



TOWN OF FAIRFAX

STAFF REPORT

August 3, 2016

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 
Christopher Morin, Chief of Police

SUBJECT: Discuss/consider response to Marin Civil Grand Jury Report *Law Enforcement Citizen Complaint Procedures: The Grand Jury Has A Few Complaints*

RECOMMENDATION

Approve the attached response.

DISCUSSION

The Town Council is required to respond in writing to the Findings and Recommendations contained in the Marin County Civil Grand Jury Report, pursuant to Penal Code § 933.05.

The 2015-2016 Marin County Civil Grand Jury issued a report entitled, *Law Enforcement Citizen Complaint Procedures: The Grand Jury Has A Few Complaints*, dated June 16, 2016. Over the years, there have been some changes to the law regarding how citizen complaints should be handled, and what requirements should or should not be on the forms for the complaints.

The Grand Jury's investigation found discrepancies in the way various Marin law enforcement agencies handled complaints. This raised concerns that people might be intimidated into not filing complaints. The Fairfax Police Department has had a proper complaint procedure in place for many years. It has been reviewed for legality, and staff has made public access to forms available online as well as in the lobby of the station. Employees have been given refresher training on how to help the public with the process if they should need it. Staff agrees with all the Grand Jury findings. Staff has implemented recommendations R1, R7, R8, R9, R10, and R14. Recommendation R3, R5, R6, R11, and R12 were already in place prior to the Grand Jury report. Recommendation R13 will be implemented in the future. Two recommendations (R2, R4) are not required by law and will NOT be implemented due to their unreasonableness.

FISCAL IMPACT

None at this time

ATTACHMENTS

1. Response to Marin County Civil Grand Jury Report from the Town of Fairfax
2. Marin County Civil Grand Jury Report: *Law Enforcement Citizen Complaint Procedures: The Grand Jury Has A Few Complaints*

RESPONSE TO GRAND JURY REPORT

Report Title: Law Enforcement Citizen Complaint Procedures: The Grand Jury Has a Few Complaints

Report Date: June 16, 2016

Agenda Date: August 3, 2016

Response by: Garrett Toy Title: Fairfax Town Manager

FINDINGS

- I (we) agree with the findings numbered: F1, F2, F3, F5, F6 based on information in the Grand Jury report
- I (we) agree *wholly* with the findings numbered: F4, F7
- I (we) disagree *wholly* with the findings number: n/a

RECOMMENDATIONS

- Recommendation numbered R1 has been implemented. *The website has been updated with a link to a clearly defined Citizen Complaint Folder.*
- Recommendation numbered R2 will not be implemented, it is not reasonable. *The Fairfax Police Department does not have a mechanism in place for any "on-line" reporting of anything, be it crimes or citizens complaints. We do, however, take citizen complaints over the phone, via email, or in person.*
- Recommendation numbered R3 has been implemented, *and was already in place for quite some time. In response to the Grand Jury investigation, the location and placement in the police lobby has been clearly marked and more visible.*
- Recommendation number R4 will not be implemented. *It is not warranted at this time as we do not have large segments of our population that speak a language other than English.*
- Recommendations numbered R5, R6, and R12 have been implemented, *and were already in place. Personnel are periodically given refresher training in the citizen complaint policy and procedures. We will continue to provide this refresher training.*
- Recommendations numbered R7, R8, R9, and R10 have been implemented. *As of 6/20/16, all forms have been updated to reflect current laws.*
- Recommendation numbered R11 has been implemented, and was already in place.
- Recommendation numbered R13 will be implemented in the future. *The Fairfax Town Code already outlines a person's ability to appeal a decision to the Town Council. The Fairfax Police complaint policy will be updated to reflect this option within the next 90 days.*
- Recommendation numbered R14 has been implemented. *As of 6/20/2016, the web site has been updated to reflect this information.*

