CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Oakland Police Department
DATE: November 9, 2004

RE: **A Supplemental Report from the Chief of Police Responding to Questions from Members of the Finance and Management Committee on Risk Management Measures Taken by the Police Department to Reduce Civil Claims and Other Payouts and Promote Employee Safety**

SUMMARY

This supplemental report provides additional information requested by the Finance and Management Committee members during the September 28, 2004 presentation of the Police Department's Risk Management Status Report. The report also responds to certain statements made via e-mail by People United for a Better Oakland (PUEBLO) to the Committee.

FISCAL IMPACT

This is a supplemental report. All risk management strategies discussed in this report have been implemented within existing Department budget allocations. They are designed to reduce the Department's and the City's potential exposure to civil claims and other payouts for alleged police misconduct.

BACKGROUND

On September 28, 2004, the Police Department presented a report on the risk management measures taken by the Department to reduce civil claims and other payouts and to promote employee safety. The Committee directed staff to return on November 9, 2004 with a supplemental report responding to questions from Committee members and e-mailed statements made by the PUEBLO organization.

KEY ISSUES AND IMPACTS

Department Risk Management Coordinator - Why is this person not identified by name? (PUEBLO)

In OPD, officers, especially sergeants and command officers, are rotated to various positions within the Police Department - based on the needs of the organization and available staff. Therefore, for continuity, job titles are routinely used in place of a specific named person.

The Chief of Police has designated Captain Howard Jordan as the Department's Risk Management Coordinator. Captain Jordan is assigned to the Bureau of Services and reports to Deputy Chief Gregory Lowe.

Firearms Discharge Board of Review - *How many review hearings have been held in the past year and what impact, if any, has this had on OPD performance? (Brunner)*

The Firearms Discharge Board of Review has met 21 times this year. The Department has not determined a quantifiable overall impact of these hearings on personnel performance.

Use of Force Review Board - *How does the fact that the Use of Force Review Board (UFRB) now determines policy compliance impact the performance of individual police officers? (Brunner)*

The Use of Force Review Board (UFRB) ***does not*** determine policy compliance. Policy compliance is set by the Chief of Police, via recommendations sent through the chain-of-command and the Internal Affairs Division. The UFRB conducts reviews on non-lethal force incidents that are referred to the Board from the Office of Chief of Police for the following purposes:

- To identify unsound tactics and practices and recommend action to be taken to correct deficiencies
- To identify the use of good tactics and techniques and recommend appropriate recognition of members employing them
- To identify training needs and recommend Department policy changes
- To identify the adequacy of safety equipment used by Department personnel and make recommendations regarding the acquisition of new or replacement equipment, or the modification or elimination of existing equipment

The Police Department Manual of Rules holds all personnel accountable for reporting violations of procedures:

> **314.48 Reporting Violations of Laws, Ordinances, Rules or Orders -**
> Members and employees knowing of other members or employees violating laws, ordinances, rules of the Department, or disobeying orders shall as soon as is practical, but in no case more than 24 hours, report the same, orally or in writing, to the Chief of Police through the chain of command. If the member or employee believes the information is of such gravity that it must be brought to the immediate personal attention of the Chief of Police, the chain of command may be bypassed. Discipline up to and including termination will be assessed for failure to comply with the provisions of this section.

The current Use of Force Policy, contained in Police Department General Order K-4, requires a supervisor to complete a Use of Force Report if a member or employee has used force. The supervisor then forwards the report through his/her chain of command for review. The accountable commander will review the report and if he/she has any questions concerning the details of the incident, the report is returned to the supervisor for clarification. The supervisor then resubmits the report and forwards it through the chain of command to the Deputy Chief who will review and forward the report to the Office of Chief of Police. The Chief of Police or his Chief of Staff then determines whether the Use of Force Report will go to Internal Affairs Division for investigation or to the Training Division for a review of training issues.

