

### **OFFICE OF CITIZEN COMPLAINTS:**

**Weak Case Management and  
Organizational Issues Degrade  
OCC's Performance**



*January 24, 2007*  
*05046*





# City and County of San Francisco

## Office of the Controller - City Services Auditor

Office of Citizen Complaints (OCC):

Weak Case Management and Organizational Issues Degrade OCC's Performance

Audit No. 05046

January 24, 2007

### Purpose of the Audit

At the request of the San Francisco Police Commission, we assessed whether the OCC investigates complaints within the timelines required by the City Charter and state law and follows its policies and procedures for conducting investigations. We also assessed the OCC's management practices and outreach activities.

### Highlights

OCC investigations took longer than necessary due to pervasive case management issues. As a result, 113 (40%) of the 286 cases sustained between January 2003 and June 2006 took more than ten months to close. The San Francisco Police Department (SFPD) returned 22 of these cases to the OCC stating that SFPD did not have sufficient time to review the cases and consider discipline before the expiration of the one-year statute of limitations. In those cases, neither the police chief nor the Police Commission had an opportunity to determine whether the officer was, in fact, guilty of misconduct, and officers who arguably should have been disciplined, counseled, or retrained were not.

The primary cause of late investigations was periods of 30 or more consecutive days when no work was done on a case. There was no reason indicated in the case files for 54 of 92 of these delays (59%). Other causes of delays were:

- Complainants' and witnesses' failure to provide requested information.
- The SFPD's refusal to comply with OCC requests for documents, particularly in high profile cases (e.g., officer-involved shootings and homicides) that were the subject of a concurrent SFPD investigation.
- Individual investigators' management of their caseloads – two investigators were responsible for the majority of delays with no reason indicated – and poor performance of some investigative staff.
- Average caseloads that were double those in other jurisdictions.
- Management's failure to reprioritize cases as cases approach the nine-month guideline for completion and the ten-month deadline to provide 60 days to the SFPD for review of the case.

OCC management does not meet standard expectations for performance and management accountability:

- Responses to our anonymous survey of OCC employees identified poor morale among 72 percent of employees and specific instances of unprofessional behavior.
- OCC management has not conducted annual performance evaluations of staff or counseled or disciplined low-performing employees.
- The OCC has not met its quarterly and annual reporting requirements to the Board of Supervisors, the Police Commission, and the SFPD.

### Recommendations

The audit report includes 45 recommendations for the OCC to improve its timeliness in completing investigations, meet standard expectations for performance and management, and improve its community outreach efforts. Specifically, the OCC should:

- Monitor its progress on investigations and work with the SFPD to complete the investigation and discipline notification process within the one-year statute of limitations, with the specific goal of completing all investigations within the Charter guideline of nine months, but definitely no later than ten months.
- Create a full "aging report" of open investigations and use it to prioritize cases and redistribute caseloads as necessary to complete timely investigations.
- Identify staff training needs and develop a plan to meet those needs, for both new and current staff.
- Schedule and conduct annual employee performance goal setting and appraisals.

*Copies of the full report may be obtained at:*

Controller's Office • City Hall, Room 316 • 1 Dr. Carlton B. Goodlett Place • San Francisco, CA 94102 • 415.554.7500  
or on the Internet at <http://www.sfgov.org/controller>





CITY AND COUNTY OF SAN FRANCISCO  
**OFFICE OF THE CONTROLLER**

**Ed Harrington**  
Controller

Monique Zmuda  
Deputy Controller

January 24, 2007

Audit Number 05046

Kevin Allen, Director  
Office of Citizen Complaints  
480 2nd Street, #100  
San Francisco, CA 94107

Dear Mr. Allen:

The Controller's Office, City Services Auditor, presents its audit report of the Office of Citizen Complaints (OCC). The audit objectives were to determine whether the OCC investigates complaints within the timelines required by the City Charter and state law and follows its policies and procedures for conducting investigations. We also assessed the OCC's management practices and community outreach activities.

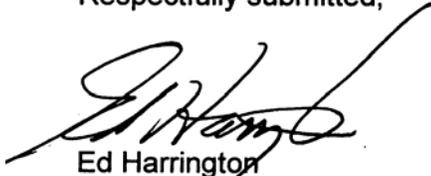
We concluded that the OCC's investigations took longer than necessary, and sometimes exceeded the statute of limitations, due to pervasive case management issues. In particular, cases often sat for periods of 30 or more consecutive days with no work done on them. There was no reason documented in the case files for many of these delays. Other delays were caused by complainants' and witnesses' failure to provide requested information and the refusal of the San Francisco Police Department (SFPD) to comply with OCC requests for documents, particularly in high profile cases that were the subject of a concurrent SFPD investigation. Other reasons for not completing timely investigations were that individual investigators did not manage their caseloads well, OCC management did not reprioritize cases as they approached the nine-month guideline and ten-month deadline for completion, and investigators carried caseloads that were double those in other jurisdictions.

The audit includes 45 recommendations for OCC to improve its timeliness in completing investigations, meet standard expectations for performance and management, and improve its community outreach efforts.

The OCC's response to the audit is attached as Appendix B. The OCC concurred or partially concurred with all of the audit recommendations, and included a plan to implement them. Responses from the Police Commission and the SFPD are attached as Appendix C and Appendix D, respectively. The Police Commission's response expresses a commitment to take action to implement the recommendations. The SFPD concurred with the three recommendations that it will be responsible for implementing.

We appreciate the assistance and cooperation that OCC staff and staff in other City departments provided to us during the audit.

Respectfully submitted,



Ed Harrington  
Controller

cc: Mayor  
Board of Supervisors  
Civil Grand Jury  
Budget Analyst  
Public Library

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# INTRODUCTION

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## AUDIT AUTHORITY

On May 3, 2006, the Police Commission of the City and County of San Francisco (City) adopted a resolution asking the Controller's Office to conduct a performance audit of the Office of Citizen Complaints (OCC) to analyze whether the OCC is operating efficiently and effectively, and whether it complies with relevant legal and procedural requirements.

## BACKGROUND

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*The OCC was created to promptly, fairly, and impartially investigate complaints of police misconduct.*

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The OCC was created by a 1982 City Charter amendment to promptly, fairly, and impartially investigate complaints of police misconduct. The OCC is required to investigate all complaints of on-duty police conduct (or off-duty officers acting under the color of authority) except for:

- Complaints which clearly indicate that the acts complained of were proper.
- Complaints made by sworn officers<sup>1</sup> of the San Francisco Police Department (SFPD) against other SFPD officers.

To achieve this, the OCC is staffed with civilians who have never been SFPD officers, including investigators, attorneys, and administrative staff. In fiscal year 2006-07, the OCC has a budget of \$3.6 million and 32.05 full-time equivalent positions, including:

- 1 director.
- 4 investigative managers, including a chief investigator and three senior investigators.
- 16 investigative staff.
- 7.30 administrative (clerical, information systems, and temporary) staff.
- 3.75 legal and policy staff.

Actual staffing at the OCC fluctuated throughout the course of 2005 and 2006, with the number of investigators on staff ranging from a low of 13 to a high of 16.

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<sup>1</sup> Throughout this document, the word "officers" will indicate all sworn members of the SFPD, regardless of rank.

The current OCC director has submitted his resignation, effective February 2007.

## Investigation Process

The OCC receives complaints primarily by mail, in person, and by phone. When the OCC receives a complaint:

- The case is assigned to an investigator.
- If the case is within the OCC's jurisdiction and requires an investigation, the OCC begins the investigation process. The City Charter requires the OCC to use its best efforts to complete its investigations within nine months<sup>2</sup> of receiving the complaint (referred to throughout this report as the "nine-month guideline").
- After a review of the evidence, member response forms,<sup>3</sup> and interviews collected during the investigation, the investigator proposes a "finding" for each complaint allegation (description follows). The senior investigator, chief investigator, and director review the findings and must approve them before the case can be closed.

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*The City Charter requires the OCC to use its best efforts to complete its investigations within nine months.*

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*Sustained allegations made up 234 (7 percent) of all closed allegations in 2005.*

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The finding in an investigation is the OCC's conclusion on whether or not the evidence supports the allegations<sup>4</sup> in the complaint. The OCC reaches a finding of "sustained" if a preponderance of the evidence proves that the acts alleged in the complaint occurred and the conduct violated SFPD policy or procedure. Sustained allegations made up 234 (7 percent) of all closed allegations in 2005 (Exhibit 1). The most common finding was "not sustained," representing 2,044 (59 percent) closed allegations in 2005. An allegation is not sustained if the evidence fails to either prove or disprove that the alleged acts occurred. See Appendix A, page A-2, for a list of the OCC's findings.

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<sup>2</sup> The Charter was amended in November 2003, including the addition of the nine-month guideline for completing cases.

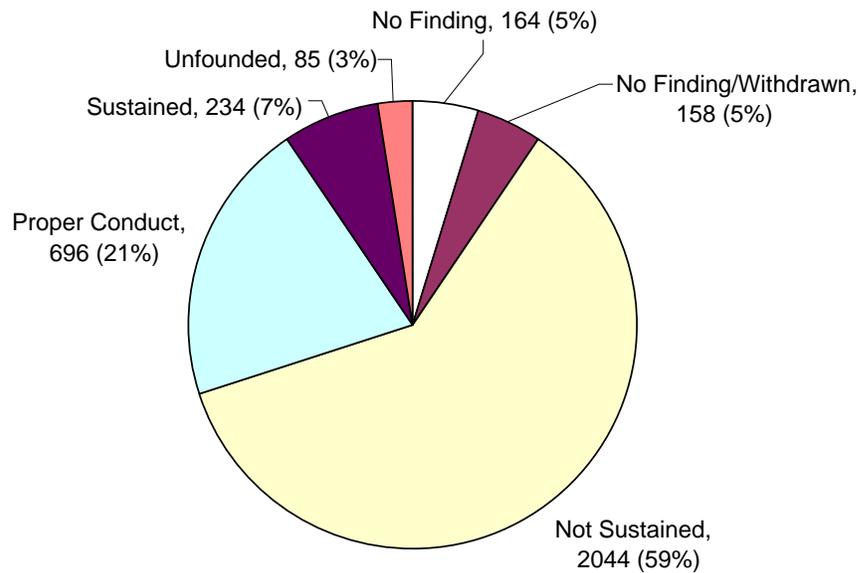
<sup>3</sup> Member response forms are questionnaires sent to officers in lieu of an in-person interview, and are generally used in cases where there are no independent witnesses.

<sup>4</sup> A single complaint can have multiple allegations, and can be made against a single or multiple officers.

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**EXHIBIT 1 Findings Reached in Complaint Allegations in 2005**

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Source: OCC 2005 annual statistical report.

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*The investigation and review, including notifying the officer of the possible discipline, must be completed within the one-year statute of limitations.*

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If the OCC sustains any of the allegations in the complaint, it must propose the level of discipline<sup>5</sup> appropriate for the officer(s) and submit the case to the SFPD for its review of the case and appropriate discipline. The Charter says that the OCC must use its best efforts to complete its investigation within nine months of receiving the complaint; however, if the OCC takes longer than nine months it should ensure that the case is completed within ten months in order to provide the police chief with the 60-day period contemplated by the Charter to review the case and consider whether discipline is appropriate for the officer(s). The complete investigation - including the OCC's investigation, the police chief's review of the case and consideration of discipline, and notifying the officer of the possible discipline - must take place within the one-year statute of limitations imposed by state law (described below).

Investigations of complaints against police are regulated by California Government Code §§ 3300-3313. In particular, § 3304(d) requires that investigations be completed and the officers notified of any proposed disciplinary action within one year of discovery of the allegation by an individual authorized to initiate an investigation of such an allegation. Otherwise, the agency that employs the officer cannot take disciplinary

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<sup>5</sup> See Appendix A, page A-1 for a description of the possible levels of discipline.

action against him or her for the allegation, nor deny the officer a promotion on grounds other than merit.<sup>6</sup>

If the OCC takes longer than 10 months to complete the investigation of a sustained case, the police chief may not have enough time to review and consider discipline for the officer. There are situations when the OCC director may bring charges directly to the Police Commission for its consideration of discipline to avoid losing the case to the statute of limitations. However, if the SFPD does not have enough time to review and consider discipline and the OCC director does not bring charges case directly to the Police Commission, no disciplinary action can be taken after the one-year statute of limitations expires.

See Appendix A for a more detailed description of the OCC's investigation process and applicable laws and regulations.

### **OCC Case Statistics**

In calendar year<sup>7</sup> 2005, the OCC opened 840 cases and closed 796, sustaining allegations in 71 of those cases. In two of the past four years, the OCC closed fewer cases than it opened, contributing to a backlog of open cases. In 2004, an average of 364 cases were pending at the end of each quarter, compared to an average of 449 in 2005.

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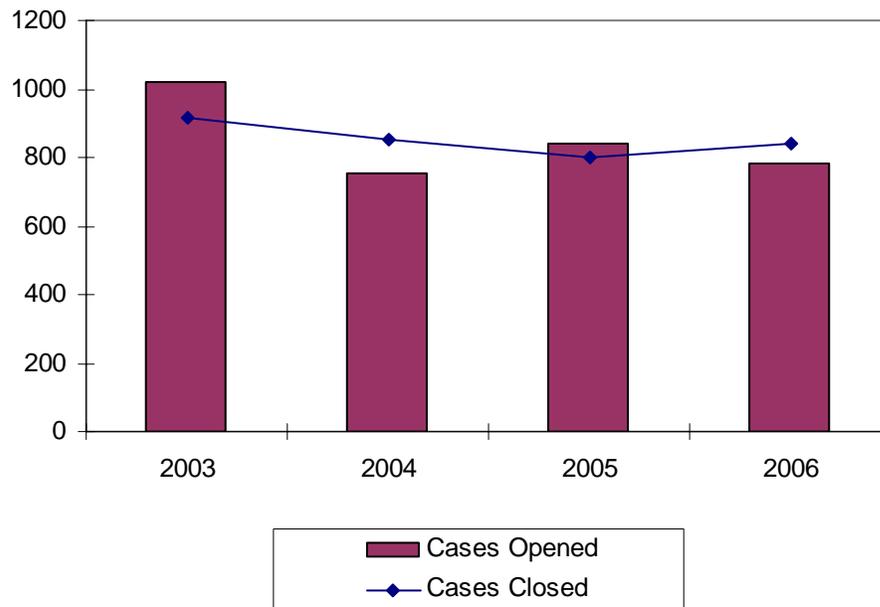
<sup>6</sup> There are exceptions to this one year statute of limitations, known as "tolling provisions." See Appendix A, page A-4, for a description.

<sup>7</sup> All subsequent references to years are calendar years, unless otherwise noted.

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**EXHIBIT 2 Cases Opened and Closed, 2003-2006\***

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Note: Analysis was based on 2005 data because audit work was performed during 2006.  
Source: OCC statistical reports.

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## OBJECTIVES

The audit objectives were to answer the following questions:

1. Does the OCC investigate complaints:
  - *Within the timelines required* by City Charter and state law?
  - *Properly*, by only investigating cases within its jurisdiction and closing proper conduct cases immediately when appropriate based on the information in the complaint?
  - *Thoroughly*, by following OCC policies and procedures for investigations and making adequate effort to contact complainants and witnesses?
2. Is the OCC managed as well as it could be to achieve its mission?
3. What community outreach activities does the OCC perform, and what are the best practices in other jurisdictions for community outreach?

## SCOPE AND METHODOLOGY

The scope of the audit included OCC investigations opened and/or closed between January 2003 and June 2006.<sup>8</sup>

The audit methodology included the following significant audit techniques:

*Analysis of case tracking system data.* The OCC stores information on its cases in its case tracking system database. The audit team performed statistical studies on this data, including analysis of investigator caseloads and the length of time it took the OCC to close sustained cases.

