



CITY OF AUSTIN

OFFICE OF THE POLICE



AUSTIN  TEXAS

2011 ANNUAL REPORT

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Table of Contents

» The Office of the Police Monitor	6
Section 1: 2011 Serious Incident Review	11
Section 2: Executive Summary	16
Section 3: End of Year Statistical Review	20
<u>Complaints</u>	20
<i>Number & Types of Complaints</i>	20
<i>Race/Ethnicity of Complainants</i>	22
<i>Gender of Complainants</i>	31
<i>Complaints by Area Command</i>	32
<i>Classification of Complaints</i>	35
<u>Allegations</u>	38
<i>Number & Types of Allegations</i>	38
<i>Allegations & Complainant Demographics</i>	44
<i>Allegations by Area Command</i>	46
<i>APD Decisions</i>	49
<i>Disciplinary Action</i>	50
<u>Subject Officer Demographics</u>	51
<i>Years of Service</i>	51
<i>Gender of Officers</i>	55
<i>Race/Ethnicity of Officers</i>	58
<i>Age of Officers</i>	61
<i>Track Records</i>	63
Section 4: Recommendation Memos	65
Appendix A: Austin Police Department's Discipline Matrix	69
Appendix B: Community Outreach Conducted in 2011	72
Appendix C: Critical Incident Monitoring Process	78
Appendix D: Meet and Confer Contract, Article 16	79

Table of Figures

Table 1: Contacts & Complaints by Type – 2007-2011	21
Table 2: Race/Ethnicity of Complainants - 2011.....	22
Table 3: External Formal Complainant Race/Ethnicity – 2007-2011.....	23
Table 4: 2011 External Formal Complainant Race/Ethnicity versus 2010 City of Austin Voting Age Population.....	24
Table 5: 2011 Traffic Stops by Race/Ethnicity versus 2010 City of Austin Voting Age Population.....	25
Table 6: 2011 Traffic Stops by Race/Ethnicity versus 2010 Travis County and Austin MSA Voting Age Population.....	25
Table 7: 2011 Traffic Stops and Searches by Race/Ethnicity.....	26
Table 8: 2011 Searches and “Hits” by Race/Ethnicity.....	27
Table 9: Race/Ethnicity of Complainants filing Supervisory Inquiries – 2007-2011.....	28
Table 10: Age of Complainants filing External Formal Complaints – 2007-2011.....	29
Table 11: Age of Complainants filing Supervisory Inquiries – 2007-2011.....	30
Table 12: Gender of Complainants - 2011.....	31
Table 13: External Formal Complaints by Area Command – 2007-2011.....	33
Table 14: Number of Complaints by Type and Area Command - 2011.....	34
Table 15: Classification of Complaints - 2011.....	36
Table 16: Number of Allegations by Complaint Type – 2007-2011.....	38
Table 17: External Formal Allegations by Number and Type – 2007-2011.....	40
Table 18: Code of Conduct Allegations by Subcategory and Complaint Type - 2011.....	41
Table 19: Number and Type of Allegations by Complaint Type - 2011.....	43
Table 20: External Formal Allegations by Complainant Race/Ethnicity - 2011.....	44
Table 21: Supervisory Inquiry Allegation Categories by Complainant Race/Ethnicity - 2011	45
Table 22: Allegations by Complaint Type and Area Command - 2011.....	46
Table 23: Code of Conduct Allegations by Complaint Type and Area Command - 2011.....	47
Table 24: Interviews, Stops & Arrests, et al by Complaint Type and Area Command - 2011	48
Table 25: Use of Force, et al by Complaint Type and Area Command - 2011.....	48
Table 26: Formal Complaint APD Investigative Decisions - 2011.....	49
Table 27: External Formal Complaint Disciplinary Action – 2007-2011.....	50
Table 28: Internal Formal Complaint Disciplinary Action – 2007-2011.....	51
Table 29: Subject Officer Years of Service - 2011.....	52
Table 30: Repeat versus Single Case Subject Officer Years of Service - 2011.....	52
Table 31: External Formal Allegations by Subject Officer Years of Service - 2011.....	53
Table 32: Supervisory Inquiry Allegation Categories by Subject Officer Years of Service - 2011.....	54
Table 33: Gender of Subject Officers by Complaint Type - 2011.....	55

Table 34: External Formal Allegations by Subject Officer Gender - 2011.....	56
Table 35: Supervisory Inquiry Allegation Categories by Subject Officer Gender - 2011	57
Table 36: Repeat versus Single Case Subject Officer Gender - 2011.....	57
Table 37: Subject Officer Race/Ethnicity by Complaint Type - 2011.....	58
Table 38: External Formal Allegations by Subject Officer Race/Ethnicity - 2011.....	59
Table 39: Supervisory Inquiry Allegation Categories by Subject Officer Race/Ethnicity - 2011.....	60
Table 40: Repeat versus Single Case Subject Officer Race/Ethnicity - 2011.....	60
Table 41: Age of Repeat versus Single Case Subject Officers - 2011.....	61
Table 42: Subject Officer Age by Complaint Type - 2011.....	61
Table 43: External Formal Allegations by Subject Officer Age - 2011	62
Table 44: Supervisory Inquiry Allegation Categories by Subject Officer Age - 2011.....	63

» The Office of the Police Monitor

Mission and Objectives

The Office of the Police Monitor (OPM) is the primary resource for accepting and filing of the complaints brought by the general public against officers of the Austin Police Department (APD). The OPM also monitors the investigation of complaints within APD, i.e., internal complaints by one officer concerning the conduct of another officer. Through its outreach efforts, the OPM will educate the community and law enforcement to promote the highest degree of mutual respect between police officers and the public. By engaging in honest dialogue over issues and incidents that impact the community and law enforcement, the OPM's goal is to enhance public confidence, trust, and support in the fairness and integrity of the APD.

The duties of the Office of the Police Monitor include:

- Assessing complaints involving APD officers;
- Monitoring the APD's entire process for investigating complaints;
- Attending all complainant and witness interviews;
- Reviewing the patterns and practices of APD officers;
- Making policy recommendations to the chief of police, city manager, and city council; and,
- Assisting the Citizen Review Panel (CRP) in fulfilling its oversight duties.

How the Process Works

OPM complaint specialists are tasked with addressing allegations of police misconduct or questionable activities raised by the public. Complaint specialists take complaints via telephone, e-mail, facsimile, and mail. The public may also visit the OPM at any time during the business day in order to speak with a complaint specialist in person or may visit after business hours through special appointment. The OPM is readily accessible to physically challenged, hearing impaired, and non-English speaking complainants.

When a complaint is received by the OPM, a complaint specialist conducts a preliminary interview with the complainant to gather the relevant facts and ascertain whether a possible violation of policy exists. Each complaint is unique in composition and level of severity. In situations where it appears no policy violation will be found, the complaint specialist educates and informs the complainant about the particular APD General Orders, Policies and Procedures¹ applicable to the complainant's

¹ The General Orders, Policies, and Procedures are the guidelines, rules, and regulations set forth by the Chief of Police that govern the day to day activities of the Austin Police Department.

situation. During a consultation with a complaint specialist, the complainant is made aware of the avenues available to her/him.

These are:

- 1) **Formal complaints** – complaints investigated or reviewed by Internal Affairs Division (IAD) or by a chain of command;
- 2) **Supervisory inquiries** – complaints of a less serious nature handled by the officer’s chain of command;
- 3) **Contacts** – an individual calls with the intention of filing a complaint but the incident does not:
 - Meet the criteria outlined in the APD’s General Orders, Policies, and Procedures;
 - The individual does not provide sufficient information for follow up;
 - The individual is not available for follow up;
 - The individual fails to follow through with the complaint process;
 - The incident involves a complaint against a law enforcement agency other than APD; or,
 - Is a matter best handled by the courts or other agency; and,
- 4) **Mediation** – an opportunity for the complainant to be in a neutral location with the officer and a mediator in order to discuss areas of concern or issues with how the officer treated the complainant.

When a person has an issue with an APD officer they would like addressed, they typically file a “Supervisory Inquiry” or opt to file a “Formal” complaint. Mediation is also an option but the results of this will not appear in an officer’s personnel file and the officer will not be subject to discipline unless the officer fails to show up for the mediation session.

Supervisory Inquiries

Supervisory Inquiries are commonly used for less severe policy violations, such as complaints about the department as a whole, the police system, broad allegations of discourtesy or rudeness or a disagreement about police activities. The Supervisory Inquiry is suitable for those complainants who do not wish to go through the Formal complaint process and would like a faster result. Many people utilize this course of action because they want to make the department aware of an unpleasant interaction with an officer but do not wish to file a Formal complaint.

The complaint specialist gathers the information from the complainant and forwards this information to Internal Affairs. Internal Affairs will then forward the complaint to the involved officer’s chain of command. From this point, a supervisor (usually the immediate supervisor) conducts an inquiry to gather the facts including the officer’s version of the incident to better ascertain the nature of the complaint. During this stage,

if the immediate supervisor or the IAD commander determines that a more serious infraction has occurred, a Formal investigation may be initiated by IAD or by the officer's chain of command. The supervisor can also address the issue with the officer through counseling or reprimands. In most cases, the complainant opts to be contacted by the officer's immediate supervisor to discuss the matter at greater length and to achieve a degree of closure on the issue. At any time during the Supervisory Inquiry process, the complainant may opt to file a Formal complaint.

Formal Complaints

There are two types of Formal complaints – Internal and External. The difference between internal and external cases is:

- **Internal** – complaints filed by an APD officer, typically a member of the officer's chain of command, regarding the conduct of another APD officer;
- **External** – complaints filed by a member of the public regarding the conduct of an APD officer.

Regardless of whether the complaint is Internal or External, the Formal Complaint process is designed to register complaints, review the matter, and have an investigation conducted by Internal Affairs.

The process begins when a complainant indicates they want to utilize the Formal complaint process. After a brief explanation of the process, a statement is taken by the complaint specialist via dictation from the complainant onto an official affidavit form. The interview is tape recorded and the complainant is given an opportunity to review the statement and make any corrections that are necessary. Once the complainant is in agreement with the statement, the complainant then signs the statement and the statement is notarized to make the document official. The complaint specialist then submits the paperwork to IAD and a copy is provided to the complainant if one is requested.

The complaint specialist will notify the complainant through an OPM letter of the classification of the investigation as well as the name of the investigator assigned to the matter. The complaint specialist attends all complainant, witness, and involved officer interviews. IAD will prepare an investigative summary which the OPM reviews. The complaint specialist reviews the entire file upon its completion and forwards comments, concerns, or issues about the case to the Police Monitor. If the OPM does not agree with the outcome of the investigation or IAD's conclusions, the OPM may make recommendations to the Citizen Review Panel (CRP), the chief of police, and/ or IAD.

The complainant is given the investigative decision in writing. A complainant may then hold a meeting with the OPM—a Police Monitor's Conference (PMC)—to find out

the details of the investigation. The written documentation of the underlying investigation (i.e., statements, documentary evidence, etc.) is not given to the complainant due to civil service limitations on what can and cannot be provided. If the complainant is not satisfied with the investigation, the complainant may also choose to have the matter presented to the Citizen's Review Panel (CRP). The CRP is a volunteer group of seven citizens that meet once a month to hear cases in dispute as brought by either the complainant or the OPM or to discuss oversight issues. If a complainant chooses to utilize the CRP to hear their case, they are given ten (10) minutes during the public portion of the meeting to outline their issues with APD and/or the outcome of the investigation. The CRP may ask clarifying questions of the complainant during this time. Afterwards, the CRP will meet in a private executive session to deliberate on the actions necessary to address the case. The CRP may make recommendations on policy and training to the chief of police or choose to leave the case in its current status.

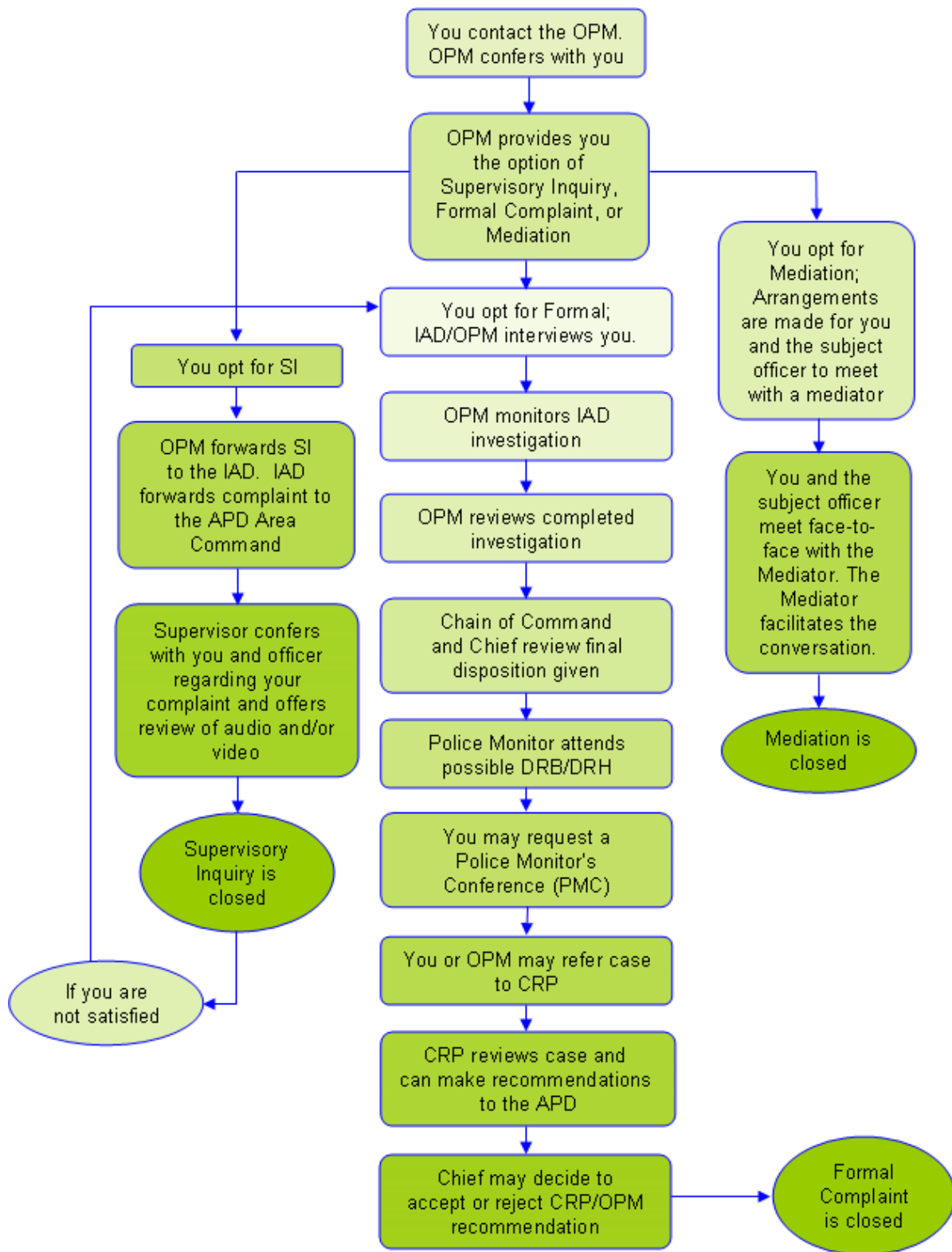
Mediation

Mediation is a third option available to a complainant. Mediation is designed to provide the complainant an opportunity to be in a neutral location with the officer and a mediator in order to discuss areas of concern or issues with how the officer treated the complainant. If the mediation option is utilized, the complainant cannot opt for a Formal complaint once the mediation process has concluded regardless of the outcome. In addition, the nature of the complaint itself must reach the level of a class "B" investigation in order for the mediation process to be utilized. The use of this process will bring the officer and the complainant together with a third-party in order to air and, hopefully, resolve their issues. This option will not result in any discipline for the involved officer (or officers) and will not be placed in the officer's personnel record.

To file a complaint with the OPM, an individual may contact the office in person, by telephone at (512) 974-9090, by facsimile at (512) 974-6306, by e-mail at police.monitor@ci.austin.tx.us, or by mail. The office is located in the City of Austin Rutherford Complex at 1520 Rutherford Lane, Bldg. 1, Suite 2.200A, Austin, TX 78754. The mailing address is: PO Box 1088, Austin, TX 78767.

For more information, including a full copy of this report, please visit the OPM website at www.austinpolicemonitor.com.

Figure 1. OPM Complaint Process



OPM: Office of the Police Monitor **APD:** Austin Police Department **IAD:** Internal Affairs Division
SI: Supervisory Inquiry **CRP:** Citizen Review Panel **DRB:** Disciplinary Review Board
DRH: Disciplinary Review Hearing

Section 1: 2011 Serious Incident Review

While there were many complaints brought throughout 2011, below is a brief summary of the more serious cases. When determining the type and severity of discipline to be administered to an officer, the APD consults its Discipline Matrix. The Matrix is attached in Appendix B. The Matrix serves as a guideline when assessing discipline on sustained allegations. Different policy violations carry different discipline; discipline becomes more severe if an officer has violated a particular policy more than once.

The cases are presented in chronological order.

On May 9, 2011, Officer Steven Pena responded to several 911 calls reporting an armed male attempting to forcibly gain entry into an apartment in southeast Austin. The suspect was the estranged boyfriend of a female occupant of the apartment. Officer Pena responded with his back up officer. He made his way to an open courtyard where he observed the suspect, who was armed with a handgun, on an upper breezeway kicking at the door of his estranged girlfriend's apartment. Officer Pena gave verbal commands to the suspect who then turned in the direction of Officer Pena and fired his weapon. Officer Pena fired fatally striking the suspect. Officer Pena made his way to the apartment and observed that the suspect had fired several rounds at the door and the surrounding area. Officer Pena and his backup officer secured the residence without incident. The case involving Officer Pena was Administratively Closed.

In the late evening of May 30, 2011, Officers Nathan Wagner and Jeffrey Rodriguez were on a directed specialized operation in the downtown area to deter a recent slew of vehicle break-ins. Both officers were assigned to bicycle units and were tasked with observation of foot traffic in the area. During the course of the operation, the officers observed two males in the area they deemed suspicious. The officers decided to follow the two males on foot, but lost visual contact. The two males were re-located sitting in a parked vehicle. As the officers began to approach the vehicle, the vehicle pulled forward rapidly causing Officers Wagner and Rodriguez to jump out of the way. Officer Wagner heard a cry from Officer Rodriguez. Believing Officer Rodriguez had been struck by the vehicle, Officer Wagner discharged his weapon at the vehicle. Officer Wagner fired several shots wounding the driver and fatally wounding the passenger. Officer Rodriguez was transported to the hospital for treatment of his injuries. The case involving Officer Wagner was Administratively Closed. The OPM and the CRP made recommendations to the Chief of Police regarding this matter. Due to Civil Services laws, these recommendations cannot be disclosed by either the OPM or the CRP.

On July 24, 2011, Officer Scott Garner was dispatched to a 911 call that a person was passed out at the wheel of a running vehicle. The Austin Fire Department (AFD), Emergency Management Services (EMS) as well as the APD responded to the scene. As Officer Garner arrived on scene, EMS was treating the young male. It was determined that the male needed medical attention and was transported to the hospital. EMS, AFD, and other APD officers on scene had a clear indication that the male was probably intoxicated. Officer Garner arrived at the hospital, and after a brief examination the male was released to Officer Garner's custody where he performed basic field sobriety tests in the parking lot. Officer Garner made the determination to take the male home. Once at the male's residence Officer Garner conversed with the male's mother and then returned to his shift. Officer Garner's chain of command initiated a complaint on the basis that Officer Garner was instructed to arrest the male for DWI or PI and did not have permission to release the male to his parents. The chain of command determined that Officer Garner was insubordinate and dishonest in his account of the incident and attempted to shift blame to other APD officers. Officer Garner was indefinitely suspended from the department after a disciplinary hearing conducted by his chain of command and Chief Acevedo.

On Sunday, July 17, 2011, a call went out regarding a male wearing a black shirt with the word "Police" on it and carrying a handgun outside a fast food restaurant. The suspect was arrested for Impersonating a Police Officer. The suspect was reported to be very respectful and was arrested and transported without incident.

Once inside the jail, while the transporting officer was booking the suspect in, he heard a noise coming from behind him and noticed that the suspect was having a seizure. Travis County jail staff, including two nurses, began assisting the suspect. In the meantime, EMS was also called. During the transport to Brackenridge hospital, the suspect went into cardiac arrest. Despite efforts to revive the suspect, he passed away. The case was Administratively Closed.

On August 15, 2011, at approximately 4:50 p.m., a suspect entered a convenience store, pointed a handgun at a clerk, and demanded the money in the register. The clerk called 911 and reported the aggravated robbery with a deadly weapon, giving a detailed description of the suspect and the suspect's direction of travel.

An officer in a marked APD patrol unit, on his way to court, heard the broadcast over the radio of a "hot-shot" call of aggravated robbery. The officer advised dispatch that he would be en route to the location. Simultaneously, a second officer also in a marked APD patrol unit informed dispatch that he would be responding to the aggravated robbery call as well.

The first officer turned into a motel parking lot and observed the suspect running westbound through the gravel parking lot towards the motel's rear structure. The officer drove his patrol unit past the suspect and attempted to cut off his forward progress by pulling his patrol unit into his path. The second pursuing officer followed and stopped the patrol unit approximately 10-15 feet behind, and to the east of, the first officer. The suspect attempted to climb over a fence attached to the motel but was unsuccessful. He then turned around and ran back toward and in between the two officers' patrol units.

Both officers exited their patrol units and began running in the direction of the suspect. Another officer stopped his patrol unit where the sidewalk meets the parking lot of the motel. When the suspect ran in the direction of that patrol unit, the officer fired six (6) shots at the suspect through his patrol unit's front passenger window. The suspect was not struck and continued running. The officer then got out of his patrol unit and pursued the suspect on foot.

