



MEMORANDUM

TO: Mayor and Council Members

FROM: Rey Arellano, Assistant City Manager 

DATE: May 31, 2022

SUBJECT: **Kroll Supplemental Report - Review of Administrative Investigations - Bias and Discrimination**

Kroll was asked to review and evaluate APD administrative investigations of complaints made against APD officers and executives that alleged some form of bias or discrimination over a ten-year period (2012 to 2021), including complaints that did not result in disciplinary action. Specifically, Kroll reviewed the timeliness in APD's processing and intake, the fairness and objectivity of the administrative investigations, the completeness of the investigations, and the speed with which complaints were resolved. Kroll also attempted to ascertain if: (a) administrative investigations comported with department policy; (b) supervisors made appropriate findings and determinations; (c) APD properly collected and processed relevant evidence; (d) fair and consistent discipline was imposed (when allegations were sustained); and (e) appropriate training and counseling was provided, when applicable.

APD is currently reviewing the report and agrees with many of the recommendations. Some recommendations require additional time to fully evaluate and determine if or how they can be implemented. APD continues to strive for improvement and welcomes this analysis provided by the Kroll team.

Attached is Kroll's Supplemental Report - Evaluation of Austin Police Department: Administrative Investigations of Complaints Alleging Bias or Discrimination (2012 – 2021).

Cc: Spencer Cronk, City Manager
Chief Joseph Chacon, Austin Police Chief
Sylvia Hardman, Acting Police Oversight Director
Anne Morgan, City Attorney

Attachment

Supplemental Report - Evaluation of Austin Police Department: Administrative Investigations of Complaints Alleging Bias or Discrimination (2012 – 2021)

May 4, 2022

Prepared for

City of Austin, Office of Police Oversight / City Manager's Office

Status

Final Report

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1 INTRODUCTION

On November 12, 2020, the City of Austin, through the Office of Police Oversight (OPO) in consultation with the City Manager's Office (CMO), retained Kroll Associates, Inc. (Kroll) to review and evaluate the Austin Police Department (APD) on the extent to which forms of racism, bigotry, and discrimination are present in the protocols, practices, and behaviors of the APD.¹ The initial phase of Kroll's review ("Phase A"), which was completed on April 23, 2021, involved assessing the APD Training Academy (Academy) on its ability and readiness to prepare cadets for policing in a multi-ethnic, diverse urban population consistent with best practices. See Kroll Report *Austin Police Department: Review and Assessment of Training Academy*, April 23, 2021.²

The second phase of Kroll's evaluation ("Phase B") addressed four distinct areas: (1) APD use-of-force incidents from January 1, 2017 to December 31, 2020 (48 months), including the role that race, ethnicity, gender, or similar person characteristics potentially impact APD's application of force; (2) a qualitative review and analysis of approximately 1,321 APD use of force incidents from June to November 2019; (3) APD's public interactions with civilians (e.g., traffic stops, arrests, citations, and searches) from January to December 2020 (12 months) and potential disparities involving race, ethnicity, gender, or other similar personal characteristics; and (4) APD's recruitment, selection, and promotion policies and practices and their potential impact on historically underrepresented groups such as women and people of color. Kroll's Phase B report was completed and finalized on January 21, 2022. See *Evaluation of Austin Police Department: Use of Force / Public Interactions / Recruitment, Selection, and Promotions*, January 21, 2022 ("Kroll Phase B Report").³

For this report, Kroll was asked to review and evaluate APD administrative investigations of complaints made against APD officers and executives that alleged some form of bias or discrimination over a ten-year period (2012 to 2021), including complaints that did not result in disciplinary action.⁴ Specifically, Kroll reviewed the timeliness in APD's processing and intake, the fairness and objectivity of the administrative investigations, the completeness of the investigations, and the speed with which complaints were resolved. Kroll also attempted to ascertain if: (a) administrative investigations comported with department policy; (b) supervisors made appropriate findings and determinations; (c) APD properly collected and processed relevant evidence; (d) fair and consistent discipline was imposed (when allegations were sustained); and (e) appropriate training and counseling was provided, when applicable.

Excluding complaints and case files that had been purged from APD's records, contained insufficient information, or preceded 2012, Kroll identified and reviewed a total of 252 case files pertaining to 653 allegations and involving 346 officers (including 50 officers that were named in more than one complaint). The case files reviewed by Kroll were organized by APD into four categories: (1) complaints alleging racial

¹ Kroll's retention is pursuant to contract MA 4400 PA210000018.

² <https://www.austintexas.gov/edims/document.cfm?id=359317>. Kroll was subsequently appointed by the City to serve as Independent Evaluator of the Academy to ensure that APD effectively implemented the short-term and long-term recommendations in Kroll's Report that were approved by the City Manager and agreed to by APD leadership. Kroll submitted an Interim Report in its role as Independent Evaluator on October 14, 2021 (*Interim Report of Independent Evaluator: APD Training Academy*, October 14, 2021), and its final report on February 16, 2022 (*Final Report of Independent Evaluator: APD Training Academy*, February 16, 2022).

³ <https://www.austintexas.gov/edims/document.cfm?id=375462>.

⁴ With the approval of the CMO, Kroll deferred its review of the relevant complaints and APD's handling of them, and thus did not include this portion of our analysis in Kroll's Phase B report, due to delays in APD's production of the case files, documents, and video links associated with the relevant complaints.

bias or discrimination; (2) complaints alleging racial and gender bias or discrimination; (3) complaints alleging bias or discrimination due to some factor other than race or gender; and (4) other uncategorized complaints with a potential bias or discrimination component.

In conducting its analysis, Kroll reviewed the contents of each case file, including the initial complaint, OPO correspondence with the complainant and APD, other internal and external correspondence, and when available, the internal affairs histories of accused officers, investigation summaries or other written reports prepared by the internal affairs investigators or an assigned supervisor in the employee's chain of command, case dispositions including any resulting discipline, and all other documentation and evidence, including body-worn camera or dashboard camera video footage where applicable, photographs and written documentation, and relevant policies implicated.⁵

This report summarizes Kroll's findings and analysis of the complaints and resulting administrative investigations and dispositions examined. Section Two provides an Executive Summary of our findings and analysis. Section Three includes a discussion of general principles that should guide the internal affairs and administrative investigations function within every police department, as well as an overview of the APD administrative investigations process, the standard of review, and key definitions. Section Four contains Kroll's findings and analysis of the 252 complaints and associated case files reviewed, including the challenges Kroll encountered in obtaining the relevant documentation, an aggregate analysis of the complaints examined, and individual summaries of selected cases for which Kroll identified some issues or concerns. Finally, Section Five provides a set of recommendations and suggested modifications to the APD internal affairs and administrative investigations process.

⁵ The documentation contained in each case file varied depending upon how the complaint was classified or handled by APD. Class A and B complaints, which are investigated by the Internal Affairs Division (IAD), typically contained the most comprehensive case files, while cases handled as supervisor referrals, citizen concerns, and Class C and D complaints, had varying degrees of information and documentation in the case files provided.

2 EXECUTIVE SUMMARY

Kroll was asked to review and evaluate APD's handling of internal and external complaints alleging or potentially involving some form of bias or discrimination over a ten-year period. Based on the data provided by APD, Kroll identified 331 complaints from 2012 to 2021 that alleged some form of bias or discrimination or were identified by the department as potentially alleging bias or discrimination.⁶ Of these, case files associated with 79 complaints were marked as purged in accordance with APD retention schedules. Accordingly, Kroll reviewed the remaining 252 complaints and associated case files involving 653 allegations that were made available to the assessment team.⁷

Overview of Cases Reviewed

Kroll found that 47% of the 252 incidents reviewed involved an allegation of racial or ethnic bias, while 13.8% of the complaints alleged bias due to gender, 3% to sexual orientation, and 7% to some other form of bias, such as age, disability, religion, or homelessness. Additionally, 39% of the complaints reviewed did not involve an allegation of bias or discrimination. Thus, in total, Kroll reviewed complaints and case files associated with 154 alleged bias-related incidents over a ten-year period.

Allegations were sustained by APD in 8.3% of the alleged bias-related incidents reviewed, while officers were exonerated in 27% of the bias-related complaints. Approximately 44% of the sustained allegations resulted in a written reprimand, while a suspension resulted in 14% of disciplinary actions. In 19% of the alleged bias-related cases, the subject officers resigned.

Kroll evaluated each case in part to determine the completeness and thoroughness of each investigation, with the understanding that not every complaint requires the same level of investigation. Kroll's review determined that, with respect to the 154 alleged bias-related complaints, investigations were sufficiently complete in 85% of the incidents, while in Kroll's judgment more investigation or review should have occurred in roughly 15% of the cases.

Kroll also evaluated each case to determine if APD made appropriate findings or otherwise disposed of the complaint in a manner consistent with the evidence and circumstances of each complaint. Kroll disagreed with the ultimate disposition or finding in roughly 14% of the alleged bias-related incidents. Of the 119 cases that involved an allegation of racial/ethnic bias or discrimination, approximately 29% were designated as either a Class A or Class B complaint, which required a full and complete Internal Affairs investigation and

⁶ APD provided data associated with approximately 339 complaints; however, some of the complaints dated back to 2011 (outside the 10-year scope of review) and other files contained incomplete or insufficient documentation for Kroll to effectively include in its evaluation or which were otherwise inapplicable to our review.

⁷ Kroll notes that an anonymous complaint filed with OPO on October 30, 2019, which alleged that former Assistant Chief Justin Newsom used blatantly racist language in a series of statements and text messages, was not included in the case files provided to Kroll for its review. OPO received the anonymous complaint just hours before Newsom announced his retirement, and the City Manager's Office retained an outside law firm to investigate the matter. A report of investigation was released by the law firm on April 16, 2020. See Report of LM Tatum LLC, *Austin Police Department Independent Investigation – Fact Investigation*, April 16, 2020. Kroll has reviewed that investigative report; however, as that investigation was not conducted by APD, it was not part of our evaluation and assessment. Nevertheless, the conduct and allegedly racist statements of then Assistant Chief Newsom, and the sequence of events that led to his retirement without being subjected to an APD internal administrative investigation, raised many troubling questions about the then prevailing culture at APD. These questions were heightened further by allegations that Newsom was "tipped-off" by APD leadership about the complaint, which allowed him to retire with full benefits and accrued leave before an internal administrative investigation had formally commenced, and that then Chief Brian Manley was aware of Newsom's racism and use of racist language and did nothing about it.

report. By contrast, 43% of racial/ethnic bias complaints were delegated to the subject officer's chain of command to be handled as a Supervisor Referral, and thus involved a far more limited review and investigation of the incident.

For the 154 bias-related incidents, the average number of days until closure was 67.3 days. Roughly 4% of investigations took longer than 180 days, while 43% of incidents took less than 30 days to complete. Most cases resolved in the shorter time frame were those designated as Supervisor Referrals, Information Incidents, and Citizen Concerns.

Individualized Case Review

Although the vast majority of complaints reviewed by Kroll were appropriately handled by Internal Affairs and the department, certain case files raised questions about the manner in which the complaints were investigated or resolved. For example, Kroll identified cases in which complaints were potentially misclassified, others that were not investigated as thoroughly as the complaint and circumstances demanded, and some where the findings were inconsistent with the evidence or which failed adequately to address credible concerns about APD officers' treatment of citizens and community members, supervisory issues, or other issues.

Similar to what we highlighted in our use-of-force analysis in the Kroll Phase B Report (pp.75-85), Kroll noted that, in some of the cases reviewed, APD officers were too quick to detain and handcuff individuals during minor traffic stops without first establishing reasonable suspicion to justify the temporary detention and protective frisk of individuals. We observed in multiple cases that supervisors mistakenly noted that "a frisk is not a search" and that a protective frisk can occur based solely on a generalized concern for an officer's safety.

In several cases reviewed, APD did not thoroughly examine the credible and specific allegations of racial profiling, racial or ethnic bias, and similar claims, but merely reviewed the body-worn camera or dashboard camera recordings without undertaking a more robust and objective examination of the racial bias or profiling claims.

In the vast majority of cases reviewed, including in Class A and B investigations, the case file did not include a written explanation of the final disposition and any imposed discipline. Accordingly, it was difficult for Kroll to discern how the APD chain of command evaluated the evidence and facts outlined in the investigative report and what factors were considered in determining the disciplinary actions imposed.

Kroll observed that some allegations resulted in dispositions of "Unfounded" (the alleged conduct did not occur) when the more appropriate disposition should have been "Inconclusive" (the evidence was insufficient to prove or disprove the allegation). Because APD does not use the designation "Not Sustained" for allegations that are not supported by sufficient evidence, this potentially results in inconsistencies and confusion over the proper disposition of some cases. It also results in an over-reliance on "Unfounded" when resolving fully investigated complaints.

Kroll also reviewed cases in which different complainants alleged the same or similar policy violations and fact patterns against the same officer. In the cases Kroll reviewed, there was no cross-reference or attempt to (1) consider the other complaints (including the prior complaints) to determine if a pattern of conduct could be detected or (2) examine the officer's conduct more closely for training or counseling purposes.

Finally, Kroll observed that APD administratively closes investigations without completing the investigation or resolving the complaint whenever a subject officer resigns or retires during the investigation. This practice should be evaluated in cases that involve serious allegations of racism, sexual harassment, financial improprieties, dishonesty, or other serious ethical breach. For purposes of organizational integrity,

transparency and accountability, as well as for risk management concerns, it is important that the department have a full understanding of the alleged misconduct and that it be able to fully document and determine what misconduct occurred, how the matter was handled and resolved, and whether any training or policy adjustments are needed.

