



CITY OF AUSTIN

OFFICE OF THE POLICE



AUSTIN  TEXAS

2013 ANNUAL REPORT

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» The Office of the Police Monitor

Mission and Objectives

The Office of the Police Monitor (OPM) is the primary resource for accepting and filing complaints brought by the general public against officers of the Austin Police Department (APD). The OPM also monitors the investigation of complaints within APD (i.e., internal complaints by one officer concerning the conduct of another officer). The OPM seeks to educate the community and law enforcement through its outreach efforts and 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

Complaint Specialists from the OPM are tasked with addressing allegations of police misconduct or concerns raised by the public. Complaints are taken via telephone, e-mail, facsimile, and mail. The public may also visit the OPM at any time during the business day in order to speak with a complaint specialist in person or may visit after business hours through special appointment. Given that the duties of the complaint specialist often require them to be out of the office, it is best for the public to call ahead to schedule a time and date. 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. During this consultation, the complainant is made aware of the avenues available to him/her.

The avenues are:

- 1) **Filing a Formal complaint** – this is the most serious of complaints and is investigated by the Internal Affairs Division (IAD) or by a chain of command;

- 2) **Filing a Supervisor Referral**– this is a less serious complaint handled by the officer’s chain of command;
- 3) **Mediation** – an opportunity for the complainant to be in a neutral location with the officer and a mediator in order to discuss areas of concern or issues with how the officer treated the complainant.

When a person has an issue with an APD officer they would like addressed, they typically file a “Supervisor Referral” or opt to file a “Formal” complaint. As noted, mediation is also an option, but the result of this will not appear in an officer’s personnel file. Additionally, if the mediation option is chosen, the officer will not be subject to discipline unless the officer fails to show up for the mediation session.

In situations where it appears clear no policy violation will be found, the complaint specialist educates and informs the complainant about the particular APD policies and procedures, known as Lexipol,¹ applicable to the complainant’s situation.

Supervisor Referrals

Supervisor Referrals (SRs) are commonly used for less-severe policy violations, such as allegations of discourtesy or rudeness, or a disagreement about the level of police services. The Supervisor Referral is suitable for those complainants who do not wish to go through the Formal complaint process and would like a faster result. Many people use 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 the IAD. IAD will then forward the Supervisor Referral 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 complaint may be initiated by IAD or by the officer’s chain of command. The supervisor may also address the issue with the officer through counseling, training, or a reprimand. In most cases, the complainant opts to be contacted by the officer’s immediate supervisor to discuss the matter at greater length and to achieve a degree of closure on the issue. At any time during the Supervisor Referral process, the complainant may opt to file a Formal complaint.

¹ All APD policies and procedures are outlined in the APD Policy Manual known as “Lexipol.” The guidelines, rules, and regulations are set forth by the Chief of Police and govern the day-to-day activities of the Austin Police Department.

Formal Complaints

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

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

Regardless of whether the complaint is Internal or External, the Formal complaint process is designed to register complaints, review the matter, and, if appropriate, have an investigation conducted by IAD or by the chain of command.

The process begins when an external complainant indicates they want to use the Formal complaint process. After a brief explanation of the process, a statement is taken by the complaint specialist via dictation from the complainant onto an official affidavit form. The interview is tape recorded and the complainant is given an opportunity to review the statement and make any corrections that are necessary. In some cases, the complainant chooses to prepare his/her own statement on the official affidavit form. Once the complainant is in agreement with the statement, the complainant then signs the statement before a notary (all complaint specialists are notaries) to comply with state law which requires an External Formal complaint to be sworn to before a notary. The complaint specialist then submits the paperwork to IAD. A copy of the completed affidavit form 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. During the investigation, the complaint specialist will monitor the investigation and provide input to IAD to ensure a fair and thorough investigation. At the end of the investigation, IAD will prepare an investigative summary which the OPM reviews. The complaint specialist reviews the entire file upon its completion and forwards comments, concerns, or issues about the case to the Police Monitor. The Police Monitor may make recommendations to the chief of police and/or the chain of command regarding whether an allegation should be sustained and the appropriate discipline, if any.

The complainant is given the results of the investigation in writing. A complainant may then hold a meeting with the OPM—a Police Monitor’s Conference (PMC)—to find out the details of the investigation. The written documentation of the underlying investigation (i.e., statements, documentary evidence, etc.) is not given to the complainant due to civil service limitations on what can and cannot be provided. If the complainant is not satisfied with the investigation, the complainant may also choose to

have the matter presented to the Citizen Review Panel (CRP). The CRP is a volunteer group of seven citizens that meet at least once a month. The CRP meets to hear cases in dispute as brought by either the complainant or the OPM or to discuss oversight issues. If a complainant chooses to utilize the CRP to hear their case, they are given ten (10) minutes during the public portion of the meeting to outline their issues with APD and/or the outcome of the investigation. The CRP may ask clarifying questions of the complainant during this time. Afterwards, the CRP will meet in a private executive session to deliberate on the actions to take, if any. The CRP may make recommendations on policy and/or training to the chief of police or choose to make no recommendations. The CRP may also request that the case be investigated further. If the case involves a critical incident, in addition to the actions the CRP may take in any case, the CRP may make a recommendation to the chief of police as to whether the officer violated policy and may recommend discipline. The decision to sustain or not sustain the allegation and/or administer discipline is within the province of the chief of police.

Mediation

Mediation is a third option available to a complainant. Lexipol Policy 902.6.5, Mediation, went into effect in April 2013. The policy clearly outlines the provision of mediation for resolving select external, Class B complaints—rudeness, profanity, belittling and inadequate police services. The policy revision sets forth timelines for utilization, identifies a mediation coordinator through the Office of the Police Monitor and names the Dispute Resolution Center as the third party mediation service provider.

Mediation is designed to provide the complainant an opportunity to be in a neutral location with the officer and a mediator. The use of this process brings the officer and the complainant together with a neutral third-party in order to air and, hopefully, resolve their issues. If the mediation option is used, 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. 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.

The OPM and the IAD sergeants began training APD officers on the updated Mediation policy in September 2013. Upwards of sixty (60) face-to-face trainings were provided to officers throughout the APD. A training video and an information brochure were also posted on the APD Intranet and the OPM website.

Mediations take place at the Dispute Resolution Center (DRC) which is located inside the Chase Bank building at Capital Plaza. Mediation sessions are facilitated by volunteer mediators. The mediation sessions between the APD officers and

complainants do not yield any written agreements between the parties. The sessions are also not audio or video recorded. Information shared in the mediation session is confidential. Nothing in the course of the mediation session can be used at a later date or time in any court matter or civil proceedings.

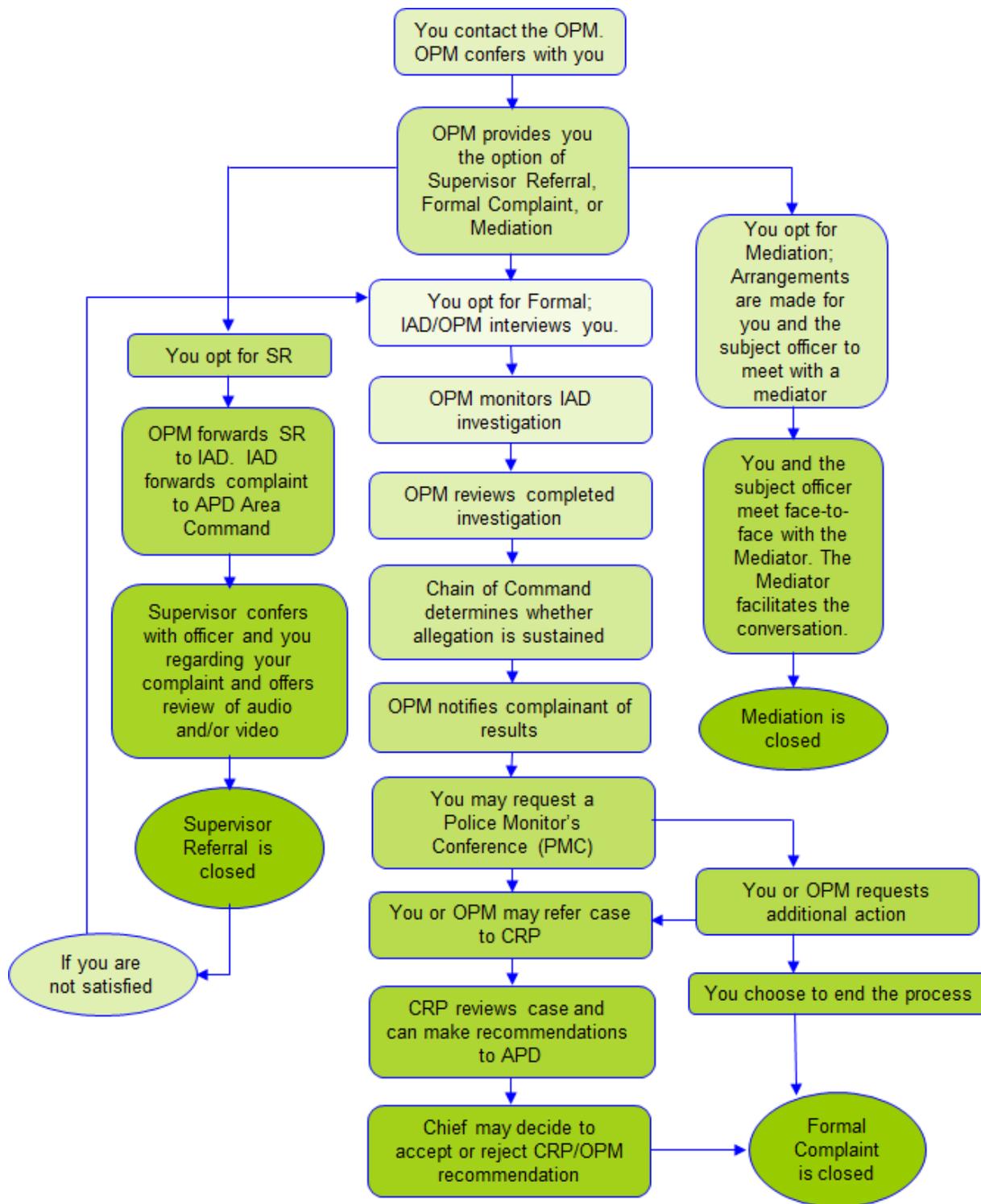
Unlike typical mediation, the parties are not required to make any offers in compromise and are not asked to work toward an equitable resolution of their differences. The APD Lexipol policy only requires that the parties participate in a respectful and productive conversation related to the complaint. Neither party is required to admit any wrongdoing or make any apologies for their actions. The parties may, however, after talking to one another and hearing the other's perspective, extend an apology. Complaints that are mediated cannot be returned to IAD for investigation.

With strong support from the Austin Police Association and the Austin Police Department, the Office of the Police Monitor hopes that the citizens of Austin and Austin police officers will avail themselves to mediation as a complaint resolution option.

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@austintexas.gov, or by mail. The office is located in the City of Austin Rutherford Complex at 1520 Rutherford Lane, Bldg. 1, Suite 2.200A, Austin, TX 78754. The mailing address is: PO Box 1088, Austin, TX 78767.

For more information, including a full copy of this report, please visit the OPM website at <http://www.austintexas.gov/department/police-monitor>.

Figure 1. OPM Complaint Process



OPM: Office of the Police Monitor APD: Austin Police Department IAD: Internal Affairs Division
 SR: Supervisor Referral CRP: Citizen Review Panel DRB: Disciplinary Review Board

Section 1: 2013 Serious Incident Review

While there were many types of complaints brought throughout 2013, below is a brief summary of the more serious. When determining the type and severity of discipline to be administered to an officer, the APD consults its Discipline Matrix. The Matrix is attached in Appendix B. The Matrix serves as a guideline when assessing discipline on sustained allegations. Different policy violations carry different discipline; discipline becomes more severe if an officer has violated a particular policy more than once.

The cases are presented in chronological order.

On January 1, 2013, two officers responded to a call of an aggravated robbery with a deadly weapon. Additional information indicated that shots were fired and a description of the subject and the subject vehicle was also broadcast. While en route to the location of the robbery, the two officers came into contact with a witness who was following the subject and able to provide the officers with the direction of travel. Based on this information, the two officers were able to locate the vehicle and attempted to stop it with lights and sirens. The driver of the vehicle refused to stop, resulting in a vehicle pursuit which ended behind a supermarket. At this point, the subject exited his vehicle and began firing a weapon in the direction of the officers. The two officers returned fire. The subject began to run and was pursued on foot by the two officers. The foot pursuit ended when one of the officers was struck in the knee by a gunshot from the subject. The subject continued to flee on foot and was located later and taken into custody without further incident. The wounded officer was transported by EMS to the hospital where he was admitted and treated for the wound to his knee. The Grand Jury no billed the officers on June 25, 2013. The case was presented to the Citizen Review Panel on July 1, 2013. The Citizen Review Panel made no recommendation in the case as it found the force to be appropriate. The case was Administratively Closed by the Chain of Command. No discipline was issued. (Case Number 2013- 0077)

On March 1, 2013, an officer responded to a 911 call. The caller had stated that he had shot a stray dog in his backyard. The caller was asked by the 911 dispatcher to disarm himself before the police arrived on scene. The caller refused to disarm, saying he had a concealed handgun license. The officer stated that when he arrived on scene he saw a handgun tucked in the waistband of the caller's pants and attempted to secure the caller's firearm while he investigated the dog shooting. According to the officer, the caller reportedly moved away from the officer, drew his weapon and pointed it at him. The officer drew his duty weapon and fired two rounds at the caller. The caller died on scene. The Grand Jury no billed the officer on June 23, 2014. The case was presented to the Citizen Review Panel on July 8, 2014, and the Citizen Review Panel was critical of the officer's approach to the caller. The case was Administratively Closed by the Chain of Command. No discipline was issued. (Case Number 2013-0219)

On April 23, 2013, five officers responded to a call about a subject who was armed and threatening to harm himself or others. During the incident, four officers (the corporal did not accompany them) began to make their way to the back of the residence due to a report that the subject may have fled the residence on foot. Towards the back of the house the officers came across a male who told the officers to get off of his property and then retreated to a nearby shed. The male exited the shed with what appeared to be a rifle. Officers gave verbal commands for the male to drop the weapon. The male allegedly raised the weapon in the direction of the officers. The officers fired their weapons, critically wounding the subject. The Grand Jury no billed the officers on September 16, 2014. The case was presented to the Citizen Review Panel on October 6, 2014, and the Citizen Review Panel was critical of how the supervisor at the scene handled the situation and the lack of communication. The case was Administratively Closed. No discipline was issued. (Case Number 2013-0408)

On May 8, 2013, an officer conducted a traffic stop of a vehicle he observed run a red light. The vehicle stopped and the driver exited the vehicle to approach the officer's unit. As the driver approached, the officer exited his vehicle and yelled to the driver to not come any further. The officer then drew his weapon and discharged one round at the driver, but it did not strike the driver. The officer stated he had observed the driver making furtive movements inside of his vehicle and upon exit the driver had either reached into his pocket or had an unknown object in his hand. The case was presented to the Citizen Review Panel on September 5, 2013, and the Citizen Review Panel recommended that the officer be indefinitely suspended due to the improper use of force. The Grand Jury no billed the officer on September 20, 2013. The officer was indefinitely suspended. (Case Number 2013-0454)

On May 17, 2013, officers were dispatched to assist EMS/AFD with a subject who was running around in a motel spraying fire extinguishers in the building. Officers arrived on scene and took the subject into custody after he was found in possession of drug paraphernalia and appeared to be in an altered mental state due to intoxication. While being escorted to a patrol car, the subject began to yell and pull away from the officers. During the struggle, the officers noticed the subject was struggling to breath and his lips were turning blue and immediately notified EMS that was still on scene. The subject was transported to the hospital where he was being treated until he was removed from life support by his family on May 25, 2013. The Grand Jury no billed the officers on July 29, 2014. The case was presented to the Citizen Review Panel on September 4, 2014, and the Citizen Review Panel recommended that the officers be found in compliance with policy and commended the officers for their recognition of the medical emergency and securing of assistance. The case was Administratively Closed by the Chain of Command. No discipline was issued. (Case Number 2013-0541)

On May 17, 2013, officers responded to a 911 call of shots fired. The caller reported hearing two gunshots and seeing his neighbor tuck a black object into his waistband.

The caller believed the object was a gun. The caller also reported that the neighbor had pointed a gun directly at him. Several officers responded to the call for service. One officer observed broken glass on the balcony and saw what he believed to be a bullet hole in the glass. As this officer re-positioned himself, he observed an arm extend from the window and swing toward him. Another officer yelled “gun” over the radio. The officer fired one round from his duty weapon toward the subject. The subject was taken into custody with the assistance of SWAT. There were no injuries sustained by the subject or the officers on scene. This case was not presented to the Grand Jury. The case was presented to the Citizen Review Panel on April 7, 2014, and the Citizen Review Panel recommended that the officer be found in compliance with policy and complimented the level of coordination between the officers present on the scene. The case was Administratively Closed by the Chain of Command. No discipline was issued. (Case Number 2013-0495)

On June 23, 2013, two officers responded to a call for service of a suspicious person. The officers made contact with five adult male subjects. The officers identified four of the five males and released them. The fifth male subject provided the officers with false information and was subsequently placed under arrest for failure to identify. The subject was placed in handcuffs and searched in front of the patrol car with the video recorder running. As one of the officers released his hold on the subject to put gloves on, the subject fled and ran handcuffed into the nearby roadway. Both officers yelled to the subject to stop while they attempted to catch up to him. The subject was struck by a vehicle in the roadway. The subject was transported from the scene and pronounced deceased at the hospital. The medical examiner’s report indicated that the subject died as a result of his injuries. This case was not presented to the Grand Jury. The case was presented to the Citizen Review Panel on November 4, 2013, which had no recommendation. The case was Administratively Closed by the Chain of Command. No discipline was issued. (Case Number 2013-0664)

On July 26, 2013, a detective assigned to a federal task force was at a local bank following up after a robbery of that bank earlier that day. Due to robbery, the bank was closed. While the detective was still in the bank, a male approached the bank and inquired about being able to conduct business. An employee met the subject at the door and informed him the bank was closed temporarily. The male gave as his name the name of another of the bank’s clients. This raised suspicion with the bank employee who notified the detective. While the detective was questioning the subject, the subject took off running. The detective gave chase for several yards but was not able to keep up, ultimately losing sight of the subject. There are varying accounts as to what occurred from this point, but it is undisputed that the detective’s weapon discharged and the subject was mortally wounded. The case was presented to the Citizen Review Panel on October 7, 2013, and the Citizen Review Panel recommended that the officer be indefinitely suspended due to the improper use of force. The detective retired while

under investigation on October 23, 2013, and the case was Administratively Closed. The Grand Jury indicted the detective for the charge of manslaughter on May 12, 2014. The criminal case is still pending. (Case Number 2013-0780)

On August 31, 2013, an officer was dispatched to a Burglary of Business call. Upon arrival, the officer saw a vehicle parked near the entrance to the business and observed two males placing items inside. As the officer drove toward the vehicle, he relayed to dispatch that there were three occupants in the vehicle, the license plate number, and that they appeared to be getting ready to drive away. The officer stopped his vehicle in front of the subject vehicle. The driver of the subject vehicle then backed into a dumpster striking it. The subject then drove forward, stopped, and attempted to back up but was blocked between the dumpster and the marked police unit. At this point, the subject drove his vehicle forward striking the front of the police car. After striking the police vehicle, the driver of the subject vehicle continued to drive forward pushing the police car backward. The officer advised dispatch his vehicle had been struck and began giving verbal commands to the occupants of the vehicle telling them to put their hands up. The subjects did not comply and the subject vehicle continued to push the officer-occupied police vehicle until it struck a tree causing damage to the rear of the unit and stopping both vehicles. While the patrol unit was being pushed backwards, the officer opened fire. One shot struck the driver on the upper right side of his head. The officer advised dispatch that shots were fired and continued to give direction to the subjects and other units until the other units arrived and took custody of the subjects. The Grand Jury no billed the officer on August 26, 2014. The case was presented to the Citizen Review Panel on September 4, 2014, and the Citizen Review Panel and the Citizen Review Panel recommended that the officer be found in compliance with policy. The case was Administratively Closed by the Chain of Command. No discipline was issued. (Case Number 2013-0894)

On October 18, 2013, 911 dispatch alerted area units of an active shooter in a residential neighborhood. Dispatch had relayed that the subject had randomly shot at a neighbor striking him in the calf and had either fled or retreated back to his residence. Officers responded to the area and began to set up perimeters. There were three officers who were the primary officers on scene. They began to discuss the course of action needed to respond to the incident when they heard another gunshot. The officers gathered their weapons and began to make their way to the residence where they believed the shooter was located. The subject exited the residence with a rifle in hand. Several verbal commands were given to the subject to drop the weapon. The subject raised the weapon in the direction of officers and the officers discharged their weapons. The subject was struck by a single round. The subject sustained non-life threatening injuries. The Grand Jury no billed the officers on November 7, 2014. The case was presented to the Citizen Review Panel on December 4, 2014, and the Citizen Review Panel recommended that the officers be found in compliance with policy. The case was

Administratively Closed by the Chain of Command. No discipline was issued. (Case Number 2013-1060)

On November 10, 2013, several officers, including the shift sergeant, responded to a 911 Check Welfare call. They stated that while attempting to make contact with the resident, the resident pointed a gun with a laser sight at several of the officers. The officers retreated, took cover, and waited for back-up as no one on scene had a ballistic shield. The subject remained inside his apartment but the officers stated that he continued to track the officers with his gun/laser through the floor to ceiling windows. One officer stated he observed the subject raise his gun, and, fearing for the lives of three officers standing close to the subject's apartment with little to no cover, fired one round from his AR-15 rifle to stop the threat. The round struck the subject's gun. Officers then reported hearing the subject moving furniture inside the apartment and loading a gun and hearing a gun shot. When the subject appeared a second time, two back-up officers each fired one round, striking the subject. The wounded subject came out of his apartment at the direction of a negotiator. The subject was taken into custody, transported to the hospital and treated for his injuries. The subject was indicted, but found not guilty in a jury trial. The Grand Jury no billed the officers on June 17, 2015. The case was presented to the Citizen Review Panel on July 6, 2015, and the Citizen Review Panel expressed concern about lack of equipment, coordination and communication during the incident and the handling of mentally ill subjects, but did not find fault with the officers' decision to use deadly force. The final disposition of the administrative case was still pending as of this writing. (Case Number 2013-1128)

Section 2: Executive Summary

The Office of the Police Monitor's (OPM) annual report is presented to the public as a means to provide transparency into the Austin Police Department's (APD) complaint investigative process. This report reviews behavior patterns of APD officers and makes policy recommendations. Below are some of the key findings from the 2013 reporting year.