Both of the other officers continued to pursue the suspect on foot as he fled northbound in front of the motel. The suspect was apprehended a short while later by other officers without incident. The OPM and the CRP made recommendations to the Chief of Police regarding this matter. Due to Civil Service laws, the recommendations cannot be disclosed by the OPM or the CRP.

In early September, 2011, a woman complained to the OPM that she had witnessed an APD officer use excessive force against her cousin during an arrest. She filed an External Formal complaint. The investigation revealed that Officer Michelle Gish had responded to the scene to assist in securing a female suspect. As the handcuffed suspect was being secured to the EMS gurney, she spit in Officer Gish's face. Officer Gish struck the suspect in the face at least once. The investigation also revealed that Officer Gish, Officer Robledo, and Corporal Jones had not properly documented the use of force and Sgt. Breckenridge had not conducted a proper response to resistance investigation. It was further determined that Officers Gish and Robledo had been untruthful during the investigation. As a result, Officers Gish and Robledo were indefinitely suspended. Corporal Jones received a ten day suspension and Sgt. Breckenridge received a twenty day suspension.

On November 18, 2011, a task force comprising state and federal organizations discovered financial activity that might indicate possible federal criminal behavior by several Austin Police Officers. It was determined that a number of officers had been approached by two particular APD officers about a lucrative off-duty security contract that had been orchestrated by a wealthy businessman from Mexico. The nature of the contract was that officers would be paid to provide around the clock security and

surveillance of his daughter as she attended the University of Texas. In contrast to the initial job description, the only task performed by the officers was sitting in their personal vehicle keeping tabs on the daughter's residence and her comings and goings. An additional four officers had worked the contract on one or multiple occasions over the course of a few months to a year and were paid several thousands of dollars in cash that was not reported to IRS. One of the two officers who recruited the other officers retired from the APD while under investigation. The other officer resigned and was later convicted of income tax evasion and sentenced to one year in Federal prison.

In the early morning hours of December 5, 2011, the Austin Police Department and the Travis County Sheriff's Office (TCSO) responded to several 911 and Officer Needs Assistance calls involving a TCSO pursuit of a suspect. As officers and deputies were searching for the suspect after he abandoned his vehicle, persons in a nearby residence reported that the suspect was in their home. Shortly thereafter, the garage door opened and the suspect began backing a vehicle out into the driveway. An APD officer fired several rounds at the vehicle striking and wounding the suspect in the wrist. The suspect was able to barricade himself in another building in the area where he subsequently surrendered to law enforcement. This case is pending as of this writing.

In early December, 2011, a burglary victim complained to the OPM about how Detective Richard Munoz was handling her case. The complainant felt that the detective was inattentive to her case despite her having expressed concerns regarding her family's safety. Additionally, she felt that the conversations she did have with the detective were rude and condescending in nature relevant to the crime and the concern of the complainant. As time passed, the complainant would attempt to phone Detective Munoz for his progress and efforts on the case, but was either not called back or would have less than productive conversations. An investigation was initiated and it was determined that Detective Munoz's actions in this and other cases were improper. There was also a determination that Detective Munoz had not been truthful during the investigation. These actions, along with Detective Munoz's disciplinary history, resulted in his indefinite suspension.

In the 2010 Annual Report, the case involving Officer Frank Wilson was still pending when the report was released. The incident itself occurred on December 23, 2010. Officer Wilson and another officer were paired up in a unit when Officer Wilson observed a vehicle roll through a stop sign in a residential area. As Officer Wilson attempted to stop the vehicle, the suspect sped through the neighborhood abruptly stopping at a residence. The suspect exited the vehicle and fled on foot jumping a nearby fence. Officer Wilson gave chase but stopped and did not enter the yard into

which the suspect had fled due to the presence of dogs. Officer Wilson could not see the suspect and returned to his unit. He then began to search the neighborhood for the suspect. Officer Wilson saw the suspect a few blocks over and again exited his vehicle and gave chase. When Officer Wilson found the suspect in another backyard, they engaged in a physical struggle. As Officer Wilson attempted to cuff the suspect, the suspect managed to get free and broke through the yard's wooden fence. Officer Wilson once again caught up to the suspect and engaged in another physical struggle. As Officer Wilson and the suspect were involved in the struggle, the suspect pulled a knife from Officer Wilson's duty belt and cut Officer Wilson across the neck. Officer Wilson drew his weapon and fired one round into the suspect. The suspect released his grip from Officer Wilson and staggered off collapsing in the driveway of another residence. The suspect later died from his wounds. Officer Wilson sustained a life threatening injury to his neck but recovered after surgery. The case involving Officer Wilson was Administratively Closed in July of 2011.

Section 2: Executive Summary

The Office of the Police Monitor's (OPM) annual report is presented to the public as a means to provide transparency into the Austin Police Department's (APD) complaint investigative process. This report reviews behavior patterns of APD officers and makes policy recommendations. Below are some of the key findings from the 2011 reporting year.

- In 2011, 1,425 persons contacted the OPM or the APD's Internal Affairs Division (IAD) wishing to file a complaint against one or more members of the APD. This was a decrease of 5% (72 contacts/complaints) from 2010. Of these contacts, half (717 of the 1,425) actually resulted in some type of complaint. (Page 20)
- There were 344 Formal complaints filed in 2011. This was an increase of 9% (28 cases) from the number filed in 2010. Of these 28 cases, there were 14 more External Formal complaints (↑ 16%) and 14 more Internal Formal complaints (↑ 6%). (Page 20)
- The total number of Supervisory Inquiries monitored by the OPM was down in 2011 to 373 complaints, a decrease of 15% (64) from 2010. (Page 20)
- For the first time in the history of the OPM, Caucasians and Blacks/African Americans filed the same percentage of External Formal complaints. (Page 23)
- Blacks/African Americans file External Formal complaints at a rate almost five times greater than their representation in the voting age population in Austin. (Pages 23-24)
- The largest disparity in traffic stops involves Blacks/African Americans. This group is stopped 13% of the time while making up only 8% of the voting age population of the City. (Pages 24-25)
- Blacks/African Americans are searched one out of every eight times a member of this group is involved in a traffic stop. Hispanics/Latinos are searched one out of 10 times; Caucasians are searched one out of 28 times. (Page 26)
- Despite the percentage of searches, there is virtually no difference in the likelihood of contraband being discovered within the three groups. (Pages 26-27)
- When looking at External Formal complaints, there is a notable disparity between the complaint rates and the population percentages. Males file External Formal complaints at a rate higher than their representation within the City (59% of complaints vs. 53% of the population) while females file at a rate lower (39% of complaints vs. 47% of the population). (The gender of the remaining 2% is unknown). (Page 31)

- The Downtown area command, which has frequently recorded the most complaints, had the second most complaints in 2011 with 16 External Formal complaints. It was surpassed by the Central East area command with 18 External Formal complaints. (Page 33)
- For the first time in the history of the OPM, the Northwest area command had the third highest number of External Formal complaints with 14. (Page 33)
- While not having a large number of External Formal complaints (9), the Southeast area command did experience a large number of Supervisory Inquiry complaints (65) in 2011. (Pages 33-34)
- In 2011, 43% of all External Formal complaints received a “D” classification. This is a decrease from both 2009 and 2010. (Page 36)
- As in years past, Code of Conduct-type issues continue to be the most frequently reported allegation for both Supervisory Inquiries as well as External Formal complaints. This has been the case since the OPM began tracking complaints. (Page 39)
- When looking at allegations regarding prejudicial behavior, the OPM documented a total of 14 in External Formal complaints and 15 for Supervisory Inquiries in 2011. (Page 42)
- Last year the OPM identified an issue of concern that involved the allegations of Interviews, Stops, and Arrests, et al. This is of even greater concern this year as the number of allegations in this category has increased dramatically. In 2011 External Formal complaints, there are 39, an increase of 63%. Last year, there were 63 allegations in this category in Supervisory Inquiry complaints. This year there are 135, an 114% increase. (Page 43)
- In External Formal complaints, Caucasians are responsible for 20 (51%) of the 39 Interviews, Stops, and Arrests allegations in 2011; the rest are split between Blacks/African Americans with 12 (31%) and Hispanics/Latinos with 7 (18%). (Page 44)
- In Supervisory Inquiries, Interviews, Stops, and Arrests allegations are the most cited complaint for Blacks/African Americans at 39 allegations, or 44% of all allegations levied by this group. This number is lower for Caucasians at 40 allegations but only 28% of this group’s allegations and Hispanics/Latinos with 33 allegations or 33% of all allegations levied by Hispanics/Latinos. (Page 44)
- Only 44% of all allegations filed by Caucasians in Supervisory Inquiries are Code of Conduct related. This is down 20% from last year. For Blacks/African Americans this percentage is 33% and for Hispanics/Latinos 48%. (Page 45)

- A notable shift in 2011 External Formal allegations is in the Southeast area command. Last year, it had 30 allegations levied in External Formal complaints while this year that number fell to 7, a decrease of 23 allegations, or 77%. This is in contrast to the number of allegations in the Southeast area command levied in Supervisory Inquiries. Last year, the number of allegations in Supervisory Inquiries was also 30; this year that number is 71, an increase of 58%. (Page 46)
- When combining allegations from both External Formal complaints and Supervisory Inquiries, DTAC is tied with Central East for the most number of allegations with 87 each. For the first time ever, Northwest makes it into the top three with 83. (Page 46)
- There were very few Use of Force allegations brought forward in 2011. There were only four (4) total allegations in Supervisory Inquiries and 29 in External Formal complaints and 20 in Internal Formal complaints in 2011. Fifty-three (53) total Use of Force allegations is considered low given the number of incidents in which the APD uses force. In order to ensure that the Response to Resistance policy is being followed, the OPM is recommending that routine audits of Response to Resistance reporting be conducted. (Page 49)
- There was a significant climb in the number of allegations that were Sustained in External Formal complaints in 2011. This number was up by 24 decisions from 2010, or 126%. At the same time, the number of cases that were Administratively Closed fell by 16 decisions, or 21%. Inconclusive findings for External Formal complaint allegations also fell in 2011 by 8 decisions, or 57%. (Pages 49-50)
- The number of allegations associated with External Formal complaints that resulted in Indefinite Suspensions in 2011 is unprecedented. These allegations spanned three cases and were divided amongst four officers. (Page 50)
- For 2011 complaints, the average length of time an officer had served on the force until the date of the incident was eight (8) years for both Supervisory Inquiries and Formal complaints. For Formal complaints, this is one year earlier than in 2010. Last year, the average length of service was nine (9) years. Nonetheless, this is still typical of what the OPM has reported in the past. (Pages 50-51)
- When looking at External Formal complaints, and then comparing allegation types to years of services, the OPM found in 2011 that officers with 10 or more years of experience and those with less than 3 years of experience have the greatest percentage of Code of Conduct allegations levied against them. For the more senior officers, this is somewhat in line with national statistics. (Page 53)
- Within Supervisory Inquiries, half of all allegations levied against officers with 4-6 years of service are Interviews, Stops & Arrests related. This category is cited

16% more often than Code of Conduct – a first in the history of the OPM. (Page 54)

- As has been the case in years past, complaints are brought against male officers at a slightly higher rate than female officers relative to the demographic make-up of the police force. (Page 55)
- For those officers with External complaints in 2011, meaning both External Formal complaints as well as Supervisory Inquiries, the OPM found that 65% of these officers have had at least one additional complaint between 2007 and 2010. (Page 63)
- When aggregating the complaints brought against officers within the 2007-2011 timeframe, the OPM found that 19% of officers in this pool had just a single complaint; the remaining 81% had two or more complaints. (Page 64)

Section 3: End of Year Statistical Review

Complaints

Number & Types of Complaints

In 2011, 1,425 persons contacted the OPM or the APD's Internal Affairs Department (IAD) wishing to file a complaint against one or more members of the APD. This was a decrease of 5% (72 contacts/complaints) from 2010. Of these contacts, half (717 of the 1,425) actually resulted in some type of complaint.

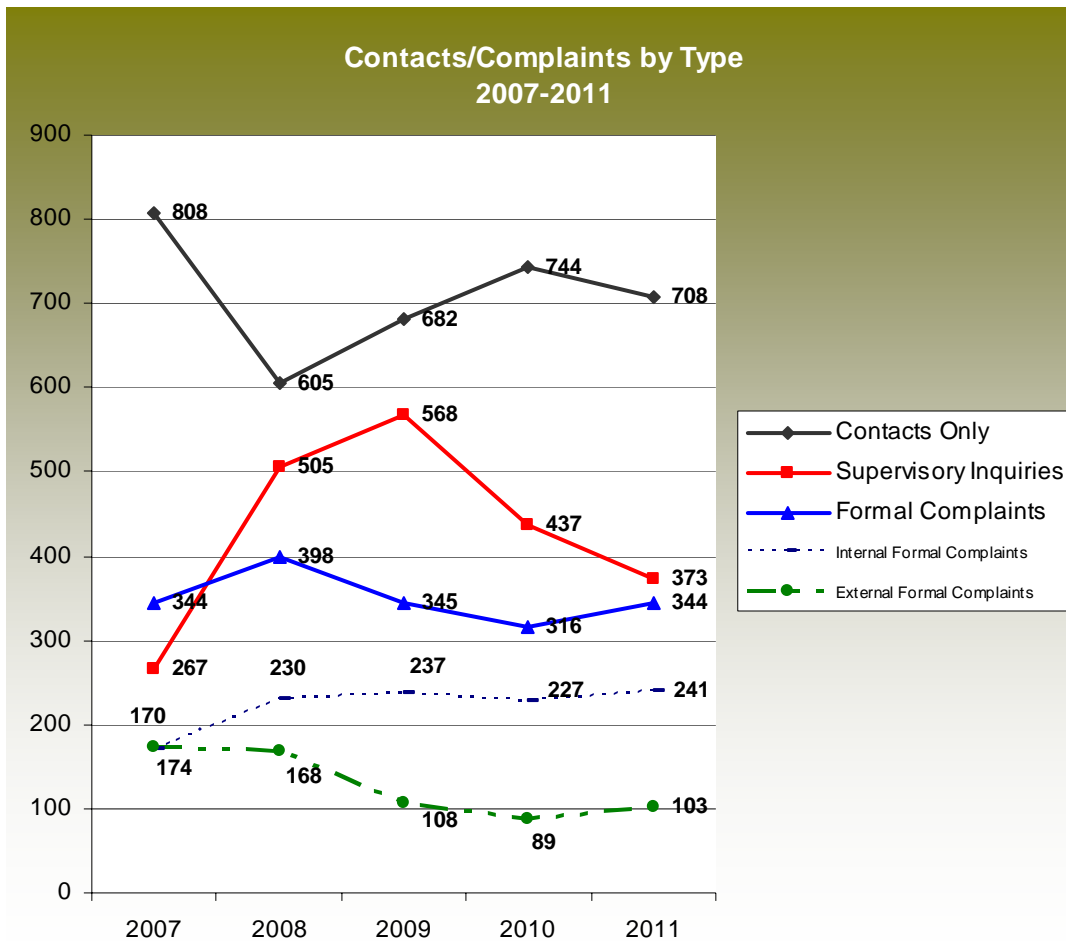
When a member of the public files a complaint with the OPM, they are made aware of the avenues available to them during a consultation with a complaint specialist. They have a choice regarding the type of complaint they would like to file and whether to file a complaint at all. Should they choose to proceed with their complaint, they have the option of filing a Supervisory Inquiry or filing a Formal complaint.

The graph below includes all individuals contacting the OPM or the IAD with the intention of filing a complaint including those from within the APD. In this figure, the term "contacts only" means that a person reached out to the OPM or the IAD but then, for whatever reason, did not file a Supervisory Inquiry or a Formal complaint.

There were 344 Formal complaints filed in 2011 – 103 External Formal complaints and 241 Internal Formal complaints. This was a total increase of 9% (28 cases) from the number filed in 2010. Of these 28 cases, there were 14 more External Formal complaints (↑ 16%) and 14 more Internal Formal complaints (↑ 6%).

The total number of Supervisory Inquiries monitored by the OPM was down in 2011 to 373 complaints, a decrease of 15% (64) from 2010. Supervisory Inquiries had increased steadily from 2006 through 2009 but decreased in both 2010 and 2011. During this same time period, the number of External Formal complaints climbed from 2006 to 2008, dropped in 2009 and 2010, but were up again in 2011.

Table 1: Contacts & Complaints by Type – 2007-2011



When a complainant files a Supervisory Inquiry, they have the option of speaking directly to an officer’s supervisor about the issue. Supervisory Inquiries are usually initially handled by the individual officer’s supervisor and sometimes by the entire chain of command. The process was developed jointly by the APD and the OPM in an effort to provide members of the public the option to speak directly with an officer’s supervisor, when the complaint is of a less serious nature.

While the OPM believes the option of speaking directly to an officer’s supervisor is one of the factors leading complainants to choose this avenue, other factors may also come into play. One factor is time—Supervisory Inquiries normally take less than 30 days to complete while a Formal complaint may take as long as 180 days. The other is that, in general, the vast majority of complaints being brought do not involve accusations of serious misconduct.

The OPM assesses complainant satisfaction with the resolution of the Supervisory Inquiry via a follow-up conversation with the complainant. During this time, the complainant is made aware that if they are not satisfied with the outcome of the case, they have the option to file a Formal complaint. In 2011, only 6 complainants chose to

advance to a Formal complaint after first going through the Supervisory Inquiry process.

Race/Ethnicity of Complainants

Complaints may be filed at the OPM in person, or by telephone, e-mail, facsimile, or mail. Because of the various methods of contacting the OPM, at times thorough collection of all demographic data points can be challenging. Often complainants simply do not wish to share this information, particularly over the telephone. This challenge proves to be even more problematic with Supervisory Inquiries as can clearly be seen in the high percentage of missing or unknown data in this category. The OPM will continue to strive to improve data collection methods.

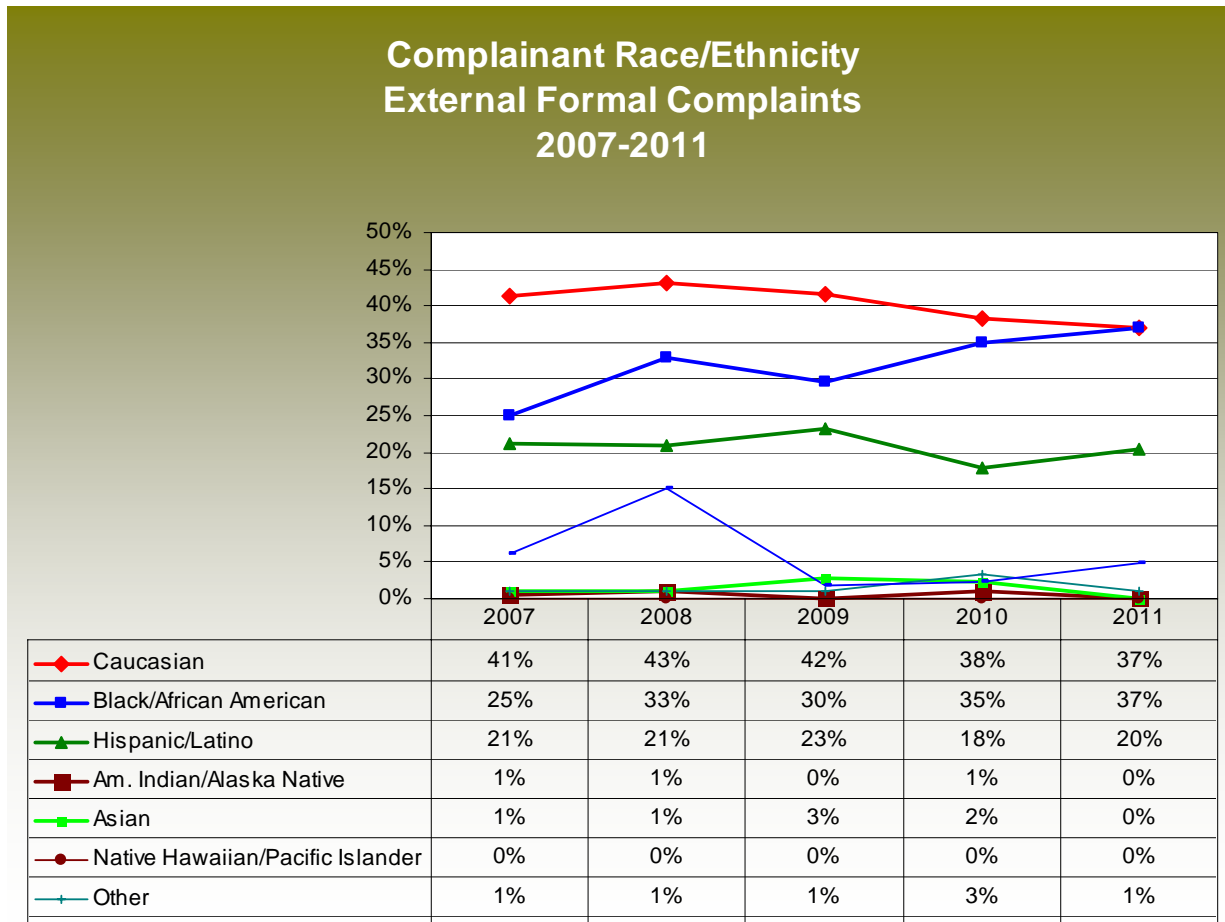
Please note that the data presented in the table below are not made up of unique individuals as a person may file more than one complaint and/or more than one type of complaint if they were involved in more than one incident.

Table 2: Race/Ethnicity of Complainants - 2011

Ethnicity/Race	Supervisory Inquiries		External Formals		Total	
	#	%	#	%	#	%
Caucasian	135	36%	38	37%	173	36%
Black/African American	79	21%	38	37%	117	25%
Hispanic/Latino	92	25%	21	20%	113	24%
Am. Indian/Alaska Native	1	0%	0	0%	1	0%
Asian*	5	1%	0	0%	5	1%
Native Hawaiian/Pacific Islander*	2	1%	0	0%	2	0%
Other	3	1%	1	1%	4	1%
Unknown	56	15%	5	5%	61	13%
Total	373	100%	103	100%	476	100%

When combining complaint types, the percentage of each group does not shift much from what has been seen in the past. However, when looking at External Formal complaints, a different picture emerges.