Section Five of the report contains a set of recommendations for APD's consideration to further improve its internal affairs function and administrative investigation process, and to help address the issues identified by Kroll.

3 THE COMPLAINT AND ADMINISTRATIVE INVESTIGATION PROCESS

The role of internal affairs within a police department, and how complaints are handled and resolved, is essential to building and maintaining mutual trust and respect between the police and the community. When police misconduct occurs, the internal affairs function and administrative investigation process is the primary method of reassuring the community that unethical behavior will not be tolerated and that the department will affirmatively address and resolve such misconduct. Thus, the internal affairs function within every law enforcement agency serves two communities – (1) the agency and its employees, and (2) the community served by the agency. An effective administrative investigation process must ensure that complaints of misconduct are evaluated thoroughly, accurately, and impartially, and that both the complainant and the accused officer are treated fairly. A strong and effective internal affairs function and administrative investigation process within an agency can improve agency morale and increase trust with the community.

In this section, we discuss general principles that should guide the internal affairs function within every police department, and then describe the overall complaint and administrative investigation process within APD and the City of Austin.

3.1 Some Guiding Principles

At the outset, it should be noted that the vast majority of police officers in the United States are men and women who serve with distinction and integrity. Police officers are provided with a great deal of power and discretion. Because their responsibilities are vast, agency and public expectations for how officers fulfill their duties and responsibilities are high.

When an officer is accused of misconduct – from a minor, service-oriented complaint to criminal wrongdoing – the allegation results in some level of review or investigation of the officer’s conduct (as discussed further below). Implementing a fair and objective fact-finding process that respects the rights of all individuals involved, including the person making the complaint and the officer accused of wrongdoing, is the most essential role of the internal affairs function. Because police agencies investigate alleged misconduct within their own agencies, the administrative investigation process presents a unique set of challenges, including variations in state and local laws, employment rights, collective bargaining agreements, community expectations, and the culture of the agency itself. While it is generally accepted that police departments, managed properly, are able to police themselves in a manner that enhances public trust, this is only true if the department objectively, fairly, and thoroughly investigates each allegation in a timely manner that maintains transparency and accountability.

The Intake Process

The investigation process starts with “intake” – the process of receiving complaints. Agencies should take in all complaints without restriction, as they provide insight into how the agency is perceived by the community and whether it is viewed as ethical, respectful, and fair. Not every complaint, of course, needs to be investigated in the same manner. Some complaints may simply involve an allegation that an officer was rude or did not handle a call correctly. Other complaints may involve more serious allegations of wrongdoing, from alleged racial bias, discriminatory treatment, unethical behavior, or criminal wrongdoing. Thus, it is important to intelligently evaluate each complaint at intake. Some complaints may be better

handled by areas of the department other than Internal Affairs (e.g., requests to speak with an officer's supervisor and certain employee disputes).

Although persons filing a complaint ("complainant") should have a wide choice of options in which to file a complaint, such as a civilian agency separate from the police department, online forms, and other neutral modes of reporting, complaints should be promptly forwarded to the Internal Affairs Division. Moreover, the complaint process should accommodate all languages spoken by a substantial proportion of community residents.

Complaint Tracking

Ideally, all complaints should be tracked in an automated system through final disposition. Separate data fields should be created for all important information. The tracking system should alert investigators and managers of approaching deadlines. Departments should routinely audit the complaint process to ensure that complaints are being handled consistent with departmental policies and procedures.

An effective case tracking process also allows the agency to evaluate the types of alleged misconduct that are the most frequent subject of complaints and to identify potential patterns of behavior related to specific officers. This form of tracking can help inform department-wide training needs and priorities, as well as opportunities for individual officer intervention. Additionally, tracking and analyzing complaint data allows a department to produce comprehensive and informative summary reports for public consumption. Such reports can further enhance transparency and accountability to the community.

The Nature and Extent of an Investigation

It is also important that complaints be properly classified, as this may impact how a complaint is handled within an agency. For example, complaints involving allegations of serious misconduct require a full and complete investigation and may be subject to certain additional procedural requirements. By contrast, some service complaints may not allege any identifiable officer misconduct and may simply require that a supervisor review the matter and conduct appropriate follow-up with the complainant. While all complaints from members of the public, and all internal complaints of a serious nature, must be investigated, the extent and complexity of the investigation will be commensurate with the seriousness and complexity of the allegations. Some complaints may be resolved easily and quickly after a cursory investigation. However, no investigation should be closed or terminated without the concurrence of the Commander of Internal Affairs or appropriate designee.

As a general matter, an investigation is complete when all relevant information has been gathered and reviewed, essential witnesses have been interviewed, significant material conflicts resolved, and a reasonable determination can be made of the facts and issues addressed. If collecting more information would be merely cumulative and offer no other meaningful perspective, further investigation is typically not warranted. However, any decision not to proceed to a complete investigation should be accompanied by a written explanation in the file and be made with the concurrence of the Commander of Internal Affairs.

It is essential to have a written directive that delineates which types of complaints are to be investigated by Internal Affairs and which can be delegated to a subject officer's supervisor or chain of command. Internal Affairs should, at minimum, investigate all serious complaints of employee misconduct, including alleged constitutional violations, allegations of racial profiling or discriminatory policing, allegations of racial, gender, or ethnic prejudice, or of dishonesty, sexual misconduct, drug use, and other serious ethical or policy breach. Internal Affairs or a specialized investigative unit within a department also must conduct investigations required by regulation, such as officer-involved shootings and in-custody deaths. Investigations of less serious allegations are appropriately conducted by the officer's supervisor or chain of command, such as allegations of rudeness or service complaints that involve no suggestion of

discrimination against a particular person or group. Similarly, complaints about some traffic enforcement matters may be appropriately investigated at the unit level, again where there is no allegation of racial profiling or discriminatory treatment.

Time Requirements

All investigations should be completed and resolved as quickly as reasonably necessary to fulfill the investigative mission. In no instance, should an investigation exceed an applicable statute of limitations that would preclude imposing discipline on an officer found to have violated the law or department policy. In all instances, an administrative investigation should be completed in less than 180 days, absent just cause to extend the deadline or with the consent of the accused employee, or where a mutual extension is mandated by the applicable collective bargaining agreement.

Investigative Reports

Investigative reports, or other written documentation where a full investigative report is not necessary, should be as comprehensive as reasonably necessary. At minimum, the report should provide the decision-maker with sufficient information to make an appropriate finding and disposition. An investigative report should (1) clearly describe and address each allegation; (2) summarize all relevant facts and the evidence in support of the facts (e.g., photos, audio and video recordings, relevant documents); (3) identify all persons interviewed; and (4) express no bias for or against any party. Reports should be written in clear, concise, and plain language, define special terms of art, be logically organized, avoid conclusionary statements and personal opinions, and provide reasonably precise estimates of time, distance, or other facts when applicable.

Post-resignation Investigations

When an employee accused of misconduct resigns or retires before completion of the investigation, consideration should be given to completing the investigation of the complaint as if the employee were still with the department. This is particularly important when the allegation concerns racial bias, discrimination, sexual misconduct, or other serious matters that may have broad implications for the department as a whole. Whether to complete such an investigation may depend on resources, legal considerations, and impact on public confidence. But it should not be automatically assumed that an investigation can be closed or terminated simply because the accused officer has resigned or retired. From an agency risk management perspective, in many cases completing the investigation may help prevent or limit liability and address issues of concern that, left unaddressed, could have broader implications for the department even after the subject employee departs.

The Findings

In general, completed investigations should result in one of four findings:

1. Sustained – a preponderance of the evidence establishes that the alleged conduct occurred and violated agency policy.
2. Not sustained – the evidence does not sufficiently establish that the allegation is true or not true.
3. Unfounded – the allegation is not true.
4. Exonerated – the conduct at issue occurred but is not a violation of agency rules or policy.

The adjudicators within a department – i.e., the person(s) designated with deciding the outcome of an investigation – must neutrally and objectively evaluate the evidence without bias or prejudice. The outcome and rationale for each adjudication should be provided in writing and the conclusions should be logically

deduced from the evidence. An allegation can only be sustained if they are proven by a preponderance of the evidence.

Discipline

If a complaint against a subject officer is sustained, the Chief of Police or designee must impose some form of corrective action to modify the officer's behavior and, in some cases, take disciplinary action. Any discipline imposed should be fairly and consistently applied. In some cases, a discipline matrix or similar schedule may prove helpful to ensure consistency, objectivity, and predictable penalties for misconduct. However, a discipline matrix should not be applied inflexibly and should involve a recommended range of discipline that considers the totality of circumstances, aggravating and mitigating factors, precedent, and consistency. Moreover, fair punishment should reflect current ethical standards and not be restricted to past precedent.

Voluntary Mediation

In some cases, voluntary mediation conducted by a neutral facilitator, in lieu of investigation and adjudication, can help resolve minor complaints that are not easily resolved through traditional investigation. Mediation provides complainants with an opportunity to have their concerns heard in ways that might not otherwise occur in a more formalized investigation, and it can sometimes offer an effective means to allow an officer and a citizen to better understand each other's perspectives. Complaints best resolved through mediation are allegations of officer discourtesy or rudeness and other minor interactions between an officer and a member of the public. If used, mediation must be voluntary and mutually consented to, and the types of complaints that can be mediated should be set forth in policy.

Selection and Training of Internal Affairs Investigators

The U.S. Department of Justice, Office of Community Oriented Policing Services, has recommended that, to ensure "that Internal Affairs units benefit from high-quality and experienced employees, agencies should consider utilizing promotional policies that recognize service in Internal Affairs as productive and useful for advancing an officer's career, and they should make such policies explicit and well-publicized. Tours in Internal Affairs should be limited to fixed terms."⁸ Individuals selected to serve in Internal Affairs should be afforded a broad range of professional development opportunities and training in investigation techniques, including effective interviewing, report writing, and development of case strategy.

3.2 The APD Complaint and Administrative Investigation Process

In the City of Austin, an external complaint against APD personnel is made through the Office of Police Oversight. Complaints can be made in person, by phone or email, or by completing an online complaint form on OPO's website.⁹ Once a complaint is received, OPO assigns a staff person to conduct initial intake by contacting the complainant (when contact information has been provided) and obtaining as much information as possible regarding the complaint. OPO documents the complaint and then forwards the complaint to the APD Internal Affairs Division for appropriate follow-up and investigation.

OPO does not investigate complaints but oversees and monitors the investigation process. As stated in OPO's website,¹⁰ the purpose of civilian oversight is to:

⁸ *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*, U.S. Department of Justice, Office of Community Oriented Policing Services, 4.10, p. 59.

⁹ <https://alpha.austin.gov/en/police-oversight/file-a-complaint-about-an-austin-police-officer/>

¹⁰ <https://alpha.austin.gov/police-oversight/complaint-process/>

- Assure timely, fair, impartial, and objective administrative review of complaints against police officers, while protecting the individual rights of officers and civilians.
- Provide an independent and objective review of the policies and procedures of the Austin Police Department.
- Provide a non-exclusive location for accepting administrative complaints of officer misconduct.
- Provide transparency in policing and fostering trust between the community and the Police Department.¹¹

OPO can also initiate a complaint independently, recommend that APD investigate an individual incident, and make broader policy recommendations to APD and the City Manager.

In addition to external complaints (i.e., complaints initiated by a citizen against an APD officer), internal complaints – i.e., complaints by an APD employee against another APD employee – are also handled by Internal Affairs. Internal complaints can be reported to OPO, the City Human Resources Department, or any unit or division of APD. All internal complaints are forwarded to Internal Affairs for appropriate investigation.¹²

Classification of Complaints

Once a complaint is received by Internal Affairs, an assessment is made as to how to classify the complaint. All complaints are initially reviewed by a Sergeant in Internal Affairs, who examines the complaint, reviews available evidence such as body-worn camera (BWC) or dashboard camera (DAMV) video recordings, incident reports, and other documentation. Although all complaints are initially reviewed and assessed by Internal Affairs, not all complaints are treated or investigated in exactly the same manner. For example, if a complaint is classified as a Class A complaint (cases in which the potential discipline is more than a 15-day suspension, indefinite suspension, or demotion), it will be assigned to one or more Internal Affairs investigators to conduct a full and complete investigation. Complaints that involve allegations of criminal conduct are also concurrently investigated by the Special Investigations Unit as outlined in General Order 901. Class B complaints (in which the potential discipline is a 15-day suspension or less) are also investigated by Internal Affairs, except for complaints that are eligible pursuant to the Officer Final Classification Agreement (OFCA), which are handled by the employee's chain of command.¹³

Moreover, APD General Order 902.7 requires that when “an investigation discloses misconduct or improper job performance which was not alleged in the original complaint, the investigator shall take appropriate action with regard to any possible additional allegations. Any additional allegations shall go through the assessment, classification, and investigation process.” Similarly, under General Order 902.3, “[i]f facts uncovered during an investigation indicate that a more serious offense than originally alleged may have occurred, the case may be reclassified and reassigned to the appropriate unit or command with investigative responsibility.”

¹¹ See also Agreement between Austin Police Association and the City of Austin, Article 16, Section 1(b), November 15, 2018.

¹² Although most complaints are investigated by APD Internal Affairs or the employee's chain of command, some complaints are investigated by APD Human Resources or City Human Resources, the City Auditor's Office, or an independent investigator appointed by the Chief of Police and/or the City Manager. See APD General Order 902.1.2(a).

