



CITY OF AUSTIN

OFFICE OF THE POLICE MONITOR 2008 ANNUAL REPORT

**Office of the Police Monitor
1520 Rutherford Ln. Bldg. 1, Ste 2.200A
Austin, TX 78754**

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*The Office of the Police Monitor
1520 Rutherford Lane, Bldg. 1, Ste. 2.200A
Austin, TX 78754*

Message from the Police Monitor

I am pleased to present the 2008 Annual Report for the City of Austin's Office of the Police Monitor (OPM). I am confident this report will give you, the citizens of Austin, greater insight into the workings of our office.

This report includes data and statistics related to the number and types of complaints filed against members of the Austin Police Department (APD). It explains how cases are classified, the types of allegations that were investigated as well as the outcome of those investigations.

One of our primary missions is to provide an independent and objective review of the policies and procedures of the APD. In practice this means that this office will ensure that investigations into complaints are fair, timely, and impartial. Our goal is to make sure there is an objective administrative review of complaints against police officers, while still protecting the individual rights of the citizens and the officers.

To this end, we are always looking for ways to improve our service to the community. Therefore, moving forward, we intend to provide an even greater degree of transparency into the process by presenting new information in a way that will shed even greater light on the issues and practices surrounding the interaction between the APD and the public. .

As always, we welcome your comments and suggestions.

Sincerely,

Cliff Brown
Police Monitor
City of Austin

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The Office of the Police Monitor

Mission and Objectives

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

The duties of the Office of the Police Monitor include:

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

How the Process Works

OPM complaint specialists are tasked with addressing citizen issues concerning APD activity. Complaint specialists take phone calls, e-mails, faxes and complaints via US mail about allegations of police misconduct or questionable activities. Persons may also visit the OPM in order to speak with a complaint specialist in person either during the day or after business hours through special appointment. The OPM is readily accessible to physically challenged, hearing impaired, and non-English speaking complainants.

When a complaint is received by the OPM, a complaint specialist conducts an interview with the complainant to gather the relevant facts of the complaint. Each complaint is unique in composition and level of severity. The complaint specialist will explain the three courses of action available to the complainant— filing a supervisory inquiry, filing a formal complaint, or seeking mediation.

Through Civil Service Standards, a complaint must be filed within 180 days of the incident in order for an officer to receive any type of formal discipline. Complaints that are filed after 180 days can only result in a written reprimand.

Supervisory Inquiries

Supervisory inquiries are reserved for less severe policy violations or to clarify APD's rules and regulations. The supervisory inquiry is also for those complainants who do not wish to go through the formal process and would like a faster result. Many people utilize this course of action because they simply want to make the department aware of an unpleasant issue.

After the OPM assesses the complaint and the complainant chooses the supervisory route, the complaint is forwarded to the officer's supervisor or their chain of command by the Internal Affairs Division (IAD) of the APD. This process allows the complainant to communicate directly with the officer's supervisor and is completed within 30 days. At the conclusion of this option the complaint specialist will follow up with the complainant. Those individuals who believe their concerns were not fully addressed can still request that a formal complaint be filed.

Formal Complaints

The OPM staff documents complaints through a complainant's interview with a complaint specialist. The interview is digitally recorded and the complainant's statement is typed, signed, and notarized. The statement and recording are then forwarded to IAD for review of potential policy violations and case classification. Complaints classified as "A" and "B" have been deemed to present potential policy violations that warrant closer examination in order to identify, address, and correct officer conduct. Class "C" or "D" complaints are not investigated in the traditional manner but are relegated to supervisors to identify performance and/or training issues. IAD investigates or reviews all formal complaints. If a complaint is investigated by IAD, an OPM staff member is present at all interviews and monitors the progress of the investigation. Once an investigation is completed, the OPM reviews the investigation for completeness and fair application and interpretation of rules, regulations, and policy.

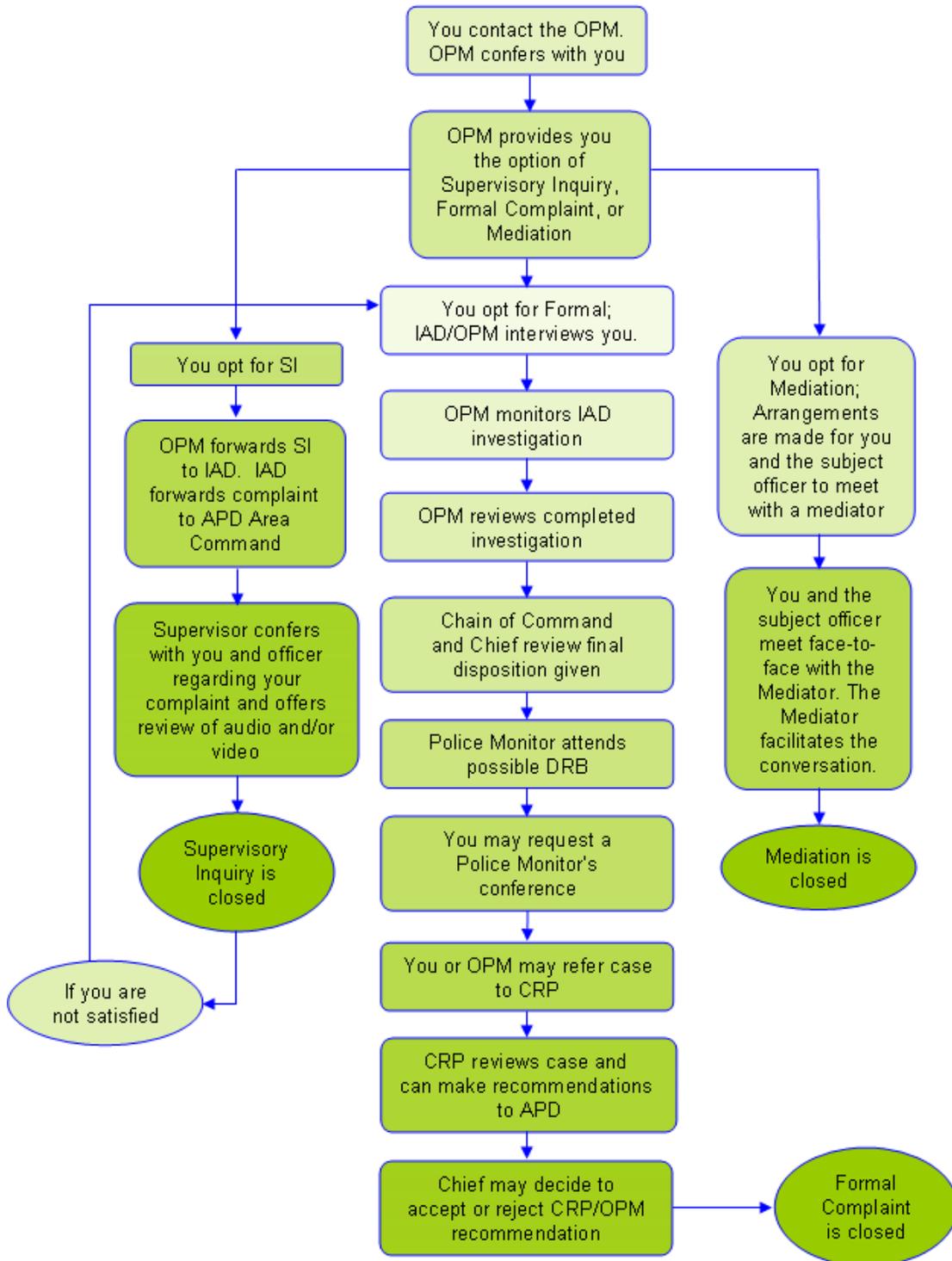
The complainant is given the investigation decision in writing. Should they choose to do so, a complainant may then sit down with the police monitor or assistant police monitor to discuss the details of the investigation during a Police Monitor's Conference (PMC). Written documentation of the investigation is not given to the complainant due to civil service limitations on what can and cannot be provided. If the complainant is not satisfied with the investigation, they may also seek assistance from the Citizen's Review Panel (CRP). The Citizen's Review Panel is a volunteer group of seven citizens that meet once a month to hear cases in dispute as brought by either the complainant or the OPM or to discuss oversight issues. If a complainant chooses to utilize the CRP to hear their case, they are given 10 minutes during a public portion of the meeting to

outline their issues with APD and/or the outcome of the investigation. The CRP may ask clarifying questions of the complainant during this time. Afterwards, the CRP will meet in a private executive session to deliberate on the actions necessary to address the case. The CRP may make recommendations concerning the complaint to the chief of police or choose to leave the case in its current status.

Mediation

Mediation is designed so that a complainant may have a professional dialogue with the subject officer in the presence of a neutral mediator. It is not only an opportunity for a complainant to air their grievances, but also an opportunity for both parties to express individual points of view and perspectives. In order to utilize the mediation process, the complaint itself must reach the level of a class "B" investigation. For mediation to occur, both the complainant and the officer have to agree to it. No discipline is administered to an officer participating in mediation and the outcome does not go into the officer's personnel file. If mediation is chosen, the supervisory/formal complaint processes cannot be utilized.

Figure 1. OPM Complaint Process



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

To file a complaint with the OPM, an individual may contact the office in person, by phone at (512) 974-9090, by fax at (512) 974-6306, by e-mail at police.monitor@ci.austin.tx.us, or by US mail. The office is located in the City of Austin Rutherford Complex at 1520 Rutherford Lane, Bldg. 1, Suite 2.200A. The zip code is 78754.

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

This piece was written by Assistant Police Monitor Louis Gonzales III. He has been with the OPM since its inception in 2002.

2008 Year in Review

The 2008 calendar year saw significantly fewer critical incidents than in the previous year. Critical incidents include officer-involved shootings, and/or incidents involving serious injury or death, etc.