Date: _____ Signed: _____

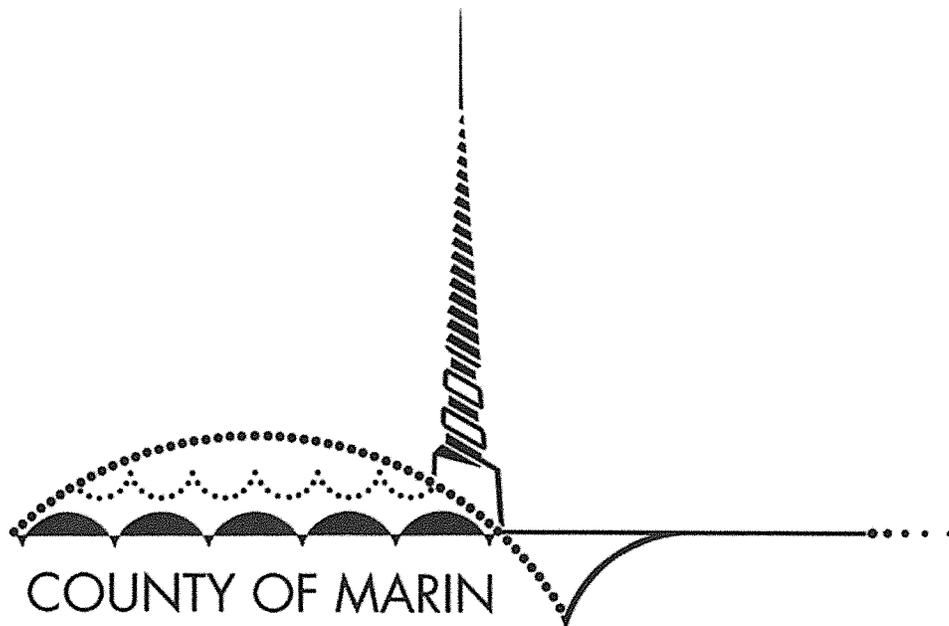
2015/2016 MARIN COUNTY CIVIL GRAND JURY

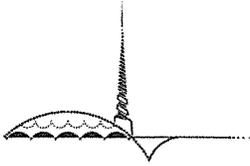
Law Enforcement Citizen Complaint Procedures

The Grand Jury Has A Few Complaints

Report Date: June 16, 2016

Public Release Date: June 23, 2016





Law Enforcement Citizen Complaint Procedures

The Grand Jury Has A Few Complaints

SUMMARY

Marin County's Civil Grand Jury undertook an investigation into the Citizen¹ Complaint procedures that are currently used by Marin's law enforcement agencies. The Grand Jury focused on procedure accessibility, comprehensiveness and clarity.

Questioning authority and its representatives can be intimidating and is made more so by opaque and inaccessible policies and procedures. The Grand Jury learned that lodging a complaint with any of Marin County's ten law enforcement entities can be confusing, time consuming and discouraging.

The California statute (CPC §832.5) that was enacted over forty years ago requires that Citizen Complaint procedures be established by law enforcement agencies. The Grand Jury discovered that Marin County's law enforcement agencies interpret and apply this statute in various and inconsistent ways.

To maintain full public trust, an effective law enforcement complaint process depends on fair and transparent procedures. Through its investigation, the Grand Jury learned that the courts, law enforcement organizations, civil rights advocates and educational institutions all concur that open communication between law enforcement agencies and citizens is essential.

An improved and uniform complaint process would provide greater credibility and effectiveness to the Citizen Complaint process. While demonstrating law enforcement's commitment to protect and respect the community it serves, a clear and consistent set of procedures would build a better foundation for interactions between law enforcement and the public.

The Grand Jury recommends that every law enforcement agency in Marin County have a clear and complete description on its website and in its lobby, in both English and Spanish, of the department's policy, procedures and forms for filing a citizen complaint. Law enforcement personnel should be trained in and be able to fully describe the process and forms to any inquiring person and direct that person to the appropriate location of the information. Preserving confidentiality and anonymity when requested should be an option (via website and in person) for all complainants.

¹ The term "Citizen Complaint" has been questioned insofar as the term implies that non-citizens, e.g. undocumented immigrants, non-residents or visitors, cannot avail themselves of statutory protections against law enforcement misconduct. See for example, 2012-2013 Santa Clara County Civil Grand Jury Report: "Law Enforcement Public Complaint Procedures." It has been suggested that the term "Public Complaint" is more appropriate; however, "Citizen Complaint" has taken on a more common use and meaning in this context and that term will be used throughout this Report.

BACKGROUND

Marin County's Police and Sheriff Departments ensure the safety and security of their citizens and the dedication of these law enforcement agencies and the devotion of their officers cannot be overstated. Yet, there are times when questions arise regarding interactions between law enforcement and the public. While police misconduct in Marin may be infrequent, policies and procedures are necessary and legally required for citizens to be able to raise concerns regarding peace officer conduct.

When law enforcement and citizens interact, they are not in positions of equality. Because of a peace officer's authority, there is a power differential from the moment he or she comes into contact with citizens. While this power difference may be necessary for officers to do their jobs, a citizen should have a way to complain about those instances where, whether intentionally or unintentionally, a peace officer is viewed or is thought to overstep their authority, role, or behaves inappropriately.