Table 3: External Formal Complainant Race/Ethnicity – 2007-2011



Hispanics/Latinos did not file more complaints in 2011 than their representation in the Austin voting age population. This has been true since the OPM opened its doors. In 2011, Hispanics/Latinos made up 31% of the City’s voting age population² but filed only 20% of the External Formal complaints. The OPM remains concerned that this may be because of a fear by some members of the Hispanic/Latino community to contact the OPM due to language and/or immigration status concerns. The OPM will continue to focus specific outreach efforts on the Hispanic/Latino community.

For the first time in the history of the OPM, Caucasians and Blacks/African Americans filed the same percentage of Formal complaints. When comparing these percentages to the voting age population of the City of Austin, (i.e., only people 18 years old or older) the percentage of External Formal cases filed by Caucasians was well below this group’s representation in the population (53% of the voting age population vs. 37% of External Formal complaints). In contrast, the percentage of complaints filed by Blacks/African

² The voting age population was chosen in order to more closely approximate the ages of members of the public most likely to have interaction with the APD as well as to better reflect the age range of complainants coming into the OPM. The voting age population is also viewed as a closer approximation of those operating motor vehicles (as opposed to the total population which includes children).

Americans is disproportionately higher (8% of the population vs. 37% of all External Formal complaints).

Table 4: 2011 External Formal Complainant Race/Ethnicity versus 2010 City of Austin Voting Age Population

Ethnicity/Race	External Formals		2010 City of Austin Voting Age Population		Gap: % Complaints vs. % Population
Caucasian	38	36.89%	329,500	53.44%	-16.55%
Black/African American	38	36.89%	46,219	7.50%	29.40%
Hispanic/Latino	21	20.39%	188,318	30.54%	-10.15%
Am. Indian/Alaska Native	0	0.00%	1,639	0.27%	-0.27%
Asian*	0	0.00%	39,604	6.42%	-6.42%
Native Hawaiian/Pacific Islander*	0	0.00%	1,639	0.27%	-0.27%
Unknown/Other	6	5.83%	9,645	1.56%	4.26%
	103	100%	616,564	100%	

Again, this is something the OPM has reported in the past but it continues to be an issue. As a percentage, Blacks/African Americans filed more Formal complaints than they did Supervisory Inquiries. This is a concern because Formal complaints are typically of a more serious nature. This may also be reflective of a belief that a supervisor will not take the complaint seriously and/or that the complainant wishes to have the OPM more involved in the monitoring of the investigation. Two, the gap between the percentage of External Formal complaints filed by Caucasians and those filed by Blacks/African Americans has disappeared completely in 2011. Despite the double digit difference in population, the percentage of Formal complaints attributable to these two groups is now at parity. The third issue relates to the 2011 Racial Profiling Report published by the APD in March of 2011.

In the 2011 Racial Profiling report, the APD states that Caucasians were stopped 98,428 times, or 55% of all traffic stops, Blacks/African Americans were stopped 22,917 times, or 13% of all reported traffic stops, and Hispanics/Latinos were stopped 52,453 times, or 29% of all traffic stops. As can be seen in the table below, when comparing the number of stops to the voting age population for each group within the City of Austin, Caucasians and Hispanics/Latinos are stopped at approximately the same percentage as their representation in the voting age population. Blacks/African Americans are stopped at a rate that is 5% above their representation within the City of Austin's voting age population while Asians are stopped at a rate that is 4% below their representation. Thus, the largest disparity between stops and the voting age population within any racial/ethnic group is again amongst the Black/African American group.

Table 5: 2011 Traffic Stops by Race/Ethnicity versus 2010 City of Austin Voting Age Population

APD Category	2011 Traffic Stops		2010 City of Austin Voting Age Population		Difference: Population vs. Stops
Caucasian	98,428	54.72%	329,500	53.58%	1%
Black/African American	22,917	12.74%	46,219	7.52%	5%
Hispanic/Latino	52,453	29.16%	188,318	30.62%	-1%
Asian	4,740	2.64%	39,604	6.44%	-4%
Am. Indian/Alaska Native	83	0.05%	1,639	0.27%	**
Middle Eastern	1,261	0.70%	**	**	**
Unknown/Other	**	**	9,645	1.57%	**
	179,882	100%	614,925	100%	

According to the APD, 28% of the traffic stops occurred along an US highway; therefore, the OPM also compared the percentage of stops to the voting age population within Travis County as well as the Austin Metropolitan Statistical Area (MSA) voting age population. The Austin MSA covers the counties of Travis, Williamson, Hays, Bastrop and Caldwell and includes the cities of Austin, Round Rock, Cedar Park, San Marcos, Georgetown, Pflugerville, Kyle, Leander, Bastrop, Brushy Creek, Buda, Dripping Springs, Elgin, Hutto, Jollyville, Lakeway, Lockhart, Luling, Shady Hollow, Taylor, Wells Branch, and Windemere. There is virtually no difference in the percentage of stops data between the City of Austin and Travis County voting age population, and only a slight difference when looking at the MSA data.

Table 6: 2011 Traffic Stops by Race/Ethnicity versus 2010 Travis County and Austin MSA Voting Age Population

APD Category	2011 Traffic Stops		2010 Travis County Voting Age Population		Difference: Population vs. Stops	2010 Austin MSA Voting Age Population		Difference: Population vs. Stops
Caucasian	98,428	54.72%	429,849	55.16%	<1%	756,128	59.00%	-4%
Black/African American	22,917	12.74%	60,875	7.81%	5%	87,873	6.86%	6%
Hispanic/Latino	52,453	29.16%	228,123	29.28%	<1%	352,400	27.50%	2%
Asian	4,740	2.64%	46,461	5.96%	-3%	62,996	4.92%	-2%
Am. Indian/Alaska Native	83	0.05%	2,117	0.27%	**	3,861	0.30%	**
Middle Eastern	1,261	0.70%	**	**	**	**	**	**
Unknown/Other	**	**	11,804	1.51%	**	18,271	1.43%	**
	179,882	100%	779,229	100%		1,281,529	100%	

There were 11,719 searches included in the 2011 Racial Profiling Report. Caucasians accounted for 55% of the stops and 30% of the searches. Blacks/African Americans accounted for 13% of the stops and 26% of the searches. Hispanics/Latinos accounted for 29% of the stops and 43% of the searches. This translates to a 1 in 28 chance for Caucasians, 1 in 8 chance for Black/African Americans and 1 in 10 for Hispanics/Latinos to be searched once stopped.

Table 7: 2011 Traffic Stops and Searches by Race/Ethnicity

APD Category	2011 Traffic Stops		2011 Searches		Likelihood of Being Searched if Stopped	
	Count	Percentage	Count	Percentage	Percentage	Ratio
Caucasian	98,428	54.72%	3,505	29.91%	3.56%	1 out of 28
Black/African American	22,917	12.74%	3,037	25.92%	13.25%	1 out of 8
Hispanic/Latino	52,453	29.16%	5,050	43.09%	9.63%	1 out of 10
Asian	4,740	2.64%	97	0.83%	2.05%	1 out of 49
Am. Indian/Alaska Native	83	0.05%	3	0.03%	3.61%	1 out of 28
Middle Eastern	1,261	0.70%	27	0.23%	2.14%	**
Unknown/Other	**	**	**	**	**	**
	179,882	100%	11,719	100%		

*Source: APD's 2011 Racial Profiling Report
http://www.austintexas.gov/sites/default/files/files/Police/Reports/2011_FINAL_racial_profiling_report.pdf

In November of 2011, the APD published its 2010 Racial Profiling Report Supplement – Geographic Analysis. In it, the APD concluded that most of the 2010 stops and searches occurred in high-crime areas. The APD reported that Blacks/African Americans and Hispanics/Latinos make up 79% of the population in those areas, but were stopped only 50% of time. Without the benefit of knowing the location of the stop combined with the demographic/geographic information of the person being stopped, the OPM cannot substantiate this argument. These data have been made available to the OPM for calendar year 2010 but not for 2011. The OPM will be releasing a full analysis of the 2010 APD stops data later this year.

There is little difference whether contraband is found as a result of a search. APD calls the finding of some form of contraband a “hit.” Again, looking at APD’s 2011 Racial Profiling Report, it can be seen that the hit rate for all three groups is between 20% and 22%. In short, there is virtually no difference in hits between the three groups.

Table 8: 2011 Searches and “Hits” by Race/Ethnicity

APD Category	2011 Searches		2011 "Hits"		Likelihood of a "Hit"	
Caucasian	3,505	29.91%	701	29.54%	20.00%	1 out of 5
Black/African American	3,037	25.92%	657	27.69%	21.63%	1 out of 5
Hispanic/Latino	5,050	43.09%	992	41.80%	19.64%	1 out of 5
Asian	97	0.83%	**	**	**	**
Am. Indian/Alaska Native	3	0.03%	**	**	**	**
Middle Eastern	27	0.23%	**	**	**	**
Unknown/Other	**	**	23	0.97%	**	**
	11,719	100%	2,373	100%		

Source: APD's 2011 Racial Profiling Report

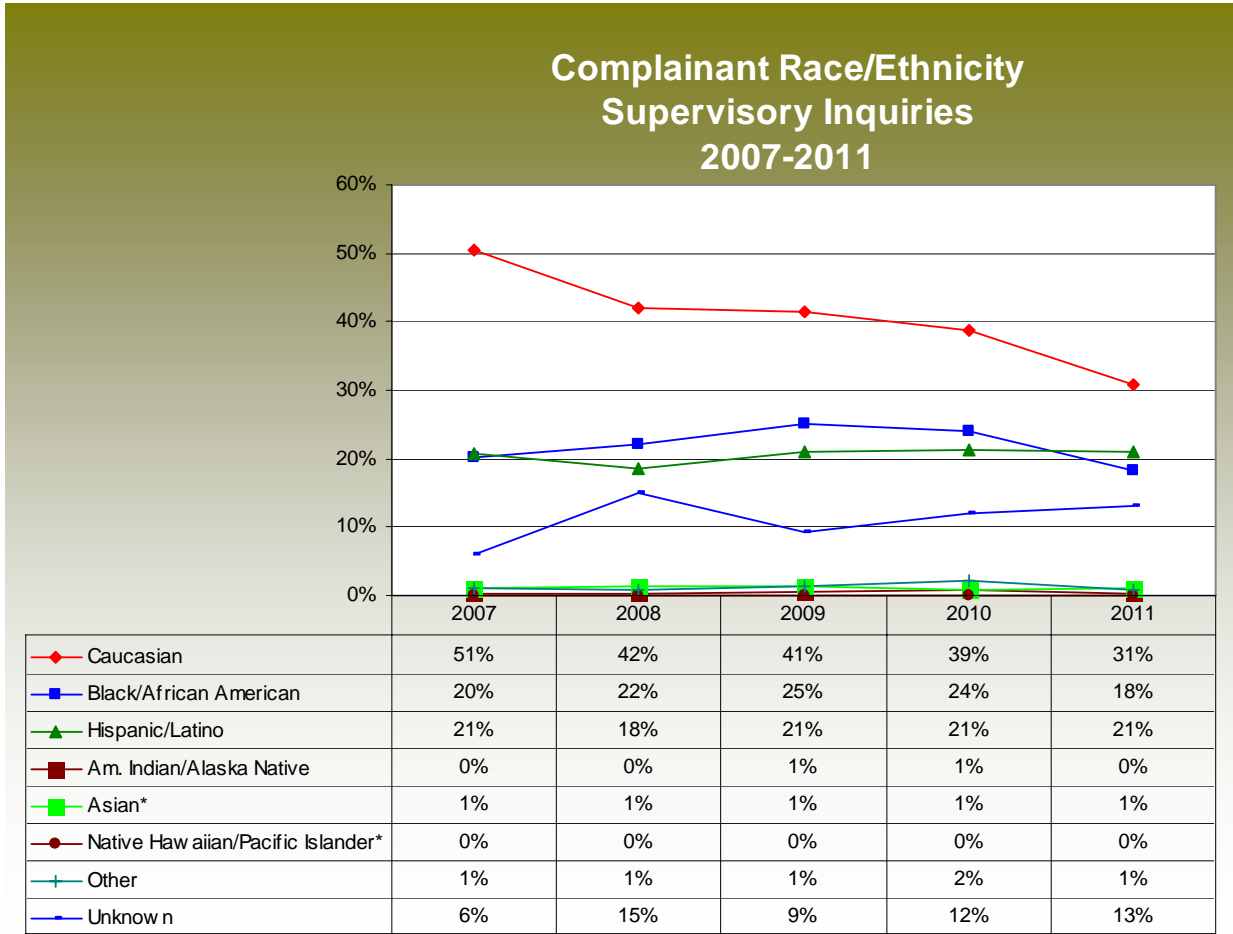
http://www.austintexas.gov/sites/default/files/files/Police/Reports/2011_FINAL_racial_profiling_report.pdf

As a proportion of all searches, the hit rate corresponds almost directly. For example, Blacks/African Americans make up 26% of all searches and account for 28% of the contraband.

The OPM recognizes that with only these data in hand, the results presented here are not without flaw. At this time, however, the data needed for a more comprehensive analysis are not available to the OPM.

As a whole, Supervisory Inquiries were down in 2011. Supervisory Inquiries as well as External Formal complaints have been declining amongst Caucasians for the past three years. For Blacks/African Americans, Supervisory Inquiries had been flat in 2009 and 2010 then dropped off significantly in 2011. For Hispanics/Latinos, the percentage of Supervisory Inquiries over the past three years has remained constant.

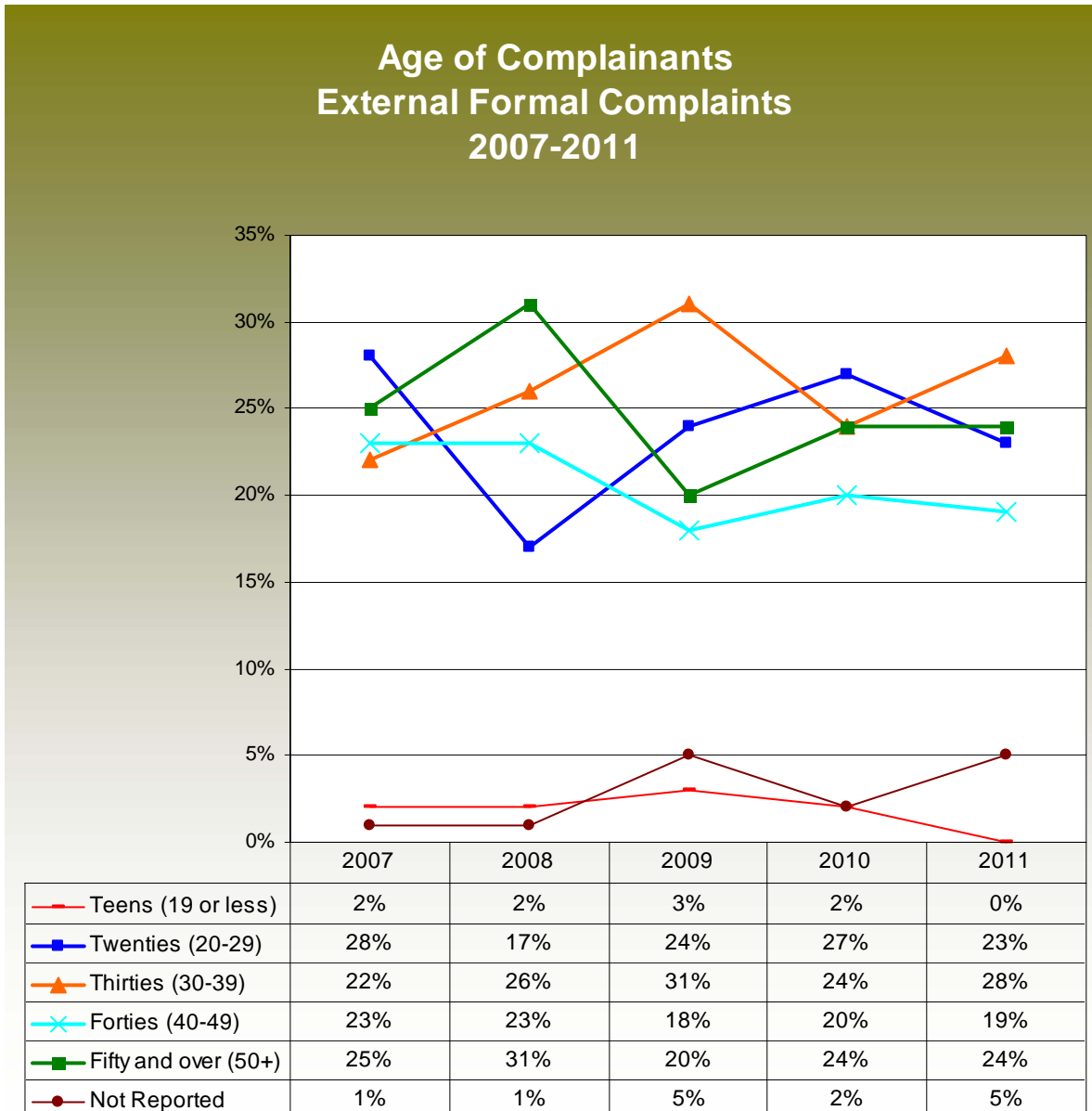
Table 9: Race/Ethnicity of Complainants filing Supervisory Inquiries – 2007-2011



Age of Complainants

From 2006 to 2009, External Formal complaints stemming from 30-39 year old members of the public had steadily increased. This number fell a bit in 2010 but is back up in 2011 with this group reporting the highest percentage of complaints. The 20-29 year olds and the over 50 group reported complaints at about the same level. Overall, in 2011, the percentage difference among those 20 and over is wider than in 2010.

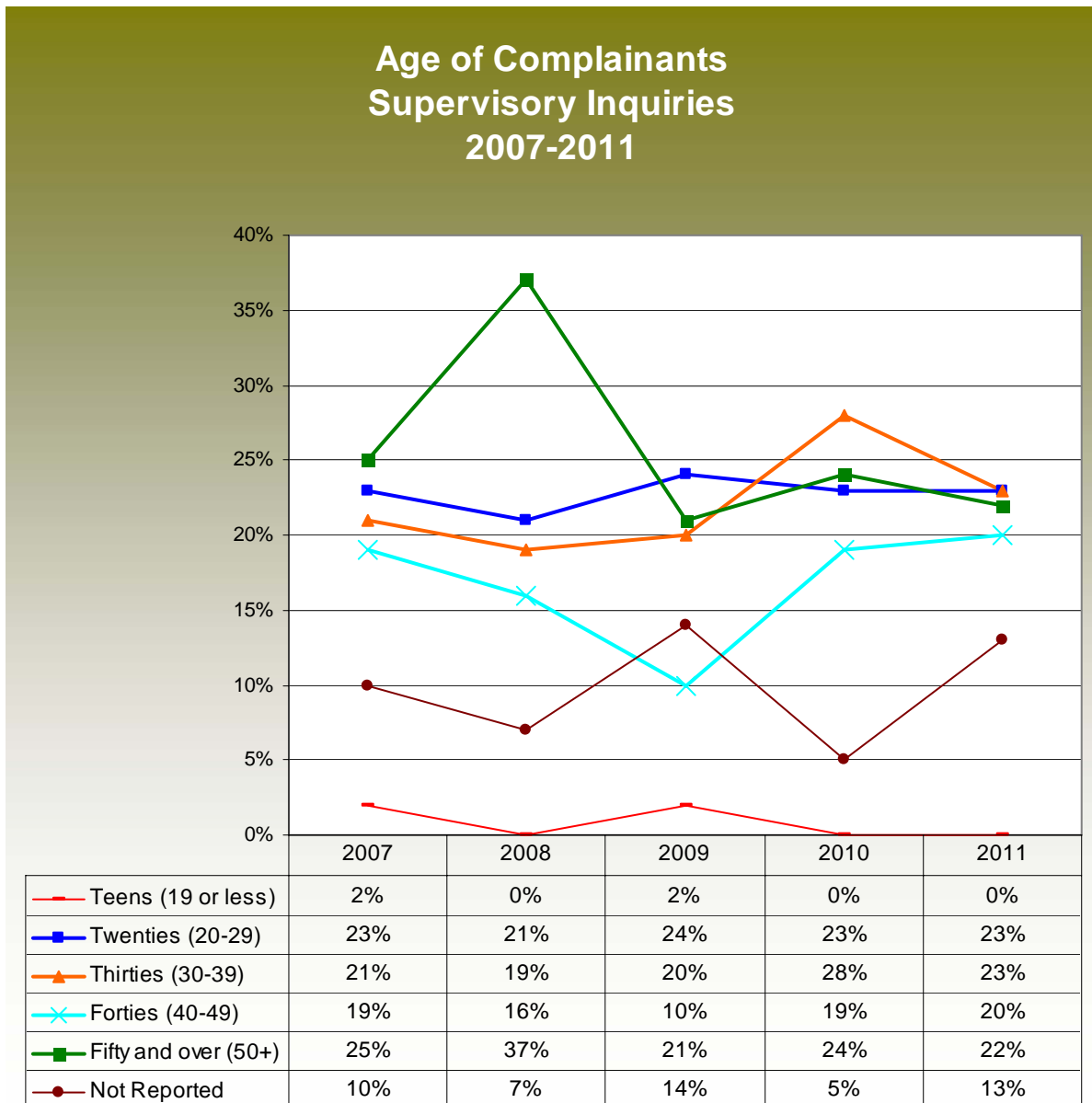
Table 10: Age of Complainants filing External Formal Complaints – 2007-2011



The age of persons filing Supervisory Inquiry complaints has remained relatively consistent over the past five years with just a few exceptions. In 2008, there was an

exceptionally large percentage of people over 50 who filed a Supervisory Inquiry complaint. In 2010, there were smaller spikes in the 30-39 and 40-49 year old groups. In 2011, however, the percentage of Supervisory Inquiry complaints is fairly evenly distributed among those 20 and over.