In 2013, 1,222 persons contacted the OPM or the APD's IAD wishing to file a complaint against one or more members of the APD. This was a decrease of 4% (52 contacts/complaints) from 2012. Of these contacts, a little less than half of those who reached out to either the APD or the OPM (585 of the 1,222) actually resulted in some type of complaint being filed.

- There were 327 Formal complaints filed in 2013 – 90 External Formal complaints and 237 Internal Formal complaints. In aggregate, this was a total decrease of 2% (8 cases) from the number filed in 2012. There were 14 *more* External Formal complaints (↑ 18%) and 22 *fewer* Internal Formal complaints (↓ 8%).
- The total number of Supervisor Referrals monitored by the OPM was up in 2013 to 258 complaints, an increase of 3% (7) from 2012. Supervisor Referrals had increased steadily from 2006 through 2009 then decreased in 2010 through 2012.
- There was considerable movement this year with regard to the number of complaints within each racial group. The biggest change was the Hispanic/Latino group. In 2013, this group's filing of External Formal complaints more than doubled (↑ 180%, up by 18 cases to 28). This is the first time since 2004, where Hispanics/Latino had the highest number of External Formal complaints.
- Caucasians make up the vast majority of the voting age population within the City of Austin. This group filed formal complaints at a rate 23% less than their representation in the population. Blacks/African Americans make up 8% of the population but filed 23% of the External Formal complaints in 2013. This translates to a difference of 16% between their representation in the population versus the percentage of External Formal complaints filed. Hispanics/Latinos filed External Formal complaints at a rate on par with their representation in the Austin voting age population.
- Historically, Hispanics/Latinos have filed complaints at a rate lower than their representation in the population. This has been the case since the OPM began keeping track; 2013 is the first year where the complaint rate of Hispanics/Latinos has equaled their representation in the population.

- Despite the decrease in population representation and complaint rate, Blacks/African Americans still file complaints at a rate significantly higher than their representation in the population while Caucasians file at a rate much lower.
- Caucasians experienced traffic stops at a rate slightly lower than their representation in the voting age population. Blacks/African Americans and Hispanics/Latinos were stopped at a rate above or slightly above their representation within the City of Austin's voting age population. Thus, the largest disparity between stops and the voting age population within any racial/ethnic group is again amongst the Black/African American group. At a 5% difference, this is virtually the same as last year.
- Caucasians accounted for 51% of the stops and 32% of the searches.
- Blacks/African Americans accounted for 13% of the stops and 26% of the searches.
- Hispanics/Latinos accounted for 32% of the stops and 42% of the searches.
- Hispanics/Latinos had a 1 in 9 chance of being searched after being stopped which is the same last year.
- Blacks/African Americans had a 1 in 6 chance, also the same as last year.
- The probability of Caucasians being searched once stopped was 1 in 20 in 2013 and 1 in 19 in 2012. Either way, it is a double digit difference compared to the other two large groups.
- In August of 2012, a new policy was instituted wherein the APD began requiring officers to have drivers sign a form before a consent search could be performed on their vehicles. With this policy in place the entire 2013 calendar year, the number of consent searches dropped.
- Probable cause searches were down in 2013 by 1,884 (↓ 35%). The reduction in the number of probable cause searches is unusual. It is possible that this reduction could be linked to the change in APD policy of not reporting searches where no citation was given or arrest made.
- There were no instances where the reason for the search was not documented in 2013. However, it is unlikely officers complied with the policy 100% of the time and, therefore, the OPM is of the opinion there are searches being conducted which are not being reported properly.
- Nothing was found 59% of the time when a search was conducted based on probable cause. This means that something was found only 41% of the time. It is impossible to tell if this is accurate due to APD not reporting searches where nothing was found and no citation was given or arrest was made.

- Males file External Formal complaints at a rate higher than their representation within the City (72% of complaints; 53% of the population) while females file at a rate lower (27% of complaints; 47% of the population).
- External Formal complaints as a whole were up in 2013, from 76 to 90. The Downtown area command, which frequently has the most complaints, again had the most in 2013 with 18. The area command with the next highest number was the Central East with 15 External Formal complaints.
- In 2013, 57% of all External Formal complaints received a “D” classification. This is the highest percentage of “D” classifications in the past 5 years and a serious step backward in the opinion of the OPM.
- In both 2010 and 2011, the OPM identified an issue of concern regarding Interviews, Stops, and Arrests, et al, allegations. These types of allegations were down dramatically in 2012 but have reached an all-time high in 2013 with 48 allegations filed in External Formal complaints.
- When combining the allegations for both Supervisor Referrals and External Formal complaints, the area command with the highest number of allegations was Downtown with 65. This was followed by Southeast and Central East both with 62. The South Central area command was third with 60 allegations total.
- Looking at Interviews, Stops and Arrests allegations for both External Formal complaints and Supervisor Referrals, the OPM has found that the Southeast area command had the greatest number of allegations, 15, followed by the Southwest and Downtown area commands each with 11.
- In 2013, there were four Response to Resistance (Use of Force) allegations in Supervisor Referrals and 22 in External Formal complaints. Of the Response to Resistance allegations associated with External Formal complaints, six of the nine area commands had at least one Response to Resistance allegation filed – one more area command than last year.
- In 2013, as in 2012, only 7% of allegations in External Formal allegations were Sustained. This is down from 20% in 2011. The number of allegations that were Administratively Closed was 54%. This is down from 66% in 2012 but much higher than the 28% in 2011.
- As a matter of routine, all cases classified as a “D” are “Administratively Closed.” In addition to the “D” cases, many others are also “Administratively Closed.” The OPM continues to advocate that “Administratively Closed” be used sparingly. It is the opinion of the OPM that making a finding (e.g., “Sustained” or “Exonerated”) regarding the conduct of an officer adds credence to the process.

- For the second year in a row, no external cases were found to be inconclusive. While inconclusive may sometimes be the appropriate finding as the investigation cannot sort out whether the conduct occurred or not, if investigations are conducted fairly and thoroughly, it should be a rare finding. The OPM is concerned that cases are being administratively closed with a “D” classification may, in fact, be inconclusive.
- There were fourteen terminations in 2013 as a result of a complaint. One officer retired, three retired while under investigation, five resigned, two resigned while under investigation and three received Indefinite Suspensions.
- For those with complaints in 2013, the average length of time the officer had served on the force until the date of the incident with the public was seven years for Supervisor Referrals and 7.6 years for Formal complaints. This is interesting as officers with 7-9 years of experience make up the smallest percentage of the APD, 11%.
- The most common length of time officers have been on the force before receiving their first complaint in 2013 was just a little over a year for Supervisor Referrals and a little over four years for External Formal complaints. This is much lower than last year. Last year, the most common tenure for an External Formal complaint was almost 11 years.
- It is not surprising to see relatively inexperienced officers making up the majority of the subjects of complaints. The OPM is troubled, however, by the length of service of the officers involved in the more serious complaints.
- As has been the case in years past, the public bring complaints against male officers at a higher rate than their representation on the police force and, of course, this is reflected in the number of allegations lodged against the officer.
- In 2013, there were an unusually high number of allegations levied against female officers in External Formal complaints (32). This was three times as high as in 2012 when there were 10.
- When aggregating the complaints brought by members of the public against officers within the 2009-2013 timeframe, the OPM found that 69% of officers in this pool have had two or more complaints in the past 5 years.

Section 3: OPM Recommendations

- While state regulation may not require the reporting of stops or searches that do not result in a citation or arrest, APD should make that data available to the OPM and the public. This data should include not only stops of vehicles, but also pedestrian stops that resulted in frisks or searches.
- The OPM recommends that routine audits of traffic stops videos and reports be performed to ensure racial profiling data has been provided as required. If it has not been provided, but is available, the report should be supplemented.
- APD should take greater care in classifying cases as a “D.” If it is not clear on the face of the complaint that it has no merit, the case should be classified as an “A” or “B.” If it is determined that the officer did not commit a violation, the case should then be “unfounded” as opposed to being administratively closed.
- Given the number of incidents in which the APD uses force, the number of external allegations seems low. In order to ensure that the Response to Resistance policy is being followed, the OPM is recommending that routine audits of Response to Resistance reporting be conducted by the OPM and the APD. If deficiencies are discovered, training, policy development, and/or discipline should be considered.
- It is recommended that the APD continue to review the staffing assignments to allocate the most experienced officers and least experienced officers in at least a more balanced manner taking into consideration the level of activity and crime rate.

Section 4: End of Year Statistical Review

Complaints

Number & Types of Complaints

In 2013, 1,222 persons contacted the OPM or the APD's IAD wishing to file a complaint against one or more members of the APD. This was a decrease of 4% (52 contacts/complaints) from 2012. Of these contacts, a little less than half of those who reached out to either the APD or the OPM (585 of the 1,222) actually resulted in some type of complaint being filed.

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

The graph below includes all individuals contacting the OPM or the APD regarding an issue with an APD officer including those from within the APD. In this figure, the term "contacts only" means that a person reached out to the OPM, reached out to the IAD or requested to speak to a supervisor while the officer and the complainant were still on the scene of the incident or shortly thereafter. For those that reached out to the OPM or IAD, a contact as defined here means that the person did not file a Supervisor Referral or a Formal complaint. The complaint may not have been filed because:

- The incident did not meet the criteria outlined in the APD's policy manual, Lexipol;
- After speaking with the complaint specialist, the individual had a better understanding of the officer's actions and no longer desired to file a complaint;
- The individual did not provide sufficient information for follow up;
- The individual was not available for follow up;
- The individual failed to follow through with the complaint process;
- The incident involved a complaint against a law enforcement agency other than APD; or,
- Was a matter best handled by the courts or another agency.

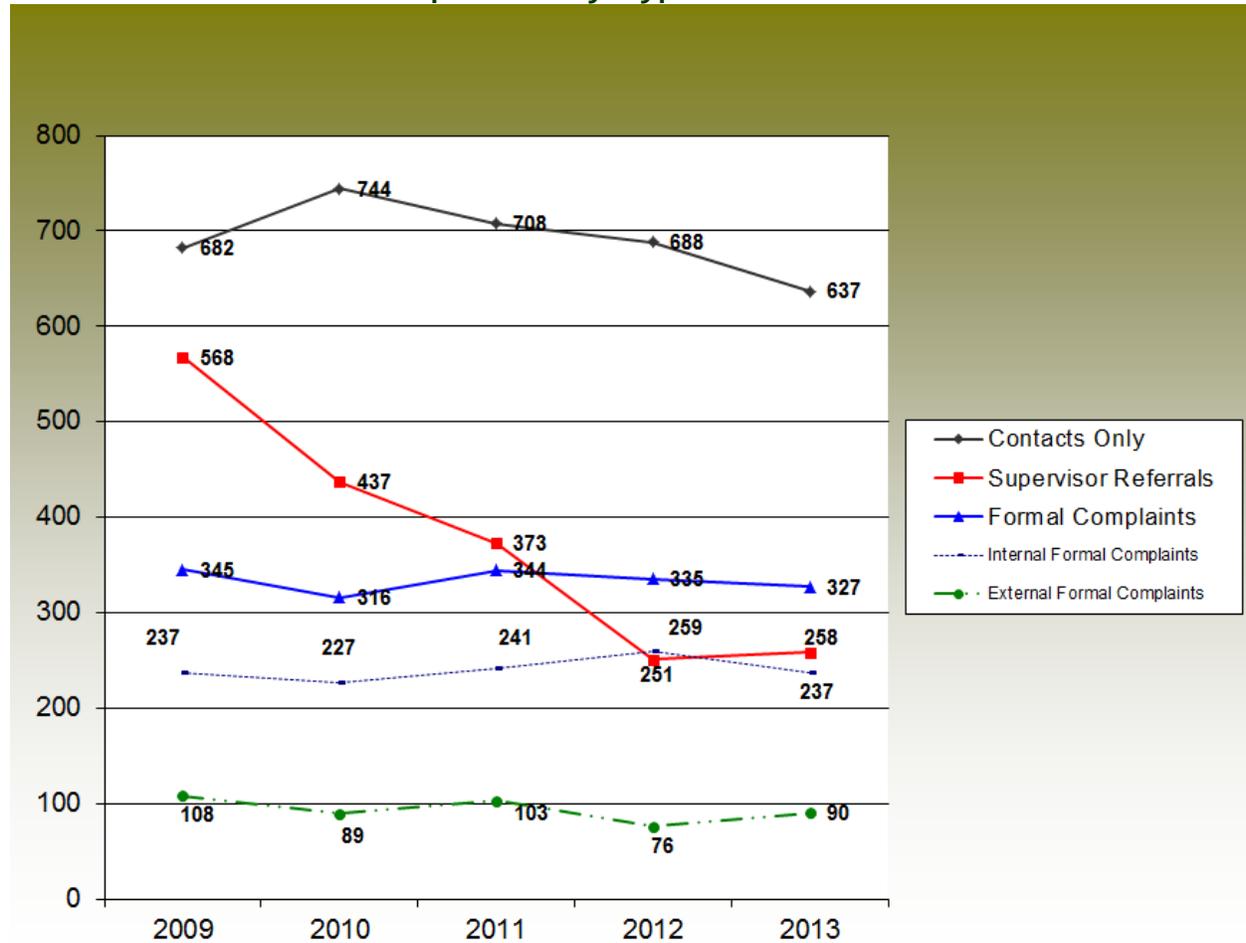
For those people that requested a supervisor be sent to the scene of the incident, they remain a "contact" for the purposes of this report because they were either satisfied with the answers provided to them by the supervisor and/or chose not to come to the OPM to file a complaint.

There were 327 Formal complaints filed in 2013 – 90 External Formal complaints and 237 Internal Formal complaints. In aggregate, this was a total decrease of 2% (8 cases)

from the number filed in 2012. There were 14 *more* External Formal complaints (↑ 18%) and 22 *fewer* Internal Formal complaints (↓ 8%).

The total number of Supervisor Referrals monitored by the OPM was up in 2013 to 258 complaints, an increase of 3% (7) from 2012. Supervisor Referrals had increased steadily from 2006 through 2009 then decreased in 2010 through 2012. During this same time period, the number of External Formal complaints has been up and down.

Table 1: Contacts & Complaints by Type – 2009-2013



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

While the OPM believes the option of speaking directly to an officer’s supervisor is one of the factors leading complainants to choose this avenue, other factors may also come into play. One factor is time—Supervisor Referrals normally take less than 30 days to

complete while a Formal complaint may take as long as 180 days. The other is that, in general, the vast majority of complaints being brought do not involve accusations of serious misconduct.

The OPM assesses complainant satisfaction with the resolution of the Supervisor Referral 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 an External Formal complaint. In 2013, only four complainants chose to advance to an External Formal complaint after first going through the Supervisor Referral process. The OPM believes this is a reflection of the first line supervisors doing a thorough job of listening and explaining.

Complaints & Complainant Demographics

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

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

Table 2: Race/Ethnicity of Complainants - 2013

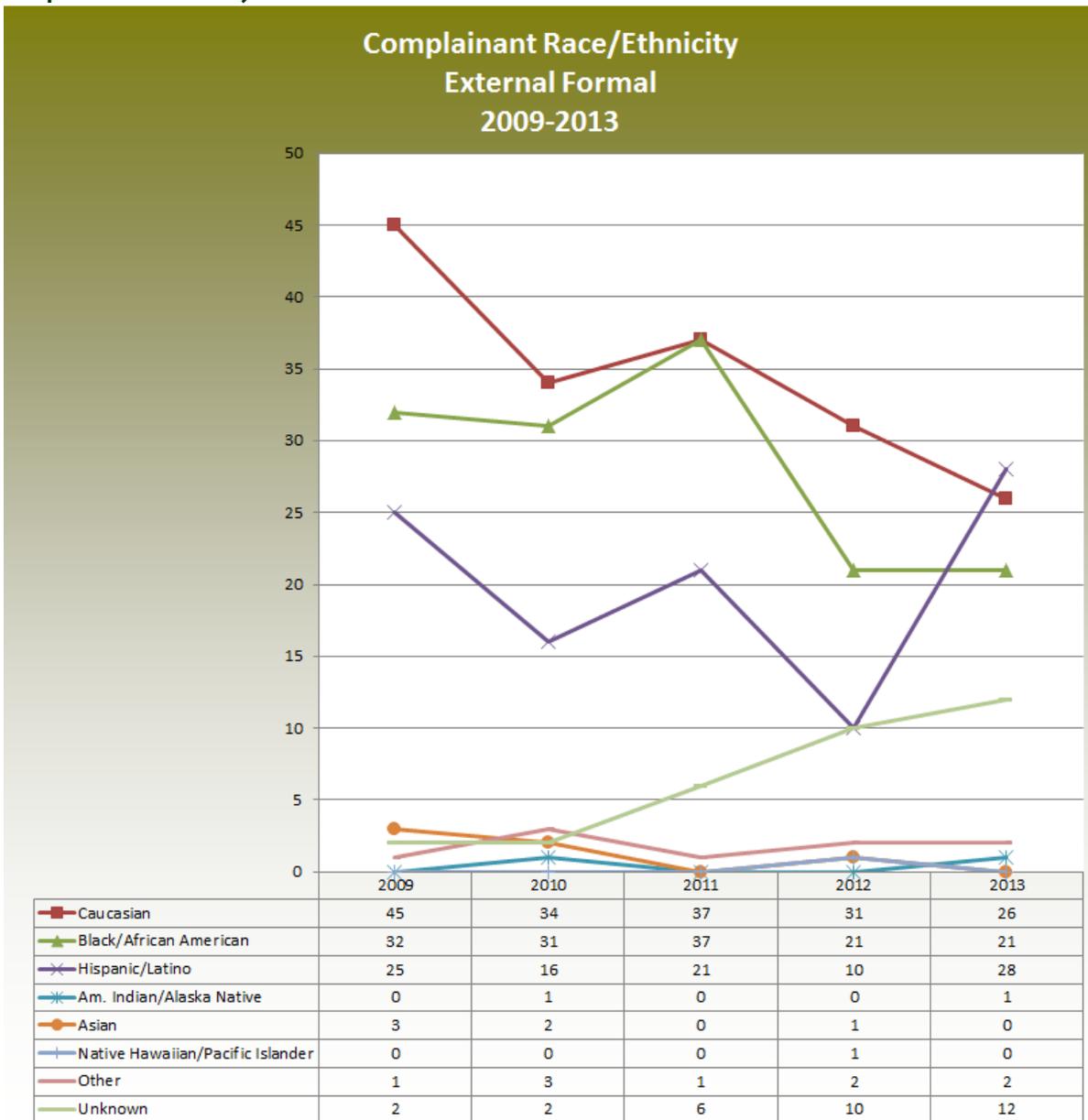
Ethnicity/Race	Supervisor Referrals		External Formals		Total	
	#	%	#	%	#	%
Caucasian	98	38%	26	29%	124	36%
Black/African American	56	22%	21	23%	77	22%
Hispanic/Latino	58	22%	28	31%	86	25%
Am. Indian/Alaska Native	2	1%	1	1%	3	1%
Asian	2	1%	0	0%	2	1%
Native Hawaiian/Pacific Islander	0	0%	0	0%	0	0%
Other	1	0%	2	2%	3	1%
Unknown	41	16%	12	13%	53	15%
Total	258	100%	90	100%	348	100%

*May not total to 100% due to rounding.

