

City of Austin



**A Report to the
Austin City Council**

Mayor
Steve Adler

Mayor Pro Tem
Kathie Tovo

Council Members
Ora Houston
Delia Garza
Sabino Renteria
Gregorio Casar
Ann Kitchen
Don Zimmerman
Leslie Pool
Ellen Troxclair
Sheri Gallo

**Office of the
City Auditor**

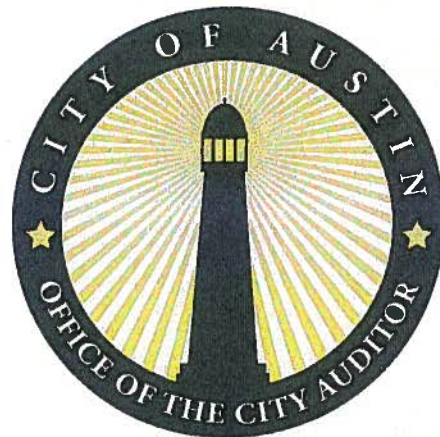
City Auditor
Corrie Stokes
CIA, CGAP, CFE

Deputy City Auditor
Jason Hadavi
CPA, CFE

AUDIT REPORT

Audit of the Austin Police Department's Handling of Complaints

September 2016



REPORT SUMMARY

Cultural issues and other barriers limit the ability of members of the public to make complaints about interactions with the Austin Police Department (APD). Additionally, issues with APD policies and practices affect the consistency of how complaints are handled. Lastly, the ability of the Office of the Police Monitor to provide oversight is limited. These issues may lead to a more negative perception of law enforcement and may erode the public trust in APD.

TABLE OF CONTENTS

BACKGROUND	1
OBJECTIVES, SCOPE, AND METHODOLOGY.....	2
WHAT WE FOUND.....	3
Appendix	
Appendix A: Management Responses	13

GOVERNMENT AUDITING STANDARDS COMPLIANCE

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT TEAM

Katie Houston, CIA, CPA, CFE, Assistant City Auditor
Andrew Keegan, CIA, CGAP Auditor-in-Charge
Mary Dory
Michael McGill

Office of the City Auditor
phone: (512)974-2805
email: oca_auditor@austintexas.gov
website: <http://www.austintexas.gov/auditor>

Copies of our audit reports are available at <http://www.austintexas.gov/page/archive-auditor-reports>



*Printed on recycled paper
Alternate formats available upon request*

September 2016



Report Highlights

Why We Did This Audit

This audit was conducted as part of the Office of the City Auditor's Fiscal Year 2016 Strategic Audit Plan.

The audit was included on the plan in response to a request from the Police Chief, as well as local and national focus on interactions between police officers and members of the public.

What We Recommend

- The Police Monitor increase awareness about the complaint process and work to reduce barriers
- The Police Chief change policy and practice to ensure complaints are handled consistently
- The City Manager pursue opportunities to expand oversight of the complaint process



For more information on this or any of our reports, email oca_auditor@austintexas.gov

AUDIT OF THE AUSTIN POLICE DEPARTMENT'S HANDLING OF COMPLAINTS

BACKGROUND

Members of the public who believe they have had a negative interaction with an Austin police officer can file a complaint with the Austin Police Department (APD) or the Office of the Police Monitor (Police Monitor). APD's Internal Affairs investigates these complaints and the officer's chain of command determines if a policy was violated and an appropriate discipline. Between 10/1/2013 and 12/31/2015 there were approximately 1,200 complaints filed, over half of which did not result in any discipline for the officer.

OBJECTIVES AND SCOPE

The objectives of the audit were to determine if:

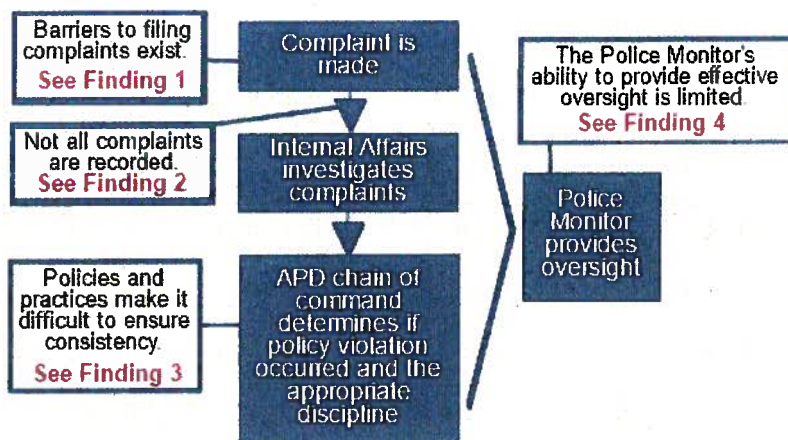
- the complaint process is accessible,
- complaints are processed consistently,
- appropriate corrective actions are taken, and
- Austin's complaint process is comparable with similar entities.

The audit scope included administrative investigation activities related to complaints made between 10/1/2013 and 12/31/2015.

WHAT WE FOUND

As shown in the graphic below, there are barriers to filing complaints and APD's policies and practices make it difficult to ensure that complaints are handled consistently. Lastly, the Police Monitor's ability to provide oversight is limited.

Issues noted with the process for accepting, investigating, and evaluating complaints



These issues may lead to a more negative perception of law enforcement and erode the public trust in APD. They could also compromise Internal Affairs' ability to fully investigate complaints, affect the completeness and reliability of complaint data, and/or impact the ability of APD and outside parties to monitor the complaint process and identify trends in complaints or officer behavior.

BACKGROUND

Austin Police Department (APD) officers interact with residents and visitors thousands of times each year. When someone believes they have had a negative interaction with an officer they can file a complaint about the officer's actions. APD officers can also file complaints if they know or suspect another officer violated APD policy.