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*We reviewed a random sample of 86 of the 796 cases opened in 2005.*

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*Review of a sample of OCC case files.* The audit team reviewed a random sample of the case files of 86 of the 796 investigations completed in 2005. This is a statistically significant sample with a margin of error of  $\pm 5$  percent, and the audit team believes that the results can reasonably be projected to the entire population of cases closed in 2005.

*Review of three investigators' caseloads for May 2006.* To determine whether there were factors in addition to caseload size that caused delays in OCC investigations, we selected three investigators for a review of their entire caseloads for the month of May 2006. The investigators were selected because they represented an investigator who had fewer than expected delays of 30 or more consecutive days, an investigator with the expected number of such delays, and an investigator with more than the expected number of delays.

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*We conducted an anonymous survey to assess employee opinions of the OCC's management, communication, and morale.*

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*Anonymous survey of OCC employees.* The audit team distributed an anonymous written survey to all OCC employees. The survey included more than 90 questions designed to assess employee opinions of the OCC's management, communication, and morale. Twenty-five (86 percent) of the twenty-nine employees who worked at the OCC at the time of the survey responded.

### *Additional audit techniques.*

- Analyzing the OCC's investigation policies and procedures.
- Interviewing OCC staff and other knowledgeable and interested parties, including members of the Police

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<sup>8</sup> Note that the obligation for OCC to use its best efforts to complete its investigations within nine months was approved by voters in November 2003, and does not apply to cases closed before that date.

Commission, SFPD, Board of Supervisors, past employees of OCC, and community groups including the American Civil Liberties Union of Northern California and Bay Area Police Watch.

- Performing best practices research on the topics of case management, mediation, and oversight, including reviewing websites and conducting interviews of officials in other jurisdictions.

It is beyond the scope of this audit to assess the qualitative aspects of the OCC's investigations, including whether the OCC is performing the correct investigative steps or whether it reaches the correct conclusions based on the evidence collected in its investigations. In addition, this audit did not review the functions of the main organizations with which the OCC interacts: the Police Commission, SFPD, City Attorney, and San Francisco Police Officers Association (SFPOA).

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. We believe that we adequately planned and performed the audit to achieve the audit objectives and that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives, as required by these standards.

Audit Staff: Mark Tipton, Audit Manager  
Joanne Held, Audit Staff

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# CHAPTER 1 – CASE MANAGEMENT

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## Summary

The OCC's supervision and management of complaint investigations do not ensure that sustained cases are completed within the Charter guideline of nine months. As a result, 152 (53 percent) of the 286 cases sustained between January 2003 and June 2006 took the OCC more than nine months to close, with 113 of those cases taking more than 10 months to close. Of the 113, the SFPD sent 22 cases back to the OCC stating that it was too late for the SFPD to review and consider discipline for the officers in those cases before the expiration of the one-year statute of limitations.

OCC investigations take longer than necessary due to pervasive case management issues, with over 30 percent of the time a case is open made up of delay periods of 30 or more consecutive days when no work is done on the case. There was no reason documented in the sample case files for 59 percent of delays, and 21 percent of delays were due to difficulty contacting or getting information from complainants or witnesses.

In two open cases, the OCC's investigations were delayed approximately eight months each at the time of our review because the SFPD refused to fulfill the OCC's document requests. The OCC contributed to these delays by failing to follow up on the status of its requests and escalate them to the police chief or Police Commission.

The OCC mediated only 22 (3 percent) of the cases closed in 2005 and could save investigation time and resources by mediating 75-80 cases annually (approximately 9 percent).

### **Finding 1.1. Fifty-three Percent of Sustained Cases Took More Than the Charter Guideline of Nine Months Due to Case Delays**

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*Investigations took more than ten months in 40 percent (113) of 286 cases sustained.*

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The OCC took more than the Charter guideline of nine months to complete its investigations of 152 (53 percent) of the 286 sustained cases closed between January 2003 and June 2006 and more than 10 months to complete the investigations of

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*The SFPD returned 22 sustained cases to the OCC without review, and officers who should have been disciplined, counseled, or retrained were not.*

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113 of those cases. The SFPD sent 22 of the 113 cases back to the OCC stating that the SFPD did not have sufficient time to review the cases and consider discipline for the officers involved before the expiration of the one-year statute of limitations. Unless the OCC director deems it appropriate under the facts of the particular case to use his or her authority to file charges directly with the Police Commission, the statute of limitations will run out and neither the police chief nor the Police Commission will have an opportunity to determine whether the officer is, in fact, guilty of misconduct.<sup>9</sup> These situations may undermine the City's interest in achieving accountability of SFPD officers, as officers who arguably should have been disciplined, counseled, or retrained were not. This could result in fewer people filing complaints, as they may feel that there is no point if the OCC cannot complete its investigations within the time requirements.

In October 2005, the OCC director reported to the Police Commission that no Commission-level<sup>10</sup> cases had been lost to the statute of limitations between 2003 and 2006. The cases that were lost were "B" and "C" priority<sup>11</sup> level cases (which made up 97 percent of the complaints filed between 2003 and 2006) and had allegations including rude and inappropriate comments, citations, search issues, and minor use of force.

Although there are situations in which "tolling provisions" extend the one-year deadline to complete the case, some officers in such sustained cases have filed motions with the court to have their cases dismissed when the OCC passed the one-year deadline but believed it had a tolling extension. These motions can take years to resolve, often going through multiple appeals.

### **Recommendations:**

1. The SFPD should not return or disregard sustained cases even if the OCC submits a case too late for review and consideration of discipline before the expiration of the one-year statute of limitations. Instead, the SFPD should use the information for management purposes as evidence

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<sup>9</sup> The one-year statute of limitations applies unless there is a "tolling provision" that extends the deadline. See Appendix A, page A-4, for information on tolling provisions.

<sup>10</sup> See Appendix A, page A-1, for a description of the levels of discipline.

<sup>11</sup> See Appendix A, page A-4, for a description of case priority levels.

indicating the need for nondisciplinary actions such as counseling or monitoring.

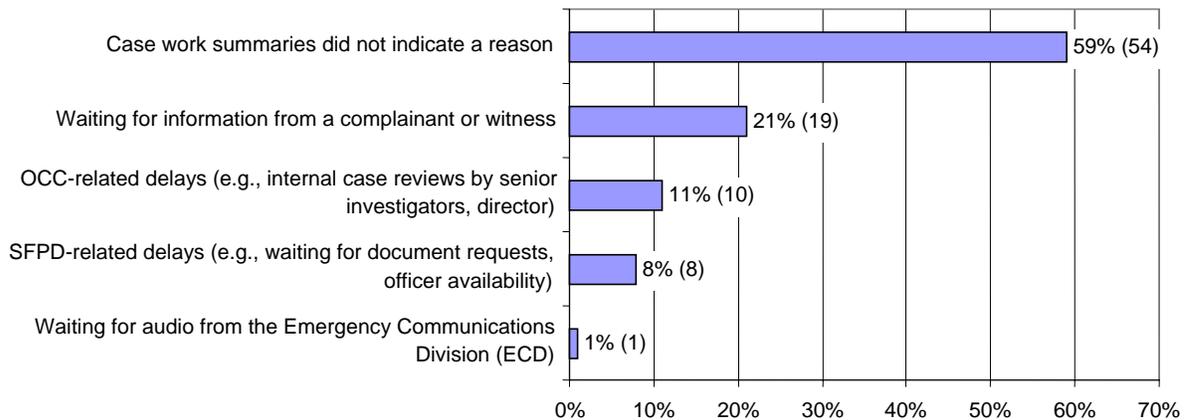
2. To avoid potential legal challenges, the OCC and SFPD should complete the investigation and discipline notification process within the one-year statute of limitations. The OCC should aim to complete its investigations within nine months, and no later than ten months.

### Delay Periods of 30 or More Consecutive Days Caused Late Investigations

*Investigations took longer than necessary due to delays of 30 or more consecutive days when no work was done on the cases.*

The OCC begins investigations promptly after complaints are received, with 71 of 86 investigations (83 percent) in the sample cases starting immediately after they were filed. In addition, the OCC's investigative processes were not lengthy once they were started. However, cases took longer than necessary because 30 percent of the time the cases were open was made up of delay periods of 30 or more consecutive days when no work was being done on the cases ("extended delays"). In our sample, there were 92 extended delays in five categories:

#### EXHIBIT 3 Causes – Delay Periods of 30 or More Consecutive Days



Source: Auditors' file review of 86 sample case files.

The two most frequent delay types - "no reason indicated" and "complainant- and witness-related" - made up 80 percent of all extended delays.

## No Reason Indicated for 59 Percent of Delays

There was no reason indicated in the sample case files for 59 percent of the extended delays. These were due to:

- Two investigators who were responsible for a high percentage of delays with no reason indicated.
- Caseload size.
- Caseload assignment.
- Case management and supervision.

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*Two of 16 investigators were responsible for 39 percent of all extended delays with no reason indicated.*

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*Two of 16 Investigators Were Responsible for a High Percentage of Delays With No Reason Indicated.* Two of 16 investigators<sup>12</sup> were responsible for 39 percent of all extended delays that had no reason indicated for the delay. One of those investigators repeatedly disregarded senior investigator instructions to complete specific steps (see Finding 2.1, page 31, for related discussion).

To determine if delays with no reason indicated were caused by investigators having large caseloads or if there were other reasons, we reviewed the full caseloads of three investigators for May 2006 to see how many had extended delays.

The three investigators' caseloads ranged from 25 to 38 cases, with an average of 32. All the investigators worked on at least one case every day they were in the office, each touching an average of 22 cases that month. If caseload were the only factor causing extended delays, one would expect the investigator with the largest caseload to have the largest number of cases with extended delays. However, our review showed that:

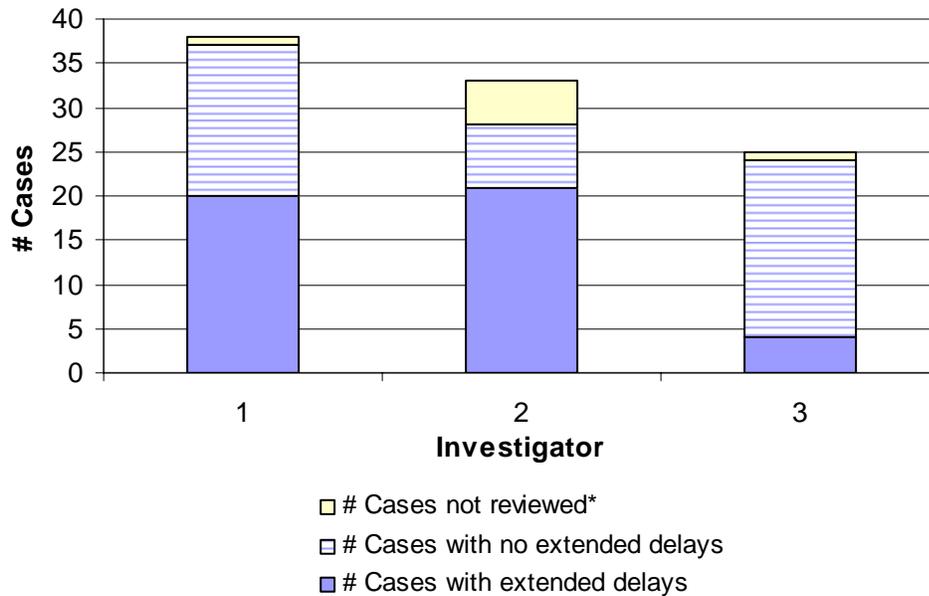
- The investigator with the largest caseload (38 cases) did not have the largest number of cases with extended delays – this investigator had 20 cases with extended delays and 17 cases with no extended delays.
- The investigator with the midsize caseload (33 cases) had the most cases (21) with extended delays and the fewest cases with no extended delays (7).
- The investigator with the smallest caseload (25 cases) had the fewest cases (4) with extended delays, and the most (20) cases with no extended delays.

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<sup>12</sup> The OCC had 16 investigators as of the end of December 2005.

Note that for each investigator, the numbers of cases with and without extended delays do not equal their total caseloads because the OCC was unable to locate some of the case files at the time of our review (see Finding 1.1, page 18, for related discussion).

**EXHIBIT 4** Review of Three Investigators' Caseloads for May 2006



\* Note: These cases were not reviewed because the OCC was unable to locate the case files at the time of review. See Finding 1.1, page 18, for related discussion.

Source: Auditors' review of three investigators' May 2006 caseloads.

*The way individual investigators handle their caseloads affects the number of delays.*

Therefore, aside from caseload size, the way individual investigators handle their caseloads affects the number of delays that occur for no reason. Consequently, investigators with the greatest percentages of extended delays with no reason indicated also have disproportionately high numbers of sustained cases submitted too late for SFPD to review and consider officer discipline and/or aging cases (see pages 9 and 17, respectively, for related discussions).

**Recommendation:**

3. To better assist investigators in managing their caseloads, the OCC should create consistent standards for case reviews and train senior investigators on them, including:
  - a. Establishing an investigation plan with timelines at the beginning of each investigation.
  - b. When to perform case reviews, including overall timelines to ensure the nine-month guideline is met.

- c. How often to perform case reviews.
- d. What items to check for in reviews and how to document them.
- e. What to document if investigators are not complying with senior investigator requests.

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*OCC investigators had an average caseload of 32, compared to 16 in other jurisdictions.*

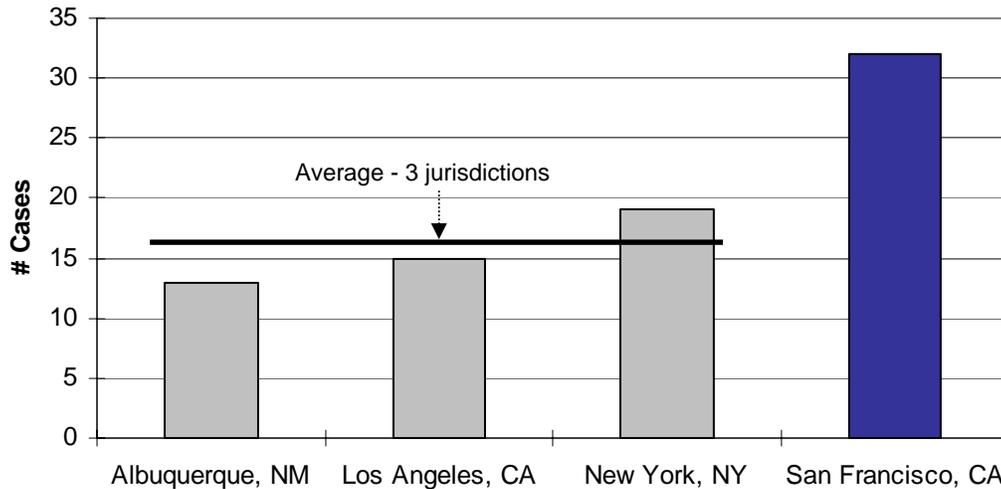
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**Caseload Size.** As of November 2006, OCC investigators had an average caseload of 32, with individual caseloads ranging from 18 to 48 cases. We reviewed three other jurisdictions' complaint investigation offices (Albuquerque, NM; Los Angeles, CA; New York, NY) and found that their caseloads ranged from 13 to 19, with an average of 16 cases per investigator.

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**EXHIBIT 5 Average Caseloads – Three Complaint Investigation Offices**

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Source: OCC case tracking system data and interviews with representatives from and websites of the cited jurisdictions.

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*Number of complaints received per year may be a better measure for determining investigator staffing levels.*

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Although the OCC met the Charter requirement to have one investigator for every 150 sworn members of the SFPD at various points during the audit,<sup>13</sup> OCC investigator caseloads were still double the average of the cited jurisdictions. This suggests that the number of complaints the OCC receives per year may be a better measure for determining staffing levels than the number of SFPD officers.

