

Police Oversight Commission

City of Albuquerque
Independent Review Office

Annual Report 2003

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Chairman's Perspective

I am completing my second year on the Police Oversight Commission and finishing my term as Chair for 2003. I would like to present my perspectives on how the system of civilian oversight of the Albuquerque Police Department is progressing.

First, it is absolutely clear to me that civilian oversight of police departments is essential! We are blessed in Albuquerque to have an excellent police department. The vast majority of officers strive to do the right thing under often-difficult circumstances. A few abuse their power and some make mistakes. Civilian oversight adds credibility to the process and gives the public confidence that the police are not covering things up and officers are being held accountable for their actions. This is good for the citizens of Albuquerque and the police department. The current system, as we interpret it, is a tremendous improvement over previous systems of civilian oversight and one of the best systems in the country. Police officers are given tremendous power over citizens. What are the limits of these police powers? In my view, the limits of police powers are our citizens' civil rights guaranteed by the Constitution and common courtesy. The POC and the Independent Review Officer provide that essential civilian oversight and perspective to APD.

Second, the public needs a better understanding of how officers are trained and how they react. Officers need to understand that the public expects them to protect themselves, while at the same time providing a public service in a courteous, professional manner to the citizens. Hopefully, our televised public hearings give insights into these areas. I also strongly encourage all interested citizens to attend the Citizens Police Academy.

Third, the health of the civilian oversight system is improving and in a state of flux at the same time. The POC has taken the initiative to ask for several opinions from the City Attorney. These answers will define the parameters and duties within the civilian oversight system and will be the rules we follow unless modified or changed by the City Council. I am quite concerned that the Chief believes he has the power to change findings of cases even years after the case was closed. I am equally distressed that the findings of the IRO and POC do not seem to find their way into the officers' records. The opinions from the City Attorney are critical to our continued relevance.

In conclusion, I have enjoyed my two-year term and hope to continue for a second term. I encourage the citizens of Albuquerque to participate in this process and improve our city.

Executive Summary

The mission of the Police Oversight Commission (POC) is to provide a means for prompt, impartial, and fair investigation of all citizen complaints brought by individuals against the Albuquerque Police Department (APD), and to provide for community participation in setting and reviewing police department policies, practices and procedures. The Independent Review Officer (IRO) works with the POC and APD to ensure that (1) citizen complaints are thoroughly investigated, (2) citizens have a fair opportunity to appeal the results, and (3) APD policies are changed to prevent the recurrence of problems identified through the complaint process.

Significant Improvements in 2003

1. POC members underwent training in policing issues.
2. The POC voted to require POC Commissioners to do two ride-a-longs per year.
3. The appeals backlog was eliminated
4. Complaints can be filed through the City website.
5. Complainants are provided a summary of the investigation into their complaint and given the findings of the IRO and Chief.
6. Protocols have been developed for appeal hearings.
7. Complainants are surveyed for feedback.
8. Outreach has been conducted to improve public and officer awareness.
9. Complaint-handling performance timeliness standards have been developed.
10. Officer involved shooting cases are formally presented to the POC.
11. The POC formally reviews and either changes or accepts the findings of the IRO.
12. The Long Term Planning Committee was created and has been extremely active in identifying problems and making policy suggestions.
13. Systemic issues and their relation to the Police Oversight Ordinance were identified and submitted to the City Attorney for formal legal opinions.

Timeliness

It is important for the citizens and police officers to have investigations completed promptly and to receive a final answer to the complaint. It is bad for the morale of the citizens and the officers to have these complaints unresolved for long periods of time. It is also important to complete these investigations so discipline can be imposed and the time frames for APD taking action are not violated. As a result, our goal is to complete 75% of the complaints in 60 days and 100% in 90 days.

For 2002 cases, the IRO staff handled 54% of the complaints and completed 76% in 60 days and 98% in 90 days. IA investigators completed 46% of the complaints in 60 days and 72% in 90 days.

For the 2003 cases completed so far this year, the IRO staff handled **60%** of the complaints and completed **86%** of the complaints in 60 days and **98%** in 90 days. IA investigators improved substantially and completed **55%** in 60 days and **80%** in 90 days. The POC has recommended an increase in the IRO staff so they can investigate almost all of the complaints and continue to complete the complaints in a timely manner.

Appeals

Twenty-five appeals were heard by the POC in 2003. There was a large backlog of appeals from 2002 that took several months to finalize. In 2002, the POC did not hear appeals for six months because there was no IRO. These appeals were very old and backlogged. Once the backlog was eliminated, appeals were heard within two months. Currently, appeals are heard at the next scheduled POC meeting.

