

Annual Report of
the Fairfax County
Independent Police Auditor

2022



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Independent Police Auditor

2022 Annual Report of the Fairfax County Independent Police Auditor

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TABLE OF CONTENTS

SECTION I: OVERVIEW	1
SECTION II: INDIVIDUAL CASE REVIEWS	2
Closed Case Reviews with Incident Reports During 2022.....	3
Open Case Reviews at the End of 2022	4
Trends in Case Reviews.....	5
SECTION III: POLICY REVIEW & RECOMMENDATIONS	6
OIPA Recommendations	6
FCPD Responses to Recommendations	8
UTSA Study Recommendations	14
SECTION IV: ADMINISTRATIVE SUPPORT, COMMUNITY OUTREACH, AND PROFESSIONAL DEVELOPMENT	16
Support to the Panel and New Office of the Police Civilian Review Panel	16
Community Outreach.....	17
Professional Development.....	19
SECTION V: CITIZEN COMPLAINTS TO THE FCPD	21
SECTION VI: ANTICIPATED 2023 ACTIVITIES	22
Individual Case Reviews.....	22
Policy and Data Reviews	22
Police Civilian Review Panel.....	23
Other Anticipated Activities.....	23
APPENDIX A	24
2022: Incidents Reviewed or Monitored	24
All Years: Incidents Reviewed or Monitored.....	24
2022: Incident Type and Force Type of Cases.....	25
All Years: Incident Type and Force Type of Cases.....	25
2022: Police Auditor Findings for Incidents Reviewed or Monitored.....	26
All Years: Police Auditor Findings for Incidents Reviewed or Monitored	26
All Years: Allegations of Force Reviewed by OIPA	27
APPENDIX B	28
Links to 2022 OIPA Public Reports.....	28

SECTION I: OVERVIEW

The Office of the Independent Police Auditor (“OIPA”) was established by the Fairfax County Board of Supervisors (“BOS”) on September 20, 2016,¹ in response to recommendations from the Ad Hoc Police Practices Review Commission² and became operational on April 17, 2017. OIPA’s mission is to bolster trust between the citizens of Fairfax County and the Fairfax County Police Department (“FCPD”) by providing accountability, fairness, transparency, and trust in the complaint system and investigative process.

The Independent Police Auditor (“Auditor”) is mandated by the BOS to review:

1. All investigations of death or serious injury cases conducted by the Internal Affairs Bureau (“IAB”) of the FCPD; and
2. Use of Force (“UOF”) investigations which are subject of a public complaint made to the FCPD or the Auditor and which meet the definition of police use of force as incorporated in Police Department General Orders (“G.O.”) as of the date of the UOF or alleged misconduct.

The Auditor reviews FCPD internal administrative investigations of all relevant use of force cases and in custody-deaths for thoroughness, completeness, accuracy, objectivity, and impartiality, and issues a public report following the review. The OIPA also produces an annual report,³ as well as additional reports on FCPD policy recommendations or data reviews. Through its reports, the OIPA makes public recommendations for revisions to FCPD policies, training, and practices.

Until 2022, the OIPA provided administrative support to the BOS-mandated Fairfax County Police Civilian Review Panel (“Panel”), which receives complaints against the FCPD and reviews police investigations involving serious misconduct or abuse of authority allegations. In February

¹ [BOS September 20, 2016 Meeting](#)

² [Police Commission](#)

³ Independent Police Auditor Richard G. Schott presented the 2021 Annual Report to the BOS during the May 17, 2022 Public Safety Committee meeting, available at: [IPA 2021 Annual Presentation](#). This 2022 Annual Report will be presented to the BOS during a 2023 Safety and Security Committee meeting.

2022, the Office of the Police Civilian Review Panel (“OPCRP”) was established, led by an Executive Director, to provide support to the Panel and operate autonomously without relying on the OIPA for administrative support.⁴ The OIPA and the OPCR now constitute a bifurcated civilian oversight system in Fairfax County. The OIPA works alongside the OPCR to provide an accessible, safe, impartial, and responsive intake venue for complaints against the FCPD. Citizen complaints concerning use of force are now exclusively handled by the OIPA, while complaints concerning allegations of serious misconduct and abuse of authority by the FCPD are exclusively handled by the OPCR and the Panel.

This Annual Report provides a description of key OIPA activities that occurred during 2022 with an emphasis on individual case reviews conducted, recommendations made by the Auditor, complaint intake, and the transference of administrative support duties to the OPCR.

SECTION II: INDIVIDUAL CASE REVIEWS

The OIPA monitored or reviewed a total of 22 FCPD investigations during 2022.⁵ The majority (19) of cases were monitored, meaning that at the time of the incident—or shortly thereafter—the IPA was able to provide immediate feedback and/or recommendations to the FCPD concerning the ongoing FCPD investigation.

In 2022, twelve (12) investigations were monitored by the OIPA automatically due to the nature of the incident: 10 were officer-involved shootings and 2 were death or serious injury cases. The Auditor also monitored one investigation at the request of FCPD Chief Edwin C. Roessler Jr. immediately following the incident in 2020,⁶ which included the use of an electronic control weapon.

The public has the option to submit complaints to the OIPA or to the FCPD, and the Auditor reviews complaints submitted to the FCPD if they have a use of force allegation. The OIPA monitored two (2) FCPD investigations into uses of force during 2022 at the request of

⁴ At its July 27, 2021, meeting, the Board of Supervisors approved the Executive Director position to provide administrative support for the Panel’s work, among other duties.

⁵ Additional details on the investigations monitored or reviewed during 2022 are provided in Appendix A.

⁶ IPA-20-05.

complainants who submitted their allegations to the OIPA while the FCPD investigations were still ongoing. In one complaint made to the OIPA, the complainant alleged being pushed;⁷ in the other complaint made to the OIPA, the complainant alleged that officers brandished a firearm.⁸ The Auditor reviewed and/or monitored a total of 7 investigations that were the subject of a complaint of excessive force made to the FCPD. The types of force used by FCPD officers in these allegations were varied and included two takedowns, two uses of force to cuff, one brandished firearm, one strike, and one assault.

Closed Case Reviews with Incident Reports during 2022

In 2022, the OIPA published 8 reports on incidents that occurred during 2019 (2), 2020 (3), 2021 (2), or 2022 (1). The following is a breakdown of those incidents, and a link to each is provided in Appendix B:

OIPA Case #	Incident Date	Incident or Allegation Description	Initiated By	Review Start Date	Report Date
IPA-19-08	12/4/2019	D/SI (Canine Bite)	Automatic - Serious Injury	12/19/2019	4/14/2022
IPA-20-05	6/5/2020	UOF (ECW)	Request by Chief	6/6/2020	12/15/2022
IPA-20-09	11/10/2020	UOF (Push)	Complaint to OIPA	11/11/2020	8/26/2022
IPA-21-01	6/7/2019	UOF (Brandished Firearms)	Complaint to FCPD	4/12/2021	1/10/2022
IPA-21-02	11/23/2020	UOF (Assault)	Complaint to OIPA	7/7/2021	9/14/2022
IPA-21-03	7/19/2021	OIS	Automatic	7/19/2021	8/2/2022
IPA-21-04	1/18/2021	UOF (Takedown)	Complaint to FCPD	8/3/2021	6/10/2022
IPA-22-02	2/15/2022	OIS	Automatic	3/03/2022	11/30/2022

KEY: OIS – Officer-Involved Shooting ICD – In-Custody Death UOF – Use of Force

⁷ While a push was alleged, it was determined that no force was used by officers during the incident (IPA-20-09).