There was considerable movement this year with regard to the number of complaints within each racial group. Caucasians continue to file the most complaints overall but

filed fewer Supervisor Referrals in 2013 than they did in 2012. Blacks/African Americans filed more Supervisor Referrals but the same number of External Formal complaints as last year. The biggest change was the Hispanic/Latino group. In 2013, this group's filing of External Formal complaints more than doubled ($\uparrow 180\%$, up by 18 cases to 28). This is the first time since 2004, where Hispanics/Latinos had the highest number of External Formal complaints.

Table 3: External Formal Complainant Race/Ethnicity (Graph of Counts) – 2009-2013



**Table 4: External Formal Complainant Race/Ethnicity
(Table of Counts & Percentages) – 2009-2013**

Ethnicity/Race	External Formal									
	2009		2010		2011		2012		2013	
	#	%	#	%	#	%	#	%	#	%
Caucasian	45	42%	34	38%	38	37%	31	41%	27	30%
Black/African American	32	30%	31	35%	38	37%	21	28%	21	23%
Hispanic/Latino	25	23%	16	18%	21	20%	10	13%	28	31%
Am. Indian/Alaska Native	0	0%	1	1%	0	0%	0	0%	1	1%
Asian	3	3%	2	2%	0	0%	1	1%	0	0%
Native Hawaiian/Pacific Islander	--	--	0	0%	0	0%	1	1%	0	0%
Other	1	1%	3	3%	1	1%	2	3%	2	2%
Unknown	2	2%	2	2%	5	5%	10	13%	12	13%
Total	108	100%	89	100%	103	100%	76	100%	91	100%

*May not total to 100% due to rounding.

In analyzing complaints, the OPM looks at how the percentages compare to the voting age population of Austin.² The focus here is on the three largest groups of people as based on their population numbers. Caucasians make up the vast majority of the voting age population within the City of Austin. This group filed formal complaints at a rate 23% less than their representation in the population. Blacks/African Americans make up 8% of the population but filed 23% of the External Formal complaints in 2013. This translates to a difference of 16% between their representation in the population versus the percentage of External Formal complaints filed. Hispanics/Latinos filed External Formal complaints at a rate on par with their representation in the Austin voting age population. Historically, this group has filed complaints at a rate lower than their representation in the population. This has been the case since the OPM began keeping track; 2013 is the first year where the complaint rate of Hispanics/Latinos has equaled their representation in the population.

While the gap between population representation and complaint rate diminished a bit in 2013 within the Black/African American group, the gap increased significantly for Caucasians. In 2012, the gap was 13%; in 2013, it was 24%. Despite the decrease in population representation and complaint rate, Blacks/African Americans still file complaints at a rate significantly higher than their representation in the population while Caucasians file at a rate much lower.

Because of their low complaint rate in the past, the OPM has made a concerted effort to reach out to the Hispanic/Latino community. Part of this effort has been to stress that the OPM will not inquire as to the immigration status of the complainant or any of the witnesses. Either this effort has had an impact or this group has become more vocal about dissatisfaction with the conduct of APD.

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

Table 5: 2013 External Formal Complainant Race/Ethnicity versus 2010 City of Austin Voting Age Population

Ethnicity/Race	External Formals		2010 City of Austin Voting Age Population		Gap: % Complaints vs. % Population
	Count	%	Count	%	
Caucasian	26	28.9%	329,500	53.4%	-24.6%
Black/African American	21	23.3%	46,219	7.5%	15.8%
Hispanic/Latino	28	31.1%	188,318	30.5%	0.6%
Am. Indian/Alaska Native	1	1.1%	1,639	0.3%	0.8%
Asian	0	0.0%	39,604	6.4%	-6.4%
Native Hawaiian/Pacific Islander	0	0.0%	1,639	0.3%	-0.3%
Unknown/Other	14	15.6%	9,645	1.6%	14.0%
	90	100%	616,564	100%	

*May not total to 100% due to rounding.

Despite the dramatic increase in External Formal complaints from Hispanics/Latinos, and given the perceived reticence of this group to file complaints, the OPM remains concerned about the number of issues this group may *not* be reporting.

A greater emphasis on outreach to the Asian community was made in 2013 as well as it is one of the fastest growing population groups in Austin. The OPM's outreach efforts included brochures about how to file a complaint that were produced in both Vietnamese and Mandarin. Those classified as Asian constitute 6% of the voting age population but filed no External Formal complaints.

In the 2013 APD Racial Profiling report³, the APD states that Caucasians were stopped 68,445 times, or 51% of all traffic stops, Blacks/African Americans were stopped 16,748 times, or 13% of all reported traffic stops, and Hispanics/Latinos were stopped 42,807 times, or 32% of all traffic stops. As can be seen in the table below, when comparing the number of stops to the voting age population for each group within the City of Austin, Caucasians were stopped at a rate slightly lower than their representation in the voting age population. Blacks/African Americans and Hispanics/Latinos were stopped at a rate above or slightly above their representation within the City of Austin's voting age population. Thus, the largest disparity between stops and the voting age population within any racial/ethnic group is again amongst the Black/African American group. At a 5% difference, this is virtually the same as last year.

³ <http://www.austintexas.gov/sites/default/files/files/Police/2013%20racial%20profiling%20report%20021113.pdf>

Table 6: 2013 Traffic Stops by Race/Ethnicity versus 2010 City of Austin Voting Age Population

APD Category	2013 Traffic Stops		2010 City of Austin Voting Age Population		Difference: Population vs. Stops	Percent of Population Stopped	Likelihood of Being Stopped
Caucasian	68,445	51.2%	329,500	53.6%	-2.4%	20.8%	1 out of 5
Black/African American	16,748	12.5%	46,219	7.5%	5.0%	36.2%	1 out of 3
Hispanic/Latino	42,807	32.0%	188,318	30.6%	1.4%	22.7%	1 out of 4
Asian	3,866	2.9%	39,604	6.4%	-3.5%	9.8%	1 out of 10
Am. Indian/Alaska Native	108	0.1%	1,639	0.3%	-0.2%	6.6%	1 out of 15
Middle Eastern	1,729	1.3%	**	**	**	**	**
Unknown/Other	**	**	9,645	1.6%	**	**	**
	133,703	100%	614,925	100%			

*May not total to 100% due to rounding.

There have been attempts by others to explain the overrepresentation in stops of Blacks/African Americans by suggesting that Blacks/African Americans residing in surrounding communities come into Austin to work and/or for entertainment. While the OPM finds little reason to suggest that Blacks/African Americans would commute into Austin at a higher rate than any other racial/ethnic group, the OPM also compared the percentage of stops to the voting age population within Travis County as well as the Austin Metropolitan Statistical Area (MSA) voting age population. The Austin MSA covers the counties of Travis, Williamson, Hays, Bastrop and Caldwell and includes the communities of Austin, Round Rock, Cedar Park, San Marcos, Georgetown, Pflugerville, Kyle, Leander, Bastrop, Brushy Creek, Buda, Dripping Springs, Elgin, Hutto, Jollyville, Lakeway, Lockhart, Luling, Shady Hollow, Taylor, Wells Branch, and Windemere. There is virtually no difference in the percentage of stops data between the City of Austin and Travis County voting age population, and only a slight difference when looking at the MSA data. The data show that Blacks/African Americans are still stopped in a greater percentage than their representation in each population.

Table 7: 2013 Traffic Stops by Race/Ethnicity versus 2010 Travis County and Austin MSA Voting Age Population

APD Category	2013 Traffic Stops		2010 Travis County Voting Age Population		Difference: Population vs. Stops	2010 Austin MSA Voting Age Population		Difference: Population vs. Stops
Caucasian	68,445	51.2%	429,849	55.2%	-4.0%	756,128	59.0%	-7.8%
Black/African American	16,748	12.5%	60,875	7.8%	4.7%	87,873	6.9%	5.7%
Hispanic/Latino	42,807	32.0%	228,123	29.3%	2.7%	352,400	27.5%	4.5%
Asian	3,866	2.9%	46,461	6.0%	-3.1%	62,996	4.9%	-2.0%
Am. Indian/Alaska Native	108	0.1%	2,117	0.3%	-0.2%	3,861	0.3%	-0.2%
Middle Eastern	1,729	1.3%	**	**	**	**	**	**
Unknown/Other	**	**	11,804	1.5%	**	18,271	1.4%	**
	133,703	100%	779,229	100%		1,281,529	100%	

*May not total to 100% due to rounding.

There were 10,884 searches included in the 2013 Racial Profiling Report. This is down 14% from the original 2012 Racial Profiling report released in February 2013 when there were 12,693 searches reported. During the course of the 2013 calendar year, the APD amended its' 2012 stops and searches numbers by removing all stops from the dataset where the driver was issued a warning only or where a field observation card was generated but the driver was not arrested, issued a citation or had their vehicle towed. As a result of removing these data, the 2012 numbers were revised and the 2012 numbers shown in the 2013 Racial Profiling report are different than what was originally reported in 2012 and repeated in the 2012 OPM Annual Report. In the 2013 Racial Profiling report, the APD states the number of searches as 11,790, or 903 fewer searches. The data in the 2013 Racial Profiling report include only stops where a driver was arrested, issued a citation or had their vehicle towed. It is likely not the case, therefore, that there were actually fewer stops or fewer searches. The OPM is concerned about the practice of not reporting searches which did not result in an arrest or citation. The OPM often hears from complainants that they were searched without probable cause or permission and that the officer told them, "I am going to give you a break and only give you a warning." Such searches are no longer listed in the APD's Racial Profiling report. The OPM will continue to monitor the search activity of the APD to ensure all members of the community are treated fairly.

Recommendation

While state regulation may not require the reporting of stops or searches that do not result in a citation or arrest, APD should make that data available to the OPM and the public. This data should include not only stops of vehicles, but also pedestrian stops that resulted in frisks or searches.

According to the 2013 Racial Profiling report, Caucasians accounted for 51% of the stops and 32% of the searches. This is basically the same as originally reported in 2012 and correlates with the revised 2012 data as well.

Blacks/African Americans accounted for 13% of the stops and 26% of the searches. This is up slightly from the original 2012 report as well as the revised 2012 Racial Profiling data where this group accounted for 24% of all searches in both datasets.

Hispanics/Latinos accounted for 32% of the stops and 42% of the searches. This is also basically unchanged from the original 2012 Racial Profiling report as well as the revised data. As in 2012, more searches of Hispanics/Latinos were conducted than of any other group.

Despite being searched the greatest number of times in 2013, Hispanics/Latinos had a 1 in 9 chance of being searched after being stopped which is the same last year.

Blacks/African Americans had a 1 in 6 chance, also the same as last year. The

probability of Caucasians being searched once stopped was 1 in 20 in 2013 and 1 in 19 in 2012. Either way, it is a double digit difference compared to the other two large groups.

Table 8: 2013 Traffic Stops and Searches by Race/Ethnicity

APD Category	2013 Traffic Stops		2013 Searches		Likelihood of Being Searched if Stopped	
	Count	Percentage	Count	Percentage	Percentage	Ratio
Caucasian	68,445	51.2%	3,437	31.6%	5.0%	1 out of 20
Black/African American	16,748	12.5%	2,772	25.5%	16.6%	1 out of 6
Hispanic/Latino	42,807	32.0%	4,535	41.7%	10.6%	1 out of 9
Asian	3,866	2.9%	93	0.9%	2.4%	1 out of 42
Am. Indian/Alaska Native	108	0.1%	5	0.0%	4.6%	1 out of 22
Middle Eastern	1,729	1.3%	42	0.4%	2.4%	**
Unknown/Other	**	**	**	**	**	**
	133,703	100%	10,884	100%		

*May not total to 100% due to rounding.

Table 9: 2012 Traffic Stops and Searches by Race/Ethnicity (Original Data)

APD Category	2012 Traffic Stops		2012 Searches		Likelihood of Being Searched if Stopped	
	Count	Percentage	Count	Percentage	Percentage	Ratio
Caucasian	76,799	51.5%	4,092	32.3%	5.3%	1 out of 19
Black/African American	19,805	13.3%	3,088	24.4%	15.6%	1 out of 6
Hispanic/Latino	46,993	31.5%	5,313	42.0%	11.3%	1 out of 9
Asian	3,969	2.7%	114	0.9%	2.9%	1 out of 35
Am. Indian/Alaska Native	113	0.1%	9	0.1%	8.0%	1 out of 13
Middle Eastern	1,321	0.9%	37	0.3%	2.8%	**
Unknown/Other	**	**	**	**	**	**
	149,000	100%	12,653	100%		

*May not total to 100% due to rounding.

In August of 2012, a new policy was instituted wherein the APD began requiring officers to have drivers sign a form before a consent search could be performed on their vehicles. This policy came into effect after the OPM's 2011 Annual Report pointed out that more drivers of color were being searched than their Caucasian counterparts despite there being virtually no difference in contraband found. The OPM believes most people do not understand they do not have to consent to a search and/or that they have the right to revoke the consent. With this policy in place the entire 2013 calendar year, the number of consent searches dropped again. In 2012, consent searches accounted for 486 of the original 12,653 searches conducted, or 4% of all reported searches. (The revised 2012 data has this as 3% of all reported searches). In 2013, the consent search number dropped to 150 of the 10,884 searches, or 1% of all reported searches.

Recommendation

As noted above, APD no longer reports stops and searches which do not result in a citation or arrest. Thus, there may be consent searches occurring which are not being reported. The OPM recommends that APD make the data on all searches conducted incident to consent available to the OPM and the public.

Table 10: 2013 Consent vs. Non-Consent Searches by Race/Ethnicity

APD Category	Consent Search		Non-Consent Search								Total All Seaches	
			Arrest		Contraband		Probable Cause		Tow			
Caucasian	40	26.7%	2,248	35.3%	18	18.2%	892	25.1%	239	32.8%	3,437	31.6%
Black/African American	31	20.7%	1,437	22.6%	36	36.4%	1,131	31.9%	137	18.8%	2,772	25.5%
Hispanic/Latino	77	51.3%	2,588	40.7%	43	43.4%	1,490	42.0%	337	46.3%	4,535	41.7%
Asian	2	1.3%	60	0.9%	1	1.0%	19	0.5%	11	1.5%	93	0.9%
Am. Indian/Alaska Native	0	0.0%	2	0.0%	0	0.0%	2	0.1%	1	0.1%	5	0.0%
Middle Eastern	0	0.0%	25	0.4%	1	1.0%	13	0.4%	3	0.4%	42	0.4%
Unknown/Other	**	**	**	**	**	**	**	**	**	**	**	**
Total by Search Type	150	100%	6,360	100%	99	100%	3,547	100%	728	100%	10,884	100%
Percent of All Searches	1.4%		58.4%		0.9%		32.6%		6.7%			

*May not total to 100% due to rounding.

Non-consent searches make up the majority of all searches. Non-consent searches include searches made incident to arrest, those based on probable cause, those based on some sort of contraband reported to be in plain view, and towing situations when a vehicle's contents need to be inventoried before it is impounded.

In the 2013 Racial Profiling report, the APD reported 6,360 searches subject to arrests, 99 searches where some form of contraband was reported to be in plain view, 3,547 searches pursuant to probable cause and 728 searches where a vehicle was towed. These instances total 10,884, or 99% of all searches. In 2012, the percent of non-consent searches was 91%.

Searches subject to arrest were up by 599 (↑ 10%) while probable cause searches were down by 1,884 (↓ 35%). Most striking is the number of searches pursuant to a tow. This number increased by 549 (↑ 301%). The reduction in the number of probable cause searches is unusual. It is most likely linked to the change in APD policy of not reporting searches where no citation was given or arrest made. This further supports the need for all searches to be recorded and reported regardless of whether a citation is issued or an arrest made.

There were no instances where the reason for the search was not documented in 2013. Whether this is factual or these data were simply omitted, we do not know. Regardless, the OPM views any true reduction of the percentage of searches for which the APD has not properly recorded the basis for the search as a positive. As officers are required by APD policy 306 to document the reason for the search, any failure constitutes a policy violation. Not a single formal complaint was filed in 2013 for violation of this policy.

However, it is unlikely officers complied with the policy 100% of the time and, therefore, the OPM is of the opinion there are searches being conducted which are not being reported properly.

Recommendation

The OPM recommends that routine audits of traffic stops videos and reports be performed to ensure racial profiling data has been provided as required. If it has not been provided, but is available, the report should be supplemented.

Overall, Blacks/African Americans account for 26% of all searches while representing 13% of those stopped, and 8% of the voting age population of Austin.

Hispanics/Latinos account for 31% of the population and represent 32% of stops but make up 42% of all searches. There are double digit gaps between these two minority groups and the percent of time they are stopped and searched. There is a double digit gap for Caucasians as well but as an underrepresentation.

Searches incident to arrest and towing are considered low discretion searches. In other words, by policy, the officer must search. Searches based on consent, probable cause, and contraband are high discretion searches. In analyzing the 3,547 instances of searches based on probable cause, the OPM is troubled by the fact that, despite the officer claiming to have probable cause to search, no contraband or evidence of a crime was found in 59% of these searches. In 2012, officers reported 115 instances where a search was based on having reported seeing evidence or contraband in plain view. In 54% of these instances, no contraband or evidence of a crime was found. The number of contraband in plain view searches dropped to 99 in 2013 and the rate at which nothing was found dropped to 35%. Again, this drop may be partially attributable to the change in reporting policy. It may also be a reflection of greater emphasis in training on what constitutes grounds for a search based on plain view. Without full reporting of all stops and searches, it is not possible to determine the true rate.

While the search of a motor vehicle is normally exempted from the search warrant requirement, police do need a basis for the search. The most common reasons cited are consent, incident to arrest, probable cause, contraband in plain view, and subject to towing and these are reported here. Many factors contribute to the existence of probable cause, but the basic premise is that probable cause requires facts or evidence that would lead a reasonable person to believe the vehicle contains contraband or evidence. There is disagreement as to what is an acceptable hit rate for contraband. While it is not expected that officers will be right 100% of the time, most literature suggests that “probable” means more likely than not contraband or evidence will be found. The 59% rate at which nothing was found when a search was conducted based on probable cause means that something was found only 41% of the time. This is an improvement from past years, but still low. Also, it bears repeating that the

improvement may be the result of not reporting searches where nothing was found, but no citation was given or arrest made.

Table 11: 2013 What Found in Probable Cause and Contraband in Plain View Searches by Race/Ethnicity

APD Category	Probable Cause			Contraband		
	Search	Nothing Found		Search	Nothing Found	
	#	#	%	#	#	%
Caucasian	892	505	56.6%	18	7	38.9%
Black/African American	1,131	639	56.5%	36	12	33.3%
Hispanic/Latino	1,490	918	61.6%	43	15	34.9%
Asian	19	13	68.4%	1	0	0.0%
Am. Indian/Alaska Native	2	1	50.0%	0	0	0.0%
Middle Eastern	13	11	84.6%	1	1	0.0%
Total	3,547	2,087	58.8%	99	35	35.4%

*May not total to 100% due to rounding.

APD calls the finding of some form of contraband a “hit.” Looking at APD’s 2013 Racial Profiling Report, it can be seen that the hit rate is between 28% and 40%. The hit rate appears to correspond directly to the number of searches conducted.

The largest difference between groups is that of Hispanics/Latinos versus Blacks/African Americans with a 12% difference. All that said, there is virtually no difference between the groups in the likelihood of a hit.

