

*City of Key West*  
**CITIZEN REVIEW BOARD**

**Annual Report**



**June 30, 2006**

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## 2005-2006 Annual Report

### CITY OF KEY WEST CITIZEN REVIEW BOARD

#### Introduction

The City of Key West Citizen Review Board (CRB) has been actively reviewing complaints filed by citizens against Key West Police Officers since January 2004. This report is intended to give the reader the facts allowing the reader to determine the progress of the board's efforts.

We will continue to track trends and patterns reflected by the types of complaints filed with the CRB and the police department. Our emphasis is on the continuing changes within the department that have had an affect on the CRB as well as the community to include organizational structure, policies and community programs.

The first annual report established a benchmark from which future comparisons can be made. Readers may obtain a copy of all annual reports by visiting the City of Key West web site, [www.keywestcity.com](http://www.keywestcity.com). This report will demonstrate a comparative study of complaint types and results.

We hope that this report will enable the reader to understand the role of the Citizen Review Board. If there are any questions, please call Executive Director Vicki Grant at (305) 293-9835 or email us at [citizensrvw@bellsouth.net](mailto:citizensrvw@bellsouth.net).



## **ABOUT THE CITIZEN REVIEW BOARD**

### **What is the CRB?**

Key West voters created the Citizen Review Board (CRB) on November 5, 2002. Seven Key West citizens review complaints filed by citizens and tourists against Key West Police Officers for alleged misconduct. The City Commission appointed four of the seven board members and three board members were interviewed and selected by the initial four board members. Board members can serve no more than nine consecutive years and terms are staggered so that no more than three board members' terms will expire in any given year.

### **Mission Statement**

The mission of the CRB is to promote public confidence in the professionalism and accountability of the sworn staff (police officers) of the Key West Police Department (KWPD).

### **Purpose**

The purpose of the CRB is to establish guidelines for the receipt and processing of allegations of KWPD police misconduct in compliance with the Charter of the City of Key West Article I, Chapter 1.07.

The CRB independently reviews citizen complaint investigations against KWPD police officers, recommends changes in departmental policy, and when deemed appropriate by the board, conducts an independent investigation of citizen complaints. The CRB forwards findings and/or recommendations to City management, the Chief of Police, State Attorney, other state and federal law enforcement agencies and/or grand juries.



## Members of the Citizen Review Board

The City of Key West Citizen Review Board is composed of seven residents of the City of Key West. The City Commission appointed four (4) members from nominations from community based civic and social service organizations. The original four (4) members then selected three (3) additional members from applications submitted by the general public. As with other boards and commissions, these are unpaid positions. The term in office for each board member is four years and a board member can serve two consecutive four-year terms.

The Executive Director of the CRB is contracted with the City of Key West and reports to the Chairman of the Board.

Board members have received training through various sources to include participation in the National Association of Civilian Oversight of Law Enforcement Conference and workshops.

The board members who served in 2005-2006 are:

**Antonio "Tony" Estenoz, III**, 37, is a native of Key West and a local businessman. Estenoz is manager and co-owner of Key Haven Shell Station and Southernmost Shell Station. He holds a Bachelor of Science degree in Hospitality Management from Florida State University. Tony is a founding board member of Keys Family Alliance. He has been a member of Dade Lodge#14 since 2001, volunteer for the Little Conch Baseball League and a board member and active volunteer of Key West Paintball League. The City Commission appointed Tony Estenoz on April 5, 2004 to complete the term of Atavia Lopez. **His term expires in June 2007.**

**Adare Fritz**, 59, is a 5-year resident of Key West retired Senior Vice President of Operations from AM General Corporation. He managed 3,000 to 4,000 United Auto Workers as well as salaried employees. Fritz holds a B.S. from Indiana University and completed the University of Minnesota Executive Program. His community involvement includes United Way Chairman, 1<sup>st</sup> Source Bank Board of Director and Dismas of Michiana, Inc. Board of Director. Dismas provide a program that reconciles former prisoners to society. He is a veteran of the United States Army having served in Viet Nam. **His term expires in June 2009.**