⁸ IPA-22-09.

Of the eight reports published during 2022, the IPA found that each of the eight FCPD investigations met the standards of being complete, thorough, accurate, objective, and impartial. However, the IPA did make recommendations in three incident reports, which are discussed in greater detail in Section III of this Annual Report.

Open Case Reviews at the End of 2022

Two reviews underway at the start of 2022 were not completed during 2022 and will continue into 2023. Public reports of those two reviews will be issued when they are completed:

OIPA Case #	Incident Date	Incident or Allegation Description	Initiated By	Review Start Date
IPA-20-02	1/28/2020	OIS	Automatic	1/29/2020
IPA-20-10	12/17/2020	OIS	Automatic	12/18/2020

During 2022 the OIPA began monitoring or reviewing FCPD investigations into 13 incidents. Twelve of those OIPA reviews will continue into 2023 and public reports will be issued as they are completed.⁹ The following is a breakdown of those incidents:

OIPA Case #	Incident Date	Incident or Allegation Description	Initiated By	Review Start Date
IPA-22-01	1/4/2022	OIS	Automatic	1/4/2022
IPA-22-03	6/30/2021	UOF (Takedown)	Complaint to FCPD	1/6/2022
IPA-22-04	9/13/2021	UOF (Force to Cuff)	Complaint to FCPD	1/6/2022
IPA-22-05	11/14/2021	UOF (Strike)	Complaint to FCPD	1/6/2022
IPA-22-06	12/19/2021	UOF (Force to Cuff)	Complaint to FCPD	1/6/2022
IPA-22-07	6/30/2022	OIS	Automatic	6/30/2022
IPA-22-08	7/7/2022	OIS	Automatic & Complaint to OIPA	7/8/2022

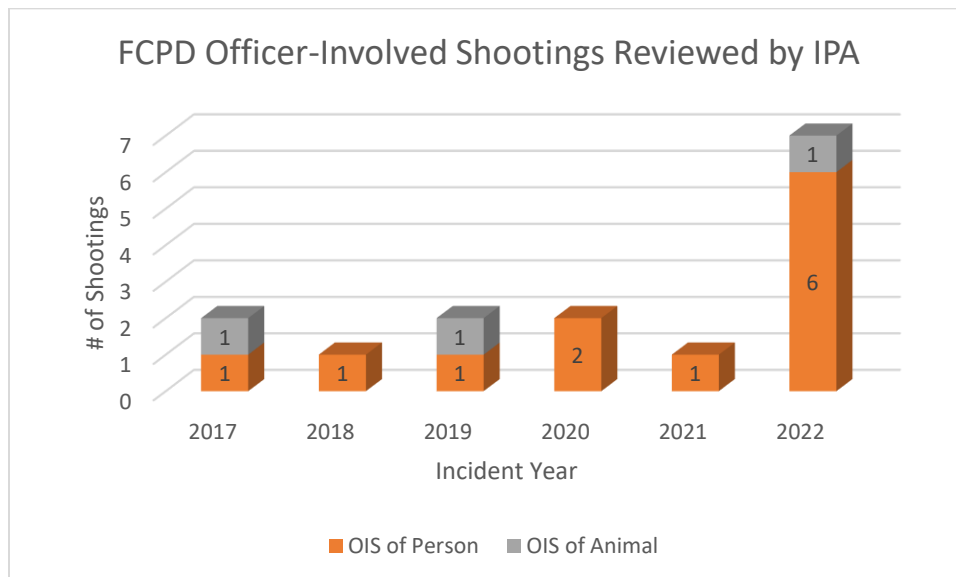
⁹ The review of IPA-22-02 began and was completed during 2022. The OIPA report was published on November 30, 2022.

OIPA Case #	Incident Date	Incident or Allegation Description	Initiated By	Review Start Date
IPA-22-09	7/9/2022	UOF (Brandished Firearm)	Complaint to OIPA	7/11/2022
IPA-22-10	8/2/2022	OIS & PIT	Automatic	8/3/2022
IPA-22-11	10/6/2022	OIS	Automatic	10/6/2022
IPA-22-12	11/10/2022	ICD	Automatic	11/10/2022
IPA-22-13	12/7/2022	OIS-Animal	Automatic	12/9/2022

Trends in Case Reviews

At the end of 2022, the OIPA reviewed the data on all case reviews undertaken since the office was established in 2017, in an effort to identify any trends in the types of cases reviewed over the five-year span.¹⁰

From 2017-2021, the OIPA reviewed a total of eight FCPD officer-involved shootings, which included the shooting of two domesticated animals. However, in 2022 alone, the FCPD had seven officer-involved shootings, one of which was of a domesticated animal.



¹⁰ See Appendix A.

From 2017-2022, the OIPA reviewed four use of force (not officer-involved shooting) incidents which resulted in death or serious injury (two each in 2017 and in 2019). In three of these incidents, serious injuries were sustained and in one incident the subject died. During that same timeframe, the IPA reviewed two in-custody deaths not involving a use of force (one each in 2018 and in 2022).

The remaining incidents reviewed or monitored by the OIPA since 2017 were uses of force that did not result in serious injury or death, and did not include an officer-involved shooting, nor was an in-custody death involved. Four of these incidents were reviewed by the OIPA at the request of the FCPD Chief.

Finally, the OIPA reviewed a total of thirty complaints from the public on uses of force by FCPD officers since 2017. The number of incidents subject of a public complaint has varied each year—with a high of twelve in 2018 to a low of only one in 2022.¹¹ The public complaints prompted OIPA reviews of allegations involving a variety of force techniques—with the most common allegations during that time involving uses of force to cuff and takedowns, each being complained of ten separate times between 2017-2022.¹²

SECTION III: POLICY REVIEW & RECOMMENDATIONS

In addition to conducting individual incident reviews, the OIPA makes public recommendations to the Chief of Police concerning the revision of FCPD policies, training, and practices. The BOS is notified when the Auditor issues recommendations. In 2022, the Auditor examined FCPD policies, practices, and training, both in the context of individual incident reviews and independent of an individual incident review.

OIPA Recommendations

In 2022, the Auditor made 17 recommendations through its incident reports, a review of the FCPD's DRAFT revised Use of Force General Order, and an OIPA Memo in Response to the

¹¹ As of March 1, 2023. The OIPA or the FCPD may still receive complaints about the use of force during incidents which occurred in 2022.

¹² See Appendix A.