Operationally, the ICMS, which is a shared database between the OPM and APD's Internal Affairs Division (IAD), was online and functioning throughout 2008. The ICMS was created in 2007 through a joint effort between the OPM and the IAD. Its' purpose is to provide shared information in real time in order to enhance how OPM and IAD conduct business. Lastly, the OPM was able to secure the designation of host city for the 2009 national conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE).

In 2008, APD implemented an initiative wherein current field supervisors, instead of IAD detectives, would investigate most formal class "B" complaints. APD's stated reason for shifting to this new investigative model was to provide field supervisors with first-hand experience in addressing performance and conduct issues and to foster a higher degree of accountability in the officer/supervisor relationship.

APD also formulated a new standard when use of force issues surfaced by implementing the "Response to Resistance" policy. This policy provided various measures of performance and defensive tactics that could assist supervisors or investigators to identify the severity or the need to address a force issue at either a supervisor's level or higher. Additionally, the Austin Police Chief, Art Acevedo, formalized a discipline matrix intended to be used as a guide when meting out discipline to officers involved in sustained allegations of misconduct or performance issues.

Finally, in 2008 APD received a set of recommendations from the US Department of Justice (DOJ). These recommendations stemmed from an investigation that the DOJ began in 2007. The purpose of the investigation was to look at allegations that Austin's Black or African American and Hispanic or Latino citizens were met disproportionately with excessive force and abuse of search powers through consent searches by APD.

2008 Serious Incident Review

On January 21, 2008, an APD officer reported that a transfer she had requested had been denied possibly because of her gender. Two Code of Conduct allegations against the commander of the unit were sustained. The commander received a 20 day suspension.

During the course of the investigation listed above, it was discovered that another officer had knowledge of the comments made by the commander but did not come forward with this information. This officer also received a 20 day suspension.

On May 12, 2008, the police department in another city received a call regarding a man passed out in his vehicle in a parking lot. By the time the police arrived on scene, the vehicle was gone. The police then received a second call from a different location also stating that a man was passed out in a vehicle. Again, by the time police arrived, the vehicle was gone but this time, the caller provided police with the vehicle's license plate number. The vehicle was registered to an APD officer. After the second incident, police went to the officer's residence where they found him backing into a parking space. The responding officers determined that they did not have enough probable cause to arrest the APD officer so he was not detained but APD was notified of the incident. Upon questioning by IAD, the APD officer admitted that he had been drinking that night. The other city's police department provided IAD with a DVD recording of the interaction as well as documentation regarding the calls for service. The officer was sustained on two Code of Conduct allegations and because he had had a previous issue involving alcohol, he received a 90 day suspension along with several other restrictions in connection with this incident.

On July 10, 2008, the Austin Police Department's watch commander was notified that an APD officer was stopped and arrested in another city on suspicion of driving while intoxicated. The officer received a 25 day suspension and was given a one year probationary period. Additionally, it was agreed that any further violations committed outside the one year probationary period would result in an indefinite suspension.

On August 18, 2008 an officer was arrested for DWI after crashing on his personal motorcycle. The officer received a 45 day suspension.

Department of Justice Review of Austin Police Practices

On May 31, 2007, the Civil Rights Division of the US Department of Justice (DOJ) opened an investigation of the Austin Police Department (APD) pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”). The impetus for the investigation was a complaint filed in 2004 by the National Association for the Advancement of Colored People (NAACP), represented by the Texas Civil Rights Project. The complaint alleged that Austin’s Black or African American and Hispanic or Latino residents were met disproportionately with excessive force and abuse of search powers through consent searches.

This complaint was supplemented in February 2005 by the NAACP after 10 APD officers were overheard using racially-charged language during a fire at a Northeast Austin nightclub.

In March, 2005, then-City Manager Toby Hammett Futrell and then-Austin Police Chief Stan Knee co-signed a letter to the Justice Department formally requesting an independent review by the Federal Agency.

In June 2007, the City was notified that the DOJ would begin an investigation. It was anticipated that the investigation would take at least one year.

In December of 2008, the DOJ made 165 recommendations for changes to APD’s policies. All recommendations fell into one of the following categories:

1. Policies and Procedures
2. Use of Force
3. Complaints of Officer Misconduct
4. Internal Affairs
5. Office of the Police Monitor/Citizen Review Panel
6. Discipline
7. Supervisory Oversight
8. Early Warning System¹
9. Officer Training
10. Community Relations

In its 2008 report, the DOJ concluded that APD had made a “number of advances” during the investigation. In particular, it cited the leadership of Chief Acevedo for the changes made to that point.

¹ In this case, an Early Warning System (EWS) is a data-based police management tool designated to identify potentially problematic behavior and allow early intervention to correct misconduct and assist in identifying deficiencies in supervision, management, and policies.

For a complete list of the recommendations, please visit
http://www.ci.austin.tx.us/police/downloads/ta_letter_from_doj_dec_2008.pdf .

APD's response to these recommendations will be included in future OPM reports.

Executive Summary

The Office of the Police Monitor's (OPM) annual report is presented to the public as a means to provide transparency into the Austin Police Department's (APD) complaint investigative process. This report reviews behavior patterns of APD officers and makes policy recommendations. Below are some of the key findings from the 2008 reporting year.

- The Office of the Police Monitor was contacted 1,507 times in 2008 by citizens or members of the APD wishing to lodge a complaint against an APD officer or officers – an increase of 6% over 2007 (Table 1).
- Of these 1,507 contacts, 1,189 were citizen contacts (Table 17a). Nine hundred two (902) of the 1,507 contacts resulted in a complaint being filed against one or more members of the APD (Table 1).
- More people opted to file a supervisory complaint in 2008 than opted to file a formal complaint (Table 1). The OPM believes this is likely attributable to the processing time involved. Supervisory complaints are closed within 30 days; formal complaints can take 180 days to complete.
- Five of the nine area commands saw a decrease in formal complaints brought by the public between 2007 and 2008. The South Central area command experienced the largest increase (Table 3).
- Very serious cases, those classified as an “A,” saw the largest increase in 2008 even though the number of critical incidents, i.e., officer-involved shootings, and/or incidents involving serious injury or death, etc., were down (Table 4).
- The number of allegations levied against officers rose 26% in 2008. This may be related to a practice shift in IAD's handling of complainant allegations as based on a statement made by the then-new chief of police, Art Acevedo. In his comments he stated that all aspects of a complaint would be investigated (Table 6).
- Code of Conduct allegations continue to be the most common complaint presented by the public. Code of Conduct allegations can include, but are not limited to, responsibility to know and understand the law, honesty, acts bringing discredit to the department, personal conduct, responsibility to the community, impartial attitude, courtesy, and duty to identify (Table 7).

- Overall, the number of Use of Force, Duty Weapon, and Firearm Discharge allegations were down citywide, dropping 50% in 2008 from its 2007 level. The Downtown area command saw the largest number decrease (down by 25; a 78% decrease) while the Central East experienced the largest percentage decrease (down 93% or 13 complaints) (Table 10).
- With the chains of command now investigating lower-level complaints, i.e., class B complaints, readers will see a dramatic shift in IAD decisions per allegation (Table 14). While IAD does review these types of cases, it may not always issue an opinion.
- The outcome of cases handled by the APD, i.e., cases sent to the chains of command (Table 15), is markedly higher than in years past. The OPM believes this is directly attributable to a process change. In previous years, these data would only include numbers for chain of command decisions on allegations recommended to be sustained by IAD. Since IAD does not directly investigate most of the class B complaints, it also does not make recommendations on these complaints; the decisions are now made by the chains of command.
- Disciplinary action was up for both internal and external complaints in 2008 (Table 16). This is likely related to the increased number of allegations.
- Complaint rates do not track proportionately to the demographic composition of the City. White citizens file complaints at a slightly lower percentage than their representation in the City population. Black or African American citizens file at a percentage that is about three times their population percentage. Hispanic/Latino citizens file at a rate that is about half their population percentage (Table 17b).
- People fifty years of age and older filed the most complaints in 2008 (Table 18). The vast majority of allegations within this group were Code of Conduct issues.
- Approximately 39% of sworn APD personnel had some sort of complaint, either internal or external, lodged against them in 2008.
- The OPM continues to see that the average length of service of officers who are the subject of complaints is approximately 7-8 years. Therefore, the OPM is again recommending a refresher or review course of APD policies and procedures in an officer's 6th year of service.
- Slightly more male than female officers had complaints lodged against them relative to their representation within APD (Table 23). Males comprise 88% of

APD but represent 91% of complaints. Females make up 12% of APD and are named in 9% of complaints.

- These gender percentages shift a bit when looking at officers who had just one complaint filed against them versus those with multiple complaints. The percentage of officers with multiple complaints was 95% male and 5% female versus single-case officers where males make up 86% and females are at 14%.
- There is no significant difference in the race/ethnic background of officers comprising APD compared to complaint rates (Table 24). Each race/ethnic group registers approximately the same percentage of complaints as their representation within APD.
- There is not much of a difference in years of service between officers with a single external complaint filed against them in 2008 versus those with multiple external complaints (Table 25). There is only a slight disparity with regard to the age of officers involved in single external versus multiple external complaints (Table 26). Single case subject officers tend to be slightly older than repeat subject officers.

End of Year Statistics

Number of Contacts/Complaints

Citizens may reach out to the OPM to report an observation or incident through a variety of means. These include telephone, fax, email, US mail, or an in-person visit. Any time a citizen makes an initial contact with the OPM, this information is captured and reported as part of this document.