What does it (the UFRB) do for the Department? (Brunner)

The board makes recommendations based on deficiencies or sound practices in the following areas:

- Development or revision of Training Bulletins
- Preparation of Officer Safety Bulletins
- Referral of the Board's report to the involved member's supervisor for individual training
- Recognition of member's use of superior tactics and techniques
- Acquisition of new equipment
- Development of lesson plans for the Recruit School, In-Service and line-up training
- Development of, or changes to, Departmental policy

When and how often will the UFRB findings be published? (Brunner)

The original report was in error. The findings of the UFRB are not published. The UFRB chairperson ensures that the recommendations (i.e., "findings") of the committee are forwarded, via written memorandum, directly to the Chief of Police within 20 business days after the committee meets. When approved by the Chief of Police, the committee's recommendations are forwarded to the appropriate Bureau commander for implementation.

Is there any preliminary information available about them now? (Brunner)

There is no information available at this time. The writings of the UFRB are internal documents. The Department views the UFRB "findings" from a training perspective and determines deficiencies or sound practices that need to be addressed.

Use of Force policy - Why is it taking so long to finalize this (Use of Force) policy? (PUEBLO)

A policy dealing with the use of force is extremely complex and must go through a number of steps before it is complete:

- Research of "best practices" used in law enforcement agencies throughout the United States.
- Initial policy is drafted by a subject matter expert.
- Internal review of the initial draft to ensure that it is operationally sound and includes all the provisions of the Negotiated Settlement Agreement relevant to the use of force.
- Edits are incorporated and a new revision is sent to the Independent Monitor Team (IMT), the plaintiffs' attorneys, and the City Attorney.
- Any suggestions or concerns from those noted above are then discussed and, where appropriate, changes are made to the policy draft.
- Policy is then proofed and submitted to the Chief for signature.
- Policy is printed.
- Training plans and schedules are developed.
- Training is then completed and policy is placed into effect.

The Department's new Use of Force policy is being reviewed and is targeted for completion in February 2005. It is anticipated that all personnel will be trained by the end of June 2005.

Departmental Safety Committee - The Departmental Safety Committee (DSC) makes referrals to the Internal Affairs Division (IAD). (Brunner)

The Departmental Safety Committee (DSC) does not make direct referrals to IAD. Police Department General Order G-4, which sets forth the responsibilities of the DSC, states:

> "The Committee shall present its recommendations by memorandum through channels to the Chief of Police and attach copies of pertinent reports and the person's Accident Record Card. As appropriate, the Committee shall identify measures that could have been taken to prevent the accident."

Departmental Safety Committee - What has the IAD investigated in the past six months? (Brunner)

Although not as the result of a referral from the DSC, IAD conducted one investigation (received directly from a citizen complainant) involving a vehicle collision. It is awaiting final disposition.

Departmental Safety Committee - What findings have been made? (Brunner)

The following table summarizes the findings of the Safety Committee's review of vehicle collisions.

Calendar Year	Preventable	Non-Preventable
2003	56 (48%)	62 (52%)
2004	61 (55%)	51 (45%)

The table below summarizes the findings of the Safety Committee's review of vehicle pursuits.

Calendar Year	Total Pursuits	Resulted in collision	Resulted in injury
2003	113	40%	4%
2004	76	36%	4%

What discipline, if any, has been given? (Brunner)

Based on a review of the DSC files for 2004, the Chief of Police took the following corrective measures on officers involved in preventable collisions:

Corrective Measure	Number
Termination	0
Suspension/Fine	2
Written Reprimand	8
Oral Reprimand	16
Counseling & Training	2

Thirty-one preventable collisions are currently in the review process and may result in corrective action(s).

Can you please provide details of recent changes in the pursuit policy that have been made to reduce the risk to bystanders? (Brunner)

Pursuits are only initiated when a law violator clearly exhibits intent to avoid arrest by using a vehicle to flee, or when the suspected violator refuses to stop and flees in a vehicle, and when there is no unreasonable threat to the public or the officer from initiating the pursuit. Except upon the approval of a commander or supervisor in the field, an officer shall not initiate a vehicle pursuit when the only known underlying criminal violation is a non-firearm-related misdemeanor or an infraction of the Vehicle Code. During pursuits, officers shall not drive any faster than 20 miles per hour over the posted speed limit except when driving on the freeway, or upon supervisory or command approval.