UTSA/CAC Report to the BOS presented in March, 2022. Nine recommendations were implemented and 6 were not implemented by the FCPD. The two remaining recommendations made by the Auditor reflected his agreement that the FCPD not implement two of the CAC's recommendations.

In 2022, the OIPA made a recommendation in each of three incident reviews – a canine bite (IPA-19-08), an assault complaint (IPA-21-02), and an officer-involved shooting (IPA-21-03). The OIPA's recommendation to revise G.O. 530.1 to require a warning before releasing a patrol service dog was implemented. The other two recommendations – which were reiterations of previous recommendations made by the Auditor – were also implemented. These addressed adding non-criminal factors to the consideration of whether force was objectively reasonable during a non-criminal situation and training on the proper conduct of searches incident to a lawful arrest.

In April 2022, the FCPD sought feedback from its community partners as it thoroughly revised the department's General Order 540 on Use of Force. The Auditor provided ten recommendations for the FCPD to consider, and the FCPD has implemented five of the ten.¹³ The recommendations that were implemented included, for example, the addition of definitions for Impact Weapons, Oleoresin Capsicum Spray (OC), and Kinetic Energy Impact Systems in the G.O.'s list of definitions. Among the five Auditor recommendations the FCPD did not incorporate was a reiterated recommendation—also made to the FCPD in 2017—to replace the term "less-lethal" with "non-deadly" force throughout the G.O. The FCPD's revised G.O. 540 streamlined the prior 55-page policy on Use of Force down to a more manageable 19 pages, 6 of which simply provide definitions and legal references.

The Auditor's recommendations as they relate to the UTSA and CAC reports are described more fully below in the section on UTSA Study Recommendations.

Also, during 2022, the FCPD implemented 12 of the Auditor's recommendations made prior to that calendar year and the FCPD was in the process of implementing one additional

¹³ The revisions were incorporated in the new FCPD G.O. 540, effective August 12, 2022.

recommendation (ultimately adopted in January 2023). The OIPA continues to monitor changes to FCPD’s data collection and publication as related to an OIPA recommendation made in 2020.

FCPD Responses to Recommendations

Recommendations made by the OIPA on FCPD policies, practices, and training are compiled in a Recommendations Matrix, which is periodically updated to reflect their implementation status to keep the Board of Supervisors and the public informed.¹⁴

Below are excerpts¹⁵ from the latest matrix, which reflects Auditor recommendations made or adopted during 2022.

Status of Auditor Recommendations Made During 2022

IPA Case # Incident Date	Report Date	Auditor Recommendation	Status (as determined by the IPA)
G.O. 540 Review Feedback	4/6/2022	G.O. 540 should be revised to replace the term "less-lethal" with "non-deadly" force (G.O. 540 III. L. and throughout).	Not implemented
G.O. 540 Review Feedback	4/6/2022	G.O. 540 III. B. should be revised to remove the language that deadly force is "intended" to cause death or serious injury.	Not implemented
G.O. 540 Review Feedback	4/6/2022	G.O. 540 should be revised to replace the word "immediate" with "imminent" in regards to a threat to the safety of the officers or others (G.O. 540 III. F. and throughout).	Not implemented
G.O. 540 Review Feedback	4/6/2022	G.O. 540 III. should be revised to add definitions for Impact Weapons, Oleoresin Capsicum Spray (OC), and Kinetic Energy Impact Systems in the list of definitions.	Implemented (see G.O. 540, effective 8/12/2022)

¹⁴ An update to the matrix was published on the OIPA webpage in March, 2022 and again in March, 2023.

¹⁵ The complete Recommendations Matrix is available from [IPA Reports and Recommendations](#).

IPA Case # Incident Date	Report Date	Auditor Recommendation	Status (as determined by the IPA)
G.O. 540 Review Feedback	4/6/2022	G.O. 540 III. M. should be revised to reflect that low level control is not "likely" to cause injury, rather than not "intended" to cause injury.	Implemented (see G.O. 540, effective 8/12/2022)
G.O. 540 Review Feedback	4/6/2022	G.O. 540 III. Q. should be revised to reflect that more than one type or level of force may be objectively reasonable.	Implemented (see G.O. 540, effective 8/12/2022)
G.O. 540 Review Feedback	4/6/2022	G.O. 540 IV. E. should be revised to reflect that officers shall use a proportional amount of force which is "objectively reasonable", rather than "necessary".	Implemented (see G.O. 540, effective 8/12/2022)
G.O. 540 Review Feedback	4/6/2022	G.O. 540 should be revised to include a definition of what is meant by "officers must have an elevated level of justification prior to deploying an ECW" on certain individuals as stated in Section VI. D. 3.	Not implemented
G.O. 540 Review Feedback	4/6/2022	G.O. 540 VII. Use of Deadly Force should be revised to reflect that no other force options to gain control of the individual(s) can be deployed safely or effectively. Specifically, recommended language was "no other force option to gain control of the individual(s) can be deployed safely or effectively, or has already proven to be ineffective. If feasible, officers shall provide a verbal warning that deadly force is about to be deployed."	Implemented (See G.O. 540, effective 8/12/2022)
G.O. 540 Review Feedback	4/6/2022	G.O. 540 VII. C. 2. should be revised to include verbatim the factors enumerated in <u>Graham v. Connor</u> as part of the totality of the circumstances related to a use of deadly force.	Not implemented
19-08 12/4/2019	4/14/2022	G.O. 530.1 should be revised to require a warning before releasing a patrol service dog anytime the dog is being released for the purpose of apprehending an individual. The requirement should include the caveat that a warning is required only when it is feasible, and that no warning is required if there is a reasonable belief that officer safety may be compromised by providing a warning.	Implemented (see G.O. 531, effective 8/11/2022)

IPA Case # Incident Date	Report Date	Auditor Recommendation	Status (as determined by the IPA)
Memo: IPA Response to UTSA and CAC Report	5/13/2022	FCPD's revised General Order 540 on USE OF FORCE[1] should state: "If force is required, officers should attempt to use only a minimal amount of force reasonably needed to overcome an individual's resistance and to gain control, and officers will receive training on various techniques which constitute less-lethal force or lethal force." (pg. 2)	Implemented (see G.O. 540, effective 8/12/2022)
Memo: IPA Response to UTSA and CAC Report	5/13/2022	Capturing Data on Potential Deadly Force Incidents: I recommend documenting ALL instances when force (lethal or less-lethal) would have been authorized by law and policy but was not used. (pg. 3 and 4)	Not implemented
Memo: IPA Response to UTSA and CAC Report	5/13/2022	Clarifying in Policy When Force May be Used: I disagree that the "objective reasonableness" standard should be replaced with "necessary and proportional" to judge the actual use of force. Police departments should strive for and train officers to utilize a minimal (or proportional) amount of objectively reasonable force when justified, but I do not agree that the written policy should be overly restrictive. (pg. 4)	OIPA agrees with the FCPD in not implementing the CAC recommendation
Memo: IPA Response to UTSA and CAC Report	5/13/2022	Clarifying in Policy Permissible Force Where No Probable Cause to Arrest: Recommend leaving intact the requirement for officers to use reasonable care, to include the use of appropriate de-escalation techniques, and prohibiting them from using force during an investigative detention when the person being detained is compliant. (p. 6)	OIPA agrees with the FCPD in not implementing the CAC recommendation