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

- 1) **Formal complaints** – complaints investigated or reviewed by IAD or by the chains of command;
- 2) **Supervisory inquiries** – complaints of a less serious nature handled by the officer’s chain of command; and,
- 3) **Contacts** – an individual calls with the intention of filing a complaint but the incident does not:
 - Meet the criteria outlined in APD’s General Orders, Policies, and Procedures;
 - The individual does not provide sufficient information for follow up;
 - The individual is not available for follow up;
 - The individual fails to follow through with the complaint process;
 - The incident involves a complaint against a law enforcement agency other than APD; or,
 - Is a matter best handled by the courts or other agency.

When a citizen wants to pursue a more formal process, they may file a “Supervisory Inquiry” or opt to file a “Formal” complaint. (Mediation is also an option but the results of this will not appear in an officer’s personnel file unless the officer fails to show up for the mediation session.)

Table 1 (below) provides information regarding the number of each of these types of contacts/complaints that were filed in 2008. In Table 1, the term “contacts only” means that a person reached out to the OPM but then, for whatever reason, did not file a supervisory inquiry or a formal complaint. While “contacts only” were down, at the same time, the number of supervisory inquiry complaints grew by 237 (89%) as did both internal and external formal complaints (collectively up by 54, or 16%).

Table 1: Type of Contacts by Year (Internal and External)

Type of Contact	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Supervisory Inquiries	231	24%	267	19%	504	34%	237	89%
Formal Complaints	285	30%	344	24%	398	26%	54	16%
Contacts Only	437	46%	808	57%	605	40%	-203	-25%
Total	953	100%	1,419	100%	1,507	100%	88	6%

Supervisory Inquiries are initially handled by the individual officer’s supervisor and sometimes by their entire chain of command. The process was developed jointly by the APD and the OPM in an effort to provide civilians filing less serious or severe complaints with an option to speak directly with an officer’s supervisor. This option is normally chosen by complainants with less serious allegations.

When a civilian chooses to file a supervisory inquiry, the complaint is forwarded by the OPM to IAD via a shared database. IAD then sends the complaint to the subject officer’s chain of command. The supervisor reviews the case, collects the fundamental facts, and calls the complainant to attempt resolution of the matter. Normally, no severe disciplinary action results from these cases. Rather, the officer is interviewed by their supervisor and may be orally counseled or reprimanded. At any time during or after the completion of the supervisory inquiry process, a citizen dissatisfied with the process or result may file a formal complaint.

The OPM assesses complainant satisfaction with the chain of command’s resolution of the inquiry via a follow-up conversation with the complainant. During this time, the complainant is made aware that if they are not satisfied with the outcome of their case, they have the option to file a formal complaint. In 2008, 27 complainants (5%) chose to advance to a formal complaint after first going through the supervisory inquiry process.

In 2008, the OPM monitored 398 formal complaints as compared to 344 in 2007. Of the 398 formal cases, 230 were internal cases and 168 were external cases. The difference between internal and external cases is:

- **Internal** – complaints filed by an APD officer, typically a member of the chain of command, against another APD officer;
- **External** – complaints filed by a citizen against an APD officer.

While the total number of formal cases was up for the year, the number of formal external cases, i.e., those brought by citizens against an APD officer, was down 3% (6 cases) from 2007 (Table 2, below). Formal internal cases were up by 35% (60). As noted,

internal cases are those brought by and filed within the Austin Police Department.

In short, there was a dramatic increase in the number of supervisory inquiries in 2008 and a slight decrease in the number of external formal complaints. The OPM believes there may be a couple of reasons this could be happening. One is that the supervisory inquiry process is much less time intensive than filing a formal complaint. Supervisory inquiries are generally resolved within 30 days (as opposed to as much as 180 days for a formal complaint). Another reason could be that often a citizen simply wants to speak to a supervisor about an issue rather than file a more formal complaint. Filing a supervisory inquiry is, therefore, adequate to resolve the issue.

Number of Formal Complaints

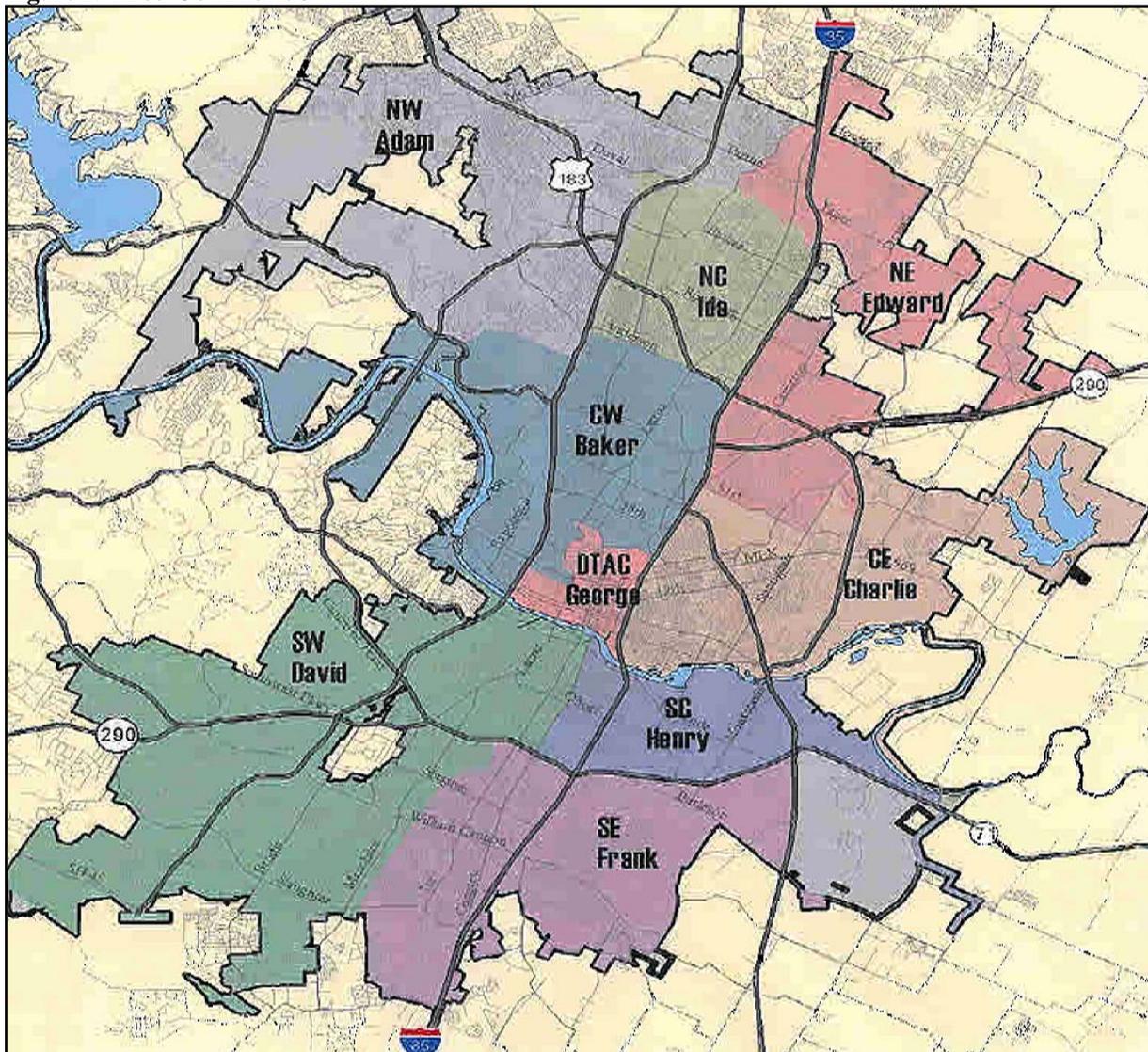
Table 2. Type of Formal Complaints by Year²

Type of Contact	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Internal	158	55%	170	49%	230	58%	60	35%
External	127	45%	174	51%	168	42%	-6	-3%
Total	285	100%	344	100%	398	100%	54	16%

Figure 2 (below) is a map of the APD's area commands.

² In previous years, the OPM did not include all internal cases as many were minor incidents, such as minor traffic violations, which are normally handled by the Chain of Command. However, in order to provide more uniformity between the OPM and the IAD annual reports and figures, the OPM began including all internal complaints beginning in 2007.

Figure 2. Area Commands



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

Table 3 (below) provides data regarding the number of complaints by APD command area. The Southeast and Northwest area commands experienced the greatest decreases (-29% and -50%, respectively). South Central experienced the only significant increase in complaints, going from 11 complaints in 2007 to 22 complaints in 2008, an increase of 100%. Ten of the 22 complaints stemmed from Code of Conduct allegations.

Table 3. External Formal Complaints per Area Command by Year

Area Command	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Central East (CE)	21	17%	25	14%	29	17%	4	16%
Central West (CW)	12	9%	5	3%	4	2%	-1	-20%
Downtown (DTAC)	27	21%	32	18%	30	18%	-2	-6%
North Central (NC)	7	6%	16	9%	18	11%	2	13%
Northeast (NE)	18	14%	16	9%	18	11%	2	13%
Northwest (NW)	10	8%	12	7%	6	4%	-6	-50%
South Central (SC)	10	8%	11	6%	22	13%	11	100%
Southeast (SE)	9	7%	28	16%	20	12%	-8	-29%
Southwest (SW)	10	8%	17	10%	13	8%	-4	-24%
Out of City	2	2%	7	4%	5	3%	-2	-29%
Unknown	1	1%	5	3%	3	2%	-2	-40%
Total	127	100%	174	100%	168	100%	-6	-3%

Numbers in red signify a drop from the previous year.

