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November 8, 2005

PUBLIC SAFETY COMMITTEE
Oakland, California

Chairperson Reid and Members of the Committee:

Subject: **CITIZENS' POLICE REVIEW BOARD 2005 SEMI ANNUAL REPORT**

Pursuant to City of Oakland Ordinance number 12454 C.M.S. adopted on November 12, 2002, the Citizens' Police Review Board must produce a semi-annual and annual report. The Citizens' Police Review Board submits its 2005 semi annual report pursuant to section 6, paragraph C, subdivision 3 of the ordinance.

Respectfully submitted,

JOYCE M. HICKS
Citizens' Police Review Board
Executive Director

APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE:

OFFICE OF THE CITY ADMINISTRATOR

Item: _____
Public Safety Committee
November 8 2005



Board Members and Term Expiration Dates

Mario Andrews	February 15, 2006
John Batarse	February 15, 2006
Angela Cheung	February 15, 2006
Corey Dishmon	February 15, 2006
Gregory E. Harris	February 15, 2007
Jamilah Scates	February 15, 2006
Charliana Michaels	February 15, 2007
Barbara Montgomery	February 15, 2007
Beneba Thomas	February 15, 2007
Cheryl Anderson (alternate)	February 15, 2006
Andrew Radlow (alternate)	February 15, 2006

CPRB Independent Counsel

Antonio Lawson

Board Counsel

CPRB Mission Statement

The Citizens' Police Review Board is committed to ensuring that Oakland has a professional police department, whose members behave with integrity and justice. As representatives of the community, our goal is to improve police services to the community by increasing understanding between community members and police officers. To ensure police accountability, we provide the community with a public forum to air its concerns on policy matters and individual cases alleging police misconduct.

Citizens' Police Review Board

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Deborah Edgerly, City Administrator
Joyce M. Hicks, Executive Director

October 13, 2005

Honorable Mayor, Council Members of the City of Oakland, and Fellow Oakland Residents:

On behalf of the members of the Citizens' Police Review Board (CPRB), I am pleased to present you with CPRB's 2005 Semi-Annual Report. During the first six months of 2005 the Board welcomed two new Board members, Gregory Harris and Charliana Michaels, to replace outgoing Board members Tim Wan and Roland Walker. The Board also elected its chair, Jamilah Scates, and Vice-Chair, Corey Dishmon.

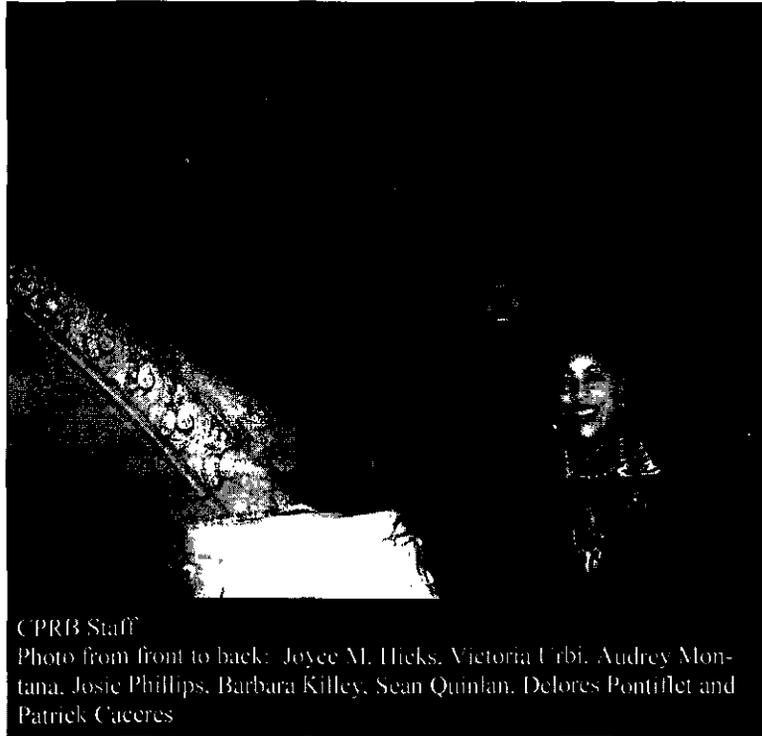
The Board saw a 32% decrease in complaints filed during the first six months of 2005 over complaints filed in the same period in 2004. In total the Board resolved 42 complaints, ten through evidentiary hearings and thirty-two by administrative closure. Of the ten hearings held, the Board forwarded five disciplinary recommendations for sustained allegations for five complaints. The City Administrator upheld three and denied one of the five recommendations forwarded. Her decision on one complaint is currently pending.

On June 7, 2005, the Oakland City Council unanimously voted in favor of the CPRB to continue hearing complaints if a tort claim is filed with the City of Oakland, so long as litigation has not been filed. This ruling has positively impacted officer compliance with CPRB investigations. In the first six months of 2005, 92% of officers replied to interviews notices in a timely manner and all officers subpoenaed for hearings have appeared.

CPRB staff also partnered with the Oakland Police Department (OPD) and U.C. Berkeley's Goldman School of Public Policy to hold CPRB's first policy forum on implementing a Personnel Information Management System (PIMS) in OPD. The Board looks forward to more future partnerships and continuing the analysis of OPD policies and relations with the community. The Board and staff thank you for your continued support in the investigation and resolution of citizens' complaints of police misconduct.

Sincerely,

Jamilah Scates, CPRB Chair



CPRB Staff
Photo from front to back: Joyce M. Hicks, Victoria Urbi, Audrey Montana, Josie Phillips, Barbara Killey, Sean Quinlan, Delores Pontiflet and Patrick Caceres

CPRB Staff

Joyce M. Hicks

Patrick Caceres

Audrey Montana

Sean Quinlan

Victoria Urbi

Barbara Killey

Delores Pontiflet

Josie Phillips

Executive Director

Policy Analyst / Outreach Coordinator

Investigator

Investigator

Investigator

Administrative Hearing Officer (CAO)

Executive Assistant to the Director

Administrative Analyst (CAO)

Executive Summary

The Citizens' Police Review Board is required to submit a statistical report to the Public Safety Committee "regarding complaints filed with the Board, the processing of these complaints and their dispositions" at least twice a year. (Ordinance No. 12454 C.M.S., section 6(C)(3).) This report is submitted to fulfill this requirement.

During the first six months of 2005, the Board received 47 complaints, filed by 50 individuals. These individuals were primarily African-Americans, over the age of 44 years old. In the first six months, the number of complainants between the ages of 55 and 64 reported the largest number of complaints. The number of complaints received for this same time last year is 32% less than in 2004.

The allegations most frequently filed with the Board were: (1) officers' failure to act; (2) excessive force; and (3) improper stops or detentions. The alleged incidents occurred most frequently in Council Districts 3 and 1.

During the first six months of 2005, the Board resolved 42 complaints; 10 complaints through evidentiary hearings and 32 through administrative closures. At evidentiary hearings, the Board sustained 23% of the allegations it heard and concluded that the officers were justified in their actions for 13% of the allegations. The Board found that 23% of the allegations it heard did not occur and voted not to sustain 40% of the allegations. In the first six months of 2005, the most sustained

allegations were for failures to act, either to write reports or to investigate.

The Board forwarded five disciplinary recommendations for sustained allegations for five complaints. The City Administrator upheld 75%, or three recommendations, of the five forwarded. Her decision on one complaint is currently pending.

Officer compliance with interview notices and hearing subpoenas continues to improve. Nine-two percent of officers replied to interview notices in a timely manner and all officers subpoenaed for hearings have appeared.

The Board also welcomed two new Board members to replace two outgoing members. On June 7, 2005, the Oakland City Council unanimously voted in favor of the CPRB to continue hearing complaints if a tort claim is filed with the City of Oakland, so long as litigation has not been filed.

In the first six months of 2005, the Board made one policy recommendation to OPD on conducting ruses which has been declined. Regarding past policy recommendations, the Board is awaiting the release of the OPD crowd control policy and its recommendations on transport of vehicle passengers if their vehicles are towed due to OPD actions. Prior recommendations on Welfare and Institutions Code section 5150 detentions and on officers' duty to cooperate with CPRB investigations have been adopted.

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INTRODUCTION

Purpose of this Report

Oakland City Council Ordinance No. 12454 C.M.S., section 6, subdivision C, paragraph 3 requires the Citizens' Police Review Board (CPRB) to "issue a detailed statistical report to the Public Safety Committee regarding complaints filed with the Board, the processing of these complaints and their dispositions" at least twice a year. This report is submitted pursuant to that requirement.