Table 11: Age of Complainants filing Supervisory Inquiries – 2007-2011



Gender of Complainants

The gender composition of Austin in 2011 was estimated as approximately 53% male and 47% female. When looking at complainant gender (below), it can be seen that both overall and for Supervisory Inquiries, both males and females file complaints at a rate that is fairly consistent with their representation in the population. When looking at External Formal complaints, there is a notable disparity between the complaint rates and the population percentages. Males file External Formal complaints at a rate higher than their representation within the City (59% of complaints; 53% of the population) while females file at a rate lower (39% of complaints; 47% of the population)³. These percentages are down for men in 2011. In 2010, men were responsible for 65% of the External Formal complaints while women were responsible for 35%.

Table 12: Gender of Complainants - 2011

Complainant Gender	Supervisory Inquiries		External Formals		Total	
	#	%	#	%	#	%
Male	189	51%	61	59%	250	52.5%
Female	181	49%	40	39%	221	46.4%
Unknown	3	1%	2	2%	5	1.1%
Total	373	100%	103	100%	476	100%

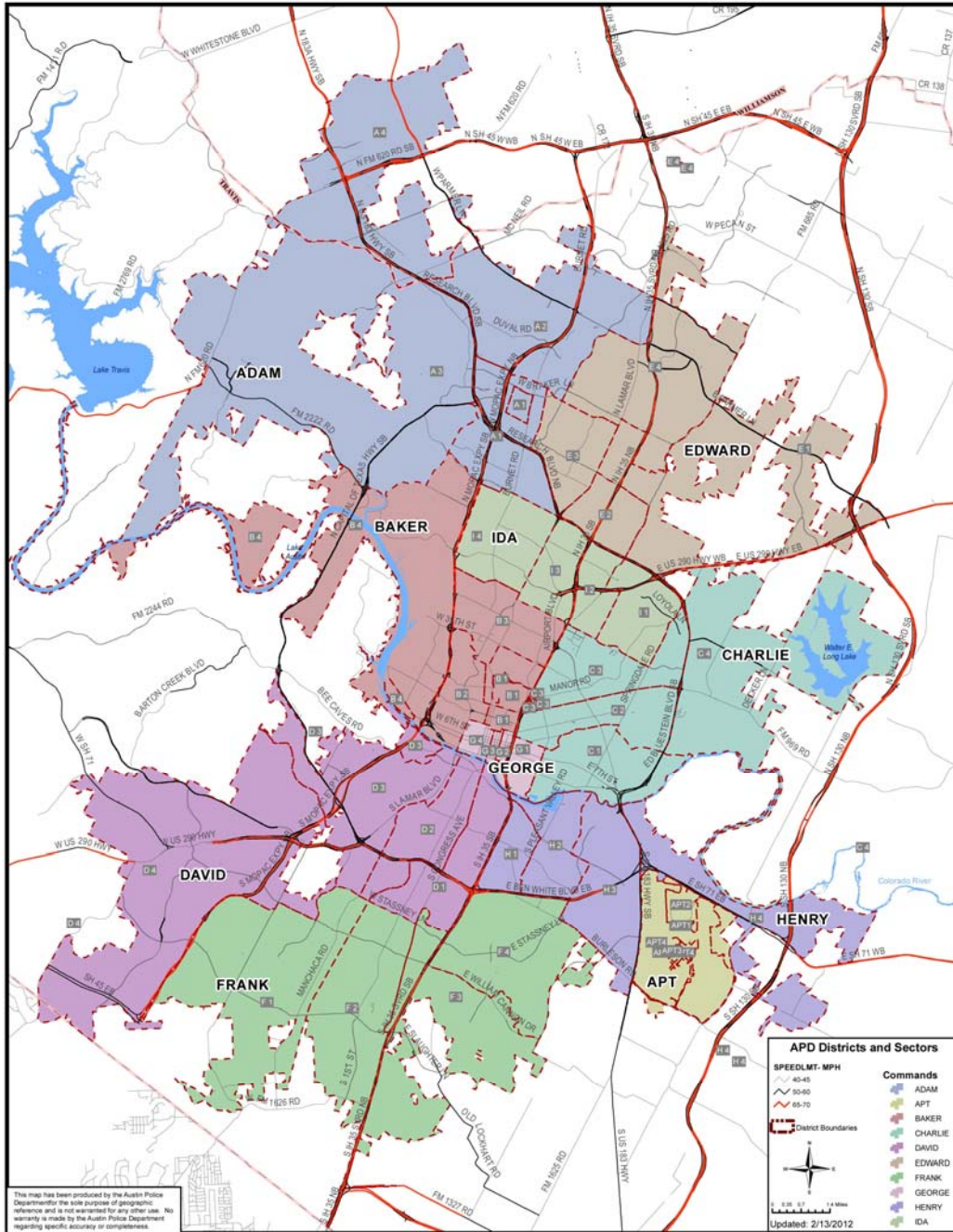
*May not total to 100% due to rounding.

³ The gender of the remaining 2% is unknown.

Complaints by Area Command

The City of Austin had nine (9) area commands in 2011. Below find a map of the geographic areas.

Figure 2: APD Area Commands



Adam = **Northwest (NW)**; Baker = **Central West (CW)**; Charlie = **Central East (CE)**;
 David = **Southwest (SW)**; Edward = **Northeast (NE)**; Frank = **Southeast (SE)**;
 George = **Downtown (DTAC)**; Henry (includes APT) = **South Central (SC)**; Ida = **North Central (NC)**

The area commands listed here are where the incident occurred, regardless of the officer's actual assigned area.

Table 13: External Formal Complaints by Area Command – 2007-2011

EXTERNAL FORMAL Area Command	2007		2008		2009		2010		2011		Change 2011 vs. 2010	
	#	%	#	%	#	%	#	%	#	%	#	%
Central East (CE)	25	14%	29	17%	19	18%	12	13%	18	17%	6	50%
Downtown (DTAC)	32	18%	30	18%	21	19%	17	19%	16	16%	-1	-6%
Northwest (NW)	12	7%	6	4%	10	9%	8	9%	14	14%	6	75%
South Central (SC)	11	6%	22	13%	12	11%	10	11%	10	10%	0	0%
North Central (NC)	16	9%	18	11%	6	6%	10	11%	10	10%	0	0%
Northeast (NE)	16	9%	18	11%	8	7%	5	6%	10	10%	5	100%
Southeast (SE)	28	16%	20	12%	8	7%	8	9%	9	9%	1	13%
Central West (CW)	5	3%	4	2%	9	8%	4	4%	7	7%	3	75%
Southwest (SW)	17	10%	13	8%	11	10%	10	11%	6	6%	-4	-40%
Unknown	5	3%	3	2%	0	0%	2	2%	2	2%	0	0%
Out of City	7	4%	5	3%	4	4%	3	3%	1	1%	-2	-67%
Total	174	100%	168	100%	108	100%	89	100%	103	100%	14	16%

External Formal complaints as a whole were up 16% from 2010, from 89 to 103 in 2011. The Downtown area command, which has frequently recorded the most complaints, had the second most complaints in 2011 with 16 External Formal complaints. It was surpassed by the Central East area command with 18 External Formal complaints.

For the first time in the history of the OPM, the Northwest area command had the third highest number of complaints with 14.

As can be seen in the table below, when adding in Supervisory Inquiry complaints, the top three area commands in terms of total complaints shifts when compared to reporting External Formal complaints only. While not having a large number of External Formal complaints (9), the Southeast area command did experience a large number of Supervisory Inquiry complaints (65) in 2011.

Table 14: Number of Complaints by Type and Area Command - 2011

Area Command	Supervisory Inquiries		External Formal		Total Complaints	
	#	%	#	%	#	%
Southeast (SE)	65	17%	9	9%	74	16%
Downtown (DTAC)	47	13%	16	16%	63	13%
Central East (CE)	37	10%	18	17%	55	12%
Northeast (NE)	40	11%	10	10%	50	11%
North Central (NC)	39	10%	10	10%	49	10%
Southwest (SW)	40	11%	6	6%	46	10%
Central West (CW)	33	9%	7	7%	40	8%
South Central (SC)	30	8%	10	10%	40	8%
Northwest (NW)	24	6%	14	14%	38	8%
Out of City	7	2%	1	1%	8	2%
Unknown	11	3%	2	2%	13	3%
Total	373	100%	103	100%	476	100%

Some caution should be used when reviewing this table, however, since sometimes a complaint may not be associated with one particular area command. This is easily seen in the high number of “Unknown” area commands. In cases where an area command is “Unknown,” it may be that a specific officer could not be identified, the complaint could have been more generic in nature rather than relating to a specific officer, there were patterns of behavior that occurred in varying locations, the location where the complaint occurred could not be specifically identified.

Classification of Complaints

When a Formal complaint is filed, it is sent to IAD for classification. The classification is intended to reflect the severity of the charges, if true. When classifying complaints, IAD uses the following criteria:

- **Administrative Inquiry** – an inquiry into a critical incident, ordered by the Chief or their designee, that could destroy public confidence in, and respect for, the APD or which is prejudicial to the good order of the APD;
- **A** – allegations of a serious nature, that include, but are not limited to: criminal conduct, objectively unreasonable force resulting in an injury requiring emergency treatment at a medical facility;
- **B** – allegations of a less serious nature, that include, but are not limited to: less serious violations of APD policy, rules or regulations, objectively unreasonable force with injury or with minor injuries not requiring emergency treatment at a medical facility, negligent damage or loss of property, negligent crashes;
- **C** – allegations that do not fit into a Class A or B category and do not rise to the level of a policy violation, or those that would be best handled through other APD processes (such as training or a performance improvement plan); or,
- **D** – the allegation is not a policy violation, a preliminary investigation using audio or video recordings show the allegation is not true, or the complaint is about the probable cause for arrest or citation.

Please remember that only Formal complaints will receive one of the classifications listed above. Supervisory Inquiries are not subject to the same classifications as they typically contain less serious allegations.⁴

Since the OPM began its mission of oversight, there has been a notable difference in case classifications between external and internal cases. Cases are classified by IAD according to the severity of the allegations included in the complaint. At this point, it is generally accepted that the discrepancy in case classifications between internal and external complaints has much to do with the cases themselves.

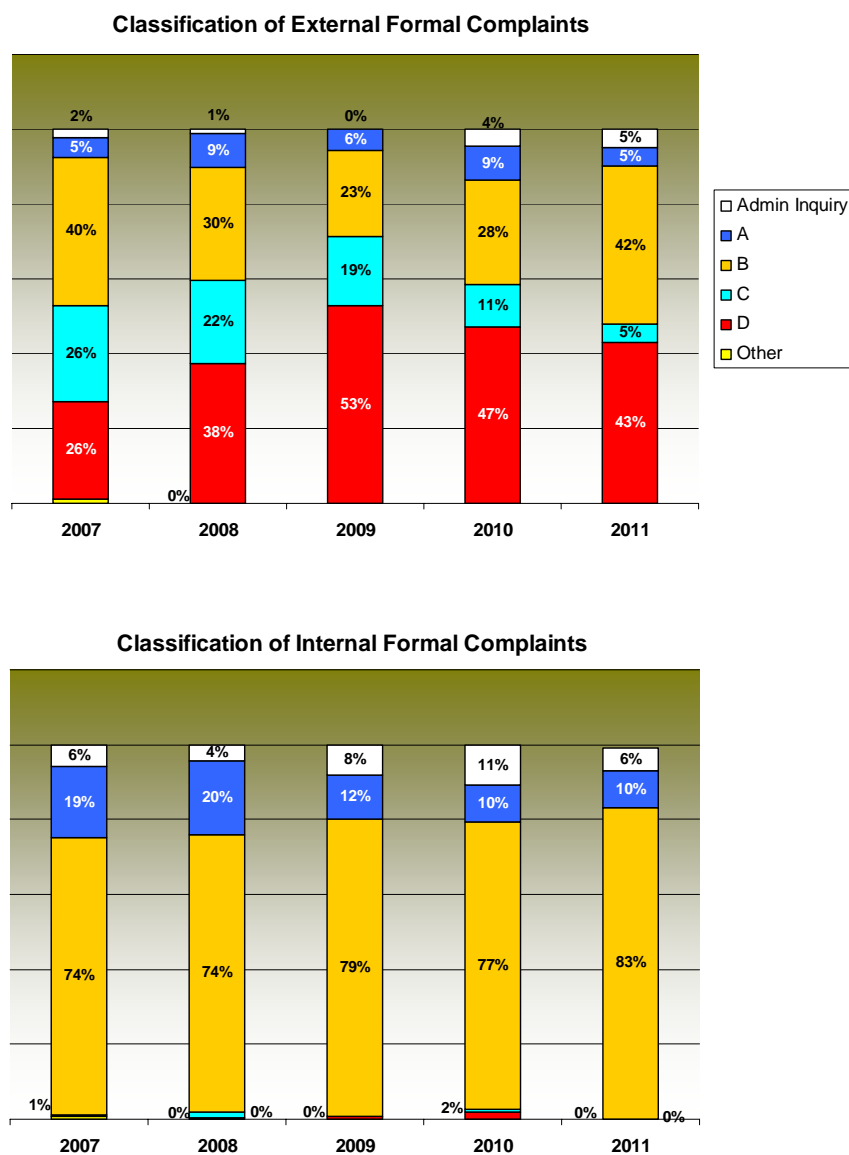
When an internal case is filed, it typically involves a supervisor bringing forth an allegation concerning the conduct of another officer. In these circumstances, the charging officers involved will have extensive knowledge of the general orders under which the complaint has been brought. The assignment of a classification, therefore, is

⁴ Should more serious allegations be uncovered during a Supervisory Inquiry, the case may be elevated to a Formal complaint and would then be classified.

fairly apparent. As such, Internal Formal complaint classifications have remained relatively static over the years. External Formal complaints have seen more flux.

In 2011, 43% of all External Formal complaints received a “D” classification. This is a decrease from both 2009 and 2010 and seen by the OPM as positive. The OPM’s concern with “D” classifications stems from the fact that per APD General Orders, a “D” is defined as a complaint that carries an allegation that is: a) not a policy violation, b) a preliminary review of the allegation shows it is not true (e.g., video or audio recording shows allegation is false), or c) the complaint is about the probable cause for an arrest or citation.

Table 15: Classification of Complaints - 2011



The OPM's position is that caution should be taken when classifying a complaint as a "D" is that it almost predicts the result of the investigation or precludes actually conducting an investigation. As written, classifying something as a "D" seems to infer from the beginning that IAD has determined the allegation has no merit.

To be fair, it should be noted that there are cases for which the OPM recommends a "D" classification and that the OPM's agreement rate on IAD's case classifications has steadily increased over the years. The OPM believes this is due in part to the greater transparency afforded through the shared database that came online in 2007 as well as the OPM's ability to protest case classifications at an early point in the process. Beginning in mid 2011, the OPM's procedure was changed to require the OPM to advise IAD the classification the OPM believed the complaint should be given when the complaint was submitted. This change allowed the OPM and IAD to discuss differences of opinion early in the process. With most cases, there is very little dispute regarding the severity and, therefore, there is no disagreement between the OPM and IAD on how a case is classified. Historically, most of the disagreement in case classifications has stemmed from those cases that were ultimately classified by IAD as lower level cases.

Allegations

Number & Types of Allegations

The Austin Police Department has a set of rules known as the General Orders, Policies, and Procedures. In August of 2011, a new Austin Police Department Policy Manual was adopted (commonly referred to as “Lexipol”⁵). The General Orders, and now Lexipol, contain all the policies by which members of the APD must abide. When a complaint is made, the IAD assigns an allegation(s) based on the alleged policy violations it can see after reviewing the description of events. In 2011, the data show that 51 more allegations were levied in Formal complaints compared to 2010. This is to be expected as there were also more Formal complaints filed in 2011 than in 2010. Forty-eight of the 51 additional allegations were in External Formal complaints.

Table 16: Number of Allegations by Complaint Type – 2007-2011

Number of Allegations	2007		2008		2009		2010		2011		Change 2011 vs. 2010	
	#	%	#	%	#	%	#	%	#	%	#	%
Supervisory Inquiries	328	37%	494	44%	354	39%	376	44%	403	43%	27	7%
Formal Complaints	563	63%	630	56%	548	61%	479	56%	530	57%	51	11%
External	314	56%	326	52%	222	41%	170	35%	218	41%	48	28%
Internal	249	44%	304	48%	326	59%	309	65%	312	59%	3	1%
Total	891	100%	1,124	100%	902	100%	855	100%	933	100%	78	9%

It should be noted that a single complaint may include multiple allegations. Over the past five years, the average number of allegations contained in External Formal complaints was 1.97; for Internal Formal complaints, this number was 1.36. These multiple allegations can apply to a single officer or multiple officers. It is also possible that a single allegation may be brought against a single officer or multiple officers. No matter the configuration, since each allegation is counted, the total number of allegations will always equal or exceed the total number of complaints.

In general, the policies in the old General Orders and the new Lexipol are largely the same. There are differences, however, in both the arrangement of the policies as well as their titles. For example, in the General Orders, there is a policy known as “Use of Force.” In Lexipol, this is called “Response to Resistance.” In the General Orders, Code of Conduct policies are primarily contained within one section. In Lexipol, these policies now span 3 chapters. Because 2011 was a transition year wherein allegations were recorded using both the old and new policy numbers, and in order to continue to provide year over year comparisons of allegations, the OPM has coded the Lexipol

⁵ Lexipol was implemented by the APD in August of 2011. The most recent version of the manual available as of this writing can be found at: http://www.austintexas.gov/sites/default/files/files/Police_Monitor/policy-manual-release-20111129.pdf

allegations into the reporting categories it has used in years past. Moving forward, the OPM will gradually switch its categories to match Lexipol.

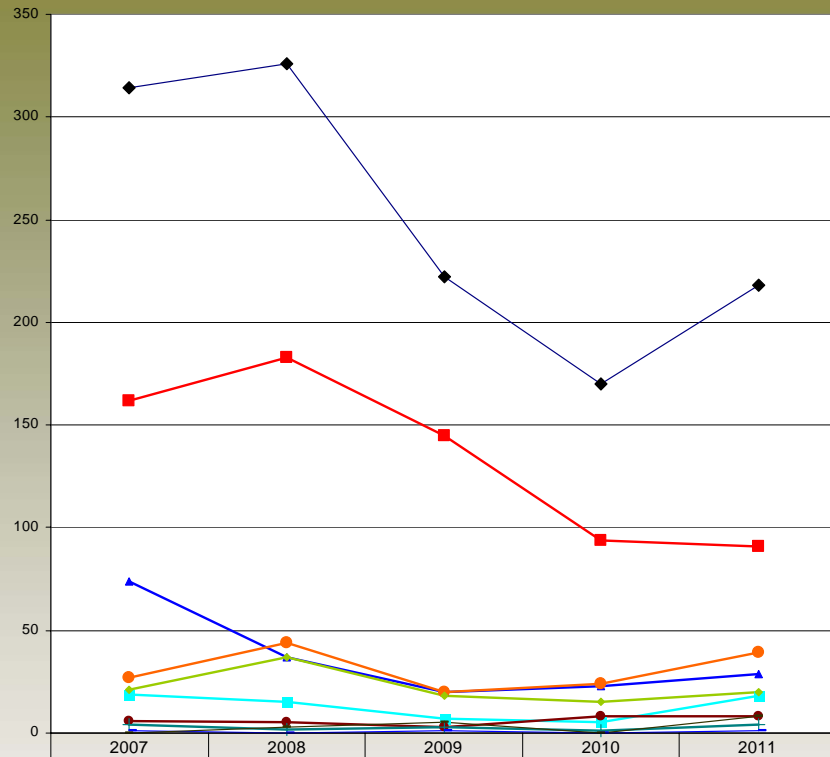
As in years past, Code of Conduct-type issues continue to be the most frequently reported allegation for both Supervisory Inquiries as well as External Formal complaints. This has been the case since the OPM began tracking complaints.

Code of Conduct allegations include, but are not limited to, the following:

- **Compliance** – knowing, understanding, complying with, and reporting violations of laws, ordinances, and governmental orders;
- **Individual Responsibilities** – dishonesty, acts bringing discredit to the department, police action when off-duty, etc.;
- **Responsibility to the Community** – courtesy, impartial attitude, duty to identify, etc.;
- **Responsibility to the Department** – loyalty, accountability, duty to take action, etc.; and
- **Responsibility to Co-workers** – relations with co-workers, sexual harassment, etc.

Table 17: External Formal Allegations by Number and Type – 2007-2011

**Number & Type of Allegations
External Formal Complaints
2007-2011**



	2007	2008	2009	2010	2011
◆ Total Allegations	314	326	222	170	218
■ Code of Conduct	162	183	145	94	91
▲ Use of Force/ Duty Weapons/ Firearm Discharges	74	37	20	23	29
● Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	27	44	20	24	39
■ Bias-Based Profiling/ Incident Reporting & Documentation	19	15	7	5	18
● Preliminary, Follow-Up & Collision Investigations	6	5	3	8	8
■ Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	4	2	3	1	4
■ Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	1	0	1	0	1
■ Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	3	5	0	8

Given that the vast majority of allegations involve Code of Conduct issues and because the Code of Conduct policies are so numerous, the OPM had requested the IAD provide more detail regarding these types of allegations. Where available, the Code of Conduct allegations break down as follows:

Table 18: Code of Conduct Allegations by Subcategory and Complaint Type - 2011

Code of Conduct Allegations by Subcategory	Supervisory Inquiries		External Formal	
	#	%	#	%
Compliance Required	7	4%	10	16%
Individual Responsibilities	11	7%	7	11%
Responsibility to the Community	149	89%	45	73%
Total	167	100%	62	100%

Even at the sub-categorical level, however, there is still one allegation listed more often than any other – “Responsibility to the Community.” The Responsibility to the Community subcategory includes policy regarding:

- Impartial Attitude;
- Courtesy;
- Duty to Identify;
- Neutrality in Civil Actions;
- Negotiations on Behalf of Suspect; and
- Customer Service and Community Relations.