IPA Case # Incident Date	Report Date	Auditor Recommendation	Status (as determined by the IPA)
IPA-21-03 7/19/2021	8/2/2022	Reiterated recommendation from 17-02: adding non-criminal factors to consider when determining whether force was objectively reasonable during a non-criminal situation, or when the individual is experiencing a medical or mental health crisis while engaged in criminal activity. An alternative recommendation to adding these non-criminal factors to the existing list of factors already in G.O. 540.5 is to simply eliminate all delineated factors and emphasize that the reasonableness of any particular use of force is determined by examining any and all, or the totality of, the circumstances.	OIPA's alternative recommendation implemented (see G.O. 540, effective 8/12/2022)
IPA-21-02 11/23/2020	9/14/2022	FCPD should place an increased emphasis on the importance of and training on the proper conduct of such searches incident to a lawful arrest.	Implemented prior to OIPA recommendation in IPA-21-02, in part because of earlier OIPA recommendation to incorporate 4th Circuit Court of Appeals ruling in <i>United States v. Davis</i> (see Regulation 203, effective 7/22/2022, and G.O. 601, effective 6/24/2022).

Recommendations Previously Made by the Auditor Implemented or In Progress in 2022

IPA Case # Incident Date	Report Date	Auditor Recommendation	Status (as determined by the IPA)
17-02 4/14/2017	1/31/2018	Consider new factors for UOF on an individual not engaged in criminal activity	Implemented with modifications (See G.O. 540, effective 8/12/2022)
17-01 1/16/2017	1/26/2018	Make available more “less lethal” options to each patrol shift	<p>Implemented with modifications (2018)</p> <p>Fully implemented March, 2022.</p> <p>The FCPD further enhanced the number of "less lethal" options available to its officers by announcing a pilot rollout of the BolaWrap device in November, 2022.</p>
17-07 6/23/2017	6/19/2018	Officers should request a CIT officer/Mobile Crisis Unit to engage person in crisis; obtain voluntary commitment	Implemented (see G.O. 609, effective 3/26/22)
17-07 6/23/2017	6/19/2018	Officers should seek additional information from family members and other witnesses about past behavior when dealing with a person in crisis	Implemented (see G.O. 609, effective 3/26/22)
Data Review: Use of Force 2016	3/11/2020	The FCPD should take steps to collect and publish data on other kinds of police activities by subject race, such as traffic stops, consents to search, arrests, and citations.	Partially implemented in 2020; continues In Progress.
Memo	5/26/2020	Policy changes to G.O. 203 REGULATIONS to ensure consistency with the G.O. on ARREST PROCEDURES.	Implemented (see G.O. 203, effective 7/22/2022)

IPA Case # Incident Date	Report Date	Auditor Recommendation	Status (as determined by the IPA)
Memo	5/26/2020	Policy changes to G.O. 601 ARREST PROCEDURES, including to recognize the full extent of and limitations on the lawful search incident to arrest.	Implemented (G.O. 601, effective 1/1/2021) G.O. 601 was again revised, effective 6/24/2022, and includes the previously recommended language recognizing the lawful scope of a search incident to arrest.
20-07 4/28/2019	12/14/2020	Add consensual encounters, investigative detentions, and arrests to the mandatory activation of ICV equipment listed in FCPD G.O. 430.8 IV. A.	Implemented with modifications; Spirit of recommendation has been implemented by virtue of full implementation of the BWC program (see G.O. 509, effective 4/11/2022)
20-07 4/28/2019	12/14/2020	Mandate that custodial interrogations conducted in an FCPD-controlled interrogation room be recorded. Potential exceptions to mandatory recording of custodial interrogations should be identified.	Implemented (see G.O. 203, effective 7/22/2022)
20-06 5/27/2020	2/25/2021	Reiterated recommendation from 20-07	Implemented (see G.O. 203, effective 7/22/2022)
20-01 10/20/2019	3/25/2021	FCPD G.O 502 on “normal vehicle operations” should be revised to fix grammatical errors and reduce redundant language.	In Progress during 2022 (see G.O. 502, effective 1/9/23)
20-03 10/25/2019	5/7/2021	Add the “preponderance of the evidence” burden of proof standard to both the “Unfounded” and the “In Compliance” findings listed in FCPD G.O. 301 VI.	Implemented (see G.O. 301, effective 5/4/2022)
20-03 10/25/2019	5/7/2021	Whenever possible, any vehicle used to transport an arrestee shall be equipped with forward-facing and rear-facing in-car video capability and shall be equipped with safety partitions between the front and rear seats.	Implemented (see Regulation 203, effective 7/22/2022)
Memo	6/9/2021	Revision to FCPD G.O. 601 ARREST PROCEDURES to reflect 4th Circuit ruling in U.S. v. Davis.	Implemented (see G.O. 601, effective 6/24/2022)

UTSA Study Recommendations

The research team from the University of Texas at San Antonio (“UTSA”)—commissioned by OIPA in 2020 to conduct a comprehensive examination of available FCPD use of force data—made several recommendations to the FCPD in the report it provided to the BOS in June, 2021.¹⁶ Those recommendations were categorized into Data Collection recommendations, Policy recommendations, and Training and Organizational recommendations.

The BOS subsequently empaneled the Fairfax County Use of Force Community Advisory Committee (“CAC”) to, among other things, assess the recommendations made by the UTSA research team. The CAC presented its assessment of the UTSA recommendations and made recommendations of its own during the BOS’s March 1, 2022, Public Safety Committee (“PSC”) meeting.

Auditor Response to UTSA and CAC Recommendations

The Auditor reviewed both groups’ recommendations in 2022 and articulated his agreement with the majority of them. However, he did express concerns regarding one recommendation made by UTSA and three recommendations made by the CAC.¹⁷

The Auditor disagreed with UTSA’s recommendation that policy stipulate “if force is required, officers *will* use only the amount of force reasonably needed to overcome an individual’s resistance and to gain control.” He agreed that police departments should strive for and train officers to utilize a minimal amount of objectively reasonable force when justified but did not agree that the written policy should be so restrictive. Instead, the Auditor recommended that FCPD’s revised General Order 540 on USE OF FORCE state: “If force is required, officers should attempt to use only a minimal amount of force reasonably needed to overcome an individual’s resistance and to gain control, and officers will receive training on various techniques which constitute less-lethal force or lethal force.”

¹⁶ See OIPA’s 2021 Annual Report for a full description of the study and the final report.

¹⁷ Memo to the BOS and the FCPD dated May 13, 2022.