CPRB History

The Oakland City Council established the Citizens' Police Review Board on April 15, 1980, to review certain complaints of misconduct by police officers or park rangers, conduct fact-finding investigations, and make advisory reports to the City Administrator. On July 30, 1996, the City Council expanded the Board's original jurisdiction to include complaints involving: (1) the excessive use of force; or (2) communications of bias based upon an individual's legally protected status (race, gender, national origin, religion, sexual orientation or disability). (City of Oakland Ordinance #11905 C.M.S., § 5 subd. (A)(1).)

Simultaneously, the City Council also granted the Board supplemental jurisdiction over other non-force conduct, subpoena power over police officers and park rangers and authorization to mediate final and binding resolution of complaints (City of Oakland Ordinance #11905 C.M.S., §§ 5 subd. (B)(1), 6 subd. (G)(2) and 7.)

In 2002, the Oakland City Council further expanded the Board's jurisdiction and powers. On July 30, 2002, the City Council granted the Board original jurisdiction over all complaints filed against an Oakland police officer or park ranger and expanded the Board's size from nine members to twelve members, with three of the nine members to serve as alternates. (City of Oakland Ordinance #12444 C.M.S., §§ 5 and 3.)

Additionally, the City Council granted the Board the option of holding evidentiary hearings using three-member panels and permitted Board members to review confidential records from the Oakland Police Department in closed session. (City of Oakland Ordinance #12444 C.M.S., § 6 subds. (G)(11) and (F)(4).)

On July 30, 2002, the City Council added a policy analyst to the Board's staff and required the Board to make complaint forms available to members of the public at libraries, resource centers, and recreation centers. (City of Oakland Ordinance #12444 C.M.S., §§ 6 subd. (E)(1) and 5(B).) Finally on November 12, 2002, the City Council further refined the amendments to the CPRB ordinance and legislated the following: the CPRB staff may make recommendations to the City Administrator regarding cases that are in litigation, CPRB investigations may take up to 180 days from the initial date of filing as opposed to the previously legislated 60 days, and OPD's Internal Affairs Division and the CPRB will use the same complaint form with sequential numbering. (City of Oakland Ordinance #12454 C.M.S., §§ 6 subd. (G)(10)(b) and (8) and 5 subd. (B).)

ANALYSIS OF COMPLAINTS FILED IN 2005

Number of Complaints Filed

Between January 1 and June 30, 2005, the CPRB received 47 complaints filed by 50 individuals. *Figure 1* displays the number of complaints that were filed for each month. The number of complaints received for this same time last year is 32% less than in 2004. Based on these figures, CPRB estimates that the total number of complaints filed for the year will be approximately 10%-15% less than in 2004.

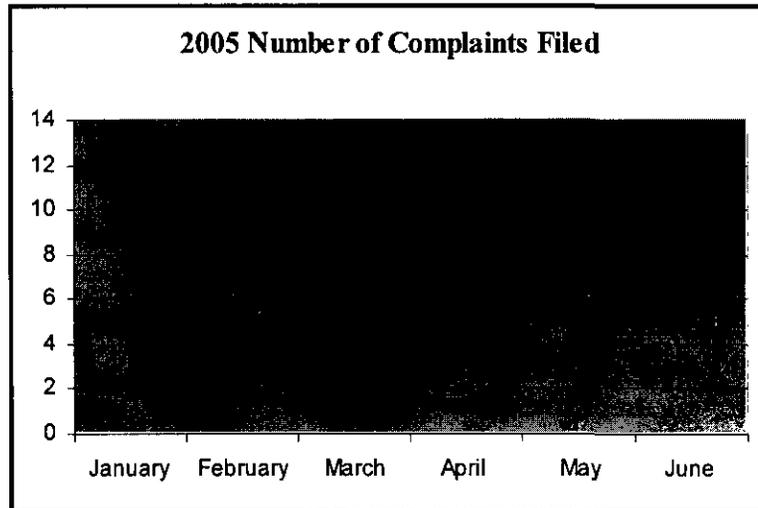


Figure 1

Figure 2 shows the number of complaints filed per month during the same time period in 2004. In 2004, the Board received 69 complaints during the first six months. These complaints were filed by 75 individuals. In 2004, there was a large increase in the May and June months not seen in 2005.

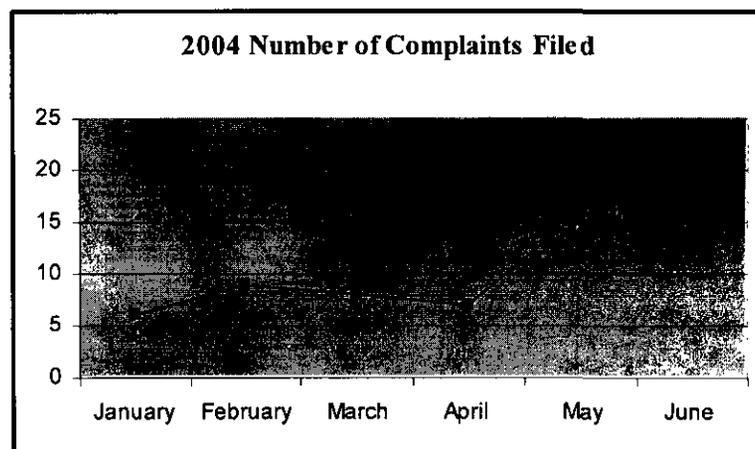


Figure 2

Race and Gender of Complainants

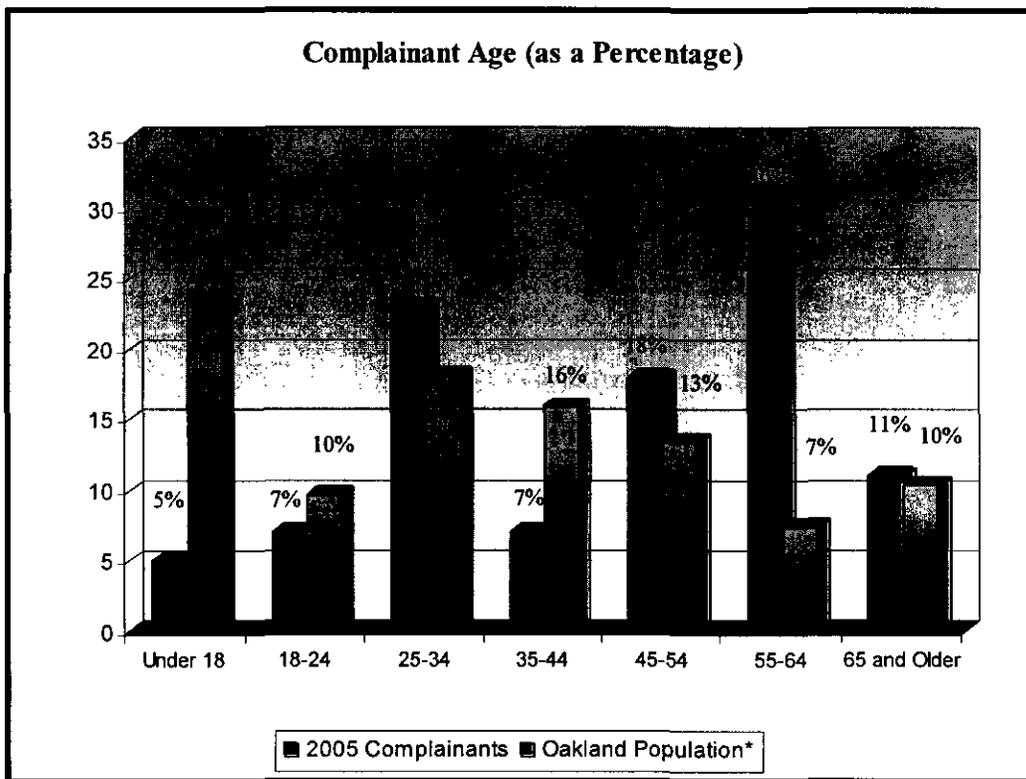
When complainants of an unknown race were removed from the data, 70% of the 2005 complainants were African-American, and 50% of the complainants were African-American males.

Race	Gender	No. of Complainants	Percent
African-American	F	9	20%
African-American	M	23	50%
Caucasian	F	3	7%
Caucasian	M	4	9%
Hispanic-American	F	0	0%
Hispanic-American	M	3	7%
Hispanic-American	Unknown	1	2%
Other	F	0	0%
Other	M	3	7%

Figure 3

Age of 2005 Complainants

Among the complainants who provided information about their ages, the greatest number of complainants fell within two age categories: 55-64 years old and 25-34 years old. See *Figure 4* for a comparison of the complainants' ages with the Oakland population.



*Source: <http://www.oaklandnet.com/government/hcd/policy/docs/Census/Census1b.pdf>

Figure 4

Allegations Filed in 2005

In the first six months of 2005, complainants most frequently alleged: (1) failure to act (19% of allegations filed); (2) excessive force (13% of allegations filed); and (3) improper detention/stop (13% of allegations filed).