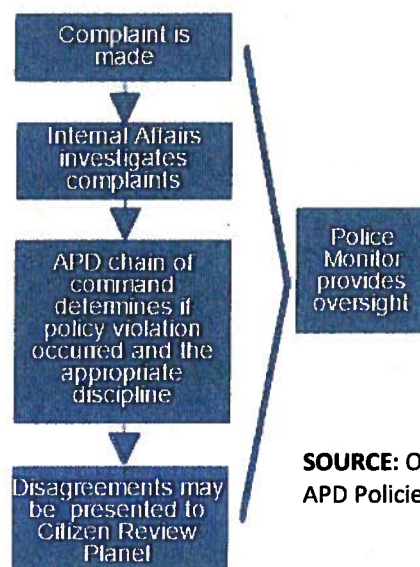
Currently, complaints can be made to the Office of the Police Monitor (Police Monitor), to APD's Internal Affairs Division (Internal Affairs), or by contacting an APD supervisor. Internal Affairs investigates complaints related to possible violations of APD policy, while complaints alleging criminal actions are handled by APD's Special Investigative Unit.¹ Additionally, APD management may order Internal Affairs to review an officer's actions in certain situations, such as officer-involved shootings. These reviews are handled similarly to complaints.

According to APD policy (see graphic), Internal Affairs staff investigate complaints while the officer's chain of command determines if a policy violation occurred and the appropriate discipline. Discipline can range from an oral or written reprimand to indefinite suspension. If the person who filed the complaint or the Police Monitor is not satisfied with the results of the investigation, he or she can present the issue to the Citizen Review Panel. This volunteer group may request Internal Affairs investigate the incident further. They may also review critical incidents² and make recommendations on policy or officer training.

APD records indicate that around 1,200 complaints were filed between 10/1/2013 and 12/31/2015, 60% of which were filed by members of the public. Complaints were related to various actions by APD officers, including how they treated citizens, operated police vehicles, and made arrests. A majority of complaints from officers resulted in discipline compared to less than 5% of complaints from members of the public. Overall, more than half of all complaints did not result in any discipline. When discipline was administered, the most frequent types were oral and written reprimands.

Texas law³ grants police officers certain protections, including limits on when discipline can be administered and who can access personnel records. However, the law also allows agreements between municipalities and police associations to supercede the provisions of the state law, such as granting access to personnel records to a civilian oversight entity. The City's 2001 agreement with the Austin Police Association⁴ established the duties and functions of the Police Monitor and the Citizen Review Panel.

Process for accepting, investigating, and evaluating complaints



SOURCE: OCA analysis of APD Policies, January 2016

¹ Some situations may involve both a criminal and a policy violation, however this audit did not review criminal investigations.

² "Critical Incidents" include officer involved shootings or actions directly resulting in serious injury or death.

³ Texas Local Government Code Chapter 143.

⁴ The Austin Police Association is the legally recognized employee representative of Austin Police officers.

OBJECTIVES, SCOPE, AND METHODOLOGY

This audit on how APD handles complaints was conducted as part of the Office of the City Auditor's Fiscal Year 2016 Strategic Audit Plan, as presented to the City Council Audit and Finance Committee.

The audit was included on the plan in response to a request from the Police Chief, as well as local and nation-wide focus on interactions between police officers and members of the public.

Objectives

The objectives of the audit were to determine if:

- the complaint process is accessible;
- internal and external complaints are processed consistently; and
- appropriate and consistent corrective actions are taken.

The audit also sought to determine how Austin's complaint process compares to similar entities.

This audit did not assess the quality of any investigations done by Internal Affairs, nor did it assess whether APD reached the appropriate conclusions regarding the legitimacy or validity of complaints.

Scope

The audit scope included administrative investigation activities related to internal and external complaints between 10/1/2013 and 12/31/2015.

Methodology

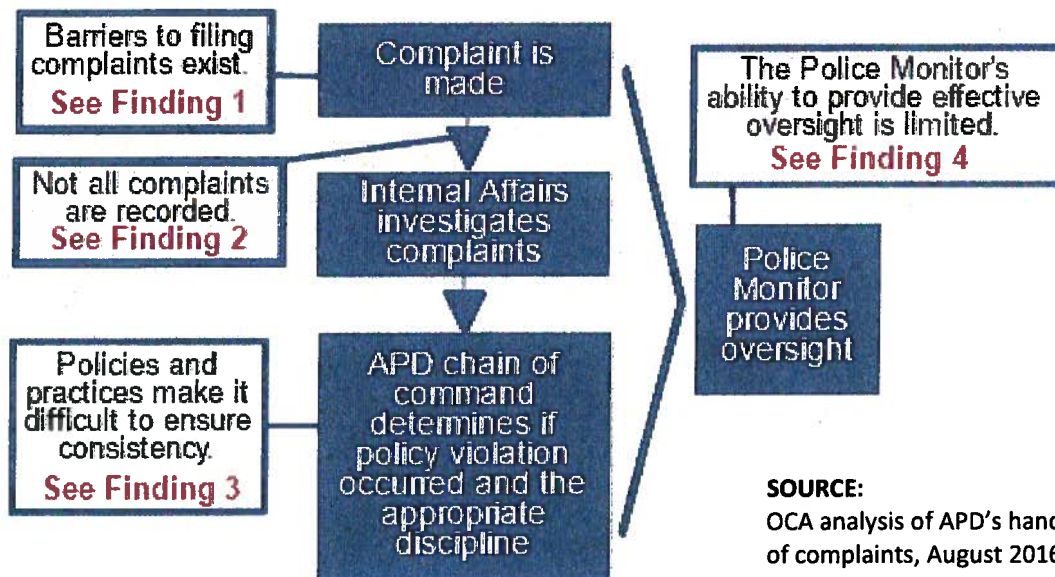
To accomplish our audit objectives, we performed the following steps:

- interviewed APD and Police Monitor staff;
- interviewed a random sample of 40 people who filed a complaint or contacted the Police Monitor and/or APD;
- interviewed six community groups that serve at-risk populations or have experience with the complaint process;
- interviewed a random sample of 23 APD supervisors;
- reviewed media reports to identify incidents likely to have resulted in complaints or investigations;
- visited various City facilities to determine what information about the complaint process was available;
- interviewed employees from other cities involved in the process of handling of complaints for their organizations;
- analyzed the investigation process for a random sample of complaints;
- researched criteria related to complaints about police officers and police oversight functions;
- obtained and analyzed access lists for information technology systems relevant to the complaint process;
- reviewed records related to the repair of vehicle audio and visual recording equipment; and
- evaluated internal controls related to the collection, investigation, and disposition of complaints.

SUMMARY OF FINDINGS

Overall, the complaint process is not accessible and there are issues with how the Austin Police Department (APD) handles complaints as depicted in the chart below. A 2007 U.S. Department of Justice memo to the City and APD identified many of the same issues along with several recommendations to address them. However, these issues have not yet been fully addressed.

