



CITY OF AUSTIN



OFFICE OF THE POLICE MONITOR

2009

ANNUAL REPORT

Cover photo courtesy of Austin Parks and Recreation

Table of Contents

» The Office of the Police Monitor	5
» 2009 Year in Review	10
» 2009 Serious Incident Review	12
» Executive Summary	14
» End of Year Statistics	16
Number of Contacts/Complaints	16
Classification of Complaints	18
Number and Types of Allegations.....	21
Complaints by Area Command	24
Allegations by Area Command	26
Investigative Findings for Formal Complaints	28
Disciplinary Action	30
Complainant Demographics	32
Subject Officer Demographics	36
» Recommendation Memos.....	39
Appendix A: 2009 Data Tables	41
Table 1: Type of Contact by Year.....	41
Table 2: Type of Formal Complaint by Year	41
Table 3: External Formal Complaints Per Area Command by Year	41
Table 4: IAD Classification of External Formal Complaints by Year	42
Table 5: IAD Classification of Internal Formal Complaints by Year	42
Table 6: Number of Allegations per Case Type by Year	42
Table 7A: Types of Allegations in External Formal Complaints by Year	43
Table 7B: Types of Allegations in Internal Formal Complaints by Year	44
Table 7C: Types of Allegations in Supervisory Inquiries by Year	45
Table 8: Number of Allegations in External Formal Complaints per Area Command by Year	45
Table 9: Number of Code of Conduct Allegations in External Formal Complaints per Area Command by Year	46
Table 10: Number of Use of Force; Duty Weapons; and, Firearm Discharge Allegations in External Formal Complaints per Area Command by Year.....	46
Table 11: Number of Interviews, Stops, & Arrests; Arrest & Bookings; Fugitive Warrants; and, Care & Transport of Prisoners Allegations in External Formal Complaints per Area Command by Year	47
Table 12: Number of Bias-Based Profiling; and, Incident Reporting & Documentation Allegations in External Formal Complaints per Area Command by Year	47
Table 13: IAD Recommendations on Allegations in Formal Complaints by Year.....	47
Table 14: Chain of Command Decisions on Allegations in Formal Complaints by Year	48
Table 15A: Disciplinary Action Taken for External Formal Complaints by Year	48

Table 15B: Disciplinary Action Taken for Internal Formal Complaints by Year	48
Table 16: Ethnicity/Race of Complainants - 2009	48
Table 17: Age of Complainants – 2009.....	49
Table 18: Gender of Complainants – 2009	49
Table 19: Years of Service – 2009	49
Table 20: Subject Officer Gender – 2009	49
Table 21: Race/Ethnicity of Subject Officers – 2009	50
Table 22: Gender of Repeat Subject Officers, Single-Case Subject Officers, and all APD Sworn Personnel – 2009.....	50
Table 23: Race/Ethnicity of Repeat Subject Officers, Single-Case Subject Officers, and all APD Sworn Personnel – 2009	50
Table 24: Years of Service of Repeat Subject Officers vs. Single-Case Subject Officers – 2009.....	50
Table 25: Age of Repeat Subject Officers vs. Single-Case Subject Officers – 2009	51
Appendix B: Austin Police Department’s Discipline Matrix	52
Appendix C: Community Outreach Conducted in 2009.....	55
Appendix D: Critical Incident Monitoring Process	58
Appendix E: Meet and Confer Contract, Article 16.....	59

» 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 Office also takes 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 day in order to speak with a complaint specialist in person or they 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 types of complaints available to her/him.

These are:

- 1) **Formal complaints** – complaints investigated or reviewed by IAD or by a chain of command;
- 2) **Supervisory inquiries** – complaints of a less serious nature handled by the officer’s chain of command; and,
- 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.
- 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 APD 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 disciplined 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 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 on 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 may also opt 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 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 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 Internal Affairs 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 for the OPM to review. 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 investigation 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 seek assistance from 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 a 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 the complainant's behalf to the chief of police or choose to leave the case in its current status.

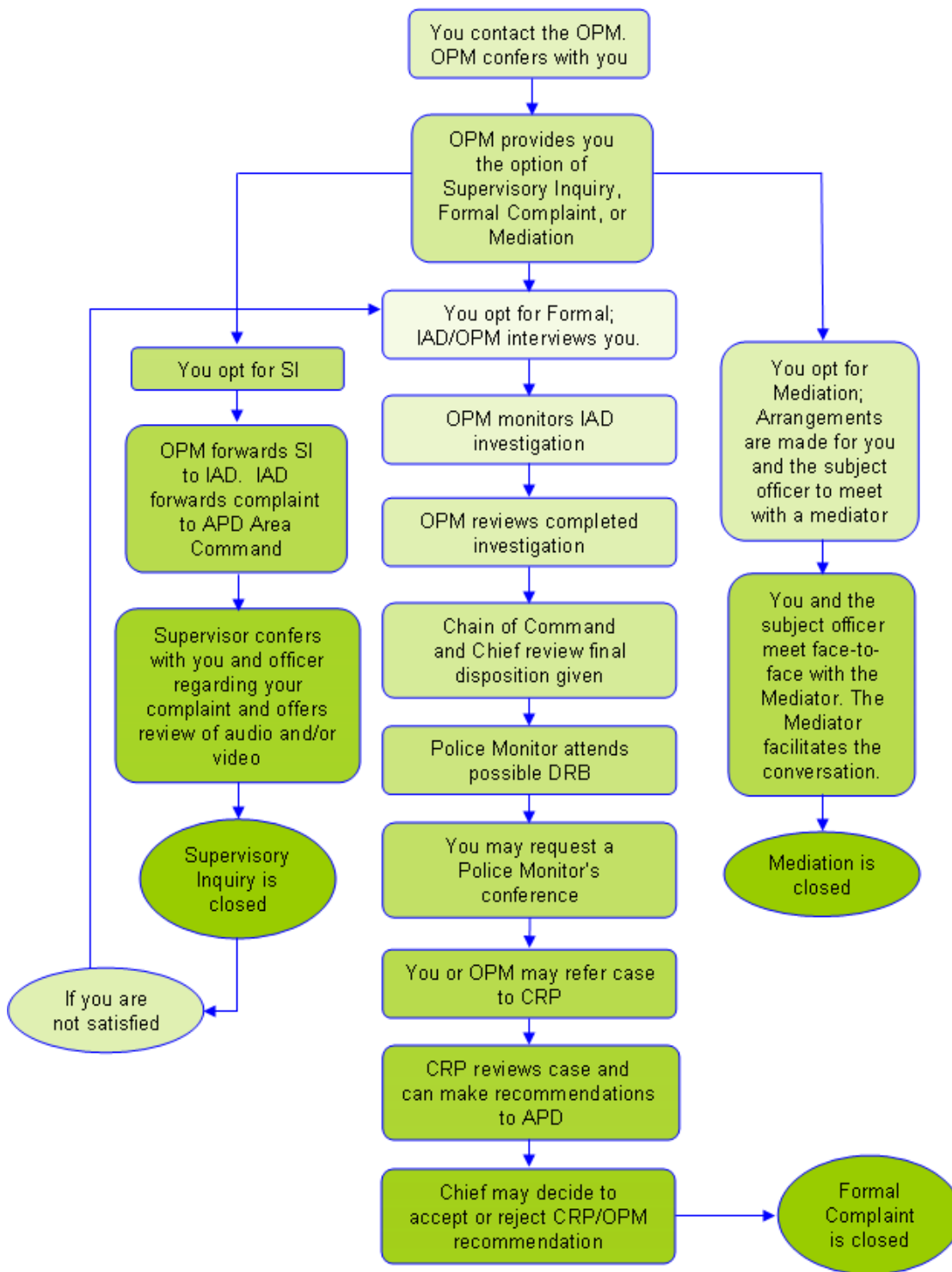
Mediation

Mediation is a third option available to a complainant. Mediation is designed to provide 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. The zip code is 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

» 2009 Year in Review

The OPM had a variety of accomplishments throughout 2009. As part of the new APD contract negotiation, the complaint process changed so that the OPM staff was allowed to conduct the intake of complainants. The effect of this change had a significant streamlining effect on the intake process. It also relieved some of the anxiety on the part of complainants associated with having to report a complaint to a police officer instead of someone outside of APD.

As a part of input provided by the Department of Justice, the OPM increased its effort to provide and stock APD stations with OPM fliers. These fliers were created to inform the public about how to file a complaint with the OPM, educational fliers about how best to interact with the police, and fliers related to traffic stops.

In March of 2009, the OPM participated in a training session on the change to the APD's Use of Force policy. The Response to Resistance initiative was presented by Chief Acevedo and his executive staff as well as training academy instructors at the APD's training facilities. The OPM's attendance was imperative so that the OPM could gain a clear understanding of the new policy and how it applies to IAD reviews and investigations.

The OPM faced its most challenging critical incident to date in May, 2009. In May, three officers were involved in a shooting that resulted in a member of the public losing his life. This case was referred to in the public as either the "Quintana matter" or the "Sanders shooting." It will be referred to herein as the "Quintana matter."

The Quintana matter raised significant questions about departmental policies regarding felony traffic stops, the use of the mobile video recording systems, and the use of deadly force. Additionally, the case raised concerns about how it was being investigated by the IAD of the APD. Even though the IAD's investigation of the case was concluded in 90 days (half the time normally allotted for critical incidents), the ramifications and fallout from the case continued well through the end of the year. The Citizen Review Panel called for an independent investigation upon completion of IAD's investigation. Ultimately, Officer Quintana was exonerated of any policy violations for his use of deadly force but was disciplined for failing to turn on his mobile video recorder. Additionally, a detective involved in the investigation of the case was fired for a Code of Conduct violation that was uncovered as part of the independent review.

As a component of the Quintana matter, the OPM attended a Town Hall meeting at the Delco Center to contribute to the APD's and city management's efforts to foster understanding of policing and community issues.

Lastly, the OPM was selected as the host city for the National Association of Civilian Oversight of Law Enforcement (NACOLE) conference. The three-day conference was well attended by both national and international representatives from other oversight

agencies. At the conclusion of the conference, Police Monitor Cliff Brown was elected as president of the NACOLE organization.

» 2009 Serious Incident Review

While there are many complaints brought throughout the year, below find a brief summary of the more serious cases of 2009. In each of these cases, at least one allegation against an officer was sustained. The reader will note that in a couple of instances, the discipline meted may seem more severe for one officer than for another. When determining the type and severity of discipline to be administered, APD consults its Discipline Matrix. The Matrix is attached in Appendix B. The Matrix serves as a guideline when doling out 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 March 7, 2009, a male officer approached a woman walking her dog and struck up a casual conversation. The officer observed that the woman was in a rental car. As a result, he was able to retrieve contact information for her. The officer began to text the woman asking her out on a date. The woman complained and IAD concluded that the officer violated the department's code of conduct and computer usage policy. The officer received a three day suspension.

On April 4, 2009, a subordinate complained to IAD that his supervisor has made continuous derogatory or racially-based comments directed at him on a variety of occasions. Internal Affairs concluded that the supervisor violated departmental policy and the supervisor received a 10-day suspension.

On May 11, 2009, three officers, Quintana, Hitzelberg, and Siddiqui, responded to a suspicious vehicle call in an apartment complex. Upon arrival, it was determined that the vehicle in question was strongly linked to a series of recent robberies. As the officers approached, the driver exited the vehicle and was taken into custody without incident. The officers observed two other persons in the vehicle.

According to the IAD investigation results, Officer Quintana opted to deal with the backseat passenger who appeared to be sleeping. Officer Quintana attempted to awaken the passenger in the backseat. In so doing, he observed a firearm and then tried to disarm the subject. A brief struggle ensued. Officer Quintana released his grip on the suspect's weapon and retreated to the back of the vehicle. Officer Quintana fired rounds into the vehicle, striking and fatally wounding Nathaniel Sanders. The right front passenger exited the vehicle moving in the direction of Officer Quintana. Officer Quintana discharged his weapon at this individual also. This individual received a gunshot wound to the chest but survived. None of the other officers discharged their weapons or sustained any injuries.

After reviewing the evidence in the case, the Citizen Review Panel recommended a 90 day suspension for Officer Quintana for tactics violations. The APD did not sustain on

any Use of Force or Code of Conduct allegations. Instead, Officer Quintana received a 15-day suspension for failing to activate his mobile video recorder; Officer Siddiqui received a three-day suspension for the same violation. After this incident, the penalties for failing to activate a mobile video recorder were strengthened. Per the APD General Orders A109d – the Discipline Matrix – the penalties for failing to activate a mobile video recorder now range from a written reprimand to an indefinite suspension. The latter being if an officer intentionally does not activate the recorder in a critical incident.

On May 13, 2009 a detective in Internal Affairs assigned to the May 11, 2009 critical incident sent an email to IAD personnel suggesting that the suspect's criminal records would suffice for police response and interaction with the intent to justify the officer's reason for stopping them and, possibly, the use of deadly force. The email was discovered in October of 2009 by the independent investigator. A separate IAD investigation was initiated determining that the detective violated departmental policy and jeopardized the integrity of the case. The detective was indefinitely suspended and lost his appeal during an arbitration hearing.