**Guadalupe "Lou" Hernandez**, 62, is a 22-year resident of Key West and is the CEO of Helpline, Inc. He is serving his second term as an elected member of the City of Key West Utility Board. Hernandez holds a bachelors degree in psychology from Texas A & M University. He was a Captain in the U.S. Army, winning a bronze star for his service in Viet Nam. Following his tenure in the Army he held several government positions in personnel, training and budgeting in Washington, D.C. He is currently chairman of the Southernmost Homeless Assistance League (SHAL) and has served on and chaired numerous boards in Key West to include the Historic Architectural Review Commission (89-93), Monroe County Democratic Party, Old Island Restoration Foundation, Key West Business Guild and Inter-Agency Council. The City Commission appointed Lou Hernandez to the board effective July 1, 2003. He was then elected as the first Vice Chairman of the board and has completed his term as Chairman. **His term expires June 2006.**

**Charles E. Lee**, 63, is a 26-year resident of Key West. He has been in the real estate profession for 23 years and is currently broker/owner of Cabana Realty, Inc. He has served on the board of directors of the Key West Board of Realtors and is a former Realtor of the year. Lee holds a bachelor's degree from Georgia Tech and a MBA from University of Florida. He served in the U.S. Air Force including a one- year tour in Vietnam and finished his tour of duty as a captain. He has completed the Civilian Police Academy conducted by the Key West Police Department and the City Ambassador's Program conducted by the City of Key West. Charles Lee was selected to serve by the original appointed board and will serve as Chairman during the 2006-2007 fiscal years. **His term expires June 2007.**

**Larry Maas**, 53, is a 6 - year resident of Key West and is the Broker/Owner of Realty Executives. He holds a bachelor's degree from North Eastern Illinois University, with graduate studies at University of IL. Maas enjoyed an extensive military career retiring as a Colonel from the U.S. Army in 2001. He started as an enlisted man, then as an Engineer Officer, Military Police Officer, Inspector General, Infantry Officer and a Signal Officer. His last assignment was a Brigade Commander responsible for 3200+ soldiers. He also served as an Auxilliary Police Officer while living in Riverside, Illinois. Larry Maas was selected to serve by the original appointed board. **His term expires June 2006.**

**Reverend James Thornton**, 70, is a 3-year resident of Key West and is the Pastor of the historic Cornish A.M.E. Zion Church. He holds a B.A. in Elementary Education and a Masters of Science in Mathematics and a Masters of Social Work with a concentration in Clinical Psychology. He has enjoyed an extensive

career as a teacher and minister, guidance counselor, social worker and community organizer. Thornton served on the Police Civilian Review Board in Louisville, Kentucky for three years and the Troy Housing Authority in New York for seven years where he also served on the Police Civilian Review Board. **His term expires June 2009.**

**Susan O. White, Ph.D.**, 70, is a 5-year resident of Key West. She retired to Key West from the University of New Hampshire in 1998. During her more than 30 years of teaching in the Department of Political Science, her primary academic interest was on the administration of justice: The Politics of Crime and Justice, Civil Rights and Liberties, and Law and Society. Many of the students in Dr. White's classes were preparing for careers in police work; some are now in senior positions in law enforcement. She also administered an intern program in Justice Studies in which 50-75 students each year interned with probation, prosecution, public defender and victim's advocates offices, as well as with the criminal courts and police agencies. The City Commission appointed Dr. White to the board effective July 1, 2003. **Her term expires June 2006.**



## **The CRB's Responsibility**

The Citizen Review Board (CRB) created by Key West voters on November 5, 2002, has the authority to review and investigate citizen complaints involving Key West Police Department personnel and forward findings and recommendations to City management, the Chief of Police, State Attorney, other state and federal law enforcement agencies and/or grand juries. It is completely independent of the Key West Police Department (KWPD). The seven (7) board members of the CRB all live in Key West and are not employed by the City.