Issues noted with the process for accepting, investigating, and evaluating complaints



SOURCE:

OCA analysis of APD's handling of complaints, August 2016

Issues identified in this audit and by the U.S. Department of Justice may lead to a more negative perception of law enforcement and erode the public trust in APD. Further, these issues could compromise Internal Affairs' ability to fully investigate complaints; affect the completeness and reliability of complaint data; and/or impact the ability of APD and outside parties to monitor the complaint process and identify trends in complaints or officer behavior.

Finding 1: The City's complaint process is not accessible and may discourage people from filing complaints about officers.

The complaint process was not well advertised. Although the Police Monitor conducts some community outreach, various community groups⁵ report having very little interaction with the Police Monitor. Although the Police Monitor can market the complaint process, these marketing efforts appear to be undermined by the City's culture. For example, during a large festival in 2014, the City of Austin Twitter account sent a

The City's agreement with the Austin Police Association established the Police Monitor as the "primary, but not exclusive" location for accepting complaints.

⁵ We contacted community groups that specifically interact with: the homeless, people affected by domestic violence, the deaf and hearing impaired, and immigrants.

message instructing the public to contact the Police Monitor if they experienced a problem with the police. After the Austin Police Association criticized the outreach, the City apologized for the tweet.

Information on how to file a complaint, including contact information for the Police Monitor was posted in public areas of APD headquarters and all police sub-stations. APD's website also has information about how to file a complaint and a link to the Police Monitor website where complaint forms can be downloaded. Additionally, Austin 3-1-1 transfers callers to the Police Monitor if the caller says they want to make a complaint about a police officer. However, information about how to file complaints was not available in other City facilities where city staff and the public routinely interact, such as libraries and neighborhood centers.⁶ City staff at many of those facilities did not seem to be aware of the Police Monitor's role, and stated that people should file complaints with APD. Although this advice is appropriate, individuals who feel they had a negative interaction with a police officer may be uncomfortable contacting APD to file a complaint.

A 2007 memo to the City and APD from the U.S. Department of Justice noted that "an effective complaint process should allow unfettered access for citizens (or others) to make complaints..."

Barriers to the complaint process may have discouraged people from filing complaints.

Complaint forms require extensive identifying information about the person filing the complaint. Although APD policies allow anonymous complaints to be accepted, this is not widely communicated. Information on the APD website indicates that all complaints must be sworn under oath and notarized.

Other conditions that may create barriers for filing complaints include:

- the Police Monitor's office location, which is located several miles from the downtown area;
- statements by APD indicating a review is already underway (see Finding 2); and
- complaint forms that are only available in English and Spanish.⁷

When barriers are coupled with a culture that does not disseminate information on reporting complaints, the City misses opportunities to identify potential policy violations and correct officer behavior. This has the potential to lead to a more negative perception of law enforcement and erode the public trust in APD over time.

Finding 2: There is not a complete record of investigations into potential policy violations, limiting the ability to effectively monitor and report on complaint investigations.

The complaint database did not include all incidents that were brought to the attention of APD supervisors or management. At the time of this audit, several high profile incidents involving police officer conduct, including one that involved the use of force, were not found in APD's complaint database. Although a formal complaint may not have been filed in each incident, two were captured on video and were widely covered by local and national

APD Policy requires that supervisors forward all complaints to Internal Affairs, regardless of whether the issue was addressed by the supervisor.

⁶ During the audit, Police Monitor staff contacted staff at City libraries to provide information about the complaint process and resources (i.e. posters, flyers) for library customers.

⁷ Following an audit of language access services, City management is working on addressing issues related to services for non-English speaking individuals.

media. APD was aware of the incidents, often commenting about them to the media. Several articles quoted police officials as saying the incidents had been investigated or were under review. As mentioned in Finding 1, this may discourage someone from actually filing a complaint if they think APD is already investigating the incident. Also, in one instance, someone contacted the City Auditor's Integrity Unit to report a negative interaction with an officer. The information was sent to APD management, but Internal Affairs staff could not locate a corresponding record in the complaint database.

Supervisors did not always forward complaints to Internal Affairs. We surveyed a sample of APD supervisors and most indicated they forward complaints they receive to Internal Affairs. However, multiple supervisors stated that if the person making the complaint indicated they were satisfied after speaking to the supervisor, the supervisor would not forward the complaint to Internal Affairs.

Without a complete record of all complaints, APD's ability to identify complaint trends or potential issues with particular officers is hindered. This may also affect the discipline administered for future policy violations or lead to inconsistent treatment of officers, as officers are supposed to receive harsher discipline for repeat violations of the same policy. Additionally, the Police Monitor's ability to provide oversight of the complaint process is compromised if it is not aware of all complaints.

Finding 3: Internal Affairs investigations are timely and evidence is generally available. However, several issues with APD policies and practices make it difficult to ensure consistent handling of complaints.

Investigations were completed in a timely manner. Internal Affairs staff were aware that options for discipline are limited if not imposed within 180 days of the incident and generally completed investigations in a timely manner. Deadlines are tracked in various ways during the investigation and as a result, more than 70% of complaints receive a disposition within 60 days from the day the complaint was made, and nearly all are processed within the 180-day requirement.

Texas law limits the types of discipline officers can receive for incidents that occurred more than 180 days ago.

Evidence critical to investigations was generally available, but record retention policies could result in some evidence not being available. Evidence necessary to investigate complaints, such as audio and video recordings, was generally available to Internal Affairs investigators. However, APD's record retention schedule specifies that certain audio and video recordings are deleted after 90 days. Since approximately 7% of complaints were made after 90 days, the recordings may not have been available for investigators in those instances. Internal Affairs' ability to investigate complaints may be compromised if audio/visual recordings are not available. In at least one instance, Internal Affairs investigators noted that their investigation of a complaint had been impacted because the recording of the police interaction was not available.

APD policies and practices made it difficult to ensure consistent handling of complaints. Several issues with APD's policy for investigating complaints and how that policy is applied make it difficult to ensure consistency regarding the handling of complaints. Specifically, we noted issues with:

1. ***Complaint Acceptance*** - In some cases, complaints about an officer's actions may be made to that officer's supervisor, rather than Internal Affairs or the Police Monitor. APD policy outlines the responsibilities of supervisors in those situations and, although it was recently updated, the policy remains unclear. For instance, the policy requires different actions depending on whether the allegations are minor or serious, but does not provide specific examples of which policy violations fall into which category. It only defines serious allegations as "serious violations of a policy, rule, or regulation" or "conduct that challenges the integrity, good order, or discipline of the Department." This wording in the policy makes the process subjective and can result in different supervisors treating complaints differently.

