chauvin murder trial. This meeting included city council members and several community leaders and advocates.

IPA has also continued to field referrals and complaints regarding SCPD police actions. Because Samara Marion, a member of the IPA team, now resides in Santa Cruz, we expect our in-person availability and our access to both the public and the Police Department to increase in the coming year.

Review of SCPD Investigations

Case 1: In Custody Death

This investigation involved an in-custody death after two SCPD officers arrested an individual for being under the influence of drugs. While waiting to be booked at the jail, the arrestee became unresponsive when the officers removed him from the police vehicle, prompting an evaluation by the on-duty jail nurse. He was transported to the hospital by ambulance, went into cardiac arrest and died shortly thereafter in the emergency room. A forensic pathologist determined that the individual died from ventricular tachycardia with cardiac arrest caused by acute methamphetamine intoxication and a congenital bicuspid aortic valve.

The Santa Cruz County Critical Incident Guideline was initiated at the time of the arrestee's death. As provided by the Critical Incident Guideline, and in an effort to ensure the objectivity of the process and result, it is the Santa Cruz County

District Attorney's Office that leads the criminal investigation when an in-custody death occurs. When the case involves its personnel, the Santa Cruz Police Department provides assistance. Additionally, the Chief initiated the Department's own administrative investigation into the incident to evaluate compliance with agency policies and procedures. Per the protocol established by the Department's "Officer-Involved Shootings and Deaths" policy (#305), that internal review was led by the Department's Professional Standards Unit.

Given the scope of our auditing responsibilities, we focused on the SCPD administrative process in conducting our review. We do, however, mention elements of the criminal investigation below, to the extent they influenced the efficacy of the SCPD internal inquiry. It should be noted that the District Attorney ultimately determined that there was no basis for prosecuting the officers in conjunction with the man's death.

SCPD had a considerable body of evidence upon which to base its ultimate findings and recommendations. Surveillance and officer body-worn camera footage from the day of the incident captured several relevant aspects of what had occurred. These included the original stop and arrest, the individual's entry into and exit from the SCPD's patrol vehicle, and the efforts by the officers, jail staff, and emergency medical personnel to attend to him before he was transported by ambulance to the hospital. Additionally, SCPD's investigation included interviews of jail, ambulance and medical staff, in addition to a witness who had called 911 after observing the individual stumbling and falling.

SCPD also conducted administrative interviews of the involved officers. To SCPD's credit, SCPD requested that the District Attorney immediately commence its criminal investigation of the incident, including prompt interviews of the involved officers. However, the District Attorney did not conduct officer interviews until three days after the incident. SCPD conducted its administrative interviews of the officers shortly after the DA had concluded its interviews. As SCPD command staff members themselves noted in the materials we looked at, the three-day delay in interviewing the involved officers was antithetical to the best practice of collecting and preserving evidence immediately following the incident.

As for any possible influence by SCPD officers on the man's death, the involved personnel denied using any force other than wrist locks (while placing the individual in handcuffs and into the patrol vehicle) and sternum rubs and pressure on his ear (while addressing the individual's sudden non-responsiveness after being removed from the patrol vehicle). BWC footage showed an extremely intoxicated and often incoherent individual stiffening slightly while officers handcuffed him and placed him in the patrol vehicle. The arrestee was handcuffed and sitting upright – though not seat-belted when officers originally placed him in the patrol car. He was lying on his stomach with his head leaning down toward the driver's side floorboard and his hands cuffed behind his back when officers opened the patrol vehicle door after arriving at the jail. Officers stated they did not seat belt the arrestee because it would have required them to reach across him, and his known history of aggression toward officers led them to believe he would become combative.

A Department command staff member reviewed the Department's administrative report and concurred with the report's findings that the officers had not violated any SCPD policies. He made two recommendations:

1. That SCPD discuss with the District Attorney's Office the delay in interviewing the involved officers, in light of the value of investigating and collecting evidence immediately in an in-custody death.
2. That SCPD's Seat Belt policy (#1010) be revised to require constant monitoring of individuals handcuffed in patrol vehicles who cannot be safely seat-belted, since their freedom of movement could lead to an increased risk of positional asphyxiation.

SCPD's internally generated recommendations are noteworthy both in substance and approach. They identify and seek to address key concerns: the importance of timely officer interviews to both the intrinsic effectiveness and the public's confidence in the investigative process, and the need for a refinement of transport practices to better ensure detainee safety. More broadly, the recommendations reflect a commitment to meaningful self-scrutiny – an approach that uses incident review as an opportunity for thoughtful reassessment and strategies to impact future operations. SCPD's willingness to take that step is commendable.

Our own views on this incident are related, and push a bit further in the identified directions. To enhance both the criminal and administrative investigation of critical incidents, IPA recommends that the Department propose that the County's Critical Incident Guideline be revised to require interviews of involved and witness officers before the end of their shift unless extenuating circumstances (such as an injury of an officer) preclude this. SCPD should also revise its Officer Involved Shooting and Death policy (#305) to incorporate this same requirement. This latter step is particularly important, insofar as the Department has direct control over its own procedures.

As for the seat belt issue, SCPD's current Seat Belt policy has not yet incorporated the recommendation that emerged from this case a year ago.² It is not apparent that the Department's review of critical incidents such as this one includes a process to monitor the implementation of recommendations that result from the review. As discussed further below, a Use of Force Review Board would assist during this important stage.