Incidents between a peace officer and the public may not rise to the level of illegal conduct, but situations involving hostility, rudeness, intimidation, unfairness, threats and unnecessary verbal or physical force reduce the effectiveness and reputation of law enforcement. A fair and consistent complaint process holds peace officers accountable to legal, ethical and community standards and expectations.

According to David J. Brent, "... the search for a system that will at once be responsive to both the public's need for accountability and the responsibility of the police to regulate themselves is basic to the efficient functioning of the police department as a necessary component within society."²

In the same journal article, Brent's analyses of interactions between law enforcement personnel reveal that: "...citizens feel that the police do not interact with them in a manner that is responsive to the realities of their daily lives, while the police are unwilling to open the process by which their actions are ultimately examined and regulated to the scrutiny and participation of the citizen."³

² David J. Brent, *Redress of Alleged Police Misconduct: A New Approach to Citizen Complaints and Police Disciplinary Procedures*, 11 University of San Francisco Law Review 587 (1977)

³ Ibid.

METHODOLOGY

The Grand Jury used the following sources of information for its report:

California Law

The Grand Jury reviewed statutes pertaining to the Citizen Complaint process under California law. It also reviewed the legislative history of the enactment of those laws.

Literature Review

The Grand Jury performed extensive research into investigations conducted by other California grand juries, as well as other organizations and groups on the topic of Citizen Complaints. The Grand Jury also reviewed the operations of the San Francisco Office of Citizen Complaints.

Law Enforcement Websites

The Grand Jury conducted a review and analysis of the websites of all ten Marin County law enforcement agencies.

Policies and Procedures

The Grand Jury reviewed all Marin County law enforcement agency policy and procedure manuals.⁴ All law enforcement agencies in Marin are required by law to have policies and procedures. Although access is available to citizens, policy and procedures manuals are not generally easy for citizens to find.

Police and Sheriff Department Site Visits

Members of the Grand Jury undertook, as private citizens, multiple in-person visits to each Marin County law enforcement agency to seek out and obtain information regarding that agency's Citizen Complaint procedures. The following law enforcement agencies were visited:

- Belvedere Police Department
- Central Marin Police Authority
- Fairfax Police Department
- Marin County Sheriff's Department
- Mill Valley Police Department
- Novato Police Department
- Ross Police Department
- San Rafael Police Department
- Sausalito Police Department
- Tiburon Police Department

Police Chief and Sheriff Interviews

The Grand Jury interviewed each of the Marin County Police Chiefs⁵ as well as the County Sheriff. During these interviews, no information was requested or obtained regarding the identity of any peace officer who was the subject of a Citizen Complaint.⁶

⁴ Many law enforcement agencies utilize some version of the standard for policies and procedures prepared by Lexipol Law Enforcement that provides customizable, state-specific law enforcement policy content and integrated policy training

⁵ The Acting Chief of the Novato Police Department was interviewed.

⁶ On February 19, 2016, California State Senator Mark Leno introduced SB 1286 amending Section 832.5 to provide for open public inspection of a peace officer's personnel files relating to the full investigation of a Citizen Complaint, findings, discipline or corrective action taken pursuant to the Public Records Act.

DISCUSSION

Legal Requirements regarding Citizen Complaints: California Penal Code §832.5

The California legislature addressed the Citizen Complaint process when, in 1974, it enacted California Penal Code §832.5. This statute requires all law enforcement agencies in the state to develop procedures for dealing with Citizen Complaints about the conduct of peace officers.

Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

The legislature did not provide detailed procedures for law enforcement agencies. The intent of the legislation was to provide the public with a mechanism by which the behavior of peace officers could be reviewed, evaluated and, when appropriate, corrected. This is to ensure that officers, while acting under the authority of law, do not engage in conduct that would violate the individual rights of the citizenry.

Website Reviews

The Grand Jury reviewed each law enforcement agency's website to determine what information it contained on the topic of Citizen's Complaints. The statutory mandate that each law enforcement agency make available to the public a written description of the procedure it employs is straightforward. This mandate can easily be satisfied by making the explanation of the procedure clear, simple and easily located on the website. To assure the availability of the Citizen Complaint information, an explanation of the complaint procedure should be provided on the law enforcement agency's website. There should be no need to physically come to the law enforcement offices to obtain information on the process or any necessary forms. The website should provide for online initiation of a Citizen Complaint, a complete description of how the complaint will be investigated and a final determination of its disposition.