A survey of APD supervisors noted conflicting ideas about what constituted a serious allegation. While several supervisors indicated that a complaint about rudeness was serious, others considered this a minor issue. The concept of rudeness itself was inconsistent, with some supervisors making a distinction between rudeness and belittling a member of the public.

2. ***Violation Identification*** - The complaint affidavit available on the Police Monitor website asks the person filing the complaint to outline their specific complaints. Once a complaint is received, Internal Affairs identifies the specific policies that may have been violated based on the complaint description. Investigations into potential violations identified during Internal Affairs' investigation must be authorized by the officer's chain of command. However this process is not outlined in APD policy and could result in inconsistent treatment of complaints by different chains of command.

In one instance, someone filed a complaint alleging that she had been stopped and questioned by an officer in an attempt to intimidate her prior to an upcoming court case. The Police Monitor noted in the complaint database that this could be a violation of APD's policy against intimidation and also noted that the officer did not document the incident, which could violate another APD policy. However, neither of these issues were investigated by Internal Affairs. Instead, it was categorized as a violation of an APD policy related to personal conduct, and was administratively closed by the officer's chain of command.

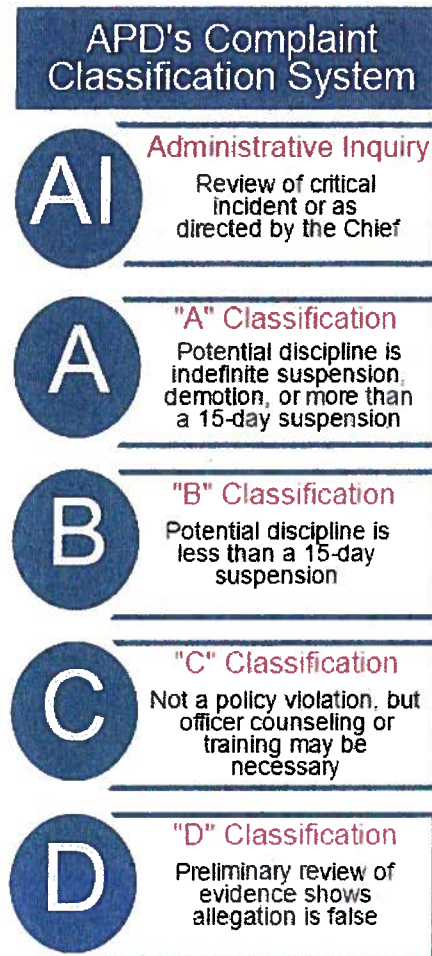
3. ***Complaint Classification*** - When complaints are received, they are classified based on APD policy (as depicted in the graphic). Two of the classification categories ("A" and "B") are based on the potential discipline an officer may receive if it is determined the violation occurred, while two other classifications ("C" and "D") are based on the outcome of the preliminary investigation⁸.

⁸ APD's classification system also included additional possible classifications, however these represented a small percentage of the total complaints reviewed.

Although APD management asserts that an officer's chain of command is responsible for determining the disposition of complaints, by assigning a "C" or "D" classification, Internal Affairs is effectively determining that no policy violation occurred. The officer's chain of command must still sign off on the results of the Internal Affairs investigation. They could also request that a "C" or "D" classification be changed to indicate a violation occurred. However, we saw no evidence of this in our testing.

Additionally, Internal Affairs changed the classifications for several complaints during or after investigations. This makes it difficult to identify trends and determine the ultimate outcome of investigations. In most of the cases reviewed, Internal Affairs changed the classification to a "D," meaning the review of evidence found no support for the complaint. Given this classification system, it's possible that a complaint alleging an officer used excessive force may initially be classified as an "A" (due to the severity of the potential discipline) but that complaint could later be reclassified as a "D" and administratively closed if the investigation did not identify a policy violation. Alternatively, the complaint may remain classified as an "A," but be listed as "unfounded" in the complaint database. Both situations are effectively the same issue with the same outcome, but the classification and disposition are recorded differently.

In 2007, the U.S. Department of Justice stated APD's classification system was "needlessly complex" and their recommended revisions were not implemented



SOURCE: OCA analysis of APD Policies, January 2016

This compromises the completeness and reliability of complaint data and may impede APD's and the Police Monitor's ability to identify trends and determine the ultimate outcome of investigations.

4. **Officer discipline** – The Police Chief is responsible for making decisions regarding discipline, and APD's policy notes that a guiding principle of the discipline process is to ensure it is "consistent, fair, impartial, objective, timely, and unbiased." To this effect, APD's policy includes a discipline matrix which is intended to provide guidance to supervisors on how to determine appropriate discipline when certain policies are violated. The discipline matrix lists various policies and provides a range of discipline for the first violation, as well as subsequent⁹ violations of that policy.

However, the discipline matrix does not include discipline guidance for all policy violations and does not address situations where an officer violates multiple policies in one incident. Since the matrix

⁹ Per APD policy, violations are considered subsequent if they occur within three years of the previous violation.

provides a range of discipline for each violation, officers who violate the same policy may receive different disciplines. A review of discipline for different officers who violated the same policy found that some received different disciplines, as shown in the table.

Three officers who violated this policy received a written reprimand, while two officers were given a three-day suspension. The two officers who were suspended had not violated other policies during the incident, while the three officers disciplined less harshly had violated other policies. Information in the complaint database did not indicate why some officers received harsher discipline.

The issues noted above related to APD's policies and practices for investigating complaints can lead to disparate treatment for members of the public and officers. This may result in the public losing trust in the complaint process and a decrease in morale for officers.

Some officers received harsher discipline compared to other officers who violated additional policies

Officer	Written Reprimand	3-Day Suspension	Additional Policy Violations During Incident
1	✓		YES
2	✓		YES
3	✓		YES
4		✓	NO
5		✓	NO

SOURCE: OCA analysis of discipline administered for a particular policy violation, July 2016

Finding 4: The Police Monitor's ability to provide effective oversight is limited.

The Police Monitor's ability to access investigation records was restricted.