On September 3, 2009, an APD detective had discussed a traffic stop with a patrol officer that involved a friend of his girlfriend. The detective then attempted to have the ticket dismissed by traffic court on the basis that the recipient was one of his confidential informants. An IAD investigation concluded that the detective was deceptive with one of his peers and his immediate supervisor. He received a 90-day suspension.

On November 1, 2009, an officer, while in the process of arresting a subject, poured water on the subject's property, poured beer on the subject's leg, spoke to the subject in an unprofessional manner, and failed to document the force that was used on the subject. The officer received a 10-day suspension.

» 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 2009 reporting year.

- The Office of the Police Monitor was contacted 1,595 times in 2009 by the public or members of the APD wishing to lodge a complaint against an APD officer or officers – an increase of 6% over 2008 (page 16).
- Of these 1,595 contacts, 1,358 were contacts from the public. Of these 1,358 contacts from the public, 676 resulted in some sort of complaint being filed against one or more members of the APD (page 16).
- The number of External Formal Cases dropped to its lowest level in the history of the OPM with only 108 complaints filed (page 16).
- The number of Supervisory Inquiries grew again this year to 568 – an increase of 12% over 2008. The OPM still believes this is likely attributable to the fact that Supervisory Inquiries take 30 days or less to process, as opposed to a Formal Complaint which can take up to 180 days. Also, generally speaking, when filing a Supervisory Inquiry, the complainant will have the opportunity to speak to the involved officer's supervisor (page 17).
- While case classifications on Internal Formal Complaints remained static, External Formal Complaints classified as "Ds" saw the largest increase in five years. This is a concern as the inference is that from the beginning IAD has determined the allegation has no merit (page 19).
- Fewer cases also means fewer allegations. Out of 222 total allegations, 145 were Code of Conduct allegations. Code of Conduct allegations continue to be those filed most often of any type of complaint (pages 21-23).
- When including both External Formal Complaints and Supervisory Inquiries, most complaints stem from incidents occurring in the Central East (CE) and Downtown (DTAC) area commands (page 25).
- With most complaints stemming from these area commands, it stands to reason that these areas would also see the highest number of allegations (page 26).

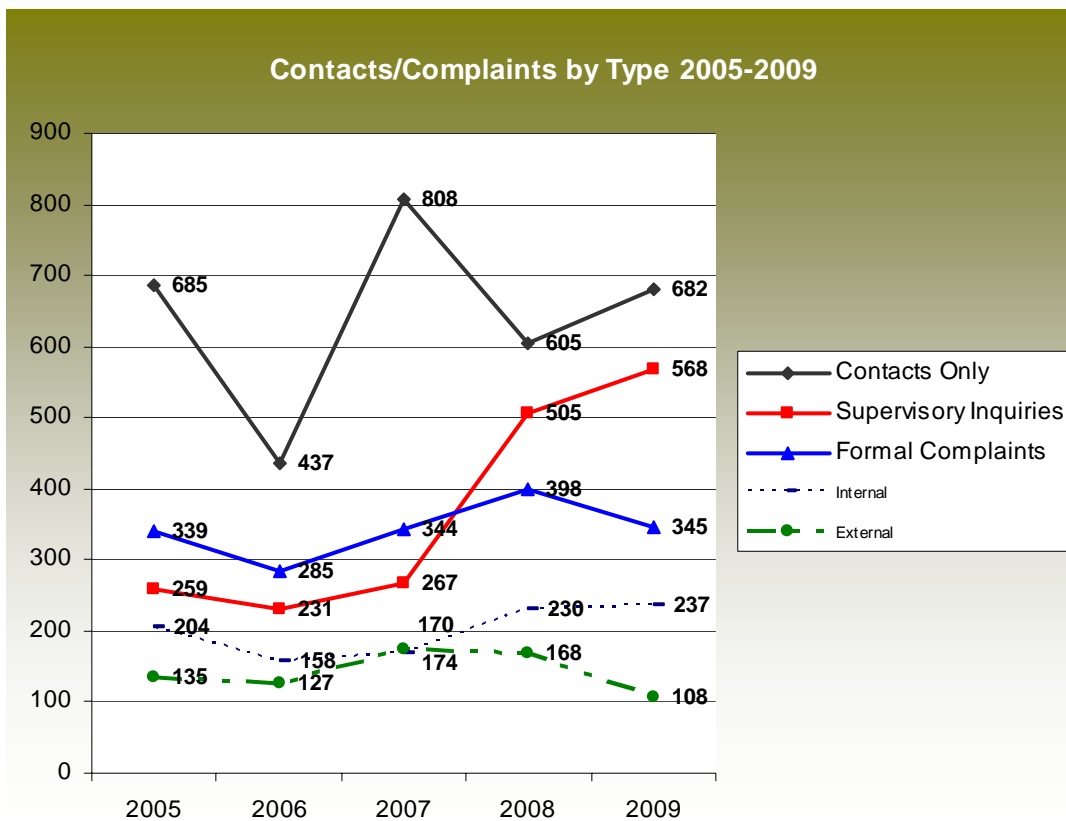
- Interestingly, the South Central (SC) area command had almost the same number of allegations as Central East and Downtown but five percent fewer complaints (pages 25-26).
- Downtown reported only four Use of Force allegations stemming from External Complaints; yet, according to the APD's 2009 Response to Resistance report, 28% of the 1,709 response to resistance events occurred in the Downtown area. So few allegations seem to indicate a lack of awareness on the part of the public regarding how and where to file a complaint (page 27).
- In Internal Formal Complaints, there were only 39 Use of Force allegations filed city-wide. This, too, is concerning and brings into question whether the Response to Resistance reporting requirements are being followed (pages 23 & 27).
- The percentage of time IAD has "Administratively Closed" an allegation has increased despite IAD investigating fewer cases. While the OPM is not able at this time to quantify a reason for this, there is a belief that several factors are likely in play. These include, but are not limited to, a revision to the APD General Orders, new staff in IAD, and the relationship between allegation decisions and the APD's early intervention system (pages 28-29).
- The percentage of time the APD chain of command has rendered an allegation as Administratively Closed is also up but only slightly, which is in stark contrast to IAD (page 29).
- Members of the public filing the most complaints tend to be Caucasian, followed by Blacks/African Americans, and then Hispanics/Latinos, respectively. While Caucasians complain at a rate relative to their percentage of the population, Blacks/African Americans complaint rate is three times higher than their representation in the population. Hispanics/Latinos complaint rate is approximately 41% lower than their population representation. From the anecdotal evidence, it appears that while Hispanics/Latinos may have complaints they would like to file, they are hesitant to do so. The OPM will be doing more outreach in an effort to address this issue (pages 32-33).
- External Formal Complaints stemming from the 30-39 year old age group have been steadily increasing (page 34).
- For officers involved in a 2009 complaint, the average length of service was between 7-9 years. This is consistent with what the OPM has seen in the past and begs the question as to the factors coming into play in this timeframe (page 36).

» End of Year Statistics

Number of Contacts/Complaints

Contacts include all individuals contacting the OPM with the intention of filing a complaint including contacts from within APD. During a consultation with a complaint specialist, the complainant is made aware of the avenues available to him/her.

In 2009, the OPM monitored 345 formal complaints as compared to 398 in 2008. Of the 345 formal complaints, 237 were internal cases and 108 were external cases. In the figure below, the term “contacts only” means that a person reached out to the OPM but then, for whatever reason, did not file a Supervisory Inquiry or a Formal complaint.



“Contacts only” were up slightly from 2008, as were the number of Supervisory Inquiry complaints. In 2009, the total number of Supervisory Inquiries grew by 12% (63). While the total number of Supervisory Inquiries was up again in 2009, the increase was not as dramatic as from 2007 to 2008.

The number of External Formal complaints was down in 2009 by 36% (60) from 2008. The number of Internal Formal complaints was up but only slightly (7).

Complainants have a choice between filing a Supervisory Inquiry or filing a Formal complaint. Supervisory Inquiries have increased over the past two years while the

number of External Formal complaints has gone down during the same period. Supervisory Inquiries are 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 civilians who are filing complaints about behavior which is less serious in nature, the option to speak directly with an officer's supervisor.

When a complainant files a Supervisory Inquiry, they have the option of speaking directly to an officer's supervisor. While the OPM believes this option is one of the factors which leads complainants to choose this avenue, other factors may also come into play. One factor is time—Supervisory Inquiries 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 majority of complaints being brought do not involve accusations of serious misconduct.

The OPM assesses complainant satisfaction with the chain of command's resolution of the 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 2009, only 16 complainants chose to advance to a Formal complaint after first going through the Supervisory Inquiry process.

Because so many cases are now being filed as Supervisory Inquiries, the OPM will be collecting more data so that more information on these types of complaints can be included in its future reports.

Classification of Complaints

When a complaint is lodged, it is sent to IAD for classification. The classification is intended to identify the severity of a case. 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, the complaint is about the probable cause for arrest or citation.

Please note that only Formal complaints will receive one of the classifications listed above. Supervisory Inquiries are not subject to the same classifications since they contain less serious complaints.²

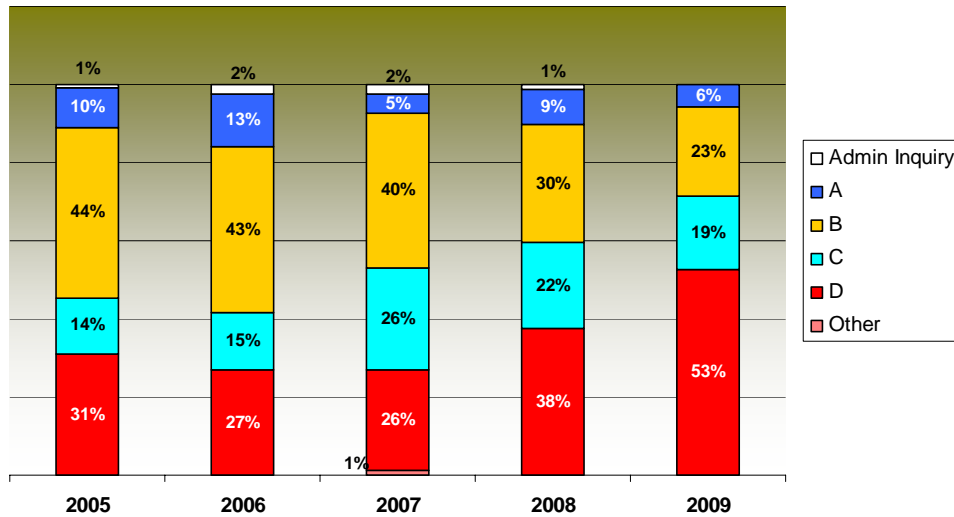
Since the OPM began its mission of oversight, there has been a notable difference in case classifications between external and internal cases. Cases are classified by IAD according to the severity of the allegations included in the complaint. At this point, it is generally accepted that the discrepancy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

When an internal case is brought, it typically involves one officer bringing forth an allegation concerning the conduct of another officer. In these circumstances, the officers involved will and do have extensive knowledge of the general orders under which the complaint has been brought. The assignment of a classification, therefore, is fairly apparent. As such, Internal Formal complaint classifications have remained relatively

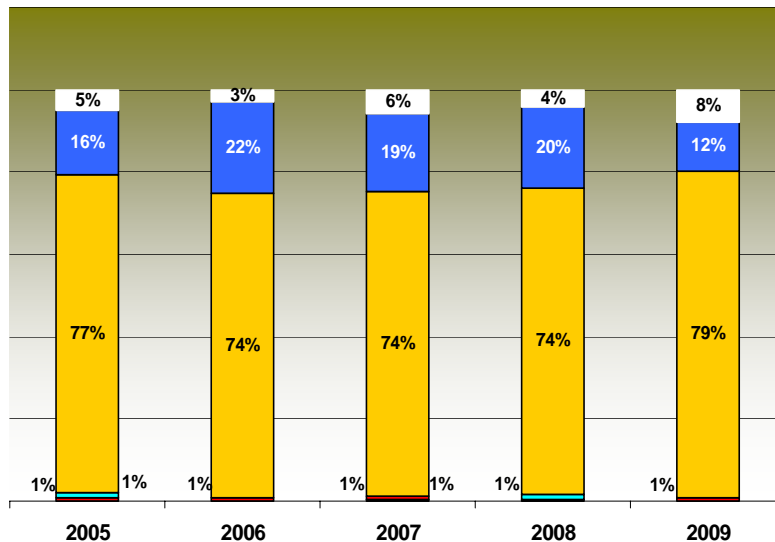
² Should more serious allegations be uncovered during a Supervisory Inquiry, the case would be elevated to a Formal complaint and would then be classified.

static over the years. External Formal Complaints have seen more flux. Of concern to the OPM this year, however, is the increase in the percent of “D” classifications for External Formal complaints. In 2009, 53% of all External Formal complaints received a “D” classification. The concern 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

Classification of External Formal Complaints



Classification of Internal Formal Complaints



The problem with this system is that classifying a complaint as a “D” almost seems to preclude actually doing an investigation. As written, classifying something as a “D” seems to infer that from the beginning, IAD has determined the allegation has no merit.