Additionally, as another safety and transparency measure, IPA recommends that the Department consider requiring the activation of in-car video camera when transporting prisoners. The transporting officer in this case reported that the arrestee was yelling while he was being transported; the backup officer reported hearing yelling from the vehicle when it was stationary. However, there was no recording of the arrestee's behavior because the transporting officer had turned off his body-worn camera while transporting the arrestee³ and he had not

² Per a new California state law that takes effect on January 1, 2022, law enforcement agencies are prohibited from authorizing techniques or transport methods that involve a substantial risk of positional asphyxia in addition to prohibiting officers from using the carotid restraint or choke hold. See https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB490. SCPD will need to revise its relevant policies to align with the new standards.

³ SCPD's Body Worn Camera policy permits officers to stop recording when the arrestee is cooperative and safely secured inside a police car or law enforcement facility. The policy advises officers to resume recording "if an arrestee becomes uncooperative, or if there is some evidentiary purpose." See SCPD Policy 426.7.

activated the in-car video camera during transport.⁴ In light of the Department's responsibility for the care and custody of prisoners, requiring the activation of the in-car video camera during their transport can provide an important safety and transparency tool.

Another topic worthy of Department consideration (and consistent with SJPd current policy but *not* current practice) is a Use of Force Review Board, at least for critical incidents. The Department's Officer-Involved Shooting and Death policy states that completed administrative investigations shall be submitted to the Use of Force Review Board. (See Policy 305.5 (c)(6)⁵). From IPA's file review, it does not appear that this case was submitted to a Use of Force Review Board. Nor does it appear that the Department has a practice of convening a Use of Force Review Board upon completion of an administrative investigation of a critical incident such as this in-custody death. Moreover, although its Shooting and Death policy mentions a Use of Force Review Board, the Board's composition, duties, timelines, meetings and scope are not defined.

A growing number of police departments convene a Use of Force Review Board comprised of command staff, training personnel and other relevant members to review the administrative and criminal investigations into critical incidents as to both individual performance and agency-wide issues. The Review Board provides an opportunity to assess the full incident, including officer tactics and decision-making, planning and coordination, force option choices, supervision, de-escalation efforts, equipment, training and post-incident responses (including medical assistance and community outreach). After considering all these components, the Review Board should have a formal process to document,

⁴ SCPD's marked patrol vehicles are equipped with a Mobile Audio/Video (MAV) recording system that turns on automatically whenever the unit's emergency lights are activated and the recording system remains on until turned off manually. Officers can manually activate the audio recording which also activates video recording. (See SCPD Policy 421). The officer did not use the patrol vehicle's emergency lights during transport and thus the MAV recording system was not automatically activated. Nor did the officer manually turn on the audio recording system during transport.

⁵ The Department's Officer-Involved Shooting and Death policy states, "Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review Board, which will restrict its findings as to whether there was compliance with the Use of Force Policy." (4/14/2021).

monitor and implement recommendations and action steps arising from the Board's discussions. The involved and witness officers should be specifically debriefed at the conclusion of the process regarding any issues/concerns identified by the Review Board.⁶

Another topic for Department consideration involved the officers' initial view that the detainee was faking his medical distress. When the officers pulled the non-responsive detainee out of the patrol vehicle, they attempted to have him stand upright and he collapsed onto his knees. They continued to assume the detainee was feigning his symptoms, repeatedly ordering him to stand up. One officer told him, "Stop, you were fine five minutes ago, stand up." To their credit, they summoned medical assistance. However, when the jail nurse arrived, they told her, "He's pretending to be unresponsive," and explained that he had been screaming the whole way to the jail until they opened the door to remove him from the patrol car.⁷ The IPA recommends that the Department debrief with the involved officers about this case, including their incorrect assumption that the detainee was feigning his medical distress as well as the other issues raised by the Department's and IPA's review.

RECOMMENDATION ONE: The Department should propose that the County's Critical Incident Guideline be revised to include interviews of involved and witness officers before the end of their shift unless extenuating circumstances such as significant injury to an officer preclude this.

RECOMMENDATION TWO: The Department should revise its Officer-Involved Shooting and Death policy to require interviews of involved and witness officers before the end of their shift unless precluded by extenuating circumstances such as an injury of an officer.

RECOMMENDATION THREE: The Department should revise its Seat Belt policy to require constant monitoring of individuals handcuffed in patrol

⁶ The involved officers in this case were notified by letter that their conduct was in policy. There is no indication in the file that the involved officers were debriefed about the specific issues and learning points that emerged from the review process.

⁷ As previously mentioned, there was no audio recording of the detainee while he was inside the patrol vehicle.

vehicles who cannot be safely seat-belted in light of the significant risk of positional asphyxiation of handcuffed individuals lying in a stomach-down position.

RECOMMENDATION FOUR: The Department should revise its Mobile Audio/Video (MAV) policy to require the activation of the in-car video camera when transporting prisoners.

RECOMMENDATION FIVE: The Department should revise its Officer-Involved Shooting and Death policy to define the Use of Force Review Board's composition, duties, timelines, meetings and scope.

RECOMMENDATION SIX: The Department should revise its Officer-Involved Shooting and Death policy to include a formal process to document, monitor and implement recommendations and action steps arising from the Board's assessments.

RECOMMENDATION SEVEN: The Department should revise its Officer-Involved Shooting and Death policy to require that involved and witness officers be debriefed on any issues/concerns identified by the Review Board.

RECOMMENDATION EIGHT: The Department should debrief with the involved officers about this incident, including their incorrect assumption that the detainee was feigning his medical distress as well as the other issues raised by the Department's and IPA's review.