A review of security settings for Internal Affairs' electronic records indicated that Police Monitor staff did not have automatic access to all the complaint case files. Instead, Internal Affairs and Police Monitor staff stated that access to these records is granted by Internal Affairs staff on a case-by-case basis and there is not a documented procedure for when this access should be granted. Hard copy records are also maintained by Internal Affairs, but Police Monitor staff must request access to these records as well.

The City's agreement with the Austin Police Association states that the Police Monitor has "unfettered access to the Internal Affairs investigation process."

The City's agreement with the Austin Police Association states that one of the purposes of civilian oversight of APD is to assure "timely, fair, impartial, and objective administrative review of police officers."

The role of the Police Monitor and Citizen's Review Panel in the complaint process is limited.

Oversight of the complaint process is not required by State law and the current oversight structure was established in the negotiated agreement between the City and the Austin Police Association. However, this agreement also placed several limitations on the ability of the Police Monitor and the Citizen Review Panel to provide effective oversight.

For example, Police Monitor staff cannot solicit complaints, directly question interview subjects¹⁰, or otherwise gather evidence. Police Monitor staff are also not allowed to participate in determining

¹⁰ Police Monitor staff are allowed to participate in the interview process and may request the Internal Affairs staff ask additional questions.

discipline¹¹ for sustained policy violations, but can make recommendations to the Police Chief if they disagree with the discipline decision. However, these recommendations cannot be considered if either the officer or the person who made the complaint appeal the discipline decision. Furthermore, the Citizen's Review Panel cannot gather evidence or subpoena witnesses and officers are not required to appear or present evidence to the panel. Although they are granted access to the investigation files, the access is limited to eight hours. During the public portion of panel meetings, no facts about the case can be discussed.

Police Monitor disagreements about discipline appeared to have no impact on officer discipline. The complaint database has a field allowing the Police Monitor to indicate whether they disagree with an investigation outcome, and records indicate that the Police Monitor disagreed with the discipline in about 8% of the cases reviewed. Based on a sample of 13 of these complaints, it does not appear that the Police Monitor's disagreement had an effect on the process. However, we only found two instances in which the specific nature of the Police Monitor's disagreement was formally communicated to APD management.

In one instance, a complaint alleged that two officers violated a policy related to general conduct and responsibilities. Both officers were found to have violated the policy, but one officer received an oral reprimand and the other received a written reprimand. The Police Monitor disagreed with the discipline and noted in the complaint database that there was no clear explanation for the discrepancy. There is no indication that the discipline for either officer was altered.

Lastly, the City's agreement with the Police Association requires quarterly meetings between the Police Monitor, Police Chief, Internal Affairs Commander, and Police Association President. However, Police Monitor staff and Internal Affairs staff stated that these meetings do not occur.

These conditions, along with other issues noted in this report, hinder the ability of the Police Monitor to provide effective oversight, which may contribute to the erosion of the public's trust in law enforcement and the City's responsibility to hold the police department accountable.

Finding 5: Data reliability issues with the complaint database make analysis of complaints difficult.

APD staff asserted the complaint database is reviewed to ensure accurate data. However, key information for several records was not entered into the database, was entered incorrectly, or was entered inconsistently. This included:

- complaint classifications changed after investigations were completed (as noted in Finding 3);
- complaint records that did not indicate the investigation outcome or the discipline taken;
- complaint records indicating that the complaint was made before the incident allegedly occurred;
- incomplete data related to the APD policy that was allegedly violated; and
- notes by Internal Affairs investigators that lacked some key events or explanations for long delays in the investigation.

According to the U.S. Government Accountability Office, data should be complete and accurate.

¹¹ Internal Affairs staff are also not allowed to participate in the discipline process.

In one instance, notes made by Internal Affairs in the complaint database indicate a complaint was received in late February 2014 but the next update was not made until more than six months later. In several other complaints, there were investigation documentation gaps of between two and five months between updates.

The complaint database lacks several controls that could assist in ensuring complete and accurate data. Additionally, APD does not have any policies or procedures for how data should be entered into the complaint database. Incomplete or inaccurate data make it difficult to analyze complaint information and identify or report on complaint and investigative trends.

ADDITIONAL OBSERVATIONS:

Feasibility of comparing Austin's handling of complaints to similar entities is limited by differences in state laws and labor agreements, but various practices at other entities could be incorporated to improve complaint handling in Austin.

The structure of police oversight varies among cities, as it is generally dependent on the specific laws of that state and the labor agreements of that organization. As a result, it is not practical to make a direct comparison between Austin's police oversight structure and structures in other cities. It should be noted that within Texas, Austin is the only large city with an independent police oversight structure. However, several practices in other cities may have a positive impact on police oversight if they were to be incorporated in Austin. Those include:

- publishing a clear list of what to expect after making a complaint, including estimated timelines and deliverables;
- tasking the independent oversight agency with determining complaint classifications;
- publishing anonymized summaries of investigations and outcomes; and
- creating a paper complaint form that includes prepaid postage and is addressed to the oversight agency.

Access to the complaint database should be limited.

A review of the complaint database identified several City employees with access despite not having a business need. This included two APD officers who had previously worked in Internal Affairs, as well as several Communications and Technology Management employees. Although there was no indication of improper access to the data, State law strongly restricts access to these records. The Communications and Technology Management asserted that the issue was corrected during the audit.

RECOMMENDATIONS

Recommendations to the Police Monitor:

To address Finding 1, which noted that members of the public may not be aware of the complaint process and that barriers to making a complaint exist, we recommend that:

1. **The Police Monitor expand efforts to increase awareness about the Police Monitor and the complaint process.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

2. **The Police Monitor review the complaint process, identify barriers people may face when attempting to make a complaint, and implement methods to reduce or eliminate those barriers. This includes more clearly communicating that complaints can be made anonymously and publishing clear guidance on what to expect after making a complaint, including estimated timelines and deliverables.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

Recommendations to the Police Chief:

To address Finding 2, which noted that the complaint database may not include all complaints or reviews of officer actions by APD management (Finding 2), we recommend that:

3. **The Police Chief ensure that all staff are aware of, and comply with, the requirement that all complaints should be sent to Internal Affairs for inclusion in the complaint database.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

4. **The Police Chief create administrative inquiries for high-profile incidents and ensure they are investigated by Internal Affairs.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

To address Finding 3, which noted that evidence may not be available during complaint investigations and that the policies and practices related to complaint investigations may be inconsistent, we recommend that:

5. **The Police Chief revise the record retention schedule to ensure that evidence that could be used in complaint investigations is available to Internal Affairs investigators for at least 180 days.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

6. To better allow for analysis and reporting on complaints and their disposition, the Police Chief should revise APD's current classification process to:

- **reflect complaints as pending until initial evidence is reviewed,**
- **assign classification based on potential discipline or corrective action,**
- **limit changes to classifications once assigned, and**
- **include a conclusion (e.g. sustained, exonerated, unfounded) for all complaints.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

7. The Police Chief implement a process to document justifications for discipline, including how disagreements with the Police Monitor are addressed.