In addition, individual investigator caseloads are increased because:

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<sup>13</sup> The number of investigators fluctuated from a low of 13 to a high of 16 during the course of the audit due to staff turnover.

- Three of the OCC's investigators are new, and are not yet able to carry full caseloads.
- Based on our review of employee personnel files, the OCC currently has a few employees<sup>14</sup> who do not meet performance standards. This decreases the number of investigators the OCC has available to handle complex cases (see Finding 2.1, page 31, for related discussion).

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*The OCC would need 22 investigators to reach the average per-investigator caseload size of three other jurisdictions studied.*

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Once all of the OCC's 15 investigators<sup>15</sup> are carrying full caseloads, the average number of cases per investigator will decrease 25 percent, from 32 to 24. This will help reduce the time it will take investigators to close cases and increase the OCC's ability to meet the nine-month guideline for completing investigations. However, based on the OCC's open caseload of 353 cases as of November 2006, the OCC would need 22 investigators to reach the average per-investigator caseload size of the other three jurisdictions cited.

#### **Recommendations:**

4. With the Police Commission (and Board of Supervisors, if appropriate), the OCC should discuss and document the decision on whether the OCC needs additional investigator resources above the minimum level mandated in the Charter to provide the desired level of service (e.g., increasing overall staffing to align it with historical caseload rather than SFPD staffing).
5. To maintain staffing levels, the OCC should begin recruiting new investigators as soon as it becomes aware of an employee leaving or retiring.

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*The OCC's method for assigning cases to investigators may result in uneven caseloads.*

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***Caseload Assignment.*** Cases are assigned to investigators through a system of rotating intake days, where a team of investigators is assigned to take all complaints that come in during a given week. Within each team, there is a primary intake investigator for each day of the week who accepts complaints that are received by phone and in person and then keeps those cases for investigation.<sup>16</sup> This practice can result

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<sup>14</sup> The term "employees" in this case could refer to both OCC staff investigators (job classification 8124) and/or senior investigators (job classification 8126).

<sup>15</sup> The OCC had 15 investigators as of January 2007.

<sup>16</sup> In general, the investigator who takes the complaint keeps the case for investigation. However, cases are sometimes reassigned because one investigator already has a large number of cases, or to take advantage of an investigator's expertise.

in uneven caseloads if many complaints come in on a single intake day. In addition, the three teams have different numbers of investigators, so investigators on one team may have more intake days than investigators on another team.

Although the OCC senior investigators recently began using mail-in complaints to balance investigator caseloads, the OCC has not achieved balanced caseloads because:

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*The more complex cases are not assigned to investigators who do not meet performance expectations.*

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- OCC management considers employees who do not meet performance expectations to be unable to handle more complex cases, and thus do not assign those investigators such cases (see Finding 2.1, page 31, for related discussion).
- There is significant variation in the number of cases assigned to different investigators.
- Case weights<sup>17</sup> are not evenly distributed.
- Some investigators close a disproportionately lower number of cases than others.
- Individual investigators' rates of sustaining allegations in cases vary from 0 to 32 percent of investigators' individual caseloads.
- Even if some employees have the same number and weight of cases, some may have heavier workloads than others because of other noncase duties such as mediation coordination and language services.

The OCC recently developed a "year-to-date" report that includes information on the number and weights of the cases in each investigator's open caseload. The information in this report, used in conjunction with information on investigators' noncase duties, provides the OCC with a tool to monitor and take action to balance caseloads.

#### **Recommendations:**

6. The OCC should require investigators to fill out time reports showing how many hours were spent on individual cases, noninvestigation tasks like language services, and administrative tasks each day to establish a baseline of how long it takes investigators to:
  - a. Complete cases of different types and weights.
  - b. Provide noninvestigation services such as mediation or translation duties.

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<sup>17</sup> See definition in Appendix A, page A-3.

- c. Perform administrative duties such as transcription, photocopying, etc.

This can be done on a trial basis (e.g., for two to three months) to establish case management procedures, or on a longer or permanent basis to track investigator performance. If noninvestigators provide bilingual services, those individuals should also track the number of hours spent on such services.

7. The OCC should use the year-to-date report to analyze whether or not the number and weight of cases are equitable across investigators (taking into account high priority cases and investigators' noninvestigation duties) and redistribute cases if needed to balance caseloads and ensure that cases are closed in nine months or less.

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*OCC management did not effectively reprioritize cases to meet the nine-month investigation guideline.*

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*Case Management and Supervision.* The OCC's case supervision does not identify cases that are likely to take more than nine months to close due to insufficient investigation progress or long periods of inactivity, despite having two reports available that would assist it in doing so. The OCC has two reports to track the age of cases: a list of cases that are six months or older and another of cases eight months or older. The eight-month report listed 85 cases as of July 2006. Of those cases, nearly half (39) were one year old or older, including one that was 1,513 days (over four years) old. In addition,

- Two investigators had 35 (41 percent) of the cases on the list (see Finding 2.1, page 31, for related discussion).
- Two open cases were 443 and 659 days old (over a year and nearly two years old, respectively). These cases were assigned to investigators who had left the OCC three to five months before the report date, so the cases were already beyond the nine-month guideline when the investigators left.
- A senior investigator had two cases on the list, which were 497 and 686 days old (over a year and nearly two years old, respectively).

The OCC needs to track the age of cases throughout the investigation cycle and prioritize cases for closure before they reach eight months of age. However, the number of cases more than one year old on the eight-month report shows that the OCC is not effectively reprioritizing cases on the six-month

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*30 to 50 percent of the cases on the management reports are already more than a year old.*

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list to ensure that investigations are completed within the nine-month guideline or closing cases that are beyond the one-year statute of limitations. Thirty to fifty percent of the cases listed on the six- and eight-month reports would be past the one-year mark even if the OCC completed the investigations. This distracts attention from cases that could still be completed in time for the police chief to be able to review and consider discipline.

If the OCC is going to complete a sustained case after the nine-month Charter guideline, it is required to inform the police chief of the reasons for the delay and transmit information and evidence from the investigation to facilitate his or her timely consideration of the case. However, OCC management is not using the six- or eight-month reports to help them meet this requirement. In a sample of 22 sustained cases closed in 2005, 13 (59 percent) cases did not show evidence that the OCC provided this notification to the police chief.

In addition, the OCC does not have mechanisms for detecting and addressing cases with long periods of inactivity. For example:

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*Delays in some cases ranged from 70 to 372 days.*

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- There were delays in three sample cases totaling 414 days due to the OCC not quickly reassigning the cases of an investigator that left the OCC in January 2005.
- A senior investigator had two nonsustained cases to review before the cases could be closed. The senior investigator had an "A" priority case for 70 days (over two months) and a "C" priority case for 271 days (approximately nine months) without performing the reviews before the chief investigator retrieved and closed the cases.
- An investigator had a case that sat for 372 days (over one year) without being worked. After this delay, the investigator sent out a member response form and closed the case soon thereafter.

The OCC does not have a system to track the physical location of cases. The OCC could not locate seven case files that we were scheduled to review in our analysis of investigator caseloads (see Exhibit 4, page 13). If the investigators cannot locate their assigned cases, they cannot work on them. In contrast, the Kansas City, MO, Office of Community Complaints has a section in its case database that allows it to keep track of the physical location of a case (e.g.,

who in the office has the case file). Also, the OCC's inability to track the physical location of cases is a security issue - the OCC would not be able to tell if a case was taken from the office.

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*The OCC uses paper-based case files, which makes review and tracking of case progress manual and cumbersome.*

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The New York, NY, Civilian Complaint Review Board (CCRB) uses a computerized case tracking system to manage its case investigation information. This system is a central database that maintains the information on each complaint, including basic information (e.g., complainant name, date of complaint) and all of the investigative actions the investigators have taken on the case. This system allows the CCRB to monitor progress on cases closely, and provides automated, time-triggered reminders that prompt investigators to take certain actions based on each investigation's case management plan. In contrast, the OCC's case files are paper-based, making review and tracking of case progress manual and cumbersome.

#### **Recommendations:**

8. To meet the notification requirements of Charter § 4.127, the OCC should:
  - a. Develop a standard notification letter to send the SFPD when cases will take longer than nine months. If the investigation will close soon and it would be less efficient to send files in advance of the case, the letter should specify when information will be sent to the SFPD.
  - b. Develop a centralized system (using the case tracking system if practicable) to keep a record that the SFPD was notified at the nine-month point for sustained cases taking more than nine months to close.
9. The OCC should integrate its case work summaries into its case tracking system or other centrally-accessible database. Until that is achieved, the OCC should create a common format and template for the monthly case lists investigators submit to senior investigators, including individual columns that:
  - a. Calculate how long it has been from the last date the case was worked to present.
  - b. List work done on the case that month (which should make it clearer when adequate progress is being made).
  - c. List the last action taken on the case.

- d. List the next steps or any obstacles to completing the case.
10. The OCC should create standard case management tools and training for investigators and implement them, including:
    - a. Automated reminders for follow-up and due dates.
    - b. How to triage and prioritize cases.
    - c. How to organize files and documents.
  11. The OCC should create a full aging report using its case tracking system that can show the number of cases within certain age ranges for each investigator, investigative team, and the OCC as a whole. Senior investigators should review this report on a monthly basis to help prioritize which cases to work within each investigator's caseload and for each team as a whole to ensure the nine-month guideline is met (except when tolling provisions apply), redistributing cases when appropriate. In addition, the OCC chief investigator should track the progress of cases being investigated or reviewed by senior investigators to ensure that cases are not sitting without action being taken on them for extended periods of time.
  12. The Police Commission should pass an amendment to its Resolution 97-04 on OCC and SFPD reporting that requires the OCC to add information on the amount of time each case has been open to the "Keane Report."<sup>18</sup> This report should be organized from the oldest to the newest case.
  13. The OCC should create, document, and implement a system for reassigning the cases of investigators leaving or with prolonged absences from the OCC to other investigators.
  14. The OCC should create and implement a plan for closing cases that, even if they were completed today, would be submitted to the SFPD too late for its review and consideration of discipline. This plan should include:
    - a. The decision of whether to close cases that are more than 10 months old (i.e., those that would not have sufficient time for SFPD review) with no further action, or

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<sup>18</sup> The "Keane Report" is described in Appendix A (page A-7).

- b. Integrate the remaining investigation or mediation tasks for these cases with investigators' current work plans in a way that does not jeopardize cases that are still viable.

### **Twenty-one Percent of Delays Were Complainant- and Witness-Related**

Nineteen (21 percent) case delays in the sample occurred when the OCC had to wait for complainants' and witnesses' replies to contact letters, phone calls, and information requests. This was the second most frequent cause of extended delays.

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*OCC investigators make inconsistent efforts to locate complainants and witnesses.*

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The OCC does not have standards for how long investigators should spend trying to contact complainants and witnesses, or the level of effort that OCC investigators are expected to make to locate them. Some investigators make one or a few attempts to contact complainants or witnesses and propose closing soon thereafter; others make multiple attempts over many months to reach complainants, or attempt a contact and then wait for months without working on the case when they have received no response from the complainant. In 7 (39 percent) of 18 sample cases, OCC investigators did not make additional effort to contact witness(es) when they were unable to reach them through a telephone call or contact letter.

In addition, when complainants and witnesses do not respond to requests for information early in the investigation, their memories and evidence can become less reliable. This could result in the OCC being unable to reach a conclusive finding in a case in which such a finding would have been reached if the investigation were completed without unnecessary delay.

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*Other jurisdictions have procedures for the methods and level of effort for complainant and witness contacts.*

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The complaint investigation offices in two other jurisdictions have procedures for closing cases when complainants or witnesses are uncooperative.<sup>19</sup> These procedures include:

- The method of communication to be used (phone, letter, etc.).
- The number of contact attempts that must be made by each method.
- The period of time over which the investigator must make the contact attempts.

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<sup>19</sup> New York, NY, and Kansas City, MO.

After a reasonable amount of time (in these jurisdictions, 10 to 18 business days), if the complainant does not respond to the agency's contact attempts, the case is closed. In one of the jurisdictions, a complaint can be reopened if the complainant later contacts the agency and provides the needed information. This helps focus investigators' limited time resources on cases where the complainant is available and cooperative while providing a mechanism to reopen investigations at the complainant's request.

According to the OCC policies and procedures manual, the OCC's "...goal in every case is to conduct as thorough an investigation as possible. To accomplish this we [the OCC] must identify and gather all available evidence and locate and interview key witnesses." If the OCC wishes to maintain the standard that all evidence will be gathered in every case, it must verify that investigators are taking the same level of effort for every case. However, the OCC may wish to make a conscious decision to triage its efforts to put more investigator resources into working cases that have certain characteristics. In either case, having an established policy and procedure promotes consistency in investigations.

**Recommendation:**

15. The OCC should create and implement policies and procedures for the effort to put into contacting complainants and witnesses who do not respond to telephone calls or contact letters and for closing cases due to uncooperative complainants, including: the method of communication to be used (phone, letter, etc.); the number of contact attempts that must be made by each method; the period of time over which the investigator must make the contact attempts; and the types of cases in which to use different levels of contact.

**OCC's Internal Processes Caused 11 Percent of Extended Delays**

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*Ten (11 percent) extended delays in the sample cases were caused by the OCC's internal processes.*

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Ten (11 percent) extended delays in the sample were caused by the OCC's internal processes, including case reviews by senior investigators, OCC attorneys, and the director (see Finding 1.1, page 17, for related discussion).

## When OCC and SFPD Disagree on Document Requests, Delays Are Significant

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*The SFPD's refusal to provide documents to the OCC has caused significant delays in completing investigations, particularly in high-profile cases.*

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SFPD-related delays were not a significant source of delays in our sample, representing only eight (8 percent) extended delays. However, through additional file review, we determined that in situations where the SFPD refuses to comply with OCC document requests, the time delays are significant. In general, these situations occur when an OCC investigation involves a high profile issue that is the subject of a concurrent SFPD investigation (e.g., officer-involved shootings, homicides, etc.).

In two open cases with significant document-related delays, the OCC's investigations were delayed approximately eight months each at the time of our review because the SFPD refused to fulfill the OCC's document requests. In these cases, the SFPD did not comply with the mandate of Charter § 4.127 that all City departments and employees shall "...promptly produce all records requested by the Office of Citizen Complaints except for records the disclosure of which to the Office of Citizen Complaints is prohibited by law."

The SFPD cited an ongoing homicide investigation in one of the two cases and an ongoing internal investigation in the other. Unless the OCC and SFPD mutually agree to the SFPD not disclosing selected pieces of information from an open investigation for logistical reasons (e.g., the identities of confidential informants), the SFPD is required to provide all other requested documents within the established timelines to allow the OCC to complete its investigation within the Charter guideline of nine months.

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*The OCC director's failure to escalate requests for information from the SFPD to the police chief caused a significant delay.*

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Though these delays were initiated by the SFPD's denial of OCC's document requests, the OCC director's failure to escalate the requests through the established protocol<sup>20</sup> for obtaining documents from the SFPD or Administrative Code § 96.3, "Disclosure of Documents to OCC," caused delays in one of these cases. During the course of more than three months, the case's investigator, OCC attorneys, and the chief investigator sent nine e-mails to and had two meetings with the OCC director about the need to escalate the document request. The consensus reached in these exchanges was that the director would contact the police chief regarding the requested documents. As of the expiration of the one-year

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<sup>20</sup> See Appendix A, page A-7, for an explanation of the document protocol.

time limit on this complaint, the director had still not contacted the police chief regarding this issue.

The OCC now has a system where all document requests to the SFPD are sent through a fax server that maintains a centralized record of when documents were requested and whether a second request had to be made for the documents. This system will allow the OCC to track instances when the SFPD does not comply with the document protocol and follow up with the police chief or Police Commission when necessary.