The CRB maintains its independence by insuring that its review of complaints and its policy recommendations are done "in the sunshine" on a fair and impartial basis.

The CRB staff works to ensure that all complaints receive a fair and objective investigation and, when necessary, a hearing. The CRB has retained the services of an attorney and professional investigator and may recommend mediation or conduct independent inquiries, investigations, and hearings.

### **Who the Citizen Review Board Represents**

The CRB is a neutral body designed to be a bridge between the community and the Police Department. It was designed to give the public confidence that accusations of misconduct made against an officer will be fairly and thoroughly investigated.

In addition to being a neutral hearing body, the CRB offers a public forum for citizens who want to express their opinion on police-related issues.

When a complaint is received, the Executive Director reviews it for completeness and writes an executive summary for the board. The board then reviews each allegation in each case and makes a recommended finding. During this review process, the board also critiques the quality of the investigation and investigative process. This review and comment by the board gives City and Police Department management the advantage of having a perspective that is not found in most communities.



## Annual Report July 2005- June 2006

The CRB has completed the second full year of operation. Since the inception of the CRB in 2002 the Key West Police Department has undergone many changes. Following the replacement of two Chief's within two years, Chief William "Bill" Mauldin was awarded the position during the first Change of the Guard Ceremony in the history of Key West.

Chief Mauldin immediately exercised his leadership skills launching an investigation into an after-hours, off-duty brawl between two sworn officers. The investigation led to the dismissal of one of the officers involved. Mauldin was slow and methodical assessing and making the changes needed to improve the image of the department. The Chief reorganized the Professional Standards Division and assigned Officers to this division who are well suited for their new positions and responsibilities.

The CRB continued to express concern that complaints were not a priority of Internal Affairs; that investigations or inquiries into complaints were continuously exceeding of the 45 days allowed by State Statutes without explanation. Inquiries were held up in the final stage of determining the finding that was once the responsibility of the Bureau Commander. Professional Standards Commander, Lt. Jim Benkoczy, initiated a policy change allowing for the assigning of completed Internal Affairs investigations or inquiries to Division Commanders for conclusions/findings of fact, reducing the workload of the Bureau Commander. This change has expedited the entire complaint process resulting in timely reviews by the CRB.

Many of the complaints alleging excessive use of force, abuse of power and battery date back to former administrations. Under Mauldin's administration the CRB is seeing a reduction in use of force types of complaints. The register entry reports of all complaints that are filed with the police department also reveal that the department is proactive in policing their own.

The CRB first reviews an Internal Affairs investigation or inquiry report to determine if the investigation or inquiry is thorough, complete and fair. More often than not, the report is a reflection of thoroughness. On the occasion when the CRB review reveals that the investigation or inquiry is inadequate, the CRB has the option of returning the file to IA. Typically the CRB will direct IA by outlining the areas that require further inquiry or investigation. The CRB also has

the option to conduct their own investigation employing their own private investigator and has exercised this option on several occasions.

Following the review of a complaint, the board may also consider the policies that are in place that relate to the complaint. Research into Supreme Court cases that may influence interpretation of the law are considered and in some instances forwarded along with a recommendation. Recommendations have been well received and the board is satisfied with the Chief's responses.

As a part of the re-accreditation process of the department Officers were trained in updated Supreme Court cases that relate to their duties. The CRB also considers the Supreme Court rulings when evaluating allegations against officers. Officers were recently trained in the following rulings:

- Terry v. Ohio, 392 U.S. 1 (1968): investigative detentions and frisks pursuant thereto;
- Florida v. J.L., 529 U.S. 266 (2000): investigative detentions based on anonymous tips;
- Alabama v. White, 496 U.S. 325 (1990): investigative detentions based on anonymous tips;
- Aguilar v. Texas, 378 U.S. 108 (1964): tips - the basis of knowledge requirement;
- Spinelli v. U.S., 393 U.S. 410 (1969): tips - the reliability requirement;
- Illinois v. Gates, 462 U.S. 213 (1983): tips - the totality of the circumstances standard;
- Minnesota v. Dickerson, 508 U.S. 366 (1993): the plain feel doctrine;
- Michigan v. Long, 463 U.S. 1032 (1983): the "frisk" of an automobile;
- New York v. Belton, 453 U.S. 454 (1981): search incident to arrest of the occupant of a car;
- Pennsylvania v. Mimms, 434 U.S. 106 (1977): ordering drivers of stopped vehicles to exit;
- Maryland v. Wilson, 519 U.S. 408 (1997): ordering passengers of stopped vehicles to exit;
- Georgia v. Randolph (2006): consent searches where a co-occupant refuses consent;
- Brigham City v. Stuart (2006): non-consensual entry of a home with exigent circumstances;
- Ybarra v. Illinois, 444 U.S. 85 (1979): the ability to arrest or frisk others proximate to a suspect;
- Arizona v. Hicks, 480 U.S. 321 (1987): the plain view doctrine;

- Dunaway v. New York, 442 U.S. 200 (1979): when a Fourth Amendment seizure occurs;
- U.S. v. Mendenhall, 446 U.S. 544 (1980): when a Fourth Amendment seizure occurs;
- Florida v. Royer, 460 U.S. 491 (1983): consensual encounters vs. investigative detentions;
- Whren v. United States, 517 U.S. 806 (1996): the objective standard for stops.

### **The CRB's Effectiveness**

As was noted in the second annual report, the CRB successfully tested its subpoena power when they issued a subpoena to the Chief of Police to obtain a file of an investigation the CRB needed to complete a complaint review. Again in 2005, the CRB successfully exercised the authority to issue subpoena's to obtain witness statements from witnesses unwilling to testify voluntarily. This authority has proven to be a vital tool in the review process.

Two witnesses to a complaint were issued a subpoena to issue their statement and one to appear at a CRB meeting to answer questions. The complaint under investigation was over five years old so finding witnesses and officers involved in the incident was difficult. CRB counsel was able to locate one witness that had moved out of the County. The CRB's private investigator located the witness and recorded his statement. Another witness who lived locally was issued a subpoena to appear at a CRB meeting. After consideration of all witness statements, review of the Key West Police Department Internal Affairs report and the arrest reports, the CRB determined that the allegation of battery against two of the officers was Not Sustained. The officers charged are no longer with the department, one having relocated and the other was released following additional charges filed against him alleging battery involving a separate incident. Witness statements did not support the allegations against the other officers involved.

The complaint outlined above was complicated, involving many officers and civilians. It is a perfect example of why a complaint should be investigated thoroughly and expediently. Because Internal Affairs does not have subpoena authority, it also demonstrates the usefulness of subpoena authority, allowing the CRB the opportunity to interview witnesses that may not otherwise cooperate.

Two complaints the board reviewed involved an incident where officers responded to an anonymous tip called into the emergency 911 number. In

both circumstances the caller indicated that the individual in question possessed a gun. In both circumstances officers arrived to the scene with weapons "low and ready". The first case the CRB reviewed a complaint in November 2004 of alleged "rudeness" and "use of force". In this case, the use of force alleged by the complainant involved several officers pointing guns at his chest before and after he was "taken to the ground". The CRB determined that the "use of force" issue was not adequately addressed and a "Response to Resistance" report was not filed. The CRB returned the file to Internal Affairs for further investigation.

Former Chief Fortune directed his staff to review KWPD policy for a solution that will incorporate the State's definition of "low and ready". The department found that the officers involved responded appropriately under the circumstances. Upon review of the department's policy on Response to Resistance and the definition of "low ready" when a weapon is drawn, the department discovered that the policy's intent conflicts with updated Federal Department of Law Enforcement's definition. Officers and supervisors were then trained accordingly.

The second complaint involving an anonymous tip also resulted in officers arriving with weapons drawn and the defendant "taken to the ground" after the officers determined that the defendant did not have a gun.