MANAGEMENT RESPONSE: **Do not concur.** Refer to Appendix A for management response.

To address Finding 4, which noted that the Police Monitor has limited ability to provide oversight of the complaint process, we recommend that:

8. The Police Chief provide the Police Monitor with automatic access to all electronic records maintained by Internal Affairs.

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

9. The Police Chief ensure that regular meetings between stakeholders in the complaint process occur, as prescribed in the agreement with the Austin Police Association.

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

To address Finding 5, which noted issues with the reliability of data in the complaint database, we recommend that:

10. The Police Chief ensure that data is accurate, complete and consistent. This may include working with the City's Communication and Technology Management Department to identify and implement updates to the complaint database, including:

- **Required fields that cannot be blank when cases are closed; and**
- **Field level controls to ensure dates are reasonable.**

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

Recommendation to the City Manager:

To address Finding 4, which noted that the Police Monitor has limited ability to provide oversight of the complaint process, we recommend that:

11. The City Manager pursue opportunities to expand oversight functions through changes to City Code and/or the City's agreement with the Austin Police Association.

MANAGEMENT RESPONSE: **Concur.** Refer to Appendix A for management response and action plan.

APPENDIX A

MANAGEMENT RESPONSE – OFFICE OF THE POLICE MONITOR



To: Corrie Stokes, City Auditor
From: Margo L. Frasier, Police Monitor
Date: September 22, 2016
Re: Response to Audit Findings—APD Handling of Complaints

On behalf of the Office of the Police Monitor (OPM), I am grateful for the opportunity to work with the City Auditor in evaluating the handling of complaints by the Austin Police Department (APD) and identifying potential solutions to areas needing improvement.

The APD Handling of Complaints Audit has two recommendations which relate directly to the OPM. However, other findings and recommendations also impact the ability of the OPM to successfully participate in the complaint process and serve the public. The OPM concurs with all of the Auditor's findings and recommendations irrespective of whether the recommendations are directed to the OPM. The OPM is committed to working with the APD and the City Manager to implement all of the recommendations including those directed to the OPM.

Recommendation #1: The Police Monitor expand efforts to increase awareness about the Police Monitor and the complaint process.

Management Response: As the Police Monitor, I concur with this finding and recommendation. Increased efforts need to be made to make the public aware of the existence of the OPM and the complaint process. The OPM cannot do this alone, but, the OPM has made a renewed effort to place informational brochures, cards, and posters in public spaces such as libraries, community centers, and churches. The OPM would like to make greater use of social media but has encountered resistance in the past when it used Twitter to advise persons whom to contact if they had a complaint.

The effort to increase the public's knowledge of the OPM's existence and the complaint process is underway. Contact has been made with the libraries, community centers, and some churches. Where permission has been granted, OPM brochures, information cards, and posters have been placed. The effort to expand the number of places and restock the current sites is ongoing. The OPM currently has information cards in four languages (Thai, Spanish, Vietnamese, and Mandarin) and is seeking a vendor to translate the information into Arabic. The printing should be completed by October 15, 2016, and the cards will be distributed during the latter part of October, 2016. The restocking effort will be ongoing.

The OPM would ask that APD include a link to the OPM website on its website and on its mobile app. The OPM would also support APD distributing the OPM's information cards on how to file a complaint or at least providing contact information for the OPM to the public.

Recommendation #2: The Police Monitor review the complaint process, identify barriers people may face when attempting to make a complaint, and implement methods to reduce or eliminate those barriers. This includes more clearly communicating that complaints can be made anonymously and

APPENDIX A

publishing clear guidance on what to expect after making a complaint, including estimated timelines and deliverables.

Management Response: As the Police Monitor, I concur with this finding and recommendation. The complaint process is tightly controlled and limited by state law and the Meet and Confer agreement between the Austin Police Association (APA) and the City of Austin. However, the OPM has made great efforts to make it easier for the community to file a complaint including accepting complaints electronically.

There are strict limitations on the ability to file a formal complaint anonymously as all formal complaints must be in writing and notarized according to state law. However, the OPM has developed an alternative process called a Citizen Concern that may be submitted anonymously. APD has the option of opening an Administrative Inquiry on the basis of the information relayed by the OPM.

Recently, the OPM has developed information cards on how to file a complaint and translated it into four languages (Thai, Spanish, Vietnamese, and Mandarin) and is seeking a vendor to translate the information into Arabic. The printing should be completed by October 15, 2016, and the cards will be distributed during the latter part of October, 2016. The cards will be distributed at fixed locations and at outreach events.

The OPM sends a letter to complainants outlining timelines and deliverables. Recently, the OPM has developed an information sheet on each type of complaint (formal, supervisor referral, and citizen concern). Posters of the information sheets are being printed and will be placed in the OPM lobby by October 1, 2016. The information sheets will be added to the OPM website by October 1, 2016.

The OPM will utilize its December Citizen Review Panel meeting to seek input from the community on the barriers people face and the community's suggestions on how to reduce/eliminate the barriers. The OPM will also reach out to various advocacy groups and community groups to seek their assistance in identifying barriers and suggestions. This effort will take place during the first quarter of 2017 so that the information can help formulate what changes and/or clarifications need to be contained in the next Meet and Confer contract. If there are suggestions which do not require changes and/or clarification to the Meet and Confer, they will be considered by implementation by the end of March, 2017.

Again, thank you for the opportunity to work with your very professional and helpful staff.