On June 1, 2004, the Chief of Police authorized the use of the Tire-Deflating Device (Police Department Special Order 8155). The Tire Deflating Device is designed for use when the fleeing vehicle can be channeled so that one or more tires of the fleeing vehicle pass over the device. When deployed, the tire(s) of the fleeing vehicle will slowly deflate provided one or more of the spikes lodge in the tire(s). The device shall be deployed when officers can do so safely. The safety of other motorists and the presence of pedestrians in the immediate area shall also be considered when deploying the device. The deploying officer is required to evaluate the situation carefully prior to deployment. The Tire Deflating Device may only be deployed if an on-duty supervisor or commander has approved its use.

An information report on the Department's pursuit policies was presented at the January 13, 2004 meeting of the Public Safety Committee, with a supplemental report provided at the February 3, 2004 City Council meeting. The reports are available through the City Clerk's on-line legislative files system (Legistar No. 003702).

Have previous City Council recommendations (e.g. larger vehicle numbers) been implemented? (Brunner)

The "Supplemental Information Report Regarding the Oakland Police Department's Current Policy, Procedures, and Precautions Used for Vehicle Pursuits in the City of Oakland," dated February 3, 2004 detailed the fiscal impact to change the vehicle numbers on vehicles currently in the fleet. The City Council accepted OPD's recommendation to not replace or add new and larger numbers to the existing marked vehicle fleet, but to work with the vendor to apply larger number markings on newly purchased vehicles. No new marked vehicles have been added to the fleet since the February report to City Council.

Citizen's Police Review Board (CPRB) Issues

PUEBLO statement: The 2004 CPRB Semi Annual Report indicates that, in certain circumstances, it took officers 133, 128, and 105 days to respond to requests for interviews. In these instances, supervisors themselves have been the subject of numerous CPRB complaints, creating significant doubts about the degree to which they are capable of appropriate oversight and accountability (p 22-30).

OPD response:

The Citizen's Police Review Board (CPRB) is, by statute, a hearing board authorized to receive testimony from members and employees of the Oakland Police Department. Members and employees responding to CPRB subpoenas are held to the same standard as with criminal subpoenas. Refusal of members or employees to appear and testify at CPRB hearings, or a failure to respond for CPRB interviews, violate the following Manual of Rules section:

> **398.48 - REFUSAL TO TESTIFY**: Any member or employee who
> appears as a witness before any competent investigative body, judicial
> tribunal, hearing board or person authorized to receive testimony and who
> refuses to testify shall be subject to disciplinary action.

As is often the case with member and employee responses to criminal subpoenas, there are a myriad of legitimate reasons why one may be unable to respond. While there are clearly actionable Manual of Rules sections governing member and employee attendance and cooperation, using them in a sweeping, broad-brush manner ignores the human aspect of issues that can impact all persons, public or private. For every member or employee who avoids their responsibility to respond to a CPRB subpoena there are certainly many more who have a legitimate reason for their absence. Many times problems can be traced back to a lack of

communication or misunderstanding. To infer that all failures are the result of evil intentions is a disservice to those undeserving of such labels.

PUEBLO statement: We remain concerned that many of the measures that are meant to ensure increased supervisory accountability are not yet fully implemented, as documented in the number of "repeat" subject officers of CPRB complaints as well as the lack of compliance with CPRB requests for officer interviews. In the case of certain supervisors, it seems that those under their command routinely disregard General Orders, and there appear to be no disciplinary consequences that result.

