

City of Santa Monica

Inspector General's REPORT on SMPD
Complaint Investigation Process

October 2022



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Introduction

At its regular public meeting in February of 2022, the Santa Monica's "Public Safety Reform and Oversight Committee" ("PSROC") endorsed an audit project that had been recommended by Michael Gennaco of OIR Group, in his capacity as Inspector General. The project was meant to supplement the work that the Committee had already initiated in learning about the mechanics of the public complaint process as administered by the Santa Monica Police Department ("SMPD").

The Committee has produced a report and several recommendations as a result of knowledge it gleaned from members' interactions with SMPD personnel. These interactions related to protocol and procedure with regard to intake, triage, and investigation of complaints, and the Committee identified areas where it thought the processes could become more effective. In proposing an audit of actual cases completed recently by the Department's Internal Affairs unit, the Inspector General sought to add to the foundation that the Committee had established through its own efforts.

Specifically, an audit by the Inspector General was intended to add two elements to the Committee's project. One was a perspective drawn from OIR Group members' extensive experience with oversight and "best practices" for administrative investigations. The other was a substantive, qualitative review, based on the IG's unique access to confidential SMPD files and records pursuant to the City Ordinance. An assessment of recently completed cases offered a concrete way to evaluate the effectiveness of the process through the prism of actual complaints and allegations of misconduct involving SMPD personnel.¹

Pursuant to the proposal and the Committee's authorization, the IG reviewed 10 complete investigation files that were provided by the Department. These materials included the following:

- The memo prepared by the investigator that summarized the evidence;
- The transcribed interviews of the complainants, witnesses, and subjects of each case;

¹ One aspect of the complaint process not addressed in this audit is how "complaints" that are not referred for a formal administrative investigation are addressed by SMPD. As noted below, that issue is sufficiently weighty to comprise a potential future IG audit project.

- Any documents or other evidence relating to the underlying incident (including police reports, photos, body-worn camera and other recordings); and
- The written analysis by SMPD executive-level decision makers as to outcomes.

We evaluated the cases along a range of criteria. These included investigative scope, thoroughness, timeliness, objectivity, accountability, remedial steps (if necessary), and overall legitimacy.

The following Report about those evaluations hopes to provide insight in a couple of ways: first by offering a window into the specific allegations that SMPD addressed, and then, based on those particular examples, by drawing larger conclusions – and recommendations – about the process itself. Accordingly, we provide a factual summary for eight of the ten investigations that we reviewed, in terms of both the incident at issue and the Department’s administrative response.² The ultimate point was not to validate or question or otherwise re-litigate the actual outcomes of these complaints, though we do share our impressions of the findings. Instead, it was to use the cases as a concrete basis for assessing the *process* more broadly.

In doing so, we sought to identify systemic issues that may warrant attention or revision for the sake of enhancing future effectiveness. Individual issues that arose, as well as collective tendencies we saw across several cases, are discussed with accompanying recommendations.

A few notes are warranted about our interactions with SMPD in conjunction with this project. First, we appreciate the complete cooperation we received from Department supervisory staff with regard to accessing the necessary materials. Next, it bears mentioning that a prior administration was at the helm during the time these matters were investigated. Our hope is that current leadership will reinforce the strengths we identify and embrace opportunities to make positive adjustments, and we have reason to believe this will occur. Finally, we are grateful for thoughtful feedback that the Department provided, and that helped to clarify and otherwise improve this Report.

In terms of an “executive summary” of our findings, we noted a mix of strengths and limitations that we discuss below. One striking aspect of the review was that accumulating the cases for our evaluation required the Department to go back in time – some of the complaints we assessed were raised in 2018.

² After our initial review, we learned that two of the cases we examined were also the subject of ongoing civil litigation. At the request of the City Attorney, our discussion of those cases will be deferred until the conclusion of that litigation, but the intent is to discuss in an addendum to this public report what we learned from those cases at that time.

The potential causes of this low volume of formal investigations are various. The simplest and most encouraging would be that SMPD rarely provokes the dissatisfaction or grievance of the people it serves and encounters in Santa Monica. We don't discount this possibility, and agency leadership informs us that it is common for the Department's self-initiated misconduct investigations to exceed public complaints in the course of a given year. At the same time, we know the pandemic reduced the number of overall contacts by a considerable amount. And we have worked in jurisdictions in which a higher number of complaints is at least partially a function of heightened engagement and receptivity to public feedback as opposed to greater levels of dysfunction. In short, SMPD's numbers were objectively small, in a way that is best understood as a notable if only partial metric of overall community satisfaction,

We also take note of the potential relevance to this issue of the Committee's formal findings about the complaint process in its report from earlier this year, particularly those that relate to the initial screening that occurs at the outset of the process. This sometimes results in the resolution of a complaint without the involvement of Internal Affairs.³ We agree that this process merits further inquiry and potential adjustment to existing protocols.

