

# **Police Oversight Commission**

*City of Albuquerque*  
*Independent Review Office*

**Annual Report 2004**

Joe T. Gutierrez, POC Chair

Jay Rowland, IRO

## **Police Oversight Commissioners**

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I. L. Smokey Sanchez Davis, Vice Chair

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Vidalia Chavez-Encinias

Dolly Sanchez de Rivera

Steve Abraham

Michael Cook

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# Chairman's Perspective

I recently completed my second year on the Police Oversight Commission and will soon complete my term as Chairman. This year the Mayor reappointed three POC commissioners for the first time ever. This renewed commitment to the continuity of the POC and IRO, and to the goals of accountability and public trust will continue to guide us through the next years. We are gratified by the trust placed in the POC and IRO by the Mayor and City Council. The citizens of Albuquerque have given us a very important task. Our task seems especially important when a controversy focuses public attention on APD. When law enforcement actions are questioned in the media, whether it is a controversial shooting, alleged use of excessive force, or alleged biased policing, the public wants to know why these things are still happening and whether the police did anything wrong.

My experience as a law enforcement officer convinces me that these types of incidents usually result from one of three things: 1. defective training or policy, 2. negligence or incompetence on the part of good-intentioned officers, or 3. deliberate violations of APD policies and individual rights.

Defective training or policy has been frequently addressed by the POC and often the complaints are Sustained against APD, rather than individual officers. Then the policy is corrected. For example, most of the problems at the Prisoner Transfer Center (PTC) were Sustained against APD. Chief Gallegos immediately closed the PTC when he was notified of the systemic problems. Several other Standard Operating Procedures were changed by APD as a direct result of citizen complaints and impartial investigation of those complaints.

When officers are negligent or not thoroughly trained in a particular area, such incidents can result in discipline, additional training or both. An officer's continued failure to respond to corrective action or additional training may ultimately require APD to dismiss that officer. The stakes are too high for APD and the City of Albuquerque to knowingly keep an officer who cannot or will not respond positively to proper training. Citizen complaints have identified several of these officers and I am proud of the response from APD and the police union, APOA. Officers have received additional training and have improved and responded well in almost every instance.

Unfortunately, occasionally an incompetent officer or sometimes even an officer who is a bad person and deliberately harms citizens is hired. Again, citizen complaints have identified this type of officer. These officers can and have been prosecuted, fired, or resigned. Many of these officers would not have been identified, but for your citizen complaints.

Working together, we will continue to make Albuquerque a better city and make an excellent police department even better.

Joe T. Gutierrez, Chair, POC

# 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 Issues in 2004

1. The City Council passed significant amendments to the Police Oversight Ordinance. Some of the significant changes are:
  - a. The number of commissioners increased from 7 to 9. The current POC commissioners were grandfathered, but eventually there will be one commissioner from each district.
  - b. Additional training requirements were added that the commissioners must accomplish annually. They must train annually with the Fire Arm Training Simulator (FATS) and do two ride-a-longs.
  - c. The IRO will review and make findings on citizen police complaints (CPCs) and police shooting cases, but will not review and make findings on other internal investigations.
  - d. The process for finalizing findings on police shooting cases will be the same as CPSs.
  - e. The term of the IRO's contract will be two years.
  - f. The POC will make the findings.
  - g. The Chief cannot change the findings. He may request the POC to change the findings.
  - h. The findings by the POC will be placed in the officers' Retention File on an internal affairs form.
  - i. The system of summarizing the compelled statements for the citizen and the POC will not be changed and will continue as it has for the past four years.
2. The POC submitted our proposed rules and regulations to the Mayor and City Council. Additional public hearings will be held on these rules next year.
3. The IRO needs one additional investigator. Citizen complaints continue to increase at a substantial rate. We had 307 complaints this year, a 40% increase over last year's record high of 220.
4. The POC reviewed the process of filing use of force forms. APD discovered problems and implemented new training. They are now in the process of

conducting regular audits to ensure these forms are being completed and entered into the Early Warning System. While significantly improving the number of required forms being submitted, the POC will continue to monitor this important requirement until the system is working all the time.

5. Police shooting cases are taking far too long to complete. The POC continues to work with APD and the District Attorney to ensure this process is speeded up. It is moving faster, but will need continual emphasis for a long time.