Two appeals in particular generated considerable controversy. One appeal was an alleged racial profiling case. The POC agreed with the Chief and overturned the finding of Sustained by the IRO and Exonerated the officer. The other appeal was an alleged unreasonable use of force. The POC disagreed with the Chief and agreed with the IRO. The POC Sustained the IRO's finding of an unreasonable use of force. In all the other appeals, the POC agreed with the findings of the IRO and the Chief. All appeals to the Chief Administrative Officer upheld the findings of the POC.

Complainant Satisfaction

While only 19% of the complainants returned their surveys, several conclusions can be drawn from their responses. While all but two of these complainants were not satisfied with the results, they:

- a. believed the complaints were easy to file,
- b. received prompt notice that their complaint had been received,
- c. perceived the investigators as courteous and professional,
- d. were given a full opportunity to tell their story,
- e. felt the complaint was impartially and fairly investigated,
- f. thought the process was timely,
- g. were satisfied with the process, and
- h. felt they contributed to the civilian system of police oversight.
- i. Complainants did not favor mediation.

These are very favorable responses from people who were not satisfied with the end result of their complaint. We hope this will eventually translate into enhanced public confidence in the Albuquerque Police Department.

Policy Reviews

The Police Oversight Commission and its Long Term Planning Committee have reviewed numerous APD policies and given the public the opportunity to participate in these issues. Unfortunately, few citizens have availed themselves of their opportunity to address these issues, so the POC makes its recommendations without that essential added ingredient of public opinion or participation.

One group who did fully engage and participate in the review of an APD and City policy was the New Mexico Center on Law and Poverty and the Homeless Legal Committee. They championed the issue of what happens to the property of homeless people when they are arrested. The POC commissioners studied this issue for several months, met with the jail Director, and recommended that the jail accept the property of homeless people into storage at the jail rather than have APD personnel check it into Evidence rooms around the City. It was the POC's opinion that the property should follow the homeless person and the property should be returned to the homeless person as they left the jail. This recommendation was implemented.

The payment of claims and litigation for police cases was reviewed. The mayor's no settlement policy appears to have saved substantial monies. Most litigation has been successful and only relatively reasonable amounts have been paid out to this point. The POC found the system to be working well.

The K-9 policies were reviewed. The Assistant City Attorney found the policies to be within the requirements of the law.

The POC also reviewed issues related to the 911 call center, the changing of findings by the Chief, prosecution of citizens by police officers without oversight by the District Attorney, putting the Standard Operating Procedures of APD on the City website, IRO budget issues, POC review of Aviation Police complaints, audit request for racial profile training for officers, contracting for translation services for Spanish-only speaking people, the Montgomery Tactical plan, recommended changes to the Police Oversight Ordinance, who had standing to appeal IRO findings to the POC, APD response to demonstrations, and the Emergency Response Team.

Increased Accountability

A prompt, impartial, and fair investigation of all citizen complaints does not guarantee that each person who complains will be satisfied. However, the IRO gives the complainant a solid summary of the investigation with his rationale for his findings. Complainants receive a thorough explanation and can make decisions about whether to appeal based on the facts and policies, not just a conclusion standing alone.

Promptly completed investigations ensure that when discipline is appropriate, it can be imposed and the disciplinary time-line requirements are met. While there have been a few cases where the officer has resigned or retired before discipline could be imposed, it is not a timeliness problem. The IRO has also evaluated the discipline imposed by APD on Sustained citizen complaints. The IRO has found these decisions to be consistent and fair for the offenses and the officers' record.

Several very important systemic issues are pending a review by the City Attorney. The POC is trying to ensure the Police Oversight Ordinance is being followed by all parties. To resolve these important issues, they have requested the City Attorney to provide written opinions on the following issues:

- a. Does the Chief have to change the findings he changed in two police shooting cases back to the original findings?
- b. When the IRO makes findings, especially when they differ from the Chief's findings, what happens to the IRO's findings? Should the IRO's findings be filed in the officers' records in the same places that the Chief's findings are filed? If not, what happens to the IRO's findings?
- c. Does the Ordinance provide for the IRO to review and make findings on APD internal cases?
- d. Are there portions of the SOPs that cannot be made available to the public?
- e. Does the IRO, as an Independent Contractor, have to comply with the contract with the police union?
- f. Does the IRO procedure for email complaints comply with the union contract?

The answers to these critical questions will define the scope of the duties of the IRO and POC unless changed by City Council. The POC wants to be sure they are following the Ordinance passed by the City Council and will follow the rules to the best of their abilities. These systemic issues, upon which there is considerable disagreement among the IRO, POC, APD, and the APOA, must be resolved so the proper civilian oversight and accountability of the police is being done by the IRO and POC.