“Courtesy” or rudeness is always the most frequent complaint made against officers. More troubling, however, is the allegation of “Impartial Attitude.” The Impartial Attitude policy states that (APD) employees are “expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual preference, or social or ethnic background.”

Lexipol captures the behavior previously covered under “Impartial Attitude” and labels it “Bias-Based Profiling.” As a result, there may be some confusion regarding this allegation and one in the General Orders that is also called “Bias-Based Profiling.”

Often in the past, when an allegation regarding bias-based profiling, (i.e., prejudicial behavior) was filed, it was often filed using the incorrect General Order entitled “Bias-Based Profiling.” The problem was this particular General Order has to do with how this type of act is documented and not the fact that some sort of prejudicial behavior may have occurred. It is fairly easy to see, given the name of this General Order, how it was listed erroneously so often. It should be noted that listing an incorrect General Order did not have an impact on how the investigation proceeded as each case contains a description of events that would have made it clear as to the specific complaint. In other words, this was simply an administrative error.

With the revision of the General Orders in 2010 and new staff in IAD, this issue seems to have been mostly corrected as there were only seven (7) instances where the “Bias-Based Profiling” allegation from the old General Orders was recorded in 2011. When looking for any allegation of prejudicial behavior, the OPM documented a total of 14 External Formal allegations and 15 Supervisory Inquiry allegations in 2011.

For External Formal complaints, this number of prejudicial allegations is not significantly different than in years past. Supervisory Inquiries are another story. Because Supervisory Inquiries are not technically “complaints” (as defined by the Meet & Confer contract), they have not historically been documented in IAD with the same rigor as Formal complaints. As a result, there is a lack of information regarding the number of cases wherein prejudicial behavior may have been alleged. Therefore, as of this writing, the OPM does not know if the Supervisory Inquiry numbers are higher or lower than what would be typical. The OPM can say that this number of allegations is significantly different than in 2010 when 31 prejudicial behavior allegations were documented. Despite the lack of quantifiable data, or because of it, the OPM is concerned that there may also be a lack of recognition regarding what constitutes prejudicial behavior given that prejudicial behavior is not limited strictly to race.

Moving forward with Lexipol, when the Bias-Based Profiling allegation is cited, it will, in fact, mean that some sort of prejudicial behavior is being investigated.

Table 19: Number and Type of Allegations by Complaint Type - 2011

Allegation/Allegation Category	2011					
	SI		External		Internal	
	#	%	#	%	#	%
Code of Conduct	167	41%	91	42%	79	25%
Use of Force/ Duty Weapons/ Firearm Discharges	4	1%	29	13%	23	7%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	135	33%	39	18%	4	1%
Bias-Based Profiling/ Incident Reporting & Documentation	3	1%	18	8%	2	1%
Preliminary, Follow-Up & Collision Investigations	17	4%	8	4%	2	1%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	14	3%	4	2%	169	53%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	0	0%	1	0%	6	2%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	4	1%	8	4%	7	2%
Other	59	15%	20	9%	26	8%
Total	403	100%	218	100%	318	100%

Last year the OPM identified an issue of concern that involved the allegations of Interviews, Stops, and Arrests, et al. This is of even greater concern this year as the number of allegations in this category has increased dramatically.

The Interviews, Stops and Arrests category includes, but is not limited to Interviews (field), Stops, Arrests, Searches, Field Photographs, and Explanations to Persons. The category in the above table also includes the General Orders regarding Arrests and Bookings, Fugitive Warrants, and Care and Transport of Prisoners. Again, because allegation categories were often not entered into the records of Supervisory Inquiry complaints by IAD, there is currently no baseline by which to tell if this number is higher or lower than typical. However, in 2010, there were 24 allegations in this category for External Formal complaints. This year, there are 39 External Formal allegations, an increase of 63%. Last year, there were 63 allegations in this category in Supervisory Inquiry complaints. This year there are 135 allegations, an 114% increase.

Allegations & Complainant Demographics

In attempting to understand why the Interviews, Stops and Arrests category increased so dramatically, the OPM looked at the composition of those bringing these allegations in 2011. In External Formal complaints, Caucasians are responsible for half of these allegations (20 of the 39 allegations, or 51%) in 2011; the rest are split between Blacks/African Americans with 12 (31%) and Hispanics/Latinos with 7 (18%).

Table 20: External Formal Allegations by Complainant Race/Ethnicity - 2011

EXTERNAL FORMALS Allegation Category	Caucasian		Black/ African American		Hispanic/ Latino		Am Indian/ Alaska Native		Asian		Native Hawaiian/ Pacific Islander		Other		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Code of Conduct	30	32%	30	48%	27	51%	0	0%	0	0%	0	0%	2	50%	2	40%
Use of Force/ Duty Weapons/ Firearm Discharges	14	15%	8	13%	7	13%	0	0%	0	0%	0	0%	0	0%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	20	22%	12	19%	7	13%	0	0%	0	0%	0	0%	0	0%	0	0%
Bias-Based Profiling/ Incident Reporting & Documentation	5	5%	5	8%	8	15%	0	0%	0	0%	0	0%	0	0%	0	0%
Preliminary, Follow-Up & Collision Investigations	4	4%	0	0%	2	4%	0	0%	0	0%	0	0%	2	50%	0	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	4	4%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	5	5%	2	3%	1	2%	0	0%	0	0%	0	0%	0	0%	0	0%
Other	11	12%	6	10%	1	2%	0	0%	0	0%	0	0%	0	0%	3	60%
Total	93	100%	63	100%	53	100%	0	0%	0	0%	0	0%	4	100%	5	100%

This was very different in Supervisory Inquiries where the Interviews, Stops, and Arrests allegation is the most cited complaint for Blacks/African Americans at 39 allegations, or 44% of all allegations levied by this group. This number is lower for Caucasians at 40 allegations but only 28% of this group's allegations and Hispanics/Latinos with 33 allegations or 33% of all allegations levied by Hispanics/Latinos. Of the 133 Interviews, Stops & Arrests allegations in Supervisory Inquiries, 57% were filed by men, 42% were filed by women. Caucasian men make up 41% of these 77 allegations levied by men, Blacks/African American men make up 32%.

The single group with the highest number of Interviews, Stops and Arrests allegations is female Hispanics/Latinos (11) with the incident occurring in the Southeast area command.

Table 21: Supervisory Inquiry Allegation Categories by Complainant Race/Ethnicity - 2011

SUPERVISORY INQUIRIES Allegation Category	Caucasian		Black/ African American		Hispanic/ Latino		Am Indian/ Alaska Native		Asian		Native Hawaiian/ Pacific Islander		Other		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Code of Conduct	62	44%	29	33%	48	48%	1	100%	0	0%	1	100%	1	33%	25	38%
Use of Force/ Duty Weapons/ Firearm Discharges	4	3%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	40	28%	39	44%	33	33%	0	0%	1	33%	0	0%	2	67%	18	28%
Bias-Based Profiling/ Incident Reporting & Documentation	1	1%	0	0%	1	1%	0	0%	0	0%	0	0%	0	0%	1	2%
Preliminary, Follow-Up & Collision Investigations	4	3%	4	4%	4	4%	0	0%	1	33%	0	0%	0	0%	6	9%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	9	6%	2	2%	2	2%	0	0%	0	0%	0	0%	0	0%	1	2%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	1%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	3	5%
Other	20	14%	15	17%	12	12%	0	0%	1	33%	0	0%	0	0%	11	17%
Total	141	100%	89	100%	100	100%	1	100%	3	100%	1	100%	3	100%	65	100%

Only 44% of all allegations filed by Caucasians as Supervisory Inquiries are Code of Conduct related. This is down 20% from last year. For Blacks/African Americans this percentage is 33% and for Hispanics/Latinos 48%. These are also decreases from last year - 21% and 7%, respectively. Where a sub-category was captured, 52 of the 62 Code of Conduct allegations levied by Caucasians were “Responsibility to the Community”-related. All of the Code of Conduct allegations levied by Blacks/African Americans are “Responsibility to the Community”-related. Within the Interviews, Stops & Arrests allegation category, 23 of the 33 total allegations are “Explanations to Persons.” For Hispanics/Latinos, the “Responsibility to the Community”-related allegations totaled 43 of the 48 Code of Conduct allegations.

Caucasians also took issue with “Explanations to Persons” citing it 17 times of the 40 allegations alleged in the Interviews, Stop & Arrests category. This group filed allegations of “Types of Resident Contacts” 22 times.

Allegations by Area Command

With the increase in External Formal complaints came more allegations. In 2011, five area commands saw an increase in External Formal allegations while three saw a decrease (there were also decreases in Out of City and Unknown).

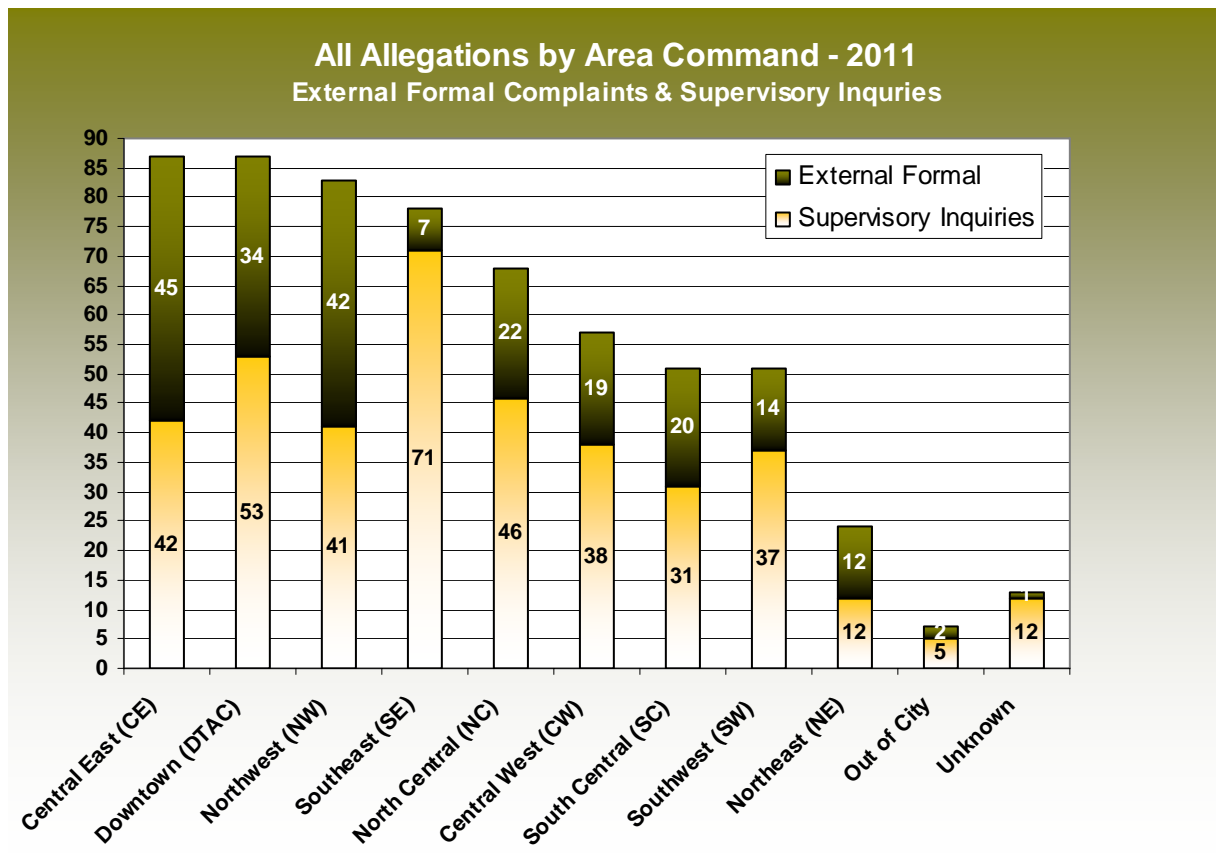
The Northwest, Central West and Central East area commands all experienced sharp increases in the number of External Formal allegations reported in 2011 versus 2010.

DTAC has seen a decrease in External Formal allegations for each of the past four years.

A notable shift in 2011 External Formal allegations is in the Southeast area command. Last year, it had 30 External Formal allegations reported while this year that number fell to 7, a decrease of 23 allegations, or 77%. This is in contrast to the number of allegations levied in Supervisory Inquiries. Last year, the number of allegations in Supervisory Inquiries in the Southeast area command was also 30; this year that number is 71, an increase of 58%.

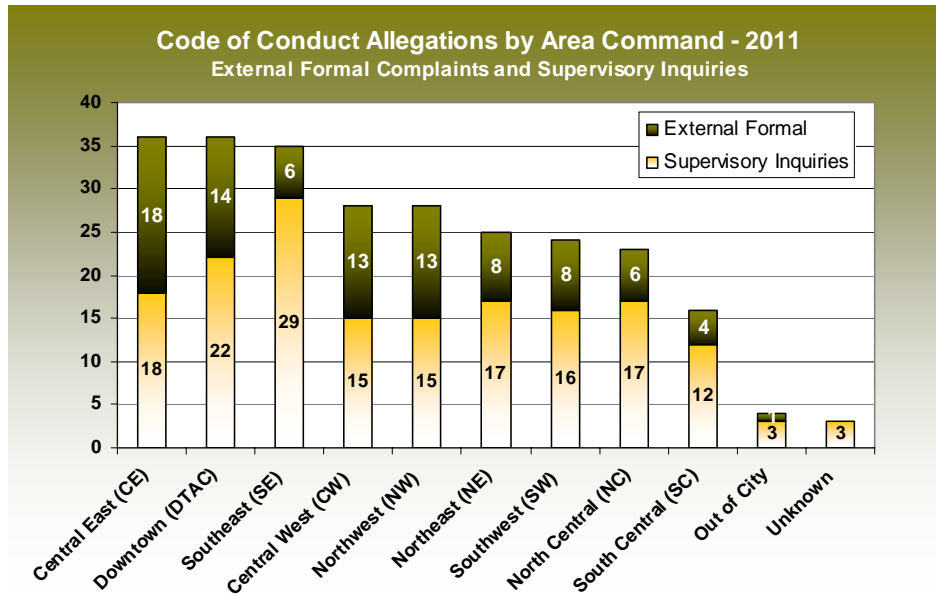
When combining allegations from both External Formal complaints and Supervisory Inquiries, Central East is now tied with DTAC for the most allegations. For the first time ever, Northwest makes it into the top three in terms of number of allegations.

Table 22: Allegations by Complaint Type and Area Command - 2011



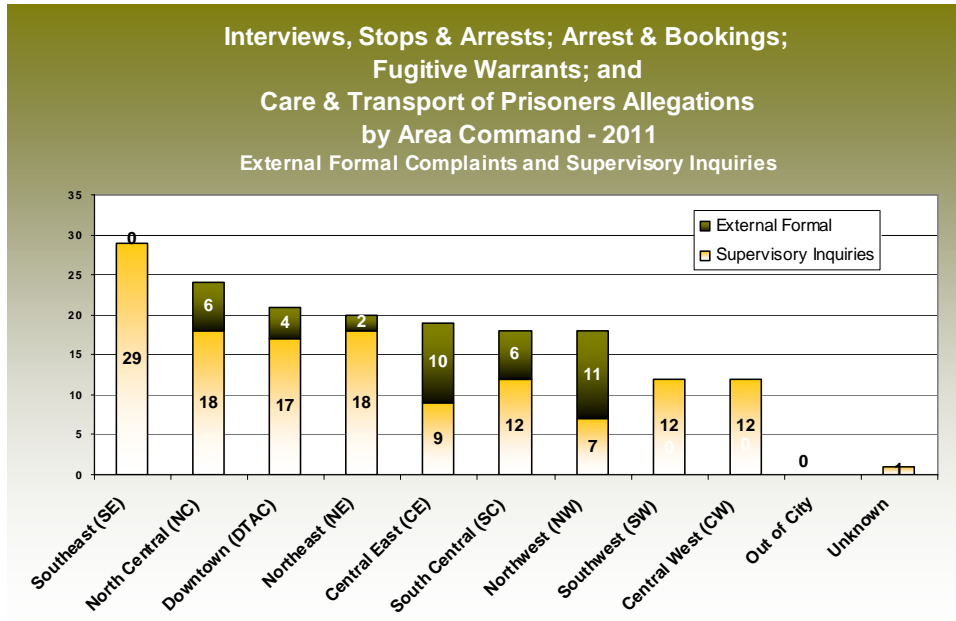
Central East, Downtown, and Southeast had the greatest number of Code of Conduct allegations in 2011. South Central had the fewest; less than half when compared to Central East.

Table 23: Code of Conduct Allegations by Complaint Type and Area Command - 2011



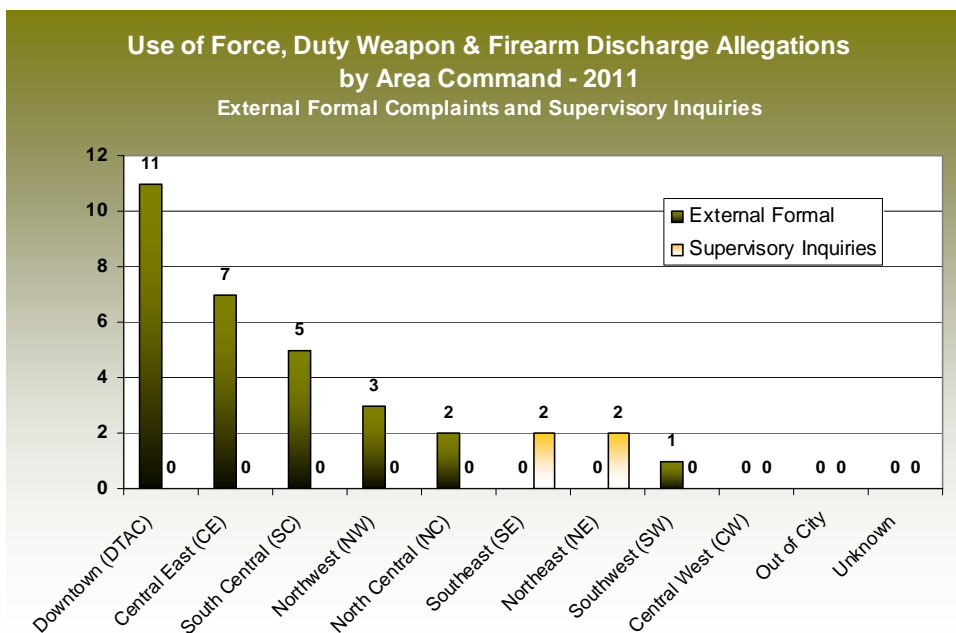
Looking at Interviews, Stops and Arrests allegations for both External Formal complaints and Supervisory Inquiries, the OPM has found that the Southeast area command continues to be the area receiving the greatest number overall of these allegations.

Table 24: Interviews, Stops & Arrests, et al by Complaint Type and Area Command - 2011



There were very few Use of Force allegations brought forward by the public in any type of external complaint in 2011. There were only four (4) total allegations in Supervisory Inquiries and 29 in External Formal complaints in 2011. Of the Use of Force allegations associated with External Formal complaints, only six of the nine area commands had at least one Use of Force allegation filed at all – one fewer area command than last year.

Table 25: Use of Force, et al by Complaint Type and Area Command - 2011



The Downtown area command reported eleven (11) Use of Force allegations in External Formal complaints in 2011.

Last year, the OPM raised a concern regarding the relatively low number of Use of Force complaints because of the data cited by the APD in its 2010 Response to Resistance report. In the 2010 Response to Resistance report, 1,709 response to resistance events were reported. The 2011 Response to Resistance report is not yet available. The OPM, however, has no reason to believe that the amount of activity occurring in 2011 regarding Use of Force will differ greatly from that of 2010.

There were only four (4) total allegations in Supervisory Inquiries and 29 in External Formal complaints and 20 in Internal Formal complaints in 2011. Fifty-three (53) total Use of Force allegations is considered low given the number of incidents in which the APD uses force. In order to ensure that the Response to Resistance policy is being followed, the OPM is recommending that routine audits of Response to Resistance reporting be conducted. If deficiencies are discovered, training, policy development, and/or discipline should be considered.

APD Decisions

Once an investigation is finished, the chain of command will make a recommendation on the outcome of the case. In other words, they will issue a finding. These findings will fall into one of the following categories:

- **Exonerated** – The incident occurred but is considered lawful and proper.
- **Sustained** – The allegation is supported or misconduct discovered during investigation.
- **Unfounded** – The allegation is considered false or not factual.
- **Inconclusive** – There is insufficient evidence to prove/disprove the allegation.
- **Administratively Closed** – No allegations were made or misconduct discovered and/or complaint closed by a supervisor.

Table 26: Formal Complaint APD Investigative Decisions - 2011

APD Decisions	External						Internal					
	2009		2010		2011		2009		2010		2011	
	#	%	#	%	#	%	#	%	#	%	#	%
Sustained	22	10%	19	11%	43	20%	218	71%	228	79%	256	83%
Inconclusive	6	3%	14	8%	6	3%	16	5%	5	2%	2	1%
Exonerated	11	5%	17	10%	33	15%	9	3%	9	3%	7	2%
Administratively Closed	128	59%	78	46%	62	28%	42	14%	42	15%	28	9%
Unfounded	49	23%	42	25%	74	34%	24	8%	4	1%	14	5%
Total	216	100%	170	100%	218	100%	309	100%	288	100%	307	100%

There was a significant climb in the number of allegations that were Sustained in External Formal complaints in 2011. This number was up by 24 decisions from 2010, or 126%. At the same time, the number of cases that were Administratively Closed fell by 16 decisions, or 21%. Inconclusive findings for External Formal complaint allegations also fell in 2011 by 8 decisions, or 57%.