OPD response:

The Department met with the CPRB in December 2003 to discuss problems with the response of members and employees to CPRB subpoenas. One officer has received discipline this year for failing to appear in response to a CPRB subpoena. Corrective action(s) shall be used to ensure improvements in member and employee response to CPRB subpoenas, while still allowing for legitimate absences. Supervisors and managers are required to monitor the performance of their subordinates and have a responsibility to take corrective action(s) when necessary. Supervisors and managers who fail to serve a subpoena or take the appropriate corrective actions to minimize the likelihood of future recurrence are held accountable.

Page 4 (of original report) outlines a number of measures OPD takes in response to legal claims (training, policy modifications, etc) - Can you give more detail (numbers, examples) of what the OPD has done in each of these areas in the past year and what legal claim caused each measure to be implemented? (Brunner)

Individual legal claims are evaluated by the Internal Affairs Division (IAD) for identifiable allegations of Manual of Rules (MOR) Violations, as well as any training needs at the individual or Departmental level. The Complaint Information Record was redesigned early in 2004 to reflect a block to be filled out when training needs are identified during investigations. Any such needs also are now articulated in the Report of Investigation. The block also allows for the identification of individual, as well as Department-wide training needs. These needs are communicated to the appropriate Department unit upon completion of the investigation.

If, during the evaluation of a legal claim, an allegation of a MOR violation is identified, a complaint is initiated and an investigation started. From a risk management standpoint, a single claim, by itself, is unlikely to cause a change in policy. However, identifiable patterns gleaned from the examination of numerous legal claims can provide the information needed to evaluate the need for policy changes. For example:

- **Prior to 2004, a "contact" letter was sent to claimants, requesting they contact the Internal Affairs Division (IAD).** Failure by the claimant to respond to the letter resulted in a case being "filed" with little to no investigation. The problem with this practice was

most apparent when settlements were proposed by the Office of the City Attorney (OCA) during Closed Session meetings of the City Council. On many occasions, the IAD had little to no information to support or oppose the settlement proposals. The current practice of evaluating legal claims for MOR violations and initiating investigations when violations are identified provides the type of information needed to evaluate legal claims proposed for settlement. It has also increased communication between the IAD and OCA.

- **Property damage claims that arise from yard searches.** An examination of legal claims yielded a pattern of claims for damage done by members of the Department during yard searches. The damage usually occurred to fencing and gates during the pursuit of suspects thought to be hiding in the yards. It was also found that the damage often happened during searches involving the use of canines. While the damage resulting in the claims was rarely the result of misconduct, the documentation of these incidents was inadequate or non-existent, making it difficult to determine exactly what occurred. An investigation was therefore required to confirm there was no misconduct. An adjustment to the reporting policy of the Canine Unit provided the mechanism needed to document incidents resulting in property damage and IAD is now able to establish the circumstances surrounding legal claims for property damage during yard searches.

- **Officers involved in the arrest of persons for being Under the Influence of Alcohol.** Except for arrests made while Driving Under the Influence, there was no requirement to offer the arrestee a test to establish their blood alcohol level. The problem with not testing became apparent by the number of legal claims and lawsuits being filed where the plaintiffs claimed to have not been Under the Influence of Alcohol at the time of their contact with the OPD. A new policy is being developed to include a Field Sobriety Test in order to avoid future such incidents.

- **A pattern of complaints and legal claims involving issues surrounding strip searches.** This pattern was identified in early 2004 by Citizens Police Review Board (CPRB) and IAD staff and resulted in the formation of new policy for conducting such searches, as well training and implementation of the policy.

Although all current legal claims are now evaluated early on in the process, a "post mortem" examination of some past claims has resulted in the identification of MOR violations and the re-opening of IAD investigations. In some cases the identification of new evidence, or a witness previously unknown, can result in the revival of an investigation.