I. Responsibilities of the POC and IRO

The purpose of the police oversight system is to provide a means for prompt, impartial, and fair investigation of all citizen complaints brought by individuals against the Albuquerque Police Department (APD), and to provide for community participation in setting and reviewing police department policies, practices and procedures.

The Police Oversight Commission (POC) is composed of seven volunteers who broadly represent the diversity of the City. The POC has been charged to perform the following functions.

1. To promote a spirit of accountability and communication between the citizens and APD while improving community relations and enhancing public confidence.
2. To oversee the full investigation and/or mediation of all citizen complaints; audit and monitor all investigations and/or police shootings under investigation by APD's Internal Affairs (IA).
3. To gain the cooperation of APD and solicit public input by holding regularly scheduled meetings
4. To review all work of the Independent Review Office (IRO) with respect to quality, thoroughness, and impartiality of investigations.
5. Submit a quarterly report to the Mayor and City Council
6. Submit all findings to the Chief of Police.
7. To engage in a long-term planning process through which it identifies major problems and establishes a program of policy suggestions and studies each year.

The Independent Review Officer is an attorney and manages the Independent Review Office and its staff. The IRO is given autonomy and performs the following duties under the direction of the POC.

1. The IRO receives all complaints and claims directed against APD and any of its officers. The IRO will review the complaints and assign them to be investigated by IRO independent investigators or to Internal Affairs.
2. The IRO will oversee, monitor and review all investigations and make findings for each. These findings are forwarded to the POC.
3. The IRO makes recommendations and gives advice regarding APD policies and procedures to the POC, City Council, APD, and the Mayor.
4. An impartial system of mediation may be used for certain complaints.
5. Monitor all claims of excessive force and police shootings and be an ex-officio member of the Claims Review Board.
6. Ensure all investigations are thorough, objective, fair, impartial, and free from political influence.
7. Maintain and compile information sufficient to satisfy the POC's quarterly reporting requirements.

8. Play an active public role in the community and provide appropriate outreach to the community. Publicize the citizen complaint process and identify locations within the community that are suitable for citizens to file complaints in a non-police environment.

II. Albuquerque's Police Complaint Handling System

Any person may file a written complaint against APD or any of its officers. These written complaints can be filed from:

- a. The IRO's website at www.cabq.gov/iro.
- b. At the IRO office at Room 813, Plaza del Sol, 600 2nd St, NW.
- c. IRO, P.O. Box 1293, Albuquerque, NM 87103, and
- d. Internal Affairs.

Citizen's are required by the union contract to sign their complaint. Complaint forms in English and Spanish are available for downloading on the web site, at the IRO office, City libraries, homeless shelters, police substations, and Internal Affairs. The complaints may be filed with the city staff and all complaints must be forwarded to the IRO.

Once the IRO receives a complaint, the complaint is entered into the IRO's case management database and assigned a unique Citizen Police Complaint (CPC) number. The IRO reviews the complaint and decides whether to attempt to mediate the complaint or assign the case to the IRO investigators or Internal Affairs. Currently, the IRO is only staffed enough to investigate about 60% of the complaints and Internal Affairs investigates the rest of the complaints. Upon completion of the investigation, the IRO reviews the investigation for thoroughness, impartiality, and fairness. The IRO decides what APD Standard Operating Procedures (SOPs) the citizen alleged to be violated and makes Findings based on the evidence contained in the investigation. Findings are based on a preponderance of the evidence. The definitions of complaint dispositions are:

1. Sustained: Member is determined to have committed the alleged violation.
2. Not Sustained: It cannot be determined by a preponderance of the evidence if the member did or did not commit the alleged violation.
3. Unfounded: Member did not commit the alleged violation.
4. Exonerated: Member was justified in taking the course of action alleged and/or member was operating with the guidelines of the law or SOPs.
5. Inactivated: Complaint was determined to not merit further investigation. Complaints can be inactivated for several reasons, including; if they do not allege a violation of SOPs, are submitted over 90 days from the incident, are not against APD members, the APD member cannot be identified, or the case was successfully mediated.

The IRO's findings are sent to the complainant, the POC, and the Chief of Police. The Chief of Police has sole disciplinary authority over the officer. The Chief will notify the citizen of his final decision by certified mail.

Any citizen who is dissatisfied with the findings may appeal that decision to the POC. Appeals are heard during the POC's monthly, televised meetings and are open to the public. The POC may, upon appeal, modify or change the recommendation of the IRO and may make further recommendations to the Chief. The Chief shall notify the POC and the citizen of his decision. If the citizen is still not satisfied with the action of the POC and the Chief of Police, the citizen may request a review by the Chief Administrative Officer (CAO) within 10 days of the Chief's action. The CAO may take any action necessary to complete the disposition of the complaint.