¹³ Pursuant to General Order 902.6.4, if a complaint involves allegations of a less serious nature (e.g., profanity, belittling language, inadequate police service, minor traffic violations) and is eligible under OFCA, the case will be referred to the employee's chain of command and the employee will be offered resolution pursuant to OFCA. If the employee agrees to the OFCA process, the allegation will be automatically sustained and the officer can receive anything from an oral reprimand to a 3-day suspension.

Informal complaints of alleged minor violations, such as a complaint that an officer was rude or discourteous, may be directed to a supervisor in the accused employee's unit with instructions for the supervisor to review the matter, determine if any policy violation occurred, and contact the complainant in an attempt to resolve the complaint. All complaints are tracked by Internal Affairs for documentation purposes.

For every complaint that comes into the system, Internal Affairs reviews the complaint and classifies it according to APD's policy and employee manual as follows:

Class A Complaints

- Criminal conduct
- Serious policy violations
- Conduct that could damage the Police Department

Class B Complaints

- Policy violations such as profanity, belittling language, inadequate police service, or minor traffic violations
- Negligent damage or loss of property
- Negligent crashes

Class C Complaints – complaints that do not rise to the level of a general order violation but may require that an officer receive counseling or additional training to better handle the situation in the future.

Class D Complaints – complaints that do not rise to the level of a general order violation and meet one or more of the following criteria:

- A preliminary review of the allegation shows it is not true (e.g., video or audio recording shows the allegation is false).
- The complaint is about the probable cause for an arrest or citation and appears to be unsubstantiated.

Administrative Inquiries are ordered by the Chief or designee, generally for issues that could damage the Police Department. These inquiries are assigned to the appropriate unit or division based on the circumstances surrounding the inquiry.

Supervisor Referrals are used when the complainant requests to speak with a supervisor and the matter involves no more than a minor policy violation and no formal complaint has been received.

Community Concerns are used when a complainant contacts OPO with a concern, often anonymously. OPO then sends it to Internal Affairs for investigation and further classification, if deemed necessary.

Timeframe

Administrative investigations may take up to 6 months but are not to exceed 180 days from the date of the alleged incident (for alleged civil and administrative violations)¹⁴ unless an extension is requested and agreed to. For sustained findings, the investigation officially ends upon the disposition of any discipline. Upon completion of a formal investigation, OPO provides complainants with the option of a close-out meeting to discuss the outcome of the complaint in detail.

¹⁴ For allegations of criminal wrongdoing, the clock starts ticking only when APD learns of the alleged violation. General Order 902.5.3. Moreover, APD's ability to discipline an employee alleged to have committed criminal wrongdoing may be extended for a number of reasons set forth in the General Orders beyond the 180-day deadline that covers most administrative investigations.

Investigation Outcome

Class A and B complaints that are investigated by APD Internal Affairs are documented in an investigative report, which includes a summary of the relevant facts, allegations of wrongdoing and associated policy violations, the evidence reviewed, summaries of all interviews conducted, and other relevant information. The investigative report does not recommend or determine how a case should be decided, but simply explains and describes all the evidence and information obtained during the fact-finding investigation. The disposition of each case, such as whether a complaint should be sustained or not, is a determination made by the employee's chain of command. The final disposition of all allegations is ultimately determined by the Chief of Police or designee.

According to Section 902.7 of the APD General Orders, administrative investigations require a disposition for each allegation. The standard of proof used to arrive at a final disposition is a "preponderance of the evidence."

In most cases, an allegation will result in a finding of either sustained, exonerated, unfounded, or inconclusive. Each of these terms is defined by APD as follows:

- Sustained – When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.
- Exonerated – When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper according to Departmental General Orders.
- Unfounded – When the investigation discloses that the alleged act(s) did not occur.
- Inconclusive – When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

Additionally, a complaint is administratively closed under the following circumstances:¹⁵

- An administrative inquiry has been completed and no allegations were made or misconduct discovered.
- The case was classified as a Class C or Class D complaint.
- At the discretion of the Chief of Police or designee.

This category is also used when the subject officer retires or resigns during the investigation.

The Chief of Police retains all management rights and authority over the process of administrative investigations of alleged misconduct by APD Officers that could result in disciplinary action.

Disciplinary Actions

APD General Order 903.1 contains a discipline matrix that is designed as a guide to be used in administrative investigations that result in a sustained finding pursuant to General Order 902. The discipline matrix is not a mandatory or all-encompassing set of parameters but is meant to provide guidance for what discipline is appropriate for the vast majority of investigations that result in a sustained finding. The discipline matrix also notes that any violation that would result in an indefinite suspension or any discipline greater than a 15-day suspension, as well as certain fact specific violations, must be investigated by Internal Affairs. A disciplinary action can be anything from a reprimand to a temporary suspension, indefinite suspension, demotion in rank, or any combination of those actions. Formal discipline is a discipline action at or above the level of a written reprimand, including temporary suspension, reduction in rank, or demotion,

¹⁵ See General Order 902.7.

Informal discipline is a discipline action at or below the level of an oral reprimand, including a Conduct Counseling Memorandum, Employee Success Plan, or training.

4 FINDINGS AND ANALYSIS

Kroll was asked to review and analyze APD’s investigation of complaints against APD officers and executives alleging some form of bias or discrimination over a ten-year period (2012 to 2021). This section of the report summarizes our findings and analysis of the complaints and case files reviewed. We first explain the data provided to Kroll, including challenges Kroll encountered in obtaining a complete set of files and records from APD. We next provide an overview of the cases reviewed, including the percentage of cases that involved alleged bias based on race or ethnicity, gender, sexual orientation, or other alleged bias; the percentage of allegations that were sustained and/or resulted in disciplinary actions; the average length of each investigation; how complaints were classified by APD; the percentage of cases in which Kroll believed more investigation was warranted or which resulted in a disposition not entirely supported by the evidence; and other areas of analysis. Finally, we highlight a number of cases in which complaints were potentially misclassified, were not in Kroll’s judgment investigated as fully and thoroughly as they should have been, were decided in a manner that appeared to contradict the weight of the evidence, or which raised concerns about APD officers’ treatment of citizens and community members, supervisory issues, or other issues.

4.1 Data Collection and Methodology

On September 23, 2020, the City of Austin informed Kroll that the review of APD administrative investigations would include a total of 341 complaints, including 80 that were specifically marked “race” (involving alleged racial bias), 27 marked “other” (to include cases related to alleged gender, sexual orientation, or disability bias), 11 cases marked “both” (alleged race and gender bias), and 223 cases with no specific designation of alleged bias (marked “blank”).

Accordingly, on November 23, 2020, after Kroll was formally retained by the City, Kroll submitted a document request to APD requesting “[c]opies of all 341 complaints made against APD officers and executives accused of bias and/or discrimination, disparate treatment, sexual harassment, and retaliation including complaints that did not result in disciplinary action, and the reason no disciplinary action was taken in each case, for the last 10 years (2011 – 2020)”

As of February 24, 2021, Kroll had not received the requested complaints or any of the associated case files. Kroll therefore renewed its request for the above information and, on March 15, 2021, APD notified Kroll that an Excel document containing the requested information would be sent through an external portal. No documents were forthcoming until May 17, 2021, when APD provided Kroll with a spreadsheet listing 74 total complaints. APD did not provide any corresponding case files or any explanation as to why only 74 complaints were listed in the spreadsheet.

On June 23, 2021, Kroll and the Director of OPO met with the responsible APD Assistant Chief and the Commander of Professional Standards (Internal Affairs) to discuss the status of the pending Kroll document request. On June 28, 2021, as a follow-up to the in-person meeting, Kroll provided the Commander with an electronic copy of the Excel spreadsheet that had been previously provided to Kroll by APD. Kroll reiterated that, to undertake our review as requested by the City, we needed all the relevant complaints and associated case files, whether or not investigated by Internal Affairs.

On July 15, 2021, the Commander and his staff confirmed during a conference call that the number of complaints APD identified were largely consistent with that previously provided by the City of Austin for

complaints of bias and/or discrimination against APD officers and executives. APD also identified additional complaints from January to July 2021 to be integrated into the spreadsheet.

On August 25, 2021, APD provided a spreadsheet that purported to contain the most current list of all complaints of bias or discrimination over a 10-year period. This updated list contained a slightly smaller number of cases (339) than the original list provided to Kroll by the City of Austin, because the list was revised to exclude cases from 2011 and to include cases from January to July 2021, for an updated 10-year review period of 2012 to 2021. Additionally, the updated list contained correlated data that was to be downloaded onto an external hard drive for Kroll's review.

On September 20, 2021, Kroll received a hard drive from APD containing 254 of the requested complaint and investigative case files. In October, APD provided a flash drive and a compact disk containing case files for seven additional cases. This resulted in 261 electronic case folders containing varying amounts of documentation pertaining to each complaint. In addition, Kroll identified 79 complaints for which no corresponding case files or documentation were provided. On October 19, 2021, Kroll learned that the missing case files had been purged pursuant to APD's Internal Case Management System (ICMS) records retention schedule.¹⁶ APD subsequently provided the records control schedule that was specific to Internal Affairs and the ICMS retention chart. APD noted that none of the purged case files pertained to complaints initiated after 2017.

As a result of the delays and challenges in obtaining all the requested data and case files needed for this review, OPO and the CMO extended Kroll's deadline for completing its review of APD's handling of the relevant complaints.

Kroll's review and analysis of the relevant complaints and case files received from APD is summarized below.

4.2 Overview of Cases Reviewed - Aggregate Analysis

In total, after excluding cases dating back to 2011 and/or cases with insufficient information to evaluate, Kroll identified 331 complaints involving 852 allegations that potentially involved some form of alleged bias or discrimination from 2012 to 2021. Of these, case files associated with 79 complaints involving 199 allegations in the final data set were marked as purged¹⁷ in accordance with APD retention schedules (and were thus unavailable to Kroll for review). Accordingly, Kroll reviewed the remaining 252 complaints and associated case files involving 653 allegations that were made available to the assessment team.

In the 252 case files reviewed by Kroll, a total of 346 officers were named in one or more allegations. This encompassed 296 unique officers, including 50 officers who were named in two or more complaints.

External vs. Internal Complaints

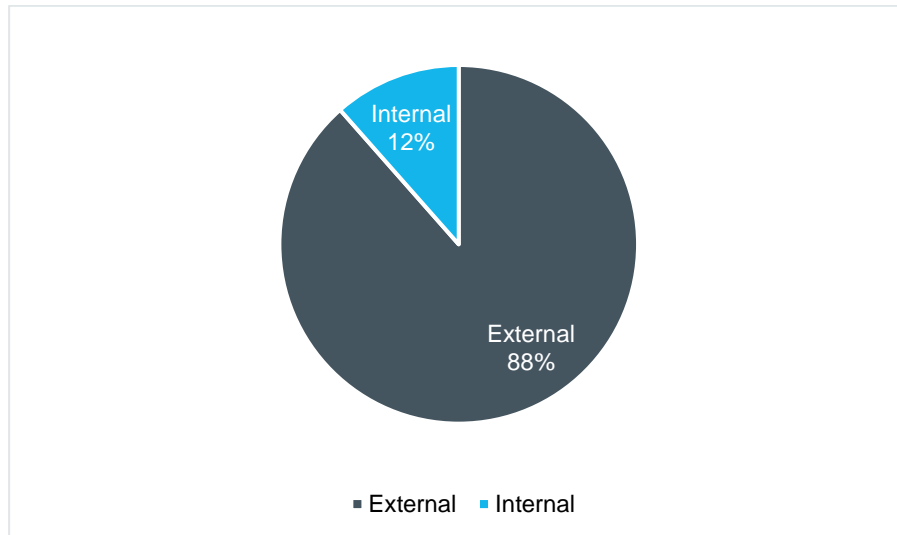
As shown in Figure 1 below, a majority of the 252 complaints were initiated externally (N = 223, 88%) compared to internally (N = 29, 12%). An external complaint is filed by a citizen or resident of Austin against an APD officer, while an internal complaint is initiated internally within APD, such as when an APD

¹⁶ City of Austin Records Control Schedule, PS-4075-01, amended May 28, 2019.

¹⁷ Of the 79 records marked as purged, 67 (85%) were in the "Blank 181" classification folder, while 11 (14%) were in the "Race" folder and one was in a folder labeled "Both" (i.e., race and gender). The "Blank" folder included a listing of cases for which there was no specific designation of bias. It is believed that the cases included in the "Blank" folder were included by APD as possibly involving an allegation of bias even though the nature of the alleged bias or discrimination was not apparent from the complaint itself. Kroll discovered that several of the cases included in the "Blank" folder did in fact allege some form of bias or discrimination, while many were not applicable to bias or discrimination.

employee files a complaint against another APD employee, or a supervisor initiates a complaint against an officer under his or her command.