Case 2: Public Complaint

This investigation arose from a complaint involving SCPD's response to a report of a road-rage incident and collision involving two vehicles, the brandishing of a gun, and one vehicle's flight from the scene. When SCPD officers spotted a vehicle matching one of the suspect vehicles, they conducted a high-risk vehicle stop and took the driver into custody. Further investigation at both scenes determined that the driver was actually the victim, not the perpetrator of the gun threat. The driver was released from the scene.

The Department's investigation addressed allegations of excessive force, discourtesy and racial profiling. The investigation included interviews of the

complainant, involved and witness officers, civilian witnesses and review of body-worn camera footage. Although the original reporting party was not interviewed and radio communications were not obtained, other aspects of the investigation were thorough.

A Department command staff member reviewed the incident, concurred with the investigator's findings of no misconduct and made four recommendations:

1. In cases involving a complaint, the investigator should request that radio communications be preserved immediately.
2. Officers should have re-contacted the original reporting party to clarify why they believed the gun was associated with the vehicle the police stopped.
3. In a high-risk vehicle stop, officers and supervisors should constantly re-evaluate the number of officers and vehicles on scene.
4. The officer who did not have his body-worn camera on during the incident should be counseled.

As with the in-custody death case, these recommendations are reflective of a commendable emphasis on improvement. However, other than indicating that the officer was counseled about activating his body-worn camera, the file did not document any Departmental efforts to implement the recommendations. Again, the Department should develop a better mechanism to ensure that any recommendations coming out of a force review are timely considered and when appropriate, implemented.

This complaint process also revealed some shortcomings in the Department's handling. The protracted timeline of the investigation was one problematic issue. The complainant was not interviewed until at least four months after filing the complaint. The Department did not take any investigative steps (such as conducting witness and involved officer interviews) until almost a full year had passed. Dispatch recordings were no longer available because the request for their retention had not been made in a timely manner.

The investigative file did not document or explain the reasons for delay. Nor did the file include any authorization from the Chief to extend the investigation beyond 90 days as required by Department policy. On its face, then, the seventeen-month delay from receipt of the complaint in May 2019 until completion of the Department's investigative findings in October 2020 seems to

have violated the Department's policy that complaint investigations be completed within 90 days. (See SCPD policy 1009.3.1)⁸

The time lag had other implications as well. State law requires that officers be provided notice of discipline within a year of the incident unless tolling exceptions apply. (See California Government Code section 3304). Thus, by taking seventeen months to complete the investigation and make findings, the Department would have been precluded by state law from disciplining any of the officers had the Department identified actionable misconduct.

In addition to these delays, the date the Department received the complaint is in question.⁹ According to the second investigator assigned to the case, he learned from the original investigator that the Department received the complaint on May 23, 2019. However, the complaint form is signed and dated by the complainant on April 2, 2019. The investigative file did not include any notes from the original investigator as to the date, time and manner he received the complaint.

Apart from the inherent disadvantages to such uncertainty, officer misconduct allegations are subject to the aforementioned one-year statute of limitations period for discipline to be viable. SCPD clearly needs a system that uniformly documents the date, time and manner of receipt of complaints and monitors the assignment and completion of complaint investigations.

We recommend that the Chief or his designee be provided monthly updates on the status of complaint investigations.¹⁰ We suggest that the current policy that

⁸ SCPD policy 1009.3.1 requires completion of Category I and II complaints within 90 days. Category I complaints involve allegations regarding excessive use of force, unlawful arrests, discrimination, bias, or criminal activity. Category II complaints involve "relatively minor violations of procedure, courtesy, service or conduct." The Chief's approval is required to extend completion of a Category I complaint investigation; the Deputy Chief's approval is required to extend completion of a Category II complaint investigation.

⁹ This is not the only complaint case during this reporting period where the "date of receipt" was at issue. (See Case 2020-024 discussed below)

¹⁰ It is our understanding that in August 2021, the former Chief began to require the Professional Standards Unit to report regularly on the status of its investigations, a practice the interim Chief has continued. Additionally, the interim Chief has indicated that beginning in January, the Acting Deputy Chief will also attend these case status

requires authorization from the Chief or Deputy Chief to extend complaint investigations beyond the 90-day deadline be enforced and documented in the investigative file. Additionally, the Department's personnel complaint policy should be revised to require any tolling exceptions¹¹ to the one-year statute of limitations be approved by a supervisor in consultation with the City Attorney and documented in the investigative file.

Finally, the Department missed an important opportunity when it issued its findings letter to the complainant. The Department's letter to the complainant explained why it concluded the complainant's allegations were not sustained or unfounded. However, the Department's letter could have also explained that the complainant's concerns and subsequent internal affairs investigation did provide a basis for improving the Department's response to felony traffic stops and investigative practices.

RECOMMENDATION NINE: SCPD should implement a more robust mechanism to ensure that any recommendations coming out of a post-incident review are timely considered and implemented.

RECOMMENDATION TEN: The Department should implement a system for accurately documenting the time, date and manner it has received a personnel complaint in its investigative file, and should update its Personnel Complaint policy to include this documentation requirement.

RECOMMENDATION ELEVEN: The Department's Personnel Complaint policy should be revised to require that any reasons for significant investigative delays be documented in the investigative file, and SCPD should ensure compliance with the approval requirement for extensions.

RECOMMENDATION TWELVE: The Department should continually monitor the timeliness of its complaint investigations through regular status updates to the Chief or his designee.

meetings. These are positive steps to address some of the timeliness issues we have identified.