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*Highly visible and more serious cases have a higher risk of delays due to document requests.*

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Although disagreements between the OCC and SFPD over document requests are not limited to high profile cases, cases that involve ongoing internal or criminal investigations (including officer-involved shootings, homicides, or media coverage) tend to create more dissent between the OCC and SFPD. As a result, cases that involve more serious issues or that are followed more closely by the public have a higher risk of delays due to disagreements over document requests and put the OCC at risk of not being able to complete its investigations within the nine-month guideline.

#### **Recommendations:**

16. The SFPD should comply with the document protocol for responding to OCC requests for information and Administrative Code Chapter 96, "Coordination Between the Police Department and Office of Citizen Complaints" (see Appendix A, page A-6, for description).
17. The OCC should present a cumulative list of outstanding OCC document requests on a regular basis (e.g., weekly, biweekly, monthly) to the Police Commission, including:
  - a. The number of open requests.
  - b. The date each request was made.
  - c. The reasons for the delays/nature of the SFPD's failure to produce the requested documents.

#### **Extended Delays Due to Requests from the Emergency Communications Division and Other City Departments**

To complete its investigations, the OCC must regularly request documents from other City departments, including the Emergency Communications Division, Fire Department, Sheriff's Department, and Department of Public Health.

Though there was only one (1 percent) extended delay due to this type of request in the sample, additional effort to provide training to these departments on their responsibility to provide documents requested by the OCC and creating a document protocol like the one for OCC requests from SFPD could help eliminate delays due to document requests from other City departments.

### **Recommendations:**

18. The OCC should establish standard training and document protocols for City departments from which it regularly requests documents, similar to the document protocol that exists between the OCC and SFPD. Items to include in the protocol:
  - a. A list of routine items that can be requested and where to direct the requests.
  - b. Procedures for requesting nonroutine items.
  - c. Required timelines for the department to produce the requested items to the OCC.
  - d. The OCC's options for recourse if documents are not produced according to the established timelines.
  
19. The OCC should extend its existing system for tracking document requests from the SFPD to include requests made from other city departments and produce a regular report of outstanding requests for required follow-up.

### **Finding 1.2. The OCC Should Mediate More Cases to Save Resources and Boost Productivity**

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*Mediation promotes police and civilian understanding and saves investigation time, but the OCC mediated only 22 (3 percent) of the 796 cases closed in 2005.*

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To better allocate its investigative resources, the OCC should use mediation<sup>21</sup> to resolve more complaint cases. The OCC mediated only 22 (3 percent) of the 796 cases closed in 2005. In our review of sample cases, only 8 (23 percent) of 35 cases that were eligible for mediation based on the nature of the complaint had any documentation in the case work summary that the OCC considered using mediation to resolve the complaint.

By not consistently screening cases for mediation, the OCC misses the opportunity to resolve some cases in a way that promotes police/civilian understanding and to save the agency

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<sup>21</sup> See Appendix A, page A-2, for a description of mediation.

investigation time. As a result, the OCC is investigating more cases than it needs to, which increases caseloads and leads to cases taking longer to close.

Experts in police oversight cite many potential benefits of mediating citizen complaints instead of performing traditional investigations, including:

- Time savings. Mediated cases at the OCC took an average of 146 days (approximately five months) in 2005 - about 30 days less than the average time it took the OCC to complete all case types closed in 2005.
- Cost savings. The OCC uses pro bono mediators to conduct mediation sessions, which could save the OCC resources in terms of the time it takes to investigate, process and send member response forms, and/or conduct officer and witness interviews.
- Greater satisfaction for complainants. "A study conducted in Queensland, Australia, found that about 35 percent of complainants were 'very satisfied' with mediation, compared to 16 percent of those whose complaints were formally investigated."<sup>22</sup> For mediated cases closed in 2005, 22 (88 percent) of 25 participants who responded to the OCC's mediation satisfaction survey were "satisfied" or "very satisfied" with the OCC's mediation process and 20 (80 percent) felt that the complaint was either partially or totally resolved.

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22 (85 percent) respondents to the OCC's mediation satisfaction survey were satisfied or very satisfied with the mediation process.

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The OCC mediation coordinator believes approximately 9 percent of the OCC's cases could be mediated with more emphasis on the program, compared to the 3 percent of closed cases that were mediated in 2005. Based on the average number of cases closed in 2003, 2004, and 2005, this means that approximately 75-80 cases per year could be closed through mediation. In comparison, the average investigator closed 49 cases in 2005. Mediating more cases could save the OCC investigation resources for more serious complaints and reduce the impact of staffing shortages.

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Using an experienced mediation coordinator increased participation in the OCC's mediation process by over 30 percent in 2005.

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The OCC's current mediation coordinator took over the mediation program in April 2005. By the end of 2005, the number of eligible cases submitted for mediation more than doubled and the complainant participation rate increased by more than 30 percentage points compared to 2004. The

<sup>22</sup> R.C. Holland. "Informal Resolution: Dealing with Complaints Against Police in a Manner Satisfactory to the Officer and the Complainant." *International Journal of Comparative and Applied Criminal Justice* 20: 83-93.

number of cases mediated in 2005 increased to 3 percent (22) of all cases closed, up from less than 1 percent (5) in 2004. These changes were the result of having a mediation coordinator who is a trained, experienced mediator making improvements to the OCC's mediation program, including:

- Increased emphasis on senior and chief investigators referring cases with mediation potential.
- Quicker processing of complaints.
- Personal contact from the mediation coordinator to explain the process and benefits of mediation rather than sending an informational letter.

These improvements mirror recommendations for best practices in mediation.

By standardizing the mechanism by which the OCC screens cases for mediation, the OCC could realize yet further increases in the number of cases mediated.

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*Treating mediation cases as investigations until mediation sessions are scheduled uses unnecessary time and staff resources.*

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Though the OCC currently saves time when it mediates a case, the OCC's practice of treating mediation cases as investigations until the point at which the mediation session is scheduled unnecessarily increases the time needed to complete the mediation process. OCC investigators carry out the same procedural and investigative steps in a case that will be mediated as they do in a case that will go through full investigation, and arrange for the mediation session at the point in the investigation when member response forms or interview notices would typically be sent out. In two other jurisdictions, the process of arranging for the mediation session is started immediately after gaining complainant and officer consent to participate in mediation, and no further investigation work takes place.<sup>23</sup> This consent is obtained either during the intake interview or shortly after the initial complaint review.

Currently, the OCC mediation coordinator performs mediation duties in addition to a full investigation caseload. The OCC will need to track the number of hours spent on mediation, especially as mediation services expand, to determine whether or not it requires a full-time mediation coordinator (see Finding 1.1, page 16, and Recommendation 6 for related discussion).

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<sup>23</sup> Kansas City, MO, and New York, NY.

**Recommendation:**

20. The OCC should create and document procedures for completing mediation cases, ensuring that no more than the minimum necessary steps are put into completing the process. These may include:
  - a. Requiring that the mediation coordinator review all incoming cases for mediation eligibility (addressing when in the course of the intake process the case should be sent for this review).
  - b. Specifying the amount and type of work to be done before mediation is scheduled.
  - c. Revisiting the types of cases that can be mediated, expanding the types if appropriate so that more cases will be eligible for mediation.

# CHAPTER 2 – OCC MANAGEMENT

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## **Finding 2.1. OCC Management Does Not Meet Standard Expectations for Performance and Management Accountability**

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*The OCC has experienced low employee morale, inadequate staffing, poor communication within the OCC and with external stakeholders, and operational inefficiencies.*

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OCC management does not meet standard expectations for performance and management accountability. As a result, the OCC has poor employee morale: 72 percent of employees responding to our anonymous audit survey disagreed or strongly disagreed with the statement “morale in the office is generally good.” In addition, the OCC has experienced inadequate staffing, staff turnover, and poor communication both within the OCC and between the OCC and its external stakeholders (e.g., the Police Commission and the public). The OCC also experiences operational inefficiencies due to a lack of standardized, streamlined policies and procedures. All together, these factors impede the OCC’s ability to complete cases efficiently and effectively, causing investigations to take longer than necessary to complete.

The Government Accountability Office (GAO) publication *Standards for Internal Control in the Federal Government*<sup>24</sup> provides guidance for management accountability, including:

- Integrity and ethical values maintained and demonstrated by management and staff.
- Management’s commitment to competence.
- Good human capital policies and practices.
- Creating and maintaining policies and procedures for achieving the organization’s mission.
- Information and communications, including communication within the organization and with outside groups.

### **Management Accountability**

*Integrity and Ethical Values.* OCC management has not demonstrated the required tone for integrity and ethical values. In our anonymous survey of OCC employees, 29 percent of respondents said they do not feel that their supervisor sets a good example of how to behave in the workplace. In addition,

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<sup>24</sup> *Standards for Control in the Federal Government* (GAO/AIMD-00-21.3.1) Government Accountability Office, 1999.

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*38 percent of respondents to our anonymous survey feel that the OCC does not have a high standard for professional ethics.*

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38 percent feel that the OCC does not have a high standard for professional ethics and 54 percent feel that OCC senior management does not exemplify the OCC's mission and values. In 2005, two employees left the office due to concerns with OCC management and ethics.

A number of survey respondents gave the following examples of integrity and ethical issues among staff at the OCC. It is beyond the scope of this audit to investigate these issues for validity, but the pervasiveness of the comments indicates potential ethical issues among OCC employees:

- Falsifying time and attendance records.
- Use of City cars for noncity business.
- Outside employment activities using City time and resources.
- Harassment and use of inappropriate language.

*Commitment to Competence.* Management must ensure that employees possess and maintain a level of competence that allows them to accomplish their duties, in addition to identifying the skills needed for various jobs and providing training.

According to our anonymous survey of OCC employees, OCC management is deficient in identifying and providing needed training:

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*Most survey respondents feel that the OCC does not provide sufficient training for employees to perform their jobs well.*

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- 52 percent of OCC employees who responded to the survey feel that senior management does not support professional development of employees.
- 60 percent feel they do not get all the training they need to do their jobs well.
- 72 percent feel they do not have sufficient access to training.
- 79 percent feel the OCC does not have a systematic process for identifying employee development needs and implementing solutions.

In particular, a number of survey respondents cited a need for more systematic training of newly hired investigators. It is beyond the scope of this audit to evaluate the adequacy of the OCC's current training practices.

*Good Human Capital Policies and Practices.* Management's responsibility for maintaining good human capital policies and

procedures includes establishing appropriate hiring, evaluation, counseling, and discipline practices.

Appropriate hiring practices include setting job qualification requirements that meet the organization's needs, ensuring compensation rates are appropriate, and performing a thorough candidate qualification review and selection process. In 2005 and 2006, the OCC hired two new investigators who did not complete their probation periods to stay at the OCC on a permanent basis. These departures may indicate a need to review and evaluate the OCC's hiring and new investigator training processes to ensure they are meeting the OCC's needs.

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*The OCC has not filed performance appraisals for any employees since 2003 and has not taken personnel actions to address employees with less than satisfactory performance.*

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OCC management is also not meeting the mayor's August 2005 Executive Directive that instructs City departments to complete annual performance appraisals for each employee. The OCC has not filed performance appraisals for any of its employees since 2003, and also has not submitted the required reports on how many performance appraisals were scheduled and performed. In addition, the OCC director does not receive an annual performance appraisal by the Police Commission. Performance appraisals of both staff and directors in any organization are an important tool to ensure that the organization's goals are being met.

Based on our review of employee<sup>25</sup> personnel files, there was no evidence that OCC management has taken action to address the performance of employees who were not meeting performance expectations. For example,

- There was no evidence in an employee's personnel file that OCC management enforced the terms of a performance improvement plan that called for the employee to be terminated if the terms were not met. This employee's performance has not been evaluated since 2003.
- There was no evidence in an employee's personnel file that OCC management created a performance improvement plan for an employee who received three consecutive performance appraisals of "development needed." This employee has not been evaluated since 2002.

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<sup>25</sup> In this context, "employee" refers to investigators (classification number 8124) and/or senior investigators (classification number 8126).

- A 2003 evaluation of a third employee gave an overall rating of “development needed,” and found the employee’s quantity of work and planning unacceptable. This employee has not been evaluated since then and there is no evidence in the employee’s personnel file that the needed improvement occurred.

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*Employees who met or exceeded performance expectations handled a greater proportion of complex cases, which reduced employee morale.*

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As of the date of this report, OCC management still has not taken action to address the performance of these employees. OCC management’s failure to address these performance issues impacts other OCC employees. The employees that do meet or exceed performance expectations are left to handle a greater proportion of complex cases. This workload imbalance contributes to poor morale: 72 percent of employees surveyed disagreed or strongly disagreed with the statement “morale in the office is generally good.” In addition, 68 percent of OCC survey respondents said it doesn’t matter whether you do good or poor work; the recognition and rewards are the same.

Poor morale and disincentives for doing a good job discourage investigator productivity. In addition, having employees who do not meet performance expectations without providing counseling or discipline does not provide full and competent staffing for the OCC.

**Recommendations:**

21. The OCC should develop and implement training on the OCC’s mission for OCC management and staff and incorporate the mission and goals into the employee performance goal setting process for individual managers and staff.
22. The Police Commission should investigate the allegations of unethical behavior listed on page 30 and take appropriate corrective action to correct any current issues and prevent possible future occurrences.
23. The OCC should create and implement a strategic plan for the ongoing training needs of staff, maintaining recordkeeping that shows:
  - a. The topics in which employees need training.
  - b. What training employees already have and the date completed.
  - c. Timing and funding for training sessions.

24. The OCC should develop and implement formal new investigator training processes, including:
  - a. Creating training manuals and reference documents.
  - b. Consulting best practices jurisdictions (e.g., New York, NY) for information to help develop the OCC's new investigator training program.
  - c. Providing standardized on-the-job training for incoming investigators.
25. The OCC should schedule and perform annual performance goal setting and appraisals for each employee and report the results as required by the mayor's Executive Directive of August 2005.
26. The Police Commission should institute an annual performance goal setting and appraisal process for the OCC director. The director's performance goals should be tied to the OCC's mission and required and desired accomplishments (reporting, outreach, etc.)
27. With the assistance of the Department of Human Resources and/or the City Attorney, the OCC should take appropriate personnel actions for employees who do not meet performance expectations. In the future, the OCC should take timely steps to proactively counsel and train employees who do not meet performance expectations as issues are identified through the performance appraisal process.

### **Policies and Procedures**

Management is responsible for establishing policies and procedures that help the organization achieve its mission. In the case of the OCC, this means having policies and procedures that promote efficient investigations that are thorough and take no longer than necessary to complete.

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*The OCC Investigator's Training Manual is disorganized, out of date, redundant, inconsistent, and incomplete.*

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The OCC has an *Intake Procedures Handbook* that was created in 2005, but it addresses only the intake portion of an investigation and reflects a method of dividing work between investigators that the OCC no longer uses. The OCC's main handbook for investigations - the *OCC Investigator's Training Manual* - is:

- Disorganized, with no table of contents or page numbers.

- Out of date, with some items dating back to 1989 and others undated.
- Redundant, with multiple copies of items and duplicate procedures for case intake written on different dates.
- Inconsistent, with different investigators' copies of the manual containing different documents.
- Lacking versions of standard templates for common types of complaints, leaving investigators to create different versions of documents.

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*OCC investigators use significantly different approaches for contacting complainants and witnesses.*

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In addition, the *OCC Investigator's Training Manual* does not address issues that affect the timeliness and completeness of complaint investigations. Specifically, the OCC does not have procedures for:

- The level of effort that investigators must make to locate complainants and witnesses and the amount of time to allow before closing a case when complainants and witnesses do not respond to investigator requests.
- If and how to triage cases and give investigative priority to certain types of cases.

Because there are no set guidelines for these issues, there is significant variation in the approaches taken by OCC investigators (see Finding 1.1, page 21, for related discussion).