The Grand Jury reviewed each website for the following:

- Ease in finding the topic of Citizen Complaints
- Availability of the written complaint procedure
- Availability of the Complaint Form
- Versions of both documents in English and Spanish languages
- Ability to file the Complaint Form electronically
- A description of the disposition process
- A description of the appeal process
- A statistical record of past complaints

Although all Marin County law enforcement agencies have a website available to the public, there is wide variance among law enforcement agencies in ease of use, availability of forms, multilingual versions, etc. Some websites are difficult to navigate resulting in time-consuming

frustration. Such websites are not always intuitive or the information is buried and difficult to find. Some websites have no information at all about Citizen Complaint procedures.

The Fairfax Police Department's website, for example, has a general description of the Citizen Complaint procedure, however, the actual complaint form must be obtained by a personal visit to the police station. San Rafael initially had no information on the website regarding a complaint process or how to file a complaint. (Since the Grand Jury's inquiry, the San Rafael Police Department has amended its website.) Some law enforcement websites do have a Citizen Complaint form available, but a full and simple explanation of the complaint investigation process may not be in the same location.

On-Site Visits

Grand Jury members visited all Marin County law enforcement agencies as private citizens to find out how to file a complaint. It became clear during those visits that CPC §832.5 is interpreted by Marin law enforcement agencies in many different ways. There was wide variance not only among law enforcement agencies, but also as to how different Grand Jury members were received by the same law enforcement agencies on different days.

In some cases, staff had to search a file cabinet to find written procedures or forms. Other agencies had a description of the complaint process and complaint forms in both English and Spanish displayed and available in their lobby. A few law enforcement agencies did not know whether or not the information was available on their agency's website. Some law enforcement personnel (officers and staff) were quite knowledgeable and professional regarding Citizen Complaint procedures. In other instances, members of law enforcement were unaware of the details of their own agency's Citizen Complaint process and in some cases inaccurate information was provided.

The Grand Jury believes that statutes such as California Penal Code §823.5 requiring adherence to Citizen Complaint procedures were enacted to reduce those instances where fear and intimidation may result in the underreporting of legitimate criticisms of law enforcement personnel.

For example, in addition to the complexity of the filing procedures, it can be intimidating and a distinct disincentive when a potential complainant is asked by law enforcement officers or staff (actual questions encountered by Grand Jurors during site visits):

- "What's the officer's name?"
- "Do you want to speak to the officer's supervisor?"
- "Only the chief handles complaints."
- "Are you a resident of this community? Only residents can file complaints."
- "Do you want to leave your name and number and someone will get back to you?"
- "What is your name and address?"
- "What's the nature of your complaint?"

Such responses to inquiries as noted above on the part of law enforcement might be understood as an effort to resolve a problem before a complaint is brought. They could also, however, have a

discouraging effect on a member of the public who seeks to know what his or her rights are and what to expect if they bring a complaint. Questions such as those above can result in underreporting of complaints. Fear of reprisal, lack of confidence in the complaint process and difficulty finding out how to complain can also contribute to underreporting.

Interviews with Police Chiefs

During in-person interviews with each police chief, acting chief and the County Sheriff, the Grand Jury members inquired about each law enforcement agency's complaint procedures and about how that information was shared with the public.

The Chiefs were asked the following:

- Are policies, procedures and complaint forms in multilingual versions available on their agency's website? Is the complaint information available in the police department's lobby (or elsewhere accessible to the public) without the individual having to request it?
- Does a Citizen Complaint have to be made in person?
- Does a complainant have to identify himself, place of residence or citizenship?
- Can the complaint be made anonymously? By minors? By third persons? By non-citizens?
- What are complainants advised regarding making false claims?
- When and how do you inform the complainant of the resolution of the complaint?
- Do you keep records of complaints and their resolution? If so, where? How long are they retained?
- Are records of Citizen Complaints available to the public?

The Grand Jury found that there was considerable inconsistency between the chiefs' and Sheriff's understanding of how their own agency deals with the public and what the Grand Jury members actually experienced upon visiting each agency. During interviews, it became evident that chiefs and the Sheriff were often unaware of how Citizen Complaint inquiries were dealt with by the officers and staff in their respective law enforcement agencies. Significant discrepancies between policy and actual practice were commonly found during the Grand Jury's research.

Policies and Procedures

The Grand Jury reviewed each law enforcement agency's policies and procedures manual and found that all ten have information pertaining to Citizen Complaints. With the exception of the Sheriff, all Marin County law enforcement agencies utilize some version of the Lexipol-prepared Policies and Procedures, which provides customized state-specific policy content and integrated training.