With that said, over the years, the OPM's agreement rate on IAD's case classifications has steadily increased. 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. 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. Most of the disagreement in case classifications has stemmed from those cases that were ultimately classified by IAD as lower level cases. In fact, it is in the "D" cases where OPM had any level of disagreement in 2009.

Number and Types of Allegations

The data show that 222 fewer allegations were brought in 2009 than in 2008 across all complaint types. However, since sixty (60) fewer External Formal cases were filed in 2009, it stands to reason that the total number of allegations would be down correspondingly.

Number of Allegations	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
Supervisory Inquiries	258	29%	247	35%	328	37%	494	44%	354	39%	-140	-28%
Formal Complaints	617	71%	461	65%	563	63%	630	56%	548	61%	-82	-13%
External	283	46%	233	51%	314	56%	326	52%	222	41%	-104	-32%
Internal	334	54%	228	49%	249	44%	304	48%	326	59%	22	7%
Total	875		708		891		1,124		902		-222	-20%

To compensate for the drop in total External Formal cases, the OPM looked at the number of allegations as a proportion relative to the number of complaints. When looking at the data this way, the OPM saw that allegations were down only slightly from 2008 for External Formal complaints.

It should be noted that a single complaint may include multiple allegations. These multiple allegations can apply to a single officer or there may be a single allegation brought against multiple officers. Either way, as each allegation is counted, the total number of allegations will always equal or exceed the total number of complaints.

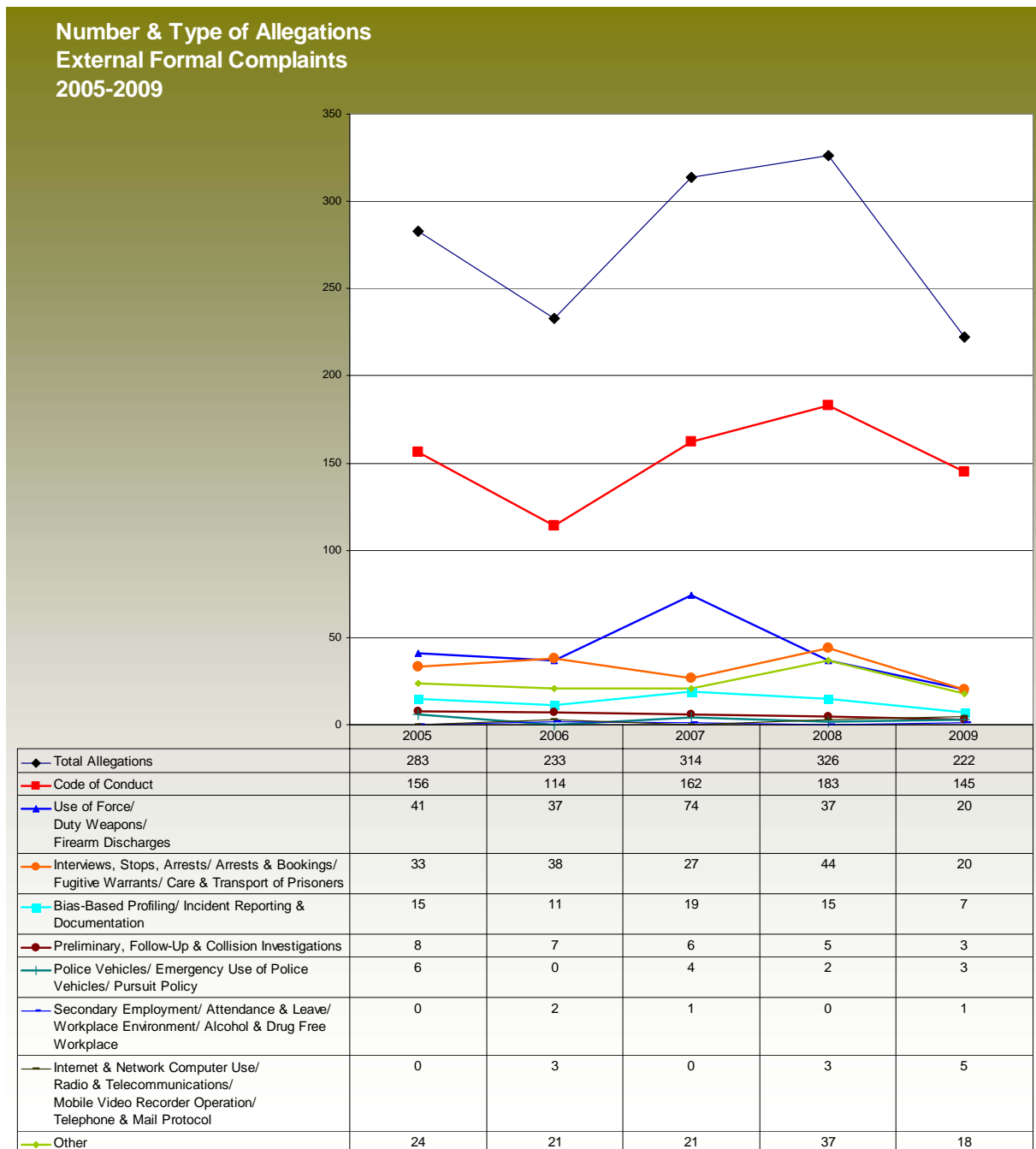
As in years past, Code of Conduct issues continue to be the most frequently reported allegation for both Supervisory Inquiries as well as External Formal complaints. This has been the case since the OPM began tracking complaints.

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.

Given that almost all allegations brought forward involve Code of Conduct issues and because the Code of Conduct policies are so numerous, the OPM has asked IAD to provide more detail regarding these types of allegations; IAD has committed to doing so. The benefit of this is that, in the future, the OPM will be able to provide numerical

data for the specific Code of Conduct violation, .e.g., Duty to Take Action, or Dishonesty, rather than simply reporting in the generic.



Police vehicles, et al., is the most frequent allegation lodged internally. Police vehicle allegations stem mostly from single car incidents where a person is not injured but a police vehicle is damaged or misused in some way.

Supervisory Inquiries are unique in that they often do not result in formal discipline (e.g., a written reprimand or suspension). For example, if a Supervisory Inquiry complaint came in that centered on a courtesy issue, IAD may or may not have included

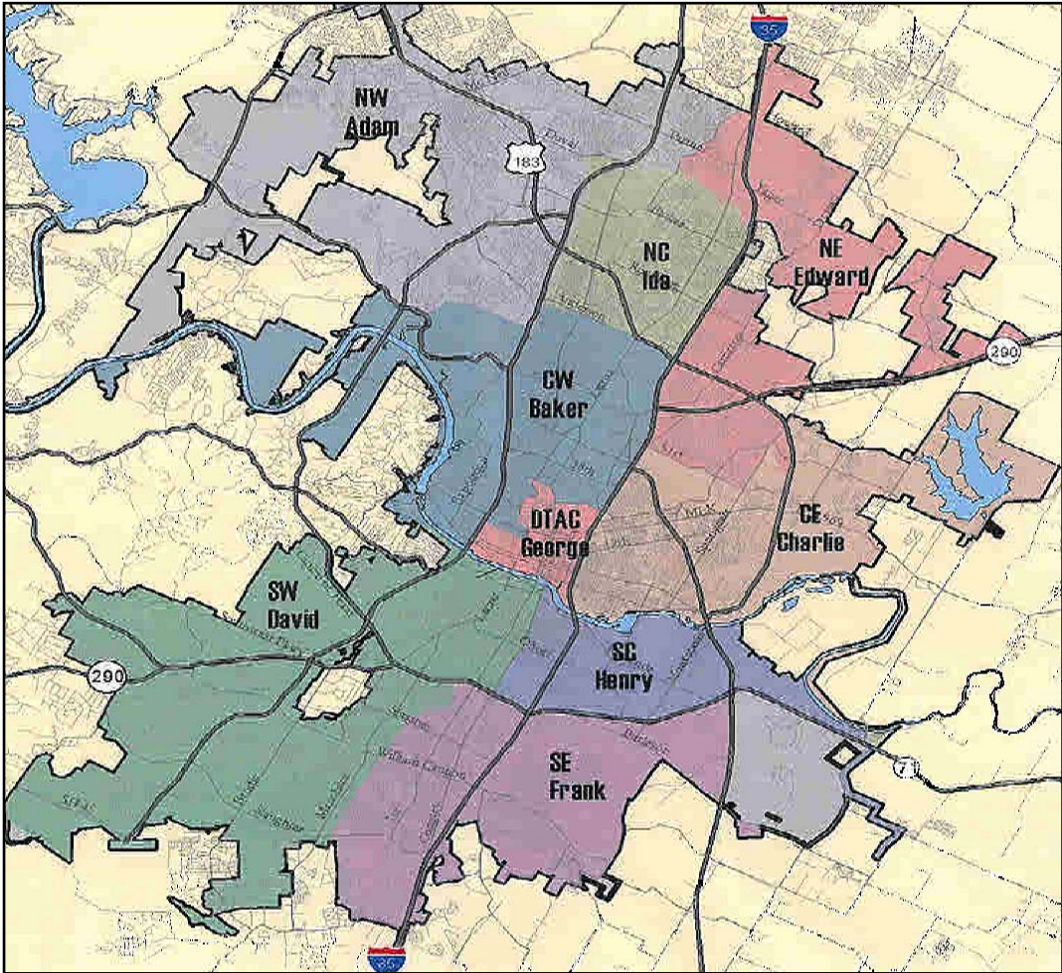
the Code of Conduct “allegation.” Therefore, the statistics for Supervisory Inquiry allegations is vastly different from that of Formal complaints. Unlike Formal complaints, the total number of Supervisory Inquiries is up, yet on its face, the total number of allegation categories for Supervisory Inquiry complaints appears to be down.

Allegation	2009					
	SI		External		Internal	
	#	%	#	%	#	%
Code of Conduct	335	95%	145	65%	96	29%
Use of Force/ Duty Weapons/ Firearm Discharges	2	1%	20	9%	39	12%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	2	1%	20	9%	6	2%
Bias-Based Profiling/ Incident Reporting & Documentation	0	0%	7	3%	1	0%
Preliminary, Follow-Up & Collision Investigations	5	1%	3	1%	1	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	6	2%	3	1%	153	47%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	0	0%	1	0%	3	1%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	5	2%	7	2%
Other	3	1%	18	8%	20	6%
Unknown	1	0%	0	0%	0	0%
Total	354		222		326	

This is because, technically, assigning a complaint category is not a requirement for Supervisory Inquiries. Nevertheless, by not including an allegation category, the number of allegations associated with Supervisory Inquiries looks quite low, i.e., fewer allegations than complaints (SI allegations = 354 while SI complaints = 568). The OPM is working with IAD to rectify this situation and anticipates this will not be an issue moving into 2010. In 2009, however, the OPM can only provide a sense of the types of complaints being brought in Supervisory Inquiry complaints.

Complaints by Area Command

The City of Austin had nine (9) area commands in 2009. Below find a map of their geographic areas.



NW = Northwest; **CW** = Central West; **CE** = Central East; **SW** = Southwest; **NE** = Northeast; **SE** = Southeast; **DTAC** = Downtown; **SC** = South Central; **NC** = North Central

As External Formal complaints as a whole were down in 2009, it would not be unreasonable to assume that there would be fewer complaints in each of the area commands. For the most part, this was true with two exceptions – there were increases in the Northwest (NW) and Central West (CW) area commands.

EXTERNAL FORMAL	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
Downtown (DTAC)	26	19%	27	21%	32	18%	30	18%	21	19%	-9	-30%
Central East (CE)	18	13%	21	17%	25	14%	29	17%	19	18%	-10	-34%
South Central (SC)	12	9%	10	8%	11	6%	22	13%	12	11%	-10	-45%
Southwest (SW)	13	10%	10	8%	17	10%	13	8%	11	10%	-2	-15%
Northwest (NW)	11	8%	10	8%	12	7%	6	4%	10	9%	4	67%
Central West (CW)	10	7%	12	9%	5	3%	4	2%	9	8%	5	125%
Northeast (NE)	14	10%	18	14%	16	9%	18	11%	8	7%	-10	-56%
Southeast (SE)	13	10%	9	7%	28	16%	20	12%	8	7%	-12	-60%
North Central (NC)	9	7%	7	6%	16	9%	18	11%	6	6%	-12	-67%
Out of City	6	4%	2	2%	7	4%	5	3%	4	4%	-1	-20%
Unknown	3	2%	1	1%	5	3%	3	2%	0	0%	-3	-100%
Total	135		127		174		168		108		-60	

The Downtown area command (home to most entertainment venues) continues to receive the most External Formal complaints of any area command, although in 2009 its total number of complaints dropped by 30% (9).

The OPM has historically reported only External Formal complaints by area command. With the shift in the type of complaints the OPM is seeing, this year the OPM has included Supervisory Inquiry complaints by area command as well. As can be seen, when adding in Supervisory Inquiry complaints, the top three area commands in terms of total complaints shifts slightly when compared to reporting External Formal Complaints only.