APPENDIX A

ACTION PLAN – OFFICE OF THE POLICE MONITOR

APD Handling of Complaints

Recommendation	Concurrence and Proposed Strategies for Implementation	Status of Strategies	Proposed Implementation Date
1. The Police Monitor expand efforts to increase awareness about the Police Monitor and the complaint process.	Concur 1. OPM has made a renewed effort to place informational brochures, cards, and posters in public spaces such as libraries, community centers, and churches. 2. Development and translation of information cards on how to file a complaint and the existence of the OPM. Distribution will be in public spaces and at community outreach events. 3. Request APD to provide a link to the OPM on its website and its mobile app. Also request APD to either distribute OPM's information cards or information about the existence of OPM. 4. Greater use of social media to advertise the existence of the OPM if the prior resistance can be overcome.	Item #1 has been Implemented . Item #2 is Underway as the information cards have been developed and translated. OPM is waiting for the printing of the cards so that they can be distributed. Items #3 and 4 are Planned .	While Item # 1 has been implemented the restocking of the cards and brochures is ongoing along with the expansion of locations. Item #2 will be completed by the end of October, 2016. Item #3 will be completed by the end of November, 2016. Item #4 is contingent on others, but the request will be presented by the end of November, 2016.

APPENDIX A

Recommendation	Concurrence and Proposed Strategies for Implementation	Status of Strategies	Proposed Implementation Date
2. The Police Monitor review the complaint process, identify barriers people may face when attempting to make a complaint, and implement methods to reduce or eliminate those barriers. This includes more clearly communicating that complaints can be made anonymously and publishing clear guidance on what to expect after making a complaint, including estimated timelines and deliverables.	Concur 1. OPM has made it possible for a complaint to complete the entire process electronically. 2. As state law prohibits a formal complaint from being made anonymously, OPM has developed a Citizen Concern process where information may be relayed by OPM to APD. 3. Development and translation of information cards on how to file a complaint and the existence of the OPM. Distribution will be in public spaces and at community outreach events. 4. Placement of the information sheets on the various types of complaints with timelines and deliverables on the OPM website and in posters in the OPM lobby. 5. Involvement of the community through advocacy and community groups to identify the barriers and suggestions on how to reduce/eliminate. Any items not requiring change in the Meet and Confer will be considered for implementation.	Items #1 and #2 have been Implemented. Item #3 is Underway as the information cards have been developed and translated. OPM is waiting for the printing of the cards so that they can be distributed. Item #4 is Underway as the information sheets have been developed and are in the process of being printed and placed on the OPM website. Item #5 is being Planned.	While Items #1 and #2 have been implemented, the ongoing publicizing of these options will advise the public of their existence. Item #3 will be completed by the end of October, 2016. Item #4 will be completed by October 1, 2016. Item #5 is being planned, but it is anticipated that public input will be sought at the December, 2016, Citizen Review Panel and meetings with advocacy groups and community groups will occur in the first quarter of 2017. Any necessary changes to the Meet and Confer will be sought in the negotiations in 2017.

APPENDIX A

MANAGEMENT RESPONSE – AUSTIN POLICE DEPARTMENT



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Corrie Stokes, City Auditor

FROM: Brian Manley, Chief of Staff

DATE: September 27, 2016

SUBJECT: Internal Affairs Complaint Process Audit

The Austin Police Department has reviewed the City Auditor's report on the Internal Affairs complaint process and concurs with the majority of APD recommendations contained within the report. The Internal Affairs Division is charged with investigating allegations of wrongdoing levied against departmental personnel and follows procedures outlined in both APD policy and the Meet and Confer agreement between the City of Austin and the Austin Police Association. Internal Affairs works closely with the Office of the Police Monitor to allow for citizen oversight of our discipline process. The unit is staffed with 11 sergeants who conduct the investigations along with a lieutenant and commander who oversee the operations.

Specific to the audit recommendations, we concur with the below listed recommendations with qualifications as listed in parenthesis:

- The Police Chief ensure that all staff are aware of, and comply with, the requirement that all complaints should be sent to Internal Affairs for inclusion in the complaint database.
- The Police Chief create administrative inquiries for high-profile incidents and ensure they are investigated by Internal Affairs.
- The Police Chief provide the Police Monitor with automatic access to all electronic records maintained by Internal Affairs (ongoing investigations or complaints).
- The Police Chief ensure that regular meetings between stakeholders in the complaint process occur, as prescribed in the agreement with the Austin Police Association
- The Police Chief revise the record retention schedule to ensure that evidence that could be used in complaint investigations is available to Internal Affairs investigators for at least 180 days (pending additional funding to cover future additional storage costs).

Page 2 of 2 Internal Affairs Complaint Process Audit

- The Police Chief should ensure that data is accurate, complete and consistent. This may include working with the City's Communication and Technology Management Department to identify and implement updates to the complaint database.
- To better allow for analysis and reporting on complaints and their disposition, the Police Chief should revise APD's current classification process to:
 - reflect complaints as pending until initial evidence is reviewed
 - assign classification based on potential discipline or corrective action
 - limit changes to classifications once assigned
 - include a conclusion (e.g. sustained, exonerated, unfounded) for all complaints

We do not concur with the audit's recommendation that the Police Chief implement a process to document justifications for discipline, including how disagreements with the Police Monitor are addressed. The Chief already justifies his decision to implement formal discipline in the Civil Service mandated suspension letters. The facts of cases that do not result in formal discipline are confidential per Civil Service law, so justifications in these cases could not be shared with anyone and are therefore unnecessary. There is already a process in place to handle disagreements between the Police Monitor's office and the Police Chief.

We look forward to a timely implementation of these audit recommendations and our continued partnership with the Office of the Police Monitor in ensuring the highest level of professionalism at APD. The attached schedule outlines our implementation strategies and timelines.