Since 2000, there has been a significant increase in the number of IAD investigations resulting from legal claims. The following table illustrates the number of investigations of allegations of MOR violations identified from legal claims prior to the implementation of current practices, as well as year to date data under the current process:

Claims Resulting in IAD Investigations
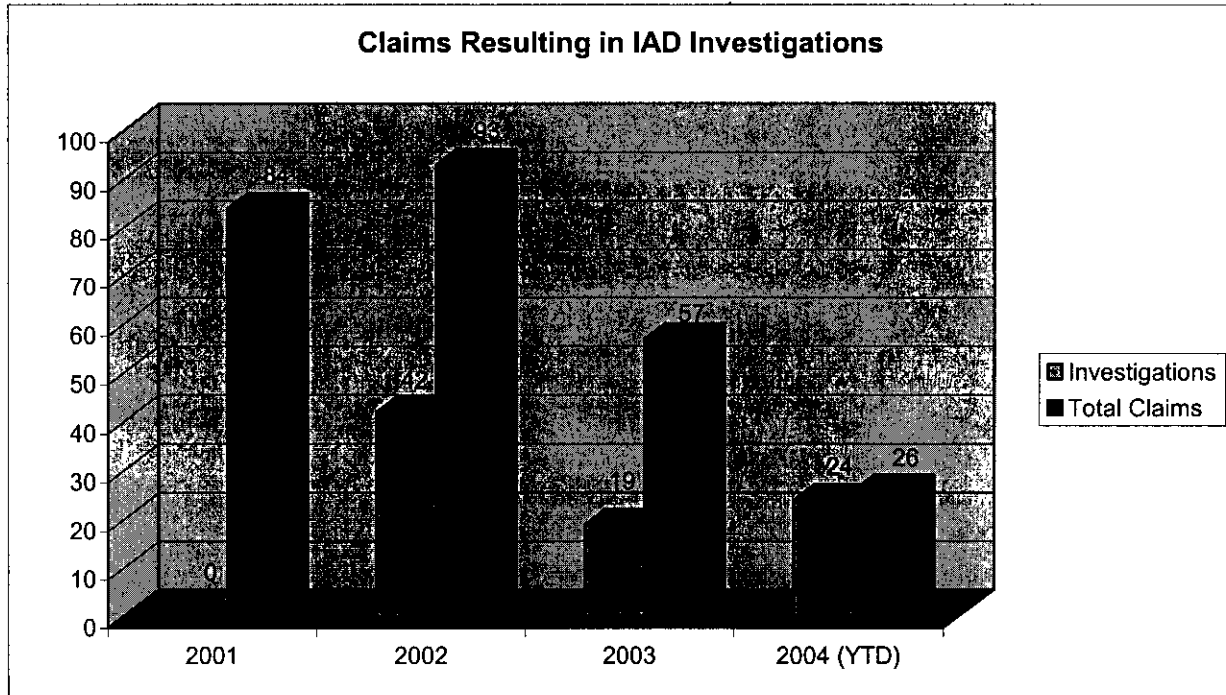
The Department's EIS is still not mandatory. (PUEBLO)

By agreement with the Oakland Police Officers' Association and the City of Oakland, officer participation in the Early Intervention System (EIS) is now mandatory.

*Early Intervention System - **Can you please provide more details here in the number of times the panel has been convened and the occurrence and type of action taken? (Brunner)***

Since 2000, thirty-nine (39) officers have been referred to the EIS. A review of the reasons for their referral shows 35% of the referrals were based on select indicators[1] and 21% were based on personnel complaints:

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[1] Events used to identify circumstances warranting a referral to the program include: Officer-involved shooting, use of less than lethal force, in-custody death, citizen complaints, arrests for 148 PC (Resisting) or 243 PC (Assault on a Peace Officer), officer-involved traffic accident, sick leave usage, and negative Report Review Notices or Case Evaluation Reports. A referral may be initiated whenever a member accumulates three or more similar incidents in any single category within a six month period or a total of five or more incidents among all events within a six-month period. Any other on or off-duty incident, circumstance, condition, or marginal performance pattern that, in the judgment of the member's division commander, may be addressed best by EIS attendance. NOTE: This does not apply in officer-involved shootings when it may be appropriate to initiate a referral at any time (and only after the Firearms Discharge Board of Review process has concluded).

