

THE INDECOM QUARTERLY 3RD

JULY – SEPTEMBER 2016

ASK INDECOM



Gleaner Company, Ltd

FREQUENTLY ASKED QUESTIONS

The Independent Commission of Investigations (INDECOM) was established in 2010, following prolonged public complaints of the conduct of investigations and alleged misconduct by the security forces. This independent body, is governed by principles of impartiality, objective investigations, respect for human rights, transparency, public trust and an intent to assist with the creation of an effective, accountable and professional security forces. The independence, of the Commission, is for the benefit of members of the security forces, the citizens, the complainants, the victims, and their families. Independence is to assuage fears, concerns, and provide confidence and reassurance.

INDECOM's sixth anniversary was in August 2016, and as an organization, we reflected on our achievements to date, the impact we have had on the members of the security forces, public perception and lessons learnt. Additionally, we acknowledged areas that require more work and attention.

However, there is still misunderstanding on key issues; and these misconstrued commentary in the media and social forums will impact members of the security forces, the public and the role of INDECOM. This 3rd quarter report seeks to address some of the concerns that are regularly reported.

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**“Education is the most powerful weapon which
you can use to change the world”**

Nelson Mandela.

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COMPACT DISC

3rd Quarterly Report: July – September 2016

Commission's Reports Completed

- July 2016
- August 2016
- September 2016

IN THIS EDITION OF THE IQ

INDECOM FAQs – BRIEF STUDY

The Commission has observed the continued misunderstanding of the role and operations of the organization. To that end, the Commission has identified eight (8) frequently asked questions (FAQs) to address some of these concerns. The issues identified are: scene response, compelling of statements from State agents, oversight of INDECOM, recommendations for charge and categories of incidents within INDECOM's remit for investigation.

PART ONE: NEW COMPLAINTS

The Commission received 173 new complaint cases for the period. The top five complaints include incidents of assault (61), discharge of firearm (31), fatal shooting (24), shooting injury (15) and unlawful wounding (7).

All parishes had complaints, both fatal and non-fatal, with Kingston and St. Andrew recording 56 complaints and St. Thomas recording the least with one (1).

The Commission's Investigative Teams and Forensic Unit responded to 94 incident scenes for the period, with September being the most active month. The nature of the incident scenes attended were predominantly fatal shootings, assaults and discharge of firearms. There were two (2) incidents of death in custody for the period.

St. Thomas, Trelawny, St. Mary, St. Elizabeth and St. Ann had no fatalities for the period. The parishes of Westmoreland, Hanover and Clarendon recorded one (1) each. Manchester recorded two (2), Portland had three (3), St. Catherine had four (4) and St. James had (6). Kingston & St. Andrew recorded the highest at 11.

PART TWO: THE LEGAL DEPARTMENT

The Legal Department, completed 112 Commission's Reports for the period. The nature of these include: assaults (51), fatal shootings (18), discharge of firearm (6) and corruption (1). The recommendations for the cases completed are listed in this section. Six (6) members of the Jamaica Constabulary Force (JCF) were arrested and charged during the period. The related list is also included in this section.

PART THREE: PUBLIC INFORMATION

The Commission's Senior Management Team in the Operations Unit had two (2) meetings with members of the JCF High Command to include the Inspectorate of Constabulary for the period. The matters discussed included specific multiple shooting cases, body worn cameras and JCF policies, practices and protocols.

Representatives of the Commission participated in several awareness exercises equaling 688 man hours for the period.

The Public Relations Unit issued nine (9) press releases for the period. The titles of these releases are listed in this section.

Continues from front page ...

1. When does INDECOM attend scenes involving Agents of the State?

Simply, INDECOM attends **ALL** scenes involving an agent of the State.

The presence of an INDECOM investigator does not equate or negate an officer's innocence or guilt. Scene attendance and preservation is protocol and mandatory according to Section 4 of the INDECOM Act.

All scenes involving any member of the Security Forces or Agents of the State **MUST** be assessed by an independent investigative body, ie INDECOM.

2. Why does INDECOM compel statements from members of the security forces?

The INDECOM Act allows for any person (Security Force or civilian) who may have information relating to the circumstances of a death, to provide a statement or be interviewed, as a witness. Parliament gave INDECOM powers akin to a Commission of Enquiry, and therefore it can compel anyone with information to give a statement and/or answer questions – all with the intention of meeting the aims of the investigation. Other Commissions of Parliament have similar powers to compel statements.

Can someone refuse to answer questions?