The board began questioning the legality of the officers' responses to anonymous tips. They considered if the officers had adequate information to approach the defendant with weapons drawn or at low and ready. Research began regarding anonymous tips and Supreme Court decisions. The board sent a letter to Chief Mauldin citing United States Supreme Court decision, Florida v. J.L. 529 U.S. 266, "Anonymous tip that person is carrying a gun held to be, without more, insufficient, under Federal Constitution's Fourth Amendment, to justify police officer's stop and frisk of that person." Florida v. J.L.

Chief Mauldin responded that the Key West Police Department's policies fully address the board's concerns regarding investigative detentions and frisks, *Terry v. Ohio*, 392 U.S. 1 (1968) and investigative detentions based on anonymous tips, *Florida v. J.L.*, 529 U.S. 266 (2000). Both concerns are addressed in the agency's Department Directive. Use of Discretion and Alternatives to Arrest, Directive 01.02.02.02 requires each member of this department to "always act reasonably and within the limits of their authority as defined by Florida State Statutes and judicial interpretation". Pat-Down Searches, Directive 03.36.02.01.02 requires all sworn personnel to follow the guidelines set forth in the *Terry v. Ohio* ruling when

deciding if there is sufficient justification for conducting a pat-down search. All sworn Key West Police Officers are issued the Miami-Dade Police Department Florida Law Enforcement Handbook that offers legal guidelines for the officer to reference when making decisions about when and how a legal stop and frisk is made.

The Chief requested that the Professional Standards Division include both the Florida v. J.L. decision and the Terry v. Ohio decision in the legal updates portion of the yearly mandatory in-service training for 2006. He also requested that the Communications Supervisor review current training for dispatchers regarding incoming anonymous calls to ensure they are getting as much information as possible from the caller.

The CRB determined that the department is providing sufficient indicia of reliability cited in J.L. required to give an officer reasonable suspicion to make an investigatory stop.

Following an incident involving the use of a taser on a Key West citizen by a Brooksville police officer, the CRB inquired about the Chief's future plans to implement the use of Tasers by Key West officers. The Chief informed the board that he has no intention to implement the use of Tasers in Key West.

Positive changes are ongoing. Allegations of excessive use of pepper spray are nearly non-existent. Use-of-force charges have dropped 30% from the previous year. The CRB continues to work well with the Department of Professional Standards. Officers are receiving better training. Leadership has improved. Statistics also reveal that the City of Key West experienced a 12.3% decline in violent crimes since 2005. Chief Mauldin has proven to be an effective leader, administrator and a supporter of the mission of the CRB.



## The Complaint Process

The complaint process is activated when a complaint is filed against a police officer of the Key West Police Department. While the Internal Affairs Department or designee investigates all complaints, the CRB is currently reviewing only those complaints that are filed directly with the CRB against a sworn officer.

If a complainant has filed directly with the Key West Police Department and the complainant is not satisfied with the finding, he can request a review by the CRB. Complainants may also request mediation.

Typically, CRB review of an allegation of misconduct is initiated by the filing of a written complaint. The complainant may contact the CRB office or obtain a complaint form and instructions from the Key West City website.

All complaints received by the CRB office are forwarded directly to the KWPD Internal Affairs (IA) Bureau and the Chief of Police within two days of receiving the complaint. IA has 45 days to complete an investigation or inquiry and forward findings to the Chief of Police, the CRB and the complainant. The CRB Executive Director contacts the complainant to find out if the complainant is satisfied with the results of IA's investigation. A confirmation letter affirming the complainant's position is mailed to the complainant.

The CRB reviews IA's findings and the complainant's response to IA's findings. The CRB determines if there is need for further investigation, inquiry and finally, a hearing. If the board determines the need for further investigation, a letter will be sent to the Chief of Police requesting that the department take no further action until the CRB investigation is complete. The CRB has the option to recommend that the Chief of Police conduct further investigation. At the conclusion of each review or investigation, the CRB renders a finding based on the preponderance of the evidence.