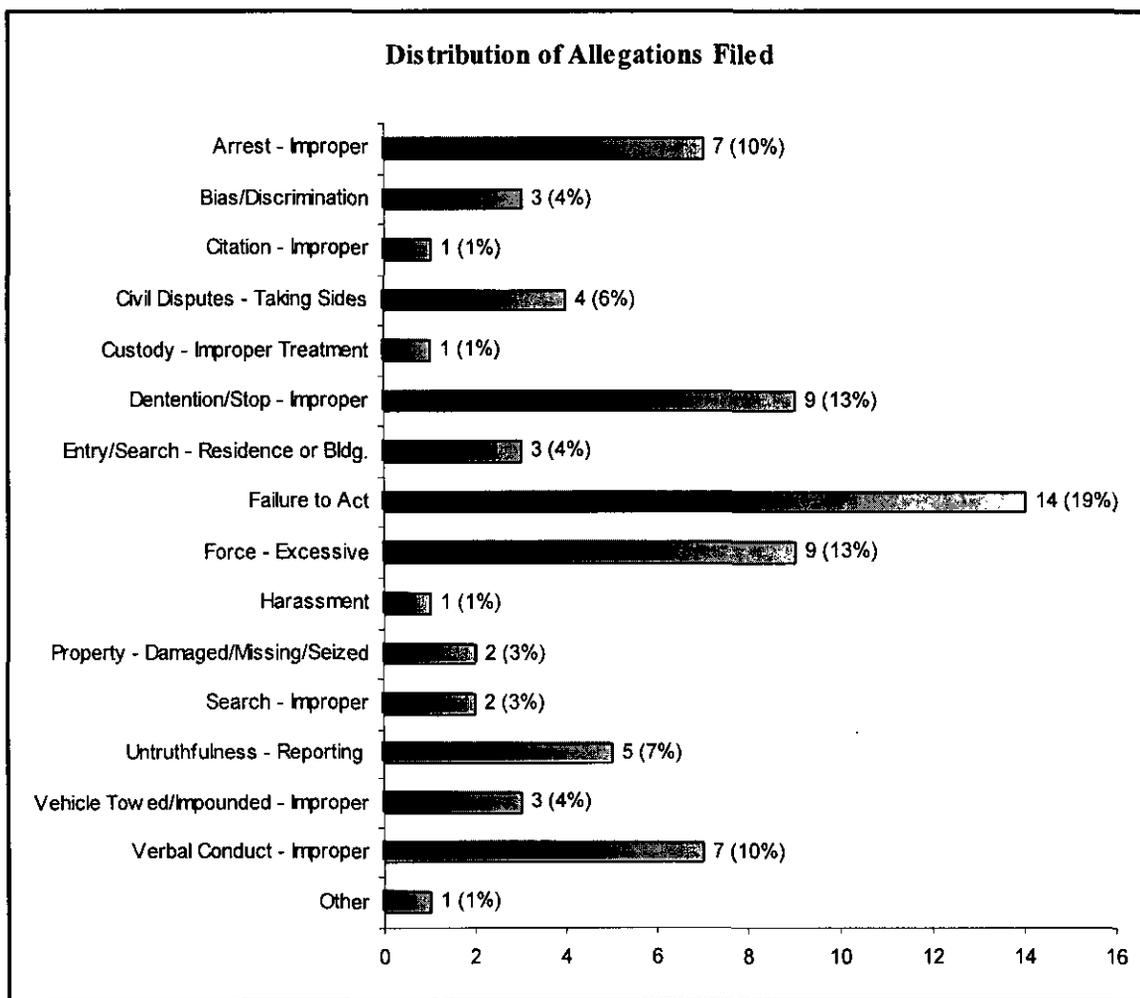


Figure 5

Allegations Filed in 2005

Figure 6, below, lists the number of complaints for each allegation into more specific categories. For example, the general category of "verbal conduct - improper" has been broken down into the two more specific categories of: (1) improper verbal conduct as in the use of profanity or rude statements; and (2) improper verbal conduct in the form of verbal threats.

Types of Allegations Filed	Distribution	%
Arrest - Improper	7	10%
Bias/Discrimination	3	4%
Citation - Improper	1	1%
Civil Disputes - Taking Sides	4	6%
Custody - Improper Treatment	1	1%
Detention/Stop - Improper	9	13%
Entry/Search - Residence or Bldg.	3	4%
Failure to Act	14	19%
Failure to Act - To Ensure Safety After Car Tow	(1)	(1%)
Failure to Act - To Investigate	(6)	(8%)
Failure to Act - To Write A Report	(2)	(3%)
Failure to Act - Other - Provide Assistance	(5)	(7%)
Force - Excessive	9	13%
Force - Grab/Push/Shove/Hip	(2)	(3%)
Force - Specifics Unknown	(2)	(3%)
Force - Strike With Hand or Unknown Object	(3)	(4.2%)
Force - Twisting of Wrist	(1)	(1.4%)
Force - Other - Broke Hand	(1)	(1.4%)
Harassment	1	1%
Property - Damaged/Missing/Seized	2	3%
Search - Improper	2	2%
Search - Person	(1)	(1%)
Search - Vehicle	(1)	(1%)
Truthfulness - Reporting	5	7%
Vehicle Towed/Impounded - Improper	3	4%
Verbal Conduct - Improper	7	10%
Verbal Conduct - Profanity/Rude Statements	(5)	(7%)
Verbal Conduct - Threats	(2)	(3%)
Other - Reckless Driving	1	1%
Total Allegations Filed	72	100%

Figure 6

Alleged Incidents by City Council District

During the first six months of 2005, the greatest number of alleged incidents occurred in City Council Districts 3 (26%) and 1 (19%). *Figure 7* provides the percentage of alleged incidents that occurred in all City Council Districts.

Upon further analysis, one explanation for Council District 3 having the highest number of complaints is due to its coverage of the downtown area. Included in Council District 3 is Jack London Square, Frank Ogawa Plaza, the City Jail, and a large section of Broadway.

Council District	No. of Complaints	% of Complaints
1	9	19%
2	6	13%
3	12	26%
4	3	6%
5	5	11%
6	7	15%
7	4	9%
Insufficient Information	1	2%
Total	47	100%

Figure 7

Time of Alleged Incidents

Figure 8, below, shows the time the alleged incidents occurred. The greatest number of incidents occurred at approximately 7 p.m. Generally, a large number of incidents are grouped in correlation to the time when most people are outside and have a higher probability of interacting with the police. Therefore, there is a grouping of incidents between the times of 3 p.m. and 7 p.m.

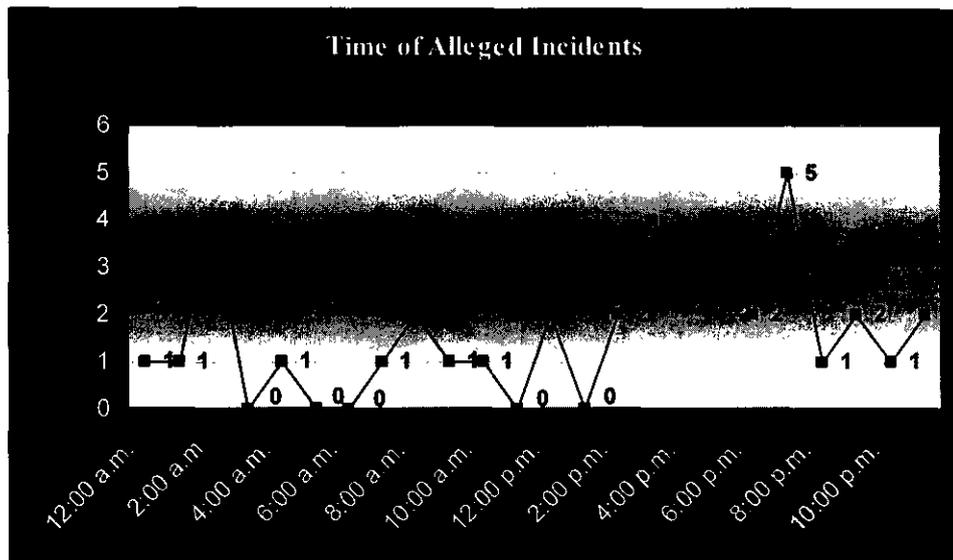


Figure 8

RESOLVED COMPLAINTS IN 2005

2005 Resolved Complaints

One way the Board strives to promote justice and police accountability is to provide complainants with public evidentiary hearings. These hearings provide complainants with the opportunity to have the Board publicly hear their complaints, make findings of fact, and make disciplinary recommendations regarding officer actions.