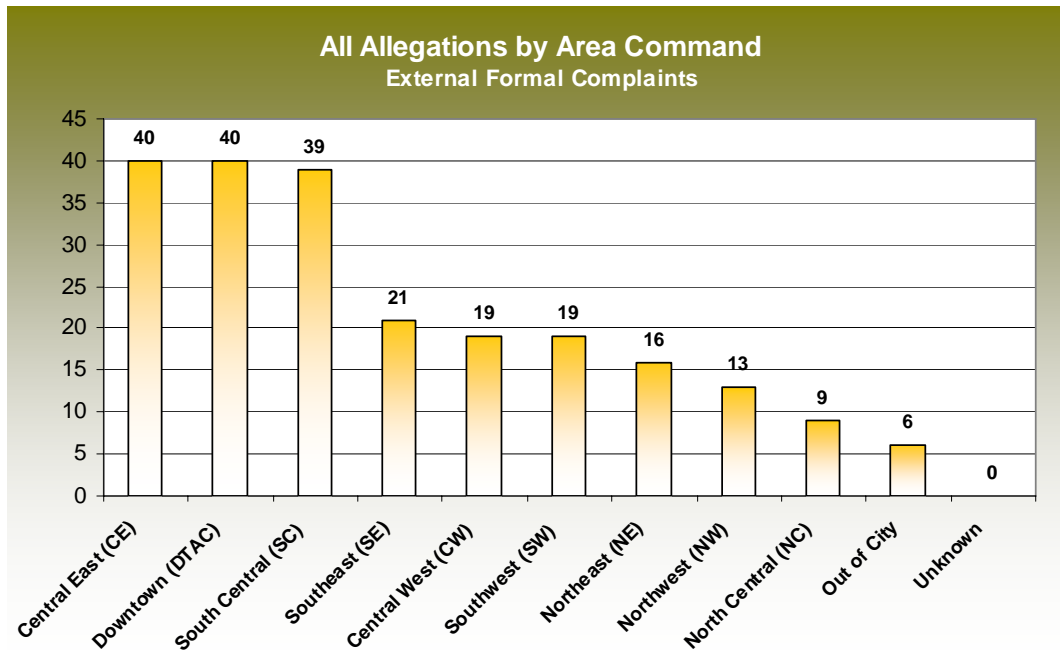
Area Command	Supervisory Inquiries		External Formal		Total Complaints	
	#	%	#	%	#	%
Central East (CE)	77	14%	19	18%	96	14%
Downtown (DTAC)	73	13%	21	19%	94	14%
Central West (CW)	74	13%	9	8%	83	12%
Northeast (NE)	67	12%	8	7%	75	11%
Southeast (SE)	55	10%	8	7%	63	9%
South Central (SC)	49	9%	12	11%	61	9%
Southwest (SW)	46	8%	11	10%	57	8%
North Central (NC)	45	8%	6	6%	51	8%
Northwest (NW)	40	7%	10	9%	50	7%
Out of City	5	1%	4	4%	9	1%
Unknown	37	7%	0	0%	37	5%
Total	568		108		676	

Some caution should be used when reviewing this table, however, since sometimes Supervisory Inquiries are not 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 or that the complaint was more generic in nature rather than relating to a specific officer.

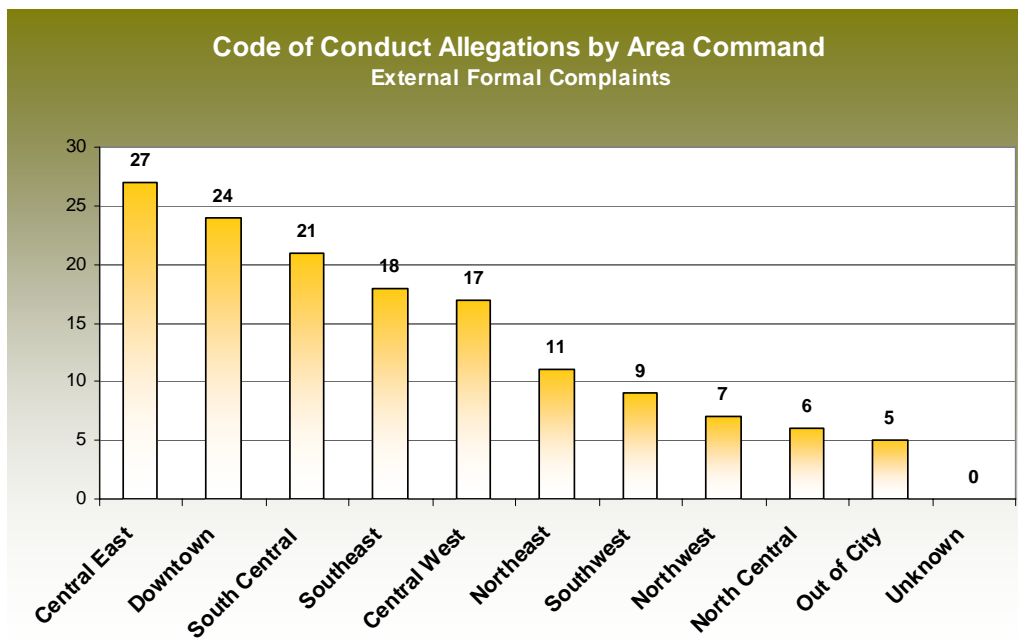
Allegations by Area Command

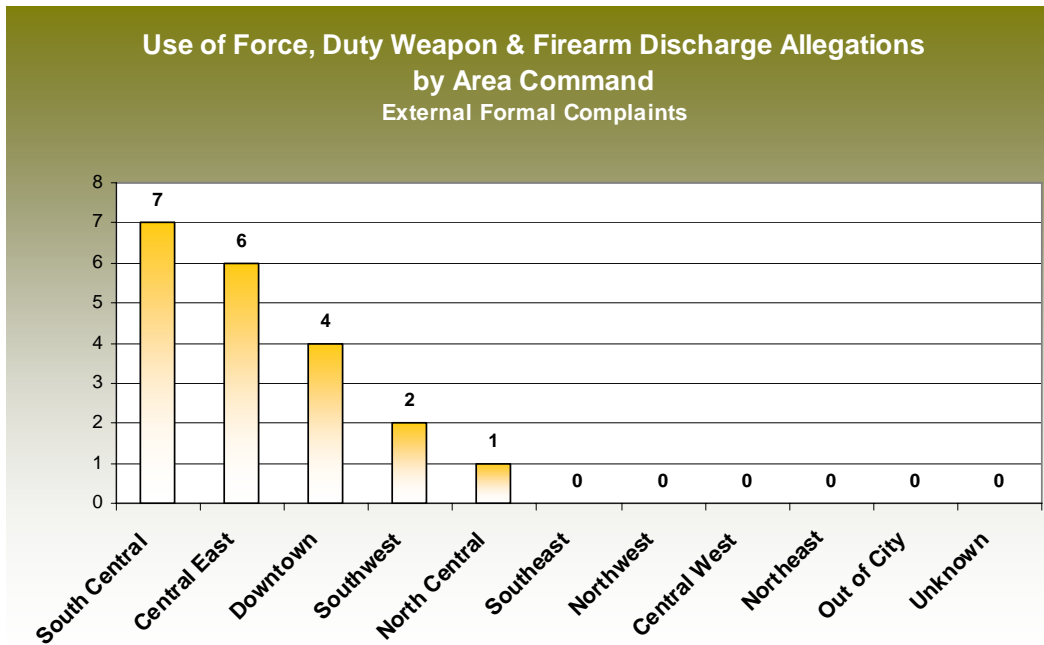
The Central East, Downtown and South Central area commands saw the greatest number of allegations in 2009 for Formal External Complaints. Interestingly, South Central had five percent fewer complaints than Central East and Downtown.

The next grouping consisted of the Southeast, Central West and Southwest area commands. This pattern is fairly consistent with what has been seen in years past.



The majority of all Code of Conduct allegations occurred within five area commands – Central East, Downtown, South Central, Southeast and Central West.





There were very few Use of Force allegations brought forward by the public in External Formal complaints in 2009. Only five area commands had this issue brought as an allegation at all. Most Use of Force allegations originated from the South Central and Central East area commands.

The Downtown area command reported only four Use of Force allegations. Yet according to the APD's 2009 Response to Resistance report, 28% of the 1,709 response to resistance events occurred in the Downtown area. Given this number of events, so few Use of Force allegations originating from the public may indicate a lack of awareness by the public of how and where to file a complaint. The lack of Internal Formal Complaints calls into question whether the Response to Resistance policy is being followed. The lack of Internal Formal Use of Force Complaints is an area the OPM needs to research and monitor further. –

Investigative Findings for Formal Complaints

Once an investigation is finished, IAD or 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.

OF SPECIAL NOTE: With the 2008 change in practice wherein the APD chain of command began investigating lower-level class B formal complaints, IAD may or may not also make a recommendation on each allegation. This practice began mid-year 2008 so the impact on the number of IAD decisions, while pronounced, was not as dramatic as it appears in 2009. Now that the practice has been in place for a full reporting year, the number of times IAD has made a recommendation has dropped even further. The decrease in decisions is based both on the fact that IAD is *investigating* fewer complaints, as well as that fewer formal complaints are being filed.

IAD Recommendation	External				Internal			
	2008		2009		2008		2009	
	#	%	#	%	#	%	#	%
Sustained	15	7%	9	11%	122	73%	11	31%
Inconclusive	9	4%	0	0%	9	5%	1	3%
Exonerated	15	7%	1	1%	4	2%	0	0%
Administratively Closed	161	70%	68	83%	21	13%	17	49%
Unfounded	30	13%	4	5%	11	7%	6	17%
Total	230		82		167		35	

Although the number of allegations is down, as a percentage of total recommendations made on External Formal Complaints, IAD is rendering an allegation as “Administratively Closed” more in 2009 than in 2008. That said, the percentage of allegations that were “Sustained” in 2009 is also up, although only slightly. Correspondingly, the percentage of allegations that were “Exonerated” is down.

For Internal Formal allegations, the percentage of Sustained allegations and Exonerations is down while, even for Internal Formal allegations, those allegations being Administratively Closed is up.

There are other factors within APD that are likely driving the decision to Administratively Close an allegation as opposed to rendering an Exonerated decision. Nonetheless, the percentage of allegations being Administratively Closed is concerning to the OPM. Unfortunately, a definitive answer based on quantifiable data is not something the OPM can provide so soon after the practice change. While it is possible IAD is simply rendering Administratively Closed decisions a greater percentage of the time, it is also possible that the cases remaining with IAD are patently not violations of policy and, therefore, warrant being Administratively Closed. It could also be that the make-up of cases brought in 2009 resulted in the percentages reported. The OPM will continue to watch these numbers and hopes to provide an answer to these questions as more data become available.

In the meantime, it is the belief of the OPM, the hypothesis, if you will, that there are several factors that may have a direct relation to the increase in Administratively Closed allegation decisions. These include, among others, issues related to the revision of the APD General Orders, new staff within IAD, and the relationship between allegation decisions and the APD's early intervention system.

As for the increase in the APD chain of command decisions, it is important to remember that prior to 2008, the APD chain of command would only make decisions after IAD had recommended sustaining an allegation. As such, the number of APD chain of command decisions was lower before the practice change. With the practice change in 2008, the APD chain of command decisions, naturally, increased. The drop in the number of APD chain of command decisions for 2009 External Formal allegations is simply a result of fewer complaints coming in from the public.

Chain of Command Decisions	External				Internal			
	2008		2009		2008		2009	
	#	%	#	%	#	%	#	%
Sustained	32	10%	22	10%	234	81%	218	71%
Inconclusive	21	7%	6	3%	14	5%	16	5%
Exonerated	31	10%	11	5%	4	1%	9	3%
Administratively Closed	160	51%	128	59%	23	8%	42	14%
Unfounded	72	23%	49	23%	14	5%	24	8%
Added/Changed at DRB	0	0%	0	0%	0	0%	0	0%
Total	316		216		289		309	

From the 2008 practice change moving forward, the percentage of times the APD chain of command decided to sustain an allegation or decided it was Unfounded remained static for External Formal allegations. Allegations regarded as Inconclusive or Exonerated were down. Those that were Administratively Closed were up only slightly which is in stark contrast to the percentage of allegations being Administratively Closed by IAD.

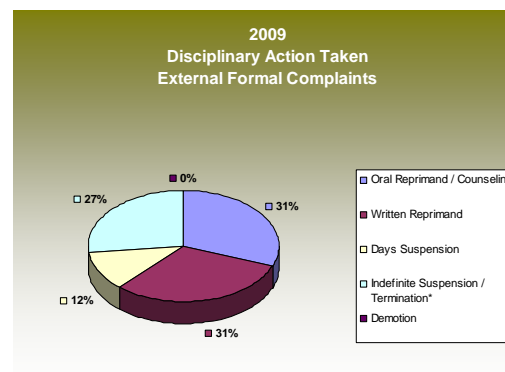
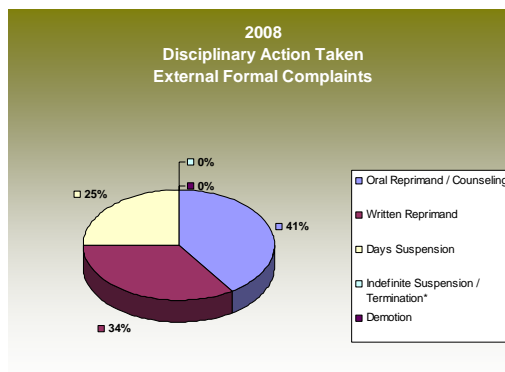
Disciplinary Action

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 terminated, i.e., an “Indefinite Suspension.” 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. So, for example, an officer may be suspended for one allegation and counseled on another all within the same complaint. Also, 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.