The same is true for Internal Complaints. Sustained findings climbed a bit while Inconclusive and Administratively Closed findings fell.

The OPM continues to advocate that “Administratively Closed” be used sparingly. It is the opinion of the OPM that making a finding, e.g., “Sustained” or “Exonerated,” regarding the conduct of an officer adds credence to the process. There are likely several factors within the APD that are driving the decision to Administratively Close an allegation as opposed to rendering a more definitive decision. The OPM believes these include, among others, issues related to the APD’s policies and the relationship between allegation decisions and the APD’s early intervention system.

Disciplinary Action

After an investigation is completed and if allegations against an officer are sustained, the chain of command will then administer discipline. Discipline ranges from oral counseling and/or a reprimand to being Indefinitely Suspended (i.e., terminated). When looking at the table below, it is important to remember that disciplinary action is related to each unique allegation and not to the number of cases or the number of individual officers. So, for example, 22 officers were not terminated in 2011; there were, however, 22 allegations from which Indefinite Suspensions stemmed. The APD’s General Orders provide guidelines for the type and severity of discipline that may be administered. These guidelines are called the “Discipline Matrix.” A copy of the matrix is attached in Appendix B.

Table 27: External Formal Complaint Disciplinary Action – 2007-2011

EXTERNAL	2007		2008		2009		2010		2011		2011 vs. 2010
Disciplinary Action Taken	#	%	#	%	#	%	#	%	#	%	% Change
Oral Reprimand / Counseling	10	43%	13	41%	8	31%	11	46%	5	12%	-55%
Written Reprimand	6	26%	11	34%	8	31%	6	25%	10	23%	67%
Days Suspension	5	22%	8	25%	3	12%	7	29%	6	14%	-14%
Indefinite Suspension / Termination*	2	9%	0	0%	7	27%	0	0%	22	51%	2200%
Demotion	0	0%	0	0%	0	0%	0	0%	0	0%	0%
Total	23	100%	32	100%	26	100%	24	100%	43	100%	79%

*Includes Resignations or Retirements occurring while the officer was under investigation

In 2011, the total number of External Formal complaints was up. Again, because the total number of External Formal complaints is up, the number of allegations is also up.

The number of allegations associated with External Formal complaints that resulted in Indefinite Suspensions is unprecedented. These allegations spanned three cases and were divided amongst four officers.

The table below comprises the disciplinary action taken on each allegation filed in an Internal complaint in 2011.

Table 28: Internal Formal Complaint Disciplinary Action – 2007-2011

INTERNAL	2007		2008		2009		2010		2011		2011 vs. 2010
Disciplinary Action Taken	#	%	#	%	#	%	#	%	#	%	% Change
Oral Reprimand / Counseling	42	29%	81	35%	84	36%	79	31%	86	32%	9%
Written Reprimand	73	51%	92	40%	75	32%	77	31%	92	34%	19%
Days Suspension	21	15%	44	19%	47	20%	51	20%	69	25%	35%
Indefinite Suspension / Termination*	7	5%	13	6%	25	11%	44	18%	25	9%	-43%
Demotion	1	1%	0	0%	3	1%	0	0%	0	0%	0%
Total	144	100%	230	100%	234	100%	251	100%	272	100%	8%

*Includes Resignations or Retirements occurring while the officer was under investigation

As is typically the case, the vast majority of the Indefinite Suspensions/Terminations listed above were associated with Code of Conduct allegations including “Responsibility to the Department,” “Individual Responsibilities,” and “General Conduct and Responsibility.”

Subject Officer Demographics

Presented in this section is some background information on the officers that were the subjects of complaints in 2011. This information is provided for external complaints only, that is, complaints filed by members of the public.

Please note that it is possible for a single officer to be involved in more than one complaint and in more than one type of complaint. Therefore, the data presented in the tables below may count the same officer more than once if that officer was the subject of more than one complaint.

Years of Service

For 2011 complaints, the average length of time an officer had served on the force until the date of the incident with the public was eight (8) years for both Supervisory Inquiries and Formal complaints. For Formal complaints, this is one year earlier than in 2010. Last year, the average length of service was nine (9) years. Nonetheless, this is still typical of what the OPM has reported in the past.

The most common length of time officers have been on the force before receiving their first complaint of 2011 was two years for Supervisory Inquiries and less than a year for External Formal complaints.

Table 29: Subject Officer Years of Service - 2011

Years of Service	2011	
	Supervisory Inquiries	External Formals
Average tenure	8.4	8.1
Longest tenure	33.6	29.0
Shortest tenure	<1	<1
Tenure midpoint	7.2	6.1
Most common tenure	2.4	<1

It is not surprising that the most common tenure of officers receiving complaints is less than 3 years of service. Indeed these recently graduated officers make up about 27% of all officers with complaints in 2011.

The range of experience of officers named in complaints in 2011 varies widely from less than one year to over 33 years of service. For the most part, there are not any significant differences between repeat and single-case officers in terms of years of service. The table below does not distinguish between External Formal complaints and Supervisory Inquiries.

Table 30: Repeat versus Single Case Subject Officer Years of Service - 2011

Years of Service	Repeat Subject Officers	Single Case Subject Officers
Average tenure	9.1	8.6
Longest tenure	29.1	33.6
Shortest tenure	<1	<1
Tenure midpoint	7.0	7.5
Most common tenure	<1	3.0

When looking at External Formal complaints, and then comparing allegation types to years of services, the OPM found in 2011 that officers with 10 or more years of experience and those with less than 3 years of experience have the greatest percentage of Code of Conduct allegations levied against them. For the more senior officers, this is somewhat in line with national statistics. Nationally, most research points to officer burnout as the primary reason officers receive more complaints involving Code of Conduct after their tenth year of service.

Table 31: External Formal Allegations by Subject Officer Years of Service - 2011

EXTERNAL FORMAL Allegation Categories	Years of Service							
	0-3		4-6		7-9		10+	
	#	%	#	%	#	%	#	%
Code of Conduct	35	42%	15	36%	10	43%	32	46%
Use of Force/ Duty Weapons/ Firearm Discharges	15	18%	7	17%	3	13%	4	6%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	14	17%	10	24%	4	17%	11	16%
Bias-Based Profiling/ Incident Reporting & Documentation	7	8%	4	10%	1	4%	6	9%
Preliminary, Follow-Up & Collision Investigations	1	1%	0	0%	3	13%	4	6%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	2	2%	0	0%	2	9%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	3	4%	3	7%	0	0%	2	3%
Other	6	7%	3	7%	0	0%	11	16%
Total	83	100%	42	100%	23	100%	70	100%

In Supervisory Inquiries, the distribution of allegations is somewhat different than for External Formal complaints. Just as with External Formal complaints, officers with the least amount of experience have the highest number of allegations while those with the greatest amount of experience again have the second highest number of allegations.

Table 32: Supervisory Inquiry Allegation Categories by Subject Officer Years of Service - 2011

SUPERVISORY INQUIRIES Allegation Categories	Years of Service							
	0-3		4-6		7-9		10+	
	#	%	#	%	#	%	#	%
Code of Conduct	58	38%	16	33%	40	48%	53	45%
Use of Force/ Duty Weapons/ Firearm Discharges	3	2%	0	0%	0	0%	1	1%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	55	36%	24	49%	22	27%	34	29%
Bias-Based Profiling/ Incident Reporting & Documentation	2	1%	0	0%	0	0%	1	1%
Preliminary, Follow-Up & Collision Investigations	4	3%	2	4%	3	4%	7	6%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	5	3%	2	4%	3	4%	4	3%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	0	0%	3	4%	1	1%
Other	24	16%	5	10%	12	14%	17	14%
Total	151	100%	49	100%	83	100%	118	100%

Missing Frequency = 2

Within Supervisory Inquiries, half of all allegations within the 4-6 years of service group are Interviews, Stops & Arrests related. This category is cited 16% more often than Code of Conduct – a first in the history of the OPM.

For both Supervisory Inquiries and for External Formal complaints, the quantity of allegations is greatest for the least experienced officers with the most experienced officers having the second highest number of allegations. Again, the OPM believes this is due to the lack of experience for the one group and burnout for the other. The OPM does not currently have access to officer shift information so does not know if any of this could be attributed to where an officer is assigned or for how long the officer was assigned to an area (both duration and number of hours in a day). Nationally, research has shown that placing less experienced officers into areas where more police intervention is required is not the best course. Research has also shown that over the longer haul, burnout occurs more frequently with officers who have been assigned to the same area for extended periods of time.

Gender of Officers

As has been the case in years past, the public bring complaints against male officers at a slightly higher rate than female officers relative to the demographic make-up of the police force.

Table 33: Gender of Subject Officers by Complaint Type - 2011

Gender of Officer	Supervisory Inquiries		External Formals		Total		Percent of All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	35	9%	23	11%	58	9%	180	11%
Male	368	91%	195	89%	563	91%	1,420	89%
Total	403	100%	218	100%	621	100%	1,600	100%

*Caution should be used when reading this table. This table is a report by gender only. It should NOT be used as a count of unique officers as an officer may be involved in more than one complaint. Also, it is possible that a Supervisory Inquiry may have no named officer.

The majority of allegations filed in External Formal complaints against both female and male officers involve Code of Conduct issues. For the most part, the percentage of allegations is about the same for both genders with the exception of Use of Force issues. The fact that male officers have more allegations levied against them is reflective of males making up the vast majority of the police force.

Table 34: External Formal Allegations by Subject Officer Gender - 2011

EXTERNAL FORMAL Allegation Categories	Female Officers		Male Officers	
	#	%	#	%
Code of Conduct	10	43%	82	42%
Use of Force/ Duty Weapons/ Firearm Discharges	2	9%	27	14%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	4	17%	35	18%
Bias-Based Profiling/ Incident Reporting & Documentation	2	9%	16	8%
Preliminary, Follow-Up & Collision Investigations	1	4%	7	4%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	0	0%	4	2%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	4%	6	3%
Other	3	13%	18	9%
Total	23	100%	195	100%

The majority of allegations filed in Supervisory Inquiry complaints against female officers again involve Code of Conduct. As previously noted, the OPM will continue to endeavor to provide greater detail regarding this category of allegation given its prevalence.

There are two significant percentage differences in the allegations filed in Supervisory Inquiries versus External Formal complaints. The first is Use of Force. This makes sense since most Use of Force complaints would be of a more serious nature and, therefore, more likely to be filed as an External Formal complaint. The other is Interviews, Stops and Arrests. This allegation category has become much more prevalent over the past year or so where the OPM has seen increases in both Formal and Supervisory complaints.

Table 35: Supervisory Inquiry Allegation Categories by Subject Officer Gender - 2011

SUPERVISORY INQUIRIES Allegation Categories	Female Officers		Male Officers	
	#	%	#	%
Code of Conduct	14	40%	153	42%
Use of Force/ Duty Weapons/ Firearm Discharges	0	0%	4	1%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	11	31%	124	34%
Bias-Based Profiling/ Incident Reporting & Documentation	1	3%	2	1%
Preliminary, Follow-Up & Collision Investigations	1	3%	16	4%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	0	0%	14	4%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	4	1%
Other	8	23%	51	14%
Total	35	100%	368	100%

In 2011, there was a slightly higher percentage of female officers that were the subjects of more than one complaint than their actual representation within the APD. Overall, however, as a percentage, slightly more complaints are lodged against male officers compared to their representation within the APD.

Table 36: Repeat versus Single Case Subject Officer Gender - 2011

Gender of Officer	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	10	14%	21	7%	31	8%	180	11%
Male	62	86%	272	93%	334	92%	1,420	89%
Total	72		293		365		1,600	100%

Race/Ethnicity of Officers

The race/ethnicity of subject officers tracks fairly close to their representation within APD (below). Proportionally, each group received about the same percentage of complaints as their representation within the APD.

Table 37: Subject Officer Race/Ethnicity by Complaint Type - 2011

Race/Ethnicity of Officer	Supervisory Inquiries		External Formals		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Caucasian	278	69%	154	71%	432	70%	1,100	69%
Black/African American	29	7%	17	8%	46	7%	144	9%
Hispanic/Latino	90	22%	39	18%	129	21%	335	21%
Asian/Pacific Islander	6	1%	8	4%	14	2%	20	1%
American Indian	0	0%	0	0%	0	0%	1	<1%
Total	403	100%	218	100%	621	100%	1,600	100%

The greatest percentage of allegations for each group are again Code of Conduct related. There are some differences in the percentage of Interviews, Stops and Arrests category of allegations with Hispanics/Latinos officers receiving a significantly lower percentage.

Table 38: External Formal Allegations by Subject Officer Race/Ethnicity - 2011

EXTERNAL FORMAL Allegation Categories	Race/Ethnicity of Officers							
	Caucasian		Black/African American		Hispanic/Latino		Asian/Pacific Islander	
	#	%	#	%	#	%	#	%
Code of Conduct	64	42%	9	50%	14	37%	4	50%
Use of Force/ Duty Weapons/ Firearm Discharges	19	12%	2	11%	7	18%	1	13%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	32	21%	4	22%	2	5%	1	13%
Bias-Based Profiling/ Incident Reporting & Documentation	15	10%	0	0%	2	5%	1	13%
Preliminary, Follow-Up & Collision Investigations	3	2%	0	0%	4	11%	1	13%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	2	1%	0	0%	2	5%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	4	3%	2	11%	2	5%	0	0%
Other	15	10%	1	6%	5	13%	0	0%
Total	154	100%	18	100%	38	100%	8	100%

There is quite a bit of movement within each group from the percentages seen in External Formal complaints to those in Supervisory Inquiries. Use of Force makes sense since these allegations tend to be of a more serious nature and, therefore, would be more likely to be filed as a Formal complaint.

Again note the increase of Interviews, Stops and Arrests allegations.

Table 39: Supervisory Inquiry Allegation Categories by Subject Officer Race/Ethnicity - 2011

SUPERVISORY INQUIRIES Allegation Categories	Race/Ethnicity of Officers							
	Caucasian		Black/African American		Hispanic/Latino		Asian/Pacific Islander	
	#	%	#	%	#	%	#	%
Code of Conduct	111	40%	6	21%	45	50%	5	83%
Use of Force/ Duty Weapons/ Firearm Discharges	2	1%	0	0%	2	2%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	88	32%	19	66%	27	30%	1	17%
Bias-Based Profiling/ Incident Reporting & Documentation	3	1%	0	0%	0	0%	0	0%
Preliminary, Follow-Up & Collision Investigations	10	4%	1	3%	6	7%	0	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	12	4%	0	0%	2	2%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	4	1%	0	0%	0	0%	0	0%
Other	48	17%	3	10%	8	9%	0	0%
Total	278	100%	29	100%	90	100%	6	100%

The race/ethnicity of repeat vs. single case subject officers tracks to their representation within APD (below).

Table 40: Repeat versus Single Case Subject Officer Race/Ethnicity - 2011

Race/Ethnicity of Officer	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Caucasian	51	71%	197	67%	248	68%	1,100	69%
Black/African American	4	6%	24	8%	28	8%	144	9%
Hispanic/Latino	15	21%	67	23%	82	22%	335	21%
Asian/Pacific Islander	2	3%	5	2%	7	2%	20	1%
American Indian	0	0%	0	0%	0	0%	1	<1%
Total	72	100%	293	100%	365	100%	1,600	100%

*May not total to 100% due to rounding.

Age of Officers

The average age of subject officers is 37 years old for repeat subject officers and 38 for single case subject officers. The lowest age is 25. The highest age was 60 for a single case subject officer and 54 for a repeat subject officer.

Table 41: Age of Repeat versus Single Case Subject Officers - 2011

Age of Officers	Repeat Subject Officers	Single Case Subject Officers
Average age	37	38
Greatest age	54	60
Lowest age	25	25
Age midpoint	37	37
Most common age	--	25

Ages between 36 and 39 come up year after year as those with the most complaints. This is again clearly shown in the table below looking at complaint types. The group with the second highest number of complaints is officers in their 40s. This could be speaking to the issue of officer burnout.

Table 42: Subject Officer Age by Complaint Type - 2011

Age of Officer	Supervisory Inquiries		External Formals		Total	
	#	%	#	%	#	%
21-29	48	12%	26	12%	74	12%
30-39	202	50%	115	53%	317	51%
40-49	119	30%	63	29%	182	29%
50+	32	8%	14	6%	46	7%
Unknown	2	0%	0	0%	2	0%
Total	403	100%	218	100%	621	100%

The 21-29 year old officers have a higher percentage of Use of Force allegations lodged against them than any other age group. Besides age, another factor likely in play here is also a lack of experience.

Table 43: External Formal Allegations by Subject Officer Age - 2011

EXTERNAL FORMAL Allegation Categories	Age of Officer							
	21-29		30-39		40-49		50+	
	#	%	#	%	#	%	#	%
Code of Conduct	10	33%	47	41%	26	42%	9	75%
Use of Force/ Duty Weapons/ Firearm Discharges	7	23%	14	12%	8	13%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	5	17%	25	22%	8	13%	1	8%
Bias-Based Profiling/ Incident Reporting & Documentation	1	3%	10	9%	6	10%	1	8%
Preliminary, Follow-Up & Collision Investigations	4	13%	3	3%	1	2%	0	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	0	0%	1	1%	3	5%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	3%	6	5%	0	0%	0	0%
Other	2	7%	8	7%	10	16%	1	8%
Total	30	100%	114	100%	62	100%	12	100%

For officers aged 21-39, there is almost no difference in the number of Code of Conduct-related and Interviews, Stops and Arrests allegation categories in Supervisory Inquiries. For officers 50 and over, Code of Conduct is most frequently cited.

Table 44: Supervisory Inquiry Allegation Categories by Subject Officer Age - 2011

SUPERVISORY INQUIRIES Allegation Categories	Age of Officer							
	21-29		30-39		40-49		50+	
	#	%	#	%	#	%	#	%
Code of Conduct	18	38%	80	40%	54	45%	15	47%
Use of Force/ Duty Weapons/ Firearm Discharges	1	2%	2	1%	0	0%	1	3%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	17	35%	73	36%	40	34%	5	16%
Bias-Based Profiling/ Incident Reporting & Documentation	1	2%	0	0%	2	2%	0	0%
Preliminary, Follow-Up & Collision Investigations	1	2%	6	3%	5	4%	4	13%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	2	4%	9	4%	2	2%	1	3%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	3	1%	1	1%	0	0%
Other	8	17%	29	14%	15	13%	6	19%
Total	48	100%	202	100%	119	100%	32	100%

Missing Frequency = 2

Track Records

For those officers with External complaints in 2011, meaning both External Formal complaints as well as Supervisory Inquiries, the OPM found that 65% of these officers have had at least one previous complaint from the public sometime between 2007 and 2010.

This group had 948 “officer complaints” between them. Please note that when a complaint comes into the OPM, it is assigned an unique ID number. When counting the number of complaints for the year, the OPM counts up these unique ID numbers and uses that number as the total number of complaints for the year. For this section, the OPM looked at “officer complaints”, i.e., counting the number of complaints attributable to any one officer. Given that more than one officer can be named in a complaint, the number of “officer complaints” will always exceed the total number of complaints, as counted by the unique ID number, for the year.

When aggregating the complaints brought by members of the public against officers within the 2007-2011 timeframe, the OPM found that 19% of officers in this pool had just a single complaint; the remaining 81% had two or more complaints.

There were twelve (12) officers who had ten or more complaints (i.e., External Formal complaints and Supervisory Inquiry complaints). A full 52% of the officer complaints comprise officers with 2, 3 or 4 complaints each. Again, only officers that received an External complaint in 2011 were included in this analysis.

During 2011, the APD made progress toward the selection of new software that will aid in early identification of officers whose behavior might lead to policy violations and/or complaints. The OPM will continue in 2012 to work with the APD to bring this software on line.

Section 4: Recommendation Memos

Type of Recommendation	Recommending Party	Recommendation	APD Response
Global	OPM	<p>Recommends stingers⁶ be available in more patrol vehicles and that officers be trained on how to safely deploy the device.</p> <p>Recommends renewed emphasis on enforcement of the pursuit policy including what role supervisors should take.</p> <p>Recommends renewed emphasis on the principles of incident command with special attention to the role of the supervisors in directing the actions of officers and the avoidance of potential cross fire situations.</p> <p>Recommends exploration and provision of appropriate training of communication staff regarding how to handle certain situations in the future.</p> <p>Recommends a formal debriefing of a single particular incident among the parties involved.</p>	Chief of Police responded that the incident from which these recommendations stemmed was reviewed.
Global	CRP	<p>Recommends that the APD review its policies, processes, and/or procedures relating to communications between dispatch personnel and officers in the field and determine whether policy revisions are needed to improve this communication process.</p> <p>Recommends that dispatch personnel and APD officers be trained on how to appropriately handle and communicate with the field officer in charge and the negotiator.</p>	Chief of Police referred the CRP to the response provided to the OPM.

⁶ A “stinger” is a device used to impede or stop the movement of wheeled vehicles by puncturing the vehicle’s tires.