## **Timeliness**

The number of complaints received in this quarter was 70 for a total of 307 this year. This continues the increase in the number of complaints over the last three years. In 2003 we received 220 complaints, which was the highest number of citizen complaints in history. The Independent Review Office only has two investigators; therefore, our office is unable to investigate as many of these complaints as we would like. Investigations of complaints are also sent to Internal Affairs for their investigation and reviewed for thoroughness and impartiality by the IRO.

Our goal is to complete 75% of the complaints within 60 days and 100% within 90 days. Of the 307 complaints received this year, we still have 52 pending and have closed 255. For the 2004 cases completed so far this year, the IRO staff closed 182 and has 20 pending. 92% of the completed cases were finished within 60 days. Three investigations took over 90 days; therefore, 98% of the investigations by the IRO were completed within 90 days. The Internal Affairs staff was often two investigators understaffed. This has significantly slowed their investigations and required our office to investigate more complaints and has slowed completion of the investigations. Internal Affairs closed 73 and has 32 pending. 58% of the completed cases were finished within 60 days and only 80% of their investigations were completed in 90 days as fourteen cases took longer than 90 days. Several pending cases are over 90-days also. The low staffing in Internal Affairs is another reason the IRO office needs a third investigator added to the staff.

## **Appeals**

Twenty-eight appeals were heard by the Police Oversight Commission this year. There is currently no backlog.

The POC disagreed with the Chief of Police on two cases from 2003 and found the officers had used unreasonable force. These cases are still on appeal to the Chief Administrative Officer. The new CAO started on July 1, 2004. He has several old appeals still requiring his action. These appeals are particularly important because the CAO can overturn the findings of the Chief and discipline the officers.

The POC can now appeal decisions of the Chief of Police to the CAO on their own initiative. This was one of the very important changes in the Police Oversight Ordinance. Two cases are pending POC decision on whether to appeal their non-concurrences to the CAO.

## **Policy Reviews**

The POC decided that the Long Term Planning Committee will review all complaints where the IRO and the Chief disagree before the cases are heard by the full POC. They reviewed three non-concurrences and agreed with the IRO on two of them and forwarded the third to the POC without a recommendation. That case will be heard in February. One of the other cases was resolved when the two officers who had refused to answer the investigators questions returned and answered all the questions. In the third case, the POC found the officer had stolen money from a citizen, while the Chief found the complaint Not Sustained due to the evidence being 50-50.

The POC wrote letters to the Mayor and District Attorney. The POC requested that the investigation of police shooting cases and the presentation to the grand jury of police shooting cases be expedited by APD and the DA. Cases have been expedited, but are so far backlogged, it will take continued oversight for several months.

The POC requested an audit of the use of force from 2002 and 2003 and what entries were made in the Early Warning System. There was concern that not all uses of force are being reported and thus not entered in the EWS. APD conducted an audit and discovered that this was true. They have conducted extensive training and will conduct regular follow-up audits until we are convinced the system is working properly.

The POC looked into the process of criminal cases against APD officers and concluded these are resolved in a timely manner.

## **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 nine 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 citizen complaints and claims directed against APD and any of its officers. The IRO will review the citizen complaints and assign them to be investigated by IRO independent investigators or to Internal Affairs.
2. The IRO will oversee, monitor and review all of those investigations and make findings for each. These findings are forwarded to the POC for their approval.
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 sent to:

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

Complaint forms are available for downloading on the IRO website, the IRO office, at City libraries, homeless shelters, police substations, and Internal Affairs. The complaints may be filed with the city staff and all complaints will 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 finalized by the Police Oversight Commission and then sent to the complainant and the Chief of Police. The Chief of Police has sole disciplinary authority over the officer. The IRO notifies the citizen of their final decisions by certified mail. If the citizen who filed the complaint is dissatisfied with the findings of either the Chief or the IRO, that person may appeal that decision to the POC. The appeal must be made within ten business days from the date the citizen received the public record letter from the IRO. 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 would then reconsider his findings and notify the POC and the citizen of his decision. If the citizen is still not satisfied with the action of the POC or the Chief of Police, the citizen may request a review by the Chief Administrative Officer (CAO) within 10 business 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***

The Police Oversight Commission is chaired by Joe Gutierrez and Smokey Sanchez Davis is the vice chair. The POC heard 28 appeals from citizens this year. The POC disagreed with the IRO and the Chief on two appeals and Sustained the complaints. They took no further action on the other appeals, while agreeing with the findings and recommendations of the IRO. Five appeals are still pending decision by the CAO. These appeals are particularly important because the CAO can overturn the decision of the Chief and discipline the officers.