Aside from the differences in the level of effort and time spent waiting for contact from complainants and witnesses, there were no functional differences in the ways different investigators conducted and documented their investigations. The only exceptions were employees who had a greater proportion of extended delays with no reason indicated and instances where senior investigator instructions and suggestions were disregarded (see Finding 1.1, page 12).

Despite the relative consistency between investigations, OCC staff cited inefficiencies in the OCC's existing policies and procedures. Sixty-four percent of OCC employees responding to the anonymous audit survey said that the policies and procedures for doing their jobs are not in writing, and sixty-three percent agreed or strongly agreed that the procedures they are required to follow to do their jobs involve unnecessary steps.

## Recommendation:

28. The OCC should create, distribute, and ensure compliance with a comprehensive investigation policies and procedures manual by fully documenting the OCC's current investigation processes and reviewing the processes for efficiency, removing duplicative and/or manual steps where practicable. In addition, the OCC should implement use of a shared set of standard templates for typical documents like member response forms, interview questions, and sustained reports on the OCC's intranet. These templates should include versions that are appropriate for common complaint types that investigators can customize to their current investigations.

## Information and Communications

The OCC has not met its obligations for internal and external communications, with shortcomings in:

- Communication within the OCC.
- Communication with the San Francisco Police Officers Association (SFPOA).
- Reporting.

Communication both within the OCC and between the OCC and external groups is poor. For example, poor communication with the SFPOA about the OCC's policies has contributed to disagreements and occasional conflicts between the OCC and SFPOA representatives. In addition, the OCC has lapsed in its reporting obligations, including the failure to issue annual reports since 2002.

Communication Within the OCC. In our anonymous survey of OCC employees,

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*60 percent of the respondents to our anonymous survey were dissatisfied with communication within the OCC.*

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- 60 percent were dissatisfied with the communication within the OCC.
- 63 percent felt that communication within the OCC has a negative effect on morale.
- 68 percent feel they do not usually know in plenty of time when important things happen or are about to happen.

A number of survey respondents voiced frustration that staff meetings are not held on a regular basis, stating there was a period of several months in 2005 when no staff meetings were

held. In addition, several respondents said that they primarily learn about developments at the OCC through word of mouth or the news media, rather than from within the OCC. It is beyond the scope of this audit to verify the frequency or adequacy of the OCC's communication.

Poor communication is a factor contributing to the OCC's poor employee-management relations, with 54 percent of OCC employees surveyed responding that communication between staff and senior management is not constructive and respectful and 52 percent responding that, in general, OCC employees do not respect and support managers.

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*There is tension between the OCC and the SFPOA due to poor communication regarding the procedures for interviews of officers under investigation.*

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Communication With the SFPOA. SFPOA representatives assert that the procedures for OCC interviews of officers, as well as other OCC policies, are unclear, seem to change over time, and have not been provided in writing when requested by officers and their SFPOA representatives. As a result, there are tensions and occasional conflicts between the OCC and SFPOA representatives during officer interviews due to this lack of communication.

The SFPOA objects to the lack of specificity the OCC provides to officers named in complaints regarding the allegations made against them. A key area of disagreement is whether officers and their SFPOA representatives have the right to know more specific details about the allegations. California Government Code § 3303(c) requires that officers "...under investigation shall be informed of the nature of the investigation prior to any interrogation." The OCC complies with this rule by providing officers with a copy of the complaint filed against them, which includes a narrative of the complaint and the number and type of allegations made.

Even though the OCC complies with the requirements of the state code, some officers and their SFPOA representatives are dissatisfied with the level of information provided about allegations. For example, an officer may know s/he is accused of making an "unwarranted action," but may not know specifically which action in the encounter with the complainant was considered "unwarranted."

The OCC is not obligated to provide more information than it currently does on allegations made against officers. However, to improve communication and decrease arguments over what the OCC's policies are, the OCC should document its policies

and procedures regarding officer interviews and notification of allegations.

*Reporting.* “In addition to internal communications, management should ensure there are adequate means of communicating with, and obtaining information from, external stakeholders.”<sup>26</sup>

In the case of the OCC, its external stakeholders include the Police Commission, Board of Supervisors, and the public. A primary method of communicating with these groups is through written reports.

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*The OCC has not issued quarterly reports since 2004 or annual reports since 2002 although both are required by City regulations.*

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City Charter § 4.127 requires the OCC to issue a quarterly report to the president of the Board of Supervisors that includes information on the number and type of complaints filed, the outcome of the complaints, and a review of the disciplinary action taken. The Clerk of the Board of Supervisors did not have any record of the OCC sending these reports to the Board President as required since 2004, nor has the OCC posted these reports on the OCC website.

City Administrative Code § 2A.30 requires each department head to file an annual report. The OCC has not issued an annual report since the one issued by the previous OCC director in 2002 which covered the operations of 2001.

Annual reports are an important tool for police oversight agencies to communicate their mission statements, as well as the accomplishments achieved and challenges faced by the organization. The OCC’s failure to issue annual reports in recent years is of deep concern to parties that used to rely on these reports, such as the American Civil Liberties Union of Northern California.

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*The OCC did not issue quarterly Early Warning System reports for an 18-month period as required by a SFPD Department General Order.*

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SFPD Department General Order 3.19 requires the OCC to submit a quarterly Early Warning System (EWS) report listing the names of officers who had more than a certain number of complaints within a specified period of time to the commanding officer of the SFPD Management Control Division and the Police Commission.

The OCC did not meet this requirement for a period of approximately 18 months in 2004 and 2005. During that

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<sup>26</sup> *Standards for Control in the Federal Government* (GAO/AIMD-00-21.3.1) Government Accountability Office, 1999.

period, the OCC provided the SFPD with weekly “morning reports” that listed officers with one or more complaints against them. According to the OCC director, the OCC began sending the weekly morning reports in place of the quarterly EWS reports because the then-current method of producing the EWS reports was manual, time consuming, and error-prone. In addition, the OCC felt that by providing weekly morning reports, it was providing more timely information that gave the SFPD the building blocks for the data provided in the EWS report.

While the OCC was providing some information to the SFPD, it did not fulfill its obligation to provide quarterly EWS reports to the SFPD and Police Commission that aggregate the weekly data. The OCC has resumed production of the quarterly EWS reports using an automated reporting tool.

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*The Police Commission has not adopted a policy for the SFPD to provide responses to OCC policy recommendations within a specific amount of time.*

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Police Commission Resolution 27-06 requires the OCC to make quarterly reports on policy recommendations. The OCC complies with this requirement, but the effectiveness of these reports is hampered because there is no adopted process for SFPD to review and provide a definitive response within a set period of time as to whether or not it will implement the recommendations. The OCC presented a suggested Department General Order in May 2005 that set timelines by which the SFPD would be required to respond to policy recommendations and engage in good faith discussions with the OCC or other parties making recommendations to negotiate any disagreements between the parties. As of December 2006, neither this suggested Department General Order nor any other requirement for the SFPD to provide a definitive response within a specific amount of time to OCC policy recommendations has been adopted by the Police Commission.

In addition to its shortcomings in providing information to external stakeholders, the OCC does not have a systematic process for collecting feedback from the complainants and officers who are involved in traditional (nonmediation) complaint investigations.<sup>27</sup> Without a formal mechanism for gathering information on the factors that positively and negatively affect the parties involved in the complaint investigation process, the OCC is less able to make informed changes that would improve its services.

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<sup>27</sup> The OCC does distribute voluntary satisfaction surveys to participants in its mediation program (see Finding 1.2, page 25, for related discussion).

### **Recommendations:**

29. The OCC should put the OCC's policies and procedures for officer notifications and interviews in writing and provide them to officers and the SFPOA.
30. The OCC should adopt a proactive internal communication approach by keeping staff apprised of important operational and strategic events. The approach should include regular staff meetings.
31. As new management comes in, the OCC should hold an all-OCC staff retreat to discuss and work to resolve conflict issues.
32. The OCC should comply with its reporting requirements and post the reports on the OCC website as they are issued.
33. The Police Commission should resolve the issue of the SFPD not being required to respond to the OCC's policy recommendations.
34. The OCC should systematically survey investigation participants (both officers and complainants) to identify areas for improvement. In addition, the OCC should report the results of these satisfaction surveys in the annual report (or more frequently) along with plans for addressing identified issues.

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# CHAPTER 3 – OUTREACH

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## Summary

The OCC performs outreach activities, but does not maintain a record of its activities and is unable to establish the amount, effectiveness, or distribution of its outreach activities.

The OCC provides the language services required by the City's Equal Access to Services Ordinance (Administrative Code Chapter 91) but should better track its language services for planning purposes.

The OCC website could be improved by instituting best practices from other jurisdictions.

The number of OCC complaints dropped between 2003 and 2006. In addition, the way that it receives complaints has shifted from being primarily by phone to primarily by mail. We did not perform detailed reviews of these issues, but are not aware of any specific causes.

## Finding 3.1. Best Practices in Outreach

### **The OCC Performs Outreach but Does Not Keep Records of or Have a Strategic Plan for Outreach**

Individual members of the OCC, including management, staff, and attorneys, participate in community outreach but do not keep records of the activities they perform. As a result, the OCC is unable to establish the amount of outreach activity it performs, the effectiveness of that outreach, or the distribution of its efforts among the City's geographic and ethnic communities.

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*The OCC did not receive any complaints at an outreach center that it established for 11 weeks in early 2006.*

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The OCC established an outreach position at the Bayview Hunters Point Family Resource Center (center) for a trial period that began in February 2006. Under this effort, an OCC investigator was available at the center on Tuesday afternoons from 1:00 pm to 5:00 pm to answer questions and assist people in filing complaints. The OCC and its partners in the Inter City Family Resource Network (the parent organization of the center) distributed flyers and presented information at

community meetings. However, the investigator who staffed this outreach effort said that no one came to file a complaint during the project, so it was discontinued in May 2006 after 11 weeks.

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*The OCC has not presented a final strategic plan to the Police Commission as requested in 2005.*

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In 2005, the Police Commission requested that the OCC develop a strategic plan for outreach in the year 2006. Although the OCC presented an overview of its outreach plans in January 2006, it had not presented a final strategic plan as of the end of December 2006.

The Office of Community Complaints in Kansas City, MO, is required to create an annual strategic plan for outreach. In addition, that office makes required quarterly presentations to its Board of Police Commissioners on:

- The outreach activities it completed in the quarter.
- The office's progress toward meeting the annual strategic goals.

This planning and reporting process allows the Office of Community Complaints, the community of Kansas City, and the Board of Police Commissioners to see where outreach efforts are focused, and if additional efforts are needed to reach different populations.

Although it is important for the OCC to engage in community education and outreach in the long term, in the immediate present the OCC should consider whether an increase in outreach efforts would lead to an increase in complaints to a level that would impede the OCC's ability to complete investigations in a timely manner and reduce the existing backlog of investigations. The OCC should consider its resources in developing a strategic outreach plan.

### **OCC Provides Required Language Services; Should Better Track Usage for Planning Purposes**

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*The OCC meets the requirements of the City's Equal Access to Services Ordinance to provide language access services.*

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The OCC meets the requirements of the City's Equal Access to Services Ordinance (Administrative Code Chapter 91) to provide language access services. This ordinance requires the OCC to:

- Translate all publicly-posted documents that provide information on department services or programs into the

languages spoken by a substantial number of limited-English speaking people.

- Prominently post public notices in the public areas of its facilities in the relevant languages indicating that written materials in and staff who speak the languages are available.
- Ensure that its translated materials include translations that are accurate and appropriate for the target audience.

In addition, the OCC must have enough bilingual employees in public contact positions to provide the same information and services to the public that it provides in English in each language spoken by a significant number of limited-English speaking people.

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*The OCC does not track staff time to determine if it has sufficient bilingual resources to serve the public.*

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The OCC has investigators who speak the two languages that the City's Immigrant Rights Commission has identified as being spoken by a significant number of limited-English speaking individuals: Spanish and Chinese.<sup>28</sup> However, the OCC does not report or use the information captured in the OCC's intake log on the primary language of complainants and individuals who contact the OCC for information on complaints for language service planning purposes. In addition, the OCC does not track the amount of time investigators and other OCC staff spend providing bilingual services to the public. As a result, there is no way to establish whether or not the OCC has sufficient bilingual resources to serve the public given the fact that investigators have investigation duties on top of translation duties (See Finding 1.1, page 16, for related discussion).

### **Best Practices in Outreach**

Based on a review of the websites of eight other jurisdictions, we identified the following best practices in making the police complaint process accessible to the public:

- ***Provide details on remote locations for obtaining forms.***  
Like other jurisdictions, the OCC has remote locations where complainants can obtain complaint forms other than the complaint investigation office or a police station. However, though the OCC website mentions that complaint forms are available from "various community

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*Best practices in police complaint process outreach include using websites to provide details on remote locations for obtaining complaint forms, outreach activities, and statistical reports, and allowing online complaint filing.*

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<sup>28</sup> In addition to the minimum requirement to have Spanish and Chinese language services, the OCC also has employees who speak Burmese, Russian, and Tagalog.

groups," it does not list the names and locations of these groups.

- Give information on outreach activities. Jurisdictions like New York, NY, have outreach sections on their web pages that feature information on their outreach efforts and public meetings, in addition to the meeting schedule of the investigation office's oversight body. The OCC's website does not mention any outreach efforts, nor does it provide information about the Police Commission's meeting schedule.

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*The OCC has not posted its most recent reports online as required by a Police Commission resolution.*

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- Provide current reports. The OCC does not post its most recent reports online. Police Commission Resolution 97-04 requires the OCC to post a copy of monthly summaries of complaints received, quarterly reports of pending OCC investigations, and its annual reports (including information on OCC investigator caseloads) on the OCC website within 10 days of issuance to the Police Commission. Though the OCC has prepared the monthly summaries, these reports have not been posted on the OCC's website for 2005 and 2006. The OCC has not prepared an annual report since 2002, and the clerk of the Board of Supervisors has no record of quarterly reports since 2004.
- Allow public to file complaints online. The public can submit complaints online through the websites of the Albuquerque, NM, Independent Review Office and New York, NY, Civilian Complaint Review Board. This allows complainants with internet access to submit complaints without the additional steps of printing and mailing a complaint form.

Currently, complainants can download a printable complaint form from the OCC website but cannot submit complaints online. Further, the complaint form on the OCC's website requires complainants to click two separate links to print both parts of the complaint form. The complaint form is not properly formatted, so each part of the form prints on two pieces of paper. The OCC's complaint form (both the internet version and the paper copy provided by the OCC) is confusing and has many spaces that the complainant is not supposed to fill out. There is a separate webpage with instructions that tells complainants which spaces to fill in.

## Recommendations

35. The OCC should develop and present an annual outreach strategic plan, beginning with calendar year 2007. The Police Commission and OCC should agree on consistent timing for this presentation (e.g., the second Police Commission meeting in January). The plan should identify:
  - a. The outreach efforts that will be undertaken during the year and the reason for the efforts.
  - b. Strategies for reaching the targeted audiences, including communication mechanisms, publicity, and distribution.
  - c. Strategies for measuring outreach success.
36. The OCC should maintain a central list of the outreach efforts of all management, staff, and attorneys, including:
  - a. Date and time of presentation.
  - b. Audience.
  - c. Topic of presentation.
  - d. Name(s) of presenter(s).
37. The OCC should maintain an outreach activity in 2007 that is at least equal to that of 2006 to establish a baseline level of outreach activity. In future years, this baseline can be used to gauge the effect of outreach activities on complaint levels.
38. The Police Commission should require the OCC to make regular (e.g., quarterly or semiannual) reports to the Police Commission on:
  - a. The outreach activities performed by the OCC in the reporting period.
  - b. The OCC's progress toward its strategic outreach goals for the year.
39. The OCC should publicize scheduled outreach events on its website, including a calendar of events that shows the dates, times, and locations of when the OCC will be giving presentations. In addition, it should provide a link to the Police Commission website and meeting information, or add that information to the OCC's calendar.
40. The OCC should report data from its intake log on the language spoken by complainants in the annual report.