EXTERNAL	2005		2006		2007		2008		2009		2008 vs. 2009
Disciplinary Action Taken	#	%	#	%	#	%	#	%	#	%	% Change
Oral Reprimand / Counseling	6	27%	13	39%	10	43%	13	41%	8	31%	-38%
Written Reprimand	8	36%	8	24%	6	26%	11	34%	8	31%	-27%
Days Suspension	6	27%	10	30%	5	22%	8	25%	3	12%	-63%
Indefinite Suspension / Termination*	2	9%	2	6%	2	9%	0	0%	7	27%	700%
Demotion	0	0%	0	0%	0	0%	0	0%	0	0%	0%
Total	22		33		23		32		26		-19%

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

Again, because the total number of External Formal Complaints is down, the number of allegations is also down. With fewer allegations, of course there will also be less disciplinary action taken. Interesting to note, however, is that in 2009, as a percentage, the most common form of discipline—an oral reprimand (or counseling)—was down from 2008 to 2009. While allegations resulting in indefinite suspensions or terminations (including retirements and resignations) appear to be up, the fact is that all seven of the termination actions in 2009 stem from two cases. In each of these cases, there was only one subject officer but each of the subject officers had multiple allegations filed against them. Both cases involved Code of Conduct issues that were not related to interaction with the public but rather were acts of personal misconduct that were reported by the public.



Unlike the number of External Formal Complaints, the number of Internal Formal Complaints went up slightly in 2009. It was only slightly less surprising, therefore, to see a large increase in Indefinite Suspensions/Terminations. In all of the Indefinite Suspensions/Terminations, the associated allegations were Code of Conduct related.

INTERNAL	2005		2006		2007		2008		2009		2008 vs. 2009
Disciplinary Action Taken	#	%	#	%	#	%	#	%	#	%	% Change
Oral Reprimand / Counseling	73	44%	40	31%	42	29%	81	35%	84	36%	4%
Written Reprimand	44	26%	59	45%	73	51%	92	39%	75	32%	-18%
Days Suspension	46	28%	29	22%	21	15%	44	19%	47	20%	7%
Indefinite Suspension / Termination*	4	2%	2	2%	7	5%	13	6%	25	11%	92%
Demotion	0	0%	0	0%	1	1%	0	0%	3	1%	300%
Total	167		130		144		230		234		2%

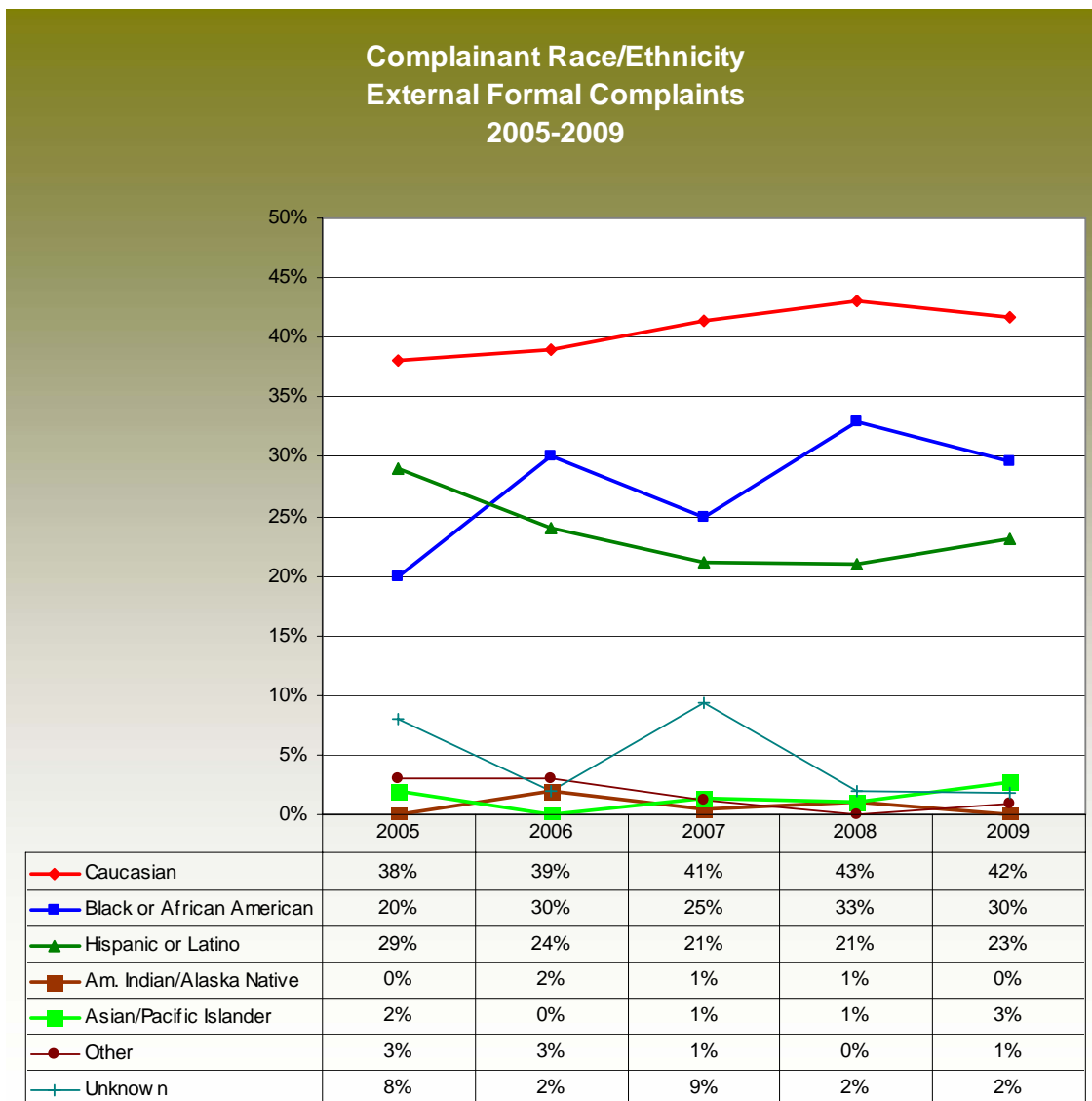
*Includes Resignations or Retirements occurring while the officer was under investigation

The number of actions that are included in the realm of “Code of Conduct” are exceedingly numerous and include a broad range of behavior. In discussing this issue with IAD, it was generally agreed that all parties should do a better job documenting these types of allegations, particularly in light of the fact that these are the most frequently filed.

Complainant Demographics

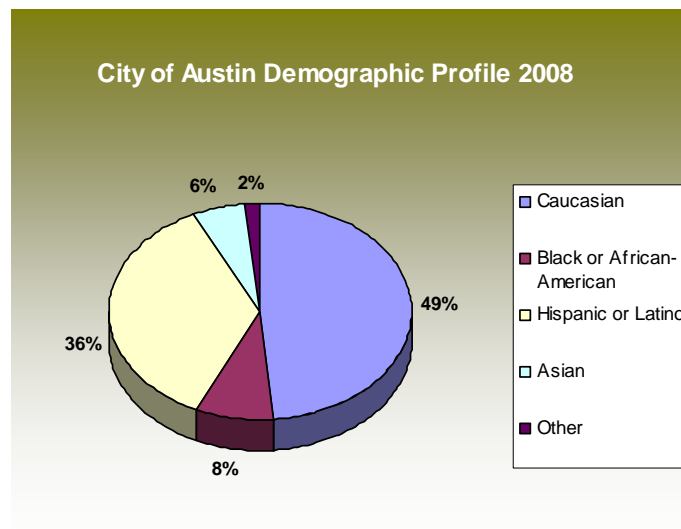
The demographic information provided below is for the members of the public that contacted the OPM with a complaint. Complaints can be filed at the OPM in person, over the telephone, via e-mail, facsimile, or by mail. Because of the various methods of contacting the OPM, at times the OPM finds thorough collection of all demographic data points somewhat challenging. Often complainants simply do not wish to share this information, particularly over the telephone. This challenge proves to be more problematic with Supervisory Inquiries as can clearly be seen in the high percentages of missing or unknown data in this category. The OPM will continue to strive to improve data collection methods and aims to have more complete data in future reports.

Please note that this group is not made up of unique individuals since someone may file more than one complaint and/or more than one type of complaint if they were involved in more than one incident.



External Formal complaints were down in 2009 and external Supervisory Inquiries were up. For both Supervisory Inquiries and External Formal Complaints, Caucasians continue to file the most complaints, 41% and 42% respectively.

Ethnicity/Race	Supervisory Inquiries		External Formals		Total	
	#	%	#	%	#	%
Caucasian	235	41%	45	42%	280	41%
Black or African American	142	25%	32	30%	174	26%
Hispanic or Latino	120	21%	25	23%	145	21%
Am. Indian/Alaska Native	3	1%	0	0%	3	0%
Asian/Pacific Islander	8	1%	3	3%	11	2%
Other	7	1%	1	1%	8	1%
Unknown	53	9%	2	2%	55	8%
Total	568		108		676	

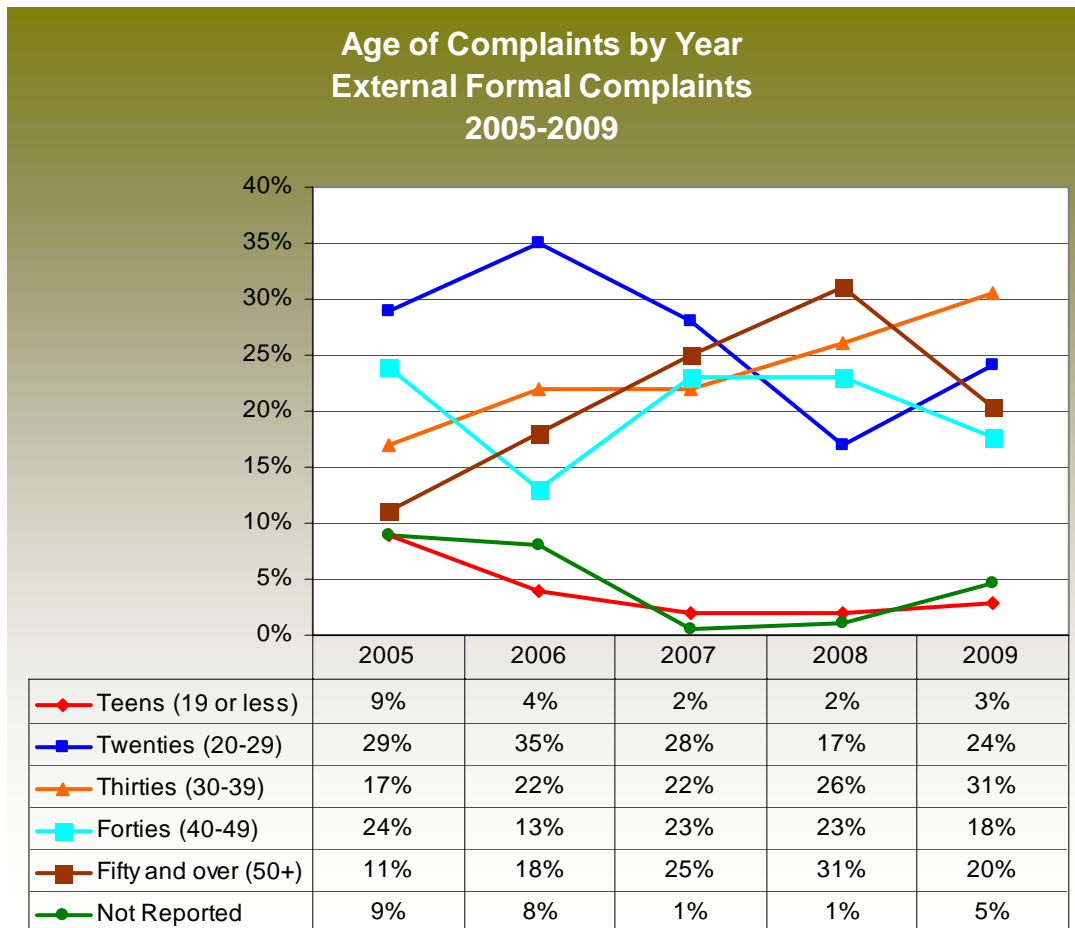


While Caucasians file the most complaints, this is still not in line with this group's overall percentage of the Austin population. According to the City of Austin Planning Department, Caucasians make up 49% of the Austin population (as of 2008).

Conversely, Blacks/African Americans file more complaints relative to their population. According to the City of Austin Planning Department, Blacks/African Americans make up 8% of the Austin population (as of 2008) but filed 30% of the External Formal complaints and 25% of Supervisory Inquiries in 2009. The percentage of External Formals complaints for this group is down slightly in 2009 while the percentage of Supervisory Inquiries was up by a like percentage.