In response to the CAC's objection to a UTSA recommendation on capturing data on potential deadly force incidents, the Auditor reiterated his agreement with UTSA's recommendation to document instances when lethal force would have been authorized by law and policy but was not used, and further recommended that FCPD capture the same data on less-lethal force. The Auditor argued that the capturing of such data would be complimentary to collecting data on de-escalation techniques, which was another recommendation made by both UTSA and the CAC.

The Auditor disagreed with the CAC that the "objective reasonableness" standard should be replaced with "necessary and proportional" to judge an officer's actual use of force. The Auditor expressed agreement with courts that continue to treat the actual use of force as a separate issue to be examined at a particular moment in time, and apart from any actions preceding the use of force. Police departments should strive for and train officers to utilize a minimal (or proportional) amount of objectively reasonable force when justified, but the written policy on the use of force should not be overly restrictive. The events leading up to a use of force should be evaluated and, if the pre-force conduct of officers is determined to be unsatisfactory, the faulty conduct should be addressed.

Finally, the Auditor expressed disagreement with the CAC's recommendation to only allow force during an investigative detention for "safety reasons" since, as the CAC points out, investigative detentions only require reasonable suspicion (not probable cause). The Auditor referred to a recent example of a failed law in Washington State that prevented officers from using force unless they had probable cause to arrest. He recommended leaving intact the policy requirement for officers to use reasonable care—to include the use of appropriate de-escalation techniques—and prohibiting officers from using force during an investigative detention when the person being detained is compliant.

Status of FCPD Implementation of UTSA Recommendations

UTSA’s recommendations were incorporated into the “FCPD and BOS Police Reform Tracker,” an effort managed by Supervisor Rodney Lusk’s office in response to community calls for police reform starting in 2020.¹⁸ Throughout 2022, the Board of Supervisors, the CAC, and the FCPD engaged in discussion on the status of implementation of the UTSA recommendations and the CAC responses to them.

SECTION IV: ADMINISTRATIVE SUPPORT, COMMUNITY OUTREACH, AND PROFESSIONAL DEVELOPMENT

Support to the Panel and New Office of the Police Civilian Review Panel

Throughout 2022, the OIPA worked to transfer its previous administrative support duties to the OPCRP. When the Panel’s Executive Director began his tenure in February 2022, and the Management Analyst began at the end of September 2022, OIPA staff oriented OPCRP staff on the history of the Panel and on the various support tasks it had provided to the Panel, so that the transfer of administrative duties from the OIPA to the OPCRP could be accomplished.

From 2017 until 2022, the OIPA served as an independent intake venue for complaints against the FCPD, including allegations of serious police misconduct or abuse of authority, which fall under the review authority of the Panel. OIPA staff received and processed 18 initial complaints and 3 requests for review on behalf of the Panel from January through September, 2022, when the OPCRP was fully staffed and able to take over the receipt and processing of complaints.

The OIPA also provided administrative support to the Panel during much of 2022 during the initial phase of inception for the OPCRP. This support included managing the logistics of Panel business meetings and subcommittee meetings; maintaining data on complaints and Panel processes; and producing timely meeting summaries and audio recordings of all Panel public

¹⁸ See, [Police-Reform-Suggestions](#), last updated on September 28, 2021.

meetings.¹⁹ During 2022, OIPA staff provided administrative support for 8 Panel business meetings and 3 subcommittee meetings. OIPA staff also supported the Panel in conducting an April, 2022 meeting with representatives from the FCPD, OIPA staff, the County Attorney's Office, the Panel Chair and Vice Chair, the deputy County Executive for Public Safety, and the Chiefs of Staff for the Chairman of the Board of Supervisors and the Chairman of the Public Safety Committee. Once the OPCRP was fully staffed and able to provide administrative support to the Panel's meetings, OIPA attended the regular business meetings of the Panel in November and December, 2022. Additionally, until the staffing of the OPCRP's Management Analyst position, OIPA staff served as liaison between the Panel and the FCPD's Internal Affairs Bureau, maintained all Panel public records and responded to FOIA requests, drafted correspondence and reports, and maintained the Panel's webpage.

Community Outreach

During 2022, OIPA staff participated in several community meetings and FCPD functions to inform the Fairfax County community about the Auditor, the Panel, and their respective responsibilities. Among those outreach events were the following:

- March 2022 – Participated in FCPD's Leadership Retreat at the National Law Enforcement Museum
- March 2022 – Met with Scotland Delegation (PERF) during their visit with the FCPD
- March 2022 – Participated in and presented during the FCPD's Use of Force Community Workshop
- May 2022 – Guest lectured for George Mason University's CRIM 490 Police Use of Force Class
- May 2022 – Attended the Fallen Officer Memorial service at FCPD Headquarters
- September 2022 – Presented to the Fairfax County Community Police Academy

¹⁹ OIPA utilized a temporary and part-time staff position to assist it in meeting its administrative duties to the Panel during 2021-2022.

- November 2022 – Attended the Mt. Vernon Public Safety Community Update Session
- November 2022 – Attended and presented at the Police Civilian Review Panel Reception

OIPA was also involved in outreach efforts to other jurisdictions in the Commonwealth and nationwide. The OIPA was involved in developing and presenting a virtual workshop for the National Association for Civilian Oversight of Law Enforcement’s (NACOLE) Annual Training in October, 2022. OIPA staff worked closely with colleagues from Charlottesville, Arlington, and the University of Virginia to present on “Oversight in the Old Dominion: The Past, Present, and the Path Forward for Civilian Oversight in VA.” In addition, the Auditor presented in November, 2022, to the F.B.I. National Academy Associates - Virginia Chapter’s First Line Supervisor School.

In 2022, OIPA staff collaborated with an oversight representative from Charlottesville to bring together police oversight practitioners and form a Virginia-specific alliance on civilian oversight. The need for such a group heightened as a result of the passing of Virginia Senate Bill 5035, which authorized localities in Virginia to establish law-enforcement civilian oversight bodies. OIPA staff first convened the alliance in May, 2022 and facilitated three additional meetings in 2022. OIPA staff worked with its partners to grow membership to include representatives from Alexandria, Arlington, Charlottesville, Fairfax County, George Mason University, Norfolk, and the University of Virginia. In addition, OIPA staff led the work of a subcommittee to develop a vision, mission, and goals for the alliance. It is anticipated that the alliance will provide a forum where practitioners can network, exchange effective practices and resources, and discuss Virginia-specific legislation and challenges in implementing oversight. Members are currently in discussions with NACOLE to determine how these two entities can work together, and support and complement each other, moving forward. The OIPA’s active involvement in this alliance will ensure that Fairfax County remains a part of advancements in the field of civilian oversight, specifically as it is implemented in the Commonwealth.

Professional Development

Staff in the OIPA participated in professional development opportunities throughout the year to continue to learn and keep abreast of national trends and research:

The Auditor attended the 2022 Consent Decree Symposium in Fort Worth, Texas, on March 31 - April 1, 2022. The annual symposium brings together oversight experts from across the country and personnel from the Department of Justice to discuss issues of police reform and accountability, latest trends, and “best practices.”