Case Classifications

When a complaint is lodged, it is sent to IAD for classification. When classifying complaints, IAD uses the following criteria:

- **Administrative Inquiry** – no allegation of misconduct can be found but the matter is considered of concern to the public and/or the Department. All critical incidents begin as Administrative Inquiries.
- **A** – allegations are of a serious nature;
- **B** – allegations are less serious violations of department policy, rules, and regulations;
- **C** – allegations do not rise to the level of a policy violation, but contain a training or performance issue; allegations are initiated after a prolonged period of time; allegations are made against an officer who cannot be identified; allegations are of a less serious nature and the complainant refuses to cooperate; and/or allegations involve an ongoing criminal investigation – IAD will investigate the administrative violations after the criminal investigation is completed; or,
- **D** – there is no allegation or misconduct by an officer.

Table 4 (below) provides a comparison between IAD’s classification of internal versus external cases and allows for this comparison year over year. As can be seen, the number of internal and external cases that were classified as an “A”, that is cases with serious allegations, was up in 2008 versus 2007 for both internal and external cases. In

2008, “B” cases varied with internal cases being up (+13, or +41%) and external cases being down (-18, or -26%).

Table 4. IAD Classification of Formal Complaints by Year

IAD Case Classification	2006				2007				2008				Change 2007 vs. 2008			
	Internal		External		Internal		External		Internal		External		Internal		External	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Admin Inquiry	5	3%	3	2%	10	6%	4	2%	10	4%	2	1%	0	0%	-2	-50%
A	35	22%	17	13%	32	19%	9	5%	45	20%	15	9%	13	41%	6	67%
B	117	74%	54	43%	126	74%	69	40%	171	74%	51	30%	45	36%	-18	-26%
C	0	0%	19	15%	0	0%	45	26%	3	1%	37	22%	3	300%	-8	-18%
D	1	1%	34	27%	1	<1%	45	26%	1	>1%	63	38%	0	0%	18	40%
Other	0	0%	0	0%	1	<1%	2	1%	0	0%	0	0%	-1	-100%	-2	-100%
Total	158	100%	127	100%	170	100%	174	100%	230	100%	168	100%	60	35%	-6	-3%

Numbers in red signify a drop from the previous year.

Since the OPM began its mission of oversight, there has been a notable agreement gap between IAD and the OPM in relation to case classifications and allegation recommendations. In the past, this was particularly true for external versus internal cases. Cases are classified by IAD according to the severity of the allegations included in the case. Agreement rates were high for cases that received the more severe allegation classifications; however, for those cases that received the less severe allegation classifications, there was less agreement between IAD and the OPM. At this point, it is generally accepted that the discrepancy in agreement between internal and external cases has much to do with the cases themselves. When an internal case is brought, it typically involves one officer bringing a case against another officer. In these circumstances, the officers involved will and do have extensive knowledge of the general orders against which the complaint has been brought. This makes it easier to assign a classification. This is not always true for complaints lodged by citizens and, hence, likely the reason the OPM has more of an agreement gap with regard to external cases.

Table 5 (below) illustrates the agreement rates between the OPM and IAD with regard to how cases are classified.

Table 5. OPM Agreement of IAD Formal Case Classifications by Year

IAD Classification	OPM Agreement Rates					
	Internal Cases			External Cases		
	2006	2007	2008	2006	2007	2008
Admin Inquiry – no policy violation, but concerning to the public	80%	100%	86%	100%	100%	100%
A – serious allegations	94%	100%	100%	94%	100%	100%
B – less serious allegations	99%	94%	100%	89%	90%	91%
C – policy/training issues	--	--	100%	74%	82%	94%
D – no policy violation	--	100%	100%	76%	90%	93%

-- signifies Zero cases.
 Numbers in red signify an agreement rate of less than 75%.

It can be seen, however, that external classification agreement rates have also climbed over time. The OPM believes this is a function of the greater transparency afforded through the data that is now resident within both IAD and the OPM.

Number and Types of Allegations

While agreement in terms of case classifications has gone up, the number of allegations has also gone up (Table 6, below). The OPM believes one contributing factor to this increase could be a practice change that occurred in 2007. The new chief made a remark mid-year 2007 wherein he stated that all allegations alleged by a citizen were to be investigated, not just those allegations selected by IAD as had been the case in years past. The OPM believes this practice carried over into 2008 and may have had an influence on the increase in the total number of allegations.

Table 6. Number of Allegations by Case Type by Year

Number of Allegations	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Supervisory Inquiries	247	35%	328	37%	493	44%	165	50%
Formal Complaints	461	65%	563	63%	631	56%	68	12%
External	233	51%	314	56%	326	52%	12	4%
Internal	228	49%	249	44%	305	48%	56	22%
Total	708	100%	891	100%	1,124	100%	233	26%

In looking at possible other causes for the increase in allegations, the OPM looked to see if the total number of officers involved may have also increased. In 2008, a total of 633 officers were referenced in some kind of complaint. Of these 633, 508 officers were involved in a citizen complaint. This represented a slight increase, 4%, from 2007 to

2008. Meanwhile, the overall number of contacts climbed by 6% in 2008 from the previous year. Both of these increases alone are not enough to account for the double digit increase seen in the number of allegations. As mentioned previously, after the new chief's comments regarding investigating all allegations, there was a marked increase in the total number of allegations. That said, the OPM believes it is too early to tell if this practice alone was the sole influence regarding the increase in the number of allegations. It could also be that 2008 simply saw a rise in alleged policy violations with regard to the APD. The OPM will only definitively be able to answer this question in coming years as it gathers more data.

As can be seen in Table 6 (above), the split between those filing a supervisory inquiry and those filing a formal complaint has shifted. In the past, as a percentage, significantly more citizens opted to file a formal complaint than a supervisory inquiry. In 2008, this gap narrowed a bit. The OPM believes the option of speaking directly to an officer's supervisor is proving more compelling over time than the option of filing a formal complaint.

As in years past, Code of Conduct issues (Table 7, below) continue to be the most frequently reported allegation for both supervisory inquiries as well as external formal complaints. This has been the case since the OPM began tracking complaints.

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

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

Table 7. Type of Allegations by Type of Contact by Year

Allegation	2006*						2007						2008					
	SI		External		Internal		SI		External		Internal		SI		External		Internal	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Code of Conduct	193	78%	114	49%	89	39%	240	73%	162	52%	95	38%	374	76%	183	56%	103	34%
Use of Force/ Duty Weapons/ Firearm Discharges	10	4%	37	16%	28	12%	11	3%	74	24%	38	15%	2	0%	37	11%	19	6%
Interviews, Stops, Arrests/ Arrests & Bookings/ Fugitive Warrants/ Care & Transport of Prisoners	8	3%	38	16%	2	1%	14	4%	27	9%	1	<1%	18	4%	44	13%	4	1%
Bias-Based Profiling/ Incident Reporting & Documentation	5	2%	11	5%	2	1%	5	2%	19	6%	1	<1%	4	1%	15	5%	3	1%
Preliminary, Follow-Up & Collision Investigations	10	4%	7	3%	3	1%	17	5%	6	2%	0	0%	9	2%	5	2%	1	<1%
Police Vehicles/ Emergency Use of Police Vehicles/ Pursuit Policy	9	4%	0	0%	76	33%	19	6%	4	1%	100	40%	49	10%	2	1%	124	41%
Secondary Employment/ Attendance & Leave/ Workplace Environment/ Alcohol & Drug Free Workplace	0	0%	2	1%	10	4%	0	0%	1	<1%	9	4%	0	0%	0	0%	18	6%
Internet & Network Computer Use/ Radio & Telecommunications/ Mobile Video Recorder Operation/ Telephone & Mail Protocol	0	0%	3	1%	4	2%	1	0%			2	1%	1	<1%	3	1%	1	<1%
Other	12	5%	21	9%	14	6%	16	5%	20	6%	1	<1%	36	7%	37	11%	32	10%
Unknown							5	2%	1	<1%	2	1%	0	0%	0	0%	0	0%
Total	247	100%	233	100%	228	100%	328	100%	314	100%	249	100%	493	100%	326	100%	305	100%

*2006 figures only include internal allegations from investigations monitored by the OPM.

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

In looking at Table 8 (below), we see that formal external complaint allegations were down in five of the nine area commands in 2008. Of the four area commands experiencing increases, the largest increase was in South Central (+24, +26%).

Table 8. Number of Allegations from Formal External Cases by Area Command by Year

Area Command	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Central East (CE)	46	20%	42	13%	39	12%	-3	-7%
Central West (CW)	25	11%	13	4%	12	4%	-1	-8%
Downtown (DTAC)	43	18%	64	20%	54	17%	-10	-16%
North Central (NC)	11	5%	25	8%	32	10%	7	28%
Northeast (NE)	34	15%	26	8%	35	11%	9	35%
Northwest (NW)	17	7%	16	5%	12	4%	-4	-25%
South Central (SC)	23	10%	19	6%	43	13%	24	126%
Southeast (SE)	16	7%	54	17%	57	17%	3	6%
Southwest (SW)	14	6%	35	11%	25	8%	-10	-29%
Out of City	3	1%	13	4%	5	2%	-8	-62%
Unknown	1	0%	7	2%	12	4%	5	71%
Total	233	100%	314	100%	326	100%	12	4%

Tables 9-13 (below) provide some detail regarding the types and number of allegations brought within each of the area commands.

While overall the total number of complaints in 2008 was down from 2007, there was a rise in certain allegations. Six of the nine area commands saw an increase in the number of Code of Conduct allegations while three saw a decrease. The Downtown area command experienced the highest *percentage* increase in Code of Conduct allegations but was tied with the Southeast command on total *number*. The area command with the highest percentage increase overall, South Central, can also attribute its increase to Code of Conduct allegations.