As for the investigations themselves, we noted several strengths. The completed files were generally well-organized and reflected a methodical, thorough investigative approach. Investigative work was often resourceful in gathering evidence from available sources and reconstructing the events underlying the respective complaints. Complainants were treated respectfully and interviewed with patience and objectivity. Interviews of the officers who were the focal point of allegations were often impressive in their depth and effectiveness in addressing the key issues. And the analysis that went into consideration of completed cases was consistently thoughtful; it showed a willingness to engage with the issues and reach appropriate conclusions in most of the individual instances we studied.

We were also impressed that the Department goes to the time and trouble of transcribing interviews. In our experience, most agencies are content to rely on recordings and investigator summaries, but the transcripts make evaluation of the actual content of statements much more efficient (and therefore more likely to happen when decision-makers are assessing completed files).

³ Per the Committee's report, this can be because the handling supervisor "defuses" the issue without a formal complaint being filed, or because of a determination that the conduct as described does not constitute a policy violation.

Overall, we found that the complaints were taken seriously, investigated skillfully, and evaluated thoughtfully by Department management. Naturally, we noted individual concerns with specific elements of the reviews, but these often reflected the close scrutiny of the review more than substantial problems that undermined the cases themselves.

We also found some “common denominators” that were more substantive in nature, and thus potentially applicable to future investigative effectiveness.

The first of these related to the *time of completion* for the investigations. All of them took at least several months to finalize, and most ran up to – or over – the one-year statute of limitation which constitutes the eligibility period for California agencies to impose discipline against peace officers who have violated policy. As we discuss, this is problematic in a few ways, even when officers are cleared of all allegations and therefore not subject to disciplinary consequences. We note in fairness to the Department that staffing challenges and COVID impacts have been a factor here, and that the current leadership team has not only acknowledged that “sooner is better” but has implemented steps to better monitor the progress of open cases. This is encouraging, and we assume it will pay dividends.

The next concerns the *completeness* of the files. Specific evidence was sometimes not included for review, even when it is referenced as having been in existence. The Department’s ability to “show its work” is important to the soundness of its record-keeping and the underlying process itself.

The third relates to the *scope* of the Department’s investigative inquiries. While the core elements of individual citizen complaints were generally processed, it is often the case that such investigations reveal other shortcomings or performance issues that were not specifically mentioned by the complainant as a concern. (These might include a deficient report or a failure to follow protocol for notifying supervisors – issues that the complainant would not even be aware of.) These would sometimes be noted, but not addressed within the context of the investigation itself. As we explain, even when such matters don’t rise to the level of a policy violation, they often merit attention, and we are not sure whether SMPD is taking full advantage of these opportunities to use the complaint process as a “feedback loop” to improve future operations.

We hope this report and attendant recommendations will serve as a complement to the PSROC’s work in this arena.

Systemic Recommendations

Internal Deadlines for Completion of Internal Investigations

As noted above, another recurring issue within the cases we reviewed related to the pace of completion. Investigative work itself often extended for months beyond the intake of the complaint. In other instances, unexplained delays at the executive level extended the process of final resolution. The year-long statute of limitations period for administering discipline is a deadline, not a suggestion, and for many reasons the appropriate investigation and response will occur in a much more efficient manner.

RECOMMENDATION 1: SMPD should develop internal deadlines for completion of internal affairs investigations of no longer than 180 days and require approval from chain of command for any extensions with reasons articulated for any delay.

RECOMMENDATION 2: SMPD leadership should commit to the timely review of completed complaint cases and should engage in prompt decision-making and remediation as needed.

Items missing in investigative files.

While the files that we reviewed were well organized, each was missing materials that one would expect to find in them. As a result, we were not able to even know whether such materials were generated, let alone review the quality of any materials produced. It is incumbent that SMPD adjust their protocols and practices to ensure that such materials are included in the investigative file.

With regard to closing letters, we were advised by the Department that they typically are not included in the file but scanned and kept in a different file. Even if there may be value in retaining copies of closing letters in another file, a copy should be inserted in the investigative file as well.

RECOMMENDATION 3: SMPD must ensure that, pursuant to state law, complainants are advised of the outcome of any complaint investigation and a copy of the letter is included in the investigative file.

RECOMMENDATION 4: When SMPD takes photographs related to injuries or other relevant aspects of the complaint investigation, it should retain such photographs in the investigative file.

RECOMMENDATION 5: Body-worn camera footage of officers that is relevant to the allegations should be included in the investigative file.