In an effort to increase the number of hearings, the Board began to offer 3-member-panel hearings in addition to its full Board hearings. Board members are assigned to the 3-member-panels through a lottery system. The findings of the 3-member-panels must be ratified

by the full Board to become final. The Board began holding 3-member-panel hearings in November 6, 2003.

During the first six months of 2005, the Board resolved 42 complaints. The Board heard four complaints at full-Board hearings, and it heard six complaints at 3-member-panel hearings. The full Board ratified the findings from the six complaints heard by 3-member-panels. Additionally, the Board closed 32 complaints through administrative closure. *Figure 9* shows the number of complaints resolved per calendar quarter.

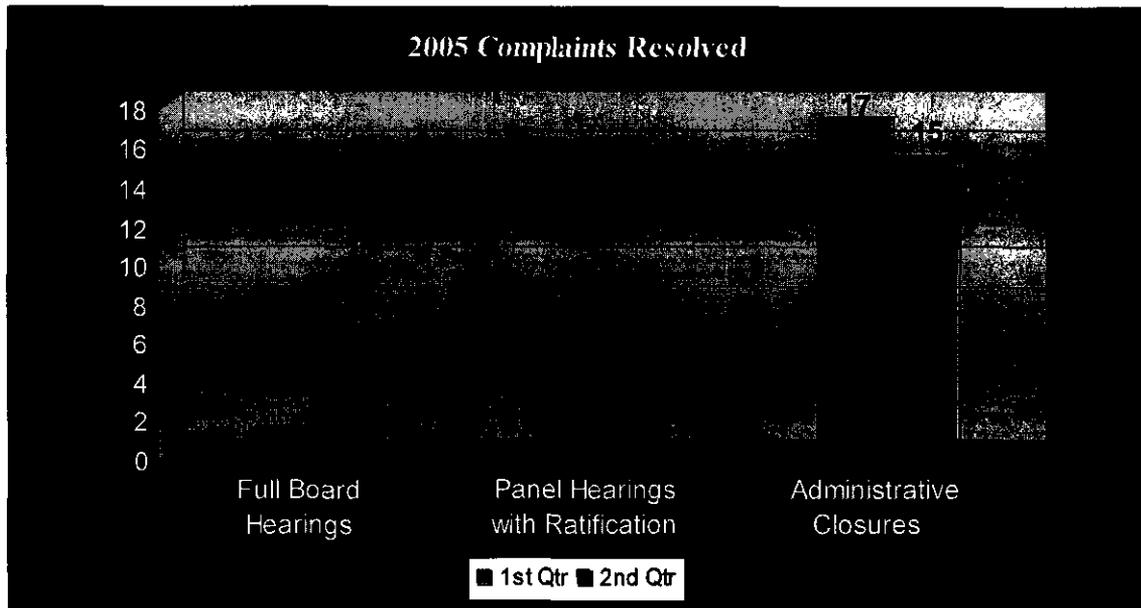


Figure 9

Allegations Before the Board at Evidentiary Hearings

Figure 10, lists the type of allegations heard at each of the Board's hearings

Hearing Date	Complaint (#)	Number and Type of Allegation Heard
02/17/2005	Dehlia Williamson (04-246)	4 Failure to Act - To Investigate; 2 Failure to Act - To Write A Report
03/31/2005	Devin Coakley (04-408)	1 Force - Strike with Weapon; 1 Force - Choke; 1 Force - Use of Chemical(s); 2 Force - Grab/Push/Shove/Trip; 2 Verbal Conduct - Profanity/Rude Statements
04/28/2005	Mark Thuesen (04-214)	1 Bias/Discrimination; 1 Citation - Improper; 1 Search - Vehicle; 3 Verbal Conduct - Profanity/Rude Statements
05/19/2005	Martin Alexander (04-174)	1 Search - Vehicle; 1 Vehicle Towed/Impounded - Improper; 1 Verbal Conduct - Profanity/Rude Statements
06/23/2005	Danny Armstrong Jr. (04-413)	1 Verbal Conduct - Profanity/Rude Statements; 1 Force - Strike with Hand or Unknown Object; 1 Force - Other - Restraint Technique Used

Figure 10

Board Findings at Evidentiary Hearings

The Board findings at evidentiary hearings are based on investigative reports prepared by CPRB investigators, which contain officer and witness interview transcripts, a list of allegations, and a description of policing policies. At the evidentiary hearings, the Board hears testimony from the officers, complainants and witnesses. The Board then deliberates on the evidence presented at the hearings and offers rulings on each allegation. Sustained allegations by the Board include disciplinary recommendations. See *Figure 11* on the following page for the Board findings for the complaints heard in the first six months of 2005.

Definitions for Board Findings

This key provides definitions for the four types of findings the Board makes. The Board is required to use the “preponderance of evidence standard” in weighing evidence. This standard requires the Board to determine whether it is “more likely than not” that the allegations are true.

Sustained: At least five Board members concluded the act(s) alleged by the complainant occurred.

Exonerated: At least five Board members concluded the act(s) alleged by the complainant occurred. However, the act(s) were justified, lawful or proper.

Unfounded: At least five Board members concluded the alleged act(s) did not occur.

Not Sustained: Based on the evidence provided at the hearing, the Board members were unable to determine whether the alleged act(s) occurred or not.

2005 Board Findings and Disciplinary Recommendations

Complainant Hearing Date	Board Findings	Allegation Category	Board Disciplinary Recommendations
Dehlia Williamson 2/17/2005	3 Sustained 2 Sustained Not Sustained	Failure to Act - To Investigate Failure to Act - To Write A Report Failure to Act - To Investigate	The Board recommended Officer Johnson receive training and counseling regarding Traffic Collision Investigations.
Devin Coakley 03/31/2005	Sustained Sustained Sustained Sustained Not Sustained 2 Not Sustained	Force - Strike with Weapon Force - Choke Force - Use of Chemical(s) Force - Grab/Push/Shove/Trip Force - Grab/Push/Shove/Trip Verbal Conduct - Profanity/Rude Statements	The Board recommended Officer Nichelini receive a 4-day suspension for the four sustained allegations of excessive force.

Figure 11

2005 Board Findings (cont'd)

Complainant Hearing Date	Board Findings	Allegation Category	Board Disciplinary Recommendations
Mark Thuesen 4/28/2005	Not Sustained	Verbal Conduct - Profanity/Rude Statements	
	Not Sustained	Citation - Improper	
	Not Sustained	Search - Vehicle	
	Unfounded	Verbal Conduct - Profanity/Rude Statements	
	Unfounded	Bias/Discrimination	
	Exonerated	Verbal Conduct - Profanity/Rude Statements	
Martin Alexander 5/19/2005	Not Sustained	Search - Vehicle	
	Exonerated	Vehicle Towed/Impounded - Improper	
	Exonerated	Verbal Conduct - Profanity/Rude Statements	
Andre [Name obscured] 02/19/2005	Sustained	[Allegation obscured]	[Recommendation obscured]
	Sustained	[Allegation obscured]	[Recommendation obscured]
	Not Sustained	[Allegation obscured]	[Recommendation obscured]
	Not Sustained	[Allegation obscured]	[Recommendation obscured]
Danny Armstrong Jr. 06/23/2005	Not Sustained	Verbal Conduct - Profanity/Rude Statements	
	Not Sustained	Force - Strike with Hand or Unknown Object	
	Not Sustained	Force - Other (restraint technique used)	

Figure 11 con't

Board Findings by Allegation Category

Figure 12 shows the Board's findings by allegation category. For the first six months of 2005, the Board sustained 23%, and did not sustain, unfounded or exonerated 77% of the allegations they heard. The most sustained allegations were for two complaints where the Board found that the officers failed to properly write reports of the incidents. Another complaint resulted in four excessive

force allegations sustained against an officer.

The allegation category most heard in the first six months of 2005 were for untruthfulness in reporting. The Board did not sustain any of these allegations. The Board determined 83% of the untruthfulness in reporting allegations were unfounded.