¹¹ The concept of tolling refers to a "stopping of the clock" that extends the normal one-year statutory deadline when certain conditions – such as a pending criminal investigation about the same conduct – apply.

RECOMMENDATION THIRTEEN: The Department's Personnel Complaint policy should be revised to require that any tolling exception to the one-year statute of limitations be approved by a supervisor in consultation with the City Attorney and documented in the investigative file.

RECOMMENDATION FOURTEEN: The Department should describe any reform or learning that resulted from the complaint when notifying the complainant of its investigation's conclusion.

Case 3: Public Complaint

This investigation arose from an incident involving three SCPD officers contacting the complainant and two individuals who were helping her load boxes from her rental storage locker into a cargo van during mid-afternoon. The complainant alleged that one officer was rude, antagonistic and threw his business card on the ground when one of the individuals requested his contact information. She also alleged that a sergeant was rude and hung up on her when she called to lodge her complaint.

Computer Assisted Dispatch (CAD) notes indicated that a 911 caller requested that police respond to a public storage facility where a male adult was unloading 20 or more boxes that included brand new bikes into a van; the involved individuals were described as a white female adult and a black male adult. Two minutes later the caller advised dispatch "it is about 10K worth bikes" and that he was "just passing through the area."

The interaction among the complainant, the two males who were helping her and the lead SCPD officer was captured on a BWC recording, including the officer flipping his business card to the ground – purportedly to maintain social distance.

The lieutenant assigned to investigate the complaint correctly concluded that the officer's act of flipping his business card to the ground violated the Department's policy that officers be courteous and respectful to members of the public. Equally important to the Department's review process was the lieutenant's discussion with the officer in which he admitted he could have handled the situation differently, and they identified strategies for better communication with the public in the future. Nonetheless, the lieutenant's remedial actions and the Department's review fell short.

The Department's review should have considered the role that "bias by proxy" may have played in the original call for service and the subsequent interaction with the complainant and the two men who were assisting her. Bias by proxy occurs when individuals call the police and their request for service is more reflective of their own prejudice than any actual observed misconduct. Recent well-known examples include the arrests of two Black men waiting for the arrival of an acquaintance at the Philadelphia Starbucks,¹² and police response to a Black student napping in the Yale University common room.¹³ When police act on a request for service that stems from a caller's own bias, there is a significant risk of an encounter that, in one way or another, reinforces that bias and its harms.¹⁴

In this incident, the call for service did not describe criminal or suspicious behavior. In fact, moving boxes at a storage facility mid-day is precisely the type of behavior expected at that location. When police arrived on scene, the complainant and her companions immediately questioned why their lawful presence at the rented storage locker resulted in a police response. The Department's review should have addressed this issue, not only as a stated element in the encounter but also as a fundamental part of the dynamic that ultimately prompted the complaint.

The Department's current Bias-Based Policing policy does not address the topic of bias by proxy.¹⁵ The California Attorney General's Racial and Identity Profiling Advisory (RIPA) Board recommends that law enforcement agencies develop

¹² <https://www.cnn.com/2018/05/02/us/starbucks-arrest-agreements/index.html>.

¹³ <https://www.washingtonpost.com/news/grade-point/wp/2018/05/10/a-black-yale-student-fell-asleep-in-her-dorms-common-room-a-white-student-called-police/>.

¹⁴ Fridell, A. (2017). A Comprehensive Program to Produce Fair and Impartial Policing. In Producing Bias-Free Policing. Springer, p. 90.

¹⁵ Of note, in 2020 the City of Santa Cruz adopted a type of bias by proxy ordinance. The ordinance's purpose is "to allow individuals who have been reported to law enforcement for unfair and unnecessary reasons to seek justice and restitution, and it also is intended to motivate people who contact law enforcement to consider the reasons they are making the report." See <https://www.codepublishing.com/CA/SantaCruz/#!/SantaCruz09/SantaCruz0986.html#9.86>.

policies and training on how to prevent bias by proxy when responding to calls for service. RIPA recommends that the policy include:

- how officers can identify a bias-based call for service;
 - once identified, how officers and dispatchers should interact with the caller who has made a bias-based call for service;
 - how an officer should interact with the community member who is the subject of the bias-based call;
 - how the officer's supervisor should interact with the caller;
 - required training for officers and dispatchers that covers responding to bias-based calls for service; and
- guidelines for how to implement a restorative justice approach to address bias-based incidents in the community.¹⁶

The Department should re-evaluate this complaint through the lens of bias by proxy. The Department should revise its Bias-Based Policing policy to address bias by proxy, including the above-mentioned topics recommended by the California Attorney General's RIPA Board. The Department should also develop bias by proxy training for both officers, supervisors and dispatchers.¹⁷ The dialogue in this encounter could be useful for scenario-based training.

Another area of improvement concerns the complainant's allegation about her attempt to lodge her complaint. File notes indicated that the complainant called the Department on the day of the storage unit incident to complain and called back the next day to request a different sergeant to take her complaint. During her interview with the investigating sergeant, she said she was more concerned with the storage unit incident that had prompted her call to the Department than with the sergeant whom she said was rude and had hung up on her when she had called to file a complaint. To the Department's credit, the investigation included interviewing the intake sergeant about this contact. However, the

¹⁶ See Racial and Identity Profiling Advisory Board Report 2021, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf>.