Filing a Complaint

All Marin County law enforcement agencies comply with California Penal Code §832.5 in that they have a written Citizen Complaint policy. There is, however, inconsistency in the way in which the procedures are presented to the public. While a law enforcement agency may acknowledge its legal responsibility to have a prompt and unbiased procedure for filing and investigating Citizen Complaints, there is not always a clear explanation of how those procedures actually work. Requiring the potential complainant to journey through a maze of law enforcement officials and management staff may be a deterrent to an individual pursuing a legitimate complaint.

Some examples of inconsistent and confusing policy and procedure instructions are:

The **Mill Valley** Police Department describes its investigation this way:

“The Department member taking your complaint or inquiry will put you in contact with the on-duty Watch Supervisor as soon as possible. If, after talking with the Watch Supervisor, you still feel you have a valid complaint and some action should be taken by the Department, the Watch Supervisor will notify the Division Commander who will then direct an investigation into your complaint and advise findings to the Chief of Police.” The Mill Valley Police Department’s policy also indicates: “If you feel your inquiry is not handled satisfactorily by the Watch Commander, you are encouraged to talk to the Division Commander.”

The **Sausalito** Police Department explains that “Generally, your complaint will be investigated by a command level officer, assigned by the Police Chief” or “assigned to a special investigator”.

The **Tiburon** Police department indicates that the Officer’s supervisor or a special investigator will investigate the complaint.

The **San Rafael** Police Department states that a “Citizen Complaint will be reviewed by the Chief of Police. It will then be assigned to an investigator.”

The **Marin County Sheriff’s** Department states that “Minor complaints may be referred to the officer’s supervisor, however, major complaints will be referred to the on-duty watch commander or bureau commander.”

The **Central Marin** Police Department states its policy as follows:

“Officer complaints require that you sign a statement acknowledging that it is a crime to make a false complaint against an officer. If the inquiry appears to be based on a misunderstanding or a lack of knowledge of acceptable or desired conduct, procedure or practices, the department member taking your complaint may offer an explanation, or he/she will put you in immediate contact with the On-duty Watch Commander. After an explanation is offered, and you believe the Police Authority should still take some action, you will be referred to the supervisor of that unit or employee. If the supervisor is off duty, you will be referred to the On-Duty Watch Commander, who will assist you with your complaint. The supervisor will forward your complaint to his/her Division Commander who will review the complaint and forward it to the Chief of Police for his review and direction to ensure a thorough and objective investigation is done.”

These complaint procedures appear to the Grand Jury to create a number of serious hurdles for a citizen to overcome. In some cases, repeated law enforcement interactions and recounting of the same complaint seem to be required before an investigation is undertaken. Climbing a ladder of authority, such as described above before an investigation is initiated, can be a discouraging process making it less likely that a resident will pursue the filing of a complaint. When information is relayed from one level of authority to another, the effect could be the same as the “telephone game” in which the final account of the complaint could be diluted or altered with each successive description. This process is more complicated when foreign language difficulties, concerns regarding citizenship status and apprehensiveness in dealing with law enforcement are present.

Communication Between the Public and Law Enforcement

Communication between law enforcement and the public regarding Citizen Complaint procedures is an essential step in the effectiveness of any Citizen Complaint program. The unfortunate reality is that many individuals in the community are apprehensive about interacting with law enforcement. News reports, electronic media, casual discussions and past experiences may create founded or unfounded suspicion of the police or Sheriff. This may be the case when the member of the public is an undocumented immigrant or does not use English as his or her primary language. Fear of miscommunication, being misunderstood, or being reported to the Immigration and Naturalization Service (INS) can inhibit a person from complaining about the conduct of law enforcement even if their rights have been compromised. While most citizens understand and believe that law enforcement is dedicated to protecting and serving the community, there is, in some instances, an inescapable public uneasiness with law enforcement and this is as real as life.

The Grand Jury concludes that a written description of the complaint procedure should, at minimum, contain the following elements:

- Where the complaint form can be found
- How the complaint will be investigated
- How the final determination of the complaint will be disseminated
- What appeal process, if any, exists if the complainant is not satisfied with the determination

During their interviews, every Chief and the Sheriff stressed that law enforcement wants to keep lines of communication open with the public and the Grand Jury supports that objective. Therefore, a citizen’s request for information about Citizen Complaints should be responded to by providing the necessary forms and descriptions of the procedures in a clear, informed and respectful way without any defensiveness or attempt to deflect, intimidate or otherwise discourage the potential filing of a Citizen Complaint.