Case Reviews and Recommendations

Case #1: Allegations of Excessive Force and Profanity During Traffic Stop

The complainant alleged that, during the traffic stop that had ultimately led to her arrest, the officer used profane language and assaulted her when he closed the driver's door on her leg. The complainant alleged that she had been subjected to excessive force by both the arresting officer and by jail personnel. She further alleged that she was wrongly denied her requests for medical attention or to make phone calls until after she had been fingerprinted and booked.

According to SMPD reports, the complainant was read the Department's complaint policy and provided with a copy of the complaint process, but she was not formally interviewed about her complaint. SMPD reported that when an investigator attempted to interview her, she requested "immunity" from the incident and declined to cooperate further.

According to SMPD reports, the complainant was stopped as a result of a defective tail-light. When the complainant was advised of the reason for the stop, she asked if she could see the tail-light and opened the car door. The body camera footage confirmed this discourse and the officer's response to "stay in the fucking car," followed by the slamming of the door. The complainant is heard to respond, "Why are you cursing me?"

According to SMPD reports, the complainant argued with the officer about signing the citation that he intended to issue her and was advised that she would be arrested if she failed to sign. The complainant eventually signed the citation but then threw the pen she had used at the officer, striking him in the chest. As a result, the complainant was charged with assaulting a police officer and taken into custody. The case was presented to the City Attorney for filing consideration, but it was rejected.

The complainant further expressed unhappiness that her tongue stud piercing and her hair extensions were removed. It was explained to the complainant that jail policy required the removal of these accoutrements. SMPD records indicate that the complainant was eventually examined by jail medical staff, and she was cleared for booking. While these aspects of her treatment were problematic to her, they were consistent with reasonable Department protocol and thus did not constitute misconduct.

The officer admitted that his use of profanity was vulgar and contrary to policy, but that it was in reaction to a threatening situation when the complainant abruptly opened the car door during the stop. SMPD conducted a thoughtful analysis of the incident and determined that the involved officer was "short" with the complainant in a way that may have contributed to escalating the encounter. For example, when the complainant

continued to argue with the officer, the officer responded by indicating that he was going to give her another citation. It also found that the officer's use of profanity violated SMPD policy; appropriate remedial action was undertaken. While the complainant's reaction further escalated the situation that eventually led to her arrest, the Department appropriately concluded that the officer's initial behavior was not in accord with its expectations.

OIR Group Review and Analysis

The Investigation

The investigation was thorough and detailed. A particularly impressive feature of the investigation was that interviews were transcribed and included in the file.

However, while SMPD reports indicated that photographs had been taken of the complainant's injuries, no photographs were included in the investigative file.⁴ Moreover, while the report indicated that the nurse at the jail examined the complainant for injuries, there were no jailer medical records.⁵ And while the investigation refers to and relies on body-worn camera footage to make its determination, no body-worn camera footage was included in the file, which initially prevented us from corroborating what was reportedly depicted.⁶ Finally, state law requires that complainants be advised of the outcome of any internal investigation, but no closing letter to the complainant was located in the file.⁷

The report indicated that the involved officer was able to review body-worn camera video of the incident prior to being interviewed. Best practices warrant that subjects of internal investigations not be afforded the opportunity to review video prior to providing a statement so that the "pure" state of mind of the officer can be obtained. After an

⁴ We were advised that the photographs were not included in the file because they did not show any injuries. However, even evidence of "non-injuries" is relevant evidence and should be included in the investigative materials. Upon our request, the photographs were retrieved; they did not show any obvious injuries to the complainant.

⁵ In a recent discussion about this issue, SMPD raised privacy concerns of the complainant if the records were included in the internal investigative file. We appreciate those concerns, and encourage the Department to balance them appropriately with ensuring investigative thoroughness. We suggest a reference in the internal investigative file as to where the medical records have been lodged and that they have been reviewed as part of the investigation.

⁶ When we raised this issue with the Department, they were able to locate the relevant body-camera footage, which we were then able to review. The footage is consistent with the investigative findings.

⁷ It is possible that the proper notification was sent but not included in the investigation file.

initial statement is obtained, the officer should then be afforded the opportunity to review video footage to determine whether that review refreshed the recollection of the officer.

Finally, it took approximately 10 months to complete the investigation and review of this complaint. We recognize that some – but not all – of this delay is attributable to the challenges in gaining an interview with the complainant. Even so, SMPD could have completed the investigation in a more timely fashion. While state law allows for one year to complete the process, agencies should strive to complete investigations well before that statutory deadline. Barring exceptional circumstances, police agencies should strive to complete investigations between 60-180 days.