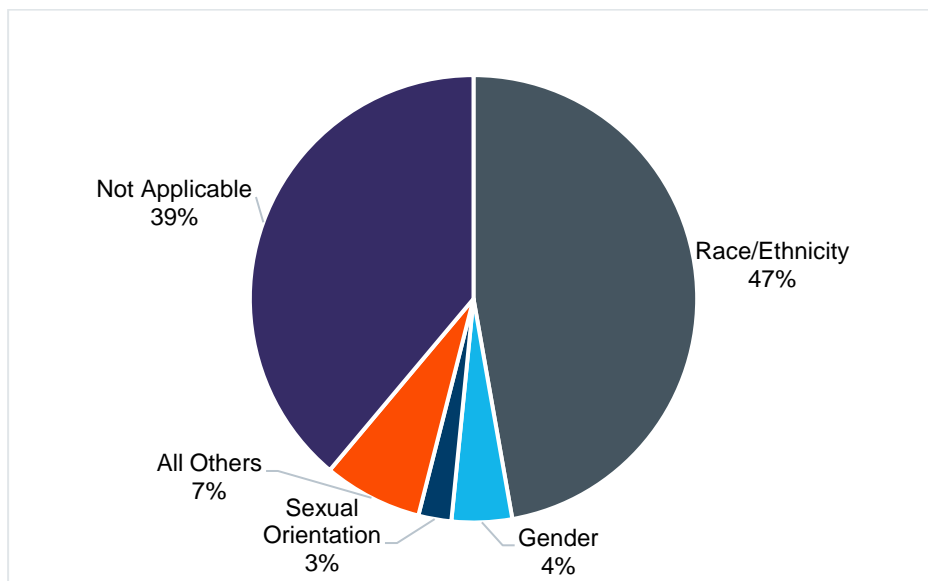
Figure 1: Initiated Complaint (Internal vs External) (N = 252 Incidents)



Complaints that Included Allegations of Bias or Discrimination

As illustrated in Figure 2 below, Kroll found that, of the 252 incidents reviewed, 47% (N=119) involved an allegation of racial or ethnic bias; 13.8% (N=11) alleged bias due to gender (including allegations of sexual harassment), 3% (N=6) alleged bias due to sexual orientation, and 7% (N=18) alleged some other form of bias, such as age, disability, religion, or homelessness. Kroll determined that 39% (N=98) of the cases reviewed did not involve an allegation of bias or discrimination.

Figure 2: Categories of Bias and/or Discrimination Reviewed by Kroll Team (N = 252 Cases)



Although Kroll reviewed the complaints and case files for all 252 incidents provided, some of which are discussed in greater detail in Section 4.3 below, the 98 “not applicable” complaints did not involve an

allegation of bias or discrimination,¹⁸ which left 154 complaints that included an allegation of bias or discrimination. However, while our below analysis is primarily focused on the complaints and administrative investigations that involved some allegation of bias or discrimination, we conducted similar analyses for all 252 case incident files.

Classification of Complaints

As explained in Section 3 of the report, once a complaint is sent to Internal Affairs, an assessment is made as to how to classify the complaint, which impacts how the complaint will be subsequently reviewed and investigated. As shown in Table 1 below, of the original 252 incidents reviewed, 35.3% were classified as Supervisor Referrals (“S”). Conversely, roughly 39.0% of the 154 complaints of alleged bias were handled as Supervisor Referrals. Class A complaints comprised 14.3% of all incidents reviewed and 14.9% of bias-related incidents, while Class B complaints made up 19.0% of all incidents reviewed and 18.2% of bias-related incidents.

Table 1: Complaint Classifications for Cases Reviewed

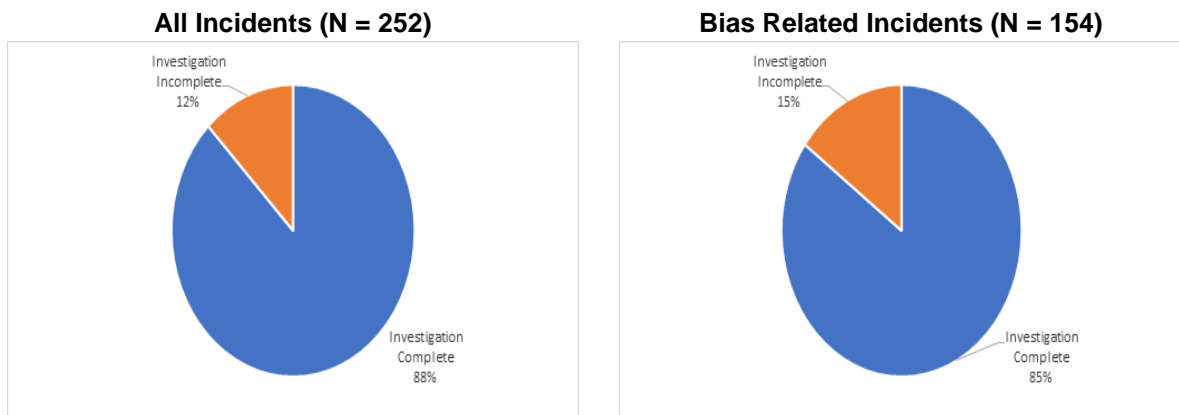
Classifications	All Complaints (N 252)		Bias-Related Complaints (N = 154)	
	N	%	N	%
A	36	14.3%	23	14.9%
B	48	19.0%	28	18.2%
C	6	2.4%	4	2.6%
D	36	14.3%	18	11.7%
Information Incident	22	8.7%	14	9.1%
Supervisor Referral	89	35.3%	60	39.0%
Administrative Inquiry	4	1.6%	3	1.9%
Citizen Concern	8	3.2%	4	2.6%
Unknown/Missing/Pending	3	1.2%	0	0%
Total	252	100%	154	100%

Completeness of Investigations

As shown in Figure 3 below, Kroll evaluated each case in part to determine the completeness and thoroughness of each investigation in light of the nature of the complaint, with the understanding that not every complaint requires the same level of investigation. Kroll’s review determined that, if all 252 case files reviewed are included, 88% (N=221) of the investigations were sufficiently complete, while in 12% (N=31) of the cases, Kroll believed that more investigation was warranted. When we limited the analysis to the 154 alleged bias-related incidents, Kroll determined that investigations were sufficiently complete in 85.4% (N=131) of the incidents, while some additional investigation should have occurred in 14.6% (N=23) of the cases reviewed.

¹⁸ The not applicable designation applied only to cases where no single allegation met the criteria of any of the other four categories listed herein.

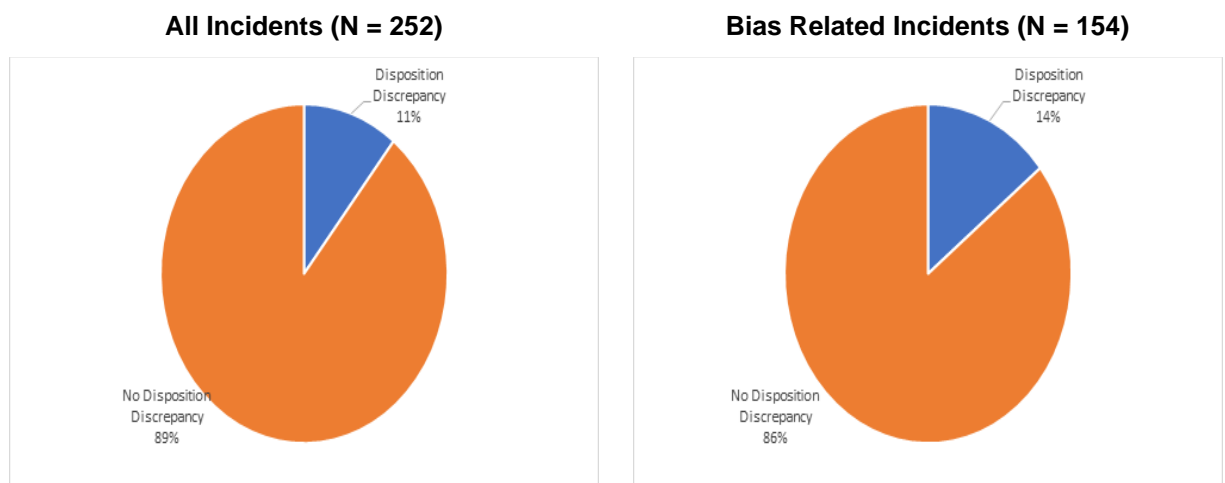
Figure 3: Completeness of Investigations



Disposition Discrepancies

As shown in Figure 4 below, Kroll also evaluated each case to determine if APD made appropriate findings or otherwise disposed of the complaint in a manner consistent with the evidence and circumstances of each complaint. When examining all incidents reviewed, Kroll found disposition discrepancies (i.e., Kroll disagreed with the ultimate disposition or finding) in 27 cases (11%). When we narrowed the review to include only the bias-related incidents, Kroll found disposition discrepancies in roughly 14.3% (N = 22) of the incidents.

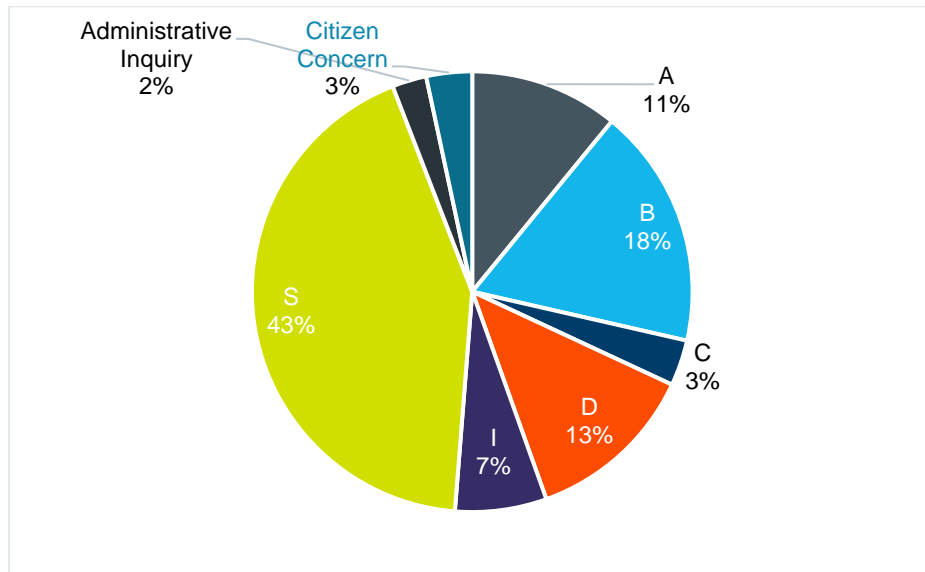
Figure 4: Disposition Discrepancies



Complaint Classifications – Alleged Bias-Related Incidents

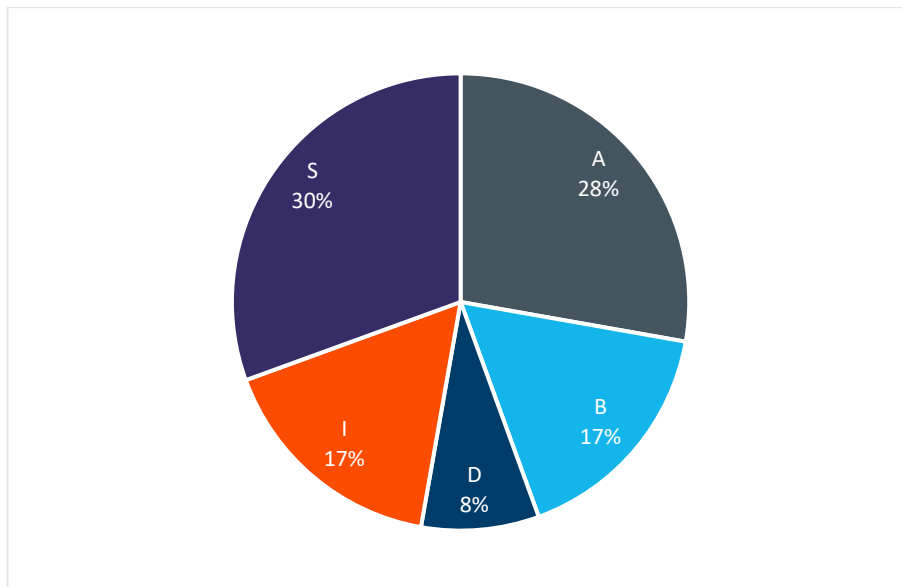
For each of the four categories described previously (race/ethnicity, gender, sexual orientation, and all others), Kroll documented the classification breakdown within each category. Thus, as shown in Figure 5, of the 119 cases that involved an allegation of racial/ethnic bias or discrimination, 43% (N=51) were handled as Supervisor Referrals (S), while approximately 11% (N=13) and 18% (N=21) were designated as Class A and Class B complaints, respectively. Most of the remaining racial/ethnic bias complaints were treated as Class C (3%) or Class D (13%) complaints, an information incident (7%), or a citizen concern (3%). A small percent (2%) of these complaints were handled as administrative inquiries.

Figure 5: Race/Ethnicity Biases and Classifications Cross Tabulation (N = 119)



For all other bias-related complaints (N=35), including complaints alleging bias due to gender (N=11), sexual orientation (N=6), or other categories (N=18), the complaint classifications were more evenly distributed. As shown in Figure 6 below, Class A complaints constituted 28% (N=10) of the cases reviewed, while Class B complaints made up 17% (N=6) of the cases reviewed. The most frequently occurring classification was Supervisor Referral at 30% (N=11), while the remaining cases were designated as Information Incidents (17%, N=6) and Class D complaints (8%, N=2).

Figure 6: All Other Biases and Classifications Cross Tabulation (N = 35)



Length of Investigations

Pursuant to APD General Order 902.6, “in order for a sworn employee to be temporarily suspended, demoted, or indefinitely suspended for allegations of an administrative nature, an investigation must be completed and discipline imposed within 180 days from the date the incident occurred.” Kroll thus examined the length of time it took APD to investigate and resolve each investigation. For purposes of the below calculations, we focused on how long it took APD to investigate and resolve a complaint from the date the investigation was received by APD until the time it was finalized and approved by the chain of command. Although the required calculation under General Order 902.6 generally starts with the date of the incident, we were interested in determining how long it took APD to handle a complaint from the moment it first had notice of the complaint (e.g., the date it was referred to APD from OPO).