California Penal Code §148.6 and the Complaint Form

California Penal Code §148.6 previously stated that potential complainants acknowledge that they could be criminally prosecuted for bringing a false complaint against a peace officer. CPC §148.6,

however, was determined to be unconstitutional when the United States Supreme Court declined to overturn a United States Court of Appeal (9th Circuit) ruling to that effect. Unfortunately, the Grand Jury found that such warnings remain in some complaint forms and policy information concerning Citizen Complaints used by Marin County law enforcement agencies.

The requirement that a person who brings a Citizen Complaint against a peace officer must acknowledge and sign the information advisory is no longer valid. There should be no language in the complaint form or anywhere else that implies potential penalties for making false claims. Advisories that threaten prosecution or other penalties can be a deterrent to filing a Citizen Complaint. During the legislative session in which discussions for and against the passage of AB 1732 (Section 148.6) were held, the argument in opposition to its passage made this clear:

"...this legislation will have a chilling impact on the filing of police misconduct complaints by members of the public. Many persons are now afraid to speak up and are intimidated from filing legitimate complaints of police abuse, by among other things, threats by the officer to sue the victim for libel. If this bill becomes law, the first thing that will happen to victims of police abuse when they go to a police station to file a citizen complaint is an admonishment that they can be jailed if their allegations are not true. We should encourage the filing of police abuse reports, not impose additional roadblocks to chill the process."⁷

As of this writing, the Citizen Complaint form provided by the **Central Marin** Police Authority still includes the language of Section 148.6 and carries its warning even further by asking the citizen to read, understand and sign off on California Civil Code §47.5. This language alerts the citizen that filing a Citizen Complaint may have civil as well as criminal consequences. To access the Citizen Complaint procedure from the **Sausalito** Police Department website, one is first directed to a screen containing the entire boldface information advisory from Section 148.6, including the threat of prosecution. The Citizen Complaint form itself contains an admonishment, albeit without the sentence threatening prosecution.

The **Mill Valley** Police Department's Citizen Complaint form, for instance, requires that the complainant sign a verification of the complaint's contents. Sworn statements are not required to initiate the Citizen Complaint process. Requiring an oath may discourage honest people who may be reticent regarding how their complaint will be handled by the system as it potentially raises a fear that the citizen could be prosecuted for bringing the complaint, particularly in cases in which a complaint is not sustained.

The Grand Jury concludes that requiring a complainant to sign their name in acknowledgement that they "read and understand" any Penal Code language in connection with their Citizen Complaint may, in itself, create fear about entering into the entire complaint process.

⁷ Assem, Com. on Public Safety, analysis of Assem. Bill No. 1732 (1995-1996 Reg. Sess.)

Anonymity

Anonymity is not the same as being unwilling to participate in the investigation. One can be interviewed and participate in the investigation without revealing his or her name, address or other identifying information. Requiring a complainant to produce or state his or her identification and sign their name to a complaint form in order to file a Citizen Complaint can be intimidating. This requirement could raise the fear that the complainant's identity and residence may be targeted for retaliation because a complaint is brought against a specific peace officer. A complainant may believe that their name and address could subject them to other kinds of law enforcement contact, such as nuisance traffic stops, other ticketing activities or even reluctance on the part of peace officers to respond to a complainant's calls for assistance. An even greater fear for an undocumented complainant might be a concern about their immigration status, which might outweigh their willingness to file a complaint. Those for whom English is not their first language may also be reluctant to file a complaint since their difficulty in communicating the facts may exacerbate their fear and reluctance to report.

In one instance, upon visiting a police station, a Grand Jury member found that Citizen Complaint information was not provided to him because he was not a resident of that law enforcement agency's jurisdiction. Asking a person where they live can be intimidating, may imply that residency is required in order to file a complaint and might be perceived as a loss of anonymity. Another law enforcement agency required that the person asking about the Citizen Complaint process sign into the police log or meet personally with an officer.

To counter these roadblocks to filing a Citizen Complaint, the Grand Jury believes that a citizen should be able to file a Citizen Complaint anonymously, thus helping to reduce any possible reticence in following through. Some Marin County law enforcement agencies acknowledge that they welcome anonymous complaints. They state, however, that such complaints would be very difficult to investigate and make law enforcement's response to the complainant impossible. Personal identification, verifications and signatures thwart anonymity.