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

Table 9. Number of Code of Conduct Allegations from Formal External Cases by Area Command by Year

Area Command	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Central East (CE)	25	22%	13	8%	20	11%	7	54%
Central West (CW)	11	10%	5	3%	7	4%	2	40%
Downtown (DTAC)	20	18%	25	15%	41	22%	16	64%
North Central (NC)	2	2%	15	9%	11	6%	-4	-27%
Northeast (NE)	15	13%	16	10%	13	7%	-3	-19%
Northwest (NW)	10	9%	13	8%	3	2%	-10	-77%
South Central (SC)	8	7%	11	7%	16	9%	5	45%
Southeast (SE)	12	11%	30	19%	41	22%	11	37%
Southwest (SW)	7	6%	16	10%	17	9%	1	6%
Out of City	3	3%	13	8%	5	3%	-8	-62%
Unknown	1	1%	5	3%	9	5%	4	80%
Total	114	100%	162	100%	183	100%	21	13%

Use of Force, Duty Weapon, Firearm Discharge allegations (Table 10, below) were down in five of the nine area commands in 2008 versus 2007. Of the four area commands with increases, three were up by one allegation each while one was up by 3.

Table 10. Number of Use of Force, Duty Weapon, and Firearm Discharge Allegations from Formal External Cases by Area Command by Year

Area Command	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Central East (CE)	7	19%	14	19%	1	3%	-13	-93%
Central West (CW)	4	11%	3	4%	2	5%	-1	-33%
Downtown (DTAC)	15	41%	32	43%	7	19%	-25	-78%
North Central (NC)	3	8%	4	5%	2	5%	-2	-50%
Northeast (NE)	1	3%	1	1%	2	5%	1	100%
Northwest (NW)	0	0%	2	3%	3	8%	1	50%
South Central (SC)	2	5%	4	5%	2	5%	-2	-50%
Southeast (SE)	3	8%	9	12%	12	32%	3	33%
Southwest (SW)	2	5%	5	7%	6	16%	1	20%
Total	37	100%	74	100%	37	100%	-37	-50%

The number of Interviews, Stop, & Arrests; Arrests & Bookings; Fugitive Warrants; and Care & Transport of Prisoners allegations (Table 11, below) was up in six of the nine area commands. The largest increase was in the South Central area command where the total number of allegations increased by 12 (600%).

Table 11. Number of Interviews, Stops, & Arrests; Arrest & Bookings; Fugitive Warrants; and Care & Transport of Prisoners Allegations from Formal External Cases by Area Command by Year

Area Command	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Central East (CE)	4	11%	5	19%	7	16%	2	40%
Central West (CW)	5	13%	2	7%	3	7%	1	50%
Downtown (DTAC)	7	18%	4	15%	1	2%	-3	-75%
North Central (NC)	1	3%	2	7%	10	23%	8	400%
Northeast (NE)	7	18%	0	0%	6	14%	6	600%
Northwest (NW)	4	11%	0	0%	0	0%	0	0%
South Central (SC)	8	21%	2	7%	14	32%	12	600%
Southeast (SE)	0	0%	5	19%	2	5%	-3	-60%
Southwest (SW)	2	5%	7	26%	1	2%	-6	-86%
Total	38	100%	27	100%	44	100%	17	63%

Table 12. Deleted.³

The number of Bias-Based Profiling and Incident Reporting & Documentation allegations (Table 13, below) was down city-wide in 2008. Only two area commands within the City saw increases in these allegations. These two area commands were the Northeast and Southeast areas where the number of allegations went up by 3 (150%) and by 2 (200%), respectively.

Table 13. Number of Bias-Based Profiling and Incident Reporting & Documentation Allegations from Formal External Cases by Area Command by Year

Area Command	2006		2007		2008		Change 2007 vs. 2008	
	#	%	#	%	#	%	#	%
Central East	5	45%	6	32%	4	27%	-2	-33%
Central West	1	9%	2	11%	0	0%	-2	-100%
Downtown	0	0%	1	5%	1	7%	0	0%
North Central	0	0%	4	21%	1	7%	-3	-75%
Northeast	1	9%	2	11%	5	33%	3	150%
Northwest	0	0%	0	0%	0	0%	0	0%
South Central	4	36%	1	5%	3	20%	2	200%
Southeast	0	0%	3	16%	1	7%	-2	-67%
Southwest	0	0%	0	0%	0	0%	0	0%
Total	11	100%	19	100%	15	100%	-4	-21%

³ NOTE: Table 12 “Number of Preliminary, Follow-Up, and Collision Investigations Allegations from Formal External Cases by Area Command by Year” was deleted from the 2008 report as there were only 5 allegations levied city-wide.

Investigative Findings for Formal Complaints

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

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

Table 14. IAD Decision per Allegation and OPM Opinion by Type of Formal Complaint by Year
(Formerly entitled, “IAD Recommendations and OPM Opinion per Type of Formal by Year”)

IAD Decision	2006				2007				2008			
	External		Internal		External		Internal		External		Internal	
	#	%	#	%	#	%	#	%	#	%	#	%
Sustained	59	26%	178	78%	36	12%	201	81%	15	7%	122	72%
Inconclusive	14	6%	10	5%	23	7%	11	5%	9	4%	9	5%
Exonerated	33	14%	11	4%	46	15%	6	2%	15	7%	4	2%
Administratively Closed	85	37%	11	5%	155	49%	20	8%	161	70%	21	12%
Unfounded	40	17%	18	8%	54	17%	10	4%	30	13%	11	6%
Resigned Under Investigation	--	--	--	--	--	--	--	--	0	0%	3	2%
Total	231	100%	228	100%	314	100%	248	100%	230	100%	170	100%
OPM Agreement Rate	78%		94%		85%		96%		91%		99%	

--Data not available

OF SPECIAL NOTE: With the policy wherein the chains of command are investigating lower-level class B formal complaints, IAD may or may not also make a discipline recommendation. As a result, IAD decisions on allegations (Table 14, above), i.e., the “outcome” of a case, appear to be fewer in 2008 than in years past while APD decisions (Table 15, below) appear to be much higher. These disparate numbers simply represent a shift in how these data are reported. For example, in previous years, this report would only include numbers for APD decisions on allegations recommended to be sustained by IAD. Since IAD does not directly investigate some of the class B complaints, Table 15 has been renamed to accommodate this change.

Table 15. APD Decision per Allegation and OPM Opinion by Type of Formal Complaint by Year
(Formerly entitled, “APD Decisions on Allegations Recommended to be Sustained by IAD and OPM Opinion per Type of Formal Complaint by Year”)

APD Decision	2006				2007				2008*			
	External		Internal		External		Internal		External		Internal	
	#	%	#	%	#	%	#	%	#	%	#	%
Sustained	51	86%	160	91%	32	89%	182	93%	32	10%	234	81%
Inconclusive	3	6%	4	2%	0	0%	3	2%	21	7%	14	5%
Exonerated	2	3%	2	1%	3	8%	4	2%	31	10%	4	1%
Administratively Closed	1	2%	5	3%	0	0%	3	2%	160	51%	23	8%
Unfounded	2	3%	4	2%	1	3%	3	2%	72	23%	14	5%
Added/Changed at DRB	0	0%	1	1%	0	0%	0	0%	0	0%	0	0%
Total	59	100%	176	100%	36	100%	195	100%	316	100%	289	100%
OPM Agreement Rate	90%		93%		97%		98%		91%		100%	

*No longer dependent on being sustained by IAD.

Table 16 (below) shows the disciplinary action meted to officers who had “sustained” allegations in 2008, i.e., either IAD or the officer’s chain of command, found that the allegation against the officer was true.

Discipline recommendations are presented for each allegation. Since it is possible for a single case to have more than one allegation associated with it, the numbers listed here are not reconcilable with the total number of cases—they will be higher. Additionally, each allegation may have its own discipline associated with it. For example, an officer may have had two allegations lodged against them. Let’s say one allegation was sustained and the officer was exonerated on the other. In this situation, both of those outcomes will be included in Table 16. Similarly, if an officer is named in two different cases and received the same discipline in each case, that discipline will be listed here each time it was meted so, in this example, it would be listed twice in Table 16.

Table 16. Disciplinary Action Taken by APD by Type of Formal Complaint

Disciplinary Action Taken	2006				2007				2008				Change 2007 vs. 2008			
	External #	External %	Internal #	Internal %	External #	External %	Internal #	Internal %	External #	External %	Internal #	Internal %	External #	External %	Internal #	Internal %
Oral Reprimand / Counseling	13	39%	40	31%	10	43%	42	29%	13	41%	81	36%	3	30%	39	93%
Written Reprimand	8	24%	59	45%	6	26%	73	51%	11	34%	92	41%	5	83%	19	26%
Days Suspension	10	30%	29	22%	5	22%	21	15%	8	25%	44	19%	3	60%	23	110%
Indefinite Suspension / Termination	2	6%	2	2%	2	9%	7	5%	0	0%	10	4%	-2	-100%	3	43%
Demotion	0	0%	0	0%	0	0%	1	1%	0	0%	0	0%	0	0%	-1	-100%
Total	33	100%	130	100%	23	100%	144	100%	32	100%	227	100%	9	39%	83	58%

As there were more officers named in complaints in 2008 than in 2007, it stands to reason that there would also be more discipline handed out and this is what the data show. This is particularly true in cases brought internally. Table 16 (above) reports the discipline administered in formal cases only. Officers receiving oral reprimands on internal cases were up by 39 (93%); those receiving a temporary suspension were up by 23 (110%).

The most common discipline received by officers involved in internal complaints was a written reprimand (41%). The most common discipline received by officers involved in external complaints, i.e., citizen complaints, was an oral reprimand (39%). A total of 52 officers received suspensions that ranged in days from 1 to 90. Of these 52 officers, 8 were involved in an external complaint. A total of 10 officers were indefinitely suspended from the APD as a result of an internal complaint lodged against them in 2008. An additional 16 officers that were involved in some complaint resigned or retired from the APD in 2008. Only one of these officers was involved in an external case.