¹⁷ We understand that the dispatchers are a County-wide and separate entity from the police department and can only be encouraged to participate in such training. We are hopeful that those overseeing such service would see the value in participating in such joint training.

investigator did not question the complainant about her complaint intake experience and ultimately, the Department made no findings about this allegation. The investigation should have obtained the complainant's account of what occurred when she called the Department to complain, and her account and other relevant evidence should have been evaluated to determine the merits of this allegation. In the future, the Department should ensure that the complainant is interviewed as to each allegation and that a final personnel complaint investigation includes findings for each allegation.

Another area for improvement concerns how the Department informs the complainant of its investigative results, a duty required by state law.¹⁸ In this case, there was no letter in the Department's investigative file informing the complainant of the investigative results.¹⁹ Best practices dictate that copies of the complainant letters should be retained in the investigative file. In fact, in October 2020, we recommended that the Department develop a protocol to ensure that copies of complainant letters are retained as part of the investigative file.²⁰

This case (and several other examples of the problem from this reporting period) provides further support to prioritize this recommendation. After the Department completes its re-evaluation of this case, we suggest the Department notify the complainant in writing of its investigative conclusions and take the opportunity to explain whatever policy and training efforts resulted from this complaint.

¹⁸ California Penal Code section 832.7 (e)(1) requires law enforcement agencies to provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

¹⁹ The Department's recent attempt to locate a copy of the complainant's letter was unsuccessful. Although a memo from a lieutenant indicates he recontacted the complainant and at that time discussed the investigation, this discussion occurred before the lieutenant had presented his investigative findings for review to command staff.

²⁰ October 21, 2020 Review of IIPA Activity (December 19, 2019 to October 20, 2020) Letter to City of Santa Cruz Public Safety Committee Members from Michael Gennaco, Interim Independent Police Auditor, page 4.
<https://www.cityofsantacruz.com/home/showpublisheddocument/82971/637475328717100000>

RECOMMENDATION FIFTEEN: The Department should re-evaluate this complaint by focusing on principles of bias by proxy when responding to calls for service.

RECOMMENDATION SIXTEEN: The Department should develop policy and training on how to prevent bias by proxy when responding to calls for service.

RECOMMENDATION SEVENTEEN: The Department should develop a written protocol to require that copies of complainant letters are retained and included as part of the investigative file.

RECOMMENDATION EIGHTEEN: The Department should revise its Personnel Complaint policy to require that the complainant be interviewed as to each allegation and that a final personnel complaint investigation include findings for each allegation.

RECOMMENDATION NINETEEN: The Department should notify the complainant in writing of its investigative conclusions and explain its policy and training efforts on bias by proxy.

Case 4: Administrative Case

This incident involved an internal complaint about an officer driving to a call for service in an unsafe manner, initiating a pursuit without proper justification, driving in a pursuit in a manner that threatened the safety of the public and the officer, and continuing to engage in a pursuit when ordered to terminate it. The investigation was thorough and resulted in timely remediation.

To be more specific, the supervisor called the officer back to the Department to complete the pursuit notification and documentation requirements. He then promptly reviewed the officer's in-car and body-worn camera videos that confirmed the extreme dangerousness of the pursuit. (The officer drove into oncoming traffic at speeds up to 80 mph for 5 miles on Highway 17—one of the most dangerous highways in the state which has sharp turns, blind spots, and narrow shoulders over the mountain between Santa Cruz and San Jose.) Shortly thereafter, he notified his watch commander about the officer's conduct as an apparent violation of the pursuit policy. Per the watch commander's instruction, the following day he drafted a memorandum outlining the officer's conduct and

potential pursuit policy violations that was reviewed by command staff and resulted in an immediate IAD investigation.

While deference to an officer's due process rights is important, it need not be mutually exclusive with timely, affirmative intervention. This is a principle that many agencies overlook, and we commend SCPD for this approach.

Case 5: Public Complaint

This incident involved a complaint concerning the officers' arrest of a complainant and her boyfriend for possessing a stolen vehicle. The complainant alleged that she and her boyfriend were wrongly arrested, that an officer used excessive force by pointing his firearm at her, and that he threatened to kill her dog. The complainant's boyfriend alleged that he was wrongfully arrested.

Although the complainants were not interviewed as part of the investigative process, other aspects of the investigation were thorough. The arrest of both complainants was captured on officers' body-worn cameras.

Concerning timeliness, the investigation concluded almost two years after the complaints were filed. The file did not document the reasons that the investigation took twenty-three months to complete. This case provides further support for adopting Recommendations Ten through Thirteen to ensure the timely completion of the Department's complaint investigations.

Despite issues of timeliness, the investigative conclusions were sound. Supported by body-worn camera footage, the Department concluded that the allegations of threats and pointing a firearm at the complainant were unfounded. The Department also exonerated the officer of the false arrest allegation based on a confirmed stolen vehicle report and the complainants' statements. The Department notified the complainants of their conclusions.

SCPD command staff's review of the investigation noted that complainants should be interviewed during the complaint investigation. Additionally, the review emphasized the importance of timely investigations and noted that either the investigation should be completed within the one-year statute of limitations and/or any "tolling exception" should be documented.

IPA recommends that the Department's policy on Personnel Complaints be revised to require timely interviews of complainants.²¹

RECOMMENDATION TWENTY: The Department's Personnel Complaint policy should be revised to require reasonable efforts to timely interview complainants.

Case 6: Public Complaint 2020-003

The complainant alleged that SCPD officers damaged his watch while he was in police custody. An investigator reviewed body-worn camera footage of the complainant's arrest, which showed the complainant handing his watch to the officer and then returning it to his wrist and being taken into custody without incident. Body-worn camera footage of the complainant's in-custody interview showed the complainant without his watch. The complaint form did not include a phone number or email for the complainant. The file indicated the investigator wrote the complainant at the complainant's address for follow up. The Department made reasonable efforts to investigate this complaint. This case involved a significant delay between receipt of the complaint in October 2019 and notification to the complainant of the investigation's disposition in March 2021 that the allegation of damage to his watch was unfounded.