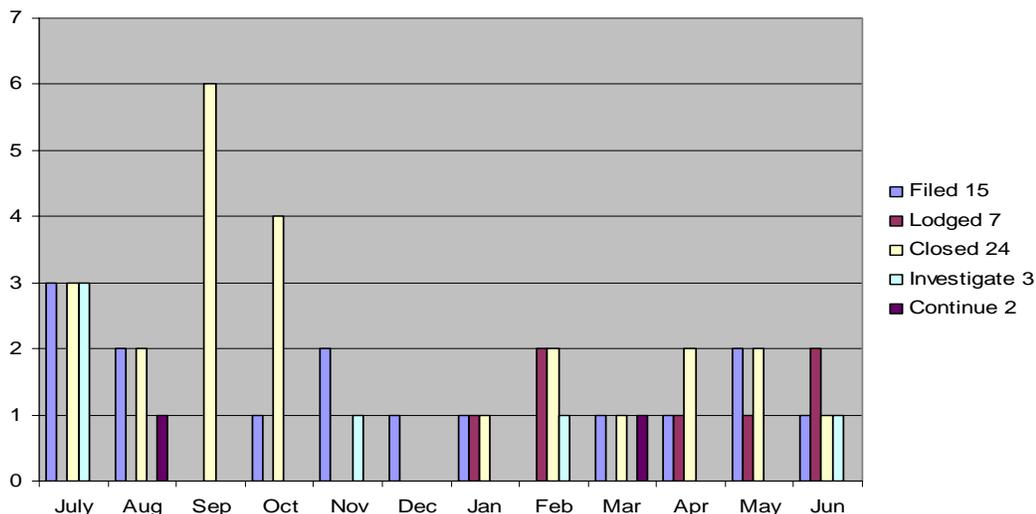
At the conclusion of the review or investigation, the CRB forwards its written findings and conclusions to the Chief of Police and to affected officers and, to the extent permitted by law, to the complainant. The Chief of Police must respond within 30 days. The Police Chief and the City Manager have the sole responsibility for discipline.



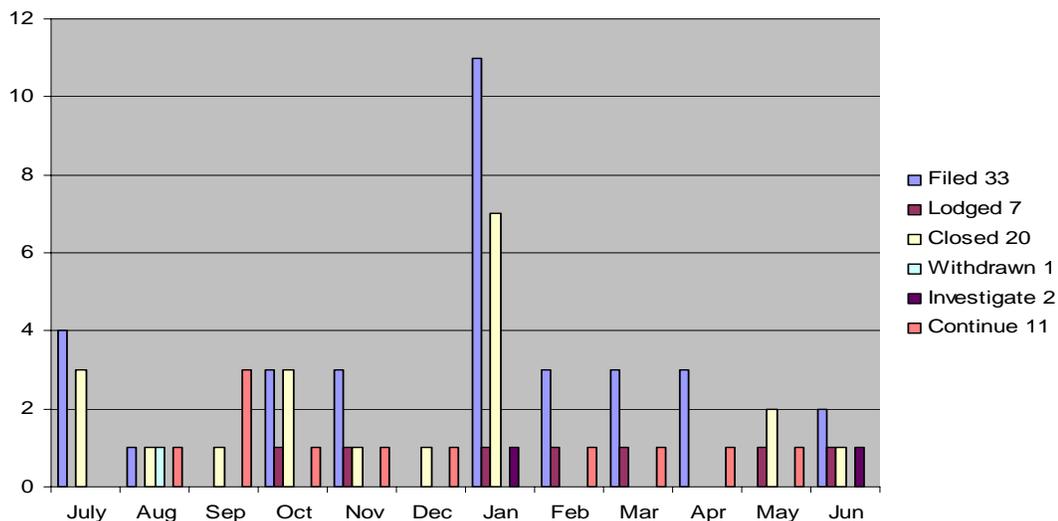
## Complaint Processing Analysis

Figures 1 and 2 compare the number of complaints filed with the CRB fiscal year 2005-2006 to the number of complaints filed 2004-2005.