As shown in Table 2, the average number of days until closure for all incidents reviewed was 69.2 days. For the 154 bias-related incidents, the average number of days until closure was 67.3 days. Roughly 4.3% of all 252 investigations took longer than 180 days (N=11), while roughly 4.2% (N=6) of the 154 bias-related investigations took longer than 180 days. Conversely, 42.3% (N=107) of all investigations took less than 30 days, while 43.0% (N=62) of bias-related incidents took less than 30 days – indicating that nearly half of all incidents (regardless of whether it was a bias-related incident or not) were closed within a month, on average. Most of the complaints resolved in the shorter time frame were those designated as Supervisor Referrals, Information Incidents, and Citizen Concerns.

Table 2: Length of Investigations

Classifications	<u>All Incidents (N = 252)</u>		<u>Bias Related Incidents (N = 154)</u>	
	N	Average Length of Investigation	N	Average Length of Investigation
A	37	155.0 days	26	142.4 days
B	52	113.6 days	34	105.8 days
C	7	79.0 days	4	49.5 days
D	37	70.2 days	1	72.8 days
I	20	13.1 days	15	12.1 days
S	86	24.0 days	66	33.2 days
Administrative Inquiry	4	131.3 days	3	161.0 days
Citizen Concern	8	10.8 days	5	15.6 days
Missing/Unknown	1	--	--	--
Total Average	252	69.2 days	154	67.3 days

Command Decisions

The 252 complaints reviewed by Kroll involved 653 allegations of potential policy violations that resulted in 653 command decisions. This includes the 154 complaints of alleged bias involving 435 allegations that resulted in 435 command decisions. Table 3 itemizes the distribution of command decisions for all 653 allegations, as well as more specifically for the 435 bias-related allegations. As shown, supervisor referrals constituted 20.1% of all incidents and 21.8% of bias-related incidents. Officers were exonerated in 19.5% of all incidents and 27.1% of bias-related incidents, and allegations were sustained in 9.6% of all incidents and 8.3% of bias-related incidents.

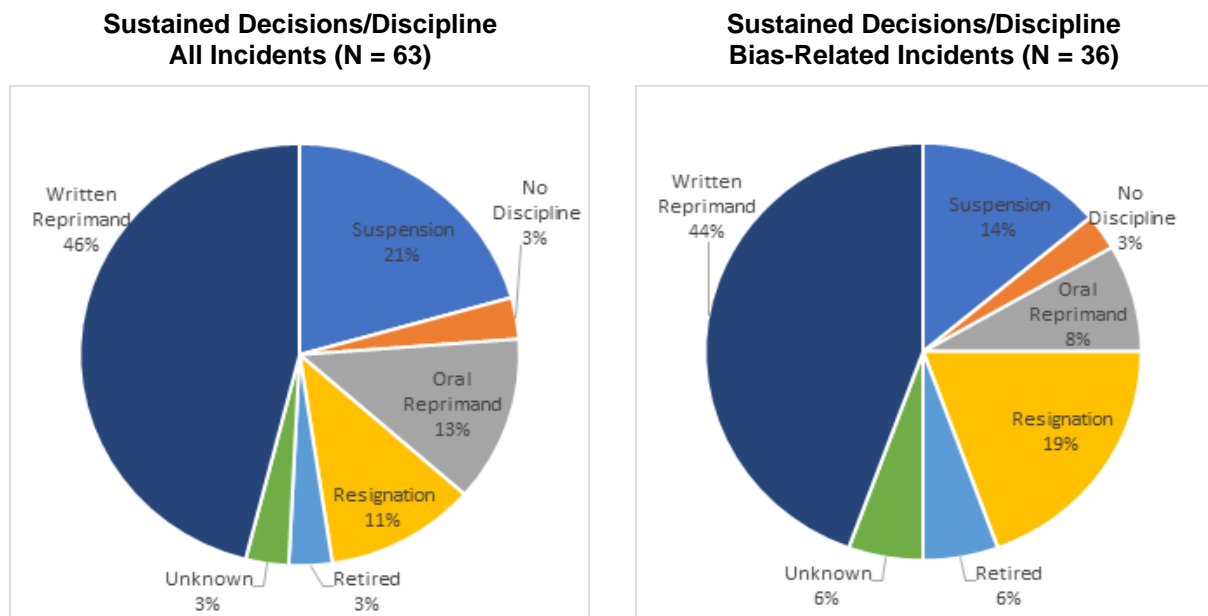
Table 3: Command Decisions Associated with Total Allegations (N = 653/435)

Decision	All Allegations (N = 653)		Bias-Related Allegations (N = 435)	
	N	%	N	%
Administratively Closed	102	15.6%	68	15.6%
Citizen Concern	20	3.0%	14	3.2%
Exonerated	127	19.5%	118	27.1%
Inconclusive	12	1.8%	8	1.8%
Information Incident	7	1.0%	4	0.9%
Investigation Suspended Per Complainant	1	0.2%	1	0.2%
No Investigation	4	0.6%	4	0.9%
Resigned Under Investigation	13	2.0%	6	1.4%
Retired Under Investigation	1	0.2%	1	0.2%
Supervisor Referral	137	20.1%	95	21.8%
Sustained	63	9.6%	36	8.3%
Unfounded	116	17.7%	77	17.7%
No Information/Incomplete Information	50	7.6%	3	0.0%
Total	653	100%	435	100%

Disciplinary Actions – Sustained Findings

Finally, as shown in Figure 7 below, of the 63 sustained command decisions (for all incidents), 48% (N=29) of disciplinary actions were written reprimands, while 21% (N=13) of disciplinary actions were suspensions. When limited to the incidents involving some form of alleged bias, 44% (N=16) of disciplinary actions were written reprimands, while 14% (N=5) were suspensions. In 19% (N=7) of the bias-related cases, the subject officers resigned. Of the remaining disciplinary actions for bias-related incidents, 8% (N=3) resulted in an oral reprimand, while the others were divided between retirements (N=2, 6%), unknown (N=2, 6%), or no disciplinary actions (N=1, 3%).

Figure 7: Sustained Decisions and Associative Discipline (N = 36)



4.3 Individualized Case Review - Qualitative Analysis

As Kroll reviewed the various complaints, investigative reports, and case files provided, we identified a number of cases in which complaints were potentially misclassified, were not investigated as fully and thoroughly as they should have been, were decided in a manner that appeared to contradict the weight of the evidence, or which raised concerns about APD officers' treatment of citizens and community members, supervisory issues, or other concerns. Although the vast majority of cases reviewed by Kroll were appropriately handled by Internal Affairs and the department, certain case files raised questions about the manner in which the complaints were investigated or resolved. The cases we identified with potential shortcomings or concerns are highlighted below.

The highlighted cases are listed in reverse chronological order and separated between complaints that involved allegations of bias or discrimination and complaints that did not involve allegations of bias or discrimination.

Complaints Involving Allegations of Bias or Discrimination

- **Incident No. 1 (2021):** Complainant was a Black female who felt that her police report was documented inaccurately and that, when she asked that the report be corrected, the officer allegedly treated her rudely. She also felt she was treated unfairly and in a racially discriminatory manner. Although she asked to speak to a supervisor and the case was designated as a Supervisor Referral, there is no documentation in the case file to suggest that any action was taken or that a supervisor ever attempted to contact the complainant.
- **Incident No. 2 (2020):** The complainant was a civilian employee at APD who alleged that an APD officer made antisemitic and politically offensive statements in a public area of the building she was walking through. The allegations were specific and detailed concerning the allegedly offensive (potentially antisemitic) statements in the lobby. Although the officer claimed not to recall any specifics of the conversation, his denials were vague and did not sufficiently refute the specificity of the complaint. Moreover, the investigator did not appear to give credence to the potentially antisemitic nature of the comments. While it is quite possible the accused officer did not realize that his alleged statements might be perceived as antisemitic, the investigator failed to sufficiently consider the potentially antisemitic nature of the comments. The complaint was credible and specific while the officer's defense consisted mostly of a lack of recollection. Moreover, the security camera footage appeared to corroborate the complainant. At minimum, the comments were not appropriate for an APD officer to make in public and more effort should have been made to understand why the complainant perceived the comments as antisemitic and why an APD officer had indiscreetly engaged in politically tainted conversations while on duty.
- **Incident No. 3 (2020):** Complainant, a Black female, alleged that when her son was arrested, APD officers placed handcuffs too tightly on his wrists, failed to provide medical attention to injuries he sustained during a prior assault, and made racially derogatory statements. This was treated as a Class D investigation and supervisory referral for a minor policy violation (failure to seatbelt prisoner during transport). However, the allegation of a racial slur during transport was not listed separately in the investigative write-up. Although we do not dispute APD's ultimate disposition, as the BWC evidence refuted the factual allegations (including the alleged racially derogatory statement), there should have been a separate line item and summary provided for this allegation in the documentation.

- **Incident No. 4 (2020):** An anonymous complainant alleged that an APD officer posted statements on her personal Facebook page under a fictitious username that violated department policy. In one statement, the officer allegedly referenced a then-recent shooting of a Black Lives Matter protester. In another post, she said the department needed to treat racism like a pandemic and to distance itself socially and physically from the historical racist ideologies and tactics within policing. Based on her Facebook postings, the complainant alleged that the officer had demonstrated political and racial bias, partiality, and prejudice in her remarks; that the officer's statements were unprofessional; and that the statements posed a direct conflict of interest in the officer's employment as a police officer, as they suggested the officer could not fairly perform her duties. The complaint alleged that the officer had previously made similarly unprofessional and biased remarks, and that her superiors were aware of her statements but were afraid to hold her accountable.

According to the Internal Affairs Personnel Complaint Control Sheet, the investigation was administratively closed one day shy of the 180-day deadline because the subject officer resigned. The case file reviewed by Kroll only contained the control sheet, an unsigned personnel action form, and copies of some of the officer's Facebook pages. The only complaint information available was from the dataset (Excel) printout. It is unclear why the case took so long to resolve or why the investigation was never completed. The Facebook posts at issue expressed concern over racial bias and historical racism in policing and included some statements critical of APD. It is not clear what, if any, investigative steps were undertaken or what led to the officer's resignation just prior to the expiration of the 180-day deadline. Although the anonymous complaint alleged inappropriate behavior by the officer, a cursory review of the Facebook documentation merely mentions the need for APD to address training and racial issues within its culture. APD should have interviewed the subject officer, analyzed her social media postings, and addressed the allegations in the complaint with the officer. Based on the documentation provided for review, it does not appear that these steps occurred.

- **Incident No. 5 (2020):** The complainant, a Black male, alleged that he was racially profiled, harassed, detained, and subjected to excessive use of force. He further alleged that he was illegally stopped and searched, along with his vehicle. The complainant's shoulder was injured during the incident and he believed that he was stopped only because he was Black and in a Black neighborhood.

APD's investigation exonerated the officer who conducted the stop and frisk and determined that the second officer's alleged violation of APD's impartial attitude and courtesy policy was unfounded. In our view, this case involved a pretextual stop. The complainant was pulled over for not signaling 100 feet before an intersection, which was used as a pretext to handcuff and frisk the driver and search his car. Because there was no DMAV or BWC video in the case file, Kroll could not independently review the video footage. However, based on our review of the facts outlined in the investigative report, no traffic citation was issued to the complainant for a moving violation, and the officer had not established reasonable suspicion¹⁹ that complainant committed or was about to commit a crime and that he was armed and presently dangerous. Although the officers were investigating alleged drug activity in the area, they had not observed any illegal activity involving this complainant. Based on the minor traffic stop, the officer detained and handcuffed the complainant and searched his car. The officer's conduct in this case may have violated APD's

¹⁹ APD General Order 306, Search and Seizure, Section 306.2, (f), Protective frisk based upon reasonable suspicion.

Racial Profiling Policy and should have been so examined. Moreover, as the complainant's shoulder was injured, and he was treated and released by EMS for right shoulder pain due to the handcuffing activity, this case also involved an alleged inappropriate use-of-force incident. Kroll notes that the Computer Aided Dispatch (CAD) records initially listed this case as a Traffic Violation Resisting Arrest or Search. Sometime later, this incident was no longer titled as a response to resistance. In the investigation, the officers indicated that the complainant offered no resistance. Kroll notes that the complainant was never interviewed and it does not appear that this case was completely and thoroughly investigated. Kroll thus disputes APD's handling of this complaint.

- **Incident No. 6 (2020):** The complaint alleged that an APD employee showed numerous photos of partially naked women to other employees at work and improperly used his work computer to access inappropriate internet sites. Although a separate Human Resources investigation found that sexual harassment had occurred, and the Internal Affairs administrative investigation found undisputed evidence of prohibited uses of technology, the officer resigned shortly before the investigation was completed and the case was administratively closed. Given the serious nature of the allegations and potential risk management and liability issues involved, Kroll believes that Internal Affairs should have formally sustained the allegations and that APD should have further reviewed the matter for any possible policy implications.
- **Incident No. 7 (2019):** Complainant, a Black female who had reported to APD that her car was stolen, later discovered the vehicle parked on the street in another part of the city. When she called to report that she had found the car, she waited with the car for several hours for APD to respond, and when they did, she did not feel that she was treated fairly or with the proper concern. She found the stolen car in a poor, non-white area and believed that this fact played a major role in the allegedly disparate treatment afforded her. The complainant's recorded interview with OPO provided sufficient details to warrant concern, but IAD's investigation focused mostly on the officer's failure to activate her BWC during some of her interactions with the complainant (for which there was a sustained finding). However, IAD did not adequately address or explore whether the officer failed to treat complainant's concerns in a non-discriminatory manner (which were found inconclusive). IAD did not speak with the complainant and only interviewed the two officers. The nature of this complaint and the specificity and credibility of the complainant's information in the recorded interview by OPO should have resulted in a more extensive investigation into the allegation of racially disparate treatment.
- **Incident No. 8 (2019):** Complainant, a Black female, provided a detailed and credible allegation that she had been racially profiled and positionally bullied by an APD officer who was working security at an HEB store. Complainant was the only African American in the store when the officer approached and stood close by her at several locations in the aisle in which she was shopping. Her complaint was initially handled appropriately as a supervisory referral, and both a sergeant and later a lieutenant spoke at some length in recorded conversations with the complainant. Although she was not fully satisfied with the sergeant's approach regarding some comments that he made (e.g., questioning her veracity about being the only Black person in the store when the incident happened, even though the sergeant was unfamiliar with the store or the neighborhood), the lieutenant then spoke with her and she was satisfied with his approach and conversation. In the supervisory referral memorandum, the lieutenant noted that he had addressed concerns with the sergeant about his approach to the interview and indicated that the subject officer needed closer monitoring based on another similar complaint against him.