OIPA took advantage of all NACOLE had to offer in 2022. The Auditor and staff attended the in-person annual NACOLE Conference in Fort Worth, Texas, from September 11 – 15, 2022, which included presentations on and discussion of topics such as “The Importance of Evidence-Based Research in Civilian Oversight of Law Enforcement,” “The Challenges of Prosecuting Police Officers,” and “Outputs vs. Outcomes: Setting and Communicating Performance Expectations for Oversight.” The Auditor and staff attended the virtual portion of NACOLE’s annual conference during October and November 2022, as well as all six NACOLE’s virtual webinars offered during the year. Both the Auditor and staff maintained the status of being NACOLE certified practitioners of oversight.

The Auditor attended the International Association of Chiefs of Police annual conference in Dallas, Texas in October 2022.

The Auditor’s service on the IACP Working Group on “Pre-Arrest Diversion” (also called “Alternatives to Arrest”) from 2019 – 2022 culminated in September, 2022, when the IACP adopted that Working Group’s product and published new guidance on Alternatives to Arrest on its website.²⁰

The Auditor also continued his service on NACOLE’s Use of Force Policy Development Committee during 2022. The committee presented its DRAFT comprehensive model policy on Use of Force (which includes various topics related to the Use of Force) to the NACOLE Board

²⁰ Available at [Alternatives to Arrest \(theiacp.org\)](https://theiacp.org).

for its consideration. The goal is for NACOLE to adopt the committee’s model Use of Force policy which can then be consulted by oversight practitioners and law enforcement agencies whenever they update and modify existing Use of Force policies in their jurisdictions.

In March, 2022, the Auditor participated in the debrief outlining the results of the Department of Homeland Security’s (“DHS”) Use of Force Simulation Experiment (“SIMEX”).²¹ The Auditor had previously represented the field of civilian oversight while taking part in the SIMEX in 2020 and 2021. The SIMEX was designed to explore and analyze current and evolving procedures and technology to ensure the appropriate use of force by state, local, and federal law enforcement officers. Results and data generated from the SIMEX will be used by DHS leadership, and by state and local law enforcement agencies, to develop best practices for the use of force and to tailor those best practices to their respective jurisdictions. DHS brought together representatives from DHS components, police chiefs and sheriffs, law enforcement research organizations, members of state and local law enforcement agencies, and oversight practitioners to participate in the SIMEX.

Findings from SIMEX 21-3, released in March, 2022, offer four overarching recommendations intended to serve as evidence-based insights for the LE community and associated stakeholders to supplement the establishment of best practices relevant for their unique jurisdiction:

1. reductions in use of lethal force require further investment in training and non-lethal options to improve proficiency levels across a highly complex and demanding profession;
2. LE agencies must take steps to foster an organizational culture that values transparency and communication about common sources of internalized stress, such as the constant risk of grave consequences including loss of life, subject/bystander non-compliance, public scrutiny, and use of force decision making;
3. LE organizations should fund and continue investigating collaboration models between LEOs and clinical mental health service providers that allow all participants

²¹ The full report was released on March 11, 2022. Related materials can be accessed from [SIMEX Resources Homeland Security \(dhs.gov\)](#).

to utilize their strengths in working with the community without increasing the risk to any individuals; and

4. LE organizations should invest in future research regarding cognitive process of officer decision making regarding use of force, implicit bias, and threat detection disparities for historically marginalized and vulnerable populations.

SECTION V: CITIZEN COMPLAINTS TO THE FCPD

As mandated by the BOS,²² the FCPD provides a public report to the Auditor on the disposition of all citizen complaints made against the FCPD so that the Auditor can ensure the FCPD is “properly responding to” and investigating these complaints in a “timely manner.”

The following chart depicts the status of all citizen complaints lodged against the FCPD during 2022:

Quarterly Case Status by Received Date
Fairfax County Police Department
Internal Affairs Bureau

Citizen Complaint Status	2022 Quarter 1 Jan/March	2022 Quarter 2 April/June	2022 Quarter 3 July/Sept	2022 Quarter 4 Oct/Dec	Total
Active	1	8	8	22	39
Exonerated/ Exonerated by Technology	10	25	14	1	50
Not Sustained		3	1		4
Sustained	2	4		1	7
Unfounded	7	18	12	1	38
Policy Infraction	1	1	4		6
Total	21	59	39	25	144

Last Updated: January 13, 2023
Source: IAPro RMS System

²² See [September 20, 2016, BOS Action Item](#) establishing the OIPA.

In 2022, the FCPD's Internal Affairs Bureau continued its notable progress—as documented in OIPA's 2021 Annual Report—on resolving complaints made against the FCPD. Overall, 73% of all complaints lodged during 2022 were resolved by the end of the year. Only one of 21 complaints made during January – March, 2022 remained active, while over half (56%) of the unresolved complaints had come to the FCPD between October – December, 2022.

The FCPD revised its G.O. 301 INTERNAL INVESTIGATIONS during 2022, becoming effective on May 4, 2022. The revised G.O. provides for two new findings at the conclusion of an internal investigation: “Unfounded by Technology” and “Exonerated by Technology.” It also mandates that all internal investigations' findings must be based on a preponderance of the evidence. It appears that this newly revised G.O. governing internal investigations will continue to allow the FCPD to properly respond to citizen complaints in a timely manner.

SECTION VI: ANTICIPATED 2023 ACTIVITIES

During 2023, the OIPA will continue to monitor and review FCPD internal investigations, and provide recommendations for changes to FCPD policies, training, and practices. More specifically, anticipated OIPA activities in 2023 are described below.

Individual Case Reviews

During 2023, the Auditor will continue to monitor and review the thirteen FCPD investigations of incidents still underway at the end of 2022, which includes six of the seven FCPD officer-involved shootings that took place in 2022. New incident reviews in 2023 will include those that are monitored at the inception of the FCPD investigation because of the nature of the incident, those that are initiated by a citizen complaint to the FCPD or to the OIPA during or after the FCPD investigation has concluded, and those that are undertaken at the request of the FCPD Chief.

Policy and Data Reviews

UTSA Research Study on Use of Force: OIPA will continue to monitor the implementation of the recommendations made by the UTSA-led research team. This will include assisting the

FCPD and the Fairfax County Use of Force Community Advisory Committee, which was empaneled specifically to review and provide feedback to the BOS on UTSA's findings, and to assess data and policy recommendations made by the research team. In 2023, the Auditor will serve as a non-voting member of a Police Reform Matrix Working Group, which is tasked with developing priorities for action for the Board of Supervisors to consider. It is anticipated that a number of UTSA recommendations will be recommended as priorities for the FCPD to address.

Data Reviews: The OIPA will meet with individual Supervisors and with FCPD Internal Affairs staff in 2023 to determine the types of data reviews OIPA may conduct that would advance the public's understanding of use of force.