Allegation Category	Not			Total
	Sustained	Sustained	Unfounded Exonerated	
Arrest - Improper	1	1		2
Bias/Discrimination		1	1	2
Citation - Improper		1		1
Custody - Improper Treatment		1		1
Detention/Stop - Improper			1	1
Failure to Act - Other	1			1
Failure to Act - To Investigate	3	1		4
Failure to Act - To Write A Report	4	1		5
Force - Choke	1			1
Force - Grab/Push/Shove/Trip	1	1	1	3
Force - Kick				1
Force - Other - Restraint Technique Used		1		1
Force - Strike w Hand or Unknown Object		1		1
Force - Strike w Weapon	1			1
Force - Use of Chemical(s)	1			1
Property - Damaged/Missing/Seized	1	1		2
Search - Vehicle		3		3
Truthfulness - Reporting		2	10	12
Truthfulness - Verbal Statements		2		2
Vehicle Towed/Impounded - Improper				2
Verbal Conduct - Profanity/Rude Statements		6	1	7
Verbal Conduct - Threats		1		1
Totals	14 (23%)	24 (40%)	14 (23%)	8 (13%)

Figure 12

Disciplinary Recommendations and the City Administrator's Decisions

If the Board determines officer misconduct has occurred, the Board will forward a recommendation of officer discipline to the City Administrator who makes the final decision regarding officer discipline. During the first six months of 2005, the Board

forwarded disciplinary recommendations arising from five complaints. The City Administrator upheld three and denied one of the Board's recommendations. Her decision on one recommendation is currently pending.

Administrative Closures

A complaint is administratively closed after an investigation documented by a written administrative closure report is considered by the Board, and the Board finds no further action is necessary. In the first six months of 2005, the Board administratively closed 32 complaints. *Figure 13*, below, provides the reasons for the administrative closures.

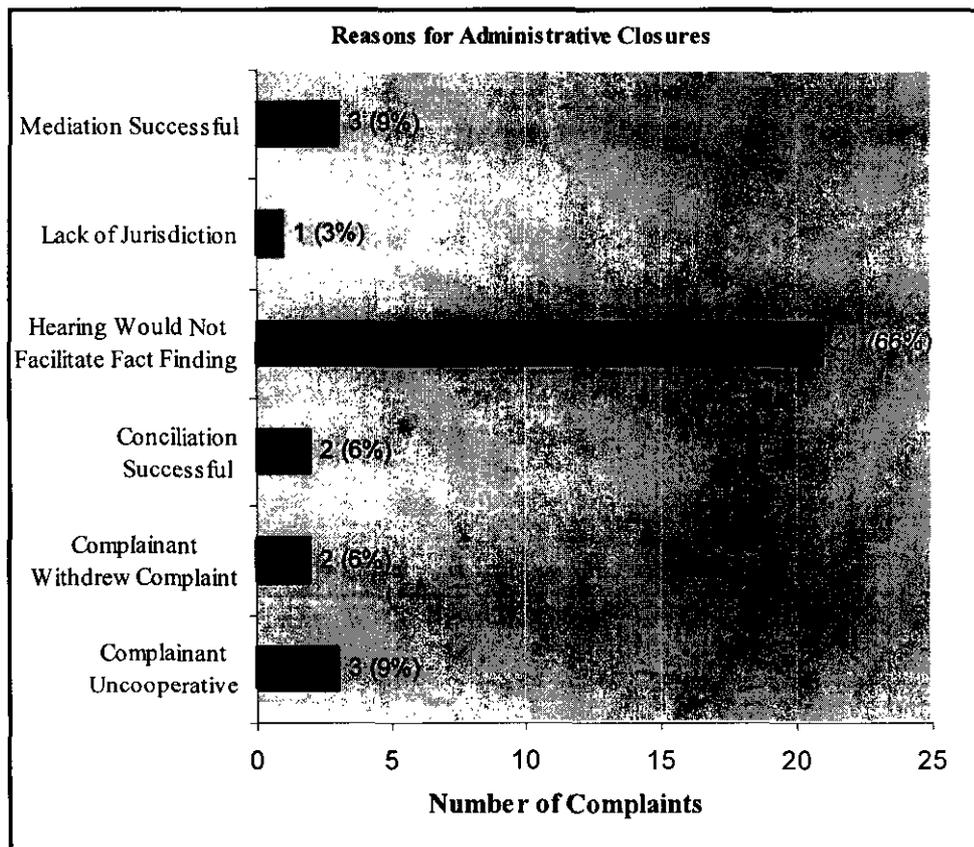


Figure 13

Mediation Was Successful

CPRB staff conducted three successful mediations in the first six months of 2005. One mediation did not result in a resolution of the complaint.

Lack of Jurisdiction

One complaint was administratively closed because the complaint was against California Department of Corrections personnel. The CPRB does not have jurisdiction over the California Department of Corrections.

Hearing Would Not Facilitate Fact-Finding Process

The Board determined that a hearing was unnecessary in twenty-one complaints. The complaints that fall under this category include those in which:

- (a) The investigator is unable to find corroborating evidence of the allegations;
- (b) The investigation fails to uncover which officers were involved; or,
- (c) The allegations are obviously implausible.

Conciliation Successful

Two CPRB complaints were resolved through an informal resolution between the complainant and the subject officer, without CPRB staff involvement.

Complainant Withdrew Complaint

Two complaints were withdrawn by request of the complainants. One complainant was satisfied with the dismissal of his disputed citation and decided not to pursue his complaint further. Another complainant was satisfied with the interview statements of the officers and realized the misunderstanding.

Complainant was Uncooperative

In three complaints the complainant failed to respond to an investigator's requests for an interview or failed to contact the investigator again after the complainant filed a complaint. In these instances, the complaint was administratively closed because of the complainant's failure to cooperate with the investigation.

OFFICER INFORMATION

Officer Compliance with CPRB Investigations

In 2005, the CPRB Policy Analyst restructured officer compliance data so reports are easily understood and focus on the specifics of the investigation process. Officer compliance with investigations can be summarized in two areas: responding to interview notices and attending hearings.

Interview Notices

Officer compliance data is specific regarding to compliance with interview notices and scheduling interviews. Officers are responsible for returning their interview notices to the court liaison within their next three on-duty days. Officers failing to complete the requirements to call and schedule interviews or release Internal Affairs statements are non-compliant with the CPRB interview process.

Appearances at Hearings

In recent years, the CPRB has had a small number of hearings canceled and ones held without officers because of the failure of officers to attend hearings. A major issue of officer attendance at hearings was because the Oakland Police Officers' Association (OPOA) asserted that officers did not have to attend hearings where a tort claim has been filed. This issue has since been resolved by the City Council which has explicitly required officers to attend CPRB hearings, despite tort claims being filed, so long as a lawsuit has not been filed. Officers who fail to appear at CPRB hearings and who do not make special arrangements for their absence are non-compliant with the CPRB hearing process.

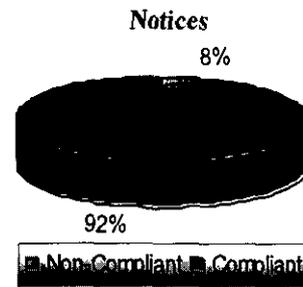
Officer Compliance Data

Officer compliance data was collected on forty-four of the forty-seven complaints filed in the first six months of 2005. While investigators are still experiencing delays in investigations from 2004 complaints, officer interviews and hearing subpoenas for complaints in 2005 are continuing with minimal delays.

Interview Notices

Number of Complaints: 44
 Number of Officers Identified: 69
 Number of Interview Notices Sent: 50
 Scheduled Interviews: 29
 Outstanding Notices: 4
 Number of Officers Non-Compliant: 4

Officer Compliance with Interview



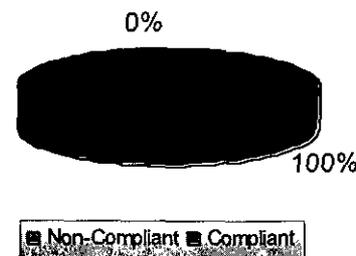
Interview Summary

In the first six months of 2005, 92% of officers replied to interview notices in a timely manner. The current 8% that have not replied are over a month late on average. The 2005 response rate is a significant improvement from prior years. The current response rate helps expedite the dispositions of complaints.

Hearing Subpoenas

Number of Hearings: 10
 Number of Officer Hearing Subpoenas: 29
 Number of Officers Attended: 27
 Number of Officers Excused: 2
 Number of Officers Non-Complaint: 0

Officer Compliance with Hearing Subpoenas



Hearing Summary

In the first six months of 2005, 100% of the officers subpoenaed complied with the conditions of the subpoena. Twenty-seven of 29 officers subpoenaed attended hearings, while two officers who did not attend were excused because one was on injured leave and another was on vacation.

**Number of Officers with One or More Complaints
from January 1, 2005 to June 30, 2005**

The CPRB tracks the number of complaints against each officer. *Figure 14*, below, lists the number of officers with one or more complaints made against them during the first six months of 2005. Each year, a small number of officers receive multiple complaints in this short period of time. CPRB tracks this data to be aware of potential recurring problems with specific officers. This year there are four officers with multiple complaints in six months. However, these complaints are only allegations of misconduct at this time and are all currently being investigated.