The Grand Jury concludes that there is no justifiable reason to require the signature, name and address of the complainant on the Citizen Complaint form. These forms should clearly indicate that the name, address, telephone number and signature of the complainant are "OPTIONAL". Citizens who may be reluctant to complain of a violation of their rights should be able to avail themselves of the Citizen Complaint procedure to focus attention on alleged improper law enforcement conduct. This objective also holds true for third parties who observe police misconduct yet do not want to become embroiled in a process to address another person's rights.

Law enforcement's interaction with minors is somewhat more problematic. While many law enforcement agencies in Marin County indicate that they will accept and investigate complaints from minors, some require that the minor's parent or guardian sign the complaint form or appear in person with the minor to file the complaint.

The Investigation, Disposition and Appeal Process

The Grand Jury reviewed the policy and procedure manuals for every Marin County law enforcement agency regarding the Citizen Complaint investigation, disposition and appeal process.

Investigation

Most law enforcement agencies state in their policy and procedures that the complaint will be assigned to an investigator, but no description is provided as to how an investigation will be conducted. Will the investigator speak to the complainant? Will the investigator interview any witnesses or discuss the matter with the officer involved? If it comes down to a “he said, she said” scenario, will the complainant ever be believed over the officer?

Further review of the policy and procedure manuals indicates that the investigation into a Citizen Complaint should be completed within one year. If that is not possible, the assigned investigator or supervisor must ensure that the delay is warranted and communicate that to the complainant. Finally, the complainant should be provided with written notification of the disposition within 30 days after a determination has been made.

An explanation to the public of what an investigator will investigate, the time frame involved and other potentially complicating issues should be provided to the complainant.

Disposition

There are four potential classifications:

- **Unfounded:** the investigation finds that the alleged act did not occur or involve law enforcement agency officers and/or staff
- **Exonerated:** the investigation finds that the alleged act did occur, but was justified, lawful and/or proper
- **Not sustained:** the investigation finds there is insufficient evidence to sustain the complaint or fully exonerate the member
- **Sustained:** the investigation discloses sufficient evidence that the act occurred and that it constituted misconduct

Once again, the Grand jury found information for the public regarding the disposition of a Citizen Complaint to be lacking in both content and consistency among the various law enforcement agencies.

Appeals

The Grand Jury also concluded that Citizen Complaint procedures should provide some mechanism for the citizen to appeal the results of an investigation. As noted above, a citizen must be notified in writing within 30 days of the disposition of his/her complaint. An appeal process as part of a law enforcement agency’s Citizen Complaint procedure could be helpful in short-

circuiting the need for further legal action. Consequently, the Grand Jury concludes that Citizen Complaint procedures should include some mechanism for the citizen to appeal the result of the investigation if the citizen disagrees with the disposition. Ideally, the appeal should include a review by a body outside of the law enforcement agency. For example, the Novato Police Department allows a complainant to appeal the results to the City Manager. The City Manager, after reviewing the complaint, may forward the complaint to the Police Advisory and Review Board for further review or investigation.⁸

Training, Compliance and Awareness

As noted above, all Marin County law enforcement agencies comply with the requirements of California Penal Code Section 832.5, yet there is inconsistency in how policies and procedures are presented to the public. As a result of the Grand Jury's site visits, website reviews, interviews with police chiefs and Sheriff and reviews of the policy and procedure manuals, it became clear to the Grand Jury that an important component missing in the Citizen Complaint process was consistent training of all law enforcement officers and other personnel. The lack of uniformity in training may explain the inconsistencies. This difference in knowledge of the process may account for some inconsistencies in communicating the policies and procedures to the public.

The Grand Jury believes that law enforcement personnel, staff and volunteers should receive regular training on the Citizen Complaint process. Personnel should know how to quickly locate and access written complaint procedure instructions and be able to provide a citizen with whatever forms are needed at the time of inquiry. In addition, all personnel should be welcoming and open to accepting complaints. Law enforcement agency employees should also be familiar with where such materials are located on the law enforcement agency website. Clear and accessible communication with the public, whether in person, by phone or via website regarding anonymity, investigative procedures, disposition and the appeal process should all be part of law enforcement personnel training programs.

Transparency and Reporting

Complete transparency regarding the number of complaints and their disposition is also essential to maintaining a climate of trust between law enforcement and the public. Even though the number of complaints received by many Marin County law enforcement agencies tends to be few, they should regularly report to their governing bodies the number of complaints received, the general nature and their disposition. At a minimum, this reporting should be on an annual basis and should also be available online.