Case 7: Public Complaint

This complaint arose from SCPD officers' response to a disturbance call involving the complainant and a neighbor that resulted in the complainant's arrest. Body-worn camera video from the officers captured the complainant's arrest and supported the investigation's conclusions that the officers' actions were within policy.

Again, the timeliness of the Department's investigation was problematic. Investigation of the complaint did not commence until ten months after receipt of the complaint. The investigative report was not completed until two weeks after

²¹ Although the Department's Personnel Complaint policy requires supervisors to ensure that complainants are interviewed during reasonable hours, thereby implying that complainants should be interviewed as part of the investigation, the policy does not explicitly require a complainant interview. (See Policy 1009). As indicated above, SCPD's command staff noted the absence of complainant interviews in this case and stated that, absent extenuating circumstances such as complainant's non-cooperation, complainant interviews should be required during a complaint investigation.

the one-year statute of limitations had run. Attempts to contact civilian witnesses did not occur until after the one-year statute of limitations had expired. No documentation or explanation for the delays was included in the file. This case provides further support for adopting Recommendations Ten through Thirteenth to ensure the timely completion of complaint investigations.

A member of the Department's command staff reviewed the investigation and noted the need to complete the investigation within a year or document the applicable tolling exception. He also suggested that in select cases such as the current one – where the complainant's recollection of events is substantially different from the body-worn camera footage – it could be fruitful to view the video with the complainant to clear up misunderstandings or discrepancies about the incident. This is a sound recommendation that in appropriate cases could assist in providing both the Department and complainants a better understanding of the incident.

RECOMMENDATION TWENTY-ONE: The Department should develop a policy that in appropriate cases permits complainants to view the body-worn camera footage of the incident that gave rise to their complaint.

Case 8: Public Complaint

The complainant alleged that an officer had improperly parked in the bike lane, causing a hazard to bicyclists, and was discourteous when the complainant approached him. The investigative officer determined that no body-worn camera footage existed of the encounter. Due to inadequate signage and the officer's engagement in a lawful purpose, the Department exonerated the officer on the allegation of illegal parking. The Department issued a "not sustained" finding regarding the discourtesy allegation in light of the absence of body-worn camera footage and both party's respective accounts appearing equally credible.²²

Case 9: Public Complaint

The complainant alleged that a ranger was rude, unprofessional, and unnecessarily pushed his skateboard into a puddle. He also alleged that the

²² The Department's letter to the complainant was not included in the investigative file. See Recommendation Seventeen, above, that addresses this issue.

officer driving the police vehicle that attempted to stop him drove the wrong way on a one-way street.

A supervisor's investigation of the unsafe driving allegation was thorough and timely and resulted in a finding that the officer had in fact driven unsafely in responding to the call. SCPD ordered remediation to address this problem.

The supervisor also noted that concerns about rudeness, aggression, and professional demeanor were recurring issues for the ranger and that he needed to work on his de-escalation skills when coming into contact with non-compliant individuals.²³ The ranger was counseled concerning active listening, de-escalation, and basic communication skills.

Case 10: Public Complaint

The complainant alleged that a ranger was rude, aggressive and discourteous during an encounter in which the complainant was issued a citation. Body-worn camera footage indicated that the ranger was professional in demeanor. However, an opportunity to view the body-worn camera footage with the complainant could have potentially facilitated a discussion about the ranger's safety concerns as well as the complainant's immediate apology that the ranger did not acknowledge for a better shared understanding of the incident. Alternatively, this complaint could have benefitted from mediation which the Department lists as an option on its complaint form.²⁴ The Department should consider implementing a procedure that identifies and offers mediation for low level complaints such as this one.

²³ Notably, this ranger was also subject to another complaint (Case No.2020-16, below) for similar conduct. The ranger is no longer an employee of SCPD due to restructuring of the ranger program.

²⁴ The Department's complaint form instructs complainants to choose one of the five options: 1) a commendation; 2) a concern; 3) request for mediation information; 4) a citizen inquiry; and 5) a citizen complaint. Concerning mediation, the complaint form states, "If you filed a citizen complaint, you may request to mediate your complaint. Mediation is a dispute resolution process where parties involved met with trained party mediators to constructively discuss their differences. Mediation is voluntary and may only proceed upon agreement by all parties and approval by the Chief of Police."

Although the file did not include a letter to the complainant explaining the Department's conclusion, notes indicated that the assigned investigator informed her of the investigation's result.

RECOMMENDATION TWENTY-TWO: The Department should consider implementing a procedure that identifies and offers mediation for low level complaints.

Case 11: Public Complaint

This complaint involved negative interactions the complainants had with a ranger whom they described as rude, hostile and aggressive. (See case 2020-014, above.) The investigation was thorough and timely and resulted in counseling of the ranger. To the Department's credit, the correspondence with the complainants about the investigation's disposition noted the value of their feedback as an impetus for further training in customer service and de-escalation.

Case 12: Public Complaint

The Department initiated an investigation after a social media posting of a picture that claimed that a named SCPD officer was standing next to an individual who was making a Hitler salute. The Department conducted an extensive investigation that confirmed that the individual in the photo was not the named SCPD officer, nor any other SCPD employee.