A few months later, the complainant submitted additional letters and evidence providing credible reasons to believe that the subject officer's explanation about the incident had not been truthful. There is no indication in the file that any official follow-up occurred. A review of all the evidence in this case raises serious concerns about the subject officer's credibility regarding why he had repeatedly positioned himself so closely to the complainant at the store. Specifically, during the investigation, the officer claimed that he was about to leave to provide security at another store and wanted to do some "shopping" at the HEB for "dog food and other items". But as the complainant noted, the officer did not have a shopping basket, the dog food was in aisle 19, while the alleged intimidation and profiling occurred in aisle 16 (which sold toothpaste, soap, etc.). The complainant provided detailed evidence and believed the department too quickly accepted what the officer said and did not do enough to address the issues of public trust and accountability that her complaint raised.

The complainant requested an opportunity to speak with the officer so that both could better understand each other. At a minimum, her information and evidence raised serious concerns about the truthfulness and credibility of the officer during the internal review process that should have been thoroughly investigated. He should have been interviewed formally and his statements should have been subjected to examination. Kroll finds that the officer's explanation of the incident as reported by his sergeant was simply not credible - the evidence in fact suggested he racially profiled this complainant and then lied about it to his sergeant. Nevertheless, as the complainant noted, the department accepted the officer's explanation even though it did not make sense in light of the detailed facts and statements presented by the complainant. Unfortunately, the file does not reflect whether anyone at APD ever followed-up on the complainant's additional information and subsequent correspondence.

- **Incident No. 9 (2019):** Complainant alleged that he was not accommodated for his disability and was improperly arrested for DWI. The officer administered a roadway test and refused to give the complainant a breathalyzer test. The complainant, who later recorded a 0.00 blood alcohol content at the station, had a disability which may have impacted the roadway testing. The case was categorized as an Information Incident and the case file does not contain any documentation showing how the complaint was handled. A request was made for the BWC video, but no follow-up, including possible additional training or counseling of the involved officer, appears to have occurred.
- **Incident No. 10 (2018):** Complainant, a female employee at APD reported to her supervisor concerns about a male officer who frequently made inappropriate and sexually related comments to her. The allegations were supported by detailed and credible statements from the complainant; she contemporaneously reported her concerns to at least two other witnesses; those reports were corroborated by the witnesses and text messages; and much of the complainant's (and witnesses') accounts were corroborated by the subject officer, who tried to dismiss much of his conduct as merely joking around. Although the complainant initially did not wish to report her concerns to Human Resources, the preponderance of evidence more than supported a finding of sexual harassment and related policy violations. Nevertheless, APD determined that the allegations were unfounded. However, there is no explanation in the case file for how the department concluded that the allegations were unfounded, and Kroll can only conclude that APD either applied the wrong evidentiary standard or misapplied the evidence. That the complainant did not wish initially to report her concerns to HR is irrelevant to whether the allegations were supported by the evidence. Although the IAD investigator conducted a complete investigation, including interviewing all relevant witnesses and examining text messages and other relevant evidence, the APD chain of

command did not adequately explain how it determined the complaint was unfounded in light of the evidence and corroboration that existed.

- **Incident No. 11 (2017):** The complainant, a Black male, alleged his son was pulled over and handcuffed because he is Black. The stop involved a minor traffic violation for failing to signal intent within 100 feet of a turn. Although no reasonable suspicion of criminal activity was articulated by the officer involved, the complainant's son was handcuffed and frisked. This case was handled as a Supervisor Referral. Although a supervisor talked to the complainant's mother, who was apparently satisfied that the officers had been counseled, Kroll believes that a more extensive investigation was needed. The supervisor referral memorandum indicated that relevant video recordings were reviewed by a supervisor but they were not included in the case file. Kroll also disagrees in part with how the matter was handled by the supervisor. The complainant asked the investigating supervisor why his son was searched, to which the supervisor incorrectly explained a distinction between a frisk and a search by documenting, "In this case, a frisk was conducted and not a search." However, a frisk is legally a search under the Fourth Amendment of the U.S. Constitution.²⁰ Moreover, complaints of racial profiling should be handled carefully and investigated through Internal Affairs. Although it was noted that one of the officers was Black and one was Hispanic, there was nothing in the case file to indicate that the officers were queried through Internal Affairs for previous or similar complaints or were subject to any supervisory or disciplinary actions in the past that might have been relevant to this complaint. Additionally, Kroll identified an apparent training issue with the investigating sergeant who inaccurately concluded that a frisk is not a search under the Fourth Amendment and appeared to be approving stops and frisks that were not supported by clearly articulatable facts establishing reasonable suspicion.
- **Incident No. 12 (2017):** The complainant, a Black male, alleged that he was the victim of racial profiling during a traffic stop. The complaint affidavit detailed that the complainant observed the officers following him for over two miles and approximately twenty minutes, during which he called his mother and then 911 asking to speak to a supervisor. One of the officers had run a check on complainant's vehicle because the driver appeared nervous (scratching his nose, not wanting to travel ahead of a police vehicle, etc.). The facts confirmed that the officers followed the complainant until he allegedly committed a turn signal violation, at which point they pulled him over. APD designated this as a Class D complaint and found no policy violations. However, one of the involved officers had a similar complaint filed against him a little over a month earlier. As this was a repeat complaint, the allegations should have been more thoroughly investigated by Internal Affairs. Moreover, the allegation of racial profiling as outlined in the Class D memorandum was given only a cursory review without any meaningful investigation.
- **Incident No. 13 (2017):** Complainant is a Black male who was handcuffed outside of a library after his friend was arrested for trespassing. Complainant requested a formal complaint and alleged racial profiling, but APD treated it as a supervisor referral on the grounds that the only issue was the officer's failure to record the incident on DMAV. There is insufficient documentation in the file for Kroll to determine if we agree with the disposition. At minimum, the case required more investigation and documentation.
- **Incident No. 14 (2017):** The complainant, a Black male, alleged racial profiling and harassment due to a traffic stop for a minor moving traffic violation. Due to the car's dark-tinted windows, the

²⁰ Terry v. Ohio, 392 U.S. 1 (1968) (Fourth Amendment applies to "stop and frisk" procedures. A careful exploration of the outer surfaces of a person's clothing in an attempt to find a weapon is a "search" under the Fourth Amendment).

officers stated they could not see the driver prior to the stop. This was confirmed by the DMAV video, although it is unknown before the DMAV was activated if the officers could have observed the driver. Moreover, although the rear window contained dark tint, the driver's side window did not appear to have tint and was partially opened. The DMAV video was activated before the traffic violation occurred, which supports that the officers intended to stop the vehicle even before the alleged traffic violation. Additionally, the CAD records show that the vehicle's registration was run before the DMAV was activated and the traffic violation observed. One of the involved officers in this complaint had a similar complaint of racial profiling filed against him approximately one month later (see Incident No. 12). The case filed contained inconsistent documentation with respect to the DMAV video, CAD report, and Officer's Street Check Report. It appears that the officers ran the complainant's license plate a minute before activating the DMAV and observing the subsequent traffic violation. This is another complaint of alleged racial profiling that was handled in a cursory fashion as a Class D complaint that Kroll believes should have been more thoroughly investigated through Internal Affairs.

- **Incident No. 15 (2017):** Complainant, a Hispanic female, alleged possible racial profiling by an APD officer who she believed asked rude and inappropriate questions during a traffic stop (e.g., when the complainant told the officer she was on her way to work, the officer asked her, "Why are you wearing a track suit if you are going to work?" and questions of that nature). The case was handled as a supervisor referral. The supervisor referral memo did not directly address the factual premise of the complaint, but simply stated that the supervisor had reviewed the DMAV and found no policy violation. There is insufficient documentation for Kroll to independently verify the sufficiency of the investigation (e.g., there was no DMAV video in the case file). Moreover, after speaking with the supervisor, the complainant requested that the matter be elevated, but there is no indication that this was ever done.
- **Incident No. 16 (2017):** The complaint alleged harassment of persons experiencing homelessness and arrests without probable cause, in some cases multiple times a day by the same officers. Based on the documents in the file, it appears that no investigation was conducted. Although the complainant did not wish to speak to a supervisor, she did request that the chain of command look into the incident. Kroll believes that further investigation by the chain of command was warranted based on the nature of the complaint. At minimum, a supervisor should have reviewed the incident details and body camera footage and spoken with the involved officers. However, there is no documentation in the file that any follow-up occurred.
- **Incident No. 17 (2017):** The complainant, a Black male, was mistakenly subjected to a high-risk traffic stop in response to reports of a disturbance involving a different Black male suspect, reportedly armed and dangerous, who had left the scene in a Jeep Liberty. The complainant, who also drove a Jeep, was subjected to a traffic stop by multiple officers and forcibly detained. Although it was quickly discovered that the complainant was the wrong person driving the wrong Jeep, he was nevertheless detained at gunpoint, handcuffed, and forced to the ground. His dry-cleaning bag hanging on the back of his car was also knocked to the ground. Ultimately, this high-risk traffic stop subjected the wrong person to a lethal seizure and handcuffing.

Kroll's review found that the CAD record had listed the active warrant that indicated the subject was possibly armed and dangerous. However, on the date of the traffic stop, additional information was obtained, including a description of the subject, that he was not presently armed with weapons, and which included the subject's vehicle registration number. Additionally, the complainant's registration was queried just before the stop, which came back to the complainant and not the

subject of the warrant. According to the DMAV video, as the complainant walked backwards from his vehicle (towards the patrol car) with his hands on his head, an officer can be heard saying, "It's not him." The DMAV video, which did not capture the handcuffing, revealed that four APD officers with guns drawn approached the complainant's vehicle on the driver's side.

A complete and thorough investigation into why the wrong person was seized at gunpoint, how the information regarding the incident was relayed, including conflicting information, and any resulting tactical issues should have been identified and addressed. Instead, the complaint was handled as a Class C complaint with no policy violations and only training issues identified. Both officers received counseling regarding reports regarding high-risk traffic stops as required by policy. In Kroll's judgment, this complaint should have been more thoroughly reviewed by APD and appropriate action taken to prevent similar encounters in the future.

- **Incident No. 18 (2017):** The complainant was a white female who alleged possible reverse discrimination by a Black officer who allegedly treated her rudely when he issued her a ticket for violating Austin's "hands free" ordinance. The complainant was an out-of-town charity worker who had been looking for her destination by referring to her cell phone GPS. The officer saw her driving while holding her phone, but allegedly would not listen to the complainant when, after pulling over and parking, she tried to explain by showing the officer her phone. APD treated this case as a Community Concern and did not conduct any follow-up. Although the complainant indicated she did not wish to speak to a supervisor, her written complaint was detailed and specific (and credible on its face). At a minimum, a supervisor should have questioned the officer about what happened and potentially advised the officer on how to handle future similar situations. The complainant perceived a potential (reverse) racial bias by the officer in how he treated her. While this was not likely the case, the officer at a minimum could have handled the situation better and more respectfully. From a customer service perspective, a better approach to handling this case would have been as a supervisor referral.
- **Incident No. 19 (2017):** Based on the information and documentation in the case file, this case should have been more fully investigated as a legitimate claim of racial profiling and not been treated as a Class D matter. The traffic stop that led to the detention of the complainant (a Black male) and the eventual search of his car appeared to be a pretextual stop to justify a detention and search for drugs. Although the officer only issued a written warning to the complainant, there was insufficient evidence in the file to confirm that the officer made a legitimate and lawful traffic stop (failing to stop at white line). Moreover, the documentation did not explain what, if any, alleged activity was observed to create the officer's suspicion that the complainant had engaged in suspected drug activity prior to the stop. The written warning checked the box that the driver's race was unknown prior to the stop, but the stop occurred at 4:15 pm in broad daylight and supposedly occurred because certain activity had previously been observed which led the officers to stop and detain the complainant.

Moreover, on the BWC footage, the officers can be heard talking to each other and stating that the complainant said where he grew up, to which one officer replied, "That's all coke over there," thus relegating an entire neighborhood (presumably a predominantly Black neighborhood) as associated with drugs. The complainant was detained for over 40 minutes and asked a series of probing questions ("Where are you from?" "Where were you coming from?" "What were you doing before that?" "What are the names of the people you ate with and visited?", etc.). When he was first stopped, complainant was told he was only getting a warning. Shortly thereafter (after the officer checked complainant's license and registration), the complainant was told to step out of his

car, asked a number of questions, and then told to wait further while the K-9 dog was brought out to sniff the car. The Class D memo concluded that the officers had reasonable suspicion to stop the car based on the "observations of the investigators who had been conducting surveillance" and probable cause to search based on the K-9 dog's positive reaction to the car. However, neither the memo nor the case file indicates what activity involving the complainant was observed by the narcotics investigators conducting surveillance, which led them to want further investigation of the complainant.