Hispanics/Latinos file at a rate much lower than their relative percentage of the Austin population. In 2008, this group made up 36% of the population but only filed 18% of the External Formal complaints. The percent of complaints filed moved up in 2009 to 21%. While it is not the desire of the OPM to see more complaints filed, this lower

relative percentage continues to be a concern. From the anecdotal evidence, it appears that Hispanics/Latinos are hesitant to file complaints as opposed to not having complaints. This may be due to language barriers, distrust of the police, and/or immigration status. The OPM will be doing greater outreach to address these impediments.

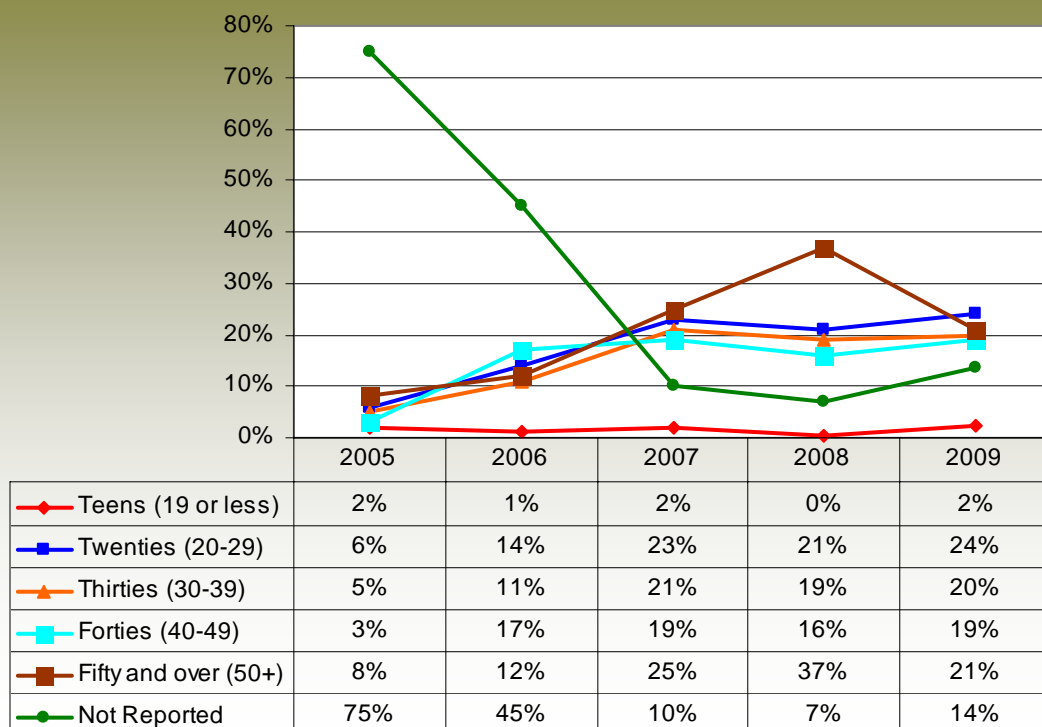


Over the past five years, External Formal Complaints stemming from the public in the 30-39 year old age group have been steadily increasing. Moving forward the OPM will attempt to determine if this group shares other characteristics besides age.

After peaking in 2005, the number of External Formal complaints by teenagers has continued to fall.

External Formal complaints by those over 40 decreased from 2008 to 2009 after climbing steadily for the previous four years.

Age of Complainants by Year Supervisory Inquiries 2005-2009



The age of persons filing Supervisory Inquiry complaints has remained relatively consistent over the past five years except for 2008 when a large percentage of people over 50 filed a complaint.

The gender composition of Austin in 2009 was estimated as approximately 53% male and 47% female. When looking at complaint gender (below), it can be seen that males file External Formal Complaints at a rate slightly higher than their representation in the population, while females file at a rate that is slightly lower. The gender of complainants filing Supervisory Inquiries tracks exactly to the gender estimates of the City.

Complainant Gender	Supervisory Inquiries		External Formals		Total	
	#	%	#	%	#	%
Female	266	47%	43	40%	309	46%
Male	299	53%	65	60%	364	54%
Not Reported	3	1%	0	0%	3	0%
Total	568		108		676	

Subject Officer Demographics

Presented in this section will be a bit of background information on the officers that were the subjects of complaints in 2009. This information is provided only for complaints brought forth by the public, that is, external complaints only.

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 were the subject of more than one type of complaint.

The average length of time an officer had served on the force until the date of the incident with the public was seven (7) years for Supervisory Inquiries and eight (8) years for Formal Complaints. This average length of service is consistent with what the OPM has reported in the past.

Years of Service	Supervisory Inquiries	External Formals
Average tenure	7	8
Longest tenure	32	36
Shortest tenure	<1	<1
Tenure midpoint	5	6
Most common tenure	<1	9

In 2009, there were approximately 1,600 sworn personnel making up the APD. It has long been the case that the average length of service for subject officers is within the 7-9 year range. Given the consistency of these durations, the OPM will again recommend that APD institute some sort of refresher course for officers upon hitting their 6 year anniversary.

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.

Gender	Supervisory Inquiries		External Formals		Total		Percent of All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	30	9%	19	9%	49	9%	173	11%
Male	319	91%	188	91%	507	91%	1,427	89%
Total	349		207		556		1,600	

*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 since an officer may be involved in more than one complaint. Also, many Supervisory Inquiries may have no officer named.

The race/ethnicity of subject officers mostly tracks to their representation within APD (below). Caucasian officers are slightly underrepresented in Supervisory Inquiries.

Race/Ethnicity	Supervisory Inquiries		External Formals		Total		Percent of All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Caucasian	223	64%	143	69%	366	66%	1,088	68%
Black or African American	43	12%	17	8%	60	11%	152	10%
Hispanic or Latino	76	22%	45	22%	121	22%	335	21%
Asian/Pacific Islander	7	2%	2	1%	9	2%	24	2%
American Indian	0	0%	0	0%	0	0%	1	<1%
Total	349		207		556		1,600	100%

There is a distinct difference in the make-up of repeat subject officers as opposed to single-case officers (below). Unlike in years past, in 2009, female officers were the subjects of more than one complaint at a rate slightly higher than their representation on the police force.

Gender	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	4	13%	41	10%	45	10%	173	11%
Male	27	87%	363	90%	390	90%	1,427	89%
Total	31		404		435		1,600	100%

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

Race/Ethnicity	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Caucasian	20	65%	270	67%	290	67%	1,088	68%
Black or African American	2	6%	38	9%	40	9%	152	10%
Hispanic or Latino	8	26%	90	22%	98	23%	335	21%
Asian/Pacific Islander	1	3%	6	1%	7	2%	24	2%
American Indian	0	0%	0	0%	0	0%	1	<1%
Total	31		404		435		1,600	100%

*Does not total to 100% due to rounding.

The range of experience of officers named in complaints in 2009 varies widely from less than one year to over 36 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 with one notable exception—one officer that was the subject of more than one complaint had over 36 years of service. Most noticeable to the OPM is that, as has been shown in years past, officers tend to become the subject of complaints right around their seventh to

ninth year of service. The OPM again recommends that special attention and/or training be given to officers that fall within this tenure.

Years of Service	Repeat Subject Officers	Single Case Subject Officers
Average tenure	9	8
Longest tenure	36	30
Shortest tenure	<1	<1
Tenure midpoint	6	6
Most common tenure	<1	<1

On average, there is only a slight disparity in age between repeat and single-case subject officers.

Age of Officers	Repeat Subject Officers	Single Case Subject Officers
Average age	37	37
Greatest age	58	66
Lowest age	23	22
Age midpoint	35	36
Most common age	28	26

» Recommendation Memos

Type of Recommendation	Recommending Party	Recommendation	APD Response
Global & Specific Recommendation	Citizen Review Panel	<p>Request for documentation that would clarify whether an officer's actions in a specific case were consistent with APD policy.</p> <p>Recommended that IAD analyze the specific situation in order to identify training issues surrounding when to transition to other tactics when a suspect is resisting arrest and the action being taken is not working.</p>	<p>APD responded that the officer's actions were consistent with APD training.</p> <p>APD agreed that further analysis of this case would be beneficial.</p>
Specific Recommendations	Citizen Review Panel	<p>Recommended that a specific case be re-opened and that an Internal Affairs investigation be conducted.</p> <p>Recommended that the Chief himself (or his designee) review the case.</p> <p>Recommended the subject officer be removed from his duty assignment and receive counseling specific to the alleged issue.</p>	None on file with OPM.
Global & Specific Recommendations	Citizen Review Panel	<p>Recommended that the Mobile Video Recording (MVR) system be reviewed and revised to send a clear message that the policy is important and that violation of the policy will result in severe disciplinary action.</p> <p>Recommended that all possible resources for funding be considered and steps taken to improve or replace the current MVR system.</p> <p>Recommended that Officer Quintana receive a 90 day suspension regarding tactical violations.</p> <p>Recommended that Officers Hitzelberg and Siddiqui receive 15 day suspensions regarding</p>	None on file with OPM.

tactical violations and failure to engage MVR (Siddiqui)

Recommended that APD should critically examine its investigative procedures and practices to assure more thoroughness, critical examination, and provide a more compelling perception of impartiality, especially to the community.

Recommended a continuing review of Det. Dunn's email given that the email supports the public's view that APD is biased in its investigations and reports.

Appendix A: 2009 Data Tables

Table 1: Type of Contact by Year

Type of Contact	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
Supervisory Inquiries	259	20%	231	24%	267	19%	505	34%	568	36%	63	12%
Formal Complaints	339	26%	285	30%	344	24%	398	26%	345	22%	-53	-13%
Contacts Only	685	53%	437	46%	808	57%	605	40%	682	43%	77	13%
Total	1,283		953		1,419		1,508		1,595		87	6%

Table 2: Type of Formal Complaint by Year

Type of Complaint	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
Internal	204	60%	158	55%	170	49%	230	58%	237	69%	7	3%
External	135	40%	127	45%	174	51%	168	42%	108	31%	-60	-36%
Total	339		285		344		398		345		-53	-13%

Table 3: External Formal Complaints Per Area Command by Year

EXTERNAL FORMAL Area Command	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
Downtown (DTAC)	26	19%	27	21%	32	18%	30	18%	21	19%	-9	-30%
Central East (CE)	18	13%	21	17%	25	14%	29	17%	19	18%	-10	-34%
South Central (SC)	12	9%	10	8%	11	6%	22	13%	12	11%	-10	-45%
Southwest (SW)	13	10%	10	8%	17	10%	13	8%	11	10%	-2	-15%
Northwest (NW)	11	8%	10	8%	12	7%	6	4%	10	9%	4	67%
Central West (CW)	10	7%	12	9%	5	3%	4	2%	9	8%	5	125%
Northeast (NE)	14	10%	18	14%	16	9%	18	11%	8	7%	-10	-56%
Southeast (SE)	13	10%	9	7%	28	16%	20	12%	8	7%	-12	-60%
North Central (NC)	9	7%	7	6%	16	9%	18	11%	6	6%	-12	-67%
Out of City	6	4%	2	2%	7	4%	5	3%	4	4%	-1	-20%
Unknown	3	2%	1	1%	5	3%	3	2%	0	0%	-3	-100%
Total	135		127		174		168		108		-60	-36%

Table 4: IAD Classification of External Formal Complaints by Year

EXTERNAL											Percent Change 2008 vs. 2009
IAD Case	2005		2006		2007		2008		2009		
Classification	#	%	#	%	#	%	#	%	#	%	
Admin Inquiry	1	1%	3	2%	4	2%	2	1%	0	0%	-100%
A	14	10%	17	13%	9	5%	15	9%	6	6%	-60%
B	59	44%	54	43%	69	40%	51	30%	25	23%	-51%
C	19	14%	19	15%	45	26%	37	22%	20	19%	-46%
D	42	31%	34	27%	45	26%	63	38%	57	53%	-10%
Other	0	0%	0	0%	2	1%	0	0%	0	0%	0%
Total	135		127		174		168		108		

Table 5: IAD Classification of Internal Formal Complaints by Year

INTERNAL											Percent Change 2008 vs. 2009
IAD Case	2005		2006		2007		2008		2009		
Classification	#	%	#	%	#	%	#	%	#	%	
Admin Inquiry	10	5%	5	3%	10	6%	10	4%	19	8%	90%
A	32	16%	35	22%	32	19%	45	20%	28	12%	-38%
B	158	77%	117	74%	126	74%	171	74%	188	79%	10%
C	2	1%	0	0%	0	0%	3	1%	0	0%	-100%
D	2	1%	1	1%	1	1%	1	0%	2	1%	100%
Other	0	0%	0	0%	1	1%	0	0%	0	0%	0%
Total	204		158		170		230		237		

Table 6: Number of Allegations per Case Type by Year

Number of Allegations	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
	Supervisory Inquiries	258	29%	247	35%	328	37%	494	44%	354	39%	-140
Formal Complaints	617	71%	461	65%	563	63%	630	56%	548	61%	-82	-13%
External	283	46%	233	51%	314	56%	326	52%	222	41%	-104	-32%
Internal	334	54%	228	49%	249	44%	304	48%	326	59%	22	7%
Total	875		708		891		1,124		902		-222	-20%