The Outcome

We concur with the outcome of the internal investigation that there was insufficient evidence to sustain the majority of the complainant's allegations. We further agree with SMPD's determination that the officer violated the Department's profanity policy and the remedial discipline imposed.

RECOMMENDATION 6: When there is evidence of medical treatment by jail staff that is relevant to the allegations received, investigators should obtain and review such records and include them in the investigative file.

RECOMMENDATION 7: When officers are the subject of an Internal Affairs investigation, they should be required to provide a pure interview statement prior to reviewing any body camera or other video footage, with a subsequent opportunity to review recordings and amend their responses as needed (and based on refreshed recollection).

Case # 2: Allegation of Missing Property

This case involved a claim filed by the complainant with the City that he had \$1,000.00 in the sleeve of his MacBook carrier when he was arrested for domestic violence, and that the money was missing when he was given back his property. The City's Risk Management group appropriately forwarded the claim to SMPD; to its credit, the Department then initiated an investigation into the allegation.

Once the investigation was initiated, the SMPD investigator attempted on three occasions to contact the complainant (who lived out of state) with no success. This hampered the investigation. However, a review of the arrest report and related materials noted that the MacBook sleeve in question was unattended and in a public space for several minutes after the complainant's girlfriend threw it out the window. Moreover, while the complainant spoke to officers after his arrest of having \$100.00 in his personal possession (which was returned to him), he did not mention the larger amount of money that he later claimed was missing.

The Investigation

This investigation took ten months to complete, and efforts were not made to contact the complainant until five months after the investigation was opened. Best investigative practices teach that a complainant should be contacted promptly when an investigative interview is needed to supplement a complaint. This not only assists with the effective framing of issues and compilation of best available evidence, but it also reinforces the notion that the Department is taking the matter seriously and prioritizing it appropriately. Moreover, as we say repeatedly here, investigations should be completed well before the statutory due date for that and other reasons – including timely resolution for involved personnel and timely accountability and corrective action where warranted.

As with the previous case, there was no letter to the complainant in the investigative file informing him of the results of the investigation nor was there any documentation of the apparent rejection by the City of the claim.

SMPD's Review

We concur with the determination that there was insufficient evidence to indicate any violations of policy by involved SMPD personnel.

RECOMMENDATION 8: SMPD should strive to contact the complainant of any investigation promptly – ideally within days of receiving the complaint.

RECOMMENDATION 9: SMPD should include any available documentation regarding resolution of a legal claim that resulted in the initiation of the complaint investigation.

Case # 3: Allegation of Excessive Force

The complainant in this matter alleged that he had been subjected to excessive force after he was evicted from a bar, claiming that he had unnecessarily been taken to the ground with his face pushed into concrete.

The investigation established the basic facts of the encounter in question. As a result of a dispute, the complainant had been ejected from the establishment. When police arrived the complainant was aggressively expressing unhappiness about the way he had been treated in the bar. SMPD officers instructed the complainant to sit down, but he declined to do so.

Because of his unruly behavior, a field training SMPD officer told her trainee to go hands on with the complainant, and the trainee first grabbed the complainant's arms. When the complainant continued to resist, the officers used a leg sweep to take the complainant to the ground. After he was handcuffed, the complainant was lifted back into a standing position. The complainant was released from the scene after representatives of the bar indicated that they had no interest in pursuing charges.

During the investigation, the trainee admitted to using a leg sweep to take the complainant to the ground. The senior officer stated that she did not know the trainee had used a leg sweep until she reviewed the body-worn camera video after the fact. The officer said she then asked the trainee why he did not tell her he had used a leg sweep, and he replied he did not know. The field training officer did not take additional action upon learning of this information. The sergeant who was on scene at the time of the incident also said that he was not aware that a leg sweep had been used and believed that the officer and subject had fallen to the ground.

Instead of preparing a formal report documenting the use of force, the force was documented on a field interview card. The sergeant said that it was his decision to document the force in that way.

Investigative Issues

As with other cases, there was no closing letter to the complainant nor any indication that a closing letter was prepared and sent.

Review Issues

We reviewed the reports and body worn camera footage of this incident and concur that there was insufficient evidence that the force used was contrary to SMPD's use of force policy. However, there were significant issues that were not considered relating to the reporting and documentation of force.

SMPD policy requires officers who use force to report that force to a supervisor and to document that force in a formal report.

300.14.1 NOTIFICATION TO SUPERVISORS

Notification to a sworn supervisor shall be made as soon as practicable following the application of force in any of the following circumstances:

[...]

(j) An individual was struck, kicked, and/or otherwise forcibly taken to the ground.

300.14 REPORTING THE USE OF FORCE

Any use of force by a member of the Department shall be documented by the involved member promptly, completely, and accurately in an appropriate incident/crime report or supplemental incident/crime report before the member completes their shift.