III. Work of the Police Oversight Commission

Steve Abraham chairs the Police Oversight Commission. Tim Kline is the vice chair. The POC heard 25 appeals from citizens during the year. They upheld the appeal by Sheriff White, Bernalillo County Sheriff's Office, and reversed the IRO's decision that Sustained a finding of racial profiling. The POC Exonerated the sergeant on the racial profiling complaint, while agreeing with the findings and recommendations of the IRO on the other appeals. The POC then requested the City Auditor to do an audit of the racial profile training received by APD officers annually as required by APD's standard operating procedures.

The POC raised the issue of the Chief of Police changing closed and completed Findings that the POC had reviewed. The Chief had changed findings from Sustained to Exonerated on three officers in two separate police shooting cases. One of the cases was over two years old and had been Sustained by the previous Chief of Police. The City Attorney's Office determined that the Chief did not have the authority to change findings. The POC also discovered that APD had changed a finding in a Citizen Police Complaint. The Chief changed that finding back to Sustained after having the issue brought to his attention. The POC requested a written opinion on the legality of all these changes from the City Attorney.

The POC also discovered two citizen complaints had not been forwarded to the IRO as required by the Police Oversight Ordinance. They were determined to be inadvertent errors and everybody in IA was trained to forward all citizen complaints to the IRO immediately.

The POC also heard several police issues, including canine policies, online SOPs for the public and the IRO, 2005 budget issues, use of force data analysis, Spanish speaking complaints and translation services, the Montgomery tactical plan and its impact on 911 calls, and the realignment of the POC committees. The IRO contracted for a Spanish interpreter and will now, for the first time, be able to investigate complaints from citizens who only speak Spanish.

The Long Term Planning Committee consists of three members and is chaired by Steve Abraham. These meetings are also open to the public, but not televised. The committee has been meeting at locations throughout the City. They go into detailed review of issues referred to them by the POC. The LTPC addressed the issue of what should be done with the property of homeless people. The POC chair sent a letter to the Mayor asking that the property be held for the homeless people after they are arrested at the Metropolitan Detention Center.

The POC and IRO have enjoyed a mostly cooperative relationship with APD. The recent problem of the Chief changing the findings of the POC and IRO without notice has adversely impacted the relationship. The POC is questioning its relevance under those circumstances and has asked several critical, systemic questions about the Police Oversight Ordinance to the City Attorney. The success of the civilian oversight will depend on the answers to these questions and greater levels of cooperation by APD in the future. The POC and IRO need timely and unfettered access to relevant documentary evidence from APD if the independent oversight function is to be meaningful. The Chief of Police needs to show more proactive leadership in the area of cooperation by all levels of APD with the POC and IRO. Important decisions need to be made soon so the public can have confidence in the current system of civilian oversight of APD.

The Albuquerque Police Department is an excellent police department and the vast majority of police officers in Albuquerque are hardworking professionals who do not engage in misconduct. We will strive to work together to reduce the level of misconduct and ultimately increase public confidence in the APD and result in better relations between the public and APD. These are worthy goals and we will do our part to attempt to achieve them.

IV. Statistical Report for Complaint Workload

The IRO has assured the citizens of Albuquerque that the independent IRO investigatory process is outstanding and produces prompt, impartial, fair, objective investigations of citizen complaints and is free from any political influence. The investigators thoroughly and impartially gather the evidence. The IRO makes findings free from any political influence. Disagreements with the Chief are often resolved. Those that cannot be resolved (as well as all findings) are explained to the citizen, who then has the opportunity to appeal to the Police Oversight Commission. These appeals are open to the public and televised. The IRO's findings are published in a public record letter, which are all available to the public in the IRO's office. These findings do not get put into the officers' records at this time. Privacy material is deleted to protect the privacy of the citizens and officers. The process is an extremely open process and subject to public scrutiny. The administration, city councilors, and citizens of Albuquerque can be proud of the system of civilian oversight of the police

department that they have created. This is one of the best oversight systems in the United States. It is working and is continuing to improve.

On August 14, 2003, the Independent Review Office completed its investigation into the numerous complaints concerning the police response to the demonstration on March 20, 2003. This was an extremely lengthy investigation. Over 70 people were interviewed and the report is about 300 pages of statements, reports and analysis. On November 20, 2003, the public record letter was sent to the complainants with a summary and analysis of the events.