Case 13: Public Complaint

This case involved a complaint that SCPD officers failed to enforce a court-issued restraining order and alleged that the officers' failure was in retaliation for the filing of a previous complaint involving the same officer from the previous incident.

The manner in which the Department discovered the complaint was irregular and problematic. The Department's complaint form, signed by the complainant includes a one-page typed summary of the incident and a copy of a Watsonville Superior Court's Civil Harassment Restraining Order After Hearing and a picture of the alleged restrained party. A note in the investigative file states that the complaint was found in an envelope in a file cabinet in a folder, but there is no date on the envelope and no "received" stamp to indicate when the Department officially received the complaint. The note also states the complaint was not

entered in IAPro (the Department's system for tracking complaints). But the note itself is not signed, and no investigator apparently recalled receiving or seeing the complaint before. Nor is any date provided as to when or by whom the envelope was discovered.

On August 12, 2020—14 months after the complainant signed the complaint and two months beyond the statute of limitations—an investigator assigned to investigate the complaint wrote a memo outlining his investigation. He learned from Dispatch that the restraining order was listed as served on June 14, 2019 at 11:13 hours. Dispatch could not determine whether this information was available to the officers during their contact with the complainant and the individual restrained by the court order.

The investigator met with the primary officer with whom the complainant had contact on June 14, 2019 concerning the restraining order. He could not recall the incident. The investigator reviewed body-worn camera footage from four officers who came into contact with the complainant and the restrained party on the night of the incident. One officer called an unnamed supervisor during the incident and after concluding the call, advised the officers they were not to serve the civil restraining order in question. The officers returned the restraining order paperwork and advised the complainant to contact the Sheriff's office for civil process servicing.

The investigator also stated that his supervisor told him that the complainant had not previously filed any complaint with the Department, thereby undercutting the supposed motive for retaliation asserted by the complainant. The basis of the supervisor's claim is not indicated.

Twenty-one months after the date of the complaint –the Department sent a letter to the complainant stating:

1. The allegation that officers refused to serve a civil restraining order in violation of department policy is unfounded because a department policy prohibits officers from serving civil processes or rendering assistance in a civil court case. Furthermore, it was not apparent whether the officers knew the order had been served earlier that day.
2. The allegation that the officers failed to cite or arrest the restrained party was unfounded because it was not apparent whether the officers knew the order had been served.

3. The allegation that the restrained party should have been arrested for being under the influence or cited for expired registration was unfounded for lack of evidence.
4. The allegation that officers were acting in retaliation to a prior complaint about a 4/1/19 incident was unfounded because the Department has no record of the complainant filing a formal complaint about an incident on 4/1/19.

The IPA found fault with several aspects of these conclusions. The Department's failure to assist the complainant in enforcing the civil harassment restraining order is problematic. The Watsonville Superior Court issued a Civil Harassment Restraining Order After Hearing that specifically states that the order is "enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS)." The order also instructs that if the law enforcement agencies has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, ***the agency must advise the restrained person of the terms of the Order and then enforce it. Violations of this Order are subject to criminal penalties.***" (See California Judicial Council Form CH-130 Civil Harassment Restraining Order After Hearing, page 5.)²⁵

The Department incorrectly concluded that the Department's Policy 320.2.9 (a) prevented the officers from advising the restrained party of the terms of the court's civil harassment restraining order and enforcing it. As part of the Department's Standards of Conduct and Discipline, Policy 320.2.9 (a) states that officers "will not serve civil processes nor will they render assistance in civil court cases, except when the City of Santa Cruz is party or they have been subpoenaed in the proper manner." The officers were not acting as a process server in a civil law suit. They were required to enforce a court-ordered civil harassment restraining order. The signed court order issued on California Judicial Council Form CH-130 that the complainant provided them gave specific instructions about law enforcement's enforcement duties. The officers' initial

²⁵ A copy of the California Judicial Council Form CH-130 the Watsonville Superior Court judge used to issue her court order and its instructions to law enforcement on their duty to advise the restrained person are available at <https://www.courts.ca.gov/documents/CH130.pdf>.

mishandling was clearly compounded by the erroneous outcome of the complaint review.

The Department should issue roll call training on Civil Harassment Restraining Orders After Hearing that instructs officers on their duty to advise restrained parties of the terms of the order, and on how to take enforcement action as needed. The roll call training should also clarify that Policy 320.2.9(a) does not apply to court-ordered civil harassment restraining orders.

Equally problematic is the Department's finding that the retaliation complaint was unfounded. The premise of the Department's position was the lack of any prior complaint – and thus the lack of any corroboration for the animus the woman believed that officers were showing in the June 2019 incident. This was mistaken. Indeed, and contrary to this erroneous assertion, the Department had received an earlier formal complaint from the complainant about a felony car stop that had occurred on April 1, 2019. One of SCPD's officers from the felony car stop was also involved in the civil harassment restraining order incident.

Given SCPD officers' refusal to follow the restraining order's explicit instructions, it is not unreasonable that the complainant questioned whether her previous complaint influenced the officers' reluctance and ultimate refusal to take enforcement action on her behalf. Not only did the Department's investigation and letter to the complainant fail to adequately address the complainant's concern of retaliation, but the Department's continued insistence that it had no record of the previous complaint she filed two months before this one surely cast doubt on the effectiveness of the Department's system and any substantive results that eventually emerged from it.²⁶

This case is clearly reflective of procedural deficiencies that require attention. To accurately keep track of and monitor its complaints, the Department should implement a system that at a minimum identifies complainants, the date and nature of their complaints, the involved officers, and the status and disposition of complaints.