Table 12: 2013 Searches and “Hits” by Race/Ethnicity

APD Category	2013 Searches		2013 "Hits"		Likelihood of a "Hit"	
Caucasian	3,437	31.6%	1,000	30.8%	29.1%	1 out of 3
Black/African American	2,772	25.5%	901	27.7%	32.5%	1 out of 3
Hispanic/Latino	4,535	41.7%	1,309	40.3%	28.9%	1 out of 3
Asian	93	0.9%	**	**	**	**
Am. Indian/Alaska Native	5	0.0%	**	**	**	**
Middle Eastern	42	0.4%	**	**	**	**
Unknown/Other	**	**	39	1%	**	**
	10,884	100%	3,249	100%		

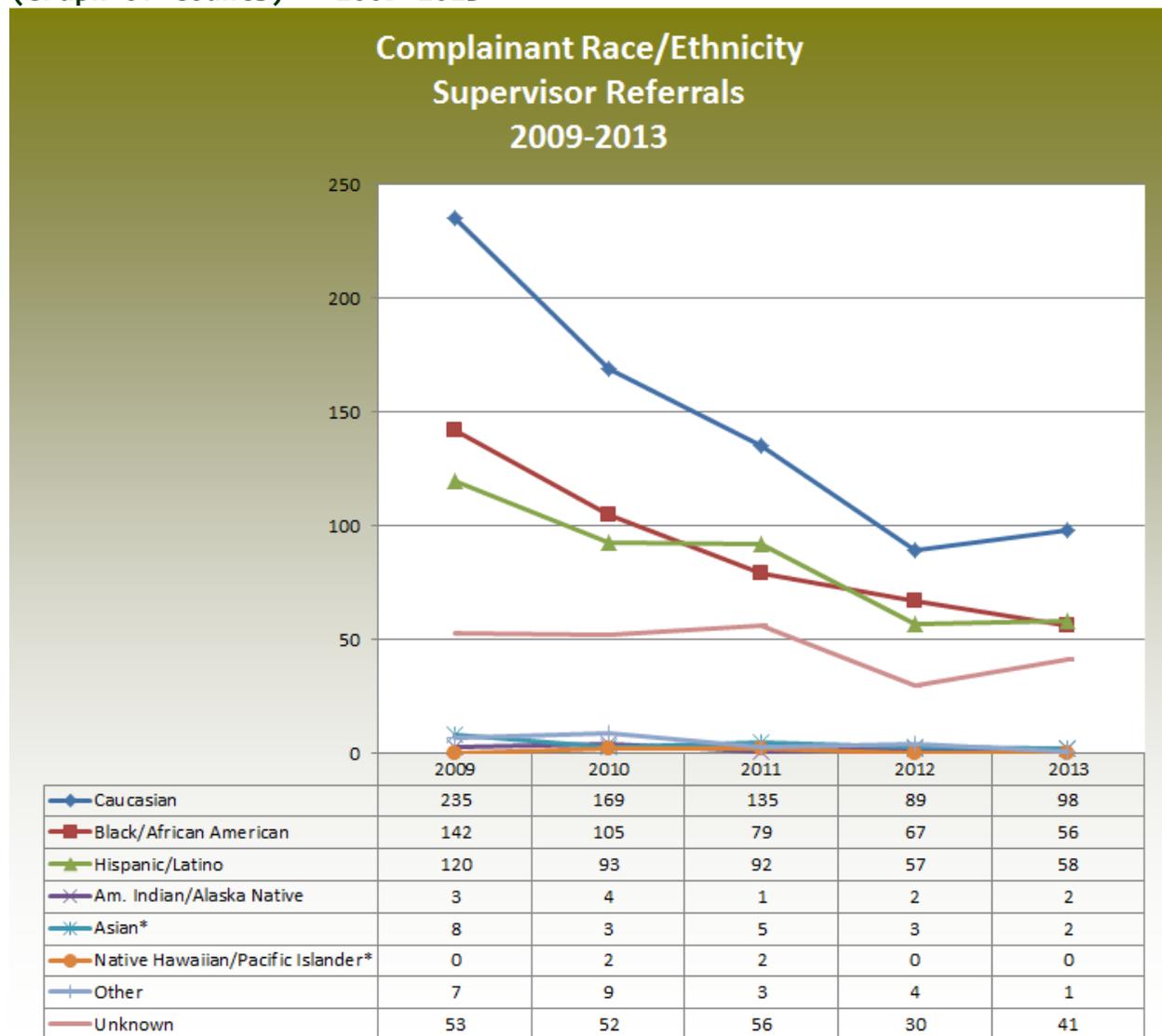
*May not total to 100% due to rounding.

The OPM recognizes the results presented here are not without flaw. Given that the data needed for a more comprehensive analysis (i.e., the APD’s Geographic Racial Profiling Report Supplement) was not published in 2013, the OPM is not able to conduct further analysis. If these data were available, the OPM would have an

indication of where stops and searches occurred as well as the population of those areas. Without the benefit of knowing the location of the stop combined with the demographic/geographic information of the person being stopped, the OPM cannot provide further analysis.

Moving on to Supervisor Referral complaints, in terms of quantity, Supervisor Referrals remained almost flat in 2013. As a percentage of complaints filed, there was a small increase among Caucasians in 2013 (up 3% over 2012) while the rate among Blacks/African Americans was down. There were also increases in the percent of complaints filed by Caucasians and Hispanics/Latinos although these were much smaller (4% and 2%, respectively).

Table 13: Supervisor Referrals Complainant Race/Ethnicity (Graph of Counts) – 2009-2013



**Table 14: Supervisor Referrals Complainant Race/Ethnicity
(Table of Counts & Percentages) – 2009-2013**

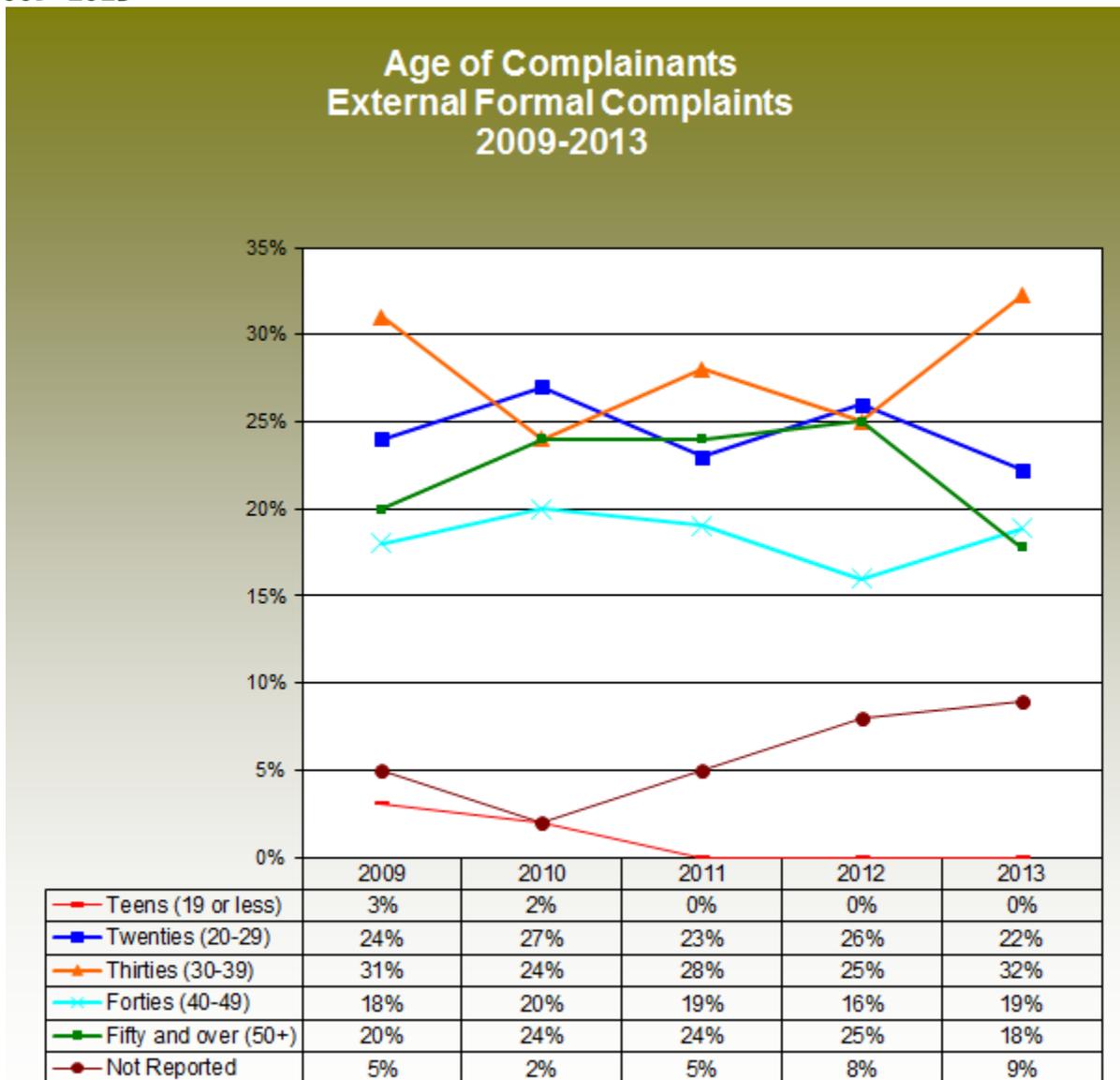
Ethnicity/Race	Supervisor Referrals									
	2009		2010		2011		2012		2013	
	#	%	#	%	#	%	#	%	#	%
Caucasian	235	41%	169	39%	135	36%	89	35%	98	38%
Black/African American	142	25%	105	24%	79	21%	67	27%	56	22%
Hispanic/Latino	120	21%	93	21%	92	25%	57	23%	58	22%
Am. Indian/Alaska Native	3	1%	4	1%	1	0%	2	1%	2	1%
Asian	8	1%	3	1%	5	1%	3	1%	2	1%
Native Hawaiian/Pacific Islander	--	--	2	0%	2	1%	0	0%	0	0%
Other	7	1%	9	2%	3	1%	4	2%	1	0%
Unknown	53	9%	52	12%	56	15%	29	12%	41	16%
Total	568	100%	437	100%	373	100%	251	100%	258	100%

*May not total to 100% due to rounding.

Age of Complainants

People in their 30s had the highest percentage of complaints in 2013—nearly one-third of all External Formal complaints. There were 4% fewer complaints from people in their 20s, 3% more from people in their 30s and 7% fewer from those 50 and over.

Table 15: Age of Complainants filing External Formal Complaints – 2009-2013

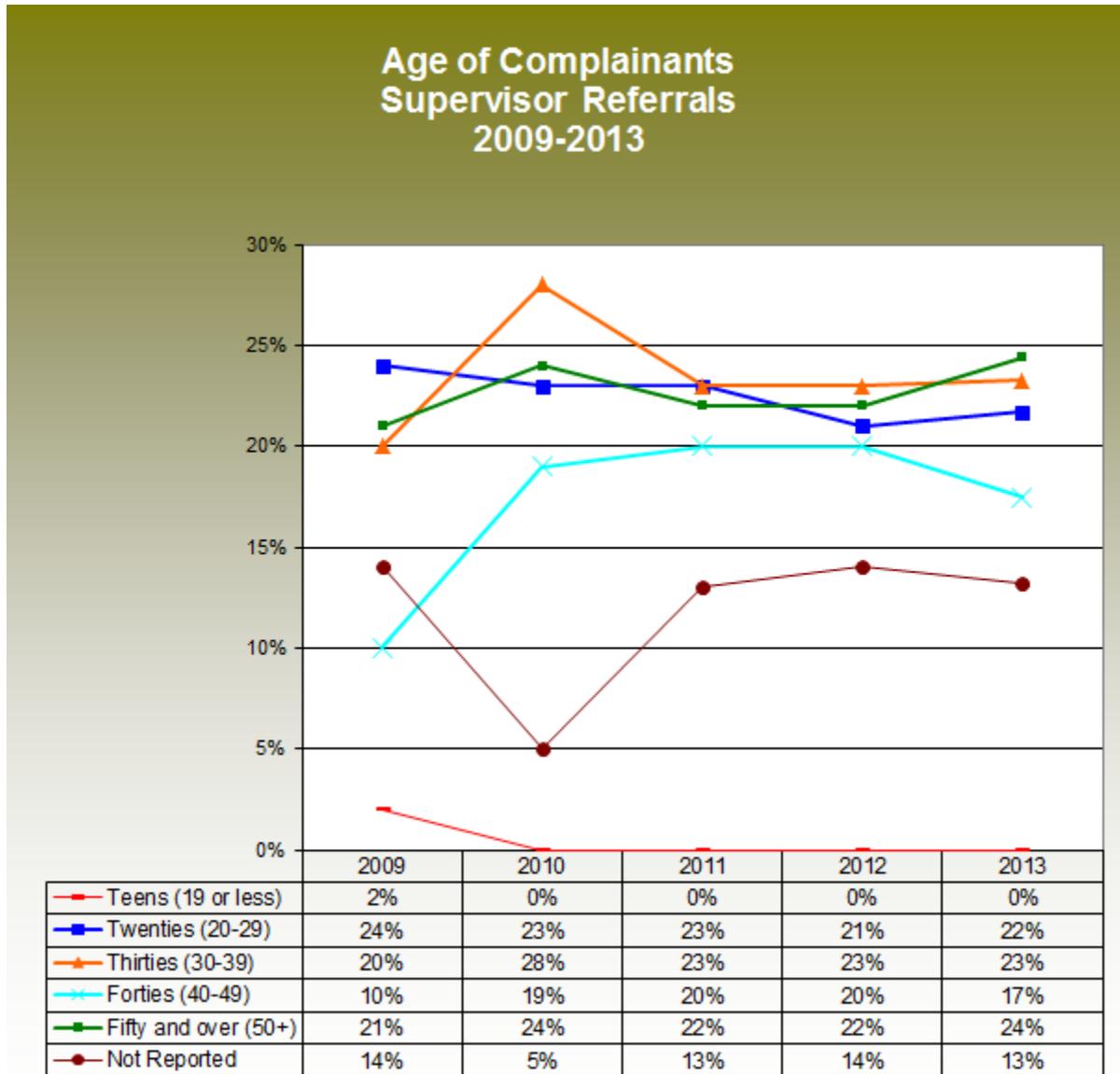


*May not total to 100% due to rounding.

The age of persons filing Supervisor Referral complaints has remained relatively consistent over the past five years with just a few exceptions. Between 2009 and 2010, there were significant spikes in the 30-39 and 40-49 groups. In 2013, the percentage of

Supervisor Referral complaints was fairly evenly distributed among all age groups with those in the 40-49 groups being a slight exception.

Table 16: Age of Complainants filing Supervisor Referrals – 2009-2013



*May not total to 100% due to rounding.

Gender of Complainants

The gender composition of Austin in 2013 was estimated at approximately 53% male and 47% female. When looking at complainant gender (below), it can be seen that, overall, people file complaints at a rate that is fairly consistent with their representation in the population. However, there are notable disparities between the type of complaint and the population percentages. Males file External Formal complaints at a rate higher

than their representation within the City (72% of complaints; 53% of the population) while females file at a rate lower (27% of complaints; 47% of the population).

Within Supervisor Referrals, the difference is less pronounced with men filing 50% of complaints and women filing 49% of complaints. The Supervisor Referral percentages are up for men in 2013 (50% in 2013 versus 44% in 2012) and down for women (49% in 2013 versus 54% in 2012). External Formal complaints were down very slightly for men in 2013 (72% in 2013 versus 74% in 2012).

Table 17: Gender of Complainants - 2013

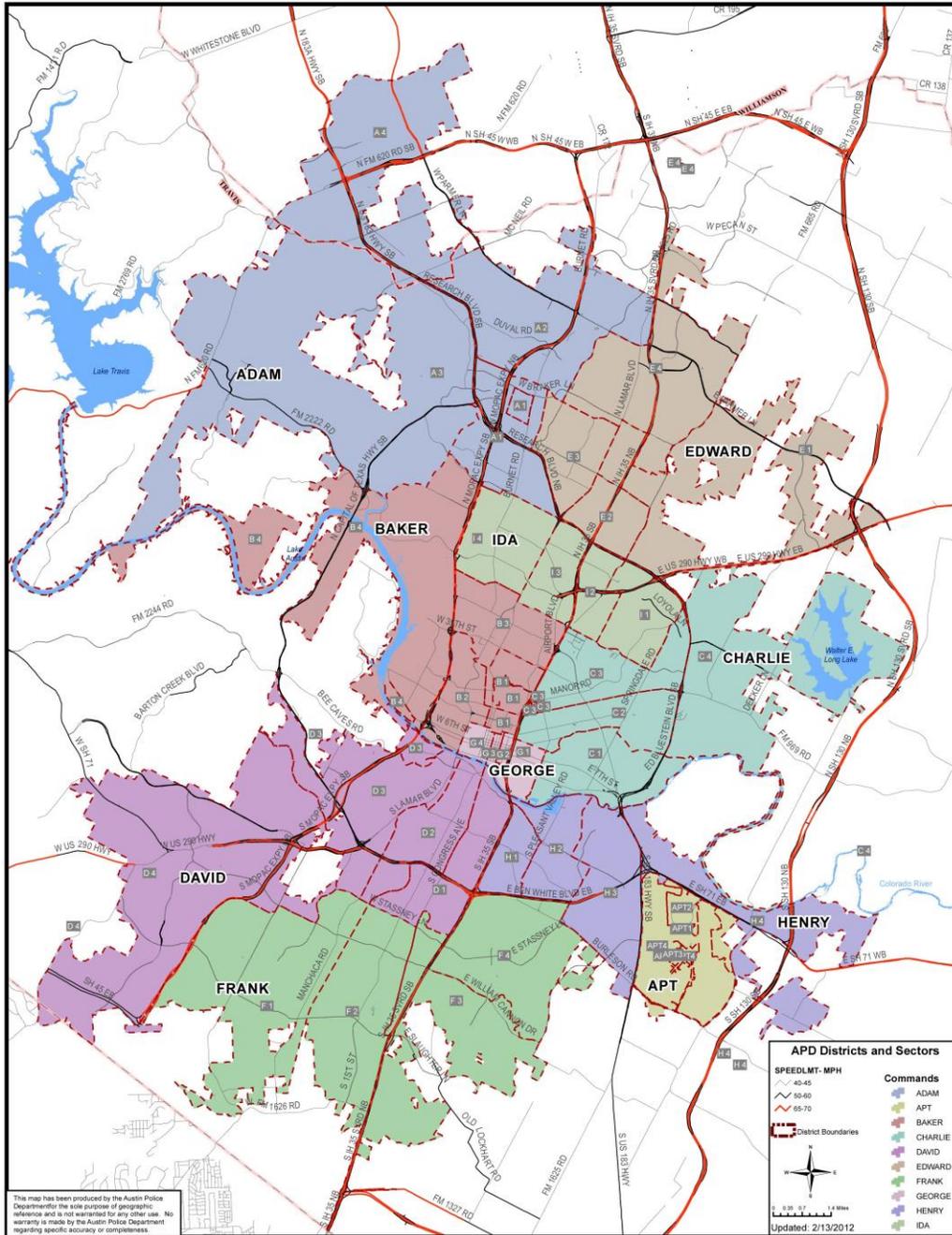
Complainant Gender	Supervisor Referrals		External Formals		Total	
	#	%	#	%	#	%
Male	128	50%	65	72%	193	55%
Female	126	49%	24	27%	150	43%
Unknown	4	2%	1	1%	5	1%
Total	258	100%	90	100%	348	100%

*May not total to 100% due to rounding.

Complaints by Area Command

The City of Austin had nine (9) area commands in 2013. Below find a map of the geographic areas.