**Figure 1**  
**July 2005-June 2006**



**Figure 2**  
**July 2004-June 2005**



**Filed** = a formal complaint received in writing. **Lodged** = a verbal complaint leading to a request for a complaint form but the complainant did not follow through.

## Tracking

The CRB also tracks complaints based on the type of complaint e.g. Rudeness, Use of Force, and the officer the complaint is filed against to determine if there is a need to recommend further training, discipline or a policy recommendation.

Figures 3 and 4 demonstrates the allegations and findings based on complaints filed directly through the CRB only

Figure 3  
2005-2006 Allegations and Findings

	Resolved - Mediated	No Finding	Investigate	Unfounded	Exonerated	Not Sustained	Sustained	Will Not Investigate	Policy Deficiency	CRB - Have Not Reviewed	Returned to IA - +45 days**	Court Issue	Totals
Abuse of Authority			1										1
Use of Force	3			2	5					2		1	13
Battery			1	4	7	2		5					19
Rudeness	2		1	2	2					1	1		9
Pepper Spray													0
Deficient Service	3	1			1		1	2		1	1		10
Profanity													
False Arrest	3			2	2			5		1			13
Truthfulness/False Reporting				5	2			1		1		1	10
Relating to Driving/tickets													
Illegal Search													
Traffic Violation													0
Tampering with Evidence													
Other										2			2
Total Misconduct Allegations & Findings	11	1	3	15	19	2	1	13	0	8	2	2	76

The Citizen Review Board received 18 complaints from 15 citizens from July 1, 2005 through June 30, 2006. The CRB reviewed and closed 24 complaints during this same time frame, seven files containing 24 allegations rolled over from the previous year. Five complaints containing 8 allegations that were filed during the 2005-2006 year have not yet been reviewed by the CRB.

Figure 4  
2004-2005 Allegations and Findings

	Investigate	Unfounded	Exonerated	Not Sustained	Sustained	Will Not Investigate	Policy Deficiency	CRB - Have Not Reviewed	Returned to IA - +45 days**	Court Issue	Totals
Use of Force	9		2	1		1	2	11	7		33
Rudeness		3	2	1		2	1	4	1		14
Pepper Spray						1					1
Deficient Service		2	2			3		3	3		13
Profanity											
False Arrest	6			3	2	1		2		4	18
Truthfulness/False Reporting	3		2	3	2			3	1	1	15
Relating to Driving/tickets											
Illegal Search											
Traffic Violation								1	1		2
Tampering with Evidence										2	2
Total Misconduct Allegations and Findings	18	5	8	8	4	8	3	24	13	7	98
Others = 15											

The Citizen Review Board received 32 complaints from 27 citizens from July 2004 through June 2005. The CRB reviewed and closed 20 complaint files.

## Trends & Patterns

There are many variables that must be considered before the CRB can determine if there is a problem with a particular policy or with a particular officer. Although there may appear that there is a trend if an officer's name is mentioned in several complaints, the board must take into consideration the following: 1) when each incident occurred; 2) the geographic area each incident occurred; 3) is the officer the arresting officer or was the officer responding to a back-up call; 4) is the officer named in the complaint. It is important to understand that the Key West Police Department includes all officers' names who responded to an incident, whether they are mentioned in the complaint or not. The CRB only evaluates the charges filed against the officer named in the complaint. To date, the CRB has not received a consistent number of complaints against any one or more officers within a concentrated time frame to establish a trend or pattern.

During the first year of operation the CRB received 7 complaints of excessive use of pepper spray. In 2004-2005 the CRB received only one complaint and in 2005-2006 the CRB did not receive any complaints of excessive use of pepper spray. Use of force remains the largest number of complaints received however, upon review, the CRB has agreed with the majority of IA's findings of Exonerated primarily because the complainant aggressively resisted arrest and the evidence indicated that the officer used the force necessary and within policy.

The CRB anticipates the tracking of trends and patterns will become more meaningful and useful to the CRB, the Police Department and the citizens of Key West as more data is collected and the census of complaints become statistically more meaningful.