Complainant Information

Tables 17a and 17b (below) show the demographic information for citizens that contacted the OPM with a complaint. In reviewing these data, it is important to consider that complaints can be filed at the OPM in person, over the phone, via e-mail, fax or US mail. Because of the various methods of contacting the OPM available to complainants, at times the OPM finds thorough data collection of all demographic data points somewhat challenging. Often complainants simply do not wish to share this information, particularly over the phone. This challenge proves to be more problematic with supervisory inquiries and contacts as can clearly be seen in the high percentages of missing or unknown data in these two categories. The OPM continues to improve data collection methods and aims to have more complete data in future reports.

In Table 17a (below), we see that the 1,189 citizen contacts comprised 42% (497) White, 25% (299) Black or African American, and 17% (206) Hispanic or Latino. One percent (16) of complainants reported being of Asian/Pacific Islander descent, less than 1 percent (3) reported being American Indian or an Alaska Native, and 1% (11) reported being some race other than those listed here. The race/ethnicity was unknown for 13% (157) of complainants. Please note that this group is not made up of unique individuals since a citizen may file more than one complaint and/or more than one type of complaint if they were involved in more than one incident. While the total number of allegations is up in 2008, the total number of complainants listed in this table is actually down from the previous year (1,221 in 2007 vs. 1,189 in 2008).

Table 17a. Complainant Race / Ethnicity by Type of Contact (External Complaints Only)

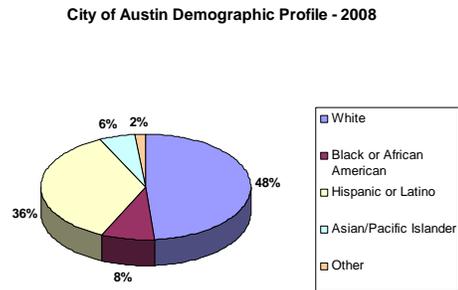
Ethnicity/Race	Supervisory Inquiries		External Formal Complaints		Contacts		Total	
	#	%	#	%	#	%	#	%
White	211	42%	72	43%	214	41%	497	42%
Black or African American	111	22%	56	33%	132	26%	299	25%
Hispanic or Latino	93	18%	35	21%	78	15%	206	17%
Am. Indian/Alaska Native	2	<1%	1	1%	0	0%	3	<1%
Asian/Pacific Islander	7	1%	1	1%	8	2%	16	1%
Other	4	1%	0	0%	7	1%	11	1%
Unknown	76	15%	3	2%	78	15%	157	13%
Total	504	100%	168	100%	517	100%	1,189	100%

As can also be seen in Table 17a (above) is that, as a percentage, significantly more Black or African American complainants opted to pursue a formal complaint than opted to pursue a supervisory inquiry (33% Formal vs. 22% Supervisory) as opposed to White (43% Formal vs. 42% Supervisory) or Hispanic/Latino complainants (21% Formal vs. 18% Supervisory).

Table 17b (below) provides the race/ethnicity data for unique individuals. When looking at just unique complainants, the race/ethnicity percentages remain relatively static thereby indicating that no one racial/ethnic group is overrepresented when it comes to filing multiple complaints.

Table 17b. Unique Complainant Race / Ethnicity for All Contact Types (External Complaints Only)

Ethnicity/Race	Total	
	#	%
White	460	41%
Black or African American	285	26%
Hispanic or Latino	198	18%
Am. Indian/Alaska Native	3	<1%
Asian/Pacific Islander	16	1%
Other	11	1%
Unknown	139	13%
Total	1,112	100%



Source: Department of Planning, City of Austin

When compared to the City of Austin demographic profile, however, a different picture emerges. Whites tend to file complaints in only a slighter lower percentage relative to their representation in the population (41% of all complaints filed versus making up 49% of the Austin population). Blacks/African Americans file at a rate about three times higher than their percentage of the population (filing rate is 26% versus making up 8% of the Austin population). Hispanics/Latinos file complaints at approximately half of their representation in the population (18% of complaints filed; 36% of the population). Removing complainants that do not reside within the Austin city limits does not create a significant difference.

When looking at Table 18 (below), the largest percentage of complainants is in the 50 years of age and over group. The number of complainants in this age group almost doubled in 2008 (209 in 2007 versus 391 in 2008).

Table 18. Complainant Age by Type of Contact (External Complaints Only)

Complainant Age	Supervisory		Complaints		Contacts		Total	
	#	%	#	%	#	%	#	%
Teens (19 or less)	2	<1%	4	2%	6	1%	12	1%
Twenties (20-29)	105	21%	28	17%	108	21%	241	20%
Thirties (30-39)	94	19%	44	26%	97	19%	235	20%
Forties (40-49)	80	16%	38	23%	101	20%	219	18%
Fifty and over (50+)	186	37%	52	31%	153	30%	391	33%
Not Reported	37	7%	2	1%	52	10%	91	8%
Total	504	100%	168	100%	517	100%	1,189	100%

The gender composition of Austin is approximately 51% male and 49% female. When looking at Table 19 (below), it can be seen that males file formal complaints at a rate slightly higher than their representation in the population while females file at a rate that is slightly lower.

Table 19. Complainant Gender by Type of Complaint (External Complaints Only)

Complainant Gender	Supervisory		External Formal		Contacts		Total	
	#	%	#	%	#	%	#	%
Female	246	49%	67	40%	206	40%	519	44%
Male	251	50%	101	60%	300	58%	652	55%
Not Reported	7	1%	0	0%	11	2%	18	2%
Total	504	100%	168	100%	517	100%	1,189	100%

Subject Officers

In this section, this report will present a bit of background information on the officers that were subjects of complaints in 2008. This information is provided only for complaints brought forth by citizens, that is, external complaints only.

Please note that it is possible for a single officer to be involved in more than one complaint and in more than one type of complaint. Therefore, the data presented in Tables 20, 21, and 22 (below) may count the same officer more than once if that officer were the subject of more than one type of complaint.

Table 20 (below) shows that for external complaints, i.e., those involving citizens, the average length of time an officer had served on the force until the date of an incident was 7 years for supervisory inquiries and 8 years for formal complaints. This average length of service is consistent with what the OPM has reported in the past. Given the consistency of these durations, the OPM is once again recommending that APD offer a review of policies and practices to all officers around the sixth year of service.

Table 20. Years of Service of Subject Officers (External Complaints Only)

Years of Service	2007		2008	
	Supervisory Inquiries	Formal Complaints	Supervisory Inquiries	Formal Complaints
Average tenure	9	9	7	8
Longest tenure	29	33	30	30
Shortest tenure	1	<1	<1	<1
Tenure midpoint	7	7	6	6
Most common tenure	5	6	1	6

In Table 21 (below), we see that male officers' representation in complaints is consistent, albeit just slightly higher, than the overall make-up of the force. Male officers were the subject of external formal complaints 91% of time but make up 88% of the police force.

Again, caution should be used when reading Table 21. This table is a report by gender only. It is not a count of unique officers since an officer may be involved in more than one complaint. In other words, while this report gives a total of 760 officers, these are not unique officers.

Table 21. Subject Officer Gender by Type of Complaint (External Complaints Only)

Gender	Supervisory Inquiries		External Formal Complaints		Total		Percent of All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	39	8%	28	9%	67	9%	189	12%
Male	423	92%	270	91%	693	91%	1,421	88%
Total	462	100%	298	100%	760	100%	1,610	100%

Table 22 (below) depicts the race/ethnicity of officers referenced in complaints in 2008. Note that it is also not a count of unique officers since an officer may be involved in more than one complaint or type of complaint. With that said, the race and ethnicity of the subject officers tracks to the composition of the APD.

Table 22. Subject Officer Race/Ethnicity by Type of Complaint (External Complaints Only)

Race/Ethnicity	Supervisory Inquiries		External Formal Complaints		Total		Percent of All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
White	299	65%	214	72%	513	68%	1,094	68%
Black or African American	56	12%	16	5%	72	9%	164	10%
Hispanic or Latino	99	21%	61	20%	160	21%	330	20%
Asian/Pacific Islander	8	2%	7	2%	15	2%	21	1%
American Indian	0	0%	0	0%	0	0%	1	<1%
Total	462	100%	298	100%	760	100%	1,610	100%

Of the 902 formal complaints and supervisory inquiries filed in 2008 (Table 1), 633 unique APD officers were subjects of complaints, meaning that 633 out of 1,610 sworn officers, or 39% of all APD-sworn personnel, were the subject of one type of complaint

or another, either an internal or an external complaint. This particular percentage certainly indicates that there is room for improvement regarding officer conduct. Note that officers referenced in multiple complaints were only counted once in developing the unique number of subject officers. Table 22 (above) does not sum to 633 because of the officers that were referenced in both types of complaints as well as those involved in internal formal complaints.

Table 23 (below) depicts the gender of officers referenced in a single complaint versus those involved in multiple complaints in 2008. This table shows a distinct difference in the make-up of repeat subject officers as opposed to single-case officers. Here we see that repeat subject male officers are represented 7% more often than their total representation on the police force.

Table 23. Gender of Repeat Subject Officers, Single-Case Subject Officers, and All APD Sworn Personnel (External Cases Only)

Gender	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
Female	8	5%	48	14%	56	11%	189	12%
Male	157	95%	297	86%	454	89%	1,421	88%
Total	165	100%	345	100%	510	100%	1,610	100%

Table 24 (below) again depicts the race/ethnicity of officers referenced in complaints in 2008 although in this table, the comparison is between repeat subject officers and those with just a single case filed against them. Looking at the data in this way, we can see that there is no one race/ethnic group that is disproportionately represented compared to the composition of APD as a whole.