	No. of Officers	% of Officers with Complaints
Officers with Two Complaints	4	7%
Officers with One Complaint	50	93%
Total	54	100%

Figure 14

Number of Officers with One or More Complaints between January 1, 2003 and June 30, 2005

In 2003, the Oakland Police Department (OPD) entered into a settlement agreement in the case of *Delphine Allen v. City of Oakland et al.*, No. C00-4599 TEH (JL). In mandating that OPD institute a Personnel Information Management System (PIMS), the settlement agreement states:

“Notwithstanding any other provisions of the PIMS policy to be developed, the policy shall include, at a minimum, a requirement that any member or employee who receives three (3) or more citizen complaints during an 30-month period . . . shall be identified as a subject for PIMS intervention.”

(Section VII (B)(6)).

In keeping with the spirit of this policy, *Figure 15*, below, provides the number of officers who have had one or more CPRB filed against them between January 1, 2003 and June 30, 2005. Data on sustained allegations and complaint status for these complaints can be found in *Appendix B*.

Also, see the Board and Staff Activities section on page 28 of this report for information on a student presentation on the implementation of the PIMS for the Oakland Police Department.

	No. of Officers	% of Officers with Complaints
Officers with Seven Complaints	1	0.5%
Officers with Five Complaints	1	0.5%
Officers with Three Complaints	13	5%
Officers with One Complaint	197	73%
Total	269	100%

Figure 15

BOARD AND STAFF ACTIVITY

Appointments to the Board

During the first six months of 2005, the Board welcomed two new Board members, Gregory Harris and Charliana Michaels, to replace outgoing Board members Tim Wan and Roland Walker, respectively. The Board also elected its chair, Jamilah Scates, and Vice-Chair, Corey Dishmon.

Investigator Training

On March 22-23, 2005 the CPRB Executive Director Joyce Hicks and Investigators Audrey Montana, Victoria Urbi and Sean Quinlan attended an "Internal Affairs Investigations" seminar sponsored by the Oakland Police Department presented by W.M. France and Associates. The objective of the seminar was to prepare the participants to confront the many challenges facing those responsible for investigating and monitoring allegations of police misconduct. For more information on the seminar email: w.m.france@att.net.

Citywide Survey

In 2004, the CPRB Executive Director and Policy Analyst worked on a task force whose purpose was to administer a Citywide survey regarding customer satisfac-

tion with police services and the reporting of complaints. The survey is pending.

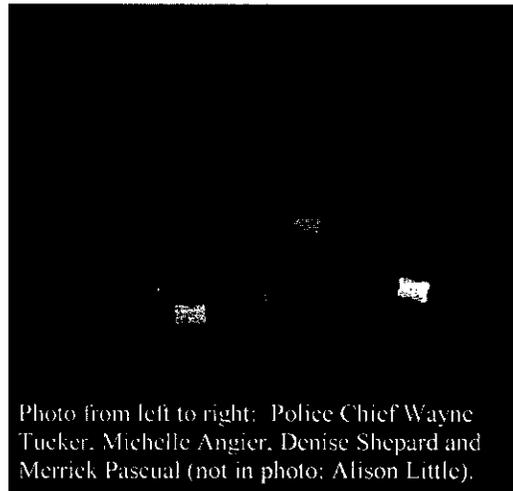
Policy Forum: Personnel Information Management System (PIMS)

Photo from left to right: Police Chief Wayne Tucker, Michelle Angier, Denise Shepard and Merrick Pascual (not in photo: Alison Little).

On April 12, 2005, CPRB held a policy forum on, "Effectively Averting Police Misconduct in Oakland Using the Personnel Information Management System (PIMS)." The policy forum was presented by three graduate students of the Goldman School of Public Policy who wrote the report on PIMS as part of a class project. The report was well written and presented to an audience of Oakland police officers and community members.

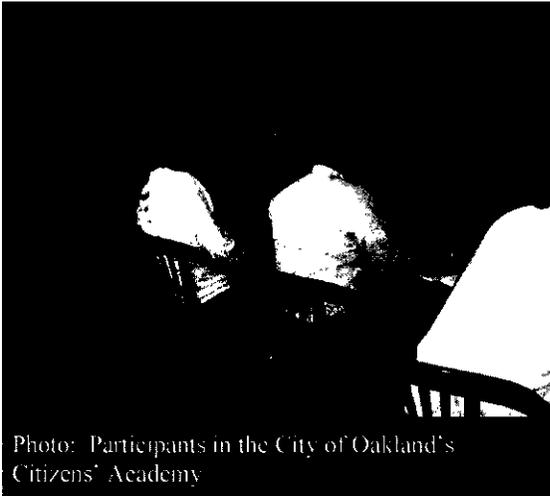
Citizens' Academy Presentation

Photo: Participants in the City of Oakland's Citizens' Academy

On May 2, 2005, Executive Director Joyce Hicks and Policy Analyst Patrick Caceres presented information on how to file complaints with the CPRB to the City of Oakland's Citizens' Academy. The presentation was followed by a question-and-answer session about the services of the CPRB.

Tort Claims

In 2004, officers began refusing to attend hearings when a tort claim was filed prior to the hearing. The Oakland Police Officers Association (OPOA) advised their officers not to attend because the complainant was being offered "free discovery" for their tort claims through the

hearing process. The issue of tort claims being filed before the hearings was ongoing for most of 2004. The CPRB temporarily stopped hearing complaints when a tort claim was filed during this dispute.

By unanimous vote, on June 7, 2005, the Oakland City Council resolved this dispute by ordering the continuation of hearing complaints despite tort claims being filed prior to the hearing, so long as a lawsuit had not been filed.

The City Council was provided research by the City Attorney's Office and from citizen testimony. The City Council decided based on the information presented that hearing these complaints did not place the City of Oakland at an undue risk of large payouts in civil suits. Therefore, the CPRB is continuing to hear complaints when a tort claim is filed with the expectation that officers will comply by attending these hearings. However, as a result of officers refusal to attend hearings, cases were not heard because the one year statute of limitations under Government Code section 3304 ran prior to the resolution or within a few months of resolution of this issue.

UPDATE ON BOARD POLICY RECOMMENDATIONS

Board Policy Recommendations

The charts on the following pages list the status of the policy recommendations made by the Board between 2001 and 2005.

Ruses

In the first six months of 2005, the Board made one policy recommendation involving OPD's policy on ruses. OPD has since declined the Board's recommendations.

Crowd Control

The OPD Crowd Control policy is an important document related to multiple policy recommendations made by the Board from 2003 to 2004. Action on CPRB's policy recommendations on crowd control matters is currently pending the release of the final version of the OPD Crowd Control policy. The current document is under legal review. OPD's Crowd Control policies are the subject of current litigation. Updates on these outstanding recommendations will be included in future CPRB reports upon the release of the OPD Crowd Control policy.

Towing

A draft of a Special Order detailing the terms of the recommendation to ensure drivers' safety after their vehicle is towed by OPD has been forwarded to the Chief of Police for his approval.

Welfare and Institutions Code Section 5150 Detentions

Three of four policy recommendations regarding 5150 detentions have been implemented in part by OPD. Limited resources have hindered the full implementation of three recommendations. However, training on these matters has significantly improved since the presentation of these recommendations in 2002.

Searching Residences

The CPRB's recommendation to revise OPD policies on searching residences was not adopted. Alternatives to this recommendations will be considered during OPD's accreditation process.

General Order M-3.2

The General Order M-3.2 includes instructions and directions to officers about their obligation to cooperate with the CPRB. A final draft of the policy is complete, and the recommendation to specify the grounds for being relieved from compliance with CPRB subpoenas was adopted.

