



CITY OF PALO ALTO OFFICE OF THE CITY CLERK

September 22, 2014

The Honorable City Council
Palo Alto, California

Independent Police Auditor Report Covering the Second Half of 2013

Attached you will find the Independent Police Auditor Report covering the second half of 2013, dated April 2014.

ATTACHMENTS:

- Attachment A: Police Auditor Report Dated April 2014 (PDF)

Department Head: Donna Grider, City Clerk

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POLICE AUDITOR'S SECOND REPORT - 2013

**Presented to the Honorable City Council
City of Palo Alto
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Independent Police Auditors**

I. Introduction

This is the second of two reports covering the seventh year in which the Independent Police Auditor ("IPA") has monitored the internal review processes of the Palo Alto Police Department ("PAPD"). It covers activity from the second half of 2013. Though these reports regularly include analysis of Taser deployments by PAPD officers, there were none during this period of time.

The report includes discussion of one allegation of misconduct that was investigated internally by the Department and completed within the audit period. (Three other complaint investigations that were initiated in 2013 were not finished until recently.) In this case, the officer was found to have acted within policy. The IPA concurs with this outcome, and found that the investigation was largely effective – with one significant caveat.

As discussed below, that concern relates to the actual "subject interview" in which a PAPD supervisor questioned the involved officer about the allegations. From our vantage point, the interview lacked the objectivity and thoroughness that the Department should be striving for. Fortunately, in light of the totality of the evidence, this issue did not undermine the final outcome. We are also happy to report that the Department was responsive to this issue when we raised it, and has pledged to take corrective action in the form of counseling and training.

II. Case Review

Factual Overview:

In the spring of 2013, Palo Alto's Chief received a letter alleging misconduct in the context of a criminal investigation that had occurred in the previous year. The complainant, who was incarcerated at the time, claimed that a Palo Alto detective had made an inappropriate threat in the context of a post-arrest interrogation.

The exchange in question had happened a few months earlier at the Palo Alto police station. The complainant was a suspect in multiple commercial burglaries, and three detectives – two of whom worked for another agency – questioned him about his involvement after providing the proper Miranda advisements. According to the complaint letter, the Palo Alto officer made a “criminal threat” toward him: namely that he would make sure that the complainant “would die in prison” and “would never get out alive” unless he confessed to the crimes at issue.

The issues for investigation were whether the statements were actually made, and, if so, whether they constituted misconduct.

PAPD Investigation:

The Department's administrative investigation supplemented the written allegations to include a formal interview of the complainant. This lasted for over an hour, and the assigned PAPD supervisor took pains to engage in a full interaction with the complainant, and to determine specifically what conduct was a concern. The recording of that conversation (which the IPA has reviewed) reflects a good rapport between the two, and an approach by the supervisor that is effectively patient and solicitous.

The pivotal evidence is a recording of the actual interrogation during which the contested statements occurred. The key moment comes toward the end (of approximately four hours), after an extended period with little progress. The detective enters the room and engages in a “hard” interview tactic of confronting the suspect with harsh language and a dire assessment of his prospects. He looms over the seated suspect for two or three minutes as he speaks.

The recording shows that the “threat” language at issue was slightly misremembered by the complainant. The gist, though, appears to be basically the same: the detective does assert that the suspect's family members, in conjunction with law enforcement, “are going to make sure” that he dies in prison. In the context of the interview, however, the statement seems to serve not as threat of violence or retribution (as alleged), but instead as a harsh warning of the seriousness of the complainant's situation. The complainant is in his sixties, with self-proclaimed

health issues, which means a long prison sentence would indeed extend beyond his natural life span.

Accordingly, the complainant's claimed interpretation of "I am going to kill you" seems far less reasonable than something along the lines of "Your sentence will be so long that you will never get out." Nor does the "real time" reaction of the complainant/suspect suggest that he felt rattled or unsafe as a result.

In spite of the relatively definitive nature of the recording as evidence of what occurred, the PAPD investigation also included telephonic interviews with the officers from the outside agency, who were present as witnesses. They remembered the exchange, considered it normal, and disputed the interpretation of the complainant.

Finally, the Department interviewed the detective himself, who explained his technique and denied having a threatening or hostile intent. From the IPA perspective, this interview was somewhat problematic.¹ The investigator's familiarity with the case (including the complainant's possible motivations) and his relationship with the detective/subject seem to affect the dynamic and interfere with both objectivity and thoroughness.

The supervisor who handled the investigation is candid about these factors during the interview, and spends a portion of the time opining about his own analysis. This candor cuts both ways. It comes across as an honest reflection of a legitimate point of view about the case, and his transparency about it reflects an absence of guile or manipulation. Nonetheless, as accurate as his personal assessment seems to be, it is less than ideal for various reasons. The most obvious of these is the undercurrent of bias it inherently suggests. Just as importantly, the pre-judging seems to preclude a focused, thorough discussion of the allegation from the subject detective's perspective.

Indeed, while the subject does offer a detailed recapitulation of his entire experience with the complainant, the critical moments of the interrogation are not discussed in specific detail. Nor are the more potentially controversial elements of the detective's "tactic" (including profanity and physical crowding) specifically addressed or challenged.

Outcome and Analysis:

While many complaint cases involve a dispute over whether clearly inappropriate behavior actually occurred, this was an instance in which the facts were clear, and the question was one of interpretation. PAPD determined that the conduct of the detective was not a violation of Department policy.

¹ As is its practice, PAPD provided the IPA with all relevant memos and recordings from the investigation, including the 25-minute subject interview.

The IPA concurs with this finding. The videotaped evidence of the actual exchange is obviously of central importance in this regard. As noted, the complainant had additional opportunity to articulate his perspective and explain his interpretation. However, even if he was sincere in that subjective analysis, the objective evidence does not support his understanding. The disputed actions of the detective during the questioning seem within the realm of permissible interrogation techniques. While the critical moments are hard-edged to the point of being slightly jarring, they are not so outrageous as to shock the conscience and do not lend themselves to the complainant's view of them.

It should also be noted that the investigation by the Department had thorough and thoughtful components, and the issues were framed appropriately and addressed convincingly. Even the flawed subject interview produces relevant and credible answers from the detective about his intent, and adds his denials to the weight of evidence against the threat allegation.

On the whole, the investigation was successful in addressing the complaint and reaching a valid conclusion. However, from the IPA's perspective, a more considered evaluation of the detective's approach – which was legal but open to legitimate questions – would have been a worthy exercise. The permissibility of profanity and other “hard-edged” tactics is not the same thing as advisability.

Suspect interviews are indeed a specialized realm of expertise, but ideally the manifestations of that expertise will remain consistent with basic Departmental philosophies about how business should be conducted. In both the administrative interview and subsequent managerial evaluation, the opportunity existed to explore this issue more fully, and we encourage PAPD to take advantage of such opportunities in future cases.

We recently spoke to Department leadership about this topic, and were pleased to note its concurrence regarding consistent professionalism in the interrogation context. Specifically, PAPD noted that interrogations should be conducted with the utmost care and with an eye toward eliciting truthful admissions in a manner that is both legal and consistent to Departmental values. PAPD committed to training and supervision that asserts those values going forward. This strikes us as a positive development.

III. Conclusion

Thank you for the continued opportunity to monitor PAPD on behalf of the community it serves. Please feel free to contact us at your convenience with questions or other feedback.