Table 7A: Types of Allegations in External Formal Complaints by Year

EXTERNAL FORMAL	2005		2006		2007		2008		2009	
Allegation	#	%	#	%	#	%	#	%	#	%
Code of Conduct	156	55%	114	49%	162	52%	183	56%	145	65%
Use of Force/ Duty Weapons/ Firearm Discharges	41	15%	37	16%	74	24%	37	11%	20	9%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	33	12%	38	16%	27	9%	44	13%	20	9%
Bias-Based Profiling/ Incident Reporting & Documentation	15	15%	11	5%	19	6%	15	5%	7	3%
Preliminary, Follow-Up & Collision Investigations	8	3%	7	3%	6	2%	5	2%	3	1%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	6	2%	0	0%	4	1%	2	1%	3	1%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	0	0%	2	1%	1	<1%	0	0%	1	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	3	1%	0	0%	3	1%	5	2%
Other	24	8%	21	9%	21	7%	37	11%	18	8%
Total	283		233		314		326		222	

Table 7B: Types of Allegations in Internal Formal Complaints by Year

INTERNAL FORMAL	2005		2006		2007		2008		2009	
Allegation	#	%	#	%	#	%	#	%	#	%
Code of Conduct	128	38%	89	39%	95	38%	103	34%	96	29%
Use of Force/ Duty Weapons/ Firearm Discharges	23	7%	28	12%	38	15%	18	6%	39	12%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	7	2%	2	1%	1	<1%	4	1%	6	2%
Bias-Based Profiling/ Incident Reporting & Documentation	4	1%	2	1%	1	<1%	3	1%	1	0%
Preliminary, Follow-Up & Collision Investigations	2	1%	3	1%	0	0%	1	<1%	1	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	137	41%	76	33%	100	40%	124	41%	153	47%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	8	2%	10	4%	9	4%	18	6%	3	1%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	13	4%	4	2%	2	1%	1	<1%	7	2%
Other	12	4%	14	6%	3	1%	32	11%	20	6%
Total	334		228		249		304		326	

Table 7C: Types of Allegations in Supervisory Inquiries by Year

SUPERVISORY INQUIRIES	2005		2006		2007		2008		2009	
Allegation	#	%	#	%	#	%	#	%	#	%
Code of Conduct	157	61%	193	78%	240	73%	374	76%	335	95%
Use of Force/ Duty Weapons/ Firearm Discharges	9	3%	10	4%	11	3%	3	1%	2	1%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	17	7%	8	3%	14	4%	18	4%	2	1%
Bias-Based Profiling/ Incident Reporting & Documentation	0	0%	5	2%	5	2%	4	1%	0	0%
Preliminary, Follow-Up & Collision Investigations	21	8%	10	4%	17	5%	9	2%	5	1%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	23	9%	9	4%	19	6%	49	10%	6	2%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	0	0%	0	0%	0	0%	0	0%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	0	0%	1	0%	1	<1%	0	0%
Other	31	12%	12	5%	21	6%	36	7%	4	1%
Total	258		247		328		494		354	

Table 8: Number of Allegations in External Formal Complaints per Area Command by Year

ALLEGATIONS	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
Area Command	#	%	#	%	#	%	#	%	#	%	#	%
Central East (CE)	40	14%	46	20%	42	13%	39	12%	40	18%	1	3%
Downtown (DTAC)	65	23%	43	18%	64	20%	54	17%	40	18%	-14	-26%
South Central (SC)	29	10%	23	10%	19	6%	43	13%	39	18%	-4	-9%
Southeast (SE)	22	8%	16	7%	54	17%	57	17%	21	9%	-36	-63%
Central West (CW)	16	6%	25	11%	13	4%	12	4%	19	9%	7	58%
Southwest (SW)	23	8%	14	6%	35	11%	25	8%	19	9%	-6	-24%
Northeast (NE)	25	9%	34	15%	26	8%	35	11%	16	7%	-19	-54%
Northwest (NW)	12	4%	17	7%	16	5%	12	4%	13	6%	1	8%
North Central (NC)	28	10%	11	5%	25	8%	32	10%	9	4%	-23	-72%
Out of City	17	6%	3	1%	13	4%	5	2%	6	3%	1	20%
Unknown	6	2%	1	0%	7	2%	12	4%	0	0%	-12	-100%
Total	283		233		314		326		222		-104 -32%	

Table 9: Number of Code of Conduct Allegations in External Formal Complaints per Area Command by Year

CODE OF CONDUCT Area Command	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
Central East (CE)	25	16%	25	22%	13	8%	20	11%	27	19%	7	35%
Downtown (DTAC)	31	20%	20	18%	25	15%	41	22%	24	17%	-17	-41%
South Central (SC)	11	7%	8	7%	11	7%	16	9%	21	14%	5	31%
Southeast (SE)	9	6%	12	11%	30	19%	41	22%	18	12%	-23	-56%
Central West (CW)	9	6%	11	10%	5	3%	7	4%	17	12%	10	143%
Northeast (NE)	13	8%	15	13%	16	10%	13	7%	11	8%	-2	-15%
Southwest (SW)	19	12%	7	6%	16	10%	17	9%	9	6%	-8	-47%
Northwest (NW)	11	7%	10	9%	13	8%	3	2%	7	5%	4	133%
North Central (NC)	16	10%	2	2%	15	9%	11	6%	6	4%	-5	-45%
Out of City	10	6%	3	3%	13	8%	5	3%	5	3%	0	0%
Unknown	2	1%	1	1%	5	3%	9	5%	0	0%	-9	-100%
Total	156		114		162		183		145		-38	-21%

Table 10: Number of Use of Force; Duty Weapons; and, Firearm Discharge Allegations in External Formal Complaints per Area Command by Year

USE OF FORCE, et al Area Command	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
South Central (SC)	0	0%	2	5%	4	5%	0	0%	7	35%	7	700%
Central East (CE)	3	7%	7	19%	14	19%	1	3%	6	30%	5	500%
Downtown (DTAC)	20	49%	15	41%	32	43%	5	14%	4	20%	-1	-20%
Southwest (SW)	0	0%	2	5%	5	7%	6	17%	2	10%	-4	-67%
North Central (NC)	5	12%	3	8%	4	5%	2	6%	1	5%	-1	-50%
Southeast (SE)	2	5%	3	8%	9	12%	12	34%	0	0%	-12	-100%
Northwest (NW)	1	2%	0	0%	2	3%	3	9%	0	0%	-3	-100%
Central West (CW)	0	0%	4	11%	3	4%	2	6%	0	0%	-2	-100%
Northeast (NE)	5	12%	1	3%	1	1%	2	6%	0	0%	-2	-100%
Out of City	3	7%	0	0%	0	0%	0	0%	0	0%	0	0%
Unknown	2	5%	0	0%	0	0%	2	6%	0	0%	-2	-100%
Total	41		37		74		35		20		-15	-43%

Table 11: Number of Interviews, Stops, & Arrests; Arrest & Bookings; Fugitive Warrants; and, Care & Transport of Prisoners Allegations in External Formal Complaints per Area Command by Year

INTERVIEWS, STOPS, & ARRESTS, et al	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
Southwest (SW)	1	3%	2	5%	7	26%	1	2%	5	25%	4	400%
Central East (CE)	3	9%	4	11%	5	19%	7	16%	4	20%	-3	-43%
South Central (SC)	1	3%	8	21%	2	7%	14	32%	3	15%	-11	-79%
Downtown (DTAC)	10	30%	7	18%	4	15%	1	2%	2	10%	1	100%
North Central (NC)	2	6%	1	3%	2	7%	10	23%	2	10%	-8	-80%
Central West (CW)	3	9%	5	13%	2	7%	3	7%	1	5%	-2	-67%
Northeast (NE)	5	15%	7	18%	0	0%	6	14%	1	5%	-5	-83%
Northwest (NW)	0	0%	4	11%	0	0%	0	0%	1	5%	1	100%
Southeast (SE)	1	3%	0	0%	5	19%	2	5%	1	5%	-1	-50%
Out of City	3	9%	0	0%	0	0%	0	0%	0	0%	0	0%
Unknown	4	12%	0	0%	0	0%	0	0%	0	0%	0	0%
Total	33		38		27		44		20		-24	-55%

Table 12: Number of Bias-Based Profiling; and, Incident Reporting & Documentation Allegations in External Formal Complaints per Area Command by Year

BIAS-BASED PROFILING, et al	2005		2006		2007		2008		2009		Change 2008 vs. 2009	
	#	%	#	%	#	%	#	%	#	%	#	%
South Central (SC)	4	27%	4	36%	1	5%	3	20%	3	43%	0	0%
Downtown (DTAC)	0	0%	0	0%	1	5%	1	7%	2	29%	1	100%
Central East (CE)	3	20%	5	45%	6	32%	4	27%	1	14%	-3	-75%
Northwest (NW)	0	0%	0	0%	0	0%	0	0%	1	14%	1	100%
Central West (CW)	1	7%	1	9%	2	11%	0	0%	0	0%	0	0%
North Central (NC)	2	13%	0	0%	4	21%	1	7%	0	0%	-1	-100%
Northeast (NE)	0	0%	1	9%	2	11%	5	33%	0	0%	-5	-100%
Southeast (SE)	5	33%	0	0%	3	16%	1	7%	0	0%	-1	-100%
Southwest (SW)	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Out of City	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Unknown	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Total	15		11		19		15		7		-8	-53%

Table 13: IAD Recommendations on Allegations in Formal Complaints by Year

IAD Decision	Pre-Process Change												Post-Process Change							
	2005				2006				2007				2008				2009			
	External		Internal		External		Internal		External		Internal		External		Internal		External		Internal	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Sustained	48	17%	238	72%	59	26%	178	78%	36	12%	201	81%	15	7%	122	73%	9	11%	11	31%
Inconclusive	44	16%	17	5%	14	6%	10	5%	23	7%	11	5%	9	4%	9	5%	0	0%	1	3%
Exonerated	32	12%	7	2%	33	14%	11	4%	46	15%	6	2%	15	7%	4	2%	1	1%	0	0%
Administratively Closed	105	38%	33	10%	85	37%	11	5%	155	49%	20	8%	161	70%	21	13%	68	83%	17	49%
Unfounded	46	17%	30	9%	40	17%	18	8%	54	17%	10	4%	30	13%	11	7%	4	5%	6	17%
Total	275		325		231		228		314		248		230	167		82		35		

Table 14: Chain of Command Decisions on Allegations in Formal Complaints by Year

Chain of Command Decisions	Pre-Process Change												Post-Process Change							
	2005				2006				2007				2008				2009			
	External		Internal		External		Internal		External		Internal		External		Internal		External		Internal	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Sustained	37	77%	212	89%	51	86%	160	91%	32	89%	182	93%	32	10%	234	81%	22	10%	218	71%
Inconclusive	5	10%	8	3%	3	6%	4	2%	0	0%	3	2%	21	7%	14	5%	6	3%	16	5%
Exonerated	3	6%	3	1%	2	3%	2	1%	3	8%	4	2%	31	10%	4	1%	11	5%	9	3%
Administratively Closed	2	4%	1	<1%	1	2%	5	3%	0	0%	3	2%	160	51%	23	8%	128	59%	42	14%
Unfounded	0	0%	1	<1%	2	3%	4	2%	1	3%	3	2%	72	23%	14	5%	49	23%	24	8%
Added/Changed at DRB	1	2%	1	<1%	0	0%	1	1%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Total	48		226		59		176		36		195		316		289		216		309	

Table 15A: Disciplinary Action Taken for External Formal Complaints by Year

EXTERNAL	2005		2006		2007		2008		2009		2008 vs. 2009
Disciplinary Action Taken	#	%	#	%	#	%	#	%	#	%	% Change
Oral Reprimand / Counseling	6	27%	13	39%	10	43%	13	41%	8	31%	-38%
Written Reprimand	8	36%	8	24%	6	26%	11	34%	8	31%	-27%
Days Suspension	6	27%	10	30%	5	22%	8	25%	3	12%	-63%
Indefinite Suspension / Termination*	2	9%	2	6%	2	9%	0	0%	7	27%	700%
Demotion	0	0%	0	0%	0	0%	0	0%	0	0%	0%
Total	22		33		23		32		26		-19%

*Includes Resignations and Retirements while Officer was under investigation

Table 15B: Disciplinary Action Taken for Internal Formal Complaints by Year

INTERNAL	2005		2006		2007		2008		2009		2008 vs. 2009
Disciplinary Action Taken	#	%	#	%	#	%	#	%	#	%	% Change
Oral Reprimand / Counseling	73	44%	40	31%	42	29%	81	35%	84	36%	4%
Written Reprimand	44	26%	59	45%	73	51%	92	39%	75	32%	-18%
Days Suspension	46	28%	29	22%	21	15%	44	19%	47	20%	7%
Indefinite Suspension / Termination*	4	2%	2	2%	7	5%	13	6%	25	11%	92%
Demotion	0	0%	0	0%	1	1%	0	0%	3	1%	300%
Total	167		130		144		230		234		2%

*Includes Resignations and Retirements while Officer was under investigation

Table 16: Ethnicity/Race of Complainants - 2009

Ethnicity/Race	Supervisory Inquiries		External Formals		Total	
	#	%	#	%	#	%
Caucasian	235	41%	45	42%	280	41%
Black or African American	142	25%	32	30%	174	26%
Hispanic or Latino	120	21%	25	23%	145	21%
Am. Indian/Alaska Native	3	1%	0	0%	3	0%
Asian/Pacific Islander	8	1%	3	3%	11	2%
Other	7	1%	1	1%	8	1%
Unknown	53	9%	2	2%	55	8%
Total	568		108		676	

Table 17: Age of Complainants – 2009

Complainant Age	Supervisory Inquiries		External Formals		Total	
	#	%	#	%	#	%
Teens (19 or less)	14	2%	3	3%	17	3%
Twenties (20-29)	137	24%	26	24%	163	24%
Thirties (30-39)	112	20%	33	31%	145	21%
Forties (40-49)	107	19%	19	18%	126	19%
Fifty and over (50+)	120	21%	22	20%	142	21%
Not Reported	78	14%	5	5%	83	12%
Total	568		108		676	100%

Table 18: Gender of Complainants – 2009

Complainant Gender	Supervisory Inquiries		External Formals		Total	
	#	%	#	%	#	%
Female	266	47%	43	40%	309	46%
Male	299	53%	65	60%	364	54%
Not Reported	3	1%	0	0%	3	0%
Total	568		108		676	100%

Table 19: Years of Service – 2009

Years of Service	Supervisory Inquiries	External Formals
Average tenure	7	8
Longest tenure	32	36
Shortest tenure	<1	<1
Tenure midpoint	5	6
Most common tenure	<1	9

Table 20: Subject Officer Gender – 2009

Gender	Supervisory Inquiries		External Formals		Total		Percent of All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	30	9%	19	9%	49	9%	173	11%
Male	319	91%	188	91%	507	91%	1,427	89%
Total	349		207		556		1,600	

Note: Use caution 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.