The first issue here is that the trainee had not properly reported the extent of his force (specifically the leg sweep) at the time of the incident, either to his training officer or the sergeant who was on scene. Because of the failure of the trainee to immediately report the use of force to either the training officer or the on-scene sergeant and the way in which the sergeant allowed the force to be informally documented, the use of force

mechanisms were not effectively activated. This would normally have included an interview of the subject and other investigative steps by the supervisor, as well as certain standardized review protocols as to compliance with force policy.

When that information did subsequently emerge, the field training officer took no action to ensure that the use of force was fully reported and reviewed; instead, she simply inquired of the trainee about his lack of full, accurate acknowledgment at the scene. The field identification card that was originally – and questionably – used as documentation by the sergeant was clearly inadequate to the more significant level of force that had actually occurred, but it was not supplemented. In short, potential violations of the Department’s reporting and documentation policies seem to have occurred, but were not considered and assessed as part of the complaint investigation.

In the executive level review of the complaint investigation, the reviewer failed to identify these deficiencies in force reporting, documentation and on-scene review. Moreover, in discussing the reasons for the force, the reviewer spoke of the “furtive” movements of the complainant in explaining the officer's actions. This sort of vague, catch-all language has become disfavored in current policing, as a greater burden has shifted to law enforcement to explain with precision why physical force was needed. Progressive agencies teach their members that general words such as “furtive” do not provide the level of detail necessary to evaluate the appropriateness of any subsequent actions by officers. Rather, the force analysis should discuss with precision what the individual was observed as doing or saying that became the basis for any subsequent application of force.

RECOMMENDATION 10: In reviewing complaints relating to inappropriate use of force allegations, the internal investigation should expand to include and address potential issues that may emerge in the adequacy of reporting, documentation, and supervisory review.

RECOMMENDATION 11: SMPD should advise its supervisory team that when reviewing or analyzing force reports, it should avoid terms like “furtive movements” and describe with detail what the subject did or said as a basis for any use of force application.

Case # 4: Allegation of Poor Tactics and Excessive Force

Officers saw a residential burglary suspect on a bicycle and attempted to stop him; instead, he fled. This prompted an additional response by another set of officers, who soon encountered a *different* person on a bicycle and confronted him under the mistaken impression that he was their target. The man was uncooperative and eventually taken to the ground in the process of handcuffing him. The initial officers arrived at the location and cleared up the misunderstanding; however, the man was still

(understandably) upset and claimed that some pre-existing injuries had been exacerbated during the struggle.⁸

The administrative interview with the complainant was detailed and included affording him the chance to review available BWC recordings. That opportunity prompted him to acknowledge that some of his specific allegations (including the claim that a “chokehold” had been used against him) were not supported by the evidence. He remained adamant, however, that one of the four involved officers had been particularly excessive and inappropriate. This officer had also failed to engage his body-worn camera – an issue that was not pursued in the investigation, but which very much made a negative impression on the complainant. The complainant also questioned the reasonableness of the mistake by which officers had wrongly confused him for the suspect they sought.

The allegations of misconduct were ultimately unfounded. A detailed “Letter of Transmittal” included a lengthy analysis that delved into the entirety of the incident. (The force had been evaluated separately as part of other SMPD internal review protocols; however, no materials relating to findings were included in the file). The mistaken identity was recognized as unfortunate but not ultimately blameworthy to the extent it constituted a policy violation. The lieutenant’s case analysis also pointed out that the officer who had had the most direct contact with the complainant had come on to the scene in way that compressed the timeline and left little room for de-escalation. Appropriate counseling was recommended.

OIR Group Review and Analysis

There were strengths to the investigation, including the aforementioned thorough and balanced interview with the complainant. The case also included interview statements from civilian witnesses to the encounter – one of whom acknowledged the complainant’s vocal anger but still had the impression that the officers were too quick to engage physically. The interviews were transcribed, and the case file itself was well-organized – for the most part. Importantly, it was missing the BWC evidence from one of the involved officers that was supposedly a significant basis for the decision that no policy violations had occurred. The file also did not include a copy of the notification letter that should have been sent to the complainant pursuant to state law.