Table 24. Race/Ethnicity of Repeat Subject Officers, Single-Case Subject Officers, and All APD Sworn Personnel (External Cases Only)

Race/Ethnicity	Repeat Subject Officers		Single Case Subject Officers		Total		All APD Sworn Personnel	
	#	%	#	%	#	%	#	%
White	111	67%	232	67%	343	67%	1,094	68%
Black or African American	17	10%	31	9%	48	9%	164	10%
Hispanic or Latino	35	21%	75	22%	110	22%	330	20%
Asian/Pacific Islander	2	1%	7	2%	9	2%	21	1%
American Indian	0	0%	0	0%	0	0%	1	<1%
Total	165	100%	345	100%	510	100%	1,610	100%

Table 25 (below) depicts the years of service of single versus repeat subject officers within the Austin Police Department in 2008. The range of experience varies widely from less than one year to 30 years of experience. There is not any significant difference between repeat- and single-case officers in terms of years of service. Most noticeable is

that, as has been shown in years past, officers tend to become the subject of complaints right around their seventh to ninth year of service. The OPM recommends that special attention and/or training be given to officers that fall within this tenure.

Table 25. Years of Service of Subject Officers for 2008 – Repeat vs. Single Case Officers (External Cases Only)

Years of Service	Repeat Subject Officers	Single Case Subject Officers
Average tenure	7	9
Longest tenure	30	30
Shortest tenure	<1	<1
Tenure midpoint	6	6
Most common tenure	1	<1

Table 26 (below) depicts the age of single versus repeat subject officers referenced in complaints in 2008. On average, there is only a slight disparity in age between repeat- and single-case subject officers.

Table 26. Age of Subject Officers for 2008 – Repeat vs. Single Case Officers (External Cases Only)

Age of Officers	Repeat Subject Officers	Single Case Subject Officers
Average age	35	38
Greatest age	54	63
Lowest age	23	23
Age midpoint	35	37
Most common age	36	38

Recommendation Memos

In 2008, the Citizen’s Review Panel issued 7 memos to the Chief with recommendations or expressing concerns. These recommendations/concerns and the response from APD are listed in Table 27 (below).

Table 27. OPM and CRP 2008 Recommendations and APD Response

Type of Recommendation	Recommending Party	Recommendation	APD Response
Global Recommendation	Citizen Review Panel	<p>Recommended the video from this incident be used as a training tool to illustrate how not to approach a suspect's vehicle.</p> <p>Recommended that Use of Force policies be reformed to address any and all significant force issues and tactics when they are employed on the public or when they are investigated by a supervisor or IAD.</p> <p>Suggested that APD make citizens aware of the complaint process if they choose to address the issue further through APD or the OPM.</p> <p>Recommended that APD devise and implement regulated mandatory training and or re-certification in patrol operations, defensive tactics, etc. for officers performing in those capacities.</p> <p>Also, if such training and/or re-certification initiatives are implemented, recommended that direct line supervisors be tasked with monitoring and be held accountable so that all officers are in compliance of the training. Failure to maintain currency in training would result in reprimands or discipline for the officer and supervisor responsible for monitoring the training.</p>	None on file with OPM.

Recommendations – cont’d

Type of Recommendation	Recommending Party	Recommendation	APD Response
Specific Recommendation	Citizen Review Panel	Requested a case be reopened and that Internal Affairs conduct a thorough investigation that includes talking to the complainant and witnesses again as well as investigating all allegations.	Memo from Chief received which advised that the investigation was appropriate, the conclusions “well-reasoned,” and that the case will remain unfounded.
Global Concern	Citizen Review Panel	<p>Memo expressing a concern that IAD may not have done as thorough a job as possible in its’ investigation of a specific case.</p> <p>Commended the Chief for decisive disciplinary action while also expressing concern the discipline may have been too harsh.</p> <p>Concerned there might be a pattern of discrimination within APD and would, therefore, be paying special attention to the issue.</p>	None on file with OPM.
Global Recommendation	Citizen Review Panel	<p>Recommended more complete documentation at the supervisor level regarding situations involving arrest, release, and re-arrest</p> <p>Recommended a clear policy regarding who has the authority to release individuals being held in custody.</p>	None on file with OPM.

Recommendations – cont'd

Type of Recommendation	Recommending Party	Recommendation	APD Response
Global Recommendation	Citizen Review Panel	<p>Recommended that APD review its policies and procedures and provide additional guidance, clarification, and training on how to handle civil disputes with an emphasis on the need to maintain a neutral attitude and refrain from taking sides in civil legal disputes.</p> <p>Recommended someone be assigned to review these issues and provide feedback to the CRP on how these issues have been addressed.</p>	None on file with OPM.
Specific Recommendation	Citizen Review Panel	Requested that the Chief personally take appropriate action to de-escalate a civil situation between an officer and one of the officer's neighbors.	None on file with OPM
Global Recommendation	Citizen Review Panel	<p>Recommended that whenever an officer discharges a firearm in performance of his/her official duty, internal affairs should conduct an administrative investigation.</p> <p>Recommended that all discharge of firearm incidents be tracked and that as a companion to the Administrative Inquiry process, have all incidents submitted to the Critical Incident Review Board pursuant to existing APD policy.</p>	None on file with OPM

Appendix I: Community Outreach Conducted in 2008



Office of the Police Monitor

OUTREACH EFFORTS January – December 2008

- January 8 Dolores Catholic Church
Montopolis Recreation Center
Ruiz Library
Parker Lane Methodist Church
- January 15 OPM South Central Community Meeting @ St. Ignatius Church
- January 17 SafePlace Community Meeting
- January 17 MLK Celebration film presentation and panel discussion of “Every Mother’s Son” @ Carver Library
- January 21 MLK Celebration March and Community Fair @ Huston Tillotson
- January 23 Bowie High School Community Fair
- January 30 Downtown Austin Alliance meeting
- February 1 Austin Housing Authority meeting with Mary Gonzalez @ North Loop Apartments
- February 8 Greater Austin Hispanic Chamber of Commerce Annual Banquet, Hilton Hotel
- February 26 Presentation to University Area Partners, St. Austin Catholic Church
- February 27 Presentation to Brentwood Neighborhood Association @ North Austin Lions Club

February 28 OPM Central West Community Meeting @ North Loop Housing Community

March 6 Thurmond Heights Housing Community meeting

March 18 Walnut Creek Neighborhood Association meeting with leaders @ St. Mark Community Center

March 21 Gracywood Neighborhood Association meeting with leader @ @ Café Java

March 27 Austin Independent School District Middle School Action Team meeting @ Martin Middle School

March 28 Presentation to parents @ Pillow Elementary School

March 31 Cesar Chavez Awards dinner @ Conley-Guerrero Senior Activity Center

April 4 Lifeworks Emergency Shelter Open House @ Lifeworks

April 10 OPM North Central Community Meeting @ Thurmond Heights Community

April 15 Greater Austin Forum on Diversity & Inclusion meeting @ Austin Energy

April 17 National Coalition Building Institute race relations training

April 19 Southwest Key Grand Opening @ 6002 Jain Lane

April 25 Presentation to parents @ Burnet Middle School

April 29 Catholic Charities of Central Texas luncheon @ Hilton Hotel

May 5 Meeting with Burnet Middle School principal

May 7 Meeting with University of Texas Organizational Diversity and Development @ University of Texas

May 14 Austin Partners in Educational Awards Banquet @ Hilton Hotel

May 15 Hispanic Scholarship Consortium @ Mansion at Judges Hill

May 19 Focus group session at Austin Learning Center

May 22 Focus group session at Crockett High School

May 23 University of Texas Human Development Center panel discussion @ Jester Dormitory

May 23 Austin Police Department “A Tu Lado” outreach at Cameron Green Apartments

May 27 Focus group sessions at Lanier High School

May 29 Meeting with KLRU’s outreach director @ KLRU

June 19 Juneteenth Celebration outreach @ Rosewood Park

June 25 Downtown Austin Alliance @ 211 E. 7th St.

August 7 United Way/OPM Stakeholder meeting @ United Way

August 13 El Buen Samaritano community fair @ El Buen

August 14 University of Texas Resident Fair @ San Jacinto Resident Hall

Sept. 17 OPM stakeholder meeting @ Rutherford Campus

Sept. 27 Hispanic Health Fair @ Travis County Expo Center

October 7 National Night Out @ Turner Roberts Recreation Center

October 22 Greater Austin Hispanic Chamber of Commerce Impact Leaders luncheon @ Green Pastures