Type of Recommendation	Recommending Party	Recommendation	APD Response
Global & Specific	CRP	<p>Recommends the Chief conduct further investigation to determine whether misconduct related to drinking and driving while on duty or on call is widespread within the APD.</p> <p>Recommends all officers be reminded of their responsibility to comply with all general orders, and the consequences for violating these general orders.</p> <p>Recommends the Chief consider implementing additional policies, guidance, or general orders that specify that second time violations of the specific general orders may result in indefinite suspension.</p>	None
Specific	CRP	<p>Recommends that all charges in this particular case be sustained.</p> <p>Recommends one particular officer be placed in an assignment where any traffic stops he might make are recorded. Also recommend frequent audits of the recordings by his supervisors.</p>	None
Specific	OPM	Recommends that additional allegations be sustained and discipline meted against officers implicated as a result of another case.	None
Specific	OPM	Recommends counseling sessions and appropriate training for one particular officer.	None

Type of Recommendation	Recommending Party	Recommendation	APD Response
Global	CRP	<p>Recommends review of APD technology and information to ensure these tools are being used in an appropriate and respectful way.</p> <p>Recommends review of officer training regarding the distinction between a search and a standard inventory prior to having a vehicle towed.</p> <p>Recommends review of impoundment procedures.</p>	None
Global & Specific	CRP	<p>Recommends immediate correction of an APD accident report.</p> <p>Recommends second level review of all APD-involved accident reports in order to find and correct potential errors.</p> <p>Recommends review of training for accident investigators and to have metrics in place to measure the effectiveness of the programs.</p>	None

Type of Recommendation	Recommending Party	Recommendation	APD Response
Global	CRP	<p>Recommends review of policies for arresting a person for the sole minor offense of jaywalking.</p> <p>Recommends revising policy to clarify that an arrest for jaywalking is not appropriate and is an inefficient use of APD's limited resources.</p> <p>Recommends further investigation regarding any pattern in jaywalking arrests that could suggest either intentional or inadvertent racial profiling.</p> <p>Recommends additional training on appropriate questions for establishing identification and on cultural competency when the sole reason for a stop or detention is a minor offense.</p> <p>Recommend that Internal Affairs review all allegations of racial profiling.</p>	None
Global & Specific	CRP	<p>Recommends that the use of force policy, specifically as it relates to multiple officers engaging one unarmed suspect, be reviewed for improvements.</p> <p>Recommends this particular case be given a more serious classification and reassigned to a different representative to investigate.</p>	None

Appendix A: Austin Police Department's Discipline Matrix

Below find the discipline matrix currently employed by APD. This can be found online at: http://www.ci.austin.tx.us/police/gen_orders_toca.htm.

A109d – Discipline Matrix

This Matrix is designed as a guide to be used in conjunction with the APD Discipline Process policy and Internal Investigative Process policy. This matrix is not an all-encompassing document but should provide some guidance for the vast majority of investigations involving discipline. As a general rule, those violations below that are listed as "IS (indefinite suspension) and "Fact Specific" or those that may include discipline greater than a 15-day suspension will be investigated by IA.

Discipline Matrix			
Violation General Category/Sub Category (APD General Orders)	1st Occurrence	2nd Occurrence	3rd Occurrence
CODE OF CONDUCT A201			
A. Dishonesty – False Official Statements	IS		
B. Criminal Violation while on duty or related to job duties	IS		
C. Other Criminal Violations	Fact Specific		
D. Reporting Responsibilities (Also See B206 Incident Reporting and Documentation)	Oral Reprimand to 1-3 days	Increased one level	Increased one level
E. Individual Responsibilities			
• Associating with those of ill repute	Fact Specific		
• Improper use of City resources not involving personal gain	Written Reprimand to 1-3 days	Increased one level	Increased one level
• Improper use of City resources involving personal gain.	4-15 days	IS	
F. Responsibility to the Community			
• Duty to identify	Oral Reprimand to 1-3 days	Increased one level	Increased one level
• Courtesy (Rudeness Complaints)			
• Impartial Attitude	Fact Specific		
G. Responsibility to the Department			
• Requirements of duty			
• Time and attention to duty	Oral Reprimand to 1-3 days	Increased one level	Increased one level
• Unprofessional or abusive behavior--co-workers			
• Neglect of Duty -Misleading Statements	Fact Specific		
• Neglect of Duty	Fact Specific		
• Insubordination	4-15 days	IS	
• Duty to take action	Fact Specific		
• Dereliction of Duty	4-15 days to Demotion	Demotion to IS	
• Unauthorized Release of Information	4-15 days	IS	

A109d – Discipline Matrix (con’t’d)

RADIO AND TELECOMMUNICATIONS B201			
A. Inappropriate Electronic Messages ¹	Written Reprimand	1-3 days	4-15 days
INTERNET/NETWORKED COMPUTER USE A312			
A. Internet/Computer Violations	Written Reprimand to 1-3 days	Increased one level	Increased one level
RESPONSE TO RESISTANCE B101a			
A. Objectively Unreasonable Use of Deadly Force	IS		
B. Objectively Unreasonable Use of Force	Fact Specific		
C. Negligent Discharge involving serious bodily injury or death	Fact Specific		
D. Accidental Discharge not involving serious bodily injury or death	1-3 days	4-15 days	4-15 days up to IS
DUTY WEAPONS B101b			
A. Violations of duty weapons policy	Written Reprimand to 1-3 days	Increased one level	Increased one level
OTHER			
A. Negligent/Reckless Conduct Resulting in SBI or Death	IS		
B. Violation of tactics, other than above "A".	Fact Specific		
BIASED BASED PROFILING B205			
A. Biased based profiling	Fact Specific		
B. Failure to document contacts	Written Reprimand to 1-3 days	Increased one level	Increased one level
DRUG AND ALCOHOL FREE WORKPLACE A408a			
A. Failure of random drug test or test resulting from Reasonable Suspicion	IS		
THE WORKPLACE ENVIRONMENT A201c			
A. Quid Pro Quo Sexual Harassment	IS		
INTERNAL AFFAIRS A109a			
A. Refusing to cooperate with Internal Affairs	IS		
SECONDARY EMPLOYMENT A307			
A. Secondary employment violations	Written Reprimand to 1-3 days	Increased one level	Increased one level
MOBILE VIDEO RECORDER OPERATION A306b			
A. Mobile video recording violations	Written Reprimand to 1-3 days	Increased one level	Increased one level
B. Intentional Mobile video recording violations	4-15 days	IS	
C. Intentional MVR violation in a critical incident	IS		
COURT APPEARANCES A304			
A. Missed court appearance	Oral Reprimand to 1-3 days	Increased one level	Increased one level

A109d – Discipline Matrix (con't'd)

FOLLOW-UP INVESTIGATIONS B203a			
PRELIMINARY FIELD INVESTIGATIONS B202a			
A. Failure to properly investigate	Oral Reprimand to 1-3 days	Increased one level	Increased one level
PROPERTY AND EVIDENCE B208			
A. Improper handling of evidence (not related to criminal conduct)	Oral Reprimand to 1-3 days	Increased one level	Increased one level
B. Improper destruction of evidence	Written Reprimand to 4-15 days	Increased one level	Increased one level
ATTENDANCE AND LEAVE A401a			
A. Abuse of sick leave	Oral Reprimand to 1-3 days	Increased one level	Increased one level
EMERGENCY OPERATION OF POLICE VEHICLES B102			
POLICE VEHICLES A306a			
PURSUIT POLICY B103a			
A. Violations of pursuit policy	Written Reprimand to 1-3 days	Increased one level	Increased one level
B. Pursuit policy, Aggravated	1-15 days	4-15 days	4-15 days to IS
C. Operation of Police Vehicles (non-collision)	Oral Reprimand to 1-3 days	Increased one level	Increased one level
D. At-Fault collision (Not involving serious bodily injury or death) ²	Oral Reprimand to 1-3 days	Increased one level	Increased one level

Notes:

*1 If inappropriate Electronic Messages bring discredit to the Department, increase one level.

*2 A written reprimand will normally be administered for violations under this heading as a first occurrence.

Supervisors will take into account the employees previous driving history, the severity of the collision and other contributing factors involve in the negligent collision. (See Discipline Process sections #5 and #8)

Appendix B: Community Outreach Conducted in 2011



Office of the Police Monitor

2011 ANNUAL OUTREACH

- Jan. 5 Immigrant Services Network of Austin meeting
- Jan. 17 MLK Celebration information booth, Huston Tillotson College
- Jan. 18 Greater Austin Forum for Diversity and Inclusion meeting
- Jan. 26 Greater Austin Hispanic Chamber of Commerce meeting on civic dialogue
- Jan. 28 Alternative Learning Center meeting with principals to discuss bringing OPM video program to school
- Feb. 5 Police Monitor presentation to Citizen Led Austin Safety Partnership, North Village Branch Library
- Feb. 8 Community Collaborative Committee meeting, Mendez Middle School Family Resource Center
- Feb. 14 Spanish-language presentation to parents enrolled in Promesas program, Winn Elementary
- Feb. 17 Meeting with director of Hispanic Ministry to discuss outreach opportunities with immigrant community, Pastoral Center
- Feb. 17 Meeting with criminal justice teacher to discuss class viewing of OPM video program, Lanier High School
- Feb. 23 Meeting with United Way's manager of volunteer engagement to discuss community improvement project

Feb. 24	Presentation to students, Texas School for the Deaf at Deaf Smith Center
Feb. 28	Meeting with St. Austin Church pastor to provide overview of OPM services
Feb. 28	Meeting with communications director to discuss publicizing OPM services in Catholic Diocese publications, Pastoral Center
Feb. 28	Meeting with Cristo Rey Church pastor
March 2	Meeting with Lanier High School teacher to provide update on services
March 2	Spanish-language presentation to youth leaders and adult leaders of Catholic Diocese parishes, Pastoral Center
March 5	Greater Austin Hispanic Chamber of Commerce Banquet
March 16	Immigrant panel discussion sponsored by American Civil Liberties Union, Capitol
March 21	Meeting with director of social ministries and mobile loaves and fishes to discuss outreach, St. Louis Catholic Church
March 22	Meeting with AISD community relations coordinator
March 26	Information booth at Homeless Women Resource Fair
March 31	Casa Marianella's Ed Wendler event, Mercury Hall
April 6	Family Resource Center Open House, Martin Middle School
April 21	Information booth at APD Auto Theft Interdiction
April 26	LULAC Annual Scholarship Fundraiser
April 28	Information booth at APD Auto Theft Interdiction, ACC Riverside Campus
May 3	Attend student presentations, Southwest Key
May 7	Information booth at APD Safety Fair, Kealing Middle School

May 11	Casa Marianella meeting, Cepeda Library
May 13	Information booth, Ortega Elementary School
May 16	Meeting with Holy Word Lutheran Church director to discuss Spanish-language presentation to ESL students
May 25	Community Collaborative Committee meeting, Dove Springs Recreation Center
May 26	Career Day keynote speaker and class presentations, Paredes Middle School
May 26	Spanish-language presentation to ESL students, Holy Word Lutheran Church
June 1	Immigrant Network Services of Austin meeting, Pastoral Center
June 3	Austin Saltillo Sister Cities meeting, Mexic Arte Museum
June 7	APD North Central and North West Commander's Forum, Cornerstone Church
June 18	Juneteenth parade, East Austin & Rosewood Park
June 23	Meeting with La Voz publisher and Seedling Foundation director
June 29	Meeting with directors of Casa Marianella and Posada Esperanza and board representative
July 6	Meeting with AISD school parent support staff
July 26	Community Collaborative Committee, Dove Springs Recreation Center
July 27	Meeting with University of Texas Social Work graduate student regarding children of incarcerated parents
July 28	Meeting with representatives of Texas Civil Rights Project
July 29	Brochure distribution to ACC Eastview, Rio Grande and Riverside campuses
August 3	Immigrant Services Network of Austin meeting, Pastoral Center
August 4	Meeting with Seton's Vice President of Diversity and Community Outreach

August 6	Community festival information booth, Kealing Middle School
August 9	Police Monitor meeting with LULAC representatives
August 11	Meeting with school counselor to discuss “Behind Bars: Doing Time on the Outside” program, Webb Middle School
August 17	National Night Out meeting, Mexican American Cultural Center
August 18	Meeting with director of Texas Inmates Family Association, Southwest Austin
August 20	People’s Forum, ACC Eastview Campus
August 23	Meeting with President of APD Amigos En Azul to review “Behind Bars: Doing Time on the Outside” program
August 24	Meeting with social worker to discuss “Behind Bars: Doing Time on the Outside” program, Southwest Key
August 31	Downtown Austin Alliance Security and Maintenance Committee meeting, St. David’s Episcopal Church
Sept. 6	APD Downtown Commander’s Forum, Waller Creek
Sept. 8	Information booth at Family Resource Center fair, Mendez Middle School
Sept. 10	Information booth at Austin Pride Festival, Fiesta Gardens
Sept. 14	Casa Marianella meeting, Cepeda Library
Sept. 17	Southeast Community Branch Library Grand Opening, Nuckols Crossing
Sept. 22	Meeting with principal to discuss bringing “Behind Bars: Doing Time on the Outside” program to school, Webb Middle School
Sept. 27	Meeting with Wells Fargo president and Seedling Foundation director
Sept. 28	Employee Wellness and Work Expo, Advanced Micro Devices
Oct. 1	Travis County Sheriff’s Extravaganza, Wells Branch

Oct. 4 National Night Out, Mueller

Oct. 6 University of Texas Diversity and Community Engagement awards ceremony, Mexican American Cultural Center

Oct. 11 Meeting with school counselor and APD president of Amigos En Azul to discuss launch of “Behind Bars: Doing Time on the Outside” program, Webb Middle School

Oct. 11 APD North Central and Northwest Commander’s Forum, 12429 Scofield Farms

Oct. 17 Meeting with coordinator of Mobile Loaves and Fishes, St. Louis Catholic Church

Oct. 22 Information booth at citizenship event sponsored by Immigrant Services Network, ACC Riverside Campus

Oct. 25 Meeting to discuss immigrant outreach with director of Austin Immigrant Rights Coalition

Oct. 31 Spanish-language presentation to parents enrolled in Promesas, Brown Elementary School

Nov. 1 Meeting with public affairs manager to discuss OPM services, Univision

Nov. 3 Meeting with “Ahora Si” reporter to discuss OPM and “Behind Bars: Doing Time on the Outside” program

Nov. 5 Information booth at St. Louis Catholic Church

Nov. 5 Information booth at Homeless Resource Fair, Pan American Recreation Center

Nov. 14 Meeting with principal to discuss “Behind Bars: Doing Time on the Outside” program, Dobie Middle School

Nov. 15 Community Collaborative Committee meeting, Widen Elementary School

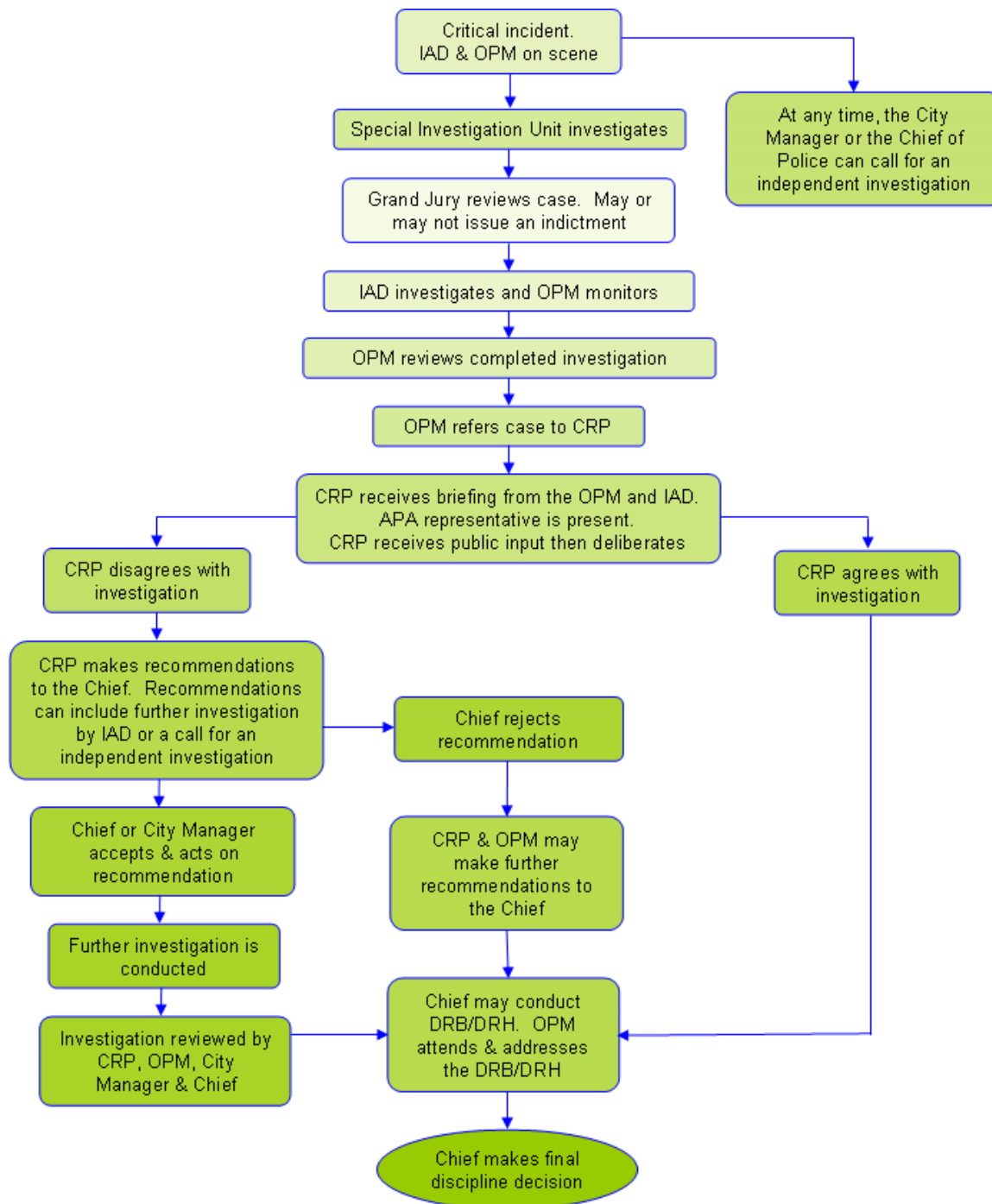
Nov. 16 Meeting with principal to discuss “Behind Bars: Doing Time on the Outside” program, Martin Middle School

Nov. 17 Meeting to guide presentation by police officer participating in “Behind Bars: Doing Time on the Outside” program

Nov. 29 Start student session of “Behind Bars: Doing Time on the Outside” program, Webb Middle School

- Nov. 29 Meeting with school counselor to discuss “Behind Bars: Doing Time on the Outside” program, O’Henry Middle School
- Dec. 8 Session 2 “Behind Bars: Doing Time on the Outside” program, Webb Middle School
- Dec. 13 Television interview of Citizen Review Panel member to discuss OPM services, Univision
- Dec. 15 Meeting with program director to discuss bringing “Behind Bars: Doing Time on the Outside” program, Southwest Key Day Enrichment Program
- Dec. 15 Session 3 “Behind Bars: Doing Time on the Outside program, Webb Middle School

Appendix C: Critical Incident Monitoring Process



OPM: Office of the Police Monitor **APD:** Austin Police Department **IAD:** Internal Affairs Division
APA: Austin Police Association **SI:** Supervisory Inquiry **CRP:** Citizen Review Panel
DRB: Disciplinary Review Board **DRH:** Disciplinary Review Hearing

Appendix D: Meet and Confer Contract, Article 16

Ratified October 1, 2008

ARTICLE 16

CITIZEN OVERSIGHT OF THE AUSTIN POLICE DEPARTMENT

Section 1. Citizen Oversight

a) Citizen Oversight means the process which incorporates citizen input into the administrative review of conduct of APD officers and the review of the Austin Police Department's policies and procedures. The City of Austin may provide for Citizen Oversight of the Austin Police Department. Citizen Oversight may include an Office of the Police Monitor and a Citizen Review Panel. The City agrees that there will be no parallel process created in addition to the one contemplated by these provisions.

b) The purpose of Citizen Oversight is:

1. To assure timely, fair, impartial, and objective administrative review of complaints against police officers, while protecting the individual rights of officers and citizens;
2. To provide an independent and objective review of the policies and procedures of the Austin Police Department; and
3. To provide a primary, but not exclusive, location for accepting administrative complaints of officer misconduct.

c) Except as otherwise provided by this Agreement, the Chief of Police retains all management rights and authority over the process of administrative investigation of alleged misconduct by APD officers that could result in disciplinary action.

d) Except as specifically permitted in this Article the Citizen Oversight process, regardless of its name or structure, shall not be used or permitted to gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint of misconduct by an officer. There shall be no legal or administrative requirement, including but not limited to subpoena power or an order from the City Manager or the Department, that an officer appear before or present

evidence to any individual, panel, committee, group, or forum of any type involved in Citizen Oversight. This provision has no application to any Independent Investigation authorized by the Chief of Police or the City Manager, regardless of whether the Independent Investigation was recommended by a Panel or Police Monitor, or to any hearing of an appeal of disciplinary action pursuant to this Agreement and/or Chapter 143 of the Texas Local Government Code. Police officers remain subject to orders or subpoenas to appear and provide testimony or evidence in such investigations or hearings.

Section 2. The Office of the Police Monitor (“OPM”)

a) The Police Monitor will have unfettered access to the Internal Affairs investigation process, except as provided herein. The Police Monitor may inquire of the Commander of the Internal Affairs Division or the Chief of Police, or the Chief’s designee, as to the status of any pending IAD investigation.

b) The OPM shall not gather evidence, contact or interview witnesses (except the complainant as provided herein), or otherwise independently investigate a complaint. The OPM shall not have the authority to subpoena witnesses. There shall be no administrative requirement, including but not limited to an order from the City Manager or the Department, that a police officer appear or present evidence to the Police Monitor. The OPM may obtain the following information in connection with the filing of a complaint of officer misconduct:

1. The complainant’s personal information;
2. The nature of the complaint;
3. Witness information;
4. The incident location, date, and time; and
5. The APD officer(s) involved.

c) The OPM shall digitally audio record the taking of the information provided in subsection (b). The OPM will promptly forward the completed complaint and audio recording to IAD. A complaint by a complainant who is not a police officer shall not be accepted unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. A complainant may be subsequently interviewed by the IAD investigator for purposes of clarification or to obtain additional information relevant to the investigation.

d) Personnel from the OPM shall assist an individual in understanding the complaint process and the requirements for filing a complaint but shall not solicit or insist upon the filing of a complaint by any individual.

e) A representative from the OPM may attend an interview of the officer who is the subject of the investigation or administrative inquiry, as well as all witness interviews. The OPM representative may not directly question the subject of the interview. At the conclusion of any interview, the OPM representative may take the IAD investigator aside and request that the investigator ask additional questions. Whether such information is sought in any witness interview is within the discretion of the IAD investigator.

f) Neither the Police Monitor nor the Internal Affairs Representative(s) may remain in the Dismissal Review Hearing (or any other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an officer for alleged misconduct) while the chain of command discusses the final classification and/or appropriate discipline, if any, to be imposed. The final classification of an allegation of misconduct is within the sole discretion of the Chief of Police, subject to the officer's right of appeal of any discipline imposed as provided by Chapter 143 of the Texas Local Government Code and this agreement.

g) On a quarterly basis, the Police Monitor, the Chief of Police, the Commander of the Internal Affairs Division, and the Association President shall meet to discuss issues related to the citizen oversight process, and shall endeavor to answer questions, and provide relevant information.