As for concerns, we noted that this case was consistent with the pattern of a protracted timeline: the final signoff at the executive level occurred within days of the end of the one-year limitations period for any potential imposition of discipline by a California police agency. We were also curious about the lack of any formal intervention with regard to

⁸ He had been afforded medical care at the scene but not transported to the hospital.

the primary officer's failure to engage his BWC – a deficiency that was certainly noted by, and understandably bothersome to, the complainant himself.⁹

Perhaps more significantly, the review and decision-making process (as opposed to the investigation itself) seemed to underplay aspects of the complaint that appeared to have some legitimacy. The complainant questioned how well he “fit the description” of the suspect whom the officers were seeking, and he seemingly had a fair point. Apart from the fact that both men were on bicycles, wore an article of clothing that was the same color (though it was a hat on one and a shirt on the other), and were persons of color (one Black, and one Hispanic), the resemblance was limited. The complainant's chafing at the supposed justification was accordingly understandable in our view. Even assuming the sincerity of the officers' confusion and acknowledging the dynamic nature of the encounter, the issue is sensitive enough to have warranted further attention.

Ideally, the complaint process ensures not only appropriate accountability, but also a deeper reckoning with performance or training issues that could lead to improvement for involved personnel and the agency as a whole. The “mistaken identity” problem that leads to the detention of innocent Black people is a notorious source of distrust and resentment. The anger and physical resistance that complicated this specific incident should not completely overshadow the underlying mistake by the officers that started things. While the lieutenant's analysis made a useful gesture in the direction of improving use of time and distance prior to physical engagement, our sense is that a further exploration would have been beneficial.

Case # 5: Allegation of Parking Officer Rudeness

A woman initiated this complaint against a parking officer after what she alleged was a negative encounter. She said she was with a small group of family and friends in a metered parking area when they were approached and scolded by an SMPD parking officer. He apparently seemed to think someone in the group was adding money to expired meters to thwart his ability to ticket cars, and made a sarcastic remark about the person apparently wanting to work for the Department. The woman found it extremely off-putting and an “abuse of authority” – not least because she asserted that this was not what they were doing in the first place.

The allegation was ultimately “not sustained” in the aftermath of the investigation. The officer claimed not to have a specific recollection of the incident. He also claimed that, even if he had suspected people of the conduct at issue, his practice is to provide education (as opposed to chastising). Although the officer was equipped with a body-worn camera, he did not record the encounter. This was within his discretion at the time that the incident occurred (the policy has since been made more definitive).

⁹ This is a different problem than the aforementioned non-inclusion in the file of another officer's recording that was apparently created and relied upon.

Given the differing versions of the encounter, and the lack of definitive proof that improper conduct had occurred to the level of a policy violation, the Department determined that a “not sustained” finding was the appropriate choice.

OIR Group Review and Analysis

The investigation file was well-organized and thorough, though it did not include a copy of the notification letter. This case also showed examples of resourcefulness and due diligence on the part of the investigator, including interviews with other parties who had been with the complainant at the time of the encounter. (Their stories essentially matched hers in terms of the key components). The complainant chose the parking officer from a “six-pack” identification package, and records of his activity established that he had been on-duty and in the area at the time alleged.

Still, although his denial was more theoretical than adamant (since he said he didn’t remember the incident but doubted that he would have treated people like that), the Department decided that the requisite preponderance of the evidence against him had not been established. This, in our view, was at least arguable. It also illustrated the value of relatively prompt interviews (so as to lessen the likelihood that an “I don’t recall” response will credibly occur)¹⁰ and the value of body-worn camera recordings (which would be expected per policy to exist in a similar scenario today).

We do have the sense that the Department took the investigation seriously. And it strikes us as an example of a scenario in which the *process* presumably sent a message that influenced behavior as much or more as the minor discipline that a sustained violation would have warranted.

Case # 6: Failure To Take a Report

The complainant in this case alleged that he had been a victim of a battery while exercising outside, and was frustrated by what he perceived to be the inadequacy of the initial SMPD response. Two officers did respond to the location, but eventually declined to file a report after locating the suspect, finding him to be somewhat incoherent, and lacking a definitive sense that a crime had occurred.

The complainant contacted SMPD again the next day, upset that no action had been taken. Meanwhile, the suspect had been arrested for a separate burglary allegation; he was ultimately cited for the previous day’s encounter as well. The complainant thought that the initial responding officers had underperformed in not taking appropriate enforcement action at the time of the incident.

The investigation established that one of the officers had in fact fallen short of expectations in terms of the diligence of his investigative efforts and documentation. The other, meanwhile, was relatively new to the job, had deferred to the more

¹⁰ This case was not finalized for some ten months after the complaint was lodged, another extended timeline for a relatively straightforward matter.

experienced officer who took charge of the call, and had done due diligence before being released from the scene by his colleague. Accordingly, he was exonerated of any culpability.

As for the first officer, he was forthright in acknowledging shortcomings in his performance and accepted responsibility. (It should also be noted that there were significant mitigating circumstances, including some ambiguity in the complainant's original information to officers.)