41. The OCC should use the information on the number of hours spent by investigators on providing translation and bilingual services in Recommendation 6 and data from the intake log on the language spoken by complainants to determine whether the OCC has sufficient bilingual resources. Also, the OCC should document its findings and its decision on whether or not to pursue additional language services resources.
42. The OCC and Police Commission should decide whether to allow online filing of complaints and document their decision. If the OCC and Police Commission decide to allow online filing, the OCC will need to request the appropriate resources in its next budget submission.
43. The OCC should make the printable online complaint form easier to use by creating a document that combines the complaint form with instructions so that it can be accessed with a single click and only one item needs to be sent to the printer. The complaint form should be formatted to fit on standard-size paper. In addition, the OCC should change the complaint form so that it only collects the information that should be provided by the complainant.

### **Finding 3.2. The Number of OCC Complaints has Dropped for No Discernable Reason**

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*The number of complaints filed at the OCC dropped 14 percent from 2001 to 2006.*

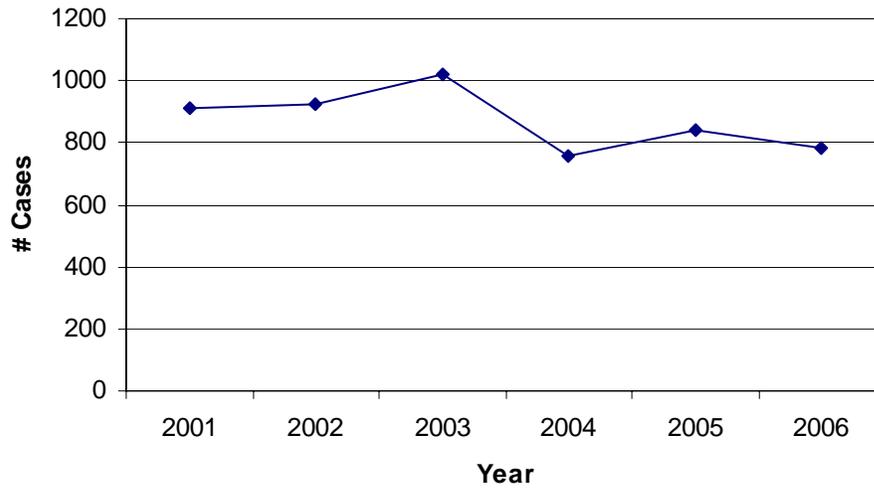
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The number of complaints filed at the OCC dropped 14 percent from 2001 to 2006. The most significant drop was in 2004, when the OCC received 755 complaints, as compared to 1,021 complaints in 2003 (a 26 percent drop). The number of complaints received rebounded in 2005, but declined slightly again in 2006 (Exhibit 6).

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**EXHIBIT 6** Number of Complaints OCC Received, 2001-2006

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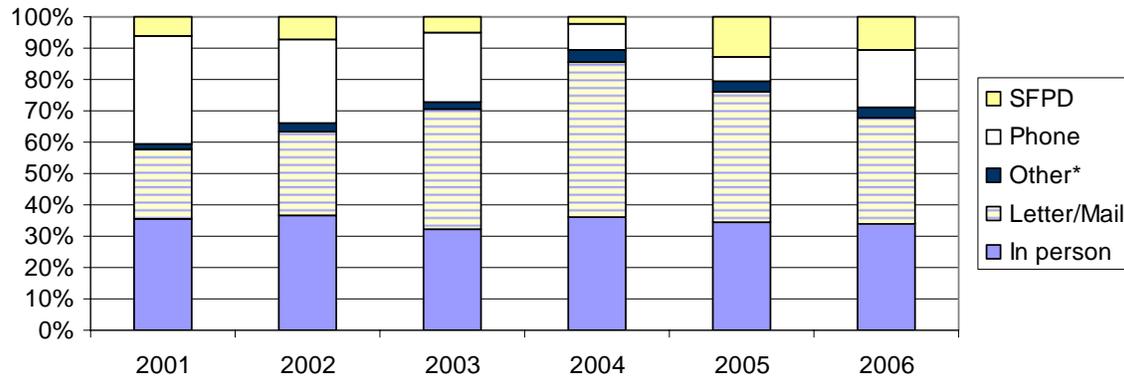


Source: OCC statistical reports.

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We did not perform a detailed review of possible reasons for the drop in the overall number of cases received in 2004, and are not aware of any specific causes. However, there may be specific causes – as described below, there has been a shift in the way the OCC has received cases since 2003. The OCC experienced a decrease in the number of complaints received by phone that most closely corresponds to an increase in the number of complaints received by mail, indicating a possible relationship between the two.

The number of complaints received by phone made up 31 percent of complaints received in 2001, compared to 22 percent in 2003 and 8 percent in 2004. This decrease in phone complaints has been accompanied by an increase in complaints received by mail, which made up 19 percent of cases received in 2001 but 49 percent in 2004 and 34 percent in 2006. Complaints received in person have remained steady throughout the period (Exhibit 7).

**EXHIBIT 7****How the OCC Received Complaints as A Percentage of all Complaints Received, 2001-2006**

\*Note: The "other" category includes complaints received by TTY (teletypewriter) and e-mail.

Source: OCC statistical reports.

Members of the Police Commission raised concerns that OCC investigators might be mailing complaint forms for complainants to fill out rather than taking a complaint over the phone as a way to avoid being assigned that case. Because of the way the OCC generally assigns cases, the investigator who receives a complaint over the phone or in person usually keeps that complaint for investigation. If an investigator were able to mail a complainant a form rather than taking the complaint right away, the investigator might be able to avoid being assigned the case if the form is not returned or if the complaint is assigned to a different investigator.

*We did not identify any significant differences between the number of cases received on each day or by each intake investigator.*

We were unable to determine whether there was an intentional cause for this shift in how the OCC receives cases. In our analysis of cases received during March 2005, there was no significant difference between the number of cases received on each day or by each intake investigator. However, the OCC should monitor whether or not a disproportionate number of complaint forms are mailed to complainants as a substitute for investigators taking complaints over the phone at the time the complainant calls by reviewing the log the OCC keeps of complaint forms that are mailed out.

### Recommendations

44. The OCC should show in its annual report how complaints are received and monitor this for any unusual changes.

45. The OCC should audit its log of complaint forms mailed out, recording the date and name of employees sending forms and checking for unusual patterns such as certain employees sending a disproportionate number of forms.

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# APPENDIX A – INVESTIGATION PROCESS AND APPLICABLE LAWS AND REGULATIONS

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## Investigation Process

The OCC receives complaints primarily by mail, phone, and in person. Once a complaint is received, it is assigned to an investigator who will complete the case investigation. Investigators are supervised by senior investigators, who each head up a team of three to five investigators. Generally, the investigation process includes:

- Interviewing the complainant.
- Obtaining and reviewing records from the SFPD, other City departments, and law enforcement databases.
- Identifying the officers involved and any witnesses to the incident.
- Reviewing the complaint and determining the appropriate allegations to address the incidents alleged in the complaint.
- Formulating an investigative plan and collecting evidence.
- Locating and interviewing any witnesses.
- Interviewing officers named in the complaint and any witness officers. However, in situations where there are no independent witnesses to the incident, the OCC will generally send a “member response form” – a questionnaire that asks the officer to respond to questions regarding the incident – instead of performing an interview.
- Analyzing all evidence collected and proposing “findings” (see section on page A-2, below) for each of the allegations in the complaint.
- The senior investigator, chief investigator, and director review the proposed findings and must approve them before the case is closed.

Levels of Discipline. If the OCC sustains any of the allegations in a complaint, it must propose the level of discipline it believes is appropriate for the case. There are two levels of discipline that the OCC can recommend for sustained complaints:

- Chief’s-level discipline is imposed by the police chief, and can include suspensions for up to 10 days.

- Police Commission-level discipline is decided as the result of a trial before one or all of the Police Commissioners, and can include discipline up to and including termination.

The completed sustained case, along with the proposed level of discipline, is forwarded to the SFPD for the police chief's review and consideration of discipline.

### **Case Findings**

The most common findings the OCC uses, as defined in SFPD Department General Order 2.04, are:

- Not Sustained. The evidence fails to prove or disprove that the alleged acts occurred.
- Proper Conduct. The evidence proves that the alleged act(s) occurred; however, the acts were justified, lawful, and proper.
- Sustained. A preponderance of the evidence proves that the alleged misconduct occurred and that the conduct violated Department [SFPD] policy or procedure.
- Unfounded. The evidence proves that the acts alleged did not occur or that the accused officer was not involved.
- No Finding/Withdrawal. The complainant failed to provide additional requested evidence, or the complainant requested a withdrawal of the complaint.
- Information Only. The evidence proves that the alleged act did not involve a sworn member of the Department [SFPD] or that the actions described were obviously imaginary. Information only allegations are not counted as complaints against sworn members of the Department [SFPD].
- Mediated. By mutual agreement of the complainant and the accused member, the complaint was mediated and resolved in a nondisciplinary manner (see full explanation below).

Mediation. Mediation is a method of informally resolving a complaint through a face-to-face meeting between the two parties. At the OCC, these meetings are facilitated by two neutral, third party mediators who provide their services to the OCC free of charge. The goal of a successful mediation session is to reach an understanding between the two parties, even if they ultimately agree to disagree.

Participation in mediation is voluntary for both the complainant and the officer. The subject of a complaint must meet

eligibility requirements to be considered for mediation. The following types of cases are not eligible for mediation absent exceptional circumstances:

- Cases involving substantial injury to either complainant or officer.
- Cases involving sexual or racial slurs.
- Cases involving use of force allegations.
- Cases regarding questions of law such as search or detention issues.

In addition, the officer involved in the complaint must meet eligibility requirements. If any of the following apply, the officer is not eligible for mediation:

- A sustained case within the past year.
- A prior mediation within the last six months.
- Three mediations within the past two years.

If an officer is ineligible for mediation due to any of the reasons above, he or she will again become eligible for mediation after a one-year period of no sustained complaints.

Under California Evidence Code § 1119, any information disclosed in a mediation session is confidential and cannot be used in any other criminal or civil proceeding. After completion of a successful mediation session, the mediation record is sealed and no further investigation takes place. Mediation findings are nondisciplinary, and do not count against an officer's complaint record.

### **Case Weights and Priorities**

The OCC assigns "case weights" and "case priorities" to the cases it investigates.

Case Weight is assigned based on the complexity of the case, including how many officers and complainants were involved in the incident, the amount of work necessary to obtain evidence and interviews, and whether or not legal issues are involved. The case weights the OCC uses range from "1" (e.g., information-only complaints) to "6" (e.g., complex cases, high profile cases).

Case Priority reflects the visibility of the complaint and the level of harm alleged in the complaint. The case priority levels the OCC assigns, listed from highest to lowest priority, are:

- “A” priority: e.g., cases alleging grave harm; serious deprivation of liberty.
- “B” priority: e.g., cases that have received publicity; cases where the officer, unit, or watch has previously been involved in a disproportionately high number of complaints.
- “C” priority: e.g., cases which might violate proper standards of behavior, but which pose no threat to a person’s safety.

### **Applicable Laws and Requirements**

In conducting its investigations, the OCC must abide by laws and regulations imposed by sections of California Government Code, the City Charter and Administrative Code, and resolutions of the Police Commission:

California Government Code §§ 3300-3313. These code sections are known as the “Public Safety Officers Procedural Bill of Rights.” One of the key items contained in these sections is § 3304(d), which imposes a one-year statute of limitations on investigations of misconduct allegations. In the event a law enforcement agency determines that an officer will be disciplined for an allegation of misconduct, the agency must complete its investigation and notify the officer of any proposed disciplinary action within one year of when an individual who is authorized to investigate such cases discovers the allegations. There are exceptions to this one year statute of limitations, known as “tolling provisions.” The following tolling provisions extend the deadline for completing the investigation:

- If the allegation is also the subject of a criminal investigation or prosecution.
- If the officer waives the one-year time period in writing.
- If the investigation is multijurisdictional and requires a reasonable extension for coordination of the involved agencies.
- If the investigation involves an officer who is incapacitated or otherwise unavailable.
- If the investigation involves a matter in civil litigation where the officer is named as a party defendant.
- If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant.

- If the investigation involves an allegation of workers' compensation fraud on the part of the officer.

Unless one or more of these tolling provisions apply, the investigation must be completed within one year (including the police chief's review of the case and notifying the officer of possible discipline). Otherwise, the law enforcement agency cannot take disciplinary action against the officer for the allegation, nor deny the officer a promotion on grounds other than merit.

City Charter § 4.127. This section describes the powers and responsibilities of the OCC, including:

- The OCC must have no less than one investigator for every 150 sworn members of the SFPD.
- The OCC must use its best efforts to complete sustained investigations and submit the case file to the SFPD within nine months of when the OCC received the complaint.
- If the OCC is unable to complete a sustained investigation and submit the case file to the SFPD within the nine-month period, the OCC director must inform the police chief of the reasons for the case taking longer than nine months and transmit information and evidence that will facilitate the police chief's timely review of the case.
- The OCC must recommend disciplinary action for sustained complaints. This consists of recommending whether the complaint should be handled at the police chief's level, or whether it should be handled at the Police Commission level. See the section on page A-1 for a description of these levels of discipline.
- The SFPD has 60 days to review sustained cases and determine whether discipline is appropriate for the officer(s) involved.
- After meeting and conferring with the police chief during the SFPD's 60-day review period, the OCC director can verify and file charges directly with the Police Commission. The OCC director can file charges with the Police Commission before the expiration of that 60-day period in circumstances where the one-year statute of limitations may expire within the SFPD's review period and either:
  - The police chief fails or refuses to file charges with the Police Commission.
  - The police chief or his/her designee fails to meet and confer with the OCC.

City Charter § 4.127 also requires the OCC to prepare the following reports:

- Monthly summaries of the complaints received.
- Quarterly reports containing recommendations for policies or practices of the SFPD that should be changed or amended.
- Quarterly reports for the Board of Supervisors on the number and type of complaints filed, the outcome of the complaints, and a review of the disciplinary action taken.

Finally, City Charter § 4.127 requires all City departments, officers, and employees to promptly provide all records requested by the OCC except records which cannot be disclosed because it is prohibited by law.

Administrative Code § 96.3. This section sets forth requirements for “Disclosure of Documents to OCC.” It requires that:

- Unless the SFPD and OCC mutually agree in writing to an alternative deadline(s), or the Police Commission by a two-thirds vote establishes an alternative deadline(s) not to exceed ten business days, the SFPD must disclose all requested documents within five business days of the OCC’s request.
- Unless the SFPD and OCC have mutually agreed in writing to alternative procedures, the following procedures apply when the SFPD intends to withhold a document or record from the OCC:
  - The SFPD must notify the OCC in writing of its proposed objection within five business days of the OCC’s request. Both the SFPD and the OCC must submit written requests to the City Attorney for a determination of whether disclosure of the requested documents to the OCC is prohibited by law, and the City Attorney must respond within five business days (unless more time is needed due to complex legal issues).
  - Within two business days of receiving the City Attorney’s response, the SFPD must either transmit the requested documents to the OCC or notify the OCC that it does not intend to comply with the document request. If the SFPD declines to disclose the documents, the OCC and SFPD must meet and confer within three business days to discuss resolving the objection.

- If the SFPD and OCC are unable to reach agreement within five calendar days of the meet and confer, the OCC must notify the Police Commission secretary to calendar the issue for discussion at the next noticed meeting of the Police Commission. Unless the Police Commission determines that the law prohibits disclosure, the Police Commission will order the police chief to disclose the requested documents within two business days unless a different deadline is justified and set.

*Resolutions of the Police Commission.* The OCC must also abide by the rules and resolutions of the Police Commission. This includes preparing “Keane Reports,” which require the OCC to report on the status of all open complaint investigations in the quarterly report that must be submitted to the Board of Supervisors in accordance with City Charter § 4.127.