Citizens' Police Review Board Policy Recommendations

Date / Incident	Recommendations	OPD Responses	Status
2005 Ruses	1. The Board recommends OPD develop a policy regarding the creation, management and implementation of ruses.	Declined	Not adopted
2004 Carijama Festival	<p>1. At the Pre-incident Planning Meetings, include the Fire Department and ambulance personnel to support OPD's efforts to manage large crowds. The Board recognizes the vital role the ambulance and fire personnel play in situations of this nature</p> <p>2. Utilize "First Aid Stations fixed and/or mobile and/or ambulances" in the event that chemical agents must be deployed: plan for disabled, elderly and children, the safety of bystanders, evaluate availability of other public safety resources, and anticipate potential medical resources.</p> <p>3. Include in the crowd control policy considerations of: occupied buildings in the area, businesses, e.g. hospitals, schools, senior centers, family restaurants, vehicular traffic, and age, health and mobility of those present.</p> <p>4. Officers must establish a presence commencing at the start of the event by having more community-centered policing (e.g. talking with crowd) and by attempting to penetrate the crowd given officer safety. Private security must be part of the Pre-incident Planning Meetings.</p> <p>5. In the Pre-incident planning conduct a risk analysis of the event to determine the sufficient number of law enforcement and public safety personnel.</p> <p>6. As standard procedure consider the use of multiple arrests before deploying chemical agents.</p> <p>7. Dispersal orders need to be given in a manner reasonably believed to be heard and understood by the intended audience including: documentation of the orders at time given and clear instructions on where people are to disperse when public transit is unavailable. The Oakland Police Department should also obtain a better public address system and repeat their dispersal orders every city block.</p>	<p>The OPD Crowd Control policy relating to these recommendations is in litigation.</p>	<p>Pending</p> <p>Pending</p> <p>Pending</p> <p>Pending</p> <p>Pending</p> <p>Pending</p> <p>Pending</p>

Citizens' Police Review Board Policy Recommendations

Date / Incident	Recommendations	OPD Responses	Status
2003 Anti-War Demon- strations	1. The Police Department should eliminate its use of wooden dowels.	The OPD Crowd Control policy relating to these recommendations is in litigation.	Pending
	2. The Police Department should end its practice of using the sting grenade.		Pending
	3. The CPRB Executive Director and the Chief of Police should collaborate with community representatives to further work on revising OPD's crowd control policy.		Pending
Towing	1. The Police Department should draft a comprehensive training bulletin regarding procedures to be followed when vehicles have been towed -- taking into consideration the age of the individual, the location of the tow and the ability of the individual to relocate to a safe location. The training bulletin should also include the directive that an officer should offer the individual and passengers transportation to the Eastmont Substation or the Police Administration Building, whichever is closer, if leaving the individual or their passengers at the location of the tow would place them at risk of harm.	A draft of a Special Order detailing the terms of the recommendation has been forwarded to the Chief of Police.	Pending
2002 5150 Policies	1. The Police Department should immediately train and inform its officers that if an officer is unsure of whether a person meets the criteria of section 5150, the officer has the option of telephoning the psychiatric emergency room at the John George Psychiatric Pavilion to obtain an expert medical opinion. All officers should be given cellular phones for this purpose.	Training complete, but unable to provide cellular phones.	Implemented in Part
	2. The Police Department should begin tracking information about 5150 detentions to determine the circumstances under which such detentions are made, the locations of these detentions, and the training needed by officers to correctly use section 5150 to detain individuals.	Declined – the current training is satisfactory given limited resources.	Not adopted

Citizens' Police Review Board Policy Recommendations

Date / Incident	Recommendations	OPD Responses	Status
	3. The Police Department should work with the Alameda County Behavioral Health Department, the Alameda County Sheriff's Department, community groups, and other interested parties to develop closer working relationships, to share resources, and to develop processes and procedures to address 5150 issues. Workshops should be publicly noticed and open to the public and should commence immediately.	Training is being conducted with a member of the Alameda County Crisis Response Team as a co-instructor.	Implemented in Part
	4. The Police Department should expand its officer training on mental illness and 5150 detentions to 40 hours. The 40-hour training program should occur post-Academy and should include training on distinguishing mental illness from mental retardation, which is not a ground for a 5150 detention.	The Sergeants training has been completed and the officers are receiving their training through Continuing Professional Training courses.	Implemented in Part
Searching Residences	1. Officers should be required to fill out a "notification" form when conducting warrantless searches. The Chief of Police should issue a Special Order revising Department Training Bulletin I-O.3, which is entitled, <i>Legal Aspects of Searching Residences</i> , for the purpose of implementing this recommendation.	This recommendation will be considered in the issuing of business cards to all officers and in the future during the accreditation process.	Not Adopted
2001 OPD Hearing Attendance	1. The police department should revise General Order M-3.2 to provide clear direction to officers about their obligation to cooperate with the CPRB, including giving interviews and attending Board hearings. The General Order should specify the grounds for being relieved from compliance with the CPRB subpoena to attend a hearing, e.g., for illness or injury and the procedures that must be followed.	Included in final draft of the General Order M-3.2	Adopted

CONCLUSION

Conclusion

This year the CPRB celebrates twenty-five years of continuous public service to the City of Oakland. In its twenty-fifth year, CPRB has seen many recent improvements in the administration, investigation and resolution of complaints. In the first six months of 2005, CPRB has improved productivity by:

- Tracking and reporting officer compliance data on CPRB interview requests and hearing subpoenas.
- Utilizing community resources and partnerships with OPD to hold CPRB's first policy forum discussion on the Personnel Information Management System (PIMS).
- Continuing to hold hearings on high priority cases, whether or not a tort claim is filed with the City.

APPENDICES

APPENDIX A

Board Member Attendance at Board Hearings

Board Member	02/12/05	03/08/05	03/22/05	04/05/05	04/19/05	05/03/05	05/17/05	05/31/05	06/14/05	06/28/05	07/12/05	07/26/05	
Andrews	Yes		Yes	Yes		Yes	Yes	Yes		Yes	Yes	Yes	
Batarse	Excused	Yes	Yes	Yes		Yes	Yes	Yes	Yes		Excused	Excused	Yes
Cheung	Yes	Yes	Excused	Yes		Yes	Yes	Yes			Excused	Yes	Excused
Dishmon	Excused		Excused	Yes		Yes	Yes	Yes			Yes	Yes	Yes
Harris											Yes	Yes	Yes
Jefferson-Scates	Yes		Yes	Yes	Yes		Excused	Excused		Yes	Yes	Yes	Yes
Michaels											Yes	Yes	Yes
Montgomery	Yes		Yes	Yes	Yes		Yes	Yes		Yes	Excused	Yes	Yes
Thomas	Yes	Yes		Yes	Excused		Yes	Yes		Yes	Excused	Yes	Yes
Walker	Yes												
Wan	Excused		Yes										
Anderson (alt.)	Yes		Excused	Yes	Yes	Yes	Yes	Excused	Yes		Excused	Excused	Excused
Radlow (alt.)	Excused		Excused	Yes		Excused	Yes		Yes		Yes	Yes	

* Three-member-panel hearing

Excused - Member asked to attend, but excused

**The Status of Complaints for Officers with Three or More
Complaints between January 1, 2003 and June 30, 2005**

Officer	Hearing (At Least One Allegation Sustained)	Hearing (No Allegations Sustained)	Investigation Pending	Administrative Closure	Tolled	Total Complaints
Samuel Francis	2	1		3	1	7
Brett Estrada		1		4	1	6
Jamie Kim		1	2	3		6
Michael Cardoza				4	1	5
William Bergeron	1			3		4
Nishant Joshi				4		4
John Koster	1	1	1	1		4
Matthew McGiffert		1		3		4
Joseph McGuinn			1	3		4
Michael Nichelini	2			2		4
Frank Bonifacio				3		3
Chad Borjesson				3		3
Bryan Clifford			1	2		3
Christopher Crabtree			1	2		3
Omega Crum			1	2		3
Sean Festag			1	2		3
Holly Hart		1		2		3
Michael Iqualdo				3		3
Ersie Joyner III				3		3
Gregory Loud	1	1		1		3
Marcus Moreno				3		3
John Muschi				3		3
Ouseng Saeparn		1	1	1		3
Totals	7	8	9	60	3	87



CITY OF OAKLAND CITIZENS' POLICE REVIEW BOARD

1 FRANK OGAWA PL * 11TH FL * OAKLAND, CA 94612 * 510-238-3159 * FAX 510-238-7084
TTY# 238-3724

Joyce M. Hicks
Executive Director

May 26, 2005

Citizens' Police Review Board
Oakland, CA

RE: Citizens' Police Review Board's Jurisdiction to Hear Complaints Where Tort Claims
Are Filed

INTRODUCTION

The purpose of this report is to provide the Citizens' Police Review Board ("CPRB") with a status report on the issue of whether the Board has jurisdiction to hear complaints where the complainant has filed a tort claim prior to the CPRB hearing date.

BACKGROUND

At your March 25, 2004 meeting, the Oakland Police Officers' Association ("OPOA") advised this Board that its officers would not testify in the Elliot Noble hearing scheduled for that night because the complainant had filed a tort claim. This was a priority 1 case as the complainant alleged, among other things, excessive force. The OPOA asserted that a tort claim was litigation for the purposes of precluding the matter from a hearing pursuant to section 9 (G) (10) of the CPRB ordinance, Oakland City Council Ordinance number 12454 C.M.S. adopted November 12, 2002. The Board's Counsel, Antonio Lawson, opined in writing on April 29, 2004, that OPOA's interpretation was incorrect, a tort claim was not litigation, and the CPRB ordinance did not preclude officers from attending a hearing if a tort claim had been filed.