Figure 2: APD Area Commands



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

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

Table 18: External Formal Complaints by Area Command – 2009-2013

EXTERNAL FORMAL Area Command	2009		2010		2011		2012		2013		Change 2013 vs. 2012	
	#	%	#	%	#	%	#	%	#	%	#	%
Downtown (DTAC)	21	19%	17	19%	16	16%	14	18%	18	20%	4	29%
Central East (CE)	19	18%	12	13%	18	17%	2	3%	15	17%	13	650%
Northeast (NE)	8	7%	5	6%	10	10%	5	7%	9	10%	4	80%
Southeast (SE)	8	7%	8	9%	9	9%	10	13%	7	8%	-3	-30%
South Central (SC)	12	11%	10	11%	10	10%	6	8%	8	9%	2	33%
Central West (CW)	9	8%	4	4%	7	7%	5	7%	8	9%	3	60%
Southwest (SW)	11	10%	10	11%	6	6%	11	14%	7	8%	-4	-36%
North Central (NC)	6	6%	10	11%	10	10%	8	11%	7	8%	-1	-13%
Northwest (NW)	10	9%	8	9%	14	14%	5	7%	1	1%	-4	-80%
Out of City	4	4%	3	3%	1	1%	9	12%	9	10%	0	0%
Unknown	0	0%	2	2%	2	2%	1	1%	1	1%	0	0%
Total	108	100%	89	100%	103	100%	76	100%	90	100%	14	18%

*May not total to 100% due to rounding.

External Formal complaints as a whole were up in 2013, from 76 to 90. The Downtown area command, which frequently has the most complaints, again had the most in 2013 with 18. The area command with the next highest number was the Central East with 15 External Formal complaints. The Northwest area command has remained at the bottom with a total of one complaint.

As can be seen in the table below, when adding Supervisor Referral complaints to External Formal complaints, the top three area commands in terms of total complaints shifts a bit when compared to reporting External Formal complaints only. The Central East area command has the highest number of external-type complaints at 54. It is followed by the South Central area command with 42 total and the Downtown area command with 41 total.

While having only one External Formal complaint in 2013, the Northwest area command did experience a larger number of Supervisor Referral complaints (33) in 2013.

Table 19: Number of External Complaints by Area Command - 2009-2013

Total External Complaints	2009		2010		2011		2012		2013	
Area Command	#	%	#	%	#	%	#	%	#	%
Central East (CE)	88	13%	66	13%	43	9%	45	14%	54	16%
South Central (SC)	57	8%	54	10%	40	8%	23	7%	42	12%
Downtown (DTAC)	94	14%	69	13%	63	13%	36	11%	41	12%
Southwest (SW)	65	10%	65	12%	58	12%	49	15%	38	11%
Northeast (NE)	79	12%	57	11%	50	11%	29	9%	37	11%
Northwest (NW)	49	7%	45	9%	31	7%	29	9%	34	10%
Southeast (SE)	65	10%	47	9%	79	17%	43	13%	31	9%
Central West (CW)	82	12%	46	9%	42	9%	24	7%	27	8%
North Central (NC)	51	8%	56	11%	49	10%	35	11%	24	7%
Out of City	9	1%	5	1%	8	2%	11	3%	16	5%
Unknown	37	5%	16	3%	13	3%	3	1%	4	1%
Total	676	100%	526	100%	476	100%	327	100%	348	100%

*May not total to 100% due to rounding.

In cases where an area command is “Unknown,” it may be that a specific officer could not be identified, the complaint could have been more generic in nature rather than relating to a specific officer, there were patterns of behavior that occurred in varying locations, and/or the location where the complaint occurred could not be specifically identified.

Classification of Complaints

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

- **Administrative Inquiry**– an inquiry into a critical incident, ordered by the Chief or designee, that could destroy public confidence in, and respect for, the APD or which is prejudicial to the good order of the APD;
- **A** – allegations of a serious nature, that include, but are not limited to: criminal conduct, objectively unreasonable force resulting in an injury requiring emergency treatment at a medical facility;
- **B** – allegations of a less serious nature, that include, but are not limited to: less serious violations of APD policy, rules or regulations, objectively unreasonable force with injury or with minor injuries not requiring emergency treatment at a medical facility, negligent damage or loss of property, negligent crashes;

- **C** – allegations that do not fit into a Class A or B category and do not rise to the level of a policy violation, or those that would be best handled through other APD processes (such as training or a performance improvement plan); or,
- **D** – the allegation is not a policy violation, a preliminary investigation using audio or video recordings show the allegation is not true, or the complaint is about the probable cause for arrest or citation.

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

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

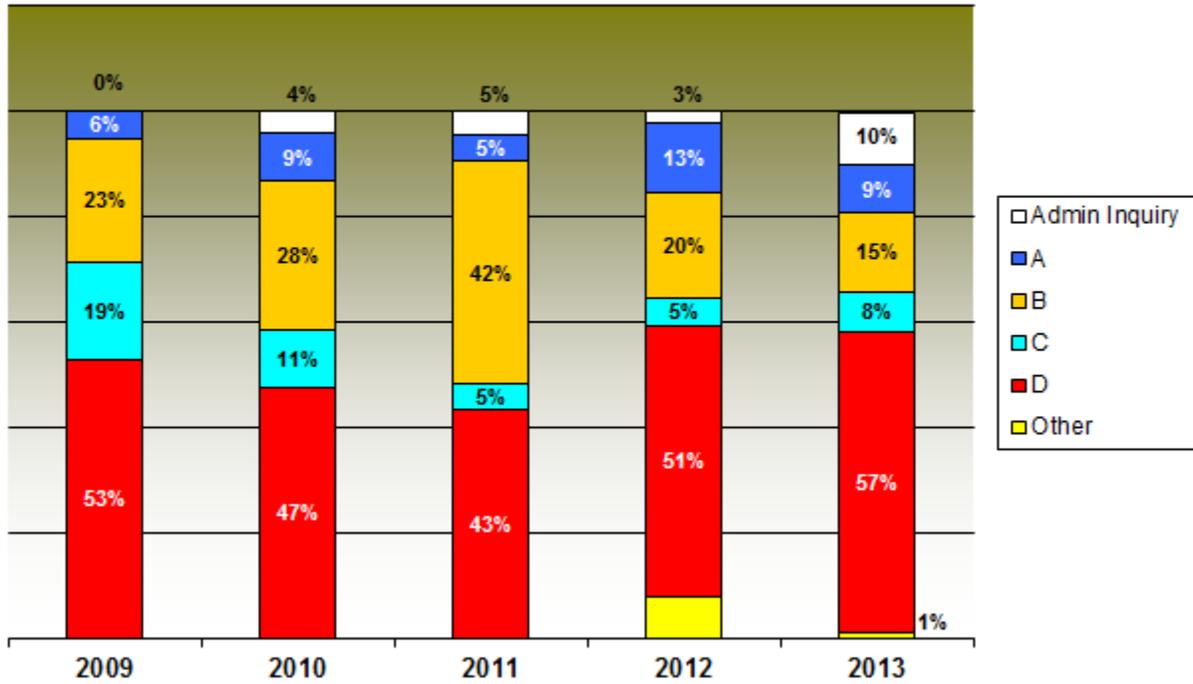
When an internal case is filed, it typically involves a supervisor bringing forth an allegation concerning the conduct of an officer. In these circumstances, the officers bringing the case will have extensive knowledge of policy. The assignment of a classification, therefore, is fairly apparent. As such, Internal Formal complaint classifications have remained relatively static over the years. External Formal complaints have seen more flux.

In 2013, 57% of all External Formal complaints received a “D” classification. This is the highest percentage of “D” classifications in the past 5 years and a serious step backward in the opinion of the OPM. The OPM’s concern with “D” classifications stems from the fact that per APD policy, 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.

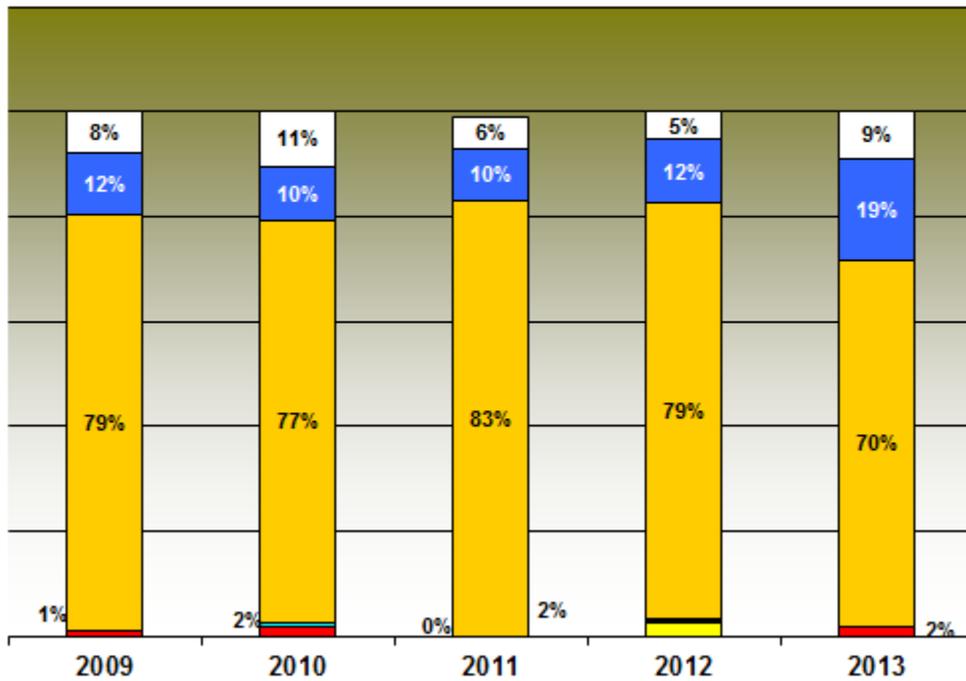
⁴ Should more serious allegations be uncovered during a Supervisor Referral, the case may be elevated to a Formal complaint and would then be classified.

Table 20: Classification of Complaints - 2013

Classification of External Formal Complaints



Classification of Internal Formal Complaints



*May not total to 100% due to rounding.

The OPM's position is that caution should be taken when classifying a complaint as a "D." A "D" classification essentially predicts the result of the investigation or precludes IAD from actually conducting an investigation. As written, classifying something as a "D" seems to infer from the beginning that IAD has recommended to the chain of command that the allegation has no merit. Complainants whose complaints are classified as a "D" often state they do not feel their complaint was taken seriously.

To be fair, it should be noted that there are cases for which the OPM recommends a "D" classification or agrees with IAD's case classifications. Beginning in mid-2011, the OPM's procedure was changed to require the OPM to advise IAD as to the classification the OPM believed the complaint should be given when the complaint was submitted. This change allowed the OPM and IAD to discuss differences of opinion early in the process. With most cases, there is very little dispute regarding the severity of the allegations. Historically, most of the disagreement in case classifications has stemmed from those cases that were ultimately classified by IAD as lower level cases, e.g., "D" classifications.

Recommendation

APD should take greater care in classifying cases as a "D". Unless it is clear on the face of the complaint that it has no merit, the case should be classified as an "A" or "B". If it is determined that the officer did not commit a violation, the case should then be "unfounded" as opposed to being administratively closed.

Allegations

Number & Types of Allegations

The Austin Police Department previously used a set of rules known as the General Orders, Policies, and Procedures. In August of 2011, a new Austin Police Department Policy Manual was adopted (known as “Lexipol”⁵). The General Orders, and now Lexipol, contain all the policies by which members of the APD must abide. When a complaint is made, the IAD assigns an allegation(s) based on the alleged policy violations it can see after reviewing the description of events. In 2013, the data show 95 more allegations were levied in Formal complaints compared to 2012

Table 21: Number of Allegations by Complaint Type – 2009-2013

Number of Allegations	2009		2010		2011		2012		2013		Change 2013 vs. 2012	
	#	%	#	%	#	%	#	%	#	%	#	%
Supervisor Referrals	354	39%	376	44%	403	43%	215	28%	215	25%	0	0%
Formal Complaints	548	61%	479	56%	530	57%	542	72%	637	75%	95	18%
External	222	41%	170	35%	218	40%	187	29%	227	36%	40	21%
Internal	326	59%	309	65%	312	58%	355	56%	410	64%	55	15%
Total	902	100%	855	100%	933	100%	757	100%	852	100%	95	13%

*May not total to 100% due to rounding.

It should be noted that a single complaint may include multiple allegations. These multiple allegations can apply to a single officer or multiple officers. It is also possible that a single allegation may be brought against a single officer or multiple officers. No matter the configuration, since each allegation is counted, the total number of allegations will always equal or exceed the total number of complaints.

In general, the policies in the old General Orders and the new Lexipol are largely the same. There are differences, however, in both the arrangement of the policies as well as their titles. For example, in the General Orders, there is a policy known as “Use of Force.” In Lexipol, this is called “Response to Resistance.” In the General Orders, Code of Conduct policies are primarily contained within one section. In Lexipol, these policies can now be found in three different chapters. Because the OPM reports some data going back five years, we will continue to transition by using both the old and new policy numbers and/or combining data into categories. Moving forward, the OPM will eventually be able to switch all reporting categories to match Lexipol.

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

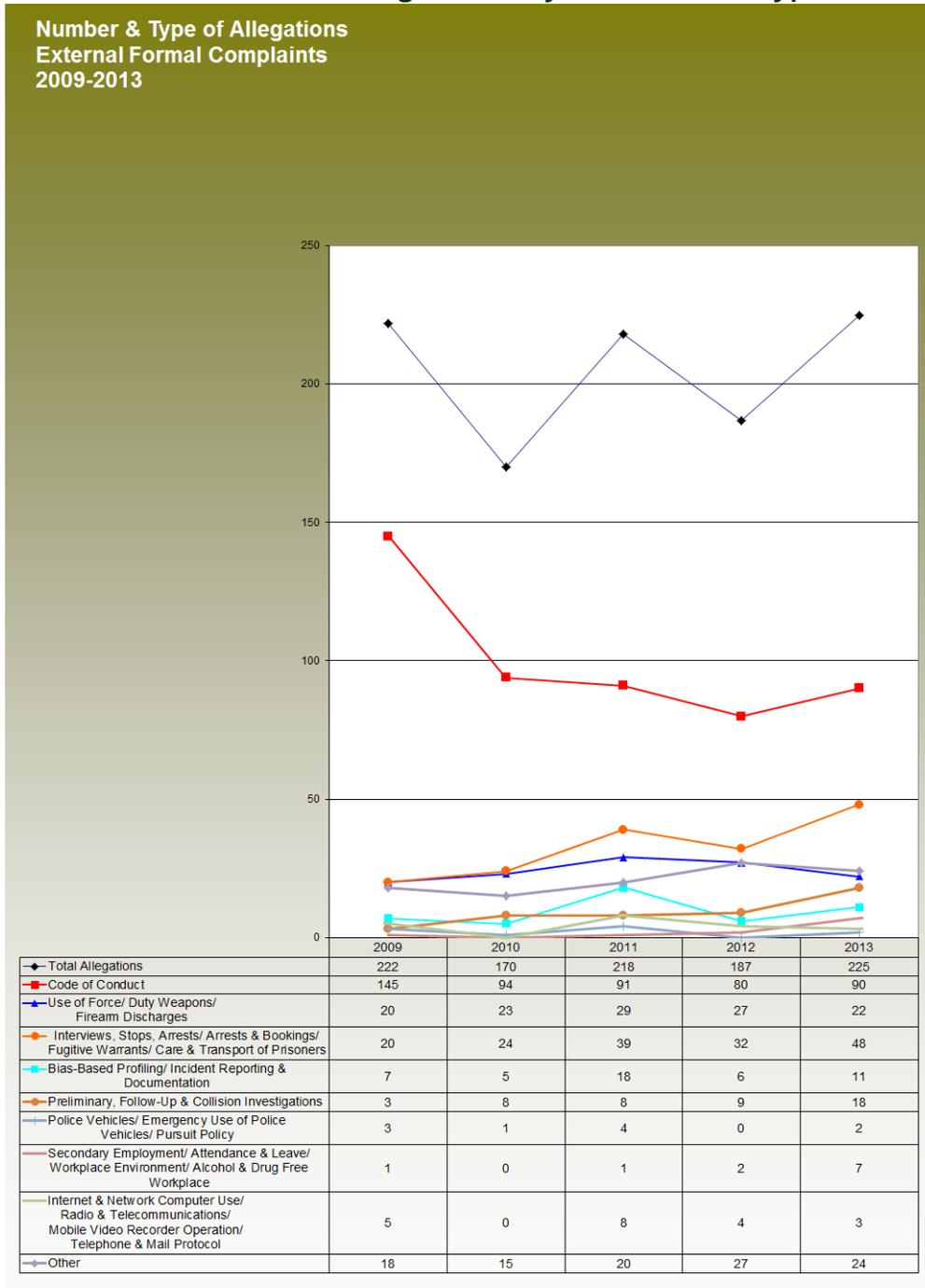
⁵ Lexipol was implemented by the APD in August of 2011. The most recent version of the manual available as of this writing can be found at: https://austintexas.gov/sites/default/files/files/Police_Monitor/2012-3%20Effective%2010-7-2012%20%282%29.pdf

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.

In both 2010 and 2011, the OPM identified an issue of concern regarding Interviews, Stops, and Arrests, et al, allegations. These types of allegations were down dramatically in 2012 but have reached an all-time high in 2013 with 48 allegations filed in External Formal complaints. Should this trend continue, the OPM will analyze the complaints and make recommendations as to training and/or policy.

Table 22: External Formal Allegations by Number and Type – 2009-2013



Given that the vast majority of allegations involve Code of Conduct issues and because the Code of Conduct policies are so numerous, the OPM requested that the IAD provide more detail regarding these types of allegations. This does not always happen so based on available data, the Code of Conduct allegations break down as follows:

Table 23: Code of Conduct Allegations by Subcategory and Complaint Type - 2013

Code of Conduct Allegations by Subcategory	Supervisor Referrals		External Formal	
	#	%	#	%
Responsibility to the Community	134	91%	43	48%
Bias-Based Profiling	7	5%	7	8%
General Conduct	7	5%	40	44%
Total	148	100%	90	100%

*May not total to 100% due to rounding.

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

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

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

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

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

Even with the Lexipol allegation of “Bias-Based Profiling” available, this allegation was only recorded 12 times each in both External Formal complaints and Supervisor Referral complaints. In addition to these 12 allegations, the OPM identified an additional 16 times in External Formal complaints and 10 times in Supervisor Referral complaints where the complainant stated they believed the APD acted prejudicially toward them.

Table 24: Number and Type of Allegations by Complaint Type - 2013

Allegation/Allegation Category	2013					
	SR		External Formal		Internal Formal	
	#	%	#	%	#	%
Code of Conduct	148	69%	90	40%	134	33%
Use of Force/ Duty Weapons/ Firearm Discharges	4	2%	22	10%	44	11%
Interviews, Stops, Arrests*/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	22	10%	48	21%	27	7%
Bias-Based Profiling/ Incident Reporting & Documentation	1	0%	11	5%	16	4%
Preliminary, Follow-Up & Collision Investigations	18	8%	18	8%	0	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	5	2%	2	1%	125	30%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	0	0%	7	3%	12	3%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	0%	3	1%	8	2%
Other	16	7%	24	11%	44	11%
Total	215	100%	225	100%	410	100%

* Includes Searches

*May not total to 100% due to rounding.

Allegations & Complainant Demographics

In looking at the composition of those bringing these allegations in 2013, the OPM found that in External Formal complaints, Caucasians were responsible for 33% of all allegations (88 of the 225 allegations). Blacks/African Americans account for 51 of the 225 (23%) and Hispanics/Latinos account for 58 of the 225 (26%).

Table 25: External Formal Allegations by Complainant Race/Ethnicity - 2013

EXTERNAL FORMALS Allegation Category	Caucasian		Black/ African American		Hispanic/ Latino		Am Indian/ Alaska Native		Asian		Native Hawaiian/ Pacific Islander		Other		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Code of Conduct	28	32%	21	41%	33	57%	0	0%	0	0%	0	0%	0	0%	8	35%
Use of Force/ Duty Weapons/ Firearm Discharges	2	2%	7	14%	9	16%	1	0%	0	0%	0	0%	1	50%	1	4%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	30	34%	11	22%	3	5%	0	0%	0	0%	0	0%	1	50%	3	13%
Bias-Based Profiling/ Incident Reporting & Documentation	0	0%	3	6%	0	0%	2	0%	0	0%	0	0%	0	0%	6	26%
Preliminary, Follow-Up & Collision Investigations	10	11%	3	6%	2	3%	0	0%	0	0%	0	0%	0	0%	3	13%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	1	1%	0	0%	0	0%	1	0%	0	0%	0	0%	0	0%	0	0%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	6	7%	1	2%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	1%	1	2%	0	0%	0	0%	0	0%	0	0%	0	0%	1	4%
Other	10	11%	4	8%	11	19%	0	0%	0	0%	0	0%	0	0%	1	4%
Total	88	100%	51	100%	58	100%	4	0%	0	0%	0	0%	2	100%	23	100%

Frequency Missing = 1

*May not total to 100% due to rounding.