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 as are all POC meetings. They go into detailed review of issues referred to them by the POC. These meetings are usually held at the Plaza del Sol in the basement hearing room at 3 PM on the fourth Tuesday of every month.

Although the POC recently received a formal complaint from a Deputy Chief about the Independent Review Officer, the POC and IRO have enjoyed an increasingly cooperative relationship with APD. This complaint will be thoroughly evaluated. It raises significant policy questions in addition to the specifics contained in the complaint. Complaints against the POC or IRO from APD cannot be allowed to compromise civilian oversight if the independent oversight function is to be meaningful.

#### ***IV. Statistical Report for Complaint Workload***

The IRO has assured the citizens of Albuquerque that the independent IRO investigatory process is outstanding and produces the prompt, impartial, fair, objective investigations of citizen complaints and is free from any political influence. The investigators thoroughly and impartially gather the evidence. The POC and IRO make findings free from any political influence. Disagreements with the Chief of Police are usually 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. 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. The improvements and the passage of the amendments to the Police Oversight Ordinance made the system of oversight even better. It is one of the best oversight systems in the United States.

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.

There were 70 complaints filed this quarter for a total of 307 this year. There were 196 citizen complaints filed 1999, 200 in 2000, 186 in 2001, 198 in 2002 and 220 in 2003. These numbers have increased steadily the last five years. We find this to be a positive indication that the citizens of Albuquerque trust the system of civilian oversight to provide them a fair and impartial answer to their complaint. More complaints do not mean the Albuquerque Police Department is doing worse. It means citizens have more faith in the system and are willing to use the system to resolve their grievances. Citizen participation will improve the Police Department in the long run. Citizen complaints have already identified problems with the Prisoner Transfer Center, completion of use of force forms, individual officers and several policy issues.

This year the IRO investigators were assigned 202 complaints, completed 182, and have 20 pending. Internal Affairs was assigned 105 complaints, completed 73, and have 32 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% on the investigations to be completed within 90 days and 75% investigated within 60 days.

In 2004, 307 complaints were received, 255 have been closed, and 52 are pending. Of the 2004 investigations completed, they were completed in the following number of days.

	<30	31-60	61-90	91-120	121+	Total
IRO	123	45	11	3	0	182
IA	16	27	16	10	4	73

Investigations pending and the number of days since receiving the complaint are listed below.

	<30	31-60	61-90	91-120	121+	Total
IRO	10	5	3	1	1	20
IA	10	7	5	8	2	32

## **VI. Sustained Allegations**

In 2001, 53 complaints were Sustained. 39 were sustained in 2002, while eighteen of those cases were Sustained in the last three months of 2002. 49 complaints were Sustained from 2003. 46 complaints have been sustained in 2004. We have grouped the Sustained complaints into the following categories.

Categories	Customer Service	Police Powers	Procedure	Pending
Sustained 2004	15	16	15	4

### **Actions taken in 2004**

Categories	Customer Service	Police Powers	Procedure
No Action	0	7*	2
Counseling	4	1	2
Verbal Reprimand	4	0	2
Letter of Reprimand	4	3	7
Suspension	1	3	2
Removal	0	0	0
Pending	2	2	0

\*Seven Prisoner Transfer Center Complaints were Sustained against APD and are listed under police powers. Five were Sustained solely against APD; therefore, no disciplinary action was taken against individual officers. In two of the PTC cases, officers were also identified as having violated SOPs and they were disciplined. These are also listed under police powers because of the PTC violations by APD. The remaining two Sustained cases where the Chief took no action were the result of one officer resigning while under investigation and one retiring.

### **Sustained Rate and APD Discipline Rate**

Sustained Cases	APD Discipline rate on Sustained Cases
2000 31%	Not Available
2001 40%	60%
2002 27%	58%
2003 35%	87%
2004 26%	98%*

\*The PTC cases sustained solely against APD were not counted. Cases where officers resigned or retired before they could be disciplined are also not counted. There has been only one case this year that the Chief refused to discipline an officer that the POC found should be disciplined. That complaint may be appealed to the CAO. Another case will be heard by the POC in February.

### **VII. Detailed Complaint Information, Part I-IX**

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