EIS Referral Reasons
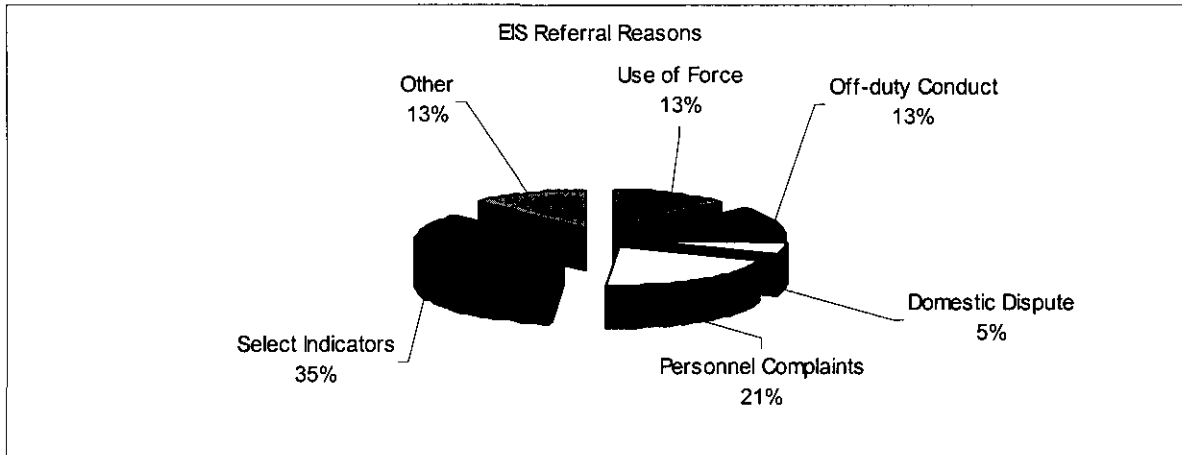
Reason for Referral	Number of Referrals
Force Complaint(s)	5
Off-duty Conduct	5
Domestic Dispute	2
Personnel Complaints	8
Select Indicators	14
Other	5
Total	**39**

How has this improved officer performance? (Brunner)

A review of select indicators and personnel complaints (counting all complaints regardless of disposition) for officers referred to EIS since 2000 shows a 52% reduction in select indicator incidents and a 62% reduction in personnel complaints after the EIS referral:

	Post-EIS Select Indicators	Post-EIS Personnel Complaints
None Received		18%
Reduction	52%	44%
No Change	38%	26%
Increase	10%	12%

A review of the latest performance appraisals for officers referred to EIS since 2000 shows 59% of the officers received an overall rating of "Exceeds Expectations," the top category:

Post-EIS Performance Appraisals
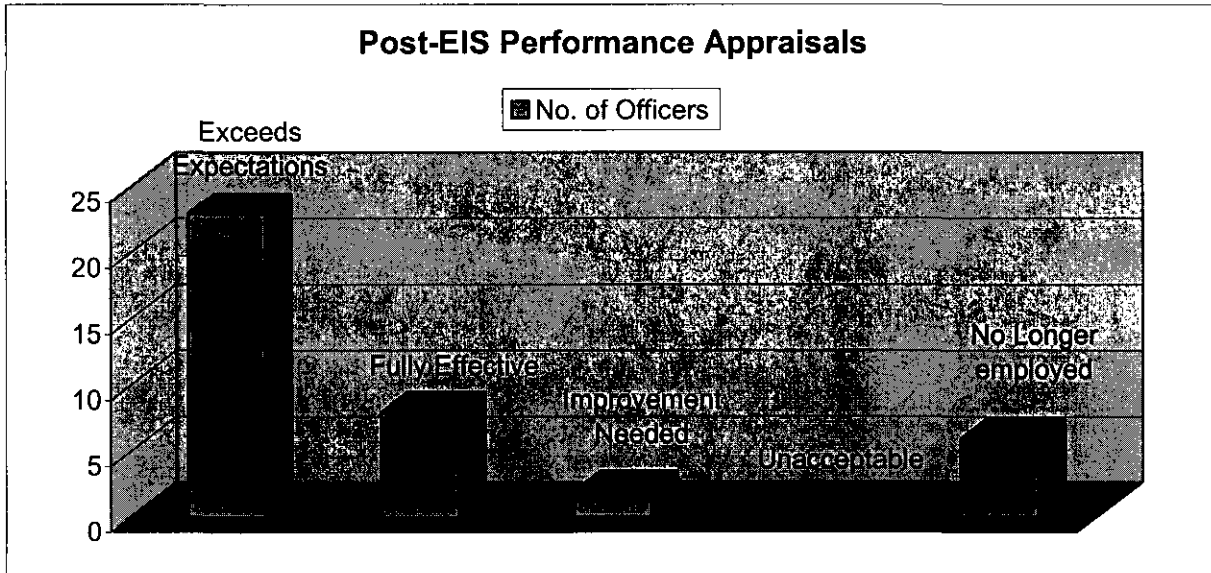
| Overall Rating	Number of Officers
Exceeds Expectations	23
Fully Effective	8
Improvement Needed	2
Unacceptable	0
N/A*	6
Total	**39**

* No longer employed by OPD

The measures of select indicators, number of personnel complaints, and the most recent performance appraisals indicate the Early Intervention System is successful at improving the performance of the officers referred to the program.

Workers Compensation: Has the (Worker's Compensation) Committee reduced workers' compensation claims? Please provide numbers.

The monthly and quarterly Workers Compensation meetings have contributed to the effective monitoring of workers compensation cases and show a 37% reduction in total claims since 2000:

	2000	2001	2002	2003
Total Claims	380	327	288	239
Lost Time Claims *	110	81	97	n/a
Total Days Lost *	4,253	5,264	4,818	n/a