Code of Conduct issues make up one-third of the allegations cited by Caucasians in External Formal complaints, are 41% of the allegations cited by Blacks/African Americans and are cited 57% of the time among Hispanics/Latinos.

Interviews, Stops and Arrests are the next most frequent allegation cited by Caucasians taking up another third of all allegations filed by this group.

In 2012, there were 5 Interviews, Stops and Arrests allegations levied in Supervisor Referral complaints and 32 in External Formal complaints. In 2013, this rose to 22 in Supervisor Referral complaints and 48 in External Formal complaints.

Table 26: Supervisor Referral Allegation Categories by Complainant Race/Ethnicity - 2013

SUPERVISOR REFERRALS	Caucasian		Black/ African American		Hispanic/ Latino		Am Indian/ Alaska Native		Asian		Native Hawaiian/ Pacific Islander		Other		Unknown	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Code of Conduct	55	71%	40	77%	32	64%	1	100%	1	100%	0	0%	1	100%	18	56%
Use of Force/ Duty Weapons/ Firearm Discharges	1	1%	1	2%	2	4%	0	0%	0	0%	0	0%	0	0%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	8	10%	4	8%	7	14%	0	0%	0	0%	0	0%	0	0%	3	9%
Bias-Based Profiling/ Incident Reporting & Documentation	0	0%	0	0%	1	2%	0	0%	0	0%	0	0%	0	0%	0	0%
Preliminary, Follow-Up & Collision Investigations	9	12%	0	0%	5	10%	0	0%	0	0%	0	0%	0	0%	4	13%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	2	3%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	3	9%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	1%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Other	2	3%	7	13%	3	6%	0	0%	0	0%	0	0%	0	0%	4	13%
Total	78	100%	52	100%	50	100%	1	100%	1	100%	0	0%	1	100%	32	100%

*May not total to 100% due to rounding.

The majority of all Supervisor Referral complaints filed by Caucasians, Blacks/African Americans, and Hispanics/Latinos are also Code of Conduct related (71%, 77% and 64%, respectively). This is down a bit from last year.

Allegations by Area Command

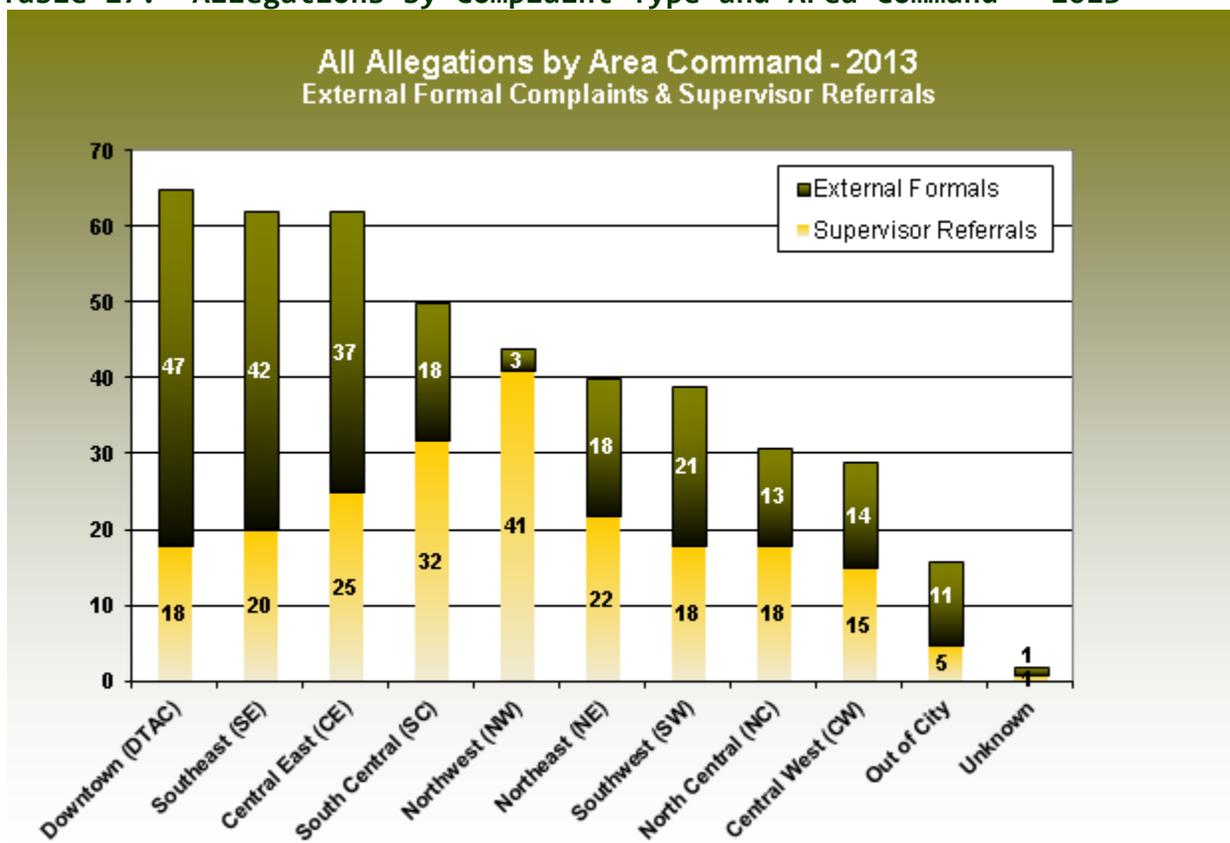
More complaints mean more allegations. In 2013, six of the nine area commands saw an increase in external allegations.

When combining the allegations for both Supervisor Referrals and External Formal complaints, the area command with the highest number of allegations was Downtown with 65. This was followed by Southeast and Central East tied for second both with 62. The South Central area command was third with 60 allegations total. The Downtown area command, also known as DTAC, had seen a decrease in External Formal allegations for the past five years but was up again in 2013.

While the Northwest area command may have the fewest allegations in External Formal complaints, it has the highest number of Supervisor Referral allegations (41). The area command with the next highest number of Supervisor Referral allegations is South Central. With 32, this is 40% more than this area had last year.

The number of External Formal allegations almost doubled in the Downtown area command from last year. It has 47 allegations levied this year versus 26 in 2012.

Table 27: Allegations by Complaint Type and Area Command - 2013



Northwest had the greatest number of Code of Conduct allegations, 30, levied in Supervisor Referrals, followed by Central East with 21.

Table 28: Code of Conduct Allegations by Complaint Type and Area Command - 2013

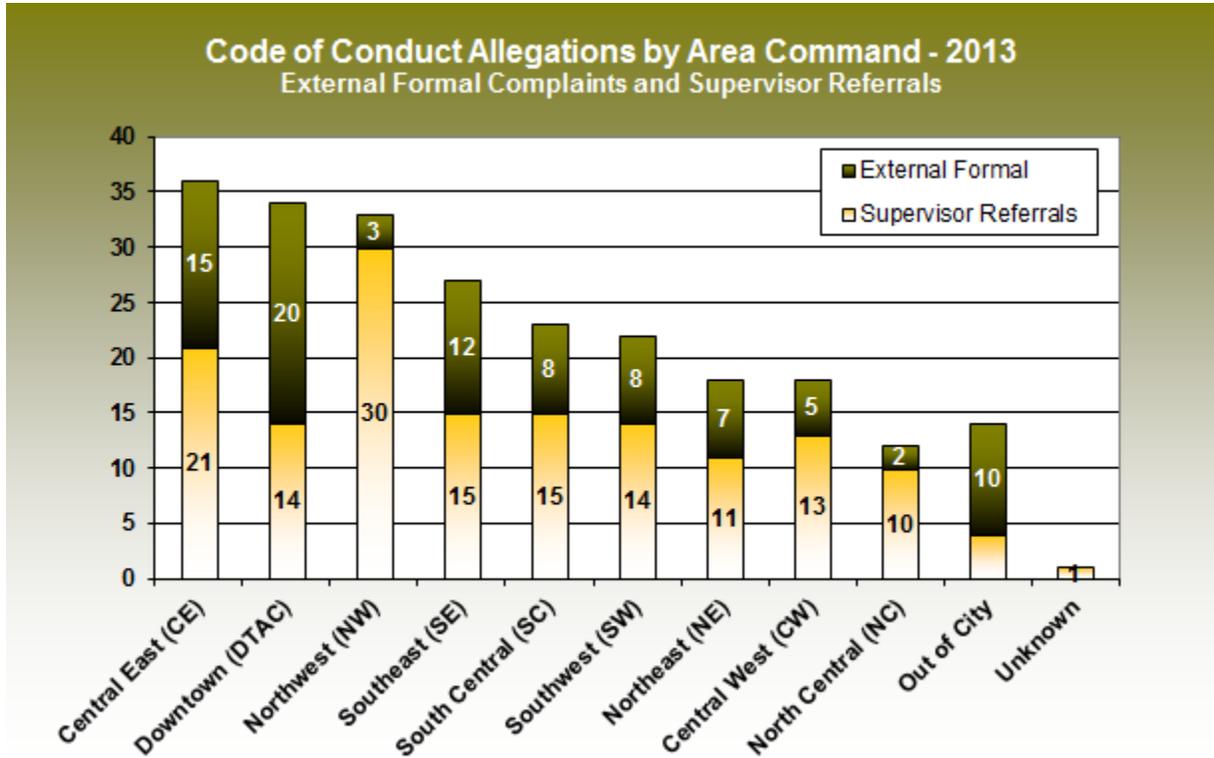
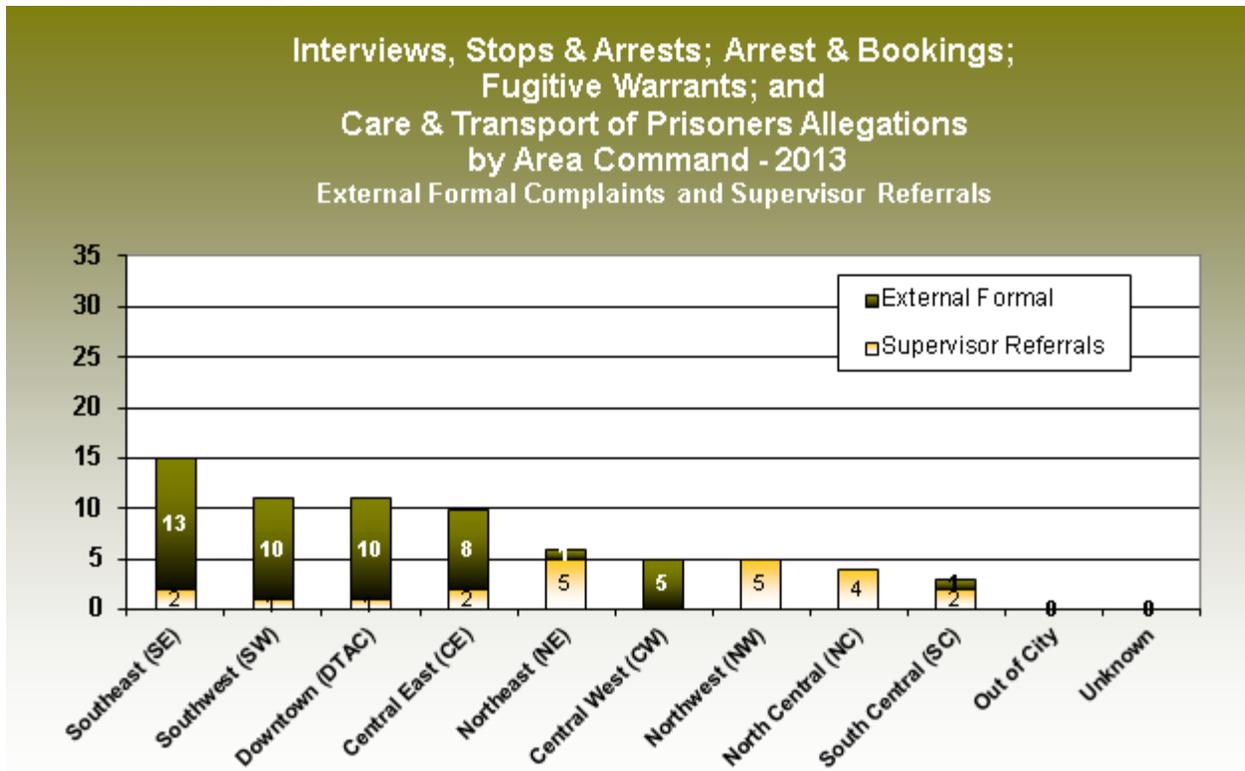
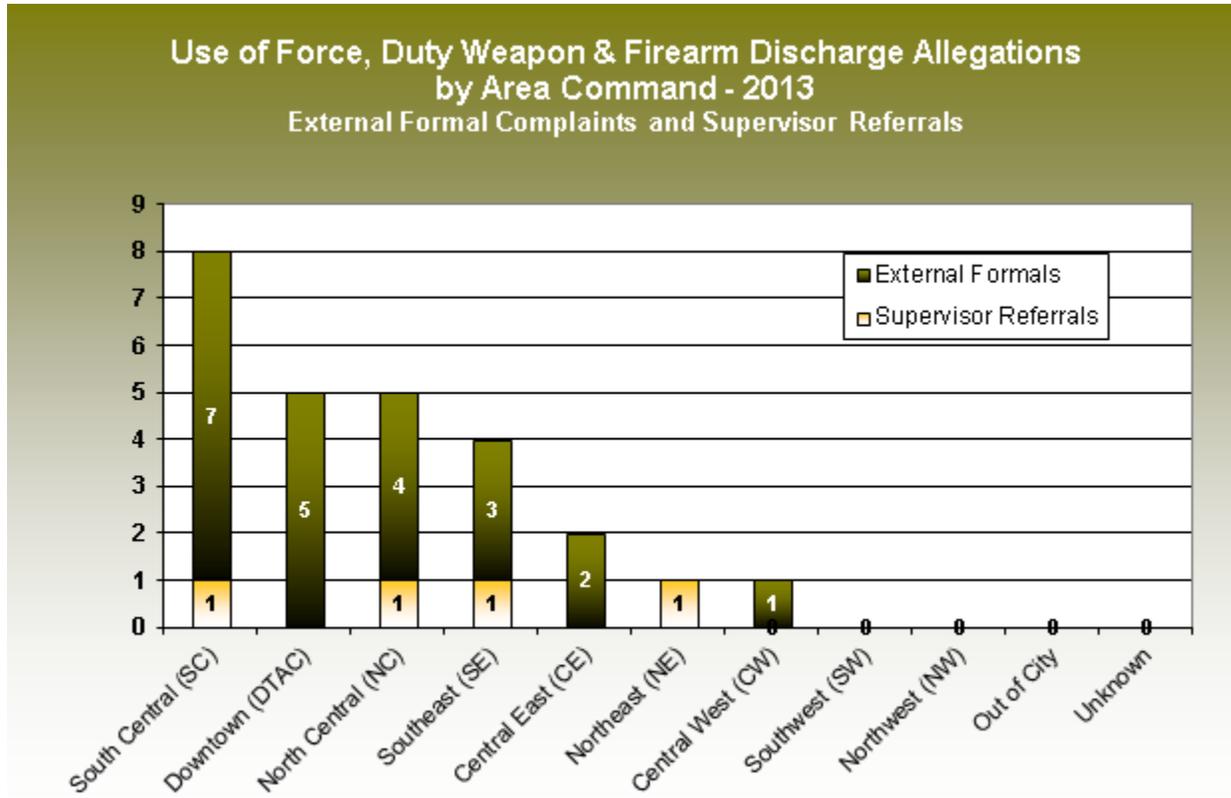


Table 29: Interviews, Stops & Arrests, et al by Complaint Type and Area Command - 2013



Looking at Interviews, Stops and Arrests allegations for both External Formal complaints and Supervisor Referrals, the OPM has found that the Southeast area command had the greatest total number of allegations, 15, followed by the Southwest and Downtown area commands each with 11. This type of allegation is up from last year across all area commands except South Central. South Central has the same number as last year at 3.

Table 30: Use of Force, et al by Complaint Type and Area Command - 2013



In 2013, there were four Response to Resistance (Use of Force) allegations in Supervisor Referrals and 22 in External Formal complaints. Of the Response to Resistance allegations associated with External Formal complaints, six of the nine area commands had at least one Response to Resistance allegation filed – one more area command than last year.

Starting in 2010, the OPM raised concerns regarding the relatively low number of Response to Resistance complaints because of the data cited by the APD in its Response to Resistance reports. In 2013, there were 3,392 use of force reports involving 1,989 subjects.

Recommendation

Given the number of incidents in which the APD uses force, the number of external allegations seems low. In order to ensure that the Response to Resistance policy is being followed, the OPM is recommending that routine audits of Response to Resistance reporting be conducted by the OPM and the APD. If deficiencies are discovered, training, policy development, and/or discipline should be considered.

APD Decisions

Once an investigation is finished, the chain of command makes a recommendation on the outcome of the case. In other words, they issue a finding. These findings 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 the 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 the complaint was closed by a supervisor.

Table 31: Formal Complaint APD Investigative Decisions - 2011-2013

APD Decisions	External						Internal					
	2011		2012		2013		2011		2012		2013	
	#	%	#	%	#	%	#	%	#	%	#	%
Sustained	43	20%	12	7%	16	7%	256	83%	250	74%	259	71%
Inconclusive	6	3%	0	0%	0	0%	2	1%	4	1%	4	1%
Exonerated	33	15%	7	4%	33	15%	7	2%	24	7%	13	4%
Administratively Closed	62	28%	121	66%	123	54%	28	9%	32	9%	63	17%
Unfounded	74	34%	42	23%	55	24%	14	5%	30	9%	25	7%
Total	218	100%	182	100%	227	100%	307	100%	340	100%	364	100%

NOTE: Numbers shown here may be lower than the total number of allegations due to resignations/retirements

*May not total to 100% due to rounding.

In 2013, as in 2012, only 7% of allegations in External Formal allegations were Sustained. This is down from 20% in 2011. The number of allegations that were Administratively Closed was 54%. This is down from 66% in 2012 but much higher than the 28% in 2011.

As a percentage, there were slightly fewer Internal Formal allegations Sustained in 2013 as well, 71% versus 74%. This was offset by slight rises in allegations where an officer was Exonerated or the allegation was deemed to be Unfounded.

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

For the second year in a row, no external cases were found to be inconclusive. While inconclusive may sometimes be the appropriate finding as the investigation cannot sort out whether the conduct occurred or not, if investigations are conducted fairly and thoroughly, it should be a rare finding. The OPM is concerned that cases are being administratively closed with a “D” classification may, in fact, be inconclusive.

Disciplinary Action

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

Table 32: External Formal Complaint Disciplinary Action – 2009-2013

EXTERNAL	2009		2010		2011		2012		2013		2013 vs. 2012
Disciplinary Action Taken	#	%	#	%	#	%	#	%	#	%	% Change
Oral Reprimand / Counseling	8	31%	11	46%	5	12%	3	18%	4	25%	33%
Written Reprimand	8	31%	6	25%	10	23%	4	24%	12	75%	200%
Days Suspension	3	12%	7	29%	6	14%	5	29%	0	0%	-100%
Indefinite Suspension / Termination*	7	27%	0	0%	22	51%	5	29%	0	0%	-100%
Demotion	0	0%	0	0%	0	0%	0	0%	0	0%	0%
Total	26	100%	24	100%	43	100%	17	100%	16	100%	-6%

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

*May not total to 100% due to rounding.

In 2013, the total number of External Formal complaints was up from 2012. Again, because the total number of External Formal complaints is up, the number of allegations should also be up. However, a higher number of allegations does not necessarily mean there will be a higher amount of discipline.

There were only 16 allegations in External Formal complaints sustained in 2013 that resulted in some sort of discipline. Seven officers received a written reprimand regarding twelve allegations and four officers received an oral reprimand.

The table below comprises the disciplinary action taken on each allegation filed in Internal complaints in 2013.

Table 33: Internal Formal Complaint Disciplinary Action – 2009-2013

INTERNAL Disciplinary Action Taken	2009		2010		2011		2012		2013		2013 vs. 2012
	#	%	#	%	#	%	#	%	#	%	% Change
Oral Reprimand / Counseling	84	36%	79	31%	86	32%	99	36%	84	28%	-15%
Written Reprimand	75	32%	77	31%	92	34%	92	34%	93	31%	1%
Days Suspension	47	20%	51	20%	69	25%	48	18%	65	22%	35%
Indefinite Suspension / Termination*	25	11%	44	18%	25	9%	32	12%	57	19%	78%
Demotion	3	1%	0	0%	0	0%	1	<1%	1	<1%	0%
Total	234	100%	251	100%	272	100%	272	100%	300	100%	10%

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

*May not total to 100% due to rounding.