Respectfully,


Brian Manley, Chief of Staff

APPENDIX A

ACTION PLAN – AUSTIN POLICE DEPARTMENT

APD Handling of Complaints

Recommendation	Concurrence and Proposed Strategies for Implementation	Status of Strategies	Proposed Implementation Date
3. The Police Chief ensure that all staff are aware of, and comply with, the requirement that all complaints should be sent to Internal Affairs for inclusion in the complaint database.	Concur We will issue a Department wide Training Bulletin on this policy.	Underway	October 1, 2016
4. The Police Chief create administrative inquiries for high-profile incidents and ensure they are investigated by Internal Affairs.	Concur High profile incidents will be handled as Administrative Inquiries. Per policy, Administrative Inquiries will be conducted by either IAD, the Chain-of-Command, Human Resources, City Auditor, or an Independent Investigator (APD Policy 902.1.2)	Implemented	N/A
5. The Police Chief revise the record retention schedule to ensure that evidence that could be used in complaint investigations is available to Internal Affairs investigators for at least 180 days.	Concur - as long as the city funds the additional increased storage cost. This is expected to be a significant cost.	Planned - as long as <u>additional funds</u> are identified to cover the increased cost.	Undetermined

APPENDIX A

Recommendation	Concurrence and Proposed Strategies for Implementation	Status of Strategies	Proposed Implementation Date
6. To better allow for analysis and reporting on complaints and their disposition, the Police Chief should revise APD's current classification process to: • reflect complaints as pending until initial evidence is reviewed; • assign classification based on potential discipline or corrective action; • limit changes to classifications once assigned; and • include a conclusion (e.g. sustained, exonerated, unfounded) for all complaints.	Concur We will assign a final classification to all complaints, but will also still use Administratively closed when appropriate (Administrative Inquiries with no findings of wrongdoing, other cases as needed). We will begin assigning final classifications to Class C and D complaints. Since we will list complaints as pending classification until we complete our initial evidence review, our changes to classifications once assigned should drop significantly.	Planned	January 1, 2017
7. The Police Chief implement a process to document justifications for discipline, including how disagreements with the Police Monitor are addressed.	Do not concur The Chief's justification for suspending an officer are already documented in the Civil Service mandated suspension letter. The facts on lower level violations that do not result in a suspension are already documented in the case file, and that is what forms the Chief's justification for his discipline decision. Civil Service law precludes making information on discipline less than a suspension public, so a "documented" justification would not be shared with anyone and therefore would serve no purpose. If the OPM disagrees with APD's handling of an investigation, they can document that in an email to the Chief. Again, if this involves a case not resulting in a suspension, nothing can be made public per Civil Service law.	N/A	N/A

APPENDIX A

Recommendation	Concurrence and Proposed Strategies for Implementation	Status of Strategies	Proposed Implementation Date
8. The Police Chief provide the Police Monitor with automatic access to all electronic records maintained by Internal Affairs.	Concur The Police Monitor will have access to all materials as outlined by the Meet and Confer agreement when they are related to an ongoing investigation or complaint. We will meet with the IAD Chain of Command to ensure appropriate access is granted.	Underway	October 1, 2016
9. The Police Chief ensure that regular meetings between stakeholders in the complaint process occur, as prescribed in the agreement with the Austin Police Association.	Concur We will schedule quarterly meetings beginning in the fourth quarter of 2016.	Underway	Fourth Quarter 2016
10. The Police Chief should ensure that data is accurate, complete and consistent. This may include working with the City's Communication and Technology Management Department to identify and implement updates to the complaint database, including: • Required fields that cannot be blank when cases are closed; and • Field level controls to ensure dates are reasonable.	Concur We will meet with CTM to discuss improvements to the database that will address the noted concerns.	Planned	TBD based on scope of work identified by CTM.

APPENDIX A

MANAGEMENT RESPONSE – CITY MANAGER



MEMORANDUM

TO: Corrie Stokes, City Auditor
FROM: Rey Arellano, Assistant City Manager 
DATE: September 27, 2016
SUBJECT: Response to Audit Findings-APD Handling of Complaints
Cc: Tom Stribling, Interim Labor Relations Officer

Thank you for the opportunity to respond to the following recommendation to the City Manager contained in the Audit of the Austin Police Department's Handling of Complaints:

Recommendation to the City Manager

To address Finding 4, which noted that the Police Monitor has limited ability to provide oversight of the complaint process, we recommend that:

1. The City Manager pursue opportunities to expand oversight functions through changes to City Code and/or the City's agreement with the Austin Police Association.

Management Response

Texas state law restricts the ability to provide citizen oversight in the investigation and discipline of police officers. These restrictions include the legal prohibition against public release of certain investigation information. Additionally, state law gives the authority to discipline officers to the Chief of Police, thereby restricting input from groups outside of the police department.

The City, in partnership with the Austin Police Association, has the ability to modify these laws through the Meet and Confer process. Meet and Confer allows the City and its police officers to contractually agree to terms affecting the working conditions of officers, including the complaint investigation process. (Changes to City Code would not alter state law.)

As noted in the Audit, Austin is the only large city in Texas with an independent police oversight function. Police oversight was first adopted in Austin in 2001 through the Meet and Confer process, and the City has worked with the Austin Police Association in subsequent negotiations to improve that process. For example, in 2013, the City and the Association agreed to

Office of the City Manager

1

Response To
Audit of APD's Handling of Complaints

APPENDIX A

unprecedented transparency in the handling of officer complaints by making the work and recommendations of the Citizen Review Panel more open to the public.

Management concurs that the negotiated agreement between the City and the Austin Police Association places limitations on the actions the Police Monitor and the Citizen Review Panel may take. However, Management does not agree that these restrictions limit the ability of the Monitor or the Review Panel to provide *effective* oversight. Your finding that the Police Monitor disagreed with investigation outcomes only about 8% of the time is proof that citizen oversight of APD's handling of complaints has achieved great success.

Nevertheless, striving toward Best-Managed City does not mean that we stop working to improve our practices and procedures. To that end, Management will continue to use the Meet and Confer process to pursue opportunities to expand oversight of APD's handling of complaints in ways best suited to achieving the purpose of citizen oversight - assuring timely, fair, impartial, and objective administrative review of complaints against police officers, while protecting the individual rights of officers and citizens.

APPENDIX A

ACTION PLAN – CITY MANAGER

APD Handling of Complaints

Recommendation	Concurrence and Proposed Strategies for Implementation	Status of Strategies	Proposed Implementation Date
11. The City Manager pursue opportunities to expand oversight functions through changes to City Code and/or the City's agreement with the Austin Police Association.	Concur Management concurs that the negotiated agreement between the City and the Austin Police Association places limitations on the actions the Police Monitor and the Citizen Review Panel may take. However, Management does not agree that these restrictions limit the ability of the Monitor or the Review Panel to provide <i>effective</i> oversight. Management will continue to use the Meet and Confer process to pursue opportunities to expand oversight of APD's handling of complaints in ways best suited to achieving the purpose of citizen oversight – assuring timely, fair, impartial, and objective administrative review of complaints against police officers, while protecting the individual rights of officers and citizens.	Planned	In connection with the next full Meet and Confer negotiations conducted with the Austin Police Association.