* Data for Sworn personnel only
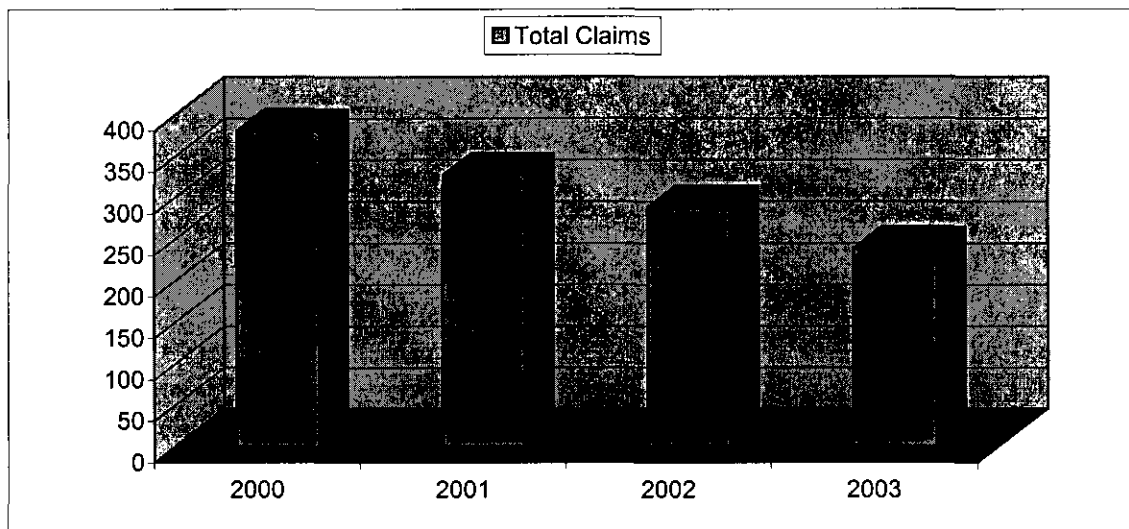
The Workers Compensation meetings also serve to coordinate the timely return to work of injured personnel eligible for modified duty. The average number of police officers assigned to modified duty has increased 41% since 2000. The following graph represents the average weekly number of officers assigned to modified duty during the calendar year.
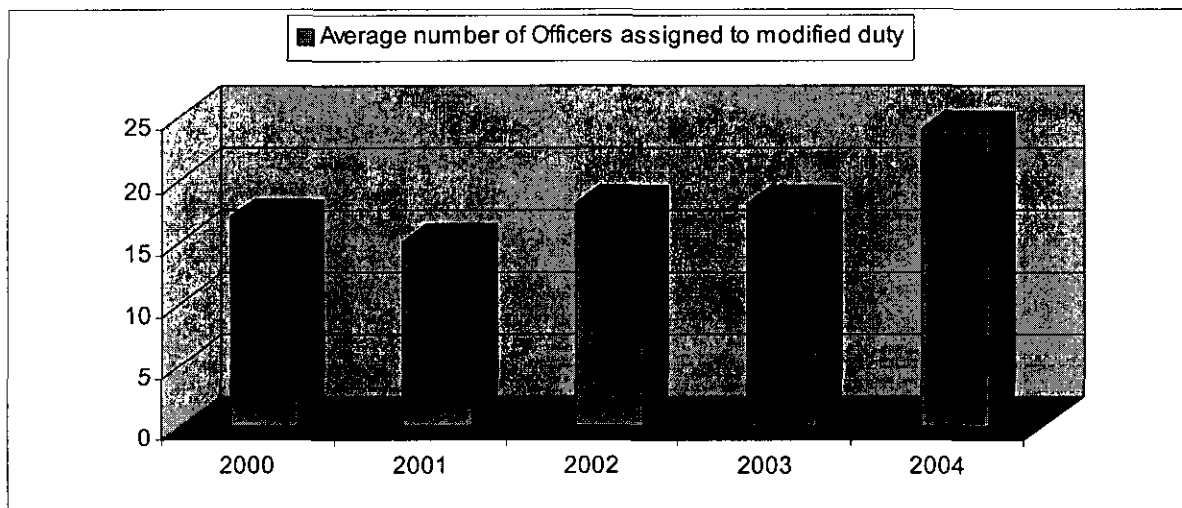
Year	Average weekly number of Officers assigned to modified duty
2000	17
2001	15
2002	18
2003	18
2004	24

How are all the new rules and policies being transmitted to the rank and file in the field? (Wan)

Paper copies of the newly published and/or revised orders or rules are distributed to all sworn members and civilian employees affected by the policy. Training is completed, with all training sessions / personnel attending recorded on a roster, which is submitted to the Training Division and entered into a data base. Commanders receive a weekly "Non-compliance" report that notes which personnel still require training on which individual policy / procedure.

SUSTAINABLE OPPORTUNITIES

Economic - Implementation of an effective risk management strategy will reduce or prevent the incidences of litigation in the areas of use of force, civil rights, conduct, and other activities that expose the City to liability costs and judgement pay-outs.

Environmental - There are no environmental opportunities associated with this report.

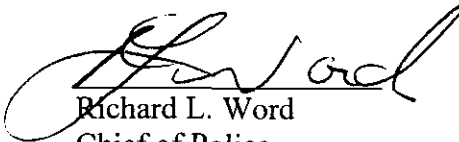*Social Equity* - Improved police services and enhanced police-community relations benefit everyone.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no senior citizen or ADA access issues contained in this report.

RECOMMENDATION

Staff recommends the Committee accept this report.

Respectfully submitted,

Richard L. Word
Chief of Police

Prepared by: Lt. Kenneth W. Parris
Bureau of Services

APPROVED FOR FORWARDING TO THE
FINANCE & MANAGEMENT COMMITTEE:

Office of the City Administrator

Item: _____
Finance & Management Committee
November 9, 2004