Despite there being 22 fewer Internal complaints than last year, the aggregate amount of discipline administered differed by 10%. There were fewer oral reprimands and/or counseling than last year and more allegations resulting in suspensions and terminations. Forty-four officers received suspensions relative to 66 allegations and one officer was demoted. There were fourteen terminations in 2013 as a result of a complaint. One officer retired, three retired while under investigation, five resigned, two resigned while under investigation and three received indefinite suspensions. In all, this group of officers terminating employment with the APD accounted for 57 allegations between them.

Subject Officer Demographics

Presented in this section is some background information on the officers that were the subjects of complaints in 2013. This information is provided for external complaints only unless otherwise noted as “All APD.” All other tables contain information based on officers named in complaints filed by members of the public, i.e., External Formals and Supervisor Referrals.

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

Years of Service

Over half of the officers within the APD have 10 or more years of service.

Table 34: Years of Service - All APD - 2013

Years of Service	All APD Sworn Personnel	
	#	%
0-3	306	18%
4-6	251	15%
7-9	191	11%
10+	966	56%
Total	1,714	100%

Missing Frequency = 1

*May not total to 100% due to rounding.

For those with complaints in 2013, the average length of time the officer had served on the force until the date of the incident with the public was seven years for Supervisor Referrals and 7.6 years for Formal complaints. This is interesting as officers with 7-9 years of experience make up the smallest percentage of the APD, 11%. It is also interesting as the 2013 average for External Formal complaints is almost exactly one year older than last year. Last year, the average length of service was 6.5 years for those with a formal complaint. This raises the question, are these officers the same group as last year? That question will be addressed in the Track Record section of this report.

The most common length of time officers have been on the force before receiving their first complaint in 2013 was just a little over a year for Supervisor Referrals and a little over four years for External Formal complaints. This is much lower than last year. Last year, the most common tenure for an External Formal complaint was almost 11 years.

Table 35: Subject Officer Years of Service - 2013

Years of Service	2013	
	Supervisor Referrals	External Formals
Average tenure	7.0	7.6
Longest tenure	27.9	30.3
Shortest tenure	<1	<1
Tenure midpoint	5.0	5.6
Most common tenure	1.3	4.4

It is not surprising to see relatively inexperienced officers making up the majority of complaints. The OPM is troubled, however, by the length of service of the officers involved in the more serious complaints. This information, along with that in Table 34, brings us around again to wondering just how many of these officers were involved in

previous year's complaints. A little later in this document, the OPM will discuss how many of these officers were, in fact, involved in complaints in prior years.

While the OPM has limited access to shift data, the OPM has tried to replicate, to the best of its ability, patrol assignments by years of experience in the following table.

Table 36: 2013 Patrol Assignments - All APD

Patrol Area	Years of Service				Total
	0-3	4-6	7-9	10+	
Northwest	31	7	7	16	61
Central West	21	9	2	17	49
Central East	23	14	7	6	50
Southwest	19	14	8	16	57
Northeast	37	9	8	6	60
Southeast	27	10	9	6	52
DTAC	35	20	9	11	75
South Central	26	9	4	9	48
North Central	33	11	3	7	54
Total	252	103	57	94	506
Percent of Total	50%	20%	11%	19%	100%
Percent of All APD (1,715 Sworn Personnel)	15%	6%	3%	5%	30%

*Table excludes District Reps and Metro

Officers with 0-3 years of experience made up 15% of the force in 2013. However, these new officers make up 50% of the patrol force. The patrol force accounts for 94% of the assignments for officers of this experience level. This is not unusual given that officers must have several years of experience before they are considered for specialized units or can test for promotion. However, in addition to patrol having the most inexperienced officers, many areas of the City have a disproportionate number of the 0-3 years of experience officers assigned. In 2012, the area with the highest crime rate was South Central. Recognizing that data needs to be analyzed before changes are made, the expectation was that in 2013, this area would have seen an increase in patrol officers regardless of years of experience. It did. On the date these data were pulled, there were four additional 0-3 years of experience officers on patrol in this area and two fewer 10+ years of experience officers for a net gain of two officers. While this may not sound like a lot, the crime rate in South Central decreased in 2013. In 2013, South Central ranked number seven in crime, number eight in total officers on patrol and number six in 0-3 officers on patrol.

In looking at crime statistics for 2013, the area with the highest crime rate was Northeast. Northeast had the highest number of officers with 0-3 years of experience on patrol the date these data were pulled. The ratio of 0-3 years of experience officers to those with four years or more of experience was 1.6:1.

Table 37: 2013 Area Commands Patrolled by Least Experienced Officers (All APD)

Area Command	Years of Service	
	0-3	10+
	%	%
Northeast	62%	10%
North Central	61%	13%
South Central	54%	19%
DTAC	47%	15%
Central East	46%	12%

In contrast, Central West had the lowest crime rate in 2013 and the highest percentage of the most experienced (10+ years) officers assigned to it.

Table 38: 2013 Area Commands Patrolled by Most Experienced Officers (All APD)

Area Command	Years of Service	
	0-3	10+
	%	%
Central West	43%	35%
Southwest	33%	28%
Northwest	51%	26%

It should be noted that level of experience does not always correspond to frequency of complaints. The Central East area command had the highest number of external complaints in 2013 (54) and North Central had the lowest (24).

Recommendation

It is recommended that the APD continue to review the staffing assignments to allocate the most experienced officers and least experienced officers in at least a more balanced manner taking into consideration the level of activity and crime rate.

For repeat versus single case subject officers in 2013, the range of experience for those named in complaints varied widely from less than one year to 30 years of service. In 2012, officers with 10 years of experience most frequently had two or more complaints. In 2013, officers with five years of experience most frequently had two or more complaints. The average for single and repeat complaint officers is eight years and seven years, respectively. This is within the same range as last year and what we have seen historically.

The longest tenure for repeat subject officers was much shorter than last year. In 2012, this was 28 years; in 2013, it is down to 19.

Table 39: Repeat versus Single Case Subject Officer Years of Service - 2013

Years of Service	Repeat Subject Officers	Single Case Subject Officers
Average tenure	6.8	8.0
Longest tenure	19.4	30.3
Shortest tenure	<1	<1
Tenure midpoint	5.4	6.4
Most common tenure	5.6	<1

When looking at External Formal complaints, and then comparing allegation types to years of services, in 2013, officers with 4-6 years of experience and those with 10 or more years of experience had the most number of allegations levied against them. For both groups, the allegation type levied most often was Code of Conduct related. For the 4-6 year group, the second most mentioned category was Interviews, Stop and Arrests. Nationally, most research points to officer burnout as the primary reason officers receive more complaints involving Code of Conduct after their tenth year of service.

Table 40: External Formal Allegation Categories by Subject Officer Years of Service - 2013

EXTERNAL FORMAL Allegation Categories	Years of Service									
	0-3		4-6		7-9		10+		Total	
	#	%	#	%	#	%	#	%	#	%
Code of Conduct	23	39%	31	39%	12	57%	23	36%	89	40%
Use of Force/ Duty Weapons/ Firearm Discharges	6	10%	7	9%	2	10%	7	11%	22	10%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	11	19%	25	31%	2	10%	10	16%	48	21%
Bias-Based Profiling/ Incident Reporting & Documentation	6	10%	3	4%	0	0%	2	3%	11	5%
Preliminary, Follow-Up & Collision Investigations	6	10%	0	0%	3	14%	9	14%	18	8%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	1	2%	0	0%	0	0%	1	2%	2	1%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drugfree Workplace	1	2%	3	4%	1	5%	2	3%	7	3%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	2	3%	0	0%	1	2%	3	1%
Other	5	8%	9	11%	1	5%	9	14%	24	11%
Total by Years of Service	59	100%	80	100%	21	100%	64	100%	224	100%
Percent of Total for All Years of Service	26%		36%		9%		29%		100%	

Missing Frequency = 3

*May not total to 100% due to rounding.

In Supervisor Referrals, the distribution of allegations is somewhat different than for External Formal complaints. Unlike the External Formal complaints, officers with the least amount of experience have the highest number of allegations followed by those with the greatest amount of experience. The OPM believes this is due to the lack of experience for the one group and burnout for the other. The OPM has limited access to officer shift information. Thus, the OPM does not know if any of this could be attributed to where an officer is assigned, or for how long the officer was assigned to an area (both duration and number of hours in a day). Nationally, research has shown that placing less experienced officers into areas where more police intervention is required is not the best course. Research has also shown that over the longer haul, burnout occurs more frequently with officers who have been assigned to the same area for extended periods of time.

Table 41: Supervisor Referral Allegation Categories by Subject Officer Years of Service - 2013

Supervisor Referrals Allegation Categories	Years of Service									
	0-3		4-6		7-9		10+		Total	
	#	%	#	%	#	%	#	%	#	%
Code of Conduct	55	59%	31	79%	11	79%	51	74%	148	69%
Use of Force/ Duty Weapons/ Firearm Discharges	4	4%	0	0%	0	0%	0	0%	4	2%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	12	13%	2	5%	0	0%	8	12%	22	10%
Bias-Based Profiling/ Incident Reporting & Documentation	1	1%	0	0%	0	0%	0	0%	1	0%
Preliminary, Follow-Up & Collision Investigations	10	11%	4	10%	1	7%	3	4%	18	8%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	1	1%	0	0%	0	0%	4	6%	5	2%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drugfree 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%	0	0%	1	1%	1	0%
Other	10	11%	2	5%	2	14%	2	3%	16	7%
Total by Years of Service	93	100%	39	100%	14	100%	69	100%	215	100%
Percent of Total for All Years of Service	43%		18%		7%		32%		100%	

*May not total to 100% due to rounding.

Last year, the 0-3 years of service group had 4 allegations in the Interviews, Stops and Arrests category; in 2013, there were 12. In 2011, Interviews, Stops and Arrests allegations were the most frequently cited for this group.

Gender of Officers

The vast majority of officers in the APD are men.

Table 42: Gender - All APD - 2013

Gender	All APD Sworn Personnel	
	#	%
Female	180	10%
Male	1,535	90%
Total	1,715	100%

As has been the case in years past, the public bring complaints against male officers at a higher rate than their representation on the police force and, of course, this is reflected in the number of allegations lodged against the officer. In 2013, there was an unusually high number of allegations levied against female officers in External Formal complaints (32). This was three times as high as in 2012 when there were 10.

Table 43: Gender of Subject Officers by Number of Allegations - 2013

Gender of Officer	Supervisor Referrals		External Formals		Total		APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	10	5%	32	14%	42	10%	180	10%
Male	205	95%	193	86%	398	90%	1,535	90%
Total	215	100%	225	100%	440	100%	1,715	100%

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

*May not total to 100% due to rounding.

The majority of allegations filed in both External Formal and Supervisor Referral complaints against both female and male officers involve Code of Conduct issues. In 2013, there were also 45 allegations levied against male officers regarding Interviews, Stop and Arrests. Female officers had 3.

Table 44: External Formal Allegations by Subject Officer Gender - 2013

EXTERNAL FORMAL Allegation Categories	Female Officers		Male Officers	
	#	%	#	%
Code of Conduct	18	56%	71	37%
Use of Force/ Duty Weapons/ Firearm Discharges	1	3%	21	11%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	3	9%	45	23%
Bias-Based Profiling/ Incident Reporting & Documentation	0	0%	11	6%
Preliminary, Follow-Up & Collision Investigations	4	13%	14	7%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drugfree Workplace	2	6%	5	3%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	0	0%	2	1%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	3%	2	1%
Other	3	9%	22	11%
Total	32	100%	193	100%

*May not total to 100% due to rounding.

Table 45: Supervisor Referral Allegation Categories by Subject Officer Gender - 2013

SUPERVISOR REFERRALS Allegation Categories	Female Officers		Male Officers	
	#	%	#	%
Code of Conduct	8	80%	140	68%
Use of Force/ Duty Weapons/ Firearm Discharges	0	0%	4	2%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	1	10%	21	10%
Bias-Based Profiling/ Incident Reporting & Documentation	0	0%	1	0%
Preliminary, Follow-Up & Collision Investigations	1	10%	17	8%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drugfree Workplace	0	0%	0	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	0	0%	5	2%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	1	0%
Other	0	0%	16	8%
Total	10	100%	205	100%

*May not total to 100% due to rounding.

As a percentage of all complaints, more complaints are lodged against male officers compared to their representation within the APD. Men were underrepresented, however, as repeat subject officers while women were overrepresented.

Table 46: Repeat versus Single Case Subject Officer Gender - 2013

Gender of Officer	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Male	23	85%	213	93%	236	93%	1,535	90%
Female	4	15%	15	7%	19	7%	180	10%
Total	27		228		255		1,715	100%

Missing Frequency = 1

*May not total to 100% due to rounding.

Race/Ethnicity of Officers

Most officers are Caucasian, 69%, with another 20% being Hispanic/Latino, and 9% being Black/African American.

Table 47: Race/Ethnicity - All APD - 2013

Officer Race/Ethnicity	All APD Sworn Personnel	
	#	%
Caucasian	1,183	69%
Black/African American	149	9%
Hispanic/Latino	340	20%
Asian/Pacific Islander	28	2%
American Indian/Alaska Native	15	1%
Total	1,715	100%

*May not total to 100% due to rounding.

Hispanic/Latino officers were slightly overrepresented in total allegations compared to their population within the APD and Black/African American officers were unrepresented compared to their population within the APD.

Table 48: Number of Allegations by Subject Officer Race/Ethnicity and Complaint Type - 2013

Race/Ethnicity of Officer	Supervisor Referrals		External Formals		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Caucasian	150	70%	148	65%	298	68%	1,183	69%
Black/African American	19	9%	11	5%	30	7%	149	9%
Hispanic/Latino	43	20%	64	28%	107	24%	340	20%
Asian/Pacific Islander	3	1%	3	1%	6	1%	28	2%
American Indian	0	0%	0	0%	0	0%	15	1%
Total	215	100%	226	100%	441	100%	1,715	100%

Missing Frequency = 10

*May not total to 100% due to rounding.

Table 49: External Formal Allegations by Subject Officer Race/Ethnicity - 2013

EXTERNAL FORMAL Allegation Categories	Race/Ethnicity of Officers							
	Caucasian		Black/African American		Hispanic/Latino		Asian/Pacific Islander	
	#	%	#	%	#	%	#	%
Code of Conduct	55	37%	3	27%	30	47%	1	33%
Use of Force/ Duty Weapons/ Firearm Discharges	14	10%	2	18%	6	9%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	31	21%	0	0%	17	27%	0	0%
Bias-Based Profiling/ Incident Reporting & Documentation	10	7%	0	0%	1	2%	0	0%
Preliminary, Follow-Up & Collision Investigations	12	8%	4	36%	0	0%	2	67%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drugfree Workplace	4	3%	0	0%	3	5%	0	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	2	1%	0	0%	0	0%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	2	1%	0	0%	1	2%	0	0%
Other	17	12%	2	18%	6	9%	0	0%
Total	147	100%	11	100%	64	100%	3	100%

Missing Frequency = 3

*May not total to 100% due to rounding.

There is quite a bit of movement between Code of Conduct and Use of Force percentages and between External Formal complaints and Supervisor Referrals. Use of Force makes sense since these allegations tend to be of a more serious nature and, therefore, would be more likely to be filed as a Formal complaint.

Table 50: Supervisor Referral Allegation Categories by Subject Officer Race/Ethnicity - 2013

SUPERVISOR REFERRALS Allegation Categories	Race/Ethnicity of Officers							
	Caucasian		Black/African American		Hispanic/Latino		Asian/Pacific Islander	
	#	%	#	%	#	%	#	%
Code of Conduct	102	68%	14	74%	30	70%	2	67%
Use of Force/ Duty Weapons/ Firearm Discharges	3	2%	1	5%	0	0%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	16	11%	2	11%	4	9%	0	0%
Bias-Based Profiling/ Incident Reporting & Documentation	1	1%	0	0%	0	0%	0	0%
Preliminary, Follow-Up & Collision Investigations	11	7%	2	11%	5	12%	0	0%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drugfree Workplace	0	0%	0	0%	0	0%	0	0%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	4	3%	0	0%	1	2%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	1%	0	0%	0	0%	0	0%
Other	12	8%	0	0%	3	7%	1	33%
Total	150	100%	19	100%	43	100%	3	100%

Missing Frequency = 10

*May not total to 100% due to rounding.

Caucasian officers are overrepresented compared to their presence on the APD in terms of repeat case subject officers. Black/African American subject officers are significantly below their representation with no repeat subject officers. Hispanic/Latino officers are on par compared to their presence on the APD in both repeat and single case subject officers.

Table 51: Repeat versus Single Case Subject Officer Race/Ethnicity - 2013

Race/Ethnicity of Officer	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Caucasian	22	81%	155	68%	177	69%	1,183	69%
Black/African American	0	0%	19	8%	19	7%	149	9%
Hispanic/Latino	5	19%	50	22%	55	22%	340	20%
Asian/Pacific Islander	0	0%	4	2%	4	2%	28	2%
American Indian	0	0%	0	0%	0	0%	15	1%
Total	27	100%	228	100%	255	100%	1,715	100%

Missing Frequency = 1

*May not total to 100% due to rounding.

Age of Officers

The majority of the APD is between 30 and 49 years old.

Table 52: Age of Officers - All APD - 2013

Age of Officer	All APD Sworn Personnel	
	#	%
21-29	163	10%
30-39	641	37%
40-49	678	40%
50+	232	14%
Unknown	1	<1%
Total	1,715	100%

*May not total to 100% due to rounding.

The average age of repeat subject officers was 34 years old and 37 years old for single case subject officers. The lowest age for a repeat subject officer was 27. The highest age for a repeat subject officer was 47 and 66 for a single subject officer.

Table 53: Age of Repeat versus Single Case Subject Officers - 2013

Age of Officers	Repeat Subject Officers	Single Case Subject Officers
Average age	34	37
Greatest age	47	66
Lowest age	27	23
Age midpoint	32	36
Most common age	--	41

Ages around 36-39 come up year after year as those with the most complaints. In 2013, the most common age of single case officers was 41 years old. There was no common age among the repeat subject officers, although they range in age from 27-47 with the average and the midpoint, being 34 and 32, respectively.

Table 54: Subject Officer Age by Number of Allegations and Complaint Type - 2013

Age of Officer	Supervisor Referrals		External Formals		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
21-29	50	23%	39	17%	89	20%	163	10%
30-39	94	44%	123	54%	217	49%	641	37%
40-49	54	25%	50	22%	104	24%	678	40%
50+	17	8%	13	6%	30	7%	232	14%
Unknown	0	0%	2	1%	2	0%	1	0%
Total	215	100%	227	100%	442	100%	1,715	100%

Missing Frequency = 10

*May not total to 100% due to rounding.

As a group, the 30-39 year old officers have the most allegations lodged against them. This is not new from previous years.

Table 55: External Formal Allegations by Subject Officer Age - 2013

EXTERNAL FORMAL Allegation Categories	Age of Officer							
	21-29		30-39		40-49		50+	
	#	%	#	%	#	%	#	%
Code of Conduct	14	36%	53	43%	16	32%	6	46%
Use of Force/ Duty Weapons/ Firearm Discharges	1	3%	15	12%	6	12%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	11	28%	26	21%	11	22%	0	0%
Bias-Based Profiling/ Incident Reporting & Documentation	5	13%	3	2%	3	6%	0	0%
Preliminary, Follow-Up & Collision Investigations	3	8%	8	7%	1	2%	6	46%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drugfree Workplace	1	3%	3	2%	2	4%	1	8%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	0	0%	1	1%	1	2%	0	0%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	1	3%	2	2%	0	0%	0	0%
Other	3	8%	12	10%	10	20%	0	0%
Total	39	100%	123	100%	50	100%	13	100%

Missing Frequency = 3

*May not total to 100% due to rounding.

Within Supervisor Referrals, all age groups have Code of Conduct allegations cited most often.