The Board held subsequent hearings on May 20, with priority two allegation of illegal strip search and June 17, with a priority three allegation of performance of duty. Tort claims had not been filed in either of these cases and the officers testified. Thereafter on July 22, 2004, the next scheduled hearing, the officers refused to testify because the complainant, Ronald Muhammed, had filed a tort claim. Complainant Ronald Muhammed alleged, among things, excessive use of force classifying it as a priority one case. On July 29, the officers were ordered by then Police Chief Richard Word to appear at the Sami Shamieh hearing, a priority one case, alleging national origin bias, among other things. The complainant had filed a tort claim prior to the hearing.

Citizens' Police Review Board's Jurisdiction to Hear Complaints Where Tort Claims Are Filed

Joyce M. Hicks, Executive Director
Citizens' Police Review Board
May 26, 2005
Page 2 of 4

In response to former Police Chief Richard Word's order that officers appear at the Shamieh hearing, in a letter dated July 29, 2004, the OPOA filed a request for immediate dispute resolution under its memorandum of understanding with the City of Oakland. The City Attorney opined the officers were not entitled to immediate dispute resolution. On February 8, 2004, the City's Personnel Director granted OPOA immediate dispute. The matter is still unresolved.

The City Council Public Safety Committee reviewed this issue at its April 26, 2005 meeting. The materials from that meeting are included for reference as Attachment "A". An amendment to the CPRB ordinance to preclude the Board from hearing complaints where tort claims had been filed was discussed at that meeting. The Public Safety Committee voted with two ayes, President De La Fuente and Councilmember Reid, one no, Councilmember Nadel and one abstention, Councilmember Quan to forward the proposed amendment to the full City Council for consideration. The ordinance to amend the CPRB ordinance was Item 21.1 on the May 16, 2005 City Council agenda. President De La Fuente indicated he wished to withdraw the matter from consideration. The ordinance was not introduced.

The rationale for adopting the ordinance was a consideration of the risk the City could be subjected to if an officer testified in a matter where the complainant had filed a claim. The purpose of filing a tort claim is to seek compensation from the City prior to filing a lawsuit. If a matter is settled during the claim stage, both sides save the expense of a lawsuit. If the matter is not resolved, the claimant can file a lawsuit.

ANALYSIS

Between March 27, 2003 and May 12, 2005, the Citizens' Police Review Board held 34 hearings. Of those 34 hearings, complainants filed tort claims in 11 of those cases. Six complainants filed tort claims before the hearing and five complainants filed tort claims after the hearing. Nine of those complaints were priority one; six excessive force, two racial/ethnic bias and one sexual harassment. The additional two complaints were priority three, procedure complaints.

In seven of the 11 cases where tort claims were filed, six were priority one and one was priority three; the tort claims were denied, no payout was made and the time to file litigation has expired. Of those seven cases, in four, the tort claims were filed before the

Citizens' Police Review Board's Jurisdiction to Hear Complaints Where Tort Claims Are Filed

Joyce M. Hicks, Executive Director
Citizens' Police Review Board
May 26, 2005
Page 3 of 4

hearing and in three the tort claims were filed after the hearing. The Board sustained allegations against the officers in five of those seven cases, yet no litigation was pursued.

In the two open cases where the tort claims were denied, litigation was filed and is still pending, the Board sustained allegations against the officers in both cases. In one case the tort claim was filed before the hearing and in the other the tort claim was filed after the hearing. Both complaints were priority one, excessive force complaints.

In the final two of the 11 cases, in each the claim was filed after the hearing. One case was a priority one excessive force case which settled in litigation. The payout was \$10,000. In the other, a priority three, procedure case which settled as a claim, the payout was \$700. The total payout for these two cases was \$10,700. The impact of the Board's findings on payouts for cases where tort claims are filed appears de minimis at this time. A spreadsheet detailing this information is included for reference as Attachment "B".

Finally the City Attorney provided information detailing claims filed in police related matters from April 1, 2003 to April 30, 2005:

- 1) 479 claims filed
- 2) Of those 479 claims, 53 (11%) evolved into litigation
- 3) 73 lawsuits were filed
- 4) 10 lawsuits (14%) went to trial

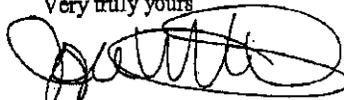
SUMMARY

Between April 1, 2003 and April 30, 2005, the total payout on claims and litigation where CPRB hearings were held was \$10,700. In the two cases that encompass the \$10,700 payout, the tort claims were filed after the hearings so an amendment to the CPRB ordinance prohibiting a public hearing where a tort claim was filed would not have prevented those two cases from going forward with the officers present. The issue before the City now is when it will schedule the arbitration for immediate dispute resolution which was requested by the OPOA on July 29, 2004 or whether the City will withdraw its offer to conduct immediate dispute resolution, thus requiring Chief Wayne Tucker to order officers back to CPRB hearings where a tort claim but no litigation has been filed.

Citizens' Police Review Board's Jurisdiction to Hear Complaints Where Tort Claims Are Filed
Joyce M. Hicks, Executive Director
Citizens' Police Review Board
May 26, 2005
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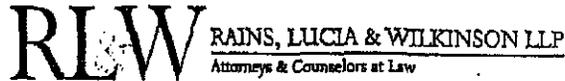
At the May 17, 2005 City Council meeting, City Council members expressed an intent to include the issue of immediate dispute resolution of the tort claim issue on its June 9, 2005 agenda.

Very truly yours



Joyce M. Hicks
Executive Director
Citizens' Police Review Board

Attachments



Rockne A. Lucia, Jr.
Pleasant Hill
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www.RLWLAW.com

June 10, 2005

VIA FACSIMILE [510.986.2827] & U.S. MAIL

Marcia Meyers
Personnel Director
Finance and Management Agency
City of Oakland
180 Frank Ogawa Plaza, Suite 5342
Oakland, CA 94612

Re: OPOA/CPRB Immediate Dispute Grievance

Dear Marcia:

This letter will confirm our telephone conference yesterday wherein Bob Valladon and I discussed the OPOA's pending immediate dispute grievance concerning officers testifying at the CPRB on matters that are the subject of pending litigation.

While I will not recite the basis for the grievance, suffice it to say that we remain committed that the dispute is subject to the immediate dispute provisions of the Memorandum of Understanding between the City and the Oakland Police Officers' Association. We are mindful of the fact that the Oakland City Attorney's Office has taken a position which is contrary to the position taken by your office, the City Manager and our office. In that regard, I have had the opportunity to read some of the legal analysis of the City Attorney's Office relative to their position that the matter is not subject to immediate dispute resolution. Frankly, based upon what I have read, I am not persuaded by any of the tenuous legal assertions and am suspicious about the political motivation behind the position taken by that office.

This letter will formally confirm the fact that during our conference call yesterday, you presented several points concerning our advancing the CPRB immediate dispute resolution grievance. While we take exception to some of the points made by you, others, frankly, have some merit.

The underlying objection by the OPOA to officers testifying in these cases is based on Oakland City Ordinance No. 12454, section 6.G(10)(b), which was clearly enacted to protect the

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Deirdre Wilson

Marcia Meyers
June 10, 2005
Page 2

City from inappropriate attempts by claimants and plaintiffs' lawyers to conduct free discovery where individuals have formally begun the process to seek monetary damages from the City. The OPOA finds it interesting that the City Council recently voted to support the practice of permitting free discovery in these matters that are the subject of litigation.

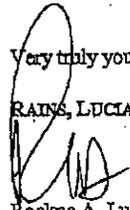
There can be no doubt that the practice of compelling officers to testify on matters that are the subject of litigation will expose the City to financial losses. At this point, it is fairly clear that individuals charged with the responsibility of protecting the City's assets seem more interested in battling the OPOA than preserving the resources of the City of Oakland. That being said, the OPOA will no longer stand in the way of what appears to be a concerted effort by the leadership in the City of Oakland to support claimants and their attorneys. The OPOA has chosen not to commit the financial resources of its members to protect the City's.

The legal obligation of the City to defend and indemnify members of the OPOA in matters that are subject to litigation will no doubt continue to be of great comfort to the membership of OPOA. However, it is disconcerting to all the members of OPOA to witness the political leadership and legal advisors of the City so willing to put politics above prudent fiscal and legal policies.

Finally, the OPOA is hereby advising you that it is formally withdrawing its immediate dispute resolution grievance. Although the grievance is withdrawn, this withdrawal will not act as a precedent for any future grievances which would come within the jurisdiction of the MOU. This withdrawal is not a waiver nor is it a modification of any existing right emanating from the MOU.

Very truly yours,

RAINS, LUCIA & WILKINSON LLP


Rockne A. Lucia, Jr.

RAL:sjs

cc: Robert Valladon, President, OPOA
Jerry Brown, Mayor
Ignacio De La Fuente, President, City Council
Deborah Edgerly, City Administrator
Wayne Tucker, Chief of Police
Joyce Hicks, Executive Director, CPRB