The Independent Review Office compiles data from citizen complaints to provide an overview of the nature and frequency of citizen complaints as well as specific data, which allows the public to identify patterns and trends. By tracking various aspects of the complaints, recommendations can be made to address particular areas of concern. The IRO and POC work closely to identify areas that may be appropriate for data collection. Many of the policy and procedural issues addressed or reviewed by the POC come from concerns raised by citizens in their complaints.

2002 marked the first time the IRO collected data on the types of complaints made against police officers and then sorted that data into complaints involving Police Powers, Procedures, and Customer Service. Data is presented showing the timeliness of investigations and the disciplinary action taken for the above categories of complaints. Data collection and statistical reporting will continue to evolve and, hopefully, provide information, which will be used to address and improve areas of concern.

There were **220** complaints filed in 2003. This was the largest number of complaints filed in the history of the current system and a **11%** increase over last year. We view this increase in complaints as a positive sign that the citizens of Albuquerque know and trust the process and are willing to use it to resolve complaints against APD. There were 196 citizen complaints filed 1999, 200 in 2000, 186 in 2001, and 198 in 2002. In 2002, IRO investigators were assigned 107 cases and Internal Affairs was assigned 91. In 2003, the IRO investigators were assigned **141** complaints, completed **126**, and have **15** pending. Internal Affairs was assigned **79** complaints, completed **65** and have **14** pending.

V. Timeliness In The Processing Of Citizen Complaints

APD Standard Operating Procedure §3-43-2I states, "Within 60 days of the filing of a written complaint, or of the completion of the Internal Affairs investigation, whichever is sooner, the Chief of Police or his designee shall take any action necessary, including disciplinary action, to complete the review of the complaint. The Chief of Police may request that the Chief Administrative Officer, or the Deputy Chief Administrative Officer for Public Safety grant an extension of up to 30 additional days." The IRO office has a goal of 100% of the complaints to be investigated within 90 days and 75% investigated within 60 days.

For 2003, **220** complaints were received, **191** have been closed, and **29** are pending. Of the 2003 investigations completed, they were completed in the following number of days.

	<30	31-60	61-90	91-120	121-150	150+	Total
IRO	72	36	15	2	1	0	126
IA	20	15	16	8	2	4	65

These statistics are not precise and it is too early to use closed complaints to fully evaluate the timeliness of the overall process, but these need to continue to be evaluated in case they provide clues to improving the overall process. While we did not meet the goal of completing all investigation within 90 days, the vast majority of the investigations were completed within 90 days.

Investigations pending and the number of days since receiving the complaint, as of December 31, 2003, are listed below.

	<30	31-60	61-90	91-120	121-150	150+	Total
IRO	10	5	0	0	0	0	15
IA	7	1	6	0	0	0	14

The Independent Review Office completed an extensive investigation into the complaints by several citizens about the police actions during the demonstrations of March 20, 2003. We completed the investigation on August 14, 2003 and forwarded it to the Chief for review and non-concurrence meetings. Over 70 witnesses were interviewed and numerous documents were reviewed, including videotapes of the demonstrations. These complaints, by their nature, took longer than the normal case involving only a few witnesses. During this period, one IRO investigator was assigned full time to conduct these investigations. Consequently, the IRO office was unable to take as many investigations on other complaints. I want to thank the Internal Affairs investigators for investigating the lion's share of the complaints for those five months. The public record letter was mailed to the complainants on November 20, 2003.

VI. Action Taken On Sustained Allegations

The complaints have been grouped into the following categories.

Categories	Customer Service	Police Powers	Procedure	Inactivated	Pending
Totals 2003	43	60	21	67	29
Sustained 2003	13	12	18		

Actions taken in 2003

No action	3*	1**	1*
Counseling	4	0	3
Verbal Reprimand	4	3	7
Written Reprimand	2	6	4
Suspension	0	1	0
Removal	0	0	0
Pending	0	1	3

The rate of Sustained cases per year and the APD discipline taken on the Sustained cases are below.

Sustained Cases		APD Discipline on Sustained Cases
2000	31%	Not Available
2001	40%	60%
2002	27%	58%
2003	35%	87%

*One case with no action taken was a non-concurrence with the Chief. The second case, the officer resigned prior to discipline being imposed. On all the other non-concurrence cases, the Chief has disciplined for some SOP violations, but did not agree with all of the SOP violations that the IRO found violated. For example, the IRO would Sustain for unlawful use of force, but the Chief would Sustain for a procedural violation and Exonerate for the use of force.

**The POC did not support the IRO's finding of Sustained.

VII. Detailed Complaint Information, Part I-IX

The following detailed information is the same types of information and in the same format that was compiled in the annual reports for 2000-2002.