Police Civilian Review Panel

Citizen complaints concerning use of force are now exclusively handled by the OIPA, while complaints concerning allegations of serious misconduct and abuse of authority by the FCPD are exclusively handled by the OPCR and the Panel. During 2023, OIPA will work with the Panel's Executive Director to develop new policies and procedures for processing citizen complaints, to conduct outreach to the Fairfax County community, and to provide training for the Police Civilian Review Panel.

Other Anticipated Activities

Finally, in 2023, OIPA expects to continue or resume its:

- Participation in community outreach events.
- Collaboration with other jurisdictions in Virginia implementing, or hoping to implement, civilian oversight.
- Involvement with NACOLE's Use of Force Policy Development Committee.
- Review of Virginia General Assembly bills addressing criminal justice and reform measures to provide input to the county's Government Relations Office.

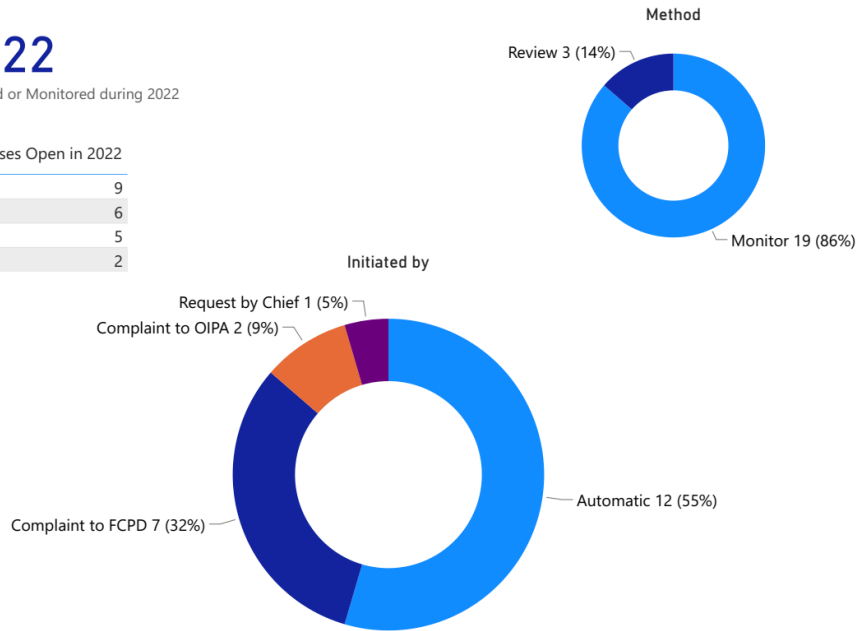
APPENDIX A

2022: Incidents Reviewed or Monitored

22

Incidents Reviewed or Monitored during 2022

Incident Year	# Cases Open in 2022
2022	9
2021	6
2020	5
2019	2

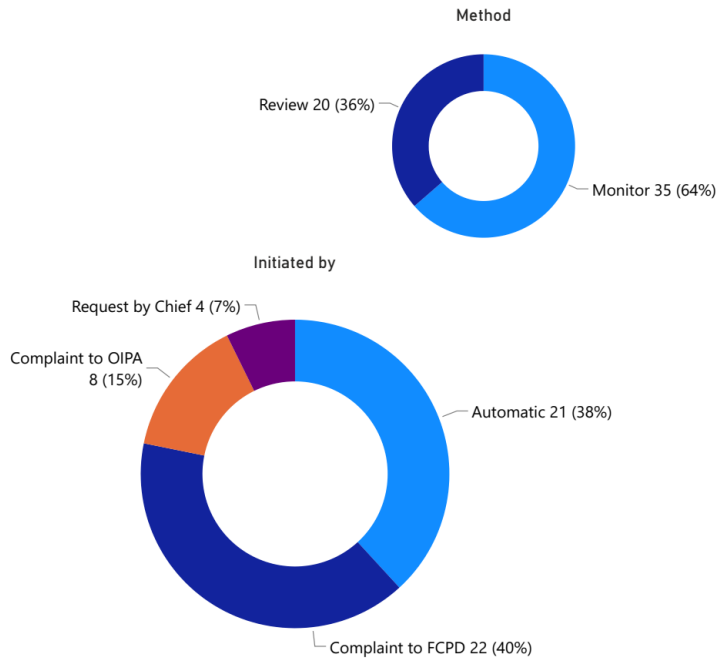


All Years: Incidents Reviewed or Monitored

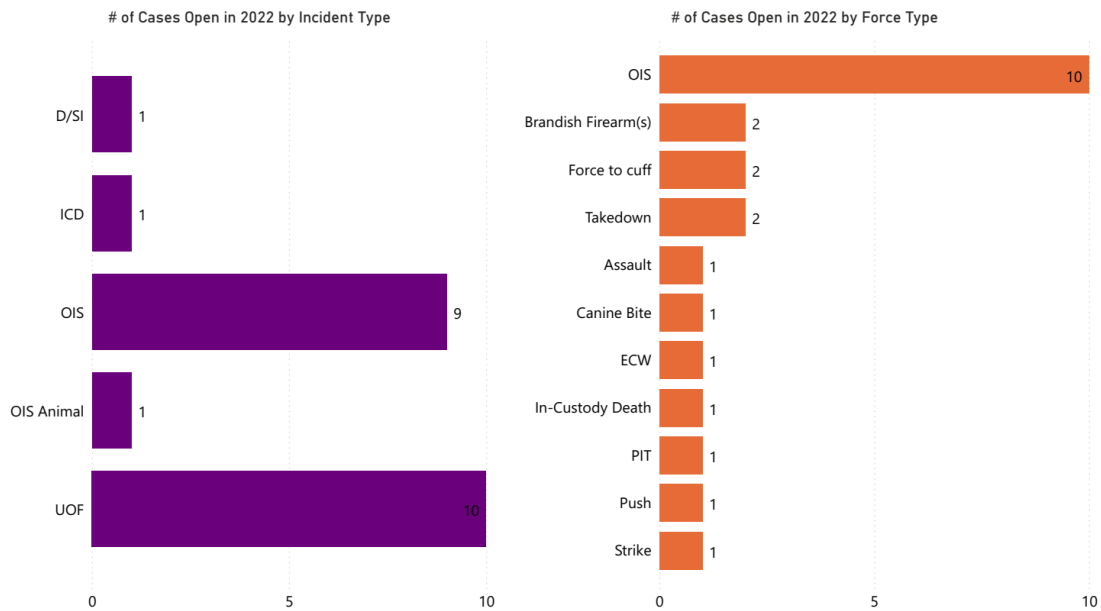
55

Incidents Reviewed or Monitored to Date

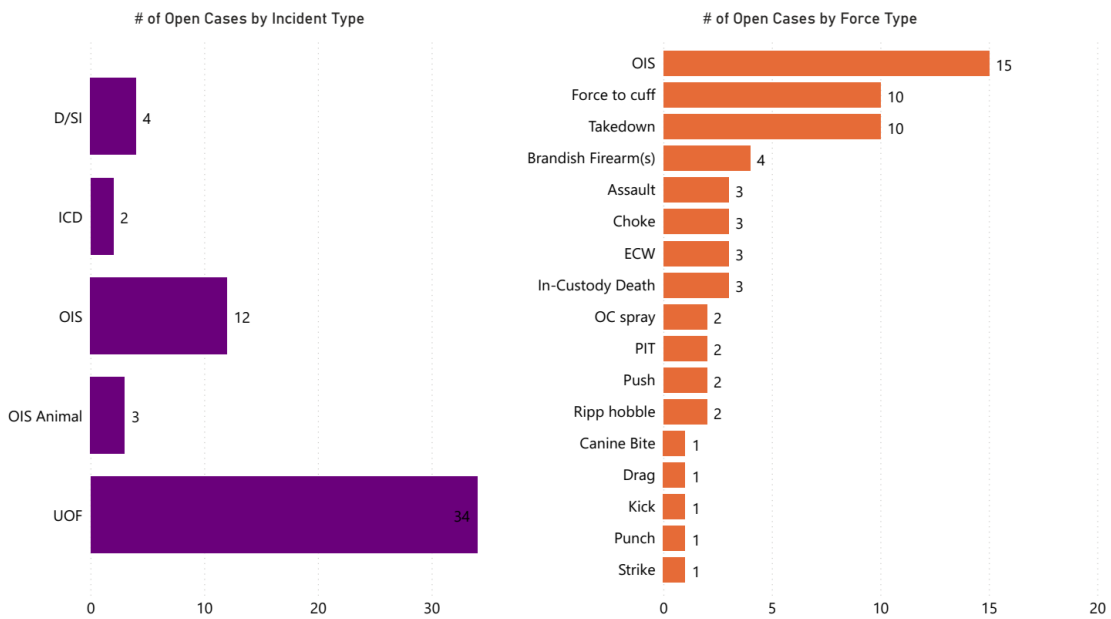
Incident Year	# Cases
2017	7
2018	14
2019	13
2020	6
2021	6
2022	9



2022: Incident Type and Force Type of Cases



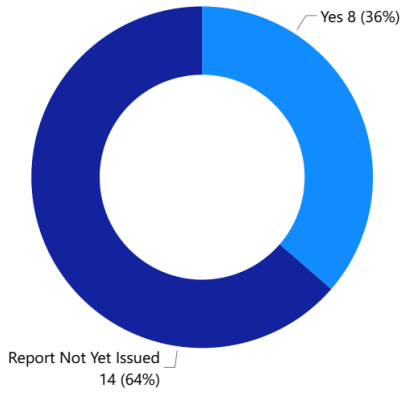
All Years: Incident Type and Force Type of Cases



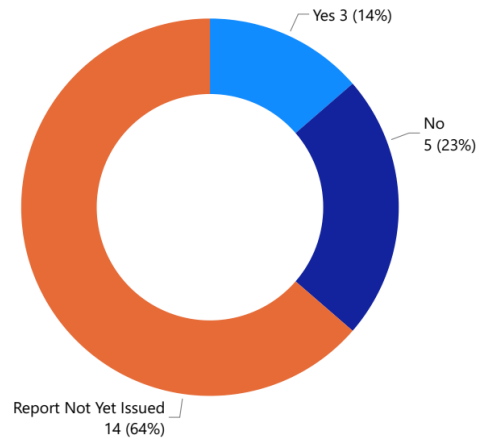
2022: Police Auditor Findings for Incidents Reviewed or Monitored

OIPA Report Findings in 2022

Did the IPA Find that the Standards Were Met?