Table 56: Supervisor Referral Allegation Categories by Subject Officer Age - 2013

SUPERVISOR REFERRALS Allegation Categories	Age of Officer							
	21-29		30-39		40-49		50+	
	#	%	#	%	#	%	#	%
Code of Conduct	28	70%	84	82%	38	75%	12	80%
Use of Force/ Duty Weapons/ Firearm Discharges	1	3%	0	0%	0	0%	0	0%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	1	3%	0	0%	1	2%	0	0%
Bias-Based Profiling/ Incident Reporting & Documentation	4	10%	2	2%	0	0%	0	0%
Preliminary, Follow-Up & Collision Investigations	1	3%	5	5%	5	10%	1	7%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drugfree Workplace	0	0%	0	0%	0	0%	1	7%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	1	3%	0	0%	4	8%	1	7%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	0	0%	0	0%	0	0%
Other	4	10%	11	11%	3	6%	0	0%
Total	40	100%	102	100%	51	100%	15	100%

Missing Frequency = 7

*May not total to 100% due to rounding.

Track Records

For those officers with External complaints in 2013, meaning both External Formal complaints as well as Supervisor Referrals, the OPM found that 43% of these officers have had at least one previous complaint from the public sometime between 2009 and 2012.

Please note that when a complaint comes into the OPM, it is assigned a unique ID number. When counting the number of complaints for the year, the OPM counts up these unique ID numbers and uses that number as the total number of complaints for the year. For this section, the OPM looked at “officer complaints” (i.e., counting the number of complaints attributable to any one officer). This group had 810 “officer complaints” from 2009-2013. Given that more than one officer can be named in a

complaint, the number of “officer complaints” will always exceed the total number of complaints, as counted by the unique ID number, for a given year.

When aggregating the complaints brought by members of the public against officers within the 2009-2013 timeframe, the OPM found that 69% of officers in this pool have had two or more complaints in the past 5 years. There were 10 officers who had ten or more complaints (i.e., External Formal complaints and Supervisor Referral complaints). Again, only officers who received an External complaint in 2013 were included in this analysis.

The officers involved in 2013 external complaints, had 326 “officer complaints” between them. Again, more than one officer can be involved in the same complaint so the number of “officer complaints” will always exceed the number of complaints as counted by case number for the year. The officers named in 2013 complaints who also had complaints in 2012, had 77 complaints between them in 2012.

The most severe discipline administered to this group of officers was a written reprimand.

Section 5: Citizen Review Panel & OPM Recommendation Memos

In 2013, twelve cases went before the Citizen Review Panel. Six of these 12 cases were Internal Complaints involving Critical Incidents that included four firearm discharge cases and two in custody deaths. The other six were complaints brought by members of the public. Of the six External complaints that went to the CRP, three of these first had a meeting with the Police Monitor, called a Police Monitor's Conference (PMC).

Type of Recommendation	Recommending Party	Recommendation	APD Response
Specific	CRP	Recommends that the involved officer suspended for a period not to exceed 3 days and that he be retrained on vehicle and foot pursuit policies	None.
Specific	CRP	Recommends that the involved officer be indefinitely suspended.	The officer was indefinitely suspended but the CRP received no response from the APD.
Specific	OPM	Recommends that the involved officer receive a temporary suspension of 5 days.	The officer received a written reprimand but the OPM received no response from the APD.
Specific	OPM	Recommends that the involved officer be indefinitely suspended.	The officer was indefinitely suspended but the CRP received no response from the APD.

Appendix A: Austin Police Department's Discipline Matrix

Below find the discipline matrix currently employed by the APD.

A109d – Discipline Matrix

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

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

A109d – Discipline Matrix (con't'd)

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

A109d – Discipline Matrix (con't'd)

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

Notes:

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

*2 A written reprimand will normally be administered for violations under this heading as a first occurrence. Supervisors will take into account the employees previous driving history, the severity of the collision and other contributing factors involve in the negligent collision. (See Discipline Process sections #5 and #8)

Appendix B: Community Outreach Conducted in 2013



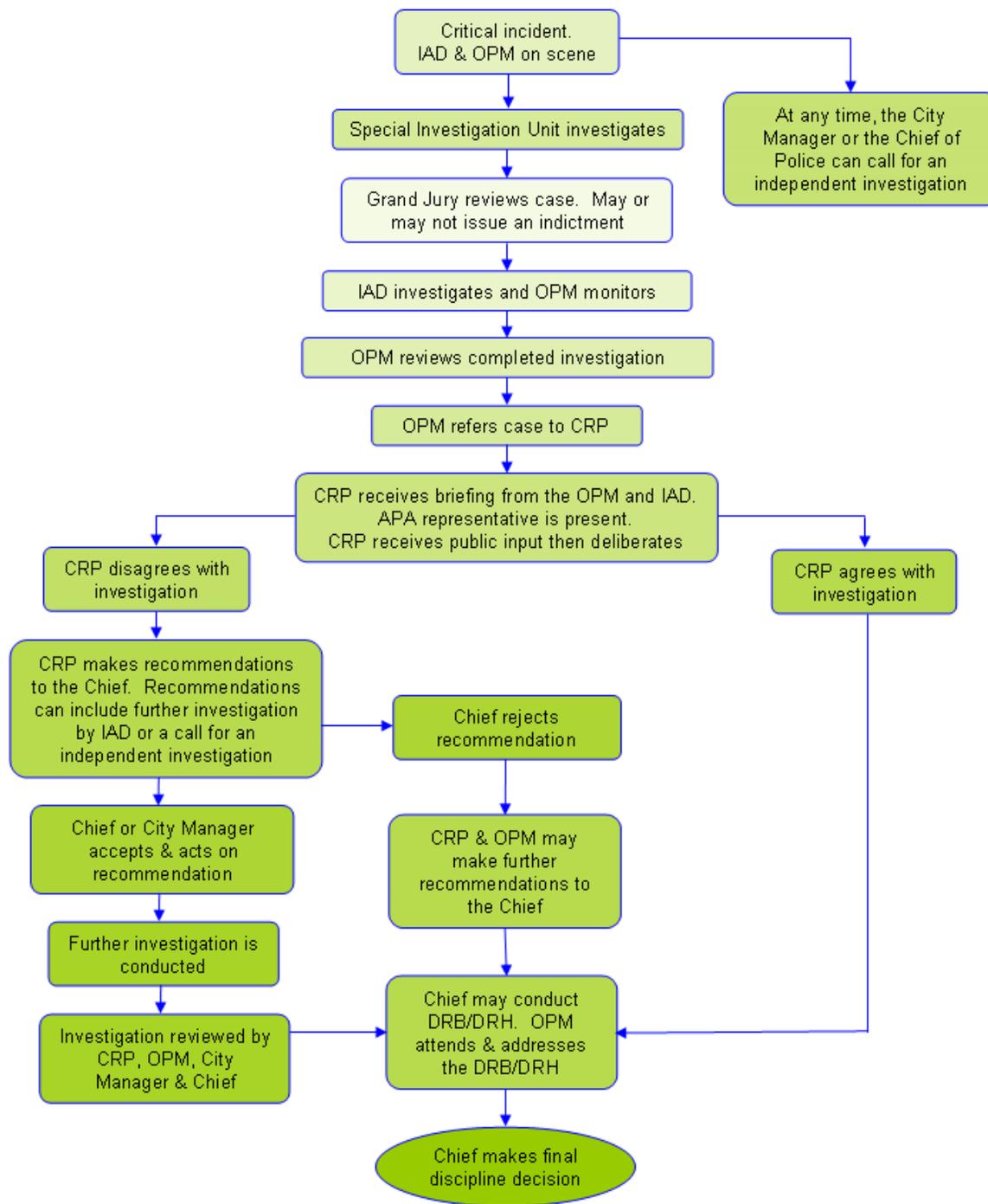
Office of the Police Monitor

OUTREACH EFFORTS
January – December 2013

1/7/13	North Austin Community School Alliance, Dobie Middle School (Ongoing Event: Behind Bars)
1/8/13	APD Downtown Commander's Forum, Waller Creek
1/17/13	Central East Community School Alliance, Martin Middle School (Ongoing Event: Behind Bars)
1/21/13	MLK Celebration, Huston Tillotson
1/24/13	Community School Alliance, Burnet Middle School (Ongoing Event: Behind Bars)
1/26/13	Criminal Justice Prison Ministry meeting, Mt. Zion Baptist Church
2/1/13	Dove Springs Community School Alliance, Mendez Middle School (Ongoing Event: Behind Bars)
2/2/13	APD Town Hall meeting, Simpson United Methodist Church
2/13/13	Texas Veterans Expo, Palmer Auditorium
2/26/13	Spanish presentation to clients of Workers Defense Project
2/28/13	Spanish presentation to Mexican Consulate at Consulate offices
3/2/13	Bienvenidos a Austin, Pan Am Recreation Center
3/11/13	KAZI radio interview on Behind Bars, KAZI
3/27/13	Department of Aging and Disability Wellness Fair
4/1/13	Texas Inmates Family Association meeting, Sunrise Community Church
4/3/13	Immigrant Services Network of Austin meeting, Terrazas Library
4/26/13	Univision's "En Su Comunidad" outreach
5/4/13	CommUnity Care Safety Fair & Fiesta
5/9/13	APD's Home Away From Home, YMCA
5/9/13	Fitness Fiesta Fair, Govalle Elementary School
5/10/13	Mother's Day Celebration, Burnet Middle School
5/18/13	Brownie Community Resource Fair, Brownie Community Park
6/1/13	Immigrant Resource Fair, Mendez Middle School
6/27/13	Asian Chamber of Commerce Open House
8/24/13	Back-to-School Bash, Convention Center
9/8/13	Univision's Diez y Seis Celebration, Expo Center

9/10/13 Back-to-School Provider Resource Fair, Mendez Middle School
9/16/13 Diez y Seis Celebration, ACC Riverside
9/17/13 ACC 40th Anniversary Celebration outreach, ACC Highland Mall
9/18/13 Diez y Seis Celebration, North Loop Housing Authority
9/25/13 Montopolis Community Leaders meeting, Ruiz Library
9/28/13 Asian American Resource Center Grand Opening, 8401 Cameron Road
10/1/13 National Night Out, Barton Creek Square Mall
10/19/13 Resource Fair, Ortega Elementary School
11/1/13 Career Fair, Pearce Middle School

Appendix C: Critical Incident Monitoring Process



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

Appendix D: Meet and Confer Contract, Article 16 (effective through September 30, 2013)

Ratified October 1, 2008

ARTICLE 16

CITIZEN OVERSIGHT OF THE AUSTIN POLICE DEPARTMENT

Section 1. Citizen Oversight

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

b) The purpose of Citizen Oversight is:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Citizen Review Panel ("Panel")

a) Function

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

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

b) Qualifications

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

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

c) Training

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

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

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

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

d) Resign to Run

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

e) Panel Review Process

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

- (2) Without a complainant's request, only the following cases may be referred to the Panel:
- a. A "Critical Incident" as defined this Article;
 - b. The appearance of a pattern of serious misconduct by the officer involved;
 - c. The appearance of a pattern of department-wide misconduct;
 - d. The appearance of serious official misconduct by one or more members of the Department;
 - e. The appearance of bias based misconduct; or
 - f. The appearance of issue(s) to be addressed by policy, procedure, or training recommendations.

f) Nature of Proceedings

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

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

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

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

g) Private Session

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

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

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

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

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

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

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

h) Public Session and Comments

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

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

i) Deliberations

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

j) Action and Recommendations

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

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

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

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

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

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

c. An officer involved shooting.

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

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

Section 4. Independent Investigation

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

(1) An employee of the City of Austin;

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

(3) A volunteer member of the Panel.

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

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

Section 5. Public Report of Independent Investigation

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

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

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

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

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

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

Section 6. Public Communication

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

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

Appendix E: Meet and Confer Contract, Article 16 (effective October 1, 2013)

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. Definitions

In this Article:

a) “Critical Incident” means:

(1) 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.);

(2) A death in custody; or

(3) An officer involved shooting.

b) “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.

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) “Complaint” means an affidavit setting forth allegations or facts that may form the basis of future allegations of misconduct against an officer and which serves as the basis for initiating an investigation.

d) “Complainant” means a person, including an Officer, claiming to be a witness to or the victim of misconduct by an Officer. “Complainant” does not include the Department designee in the case of an administrative referral.

Section 3. The Office of the Police Monitor (“OPM”)

a) Access to Confidential Information

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) Complaint Intake

(1) The OPM shall not gather evidence, contact or interview witnesses (except the complainant as provided herein), or otherwise independently investigate a complaint or other information of police misconduct. 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 an Officer appear or present evidence to the Police Monitor. The OPM is authorized to accept complaints of Officer misconduct as provided in this Section.

(2) The OPM may obtain the following information in connection with the filing of a complaint of officer misconduct:

- (a) The complainant's personal information;
- (b) The nature of the complaint;
- (c) Witness information;
- (d) The incident location, date, and time; and
- (e) The APD officer(s) involved.

(3) The OPM shall digitally audio record the taking of the information provided in subsection (b)(2). 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.

(4) 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.

c) Access to Investigation Interviews

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 directly question the Officer who is the subject of the investigation only if agreed to by the subject Officer or his/her representative and the IAD investigator. At the conclusion of or during a break in 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.

d) Access to Dismissal Review Hearings

The Police Monitor may attend any Dismissal Review Hearing (or other administrative hearing conducted for the purpose of determining whether the Department shall take disciplinary action against an Officer for alleged misconduct). Neither the Police Monitor nor the Internal Affairs Representative(s) may remain in the Hearing while the chain of command and the Chief of Police or his/her designee 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.

e) Quarterly Meetings

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 any issues related to the citizen oversight process.

Section 4. Citizen Review Panel ("Panel")

a) Function

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.

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.

b) Training

Each member must complete the training prescribed herein prior to commencing their service on the Panel, except as specified herein. The required training shall include:

(1) Attending 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 (14 hours) in different parts of the City, one of which must include a Friday or Saturday night in Downtown Command from 11 pm to 3 am. The Downtown Command ride-out must be completed within six months of selection as a Panelist, and
- i. A presentation by the Association.

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

These training requirements are subject to change by unanimous agreement of the Chief of Police, the ASSOCIATION President, and the Police Monitor.

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) Cases Subject to Review by Panel

The Panel may review the following two categories of cases regarding officer conduct:

(1) Review Requested by Complainant: Not later than thirty (30) calendar days after the Police Monitor forwards notice of the outcome of the investigation to the complainant, the complainant may request that the Police Monitor refer the complaint to the Panel. There is no limitation as to the type of case which may be referred to the Panel at the request of the complainant.

(2) No Review Request by Complainant: Without a complainant's request, only the following cases may be referred to the Panel:

- a. A "Critical Incident" as defined in 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. Citizens wanting to address the Panel during the public input/communications section of the meeting must complete a speaker sign-up card listing the agenda item they wish to address, and will be limited to addressing the topic identified. 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.

(4) 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.

g) Access to Confidential Information

(1) 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 shall make available to individual Panel members all IAD case files scheduled for review pursuant to subsection "f (3)" above. Individual Panel members may review the IAD case file for up to eight (8) 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 Monitor's Office may hold a conference call with the Panel in which the Panel is given a preview of the general nature of the cases that will appear at the next Panel meeting. The focus of the discussion shall not be on the specific facts of any particular case. The

purpose of this conference call is so that the Panel members may decide if they need to review the file prior to the meeting. 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.

(2) In an effort to ensure the Panel has a more complete view of the types of cases the APD reviews, the Police Monitor shall meet with the Panel twice a year to provide them an overview of APD activity up to that point in the calendar year.

h) Private Case Briefing 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. The Police Monitor and/or the IAD representative shall present to the Panel the information obtained from the IAD investigation. The duties of the IAD representative may be performed by others, including the chain of command, training staff, and/or forensics. Members of the Panel may be provided with READ ONLY electronic access to all or part of the IAD files, or the physical files themselves, 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, 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) 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.

(4) In addition to those individuals involved in briefing the Panel, and the Association Representative, the Assistant Police Monitor, the staff member from the Office of the Police Monitor that is assigned to the case, and a designated attorney from the City Attorney's Office may be present during the Private Case Briefing Session. No other individual may be present unless the Panel requests further information.

i) Public Session and Comments

After the Private Session, the Panel shall meet in Public Session to receive public input/communications. 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. The Police Monitor, in consultation with the Panel, shall set the time limits for such proceedings, and shall be responsible to prevent discussion of matters not on the Session agenda.

j) Communication from Complainant and/or Officer

(1) Public Session:

Subject to the provisions of Subsection "h," the Complainant shall be permitted to address the Panel in the Public Session. The Officer who is the subject of the complaint may, but is not required, attend and listen to the address by the complainant, and may also address the Panel.

(2) Private Session:

If the Complainant articulates relevant privacy or safety concerns, the Police Monitor may allow the complainant to address the Panel in a private session. The Officer who is the subject of the complaint may, but is not required, attend and listen to the address by the complainant, and may also address the Panel. 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 Private case briefing may be present during this private Panel Session.

k) 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, the staff member from the Office of the Police Monitor that is assigned to the case, and a designated attorney from the City Attorney's Office may be present during such discussion. No other individual may be

present unless, the Panel requests further information; if the Panel does so, the Police Monitor or Assistant Police Monitor, and the IA Commander or Lieutenant, must also be present.

1) Action and Recommendations

(1) The Panel shall not take action or make recommendations not authorized by this Article. At the conclusion of the review process set forth above, the Panel, upon a majority vote of its total members, may make the following written 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 non-binding recommendation on discipline, limited to cases involving a “critical incident” as defined in this Article.

(2) 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. 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. A deliberate violation of this provision shall be subject to the dispute resolution process set forth in Section of this Article, but a Panel member shall be permanently removed from the Panel upon a violation of this standard.

(3) 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).

(4) The Police Monitor shall consult with the Panel in formulating any recommendations to the Chief of Police.

Section 5. Independent Investigation

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

b) If the Panel, pursuant to Section 4(1)(1)(c), recommends that an Independent Investigation is warranted, 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.

Section 6. Public Release of Information

a) Documents Subject to and Timing of Public Release:

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 the following documents in the manner prescribed by this Section:

- 1) A Panel recommendation that Department policies warrant review and/or change, as authorized by Section 4(1)(1)(b). Unless made confidential by a law other than Section 143.089(g) of the Texas Local Government Code, such recommendations shall be subject to public release, in their entirety, upon delivery to the Chief of Police.
- 2) A Panel recommendation that further investigation by the Department is warranted, as authorized by Section 4(1)(1)(a). Unless made confidential by a law other than Section 143.089(g) of the Texas Local Government Code, such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), and only if the Police Chief imposes discipline.
- 3) A Panel recommendation that an Independent Investigation is warranted, as authorized by Section 4(1)(1)(c). Unless made confidential by a law other than Section 143.089(g) of the Texas Local Government Code, such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.
- 4) A Panel report setting forth the basis and concerns of the Panel supporting any recommendation for an Independent Investigation, as authorized by Section 5(b). Unless made confidential by a law other than Section 143.089(g) of the Texas Local Government Code, such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.
- 5) A Panel report setting forth the Panel's conclusions and recommendations after its review of any Independent Investigation, as authorized by Section 5(b). Unless made confidential by a law other than Section 143.089(g) of the Texas Local Government Code, such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.
- 6) A panel recommendation on discipline in a case involving a critical incident, as authorized by Section 4(1)(1)(d). Unless made confidential by a law other than Section 143.089(g) of the Texas Local Government Code, such recommendations shall be subject to public release, in their entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

7) The body of a final report (but not exhibits) prepared by an investigator who conducts an Independent Investigation authorized by the Chief of Police or City Manager concerning police conduct, whether or not recommended by the Panel. Unless made confidential by a law other than Section 143.089(g) of the Texas Local Government Code, the body of such report shall be subject to public release, in its entirety, only after the Police Chief's final disciplinary decision as to the subject Officer(s), regardless of whether discipline is imposed.

It is expressly understood and agreed by the parties that any recommendation and/or report released pursuant to this Section may contain information which would otherwise be made confidential by Section 143.089(g) of the Texas Local Government Code.

b) The public release of information authorized in this AGREEMENT will be reviewed 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) Unauthorized Release of Confidential Documents/Information:

(1) 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.

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

(3) 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.

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

(5) Any deliberate release of information that is made confidential by law or by this AGREEMENT shall result in the permanent removal of the offending member from the Panel. Any deliberate premature release of information before it may properly be released likewise will result in the permanent removal of the offending member from Panel.

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 (c) 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 or this AGREEMENT. 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 Officers to the extent authorized by this AGREEMENT.

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 an 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 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*, 6 385 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 Appeal

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 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 an 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. Remedie

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”), and in effect at the time of the dispute. 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.



OFFICE OF THE POLICE MONITOR

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