*Document Protocol.* The protocol between the OCC and SFPD for responding to requests establishes routine versus nonroutine document types, where document requests are to be sent, and the timelines for the SFPD to respond to the OCC’s requests. In addition, the protocol requires that if the SFPD is going to take longer than the timelines set forth in the protocol to provide documents, it must notify the OCC and the Police Commission in writing of the delay, the factual basis for the delay, and the estimated time the documents will be produced. If the OCC does not receive documents within the established timelines, it may make a written inquiry to the commander of the SFPD Legal Division and the police chief. If the police chief does not respond to the OCC’s inquiry within five business days by providing the documents or a justification for the delay, the OCC must refer the issue to the Police Commission for resolution.

If the police chief determines that there is a legal basis for denying an OCC document request, he or she must provide the OCC and the Police Commission with a written denial that sets forth the legal and factual basis for the denial of each requested item. If the OCC disagrees with the SFPD’s justification for denial, it must inform the police chief in writing with a copy to the Police Commission. If the SFPD and OCC cannot resolve the disagreement, they must refer the matter to the Police Commission for resolution.

Finally, the document protocol requires the SFPD to provide quarterly written reports to the Police Commission on the number and status of documents requested under the protocol. The police chief and OCC director (or their designees) must meet and confer on the contents of the report at least ten days before the report is presented to the Police Commission to reconcile any discrepancies in the report and discuss any recommendations or other matters in the report.

# APPENDIX B – OCC RESPONSE TO THE AUDIT

THE POLICE COMMISSION  
**OFFICE OF CITIZEN COMPLAINTS**

CITY AND COUNTY OF SAN FRANCISCO



**Kevin Allen**  
Director

Ed Harrington  
Controller  
City and County of San Francisco  
Room 316  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

January 23, 2007

To the Controller:

As the Director of the Office of Citizen Complaints during the time period studied by your agency, I wish to thank you for the hard work your staff put into the study of our agency's procedures and performance. It has been a pleasure working with Mark Tipton and Joanne Held over this past nine months.

Your report has highlighted numerous areas in which the OCC needs to improve its performance, particularly in the management of our caseload and our personnel, and in the area of external and internal communication and reporting. As the Director I am ultimately responsible for the performance, which includes deficiencies, of the Office of Citizen Complaints. I have attached responses to the 45 recommendations made in the report, along with brief explanations as to how the recommendations can be implemented.

Although I concur, or partially concur, with the majority of the recommendations and observations made by the auditor's report, I am concerned that the report does not highlight any of the achievements made by the dedicated and talented staff of the OCC, nor does it illuminate the many obstacles faced by the agency in carrying out its core mission. For example, while the report notes the high caseload carried by investigative staff, it omits the fact that in 2005, 72 percent of all cases were closed within nine months. Nor does the report outline the victories the OCC has obtained in effectively investigating allegations of police misconduct, and in obtaining Police Commission-level discipline even in cases where the Police Chief refused to investigate or file charges against those officers.

As mentioned in your report, I tendered my resignation this past December, effective February 2007. My primary hope is that the incoming director of the OCC, along with the San Francisco Police Commission, may use the Auditor's Report to move the agency forward in its mission of effectively, thoroughly and fairly investigating complaints of police misconduct.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Allen".

Kevin Allen

480 SECOND STREET, SUITE 100, SAN FRANCISCO, CA 94107 • TELEPHONE (415) 597-7711 • FAX (415) 597-7733 • TTY (415) 597-6770  
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Recommendation	Responsible Agency	Response
<p>1. The SFPD should not return or disregard sustained cases even if the OCC submits a case too late for review and consideration of discipline before the expiration of the one-year statute of limitations. Instead, the SFPD should use the information for management purposes as evidence indicating the need for nondisciplinary actions such as counseling or monitoring.</p>	<p>SFPD</p>	<p>Concur. Even where the OCC does not submit the case to the SFPD within the nine- or ten-month period (although see response to Recommendation Nos. 2, and 8 below), there are often tolling provisions that extend the statutory period for discipline. Secondly, in many cases, the Chief of Police or her designees have already had the opportunity to review case files and evidence prior to the OCC's completion of its entire investigation. (See response to Recommendation No. 8.) In all cases involving officer-involved shootings and in-custody deaths, the SFPD has an obligation to conduct its own internal investigations, which should minimize the time the Chief requires to coordinate a disciplinary response with the OCC.</p> <p>The OCC also recommends instituting a formal meet and confer process on all cases in which the Chief disagrees that discipline may be taken for whatever reason, including lack of timeliness. Furthermore, the OCC recommends that the Chief of Police and the OCC director report to the Commission regarding the reasons for any disagreement.</p>
<p>2. To avoid potential legal challenges, the OCC and SFPD should complete the investigation and discipline notification process within the one-year statute of limitations. The OCC should aim to complete its investigations within nine months, and no later than ten months.</p>	<p>OCC</p>	<p>Concur. The OCC has a supervisor case tracking application that, among other things, allows the Chief and Senior Investigators to track and record progress throughout the span of the case. Two reports in this system flag cases at the six-month and eight-month marker. The interim director will use these reports to monitor all cases over six months old, and make a quarterly presentation to the Commission as to those cases.</p> <p>In addition, when cases approach the nine-month mark, the OCC will provide the Chief of Police a status report of all outstanding, sustainable investigations, the estimated date of closure, and the existence of any tolling provisions. The Chief will receive evidence to enable her or her designees to begin reviewing the case. (See Recommendation 8, below.)</p>

Recommendation	Responsible Agency	Response
<p>3. To better assist investigators in managing their caseloads, the OCC should create consistent standards for case reviews and train senior investigators on them, including:</p> <p>46. Establishing an investigation plan with timelines at the beginning of each investigation.</p> <p>47. When to perform case reviews, including overall timelines to ensure the nine-month guideline is met.</p> <p>48. How often to perform case reviews.</p> <p>49. What items to check for in reviews and how to document them.</p> <p>50. What to document if investigators are not complying with senior investigator requests.</p>	<p>OCC</p>	<p>Concur. The interim director will institute immediate training to review current procedures regarding case reviews, as well as implement recommended standards and practices for case supervision. The Chief Investigator will do a best practices review of other agencies' case review standards, and report on them to the interim director.</p>

Recommendation	Responsible Agency	Response
<p>4. With the Police Commission (and Board of Supervisors, if appropriate), the OCC should discuss and document the decision on whether the OCC needs additional investigator resources above the minimum level mandated in the Charter to provide the desired level of service (e.g., increasing overall staffing to align it with historical caseload rather than SFPD staffing).</p>	<p>OCC</p>	<p>Concur. As quantified in the controller's audit, OCC investigators shoulder case loads double the size of investigators in other jurisdictions. In addition to discussing the need for more investigators to meet complaint demands, the OCC recommends a discussion on adding support, technical and policy staff to better respond to and monitor the agency's compliance with its external and internal reporting requirements. Those staff members could be charged with developing more efficient methods for investigators to document case activity, and developing and maintaining better internal case tracking methodology to aid supervisors in their monitoring of individual cases.</p>
<p>5. To maintain staffing levels, the OCC should begin recruiting new investigators as soon as it becomes aware of an employee leaving or retiring.</p>	<p>OCC</p>	<p>Concur.</p>

Recommendation	Responsible Agency	Response
<p>6. The OCC should require investigators to fill out time reports showing how many hours were spent on individual cases, noninvestigation tasks like language services, and administrative tasks each day to establish a baseline of how long it takes investigators to:</p> <ol style="list-style-type: none"> <li>1. Complete cases of different types and weights.</li> <li>2. Provide noninvestigation services such as mediation or translation duties.</li> <li>3. Perform administrative duties such as transcription, photocopying, etc.</li> </ol> <p>This can be done on a trial basis (e.g., for two to three months) to establish case management procedures, or on a longer or permanent basis to track investigator performance. If noninvestigators provide bilingual services, those individuals should also track the number of hours spent on such services.</p>	<p>OCC</p>	<p>Concur. The OCC will implement this recommendation on a trial basis and after three months will analyze data to determine the effectiveness of case management procedures and investigator performance.</p>

Recommendation	Responsible Agency	Response
<p>7. The OCC should use the year-to-date report to analyze whether or not the number and weight of cases are equitable across investigators (taking into account high priority cases and investigators' noninvestigation duties) and redistribute cases if needed to balance caseloads and ensure that cases are closed in nine months or less.</p>	<p>OCC</p>	<p>Concur. This process is already in place, and recent reports indicate that supervisors are effectively implementing it. The management team will continue to monitor the process and solicit investigators' input on the equities of case distribution.</p>
<p>8. To meet the notification requirements of Charter § 4.127, the OCC should:</p> <ul style="list-style-type: none"> <li>a. Develop a standard notification letter to send the SFPD when cases will take longer than nine months. If the investigation will close soon and it would be less efficient to send files in advance of the case, the letter should specify when information will be sent to the SFPD.</li> <li>b. Develop a centralized system (using the case tracking system if practicable) to keep a record that the SFPD was notified at the nine-month point for sustained cases taking more than nine months to close.</li> </ul>	<p>OCC</p>	<p>Concur. See response to Recommendation No. 2.</p>

Recommendation	Responsible Agency	Response
<p>9. The OCC should integrate its case work summaries into its case tracking system or other centrally-accessible database. Until that is achieved, the OCC should create a common format and template for the monthly case lists investigators submit to senior investigators, including individual columns that:</p> <ul style="list-style-type: none"> <li>a. Calculate how long it has been from the last date the case was worked to present.</li> <li>b. List work done on the case that month (which should make it clearer when adequate progress is being made).</li> <li>c. List the last action taken on the case.</li> <li>d. List the next steps or any obstacles to completing the case.</li> </ul>	<p>OCC</p>	<p>Partially concur. There are some systems obstacles to integrating case-work summaries into the existing case tracking system. The interim director, in consultation with the administrative and systems staff, will conduct further research into the best means of enabling supervisors to monitor progress on individual cases, and to highlight cases in which there is a gap in investigative activity.</p> <p>In the near term, the senior investigators will be immediately re-trained in the monthly case review processes, including the use of uniform monthly case lists, to ensure that supervisors are effectively monitoring day-to-day work on individual cases. Cases that show a 30-day delay, for whatever reason (including lack of complainant or witness response), will be flagged for supervisory review and setting of investigative goals. The Chief Investigator will be informed of such reviews and monitor case progress.</p>

Recommendation	Responsible Agency	Response
<p>10. The OCC should create standard case management tools and training for investigators and implement them, including:</p> <ul style="list-style-type: none"> <li>a. Automated reminders for follow-up and due dates.</li> <li>b. How to triage and prioritize cases.</li> <li>c. How to organize files and documents.</li> </ul>	OCC	Concur.
<p>11. The OCC should create a full aging report using its case tracking system that can show the number of cases within certain age ranges for each investigator, investigative team, and the OCC as a whole. Senior investigators should review this report on a monthly basis to help prioritize which cases to work within each investigator's caseload and for each team as a whole to ensure the nine-month guideline is met (except when tolling provisions apply). In addition, the OCC chief investigator should track the progress of cases being investigated or reviewed by senior investigators to ensure that cases are not sitting without action being taken on them for extended periods of time.</p>	OCC	Concur. The OCC currently has an aging report within its case tracking system. The interim director, in conjunction with the chief investigator, will institute standards by which senior investigators ensure that cases are being effectively prioritized and completed in a timely way. See also response to Recommendation No. 9.

Recommendation	Responsible Agency	Response
<p>12. The Police Commission should pass an amendment to its Resolution 97-04 on OCC and SFPD reporting that requires the OCC to add information on the amount of time each case has been open to the "Keane Report." This report should be organized from the oldest to the newest case.</p>	<p>Police Commission; OCC</p>	<p>Concur. The interim director will ensure that the Keane report is made to the Police Commission.</p> <p>The OCC also proposes that the Keane report add a requirement that the Police Chief report on the number of cases awaiting final discipline or Chief's hearing, and the reason for that delay.</p>
<p>13. The OCC should create, document, and implement a system for reassigning the cases of investigators leaving or with prolonged absences from the OCC to other investigators.</p>	<p>OCC</p>	<p>Concur. See also response to Recommendation Nos. 9 and 11.</p>

Recommendation	Responsible Agency	Response
<p>14. The OCC should create and implement a plan for closing cases that, even if they were completed today, would be submitted to the SFPD too late for its review and consideration of discipline for the case. This plan should include:</p> <ul style="list-style-type: none"> <li>a. The decision of whether to close cases that are more than 10 months old (i.e., those that would not have sufficient time for SFPD review) with no further action, or</li> <li>b. Integrate the remaining investigation or mediation tasks for these cases with investigators' current work plans in a way that does not jeopardize cases that are still viable.</li> </ul>	<p>OCC</p>	<p>Partially concur. The City and County Charter mandates that the OCC investigate all civilian complaints of police misconduct, except those that are proper on their face. The OCC is committed to fully and fairly investigating all such complaints. As made clear by the Controller's own analysis in Recommendation No. 1, above, the Chief of Police should have access to these investigations for management purposes, as evidence indicating the need for nondisciplinary actions such as counseling or monitoring. In addition, the SFPD may well have its own investigations pending into the same cases, minimizing the need for a lengthy review period. Furthermore, closing cases with no further action acts as a disincentive to timely completion of larger, more complex cases for which tolling provisions may apply. Therefore, closing old cases with no further action is not an appropriate or principled response to the problem of caseload management.</p> <p>Instead, the OCC recommends evaluating such cases and setting clear guidelines for closure, including the delineation of necessary investigative steps, in such a way that closing these cases does not jeopardize cases that are still viable.</p>

Recommendation	Responsible Agency	Response
<p>15. The OCC should create and implement policies and procedures for the effort to put into contacting complainants and witnesses who do not respond to telephone calls or contact letters and for closing cases due to uncooperative complainants, including: the method of communication to be used (phone, letter, etc.); the number of contact attempts that must be made by each method; the period of time over which the investigator must make the contact attempts; and the types of cases in which to use different levels of contact.</p>	<p>OCC</p>	<p>Concur. The OCC concurs that more uniform, detailed and written procedures and training are needed in all areas of the investigative process. In the case of witness and complainant contact, more situational and actual-case trainings would be appropriate, given the necessity of providing services to all complainants, regardless of residence-status and language needs, and the need to fully and fairly gather evidence that may either substantiate or disprove the complaint.</p> <p>In addition, see response to No. 9, regarding avoiding complainant or witness-related delays.</p>
<p>16. The SFPD should comply with the document protocol for responding to OCC requests for information and Administrative Code Chapter 96, "Coordination Between the Police Department and Office of Citizen Complaints (see Appendix A, page A-6, for description).</p>	<p>SFPD</p>	<p>Concur. Please note that the timelines of Administrative Code Section 96.3, as set forth in Appendix A-6, are not controlling. The SFPD and the OCC mutually agreed to a written Document Protocol. However, the overall issue remains unchanged. The SFPD engages in a deliberate practice of withholding key documents, especially in sensitive or high-profile cases. The OCC has recently implemented an electronic system to better track and quantify those instances of non-compliance in order to report them more promptly to the Police Commission. (See response to no. 17, below.)</p>

Recommendation	Responsible Agency	Response
<p>17. The OCC should present a cumulative list of outstanding OCC document requests on a regular basis (e.g., weekly, biweekly, monthly) to the Police Commission, including:</p> <ul style="list-style-type: none"> <li>a. The number of open requests.</li> <li>b. The date each request was made.</li> <li>c. The reasons for the delays/nature of the SFPD's failure to produce the requested documents.</li> </ul>	<p>OCC</p>	<p>Concur. The OCC has recently implemented procedures to allow electronic tracking of all document requests and instances in which the SFPD has not complied with the timelines set forth in its Document Protocol. That tracking system can be used to present this list on a monthly basis.</p>

Recommendation	Responsible Agency	Response
<p>18. The OCC should establish standard training and document protocols for City departments from which it regularly requests documents, similar to the document protocol that exists between the OCC and SFPD. Items to include in the protocol:</p> <ul style="list-style-type: none"> <li>a. A list of routine items that can be requested and where to direct the requests.</li> <li>b. Procedures for requesting nonroutine items.</li> <li>c. Required timelines for the department to produce the requested items to the OCC.</li> <li>d. The OCC's options for recourse if documents are not produced according to the established timelines.</li> </ul>	OCC	Concur.
<p>19. The OCC should extend its existing system for tracking document requests from the SFPD to include requests made from other city departments and produce a regular report of outstanding requests for required follow-up.</p>	OCC	Concur. The interim director will consult with the systems manager about expanding its current tracking system.