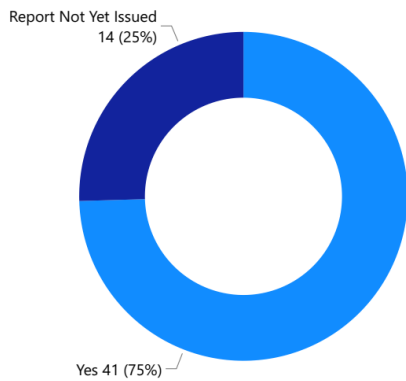
Did the IPA Make Recommendations?



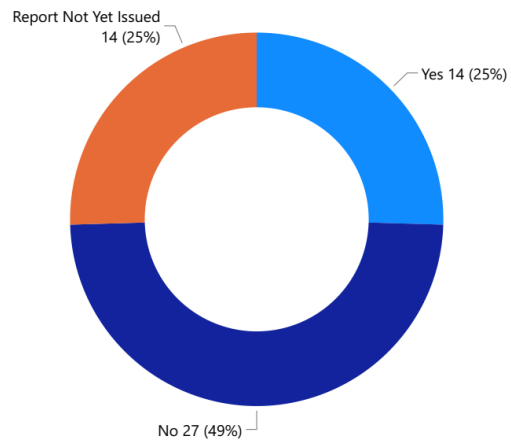
All Years: Police Auditor Findings for Incidents Reviewed or Monitored

OIPA Report Findings: All Years

Did the IPA Find that the Standards Were Met?



Did the IPA Make Recommendations?



All Years: Allegations of Force* Reviewed by OIPA

Incident Year	Assault	Brandish Firearm(s)	Choke	Drag	ECW	Force to cuff	Kick	OC spray	Punch	Push	Ripp hobble	Strike	Takedown	Total
2017			1										2	3
2018	1				1		6			1		2	4	15
2019	1	3	2				2	1	2				2	13
2020	1			1	1				1	1				5
2021							2					1	2	5
2022		1												1
Total	3	4	3	1	2		10	1	2	1	2	2	10	42

**Allegations from 30 Complaints Received via OIPA or FCPD*

APPENDIX B

Links to 2022 OIPA Public Reports

[Incident Report: June 7, 2019: Use of Force Complaint \(IPA-21-01\)](#) (Published 1/10/2022)

[2021 Annual Report](#) (Published 3/25/2022)

[Incident Report: December 4, 2019: Use of Force - Serious Injury \(IPA-19-08\)](#) (Published 4/14/2022)

[OIPA Memo: Response to UTSA and Fairfax County Use of Force Community Advisory Committee Recommendations on Use of Force](#) (Published 5/13/2022)

[Incident Report: Jan. 18, 2021: Use of Force Complaint - Takedown \(IPA-21-04\)](#) (Published 6/10/2022)

[Incident Report: July 19, 2021: Officer-Involved Shooting \(IPA-21-03\)](#) (Published 8/2/2022)

[Memorandum: Nov. 10, 2020: Non-Use of Force Incident Review \(IPA-20-09\)](#) (Published 8/26/2022)

[Incident Report: Nov. 23, 2020: Use of Force Complaint \(IPA-21-02\)](#) (Published 9/14/2022)

[Incident Report: Feb. 15, 2022: Officer-Involved Shooting \(IPA-22-02\)](#) (Published 11/30/22)

[Incident Report: June 5, 2020: Use of Force - Deployment of Electronic Control Device \(IPA-20-05\)](#) (Published 12/15/2022)