While the Department determined that the senior officer's performance had constituted a violation of policy, it was ultimately not able to administer formal discipline. This is because the case was not finalized until after the end of the one-year limitations period. The problem partly stemmed from the two-week gap between the man's initial complaint and his more thorough, formal interview with an investigator; the latter date was incorrectly relied upon. Accordingly, the Department characterized the ultimate finding as "miscellaneous." It was precluded from disciplining the officer, but the record of the case nonetheless was included in his personnel file for future reference.

OIR Group Review and Analysis

This investigation file had many of the strengths of others we looked at, in terms of the organized file, thorough interviews, and meticulous efforts to reconstruct events. The notification letter to the complainant was also included here. Clearly, though these attributes were overshadowed by the failure to process the completed investigation in time to impose an appropriate disciplinary consequence. The actual discipline here would likely have been at a minor level -- perhaps only a written reprimand and at most a one-day suspension. The issue is therefore less about the officer's avoiding a severe outcome than about the ineffectiveness of the process itself.

Establishing a correct limitations date is as fundamental as any element of a functioning discipline process. But the fact that the error in calculation was relevant at all is itself an indication that the Department was extending the process to a detrimental extent.

Case # 7: Allegation of Intentional Provocation of Third Parties and Other Misconduct

The complainant in this case was the newly divorced wife of a Santa Monica officer. She contacted the Department to express concern about an incident that had occurred approximately 12 years earlier, when she and the officer were still married. She described being at a Christmas party attended by several SMPD officers and family members, at which a disturbing video had been shown.

The on-duty video was taken by an officer who was not her then-husband, but it did involve him and other members of the "Special Policing District" unit that was assigned

to the beach in Santa Monica. Per the complainant's version of events, the video showed a clash between two apparently homeless individuals – a male and female. The complainant alleged that the officers had in fact goaded the two into conflict in order to film the result for their entertainment.

The investigation was largely able to reconstruct events in spite of the passage of time. There were records of what was apparently the incident in question – a call for service that had involved a dispute between a male and female on the beach who knew each other. Per the recollection of the involved officers (most of whom were still with the agency and were interviewed as part of the investigation), the woman had defecated on the man while he was sleeping in the sand in retaliation for his owing her money. The officers recalled finding the man to be somewhat confused and non-desirous of officer involvement. They remembered assisting him in cleaning up and then clearing the call.

The officers also acknowledged the accuracy of some elements of the complainant's story. This included the existence of the video, which one of the officers had created with a personal recorder that he sometimes brought on patrol under his own initiative. (The video itself was apparently no longer available.) It also included the fact of that year's holiday party, and the showing of the video as part of the evening's events. They denied, however, that the video depicted them engaging at all inappropriately with the two principals whose conflict had generated their response to the scene. Instead, their collective memory was that video had been shared because the situation itself was humorously bizarre – and not because they had played a role in instigating anything.

Though the propriety of the video's being taken in the first place, and then being shown in a non-work context, remained open questions (to say nothing of the potential legitimacy of the complainant's allegations as to what it actually portrayed) the investigation eventually became truncated by a procedural matter. This was the realization that a sergeant had been in attendance at the party.

This individual, now retired, was interviewed for the case. He verified that he had seen the video and was aware of its contents. This meant that, as a technical matter, the statute of limitations for imposing discipline could be said to have begun no later than the date of the party. From that starting point, the end of the one-year limitations period had also long since passed. Accordingly, SMPD decided to reach no conclusions as to the evidence with regard to any of the potential allegations.

OIR Group Review and Analysis

The Department's "rescinding" of the case left several loose ends. In fairness to SMPD, it should be noted that some of these were unavoidable. For example, though the sergeant's failure to take action with regard to the video was still potentially actionable (since others in a position to initiate an investigation were not aware), he had retired. Moreover, the extreme passage of time and the tension between the complainant and her former spouse made it difficult to establish which version of the underlying call for service was the more accurate.

At the same time, the allegations – and the *undisputed* behavior that was related to them – were attention-getting in a way that merited the Department’s follow-up. Even if there was not a basis for formal disciplinary action, the administration could and should have clarified with those involved parties that the conduct at issue reflected poorly on the agency. Additionally, the complainant raised other concerns about more recent off-duty conduct involving her former husband. These were peripheral to her original complaint. To the investigator’s credit, he solicited information and sought assurance that she was getting any assistance that she needed in handling ongoing interactions. However, as with the main complaint, the file gave no indication of achieving resolution or intervention as to these matters.

The distinctive circumstances of this case certainly posed challenges to the Department with regard to fair or meaningful investigation and/or remediation. That said, there appeared to be enough actionable information for some due diligence and a constructive response to have occurred. We hope but have no evidence that SMPD took advantage of this opportunity. More broadly, we encourage the Department to look at the complaint process as an opportunity for improvement at the individual officer or agency-wide levels, with potential that extends beyond the kind of formal accountability measures that were precluded for this complaint. We also recommend that SMPD add to the relevant case file documentation of any actions taken in response to complaint-generated issues.