Recommendation	Responsible Agency	Response
<p>20. The OCC should create and document procedures for completing mediation cases, ensuring that no more than the minimum necessary steps are put into completing the process. These may include:</p> <ul style="list-style-type: none"> <li>a. Requiring that the mediation coordinator review all incoming cases for mediation eligibility (addressing when in the course of the intake process the case should be sent for this review).</li> <li>b. Specifying the amount and type of work to be done before mediation is scheduled.</li> <li>c. Revisiting the types of cases that can be mediated, expanding the types if appropriate so that more cases will be eligible for mediation.</li> </ul>	OCC	Concur.
<p>21. The OCC should develop and implement training on the OCC's mission for OCC management and staff and incorporate the mission and goals into the employee performance goal-setting process for individual managers and staff.</p>	OCC	Concur.

Recommendation	Responsible Agency	Response
<p>22. The Police Commission should investigate the allegations of unethical behavior listed on page 30 and take appropriate corrective action to correct any current issues and prevent possible future occurrences.</p>	<p>OCC</p>	<p>Partially concur. Instituting and maintaining the highest ethical behavior is of utmost importance, and any allegation of such behavior is cause for serious concern and immediate action. However, as detailed in the Controller's report, the auditors did not investigate these allegations for validity or timeliness. Nor did the auditors provide information on whether those allegations had been brought to the attention of the outgoing Director or other city agencies for possible action, or whether any action had in fact been taken.</p> <p>The agency's director is charged with handling all personnel issues. The OCC recommends that the incoming OCC Director conduct an "ethical evaluation" of the agency, both reviewing and instituting standards and training for professional behavior, and investigating any allegations of past or ongoing unethical behavior. In Recommendation No. 27, the auditors recommended that the OCC take appropriate personnel actions for employees – including those in management -- who do not meet performance expectations, which would include maintaining ethical behavior. The director would report on both these items to the Police Commission.</p>

Recommendation	Responsible Agency	Response
<p>23. The OCC should create and implement a strategic plan for the ongoing training needs of staff, maintaining recordkeeping that shows:</p> <ul style="list-style-type: none"> <li>a. The topics in which employees need training.</li> <li>b. What training employees already have and the date completed.</li> <li>c. Timing and funding for training sessions.</li> </ul>	OCC	Concur.
<p>24. The OCC should develop and implement formal new investigator training processes, including:</p> <ul style="list-style-type: none"> <li>a. Creating training manuals and reference documents.</li> <li>b. Consulting best practices jurisdictions (e.g., New York, NY) for information to help develop the OCC's new investigator training program.</li> <li>c. Providing standardized on-the-job training for incoming investigators.</li> </ul>	OCC	Concur.

Recommendation	Responsible Agency	Response
25. The OCC should schedule and perform annual performance goal setting and appraisals for each employee and report the results as required by the mayor's Executive Directive of August 2005.	OCC	Concur. All supervisory employees will be immediately trained in the new evaluation process and will be instructed to prioritize personnel reviews.
26. The Police Commission should institute an annual performance goal setting and appraisal process for the OCC director. The director's performance goals should be tied to the OCC's mission and required and desired accomplishments (reporting, outreach, etc.)	Police Commission	Concur.
27. With the assistance of the Department of Human Resources and/or the City Attorney, the OCC should take appropriate personnel actions for employees who do not meet performance expectations. In the future, the OCC should take timely steps to proactively counsel and train employees who do not meet performance expectations as issues are identified through the performance appraisal process.	OCC	Concur. The interim director will prioritize personnel evaluations and any appropriate response to those evaluations. See also response to Recommendation No. 22.

Recommendation	Responsible Agency	Response
<p>28. The OCC should create, distribute, and ensure compliance with a comprehensive investigation policies and procedures manual by fully documenting the OCC's current investigation processes and reviewing the processes for efficiency, removing duplicative and/or manual steps where practicable. In addition, the OCC should implement use of a shared set of standard templates for typical documents like member response forms, interview questions, and sustained reports on the OCC's intranet. These templates should include versions that are appropriate for common complaint types that investigators can customize to their current investigations.</p>	<p>OCC</p>	<p>Concur. The interim director will review current investigative policies and procedures and templates, and will solicit investigator input on best practices and training needs. The policies and procedures manual will be updated, and there will be a mandatory training for all staff in those procedures.</p>
<p>29. The OCC should put the OCC's policies and procedures for officer notifications and interviews in writing and provide them to officers and the SFPOA.</p>	<p>OCC</p>	<p>Concur. The interim director will review the best practices of other jurisdictions, document OCC's policies, and provide training and outreach on those policies.</p>
<p>30. The OCC should adopt a proactive internal communication approach by keeping staff apprised of important operational and strategic events. The approach should include regular staff meetings.</p>	<p>OCC</p>	<p>Concur. The OCC's staff deserves timely, regular updates on agency business, as well as the opportunity to have meaningful input on agency performance and operations.</p>

Recommendation	Responsible Agency	Response
31. As new management comes in, the OCC should hold an all-OCC staff retreat to discuss and work to resolve conflict issues.	OCC	Concur.
32. The OCC should comply with its reporting requirements and post the reports on the OCC website as they are issued.	OCC	Concur. The interim director will review all OCC's reporting mandates and prioritize immediate and ongoing compliance and post all non-confidential reports on its website.
33. The Police Commission should resolve the issue of the SFPD not being required to respond to the OCC's policy recommendations.	Police Commission	Concur. The OCC has submitted suggested timelines to help facilitate SFPD response and Police Commission oversight of the Department's response.
34. The OCC should systematically survey investigation participants (both officers and complainants) to identify areas for improvement. In addition, the OCC should report the results of these satisfaction surveys in the annual report (or more frequently) along with plans for addressing identified issues.	OCC	Concur.

Recommendation	Responsible Agency	Response
<p>35. The OCC should develop and present an annual outreach strategic plan, beginning with calendar year 2007. The Police Commission and OCC should agree on consistent timing for this presentation (e.g., the second Police Commission meeting in January). The plan should identify:</p> <ul style="list-style-type: none"> <li>a. The outreach efforts that will be undertaken during the year and the reason for the efforts.</li> <li>b. Strategies for reaching the targeted audiences, including communication mechanisms, publicity, and distribution.</li> <li>c. Strategies for measuring outreach success.</li> </ul>	<p>OCC</p>	<p>Concur. See also response to Recommendation No. 4, regarding the evaluation of staffing needs to carry out many of these recommendations.</p>

Recommendation	Responsible Agency	Response
<p>36. The OCC should maintain a central list of the outreach efforts of all management, staff, and attorneys, including:</p> <ul style="list-style-type: none"> <li>a. Date and time of presentation.</li> <li>b. Audience.</li> <li>c. Topic of presentation.</li> <li>d. Name(s) of presenter(s).</li> </ul>	OCC	Concur.
<p>37. The OCC should maintain an outreach activity in 2007 that is at least equal to that of 2006 to establish a baseline level of outreach activity. In future years, this baseline can be used to gauge the effect of outreach activities on complaint levels.</p>	OCC	Concur.
<p>38. The Police Commission should require the OCC to make regular (e.g., quarterly or semiannual) reports to the Police Commission on:</p> <ul style="list-style-type: none"> <li>a. The outreach activities performed by the OCC in the reporting period.</li> <li>b. The OCC's progress toward its strategic outreach goals for the year.</li> </ul>	OCC	Concur.

Recommendation	Responsible Agency	Response
<p>39. The OCC should publicize scheduled outreach events on its website, including a calendar of events that shows the dates, times, and locations of when the OCC will be giving presentations. In addition, it should provide a link to the Police Commission website and meeting information, or add that information to the OCC's calendar.</p>	<p>OCC</p>	<p>Concur.</p>
<p>40. The OCC should report data from its intake log on the language spoken by complainants in the annual report.</p>	<p>OCC</p>	<p>Concur. The interim director, in conjunction with the systems and administrative personnel, will address the feasibility of adding that information to OCC's primary database, to enable better quantification of this data.</p>
<p>41. The OCC should use the information on the number of hours spent by investigators on providing translation and bilingual services in Recommendation 6 and data from the intake log on the language spoken by complainants to determine whether the OCC has sufficient bilingual resources. Also, the OCC should document its findings and its decision on whether or not to pursue additional language services resources.</p>	<p>OCC</p>	<p>Concur.</p>

Recommendation	Responsible Agency	Response
<p>42. The OCC and Police Commission should decide whether to allow online filing of complaints and document their decision. If the OCC and Police Commission decide to allow online filing, the OCC will need to request the appropriate resources in its next budget submission.</p>	<p>OCC</p>	<p>Concur. The interim director, in consultation with systems staff, will address the feasibility of this proposal and the funding necessary. See also response to Recommendation No. 4, regarding staffing issues.</p>
<p>43. The OCC should make the printable online complaint form easier to use by creating a document that combines the complaint form with instructions so that it can be accessed with a single click and only one item needs to be sent to the printer. The complaint form should be formatted to fit on standard-size paper. In addition, the OCC should change the complaint form so that it only collects the information that should be provided by the complainant.</p>	<p>OCC</p>	<p>Concur. The downloadable complaint form was recently reformatted to comply with this concern. Currently the agency has a working group comprised of investigative and administrative staff that is in the process of reviewing revisions to the complaint form.</p>
<p>44. The OCC should show in its annual report how complaints are received and monitor this for any unusual changes.</p>	<p>OCC</p>	<p>Concur.</p>
<p>45. The OCC should audit its log of complaint forms mailed out, recording the date and name of employees sending forms and checking for unusual patterns such as certain employees sending a disproportionate number of forms.</p>	<p>OCC</p>	<p>Concur.</p>

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# APPENDIX C – POLICE COMMISSION RESPONSE TO THE AUDIT



## The Police Commission CITY AND COUNTY OF SAN FRANCISCO

January 22, 2007

Ed Harrington  
Controller  
City Hall  
1 Dr. Carlton B. Goodlett Place  
Room 316  
San Francisco, CA 94102

Dear Mr. Harrington:

On behalf of the Police Commission I would like to express our appreciation to your staff and you for conducting a performance audit of the Office of Citizen's Complaint (OCC) and presenting us with a report. The Commission had requested that you conduct a performance audit of the OCC because of our concerns that the Department was not efficiently and effectively meeting its charter responsibilities.

Your report verifies our concerns and documented a number of serious shortcomings in the OCC's processes. In addition, you have provided us with a number of sound and specific recommendations for the OCC, the Police Department and the Commission to remedy the deficiencies you have found. I am confident that the Commission will seriously consider your report and take action to implement the recommendations you have made.

In addition to providing us with a blueprint for change and improvement, your report will serve another critical function. With the assistance of your office, we are currently undertaking a search for a new OCC Director. Your report makes clear that the new OCC Director must have the requisite leadership and management skills to fulfill the important OCC mission.

Again, on behalf of the Commission, let me thank your staff and you for your hard and excellent work in performing this audit report.

Sincerely

A handwritten signature in cursive script, appearing to read "Louise Renne".

Louise Renne

LHR/ss

LOUISE RENNE  
President

DAVIS CAMPOS  
Commissioner

PETRA DeJESUS  
Commissioner

YVONNE Y. LEE  
Commissioner

DR. JOE  
MARSHALL  
Commissioner

THERESA SPARKS  
Commissioner

JOE VERONESE  
Commissioner

SGT. JOE REILLY  
Secretary

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# APPENDIX D – SFPD RESPONSE TO THE AUDIT



GAVIN NEWSOM  
MAYOR

POLICE DEPARTMENT  
CITY AND COUNTY OF SAN FRANCISCO  
THOMAS J. CAHILL HALL OF JUSTICE  
850 BRYANT STREET  
SAN FRANCISCO, CALIFORNIA 94103-4603



HEATHER J. FONG  
CHIEF OF POLICE

January 22, 2007

Mr. Edward Harrington, Controller  
Controller's Office  
City Hall, Room 316  
1 Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102

Dear Mr. Harrington:

This letter is the San Francisco Police Department's response to recommendations made to the Office of the Controller audit in the Office of Citizen Complaints.

1. Recommendation #1

*The SFPD should not return or disregard sustained cases even if the OCC submits a case too late for review and consideration of discipline before the expiration of the one-year statute of limitations. Instead, the SFPD should use the information for management purposes as evidence indicating the need for nondisciplinary actions such as counseling or monitoring.*

**Response to Recommendation #1**

The Police Department agrees with Recommendation #1 and currently uses cases received too late for disciplinary action to, nevertheless, address behavior patterns, policy issues, training, counseling, and related issues.

Additionally, the Police Department is proceeding with the future implementation of an Early Intervention System (EIS) to address more formally the issues raised in Recommendation #1. A member of the OCC will participate on the EIS Oversight Committee.

2. Recommendation #2

*To avoid potential legal challenges, the OCC and SFPD should complete the investigation and discipline notification process within the one-year statute of limitations. The OCC should aim to complete its investigations within nine months, and no later than ten months.*

**Response to Recommendation #2**

The Police Department agrees with Recommendation #2 and has met, at length, with the OCC Director and staff, with the assistance of the City Attorney's Office, to create enhanced tracking mechanisms and effective communications to prevent cases from falling outside the statute of limitations.

3. Recommendation #16

*The SFPD should comply with the document protocol for responding to OCC requests for information and Administrative Code Chapter 96.*

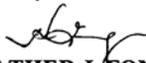
**Response to Recommendation #16**

The Police Department agrees with recommendation #16, recognizing its Charter and Administrative Code duties. The Police Department, however, also notes that some OCC information requests have been unclear, vague, improper, or untimely. Additionally, in some matters, the Police Department is precluded by law from providing information. Fortunately, circumstances where information is not provided are quite rare.

The Police Department welcomes direct communication with OCC on any concerns regarding the provision of documents to OCC in a timely manner.

The Police Department will also continue to monitor its compliance with document provision protocols and report compliance to the Police Commission.

Sincerely,



**HEATHER J. FONG**  
Chief of Police

# CITY AND COUNTY OF SAN FRANCISCO

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Please use the following web link – or fill out, detach and mail the attached card to let us know your thoughts on this report.

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The feedback link is listed with the report.

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Just fill in the card below, fold this in half and mail!

### Option 3: Phone

Call the Controller's Office at 415-554-7500 and we will take your feedback over the phone.

**Thank you for your feedback!**

*Fold along the dotted line and mail!*

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Report # <u>05046</u> – Office of Citizen Complaints					
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<input type="checkbox"/> Media Reporter					<input type="checkbox"/> Other: _____
<input type="checkbox"/> City of San Francisco Employee					
How do you rate this report?					
	Very Good	Good	Neutral	Poor	Very Poor
Significance of topic	<input type="checkbox"/>				
Clear & concise	<input type="checkbox"/>				
Objective & fair	<input type="checkbox"/>				
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Overall Report Quality	<input type="checkbox"/>				
Comments:					
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For a complete list of our reports, visit our website at <a href="http://www.sfgov.org/controller">http://www.sfgov.org/controller</a>					
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