Table 21: Race/Ethnicity of Subject Officers – 2009

Race/Ethnicity	Supervisory Inquiries		External Formals		Total		Percent of All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Caucasian	223	64%	143	69%	366	66%	1,088	68%
Black or African American	43	12%	17	8%	60	11%	152	10%
Hispanic or Latino	76	22%	45	22%	121	22%	335	21%
Asian/Pacific Islander	7	2%	2	1%	9	2%	24	2%
American Indian	0	0%	0	0%	0	0%	1	<1%
Total	349		207		556		1,600	100%

Table 22: Gender of Repeat Subject Officers, Single-Case Subject Officers, and all APD Sworn Personnel – 2009

Gender	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	4	13%	41	10%	45	10%	173	11%
Male	27	87%	363	90%	390	90%	1,427	89%
Total	31		404		435		1,600	100%

Table 23: Race/Ethnicity of Repeat Subject Officers, Single-Case Subject Officers, and all APD Sworn Personnel – 2009

Race/Ethnicity	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Caucasian	20	65%	270	67%	290	67%	1,088	68%
Black or African American	2	6%	38	9%	40	9%	152	10%
Hispanic or Latino	8	26%	90	22%	98	23%	335	21%
Asian/Pacific Islander	1	3%	6	1%	7	2%	24	2%
American Indian	0	0%	0	0%	0	0%	1	<1%
Total	31		404		435		1,600	100%

Table 24: Years of Service of Repeat Subject Officers vs. Single-Case Subject Officers – 2009

Years of Service	Repeat Subject Officers	Single Case Subject Officers
Average tenure	9	8
Longest tenure	36	30
Shortest tenure	<1	<1
Tenure midpoint	6	6
Most common tenure	<1	<1

**Table 25: Age of Repeat Subject Officers vs. Single-Case Subject Officers
– 2009**

Age of Officers	Repeat Subject Officers	Single Case Subject Officers
Average age	37	37
Greatest age	58	66
Lowest age	23	22
Age midpoint	35	36
Most common age	28	26

Appendix B: 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			
<ul style="list-style-type: none"> Associating with those of ill repute 	Fact Specific		
<ul style="list-style-type: none"> Improper use of City resources <u>not</u> involving personal gain 	Written Reprimand to 1-3 days	Increased one level	Increased one level
<ul style="list-style-type: none"> Improper use of City resources involving personal gain. 	4-15 days	IS	
F. Responsibility to the Community			
<ul style="list-style-type: none"> Duty to identify 	Oral Reprimand to 1-3 days	Increased one level	Increased one level
<ul style="list-style-type: none"> Courtesy (Rudeness Complaints) 			
<ul style="list-style-type: none"> Impartial Attitude 	Fact Specific		
G. Responsibility to the Department			
<ul style="list-style-type: none"> Requirements of duty Time and attention to duty Unprofessional or abusive behavior--co-workers 	Oral Reprimand to 1-3 days	Increased one level	Increased one level
<ul style="list-style-type: none"> Neglect of Duty -Misleading Statements 	Fact Specific		
<ul style="list-style-type: none"> Neglect of Duty 	Fact Specific		
<ul style="list-style-type: none"> Insubordination 	4-15 days	IS	
<ul style="list-style-type: none"> Duty to take action 	Fact Specific		
<ul style="list-style-type: none"> Dereliction of Duty 	4-15 days to Demotion	Demotion to IS	
<ul style="list-style-type: none"> Unauthorized Release of Information 	4-15 days	IS	

A109d – Discipline Matrix (con't'd)

RADIO AND TELECOMMUNICATIONS B201			
A. Inappropriate Electronic Messages**	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

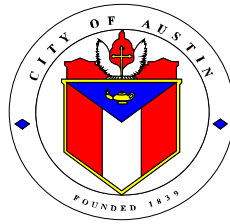
Notes:

*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 C: Community Outreach Conducted in 2009



Office of the Police Monitor

OUTREACH EFFORTS

January – December 2009

Jan. 19	Informational booth at MLK Celebration, Huston-Tillotson College
Feb. 4	Immigration Services Network meeting, Palm Square
Feb. 6	Greater Austin Hispanic Chamber of Commerce luncheon, Doubletree Hotel
Feb. 9	Immigration Speaker Series: Immigration Detention, University of Texas Thematic Initiatives and Community Engagement, 1009 E. 11 th St.
Feb. 12	Eastside Memorial High School meeting to meet new academy directors
Feb. 16	Immigration Speaker Series: Workplace Raids, University of Texas Thematic Initiatives and Community Engagement, Monkeywrench
Feb. 20	Greater Austin Hispanic Chamber of Commerce annual banquet, Hilton Hotel
Feb. 23	Immigration Speaker Series: ICE and Local Enforcement, University of Texas Thematic Initiatives and Community Engagement, 1009 E. 11 th St.
Feb. 24	Hispanic Quality of Life forum, Austin High School
March 9	Meeting with executive director of Casa Marianella to discuss immigrant concerns over law enforcement
March 10	Presentation to students at University of Texas Jester Dormitory
April 8	Information booth at Wooten Elementary School Community and Resource Fair

April 14 Downtown Commander's Forum, Mexican American Cultural Center

April 24 Information booth at Martin Middle School Parent Awareness Fair

April 25 Information booth at Austin Community College Riverside Campus Dia de la Familia event

April 29 Presentation to members of the Network of Asian American Organizations, Chinatown

May 3 AISD Latino Achievement Awards, LBJ Auditorium

May 3 Information booth and presentation at Spicewood Estates Homeowners Association annual picnic, Mountainview Park

May 6 Immigrant Services Network of Austin meeting, Palm Square

May 9 Information booth at True Light Day Care Annual Community Fair, 1300 Fort Branch

May 22 Meeting with director of Austin Immigrant Rights Coalition to discuss concerns

June 16 Meeting of Pedernales Neighborhood Association, El Zunzal

June 19 Information booth at Juneteenth Celebration, Rosewood Park

July 11 Information booth at Austin Police Department South Bureau Community Fair, Target, 2300 W. Ben White Blvd.

August 4 Meeting with Casa Marianella staff and board members

Sept. 3 Meeting with Cristo Rey Catholic Church Pastor Jayme Mathias to discuss potential community projects

Sept. 10 University of Texas Community Service Awards, Mexican American Cultural Center

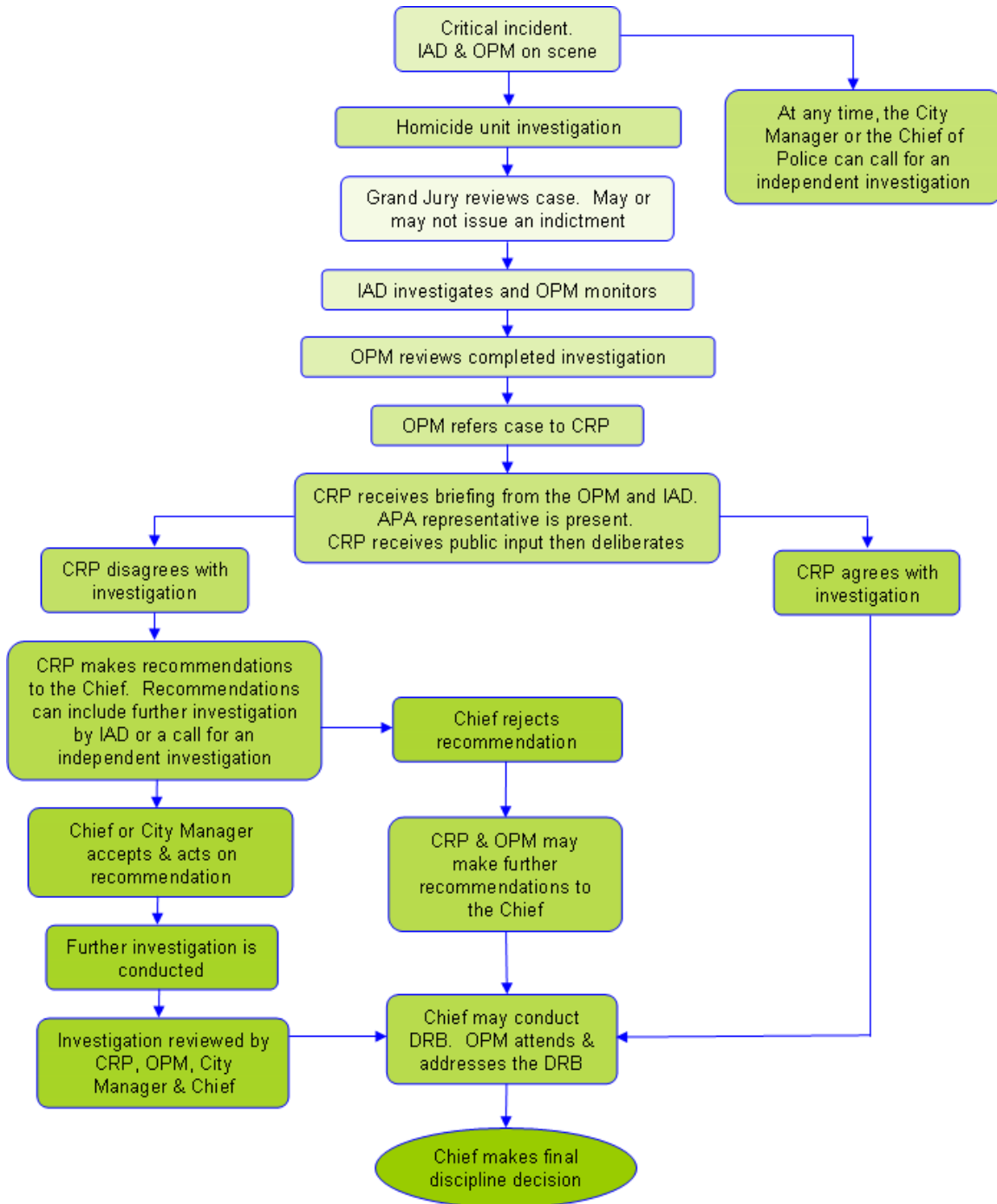
Sept. 13 Information booth at Travis County Exposition Center for Diez y Seis de Septiembre annual celebration

Sept. 16 Meeting with staff of the University of Texas Department of Diversity and Community Engagement staff meeting to discuss support of OPM video program

Oct. 3 Information booth at Travis County Sheriff Extravaganza, 3000 Shoreline Dr.

- Oct. 6 Information booth at National Night Out, Chinatown
- Oct. 9 Meeting with LULAC District Director to discuss community concerns
- Oct. 10 Greater Austin Hispanic Chamber of Commerce luncheon, Sheraton Hotel
- Oct. 30 – Nov. 3 OPM host annual conference of National Association for Civilian Oversight of Law Enforcement, Hyatt Regency Hotel
- Nov. 13 Class presentation at annual Career Day celebration, Zavala Elementary School
- Nov. 14 Information booth at Homeless Resource Fair, Pan American Recreation Center
- Nov. 23 Meeting with director of Texas Jail Project to discuss concerns

Appendix D: 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

Appendix E: 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 prejudice 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 prejudice 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 same 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

1520 Rutherford Lane
Bldg. 1, Suite 2.200 A
Austin, TX 78754

Phone: 512-974-9090
Fax: 512-974-6306
E-mail: police.monitor@ci.austin.tx.us

www.ci.austin.tx.us/opm/

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.