October 28 APD Northwest Commander’s Forum

October 29 APD Community Symposium @ Airport Hilton Hotel

Nov. 5 Presentation to students @ University of Texas School of Social Work

Nov. 10 Meeting with Anti-Defamation League

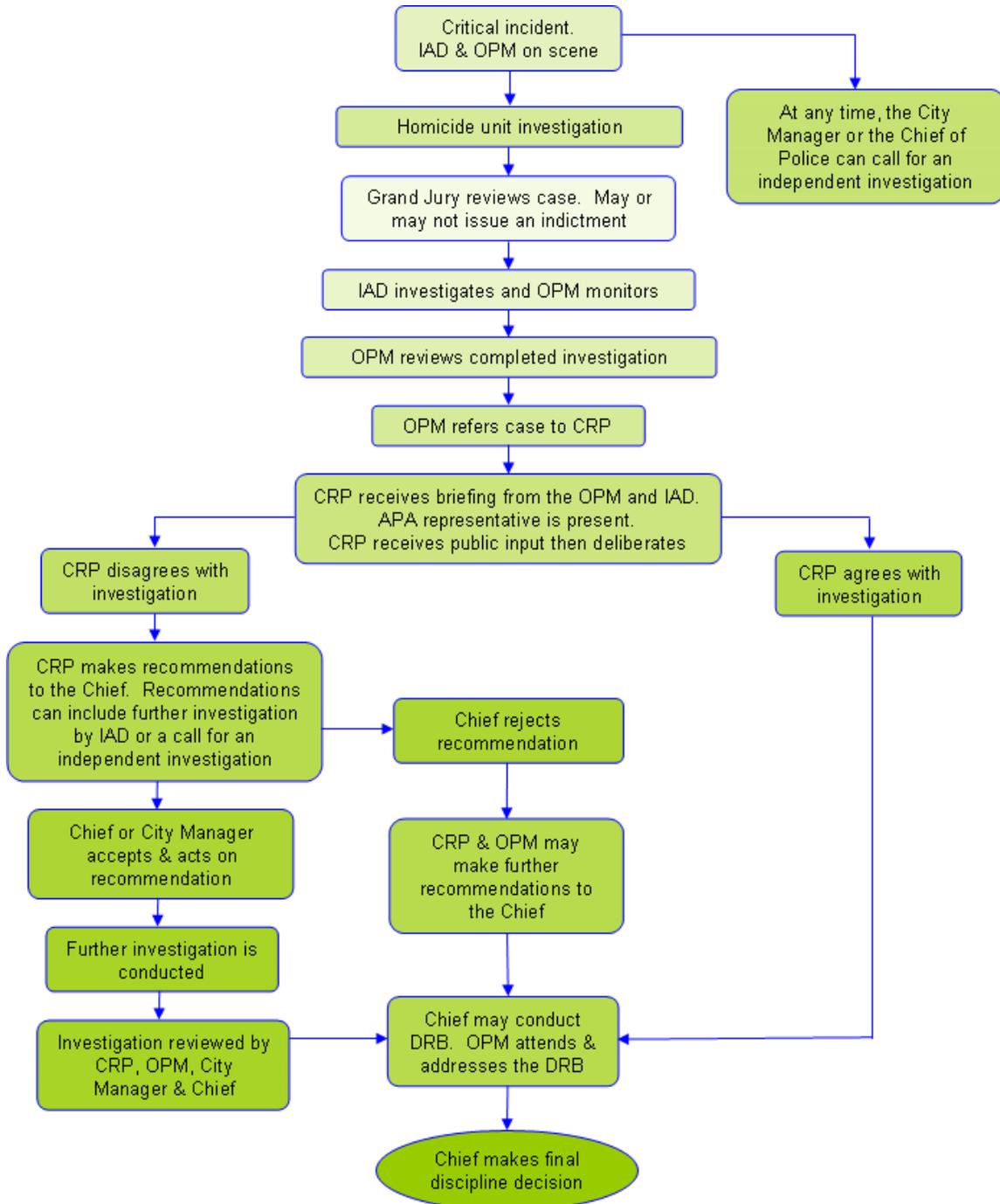
Nov. 12 OPM Northwest Community Meeting @ Austin Asian American Cultural Center

Nov. 15 Stand Down community fair @ Pan American Recreation Center

Nov. 17 Meeting with staff @ Mexican American Cultural Center

Nov. 18 Greater Austin Hispanic Chamber of Commerce Impact Leaders Luncheon @ Wyndham Hotel

Appendix II: Critical Incident Monitoring Process



OPM: Office of the Police Monitor **APD:** Austin Police Department **IAD:** Internal Affairs Division

APA: Austin Police Association **SI:** Supervisory Inquiry **CRP:** Citizen Review Panel

DRB: Disciplinary Review Board

Appendix III: Meet and Confer Contract, Article 16

Ratified October 1, 2008

ARTICLE 16

CITIZEN OVERSIGHT OF THE AUSTIN POLICE DEPARTMENT

Section 1. Citizen Oversight

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

b) The purpose of Citizen Oversight is:

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

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

d) Except as specifically permitted in this Article the Citizen Oversight process, regardless of its name or structure, shall not be used or permitted to gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint of misconduct by an officer. There shall be no legal or administrative requirement, including but not limited to subpoena power or an order from the City Manager or the Department, that an officer appear before or present evidence to any individual, panel, committee, group, or forum of any type involved in Citizen Oversight. This provision has no application to any Independent Investigation authorized by the Chief of Police or the City Manager, regardless of whether the Independent Investigation was recommended by a Panel or Police Monitor, or to any hearing of an appeal of disciplinary action pursuant to this Agreement and/or Chapter 143 of the Texas Local Government Code. Police officers remain subject to orders or subpoenas to appear and provide testimony or evidence in such investigations or hearings.

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

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

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

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

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

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

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

f) Neither the Police Monitor nor the Internal Affairs Representative(s) may remain in the Dismissal Review Hearing (or any other administrative hearing conducted for the purpose of

determining whether the Department shall take disciplinary action against an officer for alleged misconduct) while the chain of command discusses the final classification and/or appropriate discipline, if any, to be imposed. The final classification of an allegation of misconduct is within the sole discretion of the Chief of Police, subject to the officer's right of appeal of any discipline imposed as provided by Chapter 143 of the Texas Local Government Code and this agreement.

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

Section 3. Citizen Review Panel ("Panel")

a) Function

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

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

b) Qualifications

To be eligible for appointment to the Panel, applicants must not have a felony criminal conviction, received deferred adjudication for a felony, or be under felony indictment. Prior to appointment, Panel members must submit to a criminal background investigation to determine their eligibility to serve on the Panel. A felony conviction, felony indictment, or felony deferred adjudication, after appointment, shall result in the immediate removal of the member from the Panel by the City Manager.

c) Training

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

(1) Attend a three to four (3-4) day training by APD tailored specifically for Panel members including, at a minimum, the following:

- a. Special Investigations Unit;
- b. Officer Involved Shootings;
- c. Response to resistance;
- d. The Police Training Academy;
- e. Crisis Intervention Team;

- f. Firearms, including FATS training;
- g. Bomb and SWAT;
- h. Ride-outs on at least two shifts in different parts of the City; and
- i. A presentation by the Association.

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

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

d) Resign to Run

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

e) Panel Review Process

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

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

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

f) Nature of Proceedings

(1) The review of any case by the Panel shall not be conducted as a hearing or trial. Except for the receipt of public input/communications as provided by this Section or an Independent Investigation authorized by this Article, the Panel shall not gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint. The Panel shall not have the authority to subpoena witnesses. There shall be no administrative requirement,

including but not limited to an order from the City Manager or the Department, that a police officer appear or present evidence to the Panel. The Panel shall immediately forward any information or evidence of which it becomes aware to the Chief of Police through the Police Monitor.

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

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

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

g) Private Session

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

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

a. The Association’s representative will not participate in the briefing and is present only as an observer, with the following exceptions:

(i) The Association representative may request that the Police Monitor allow the representative to present information relevant to a case before the Panel.

(ii) A Panel member may request that the Association representative present information relevant to a case before the Panel.

(iii) Any information provided by the Association representative shall be presented in a neutral manner.

- b. The Association representative may not be involved in the case as a witness, investigator, relative, or officer in the chain of command.
- c. Information in the possession of the Association representative as a result of participation in such briefing shall not be disclosed or revealed other than as necessary as a part of official Association business in monitoring and enforcing this agreement, or in the normal course of dispute resolution processes under this agreement.

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

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

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

h) Public Session and Comments

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

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

i) Deliberations

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

j) Action and Recommendations

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

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

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

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

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

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

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

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

Section 4. Independent Investigation

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

- (1) An employee of the City of Austin;
- (2) An employee of the Office of the Police Monitor; or
- (3) A volunteer member of the Panel.

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

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

Section 5. Public Report of Independent Investigation

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

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

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

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

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

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

Section 6. Public Communication

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

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

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

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

Section 7. Dispute Resolution

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

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

Section 8. Access to Section 143.089(g) Files

a) Information concerning the administrative review of complaints against officers, including but not limited to Internal Affairs Division files and all contents thereof, are intended solely for the Department's use pursuant to Section 143.089(g) of the Texas Local Government Code (the 143.089(g) file.). All records of the Police Monitor's Office that relate to individual case investigations and the APD 143.089(g) file, although same are not APD files or records,

shall have the same statutory character in the hands of the Police Monitor, and shall not be disclosed by any person, unless otherwise authorized by law. Public access to such information is strictly governed by this agreement and Texas law. To the extent necessary to perform their duties, individuals involved in the Citizen Oversight process are granted a right of access to the information contained within the 143.089(g) files of police officers.

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

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

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

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

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

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

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

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

Section 10. Partial Invalidation and Severance

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

Section 11. Remedies

a) Benefit of the Bargain

The CITY expressly retains its right and ability to proceed with the determination of whether or not police misconduct occurred and the authority of the Chief to impose disciplinary action. The ASSOCIATION recognizes the fact that such reservations are essential to this Agreement. No dispute concerning the operation and function of the Police Monitor’s Office or the Panel shall impair or delay the process of the Chief’s investigation and determination of whether or not police misconduct occurred and the degree of discipline, if any, to impose. This includes internal dispute resolution procedures in this Agreement, any grievance process or arbitration, and any litigation over such issues. In other words, any such dispute resolution processes may proceed, as set forth in this contract or by law, but the disciplinary process may likewise and simultaneously proceed to its conclusion without delay. The statutory time period for the Chief of Police to take disciplinary action against an officer shall be tolled to the extent of any period in which a court order, injunction, or TRO, obtained by the officer involved or the Association on behalf of the officer, halts the Department’s investigative or disciplinary process. In no event will the actual time exceed 180 calendar days. The parties agree that the processes in this Agreement, together with the remedies set forth and the procedural protections and rights extended to officers in this Agreement are adequate remedies at law for all disputes arising under this Article.

b) Expedited Arbitration

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

Section 12. Preemption

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