⁸ Novato City Resolution 43-00

CONCLUSION

In a report entitled *Building Trust Between the Police and the Citizens They Serve*,⁹ The United States Department of Justice, Office of Community Oriented Policing Services wrote:

“It is imperative to not only have procedures in place for fairly and impartially accepting, processing, and investigating complaints concerning allegations of employee misconduct but also to inform all police employees and the public of that process. ... ‘An accessible, fair, and transparent complaint process is the hallmark of police responsiveness to the community’ ... It is incumbent on the police department to make its citizens aware that a complaint process exists, how to file a complaint, and how the agency processes and investigates complaints.”

The Grand Jury believes that the majority of Marin County law enforcement members operate within the rules of their profession, and recognize and respect the rights of citizens. However, the need for a well-defined procedure for addressing those instances when that is not the case has been affirmed by the results of the Grand Jury’s investigation into the Citizen Complaint process. Clear communication between Marin County law enforcement agencies and the citizenry regarding the Citizen Complaint process is essential for it to be successful, beneficial to law enforcement and not intimidating to the public.

FINDINGS

- F1. Marin County law enforcement agencies have procedures for Citizen Complaints that could act as deterrents to participation in the complaint process.
- F2. Some Marin County law enforcement agencies employ procedures and admonitions that have been held to be unconstitutional.
- F3. Some Marin County law enforcement agencies’ complaint procedures require face-to-face contact with law enforcement officers, which may deter citizens from using the Citizen Complaint process.
- F4. Not all Marin County law enforcement agencies provide written policies, procedures and Citizen Complaint forms in English and Spanish.
- F5. Not all Marin County law enforcement agencies accept and investigate anonymous Citizen Complaints.
- F6. Information about and access to the Citizen Complaint procedure is difficult to find on Marin County law enforcement agency websites.
- F7. Marin County law enforcement agencies do not publish the number, the nature or the disposition of Citizen Complaints.

⁹ U.S. Department of Justice Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs* (2009)

RECOMMENDATIONS

- R1. Every Marin County law enforcement agency should have a clear and full description of the law enforcement agency's policy and procedures for handling Citizen Complaints on its website that is accessible by a direct link from the law enforcement agency's home page to a clearly identified "Citizen Complaints" folder.
- R2. All Marin County law enforcement agencies should accept the filing of Citizen Complaints online.
- R3. A clear and full description of the law enforcement agency's policy and procedures along with forms for filing Citizen Complaints should be available to the public in the lobby of each law enforcement agency.
- R4. Written policies and procedures, as well as Citizen Complaint forms, should be available to the public in English, Spanish and other languages appropriate to the community.
- R5. Marin County law enforcement agency personnel should be trained in the agency's Citizen Complaint policy and procedures in order to fully describe them to members of the public.
- R6. All public-facing law enforcement personnel should present an open and welcoming attitude to any inquiry about the Citizen Complaint process.
- R7. No policy, procedure or form for handling Citizen Complaints should have any language based in whole or in part on California Penal Code Section 148.6 and/or California Civil Code of Civil Procedure Section 47.5, nor should a complainant be required to acknowledge that they have read and understood such language.
- R8. A person who initiates a Citizen Complaint should not be required to verify or certify the contents of the complaint form.
- R9. The identification of the complainant on the Citizen Complaint form should be optional.
- R10. The signature of the complainant should not be required on the form.
- R11. Anonymous Citizen Complaints, and complaints initiated by minors, should be accepted and investigated in accordance with the agency's procedures.
- R12. Members of the public who desire information regarding a law enforcement agency's policy, procedures and Citizen Complaint forms should not be required to discuss their involvement, identity or situation before the materials are provided.
- R13. All Marin County law enforcement agencies should incorporate within their policies and procedures an appeal process that allows the complainant to appeal the disposition to an entity outside of the law enforcement agency.
- R14. Marin County law enforcement agencies should publish on their websites and annually update the number, nature and disposition of Citizen Complaints.

REQUEST FOR RESPONSES

Pursuant to California Penal Code §933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- The Cities and Towns of **Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito** and **Tiburon**: F1 – F7 and R1 – R14

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with California Penal Code §933(c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

From the following individual:

- The **Marin County Sheriff**: F1 – F7 and R1 – R14

The Grand Jury invites the following individuals to respond:

- The Police Chiefs of **Belvedere, Fairfax, Mill Valley, Novato, Ross, San Rafael, Sausalito, Tiburon** and **Central Marin Police Authority**: F1 – F7 and R1 – R14

At the time of publication of this report all website information was accurate as published.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.