Although the officer claimed the K-9 dog indicated a detection of a drug odor, the BWC footage was unclear as to whether the dog indicated a positive reaction. Moreover, a top-to-bottom search of the complainant's vehicle found no drugs or contraband. The complainant was polite and cooperative the whole time, but his affidavit in support of his complaint raised a number of troubling issues. At minimum, this case should have been given a more thorough review and investigation - including interviewing the officers and the complainant and including more documentation to better explain the reasons for the pretextual stop and subsequent actions.

- **Incident No. 20 (2017):** The complainant, a Hispanic male, alleged that he was subjected to excessive force, an illegal search, and was racially profiled because he was in a high crime area. The subject officer had been alerted that a female riding in the complainant's truck had a felony warrant for her arrest. After the vehicle pulled into a nearby gas station, the female exited the truck and walked into the store connected to the station. Meanwhile, the complainant remained with the truck to put air in its tires. The female was taken into custody in the store without incident, at which point the officer intended to identify and notify the complainant of the female's arrest. The DMAV video shows that, when the officer approached the complainant, he did not ask for his name or identification but told him to "come here" four times in a matter of seconds. Without providing the complainant an opportunity to comply, the officer then directed the complainant to put his hands behind his back while simultaneously grabbing the complainant's arms. The officer's actions were unjustified. He had no reasonable suspicion for physically detaining the complainant simply because the complainant did not immediately respond to the officer's verbal directions. The complainant was not involved in or suspected of any criminal activity. The officer quickly and unnecessarily escalated the situation to a physical detention resulting in a frisk. This was inappropriate. Although the officer was verbally counseled on the importance of articulating the reason for a detention in his report, Kroll disputes APD's determination as stated in the Class C complaint memorandum that no Department policies were violated. APD Policy 306 Search and Seizure mandates that protective frisks must be based on reasonable suspicion. This case should have resulted in a more thorough investigation and assessment of whether a policy violation occurred.
- **Incident No. 21 (2016):** This complaint on its face appeared credible and detailed unjustifiable harassment by the police officers involved, detention without reasonable suspicion, and unlawful search of a vehicle. Although OPO sent this over as a Citizen Concern because the complainant allegedly did not wish to be contacted, the written complaint was sufficiently detailed and specific to suggest unjust police action involving several officers who repeatedly accused the driver (he had just parked his car) of possessing or smoking weed (without cause). Both the driver and passenger were removed from the car, at which point the officer detained the driver and put him in handcuffs against the car. When complainant asked if he was being arrested, the officer said, "No, you're being detained" and accusingly asked, "Where is the weed?" The complainant was eventually given a ticket (presumably for parking on the wrong side of the street). No other charges resulted. The description of the officer's actions and statements suggested harassment and were, at minimum,

excessive and unnecessary. Kroll believes that this complaint warranted a closer look by the employee's chain of command.

- **Incident No. 22 (2015):** A sexual harassment complaint was filed against a male officer for allegedly making inappropriate and sexually charged statements to a female officer, asking her if the rumors were true that she had a sexually transmitted disease. The female officer had previously had a relationship with the accused officer and did not believe the incident rose to sexual harassment, as she believed he meant well and only wanted to see if she was okay. However, she acknowledged that the questions were inappropriate and that this same officer had previously made inappropriate inquiries into the female officer's sex life. Although Kroll agrees with the investigation outcome in this case (administratively closed with no sustained violation), the facts of the case raised the possibility that the officer's unit could benefit from additional sexual harassment training (or refresher training).
- **Incident No. 23 (2013):** The complaint alleged sexual harassment and hostile work environment based on a number of inappropriate comments and jokes made by a female officer. Kroll agrees with the sustained finding; however, the investigation should have also addressed the alleged anti-Asian comment made by the officer - i.e., an offensive and derogatory comment about Asian female genitalia. Such comments should not be tolerated; also, a series of allegations and factual issues suggested that unit supervisors permitted a highly unprofessional work environment.
- **Incident No. 24 (2013):** The complainant is a Black female who credibly alleged that she was improperly detained, placed in handcuffs, and frisked by an APD officer after allegedly failing to come to a complete stop at a stop sign. The complainant was 59 years old and suffering from arthritis. APD sustained two of the allegations, finding that the officer had violated General Order 318.3.1 (handcuffing detainees) and 301.2(b) (impartial attitude and courtesy) as there was no reasonable suspicion for the detention/handcuffing and frisk of the complainant. A sergeant from the officer's unit conducted the investigation. Although the officer's chain of command recommended a suspension of three to five days, the final discipline administered was a written reprimand. There is no documentation in the case file as to why the recommended discipline was reduced. The imposition of discipline was within the required 180-day timeframe mandated by the APD Collective Bargaining Agreement, and this same officer was the subject of a similar complaint approximately six months earlier. The prior complaint suggested that a pattern of complaints and behavior was possibly developing with this officer, and APD should have taken a second look at the earlier complaint for investigative, disciplinary, and training value.
- **Incident No. 25 (2013):** The complainant is a Black male who questioned his traffic stop by APD and felt the officer's subsequent actions were offensive, degrading, and racially motivated. No policy violations were found and APD treated the case as a Class D complaint. We disagree with APD's assessment of this complaint. The complainant was stopped for a stop sign violation. He was cooperative with the officer and simply asked to stand up so he could retrieve his wallet from his back pocket for identification purposes. The officer immediately handcuffed the complainant and searched his car for weapons and contraband. However, the officer had not established reasonable suspicion to justify handcuffing the complainant and searching his vehicle. The Class D complaint memorandum, which was prepared by a Patrol Commander in the subject officer's chain of command, misapplied the constitutional standard to resolution of the complaint and mistakenly asserted that a frisk is not a search. Kroll has identified multiple cases where a supervisor or commander responsible for resolving a complaint has documented that a frisk is not a search under the Fourth Amendment. We disagree with APD that no violation occurred in this

case. Based on the documents reviewed, the officer did not have legal justification for the detention and frisk.

Complaints Unrelated to Bias or Discrimination

- **Incident No. 26 (2021):** A female complainant was arrested and charged with DWI, but her blood alcohol level was ultimately too low to be reliably quantified. Complainant's attorney filed a complaint against the officer alleging that the officer had committed several incidents of perjury by falsifying the affidavit - embellishing and/or fabricating a number of facts that were not accurate and were contradicted by his initial reports and the BWC footage. The attorney also presented similar allegations regarding the same officer in a separate DWI case that attorney had handled. APD determined that all allegations were unfounded. However, given the specific and serious nature of the allegations from an attorney regarding two individuals who were separately charged by the same officer for DWI, with both cases subsequently dismissed after toxicology results showed little or no alcohol in the arrestee's system, Kroll believes that further review by APD was warranted. The forensic evidence did not support the DWI charges, and there appeared to be material factual discrepancies between the incident reports and probable cause affidavits. At a minimum, interviews should have been conducted of the attorney and his clients (if possible) and APD should have more closely examined the BWC footage, incident reports, photographs, and probable cause affidavits. Examining results of other DWI cases by the subject officer may also have been warranted in this case to determine if the officer tended to check certain factual boxes without sufficient evidence to justify his DWI arrests.
- **Incident No. 27 (2020):** OPO received an anonymous complaint from a psychiatric social worker at Integral Care who complained that, during a call regarding a client in psychiatric crisis allegedly needing emergency detention, the APD officer was disrespectful and dismissive towards the complainant and seemed unknowledgeable about mental health concerns. The complaint also alleged that the officer disregarded the social worker's clinical opinion and refused to contact a mental health officer to evaluate. APD determined that the complaint was unfounded. Although Kroll does not necessarily dispute the outcome of the investigation, the investigative summary should have included analysis of the BWC video for an independent assessment of the officer's actions on scene. The anonymous complaint, which was sufficiently specific about the officer's dismissive attitude and prejudgment of the psychiatric facility worker's motives, should have been more thoroughly examined and discussed in the investigative report, or a written explanation of the unfounded determination should have been included in the case file.
- **Incident No. 28 (2018):** Complainant was a female neighbor of an APD officer, who videotaped and recorded the officer allegedly beating and abusing his dog in front of the officer's young son. When the neighbor tried to say something to the officer, the officer cursed and yelled back at the neighbor, telling her to "mind your own fucking business." The officer directed several additional aggressive statements toward the neighbor. The officer, who had previously been accused of abusing his dog, was charged criminally in the local jurisdiction. APD sustained the allegation in the IAD investigation but imposed only a 3-day suspension for this Class A complaint. In Kroll's view, the disciplinary action in this case seems light based on the facts and nature of the allegation. Although the criminal charges against the accused officer ended in a mistrial and were later dismissed by the local prosecutor, a preponderance of the evidence established that the officer had abused his dog in the presence of his young son (while a neighbor watched and videotaped) and had made unequivocally threatening comments to the neighbor after she yelled for him to stop beating his dog in front of his son. This was conduct unworthy of a police officer.

- **Incident No. 29 (2015):** This was a complaint regarding excessive use of force (officer allegedly kicked a handcuffed subject multiple times). APD treated the incident as a Citizen Concern and closed the case on the grounds that complainant (the witness who reported the incident) did not want to get further involved. But APD had sufficient information to conduct more investigation (e.g., interview subject, interview officer, listen to communications, etc.), and should have done so.
- **Incident No. 30 (2015):** The case file contained insufficient information to determine the nature of the complaint. The officer allegedly made a derogatory comment about another officer, but no specifics were provided to determine if the comments were directed at the other officer's race or ethnicity. No investigation was conducted because the accused officer retired. However, this fact should not have absolved APD from completing the investigation or conducting appropriate follow-up as to the nature of the allegedly offensive comments.
- **Incident No. 31 (2013):** The complainant, an APD officer, alleged retaliation by an APD detective who had previously filed a complaint accusing the complainant officer of harassing behavior. The complainant alleged that he was the victim of retaliation because, the day before the prior complaint against him was filed, the complainant had raised concerns with an Assistant District Attorney (ADA) that the subject detective may have committed perjury. The complaining officer heard the detective make misleading and inaccurate statements to the ADA during a prep session before a pretrial hearing that addressed in part how and why the suspect's car was searched. The investigation should have attempted to obtain a transcript of the subject detective's testimony at the court hearing - did she testify about moving the suspect's car? If she testified that it was moved because it was parked illegally in a fire lane, as complainant suggested, a potential perjury investigation may have been warranted. The ADA interview was unclear on this point, and the court transcript would have provided needed clarity. Although the alleged perjury concern was tangential to the complaint, several witnesses raised sufficient concerns about potential perjury for APD to have more closely reviewed it.

4.4 Conclusion

Kroll does not intend to convey the impression that APD's handling of misconduct allegations necessarily requires a major overhaul. But especially where so much trust is placed on a police department to police itself – and to investigate and impose discipline for policy violations committed by fellow police officers – it is important to honestly evaluate how effectively and fairly that function is being handled. Improvements can always be made, and we hope that this review has helped focus on a few areas where APD's internal affairs function and administrative investigative process can be so improved.

Although the vast majority (approximately 85%) of the administrative investigations and complaints reviewed by Kroll were appropriately handled and documented by APD, Kroll identified concerns and inconsistencies with how certain complaints are handled, as noted below:

- We continue to have concerns with certain officers too quickly detaining and handcuffing individuals during minor traffic stops without first establishing reasonable suspicion. Some supervisors are mistakenly noting that “a frisk is not a search” and that a protective frisk can occur based on a generalized concern for an officer's safety. Legally, a protective frisk requires that an officer have a reasonable articulable suspicion that criminal activity is afoot and that the subject is armed and presently dangerous.²¹ While this standard does not rise to the same level of probable cause, which

²¹ Terry v. Ohio, 392 U.S. 1 (1968).

is constitutionally required to conduct a full evidentiary search of one's person, car, or home, it is a legal standard that frequently appears to be misapplied by APD officers and their supervisors.

- In many instances, APD did not sufficiently examine credible and specific allegations of racial profiling, racial or ethnic bias, and similar claims. Merely reviewing the body-worn camera or dashboard camera recordings in such cases does not provide a complete picture or the full context of racial profiling allegations. This is not to say that all allegations of racial profiling or racial bias are valid; indeed, many are refuted by the evidence. But to establish the level of mutual trust and accountability desired between APD and the citizens of Austin requires a more robust and objective examination of bias and discrimination claims.
- At least with respect to Class A and Class B investigations, the case file should include a written explanation of the findings and any imposed disciplinary actions. A brief memorandum from the responsible official in the chain of command explaining the factors that were considered in determining discipline, and how the evidence was weighed in making the findings, would provide greater transparency and accountability and promote consistency.
- Kroll observed that some allegations resulted in findings of “Unfounded” (the alleged conduct did not occur) when the more appropriate finding should have been “Inconclusive” (the evidence was insufficient to prove or disprove the allegation). Many police agencies use the designation of “Not Sustained” instead of “Inconclusive” for allegations that are determined not to be supported by sufficient evidence. APD should consider revising its categories of findings to replace the “Inconclusive” designation with “Not Sustained” as a potentially more accurate term for cases in which the evidence is insufficient to sustain an allegation but there is no definitive proof that the alleged conduct did not occur.
- Where a complaint alleges the same policy violations and fact patterns on multiple occasions against the same officer, a process should be in place to re-examine the prior complaints, even if they had been resolved in the officer's favor. An allegation that may appear to be invalid or unfounded in one instance, may take on added merit when similar allegations are repeatedly made against the same officer. At minimum, the officer's conduct in certain instances may warrant a closer examination and possibly additional training or counseling.
- Whether as a matter of policy or practice, whenever an officer resigns or retires during an internal investigation, we observed that APD administratively closes the investigation without completing the investigation or resolving the complaint. These cases should not automatically be administratively closed. Particularly with respect to serious allegations of racism, sexual harassment, financial improprieties, dishonesty, or other serious ethical breach, it is important that the department have a full understanding of the alleged misconduct and be able to fully document what occurred and how the matter was handled and resolved. This will not only enhance the department's risk management practices, but also prevent the appearance of covering up certain types of police misconduct by allowing officers to resign or retire in lieu of a complete investigation.