²⁶ For a discussion of the complainant's prior complaint, see Case No. 2019-032 discussed at pages 6-8.

Under the circumstances, the Department should re-evaluate the findings in this case and consider issuing the complainant a new disposition letter.

RECOMMENDATION TWENTY-THREE: The Department should issue roll call training on Civil Harassment Restraining Orders After Hearing that instructs officers on their duty to advise restrained parties of the terms of the order and how to take enforcement action. The roll call training should also clarify that Policy 320.2.9(a) does not apply to court-ordered civil harassment restraining orders.

RECOMMENDATION TWENTY-FOUR: The Department should implement a system that captures accurate and sufficient detailed information regarding intake, status, and disposition of complaints for easy tracking and reference.

RECOMMENDATION TWENTY-FIVE: The Department should re-evaluate the findings in this case and consider issuing the complainant a new disposition letter.

Case 14: Public Complaint

This case involves an allegation that a SCPD officer had unlawfully towed the complainant's vehicle without providing proper notice, and that SCPD improperly failed to appear at a post-storage hearing. Documentation indicated that the Department's Vehicle Abatement officer followed the proper steps to provide notification to tow the vehicle. The investigation was thorough and timely, and the complainant was notified of the investigation's results that the officer's actions complied with Department policy. The complainant did not provide further requested information concerning the post-storage hearing, thus precluding the investigator from further inquiry into the allegation.

Case 15: Public Complaint

This case involved an anonymous complaint that an officer engaged in unspecified racist conduct forty years ago, is an alcoholic, and drinks on the job. The Department engaged in a timely and detailed investigation that found no evidence of the alleged misconduct.

Additional Matters

Apart from the formally investigated complaint cases discussed above, the IPA also monitored two additional incidents after outreach from involved parties. They were concerned about aspects of the SCPD performance in their respective matters.

Concern About the Department's Social Media Posting

A parent sent a letter to both the Chief and IPA concerning the Department's social media posting of their son's name and circumstances of the arrest. The parent pointed out that in other social media posts by the Department involving arrests on the same charges the identity of the individual was not included. The Department agreed to remove the posting. The Department's Use of Social Media Policy (#322) does not address the circumstances for including or excluding the identity of arrestees. IPA recommends that the Department develop policy to address this topic.

In developing such a policy, SCPD should consider the implications of new law AB 1475, which came into effect on January 1, 2022, and restricts the public posting of booking photos of those arrested for non-violent offenses unless certain conditions are met. The legislation also requires law enforcement to purge the posting of any booking photo from social media platforms if the individual is acquitted or other conditions are met. In that bill, the legislature spoke approvingly of San Francisco PD's decision to prohibit the release of booking photos in most cases. While this case did not involve the release of a booking photo, the concepts and competing considerations are analogous.

RECOMMENDATION TWENTY-SIX: The Department should develop policy to address the circumstances for including or excluding the identity of an arrestee in its social media postings.

Complaint About a Vandalism Arrest

SCPD officers arrested the complainant for vandalism after he used liquid chalk to paint in the middle of the street. SCPD officers handcuffed the complainant and transported him by patrol vehicle to the parking lot of the jail without incident.

At the parking lot, an officer explained to the complainant that if he provided his name, he would be cited and released. When he complained that his handcuffs were too tight, the officer loosened his handcuffs and permitted him to stand outside of the patrol vehicle while the other officer verified his identity and wrote him the ticket. Upon the complainant's request, the officer provided his badge number and his business card. The complainant signed the ticket and he was released from the scene. The complainant's arrest and subsequent release at the parking lot jail were captured on the officers' body-worn cameras.

Upon request of the complainant, the District Attorney reviewed the incident to determine whether there was any basis for filing criminal charges of false arrest and false imprisonment against the involved officers. In a written email to the complainant, the District Attorney noted that when officers arrived on scene, the complainant was actively painting in the street. The officers arrested the complainant for vandalism (Penal Code 594). The District Attorney pointed out that vandalism includes defacing with graffiti which does not require permanent damage. The District Attorney concluded that the officers had probable cause to arrest the complainant for vandalism and there was no basis for filing criminal charges against the involved officers.

Upon request of the complainant, IPA also reviewed body-worn camera footage of the incident, as well as other relevant documents and evidence. IPA concluded that the officers had probable cause to arrest the complainant, responded appropriately when the complainant stated that his handcuffs were too tight, provided badge number and business card upon request, and acted professionally with the complainant.

Conclusion

Throughout the past year, recently departed Chief Mills and newly named interim Chief Escalante were receptive to the Independent Police Auditor's role and fully cooperated in providing access to the documents we needed to fulfill our monitoring responsibilities. Many of the files that we reviewed reflected the thoroughness of the investigations in a commendable way, and the Department's effective use of individual incidents as a springboard for thoughtful recommendations to improve the performance of individual officers and the agency as a whole.

During the review period, we also observed a few cases with significant investigative delays that would have precluded discipline had actionable misconduct been identified. We have since learned that staff changes within the Professional Standards Unit along with delayed training due to COVID contributed to the Department's challenges.²⁷ Our recent discussions with the interim Chief and his command staff have been positive. Already we have seen the Department take important steps to address some of the concerns we have raised in this report.

We look forward to continuing this work with interim Chief Escalante and his Department.

²⁷ The pandemic placed additional challenges on law enforcement's ability to complete internal investigations state-wide, so much so that the Governor extended the one-year deadline for completion of such cases.