RECOMMENDATION 12: SMPD should work to ensure that it maximizes the potential benefits of rigorous complaint review by addressing identified issues through counseling, training, or other relevant non-disciplinary measures, even when formal accountability is not appropriate or possible.

RECOMMENDATION 13: SMPD should be pro-active in responding to peripheral concerns that emerge in the context of a complaint investigation, and should document any resulting interventions as part of the case file.

Case # 18: Allegations of Excessive Force and Unjustified Arrest

A man was arrested after allegedly attempting to shoplift goods and then getting into an altercation with the employee of the sunglasses store where the alleged theft had occurred. The employee said that the man punched him in the face as he tried to block him from leaving so he could summon police. The man ultimately became the complainant when he was encountered by multiple SMPD officers a short time later in response to the call for service. He claimed that the arrest had been unjustified, and that the officers had used excessive force in the process of taking him into custody.

Certain facts were not in dispute. The man was indeed arrested on the day in question, and three officers had engaged with him physically in an effort to place him in handcuffs. The first two officers on scene were struggling when the third officer arrived

with his K-9 partner – which he quickly deployed in an effort to assist his colleagues. The dog bit the man in the calf, which was a precursor to the end of the struggle and the successful handcuffing. The bite required several staples to close.

As to whether the officers had been justified in detaining him, he did meet the description of the suspect in the shoplifting/assault case and was proximate to the store when officers first engaged with him.¹¹ Moreover, the officers were consistent in their reports that the man was confrontational and resistant from the outset, and asserted that their struggle to get the man into handcuffs was a function of his refusal to submit.

These assertions were *reportedly* corroborated by body-worn camera evidence, but there were limitations to this. One of the three involved officers did not turn on his camera. The K-9 officer did, but arrived late to the scene and inadvertently ended up facing in a direction that did not capture significant aspects of the bite. (Nor did his recording establish any of the actions by the complainant that prompted the officers' initial physical response. It did, however, show the extent of the original two officers' difficulty in controlling the man.) The third officer reportedly did activate his camera appropriately and to useful effect.

The deployment of the dog to assist in taking the man into custody was perhaps the most significant aspect of the force analysis, insofar as two officers were already “hands-on” with the subject and the resultant bite was responsible for his most significant injury. However, the memo that summarized the case and exonerated all three officers noted that the circumstances did fall within the permissible parameters for “apprehension” under the operative K-9 policy.

OIR Group Review and Analysis

This investigation matched several of the strengths we saw in other cases, including a well-organized file and a resourcefulness in gathering evidence to assess the particular claims. While this did not feature the comprehensive interview with the complainant that we noted in other examples, this was apparently the function of a lack of response by the complainant subsequent to his initial outreach to the Department. The available evidence seemed to refute the complainant's assertions about his actions prior to being contacted by police, and he in fact showed assaultive behavior just prior to their arrival that is consistent with their assertions about his resistance. SMPD also disagreed with his complaint about the “excessive” nature of the force; this too, seems to have been supported by available evidence.

Our ability to corroborate was limited by technical difficulties with regard to one of the videos. Beyond that, though, this proved to be another case in which the potential “pool” of video evidence was reduced by one of the involved officer's failure to activate his

¹¹ The reporting party was brought to the site of the arrest and made a positive identification of the complainant.

camera in this first place. SMPD does not appear to have addressed this issue within the investigation. While these events transpired more than three years ago, and while we hope evolutions in policy and Department expectations have increased both compliance and accountability, we accordingly reiterate our encouragement that SMPD focus on this issue. In particular, we recommend the Department address such lapses formally in the context of complaint cases, even if the issue is not a part of the complainant's original concerns.

While no discipline attached in this case (thereby lessening the impact of any failure to meet the one-year deadline), we noted that the final "sign-off" for the investigation appears to have been some thirteen months after the incident. This is consistent with the timeliness concerns that we have cited above, and which we encourage SMPD to address.

Conclusion

The proper investigation of public complaints is a hallmark of police agency effectiveness. Ideally, these investigations ensure that officers are accountable for their misconduct, that community members are confident about law enforcement legitimacy, and that the feedback from specific incidents leads to relevant interventions for improvement of future performance.

As explained above, our review of the most recent completed SMPD investigations showed them to be fundamentally sound in ways that correspond to achievement of those positive results. At the same time, we noted recurrent – and readily fixable – issues that merit the Department's attention; we hope our recommendations will provide useful ideas for strengthening its approach in this important area of operations.