To develop and sustain trust between APD and the people of Austin, it is essential that the Internal Affairs function and administrative investigation process within APD is designed to prevent misconduct within the department, properly address misconduct when it occurs, maintain community trust and confidence, and create and maintain an ethical work environment.

Integrity and professionalism are the cornerstones of community trust-building. Police officers are afforded awesome authority to perform their duties; a badge gives officers the authority to make arrests and a gun affords them the lawful power to use force, even deadly force, when the circumstances justify it. Any abuse of that power or excessive use of that authority erodes public trust and can destroy the department's credibility in the community. In the end, every member of APD represents the entire department and must be held accountable for all conduct, positive or negative. While a transparent and effective internal affairs function and administrative investigation process is an important building block in maintaining community trust, it is important to remember that it is but one component of a thoughtful, systemic, and department-wide approach to developing a culture of integrity and ethical police conduct. If the chain of command proactively and properly trains and supervises officers, and constantly reinforces the importance of ethics, integrity, and fairness, the need to resort to internal affairs investigations will be greatly reduced.

5 RECOMMENDATIONS

Based on our review of the 252 complaints of alleged misconduct, including the 154 complaints related to alleged bias or discrimination, and the manner in which APD handled and resolved those complaints, we respectfully offer the following recommendations for APD's and the City's consideration:

- When Class A and B investigations are completed and a command decision is made, the case file should include a written memorandum that explains the ultimate findings, disposition, and any imposed disciplinary actions. A brief memorandum from the responsible official in the chain of command explaining the factors that were considered in determining discipline, and how the evidence was weighed in making the findings, would promote consistency and provide greater transparency and accountability. To the extent no such forms exist, APD should create a standardized disciplinary action memorandum to be completed by the final decision maker in each case. The goal should be to document the information that leads to better communication and analysis for policing conduct and trends.
- APD should develop a written policy for when certain investigations should be completed even where the accused officer resigns or retires while the investigation is pending. These cases should not automatically be administratively closed, as appears to be the current practice. When the department is confronted with serious and credible allegations of racism, sexual harassment, financial improprieties, dishonesty, or other serious ethical breach, the department should complete the investigation, fully address the alleged misconduct and any training or policy issues implicated, and document how the matter was handled and resolved.
- APD should consider revising its categories of findings to replace the "Inconclusive" designation with a "Not Sustained" designation. In some of the cases reviewed by Kroll, APD made findings of "Unfounded" (meaning the alleged conduct did not occur) when the more appropriate finding should have been "Inconclusive" (meaning the evidence was insufficient to prove or disprove the allegation) under APD's current designations. Many police agencies use the designation of "Not Sustained" instead of "Inconclusive" for allegations that are not supported by sufficient evidence. Kroll agrees that "Not Sustained" is a more intuitively understandable finding for when the evidence is insufficient to sustain an allegation but there is no definitive proof that the alleged conduct did not occur.
- As we recommended in Kroll's Phase B Report: *Evaluation of Austin Police Department: Use of Force / Public Interactions / Recruitment, Selection, and Promotions*, January 21, 2022, at page 157, APD should revise APD General Order 306.9 Frisk (Pat-Down) for Weapons, to include language defining "reasonable suspicion," explaining that a frisk is a constitutionally protected search under the Fourth Amendment, and mandating that officers specifically and clearly articulate in their official department reports the facts upon which reasonable suspicion are based, as a justification for any protective frisk. This would help clarify and avoid the misapplication of the constitutional requirements for a protective frisk by APD officers and supervisors that Kroll has observed in its ongoing evaluation of APD.
- Although the APD transfer policy includes incentives for personnel who are assigned to Internal Affairs, APD should consider ensuring that the promotion process also values and encourages

assignments to the Internal Affairs Division. The experience in Internal Affairs can be extremely valuable in providing police personnel with broad perspectives on officer behavior that may not be available in other units or divisions of the department. Investigating allegations of misconduct, interviewing complainants and the officers involved, and conducting thorough and objective investigations into alleged acts of police misconduct, offers practical and valuable insight that should be offered to as many qualified personnel as possible. Learning to handle the complexities of investigative controversies from start to finish and seeing firsthand the nature of the complaints, including that some allegations are true and do great damage to the department, while others are not, can be invaluable in helping to develop future leaders within the department. Allowing as many qualified investigators as practical to acquire the skills and judgment required by Internal Affairs, can help develop an informed and mature leadership team.

- During the next collective bargaining agreement negotiations, APD should consider requesting that the 180-day time limitation for administrative investigations begin when OPO or APD is first notified of the complaint. Currently, the time limitations clock starts when the incident occurred, and time can be lost for a variety of reasons, including health-related events that affect a complainant's ability to file, among other events or delays. These delays should not unduly limit the department's ability to appropriately investigate and, when appropriate, discipline an officer for sustained allegations of misconduct, or limit discipline to no more than a written reprimand for anything except criminal conduct, should the investigation exceed 180 days due to substantial delays in receiving notice of the complaint.
- As was apparent with many of the complaints reviewed by Kroll, some Austin community members believe that APD officers are racially or otherwise biased in exercising their law enforcement powers. Perceived bias by law enforcement prevents effective collaboration between police and communities. Moreover, many biased-based policing complaints are difficult to resolve because doing so requires an understanding of the officer's thought processes or motivations underlying his or her actions. For this reason, a number of jurisdictions around the country have adopted mediation procedures as an alternative to the conventional, adversary-oriented complaint process, which provides opportunities for officers and community members to develop more compatible perspectives on policing and life in the community. This approach typically employs professionally trained civilian mediators who bring together complainants and officers to build mutual understanding, increase awareness of community members' and officers' perspectives, and potentially resolve certain designated conflicts outside of the traditional disciplinary process. Although APD General Order 902.6.5 provides a process for mediation, none of the 252 complaints Kroll reviewed were handled by way of mediation, although several cases reviewed may have been better handled through mediation. Accordingly, Kroll recommends that APD and the City of Austin explore ways to increase opportunities for mediation in certain types of bias-related complaints.²²
- Finally, APD should examine and correct deficiencies in its record-keeping system for external and internal complaints, including how case files are classified, organized and maintained, and the manner in which cases are designated as involving allegations of bias or discrimination due to race, ethnicity, gender, sexual orientation, gender identity, disability, or other applicable designation. Doing so will improve APD's ability to evaluate and assess its handling of bias and discrimination

²² See H. Greenwald and C. Beck, "Bringing Sides Together: Community-Based Complaint Mediation," *Police Chief Magazine* (Aug. 2018); <https://www.policechiefmagazine.org/bringing-sides-together/?ref=7e7204767b0ac016b78ddc36cbb613a8>

(and other) complaints in the future. It will also prevent the types of delays and confusion caused by APD in producing the information and case files that Kroll requested at the behest of the City of Austin.

6 APPENDIX

6.1 References

1. U.S. Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*, Washington, D.C. (2006); <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>.
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3. International Association of Chiefs of Police / Bureau of Justice Assistance, U.S. Department of Justice, *Best Practices Guide, Internal Affairs: A Strategy for Smaller Departments* (2007); <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>.
4. H. Greenwald and C. Beck, "Bringing Sides Together: Community-Based Complaint Mediation," *Police Chief Magazine* (Aug. 2018); <https://www.policechiefmagazine.org/bringing-sides-together/?ref=7e7204767b0ac016b78ddc36cbb613a8>.

6.2 Kroll Project Team



Mark Ehlers is the **Engagement Leader** of Kroll's work with the City of Austin. Ehlers has 35 years of combined legal and investigative experience in the public and private sectors, specializing in government and university investigations, discrimination and harassment in the workplace, and alleged ethical violations. He is currently a managing director in Kroll's Philadelphia office. Prior to joining Kroll, Ehlers served for 18 years as an Assistant United States Attorney, first in the District of Columbia, where he served in the Homicide and Sex Offense Units, and later in the Eastern District of Pennsylvania, where he served on the Organized Crime Strike Force. Since joining Kroll, Ehlers has conducted numerous internal investigations and best practice reviews for a diverse array of public and private sector clients, including the University of Cincinnati Police Department (review and investigation of a UCPD officer's fatal shooting of an unarmed motorist) and North Carolina State Highway Patrol (review of hiring and selection practices, training and supervision following public reports of police misconduct), among others. Ehlers received a B.A., *magna cum laude*, from Wittenberg University, and a J.D., *with honors*, from George Washington University.



John R. "Rick" Brown is a former Lieutenant Colonel and Deputy Commissioner for Administration and Professional Responsibility of the Pennsylvania State Police (PSP). During his 29-year tenure, Brown oversaw the PSP's reform and accountability efforts in the areas of misconduct, sexual harassment, use of force, and early intervention/risk management initiatives. He developed the PSP's Equal Employment Opportunity Office's statewide liaison program and had oversight of citizen complaints that alleged discrimination or disparate treatment. Brown also oversaw the PSP's five-year Police-Citizen Contact Project, which utilized applied research techniques to assess the extent to which PSP officers engaged in racial or biased-based policing. Brown subsequently oversaw the implementation of proactive training and operational strategies to monitor and prevent racial profiling. In 2010, following a distinguished career in law enforcement, Brown created Transparency Matters, LLC, a certified Minority-owned Business Enterprise ("MBE") that focuses on building transparent policing policies and process change that provides organizational efficiencies, accountability, diversity, community education, training, and monitoring.



Daniel Linskey, former Superintendent-in-Chief of the Boston Police Department, is a nationally renowned expert in urban policing, training, and police-community relations. As Head of the BPD from 2009 to 2014, Chief Linskey developed and oversaw the BPD's social media, recruitment, community outreach, and engagement strategies, which have been cited as among the best practices in police management in the United States. Chief Linskey also changed the management and response of BPD to large-scale public disorder events. He oversaw the peaceful and successful management of the Boston Occupy movement and earned an international reputation at planning and overseeing major special events, and as the Incident Commander during the Boston Marathon Bombing Attack. Chief Linskey was part of a team sent to St. Louis County to assist the Department of Justice with an assessment of the St. Louis County Police Department and collaborative reform project following the events in Ferguson, Missouri in 2014. He is a frequent commentator on proper police tactics for national news organizations.



Dr. Robin Engel, a Professor of Criminal Justice at the University of Cincinnati ("UC") and Director of the UC Center for Police Research and Policy, is a nationally recognized expert on biased-based policing and one of the top-ranked female academics in the country. Dr. Engel has studied and written extensively on biased-based policing and worked with police departments throughout the United States to help them improve and reform. She has published over 60 peer-reviewed articles and book chapters and conducted research on such topics as biased-based policing, police-community relations, police use of force, police use of discretion / decision making, police legitimacy, violence reduction initiatives, reform efforts, and problem-oriented policing. Dr. Engel has conducted statistical analyses examining racial/ethnic disparities in policing outcomes for over a dozen jurisdictions.



J. Larry Mayes is serving as a Project Advisor on community engagement strategies and civilian input into police internal investigations. Mayes has worked with government officials and community leaders for more than two decades. From 2004 to 2010, Mayes served as the Cabinet Chief of Human Services for the City of Boston, where he led joint government/community-based initiatives to reduce crime and stabilize communities. Currently he serves as Vice President of Programs for Catholic Charities in Boston, where he leads the organization's statewide programs on adult education, immigration resettlement and legal services, childcare, and new poverty strategies. In 2014, Mayes was appointed to the Community Ombudsman Oversight Panel, which reviews the BPD's Internal Affairs citizen complaint cases.



A.J. Bingham is serving as an advisor in multi-cultural community outreach in Austin, facilitating local community input into police-citizen interactions, and providing insight into Austin's business, civic, and non-profit communities. Bingham is Founder and CEO of The Bingham Group, LLC, a City of Austin-certified MBE, and full-service consulting firm that represents and advises clients on legislative and regulatory matters throughout Texas. An Austin native, Bingham is active in the community and serves on the boards of the Young Men's Business League of Austin, the Austin Trail of Lights Foundation, and the Long Center for the Performing Arts. A lawyer by background, Bingham received his B.A. in Political Science from Wake Forest University, and law degree from Washburn University School of Law.



Dr. Nicholas Corsaro is a consultant for Kroll and serves as Associate Professor of Criminal Justice at the University of Cincinnati. He holds a PhD in Criminal Justice from Michigan State University. He has published over 30 articles on police interventions, strategies, and organizational processes. His research focuses on the role of the police in crime prevention with a particular emphasis on the use of strategies, tactics, and organizational policies. He has served as a principal investigator for a number of projects across various urban police agencies and has worked to develop rigorous evidence regarding the most viable, effective, and efficient practices that police have used to address serious crime problems. His research has been published in *Crime and Delinquency*, *Criminology and Public Policy*, *Journal of Criminal Justice*, *Journal of Experimental Criminology*, *Journal of Quantitative Criminology*, *Justice Quarterly*, as well as evaluation and public health journal outlets.



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