Section 3. Citizen Review Panel (“Panel”)

a) Function

(1) The Panel shall serve to make recommendations to the Chief of Police as provided in this Article, and in addition to review individual cases of officer conduct as authorized in this Article. Panel members shall perform their duties in a fair and objective manner.

(2) The Panel shall provide a public report setting forth the basis and concerns of the Panel supporting any recommendation for an Independent Investigation. In addition, the Panel shall provide a public report setting forth the Panel's conclusions and recommendations after its review of any Independent Investigation.

b) Qualifications

To be eligible for appointment to the Panel, applicants must not have a felony criminal conviction, received deferred adjudication for a felony, or be under felony indictment. Prior to appointment, Panel members must submit to a criminal background investigation to determine their eligibility to serve on the Panel. A felony conviction, felony indictment, or felony deferred

adjudication, after appointment, shall result in the immediate removal of the member from the Panel by the City Manager.

c) Training

To serve on the Panel, each member must complete the training prescribed herein prior to commencing their service on the Panel. The required training shall include:

- (1) Attend a three to four (3-4) day training by APD tailored specifically for Panel members including, at a minimum, the following:
 - a. Special Investigations Unit;
 - b. Officer Involved Shootings;
 - c. Response to resistance;
 - d. The Police Training Academy;
 - e. Crisis Intervention Team;
 - f. Firearms, including FATS training;
 - g. Bomb and SWAT;
 - h. Ride-outs on at least two shifts in different parts of the City; and
 - i. A presentation by the Association.

- (2) Attend six (6) hours of training provided by the Internal Affairs Division.

The training requirements of Section c) shall apply only to Panel members who are appointed to the Panel after the effective date of this Agreement.

d) Resign to Run

Any person involved in the citizen oversight process as a Panel member, who files for public elective office shall immediately resign from their position in the citizen oversight process, and failing such resignation shall be immediately removed by the City Manager.

e) Panel Review Process

- (1) Not later than thirty (30) calendar days after the mailing of the notice of the outcome of the investigation to the complainant, the complainant may request that the Police Monitor refer the complaint to the Panel.

(2) Without a complainant's request, only the following cases may be referred to the Panel:

- a. A "Critical Incident" as defined this Article;
- b. The appearance of a pattern of serious misconduct by the officer involved;
- c. The appearance of a pattern of department-wide misconduct;
- d. The appearance of serious official misconduct by one or more members of the Department;
- e. The appearance of bias based misconduct; or
- f. The appearance of issue(s) to be addressed by policy, procedure, or training recommendations.

f) Nature of Proceedings

(1) The review of any case by the Panel shall not be conducted as a hearing or trial. Except for the receipt of public input/communications as provided by this Section or an Independent Investigation authorized by this Article, the Panel shall not gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint. The Panel shall not have the authority to subpoena witnesses. There shall be no administrative requirement, including but not limited to an order from the City Manager or the Department, that a police officer appear or present evidence to the Panel. The Panel shall immediately forward any information or evidence of which it becomes aware to the Chief of Police through the Police Monitor.

(2) A quorum shall be established prior to beginning the review of any case by the Panel.

(3) Not less than five (5) business days prior to a Panel meeting, the OPM shall provide the Internal Affairs Division and the individual designated by the president of the Association as the Panel liaison, with a copy of the Panel meeting agenda. The Panel shall not take action upon or receive public input/communications concerning any case or issue not listed as an agenda item. The Internal Affairs Division shall promptly notify any officer who is the subject of a complaint listed as an agenda item as to the scheduled Panel meeting. Notice of special meetings shall be handled in a similar manner, unless circumstances require a shorter notice, in which case the notice shall be issued as soon as the special meeting is scheduled.

(3) By virtue of its purely advisory role, the Panel is not a governmental body and is not subject to the Open Meetings Act. Those portions of the meeting during which public input/communication is accepted shall be open to the public and recorded by video and audio cassette tape.

g) Private Session

(1) Prior to receiving any communication from the complainant or any other public input/communications, the Panel may meet in private session to be briefed concerning the facts of the particular case to be reviewed. Either the Police Monitor or the IAD representative shall present to the Panel the information obtained from the IAD investigation. Members of the Panel may be provided with READ ONLY electronic access to all or part of the IAD files during these presentations.

(2) An APD officer designated by the president of the Association and one individual from the Internal Affairs Division shall be present during the Panel private session case briefing, including the portion of the private session described in subsection “e” below, subject to the following provisions:

- a. The Association’s representative will not participate in the briefing and is present only as an observer, with the following exceptions:
 - (i) The Association representative may request that the Police Monitor allow the representative to present information relevant to a case before the Panel.
 - (ii) A Panel member may request that the Association representative present information relevant to a case before the Panel.
 - (iii) Any information provided by the Association representative shall be presented in a neutral manner.
- b. The Association representative may not be involved in the case as a witness, investigator, relative, or officer in the chain of command.
- c. Information in the possession of the Association representative as a result of participation in such briefing shall not be disclosed or revealed other than as necessary as a part of official Association business in monitoring and enforcing this agreement, or in the normal course of dispute resolution processes under this agreement.

(3) Panel members shall have full access to all administrative investigative and disciplinary files necessary to perform their functions under this agreement. Panel members may

ask questions and obtain specific facts, details and information from the Police Monitor, IAD, or the Chief's office. As part of such access, the Police Monitor may permit individual Panel members to review an IAD case file for up to five (5) hours, at the Police Monitor's office and in the presence of a member of the Monitor's staff. This review opportunity may occur before the Panel's private session and/or after the Panel's public session regarding such case. The prohibitions and restrictions in Section 8 of this Article apply to any confidential information viewed by Panel members during this review opportunity. Panel members shall not copy or remove any portion of the file. The Police Monitor shall be responsible for security of the file.

(4) During any private Panel briefing, the presenter should exercise discretion and omit information from the briefing that the Police Monitor deems to be irrelevant to the citizen's complaint, as well as information of a highly personal nature that would constitute an unwarranted invasion of an individual's personal privacy interests.

(5) Upon completion of the Panel case briefing, the complainant shall be allowed to address the Panel. The police officer who is the subject of the complaint may, but is not required to attend and listen to the address by the complainant. If the complainant is anxious or intimidated by the presence of the officer, the Panel shall videotape the complainant's address to the Panel, and allow the officer to view and respond to the taped statement outside the complainant's presence. Other than the complainant and the responding police officer, only those persons authorized to attend the Panel case briefing may be present during this portion of the Panel meeting.

h) Public Session and Comments

(1) After any address by the complainant and/or responding police officer, the Panel shall meet in public session to receive any additional public input/communications concerning the case under review. During the public session, the Police Monitor shall take precautions to prevent discussion of the facts of the particular case and to prevent the public session from being used as a forum to gather evidence, interview witnesses, or otherwise independently investigate a complaint. Any individual who indicates that he has new or additional evidence concerning the particular case shall be referred to the Chief of Police or his designee. The rules that apply to citizen communications with the City Council shall apply to the public session of the Panel meetings.

(2) The Police Monitor, in consultation with the Panel, shall set the time limits for such proceedings.

i) Deliberations

After receiving public input, if any, the Panel shall discuss the particular case under review in private session. The Police Monitor and/or the Assistant Police Monitor may be present during such discussion. No other individual may be present unless, the panel requests further information.

j) Action and Recommendations

(1) At the conclusion of the review process set forth above, the Panel, upon a majority vote of its total members, may make the following recommendations to Chief of Police:

- a. Further investigation by the Department is warranted;
- b. Department policies warrant review and/or change;
- c. An “Independent Investigation” is warranted; or
- d. A written, non-binding recommendation on discipline.

A recommendation on discipline is limited to cases involving a “critical incident” as defined in this Article. The Panel shall not take action or make recommendations not authorized by this Article.

(2) After the Citizen Oversight process has been completed for a "critical incident," as that phrase is defined herein, the individuals involved in the Citizen Oversight process may make non-binding disciplinary recommendations to the Chief of Police. The final decision as to appropriate discipline is within the sole discretion of the Chief of Police, subject to the officer’s right of appeal of any discipline imposed as provided by Chapter 143 of the Texas Local Government Code and this agreement. The objectives of the process being served by a written recommendation as to discipline, neither the OPM employees nor individual members of the Panel shall publicly express agreement or disagreement with the final disciplinary decision of the Chief, other than as set forth in the written recommendation. Any such recommendation shall not be publicly disclosed prior to the Chief’s final decision. After the Chief of Police has made his final decision, any such citizen or internal monitor recommendations shall be subject to public disclosure to the extent permitted by law. Violation of this provision shall be subject to the dispute resolution process set forth in Section 7 of this Article, but a Panel member shall not be subject to permanent removal from the Panel except upon a second violation of this standard.

(3) For purposes of this Section, the term “Critical Incident” shall mean:

- a. An alleged use of force or other action by an Austin Police Officer that directly results in serious bodily injury or death (The definition of “serious bodily injury” found in the Texas Penal Code, Section 1.07(a)(46) will apply.);
- b. A death in custody; or

c. An officer involved shooting.

(4) Members must attend the meeting and hear the merits of the case in order to vote. The Panel's recommendations shall be reduced to writing. The Panel's written recommendations shall explain the Panel's issues(s) or concern(s).

(5) The Police Monitor shall consult with the Panel in formulating any recommendations to the Chief of Police. All recommendations to the Chief of Police by the Panel shall be made available to the public to the extent permitted by law and this Agreement.

Section 4. Independent Investigation

a) In this Article, "Independent Investigation" means an administrative investigation or inquiry of alleged or potential misconduct by an officer, authorized by the Chief of Police or City Manager and conducted by a person(s) who is not:

(1) An employee of the City of Austin;

(2) An employee of the Office of the Police Monitor; or

(3) A volunteer member of the Panel.

b) An "Independent Investigation" does not include attorney-client work product or privileged material related to the defense of claims or suits against the City of Austin.

c) The Chief of Police and the City Manager retain all management rights to authorize an Independent Investigation concerning police conduct.

Section 5. Public Report of Independent Investigation

a) The provisions of Section 143.089(g) of the Texas Local Government Code are expressly modified to the extent necessary to permit public release of a final report prepared by an investigator who conducts an Independent Investigation authorized by the Chief of Police or City Manager concerning police conduct.

b) The public release of information authorized by this Section shall not contain or reveal evidentiary facts, or other substantive investigative information from the file, except to the extent that such information is at the time of such release no longer protected from public disclosure by law, or is already public as a matter of fact by lawful or authorized means or by the officer's own release. For example, the names of officers in an investigation may not be released, but could be released if those officers have elected to enter the public debate and discuss their involvement, or

if the public has been informed of identities by lawful or authorized means in the course of grand jury or other legal proceedings. The public statements authorized in this agreement are subject to review by the City of Austin Law Department to insure compliance with this Agreement and to determine whether the release of such information may be prohibited by any other law.

c) This Section shall apply to any Independent Investigation whether completed prior to or after the effective date of this Agreement and applies to every position and rank within the Austin Police Department.

d) Section 143.089(g) of the Texas Local Government Code is modified and superseded to the extent necessary to permit the public release of the following information only:

1. A report setting forth the basis and concerns of the Panel supporting any recommendation for an Independent Investigation.
2. A report setting forth the Panel's conclusions and recommendations after its review of any Independent Investigation.
3. A report setting forth any policy recommendations made by the Panel.
4. A final report from an Independent Investigator, whether or not recommended by the Panel. This Section shall also apply to any Independent Investigation completed prior to ratification of this agreement.

Section 6. Public Communication

a) Except as permitted by this Agreement, employees of the OPM and members of the Panel shall not publicly comment on the specifics of pending complaints and investigations prior to a panel decision. All public comments and communications by the OPM shall be factual and demonstrate impartiality to individual police officers, the Austin Police Department, the Austin Police Association, employees of the City of Austin, residents of the City of Austin, and community groups.

b) Should a person participating on a Panel make public statements which, to a reasonable observer, would be perceived to express or demonstrate a position, bias, or prejudgment on the merits of a particular case that is under investigation or subject to review, prior to the completion of the citizen panel process for that case, such person will not be allowed to participate in the review, deliberation, or drafting of recommendations concerning that case. This provision does not prohibit the Panel or an individual Panel member from making generic, non-case related public statements about the Austin Police Department, or from providing information about the process, which does not appear to prejudge the merits, or demonstrate a bias on the case. In the

event of a violation of this standard, the Panel member shall be subject to permanent removal from the panel as set forth below.

c) No public comment or communication (including but not limited to oral or written statements, reports, newsletters, or other materials made, released, published or distributed) by the OPM or Panel members will make reference to or identify an officer by name, unless such release is then permitted by law, or the officer's name has become public as a matter of fact by lawful or authorized means, or by the officer's own release. Public comments or communications by the OPM and the Panel shall conform to state and federal law and this Agreement regarding confidentiality, and shall not contain information that is confidential or privileged under this Agreement or state, federal or common law.

d) All OPM written publications shall be provided to the APD and the APA simultaneously with distribution to the public.

Section 7. Dispute Resolution

a) Complaints concerning the conduct of OPM employees shall be filed with the Police Monitor, or if the complaint concerns the personal conduct of the Police Monitor, shall be filed with the City Manager. If not resolved at the first level, a fact finder shall be appointed to review relevant materials and take evidence to reach written findings of fact, which shall be expedited for final resolution within two weeks after appointment. The fact finder shall be appointed by striking an AAA list, if the parties do not otherwise agree on a fact finder. Upon conclusion of the fact finding, and after review and evaluation of the fact finder's report, the Police Monitor (or City Manager if the complaint concerns the personal conduct of the Police Monitor) shall make a decision. The final decision shall be made by the City Manager.

b) Complaints concerning the conduct of Panel members shall be filed with the City Manager. If a signed complaint is filed alleging specific comments by a Panel member that violate the standards in subparagraph 6 (b) above, the Panel's consideration shall be postponed or the particular Panel member shall not participate, until the matter is finally resolved. A complaint may not be based on statements or conduct previously raised and found insufficient for disqualification. Only one of such Panel members may be temporarily disqualified under this provision on a particular case. The City Manager shall promptly determine the complaint. The Association may appeal from the decision of the City Manager through the expedited arbitration process in this agreement. If two (2) consecutive complaints are found insufficient on a particular Panel member, subsequent complaints on that Panel member shall not result in temporary removal, but upon final determination that there has been a violation, such member shall be subject to permanent removal. Nothing shall prevent the Chief from taking disciplinary action within the statutory time frame, under the provisions of Chapter 143, as modified by this agreement.

Section 8. Access to Section 143.089(g) Files

a) Information concerning the administrative review of complaints against officers, including but not limited to Internal Affairs Division files and all contents thereof, are intended solely for the Department's use pursuant to Section 143.089(g) of the Texas Local Government Code (the 143.089(g) file.). All records of the Police Monitor's Office that relate to individual case investigations and the APD 143.089(g) file, although some are not APD files or records, shall have the same statutory character in the hands of the Police Monitor, and shall not be disclosed by any person, unless otherwise authorized by law. Public access to such information is strictly governed by this agreement and Texas law. To the extent necessary to perform their duties, individuals involved in the Citizen Oversight process are granted a right of access to the information contained within the 143.089(g) files of police officers.

b) Individuals involved in the Citizen Oversight process shall not be provided with information contained within a personnel file, including the 143.089(g) file of a police officer, that is made confidential by a law other than Chapter 143 of the Texas Local Government Code, such as records concerning juveniles, sexual assault victims, and individuals who have tested positive for HIV. All persons who have access to IAD files or investigative information by virtue of this agreement shall not be provided with access to any records of criminal investigations by the APD unless those materials are a part of the IAD administrative investigation file.

c) All individuals who have access by virtue of this agreement to IAD files or investigative information, including the information contained within the 143.089(g) files of police officers, shall be bound to the same extent as the Austin Police Department and the City of Austin to comply with the confidentiality provisions of this Agreement, Chapter 143 of the Texas Local Government Code, and the Texas Public Information Act. All such individuals shall further be bound to the same extent as the Austin Police Department and the City of Austin to respect the rights of individual police officers under the Texas Constitution and the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, including not revealing information contained in a compelled statement protected by the doctrine set forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967), and *Spevack v. Klein*, 385 U.S. 511 (1967).

d) A breach of the confidentiality provisions of this Agreement and/or Chapter 143 of the Texas Local Government Code by any individual involved in Citizen Oversight:

1. Shall be a basis for removal from office;
2. May subject the individual to criminal prosecution for offenses including, but not limited to Abuse of Official Capacity, Official Oppression, Misuse of Official Information, or the Texas Public Information Act; and/or
3. May subject the individual to civil liability under applicable State and Federal law.

e) The confidentiality provisions of this agreement, Chapter 143 of the Texas Local Government Code, and the Texas Public Information Act, are continuous in nature. All individuals involved in Citizen Oversight are subject to these confidentiality provisions even after their association with the Oversight process has terminated.

f) Following any review of an alleged violation of the confidentiality provisions of this Agreement, the City Manager's office will provide information about the outcome of that review to any officer(s) directly affected by the alleged violation.

Section 9. Use of Evidence from the Citizen Oversight Process in Disciplinary Appeals

Opinions or recommendations from individuals involved in Citizen Oversight in a particular case may not be used by a party in connection with an appeal of any disciplinary action under the provisions of Chapter 143 of the Texas Local Government Code and this Agreement. No party to an arbitration or Civil Service proceeding may use or subpoena any member of the Citizen Review Panel or the Police Monitor (unless the Police Monitor took the complaint in the relevant case) as a witness at an arbitration or Civil Service proceeding including, but not limited to live or deposition testimony which concerns their duties or responsibilities in the oversight process or their opinions or recommendations in a particular case. This provision shall not prevent any testimony for evidentiary predicate.

Section 10. Partial Invalidation and Severance

In the event that a Court Order, Judgment, Texas Attorney General Opinion, or arbitration decision, which is final and non-appealable, or which is otherwise allowed to take effect, which order, judgment, opinion, or decision holds that the right of access to the information contained within the 143.089(g) files of police officers granted by this Article or the public dissemination of information pursuant to this Article, results in "public information" status under the Texas Public Information Act of the information contained within the 143.089(g) files of a police officer, the provision or provisions resulting in such a change in the status of the 143.089(g) file shall be invalidated and severed from the balance of this Agreement.

Section 11. Remedies

a) Benefit of the Bargain

The CITY expressly retains its right and ability to proceed with the determination of whether or not police misconduct occurred and the authority of the Chief to impose disciplinary action. The ASSOCIATION recognizes the fact that such reservations are essential to this Agreement. No dispute concerning the operation and function of the Police Monitor's Office or the Panel shall impair or delay the process of the Chief's investigation and determination of whether or not police misconduct occurred and the degree of discipline, if any, to impose. This includes internal dispute resolution procedures in this Agreement, any grievance process or arbitration, and any litigation over such issues. In other words, any such dispute resolution processes may proceed,

as set forth in this contract or by law, but the disciplinary process may likewise and simultaneously proceed to its conclusion without delay. The statutory time period for the Chief of Police to take disciplinary action against an officer shall be tolled to the extent of any period in which a court order, injunction, or TRO, obtained by the officer involved or the Association on behalf of the officer, halts the Department's investigative or disciplinary process. In no event will the actual time exceed 180 calendar days. The parties agree that the processes in this Agreement, together with the remedies set forth and the procedural protections and rights extended to officers in this Agreement are adequate remedies at law for all disputes arising under this Article.

b) Expedited Arbitration

The parties have agreed to expedited arbitration for all unresolved grievances related to the application or interpretation of this Article in order to achieve immediate resolution and to avoid the need for court intervention in equity. Such arbitrations shall be conducted pursuant to the Expedited Labor Arbitration Procedures established by the American Arbitration Association ("AAA"), as amended and effective December 1, 2002. To be appointed, the arbitrator must be available to hear the arbitration within thirty (30) calendar days of selection and a decision shall be made within one (1) week of the hearing. The parties agree to create a list of pre-approved arbitrators. Failing same, or in the absence of an available arbitrator from such pre-approved list, the arbitrator designated by the AAA shall be required to be licensed as an attorney in the State of Texas. The parties both agree that the arbitrator has the discretion to receive and hear issues and testimony by written submission or phone conference, but may also require live testimony where appropriate.

Section 12. Preemption

It is expressly understood and agreed that all provisions of this Article shall preempt any statute, Executive Order, local ordinance, City policy or rule, which is in conflict with this Agreement and the procedures developed hereunder, including for example and not by way of limitation, any contrary provisions of Chapters 141, 142, and 143 of the Texas Local Government Code, including but not limited to Section 143.089(g).



OFFICE OF THE POLICE MONITOR

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The Police Monitor's Office is the main location for accepting complaints filed by members of the public against police officers. To file a complaint with the Office of the Police Monitor, the public can contact our office by telephone, facsimile, mail, email, or in person. The Police Monitor or a member of the Police's Monitor's office will conduct an initial interview with the complainant and will explain the oversight and investigative processes. The Internal Affairs Division of the Austin Police Department or the subject officer's chain of command will conduct an investigation. The Office of the Police Monitor will participate in the APD investigation. The Office of Police Monitor will make policy recommendations to APD. Upon conclusion of the investigation, the complainant will be notified in writing of the outcome.