- i) If anyone is informed that they are **regarded as a suspect** during an INDECOM investigation, then that person will be cautioned that they are not obliged to answer any questions at all.
- ii) However, where INDECOM invokes Section 21 of the INDECOM Act, that person **cannot** refuse to answer questions relating to the investigation, except where such an answer may incriminate themselves or reveal privileged information.

This is explained to all persons who are requested to be interviewed, whether as a witness or a suspect.

3. When is an Agent of the State considered a concerned officer, witness or suspect?

A **'concerned officer'** refers to any police officer, soldier or correctional officer (any rank) about whom a complaint is made or who may be involved in the incident that INDECOM is investigating.

The starting point for most investigations or complaints that are received, is that the concerned officer

is initially regarded as a witness. Within the aims of an independent investigation, the 'concerned officer' is sought in order to appreciate the full facts of the matter.

A 'concerned officer' is served with a notice showing that he/she is being regarded or interviewed as a witness. As a witness, the concerned officer will either provide a witness statement, explaining and accounting for their actions, or be interviewed as a witness.

The status of 'suspect' arises when evidence is obtained which provides reasonable grounds to suspect that the concerned officer may have committed a criminal act.

Such officers will receive the same safeguards as all citizens and be informed that they are regarded as a suspect in the investigation. They will be served a notice explaining their status and any interview as a suspect can be with a lawyer. Further any such interview as a suspect, can only be voluntary and will be conducted under the Judge's Rules.

4. Why is an independent investigation of Agents of the State necessary?

An independent investigation seeks to satisfy five factors, all of which must be clearly understood by everyone.

- a. The full facts are quickly uncovered.
- b. Culpable and discreditable conduct is exposed and brought to public notice.
- c. Any suspicion of deliberate wrongdoing, if it is unjustified, is allayed.
- d. Any dangerous practices and procedures are rectified.
- e. Those who have lost their relatives may at least have the satisfaction of knowing that lessons learned from the death may save the life of others.

For these aims to be achieved, INDECOM's investigative conclusions must be based on thorough, objective and impartial analysis of all relevant evidence. The investigation has to consider the use of lethal force according to the "no more than absolutely necessary" standard required by Article 2.2 of the Convention. When determining whether the force used was no more than absolutely necessary, the investigation has to carefully scrutinize two things, namely:

- i) Whether force used was strictly proportionate to the aim of protecting persons against unlawful force.
- ii) Whether the operation was planned and controlled so as to minimize, to the greatest extent possible, recourse to legal force.

The INDECOM Act was implemented to ensure that these international principles can be achieved.

5. Does INDECOM have oversight?

There is a natural concern over **'who watches the watchers?'** In fact, INDECOM's role and performance is overseen in a variety of different ways.

- i) **As a Commission of Parliament**, INDECOM is mandated to provide regular reports and give an account of matters related to decisions of operations at any given time. INDECOM has provided five annual reports, seven quarterly reports and one special report, since inception, to Parliament. The Commissioner has also appeared before Parliamentary Committees: Joint Select Committee and Public Administration and Appropriations Committee (PAAC).
- ii) **The Office of the Director of Public Prosecutions (ODPP)**, can at any time, take charge of or discontinue any prosecution initiated by the Commission, as the Director of Public Prosecution (DPP) is advised before the Commission charges an officer. So far, the DPP has ended one entire case and part of another.
- iii) A **Judicial Review** of any of the Commission's decisions to prosecute, can be sought by an organization or member of the public. Presently INDECOM has had eight Judicial Reviews in the last 6 years.

6. How does INDECOM arrest and charge Agents of the State?

The following are the procedures for arresting and charging:

- i) Investigation completed by an Investigator;
- ii) Investigator submits a report to the Director of Complaints for the region;
- iii) The report, with any recommendation for charge, is submitted to the Commissioner of INDECOM and the legal team;
- iv) If consideration is given to charge, a summons or warrant will be prepared, approved and signed by a Justice of the Peace (JP);
- v) The Director of Public Prosecutions (DPP) is advised;
- vi) The Commissioner of Police/ Head of the JDF/ Head of the Department of Correctional Services is advised of the member of the force who will be charged.

In a minority of cases, an officer may be arrested without a warrant but the arrest is always with the co-operation of the BSI.

It should be understood that an officer has never been arrested 'at the scene' by INDECOM and at no time, whether for arrest or the purpose of an investigation, is a member of the security force disarmed by INDECOM at an incident scene.

7. How many INDECOM investigations result in a charge?

The Commission has authority to charge Agents of the State. However, before a charge is laid, INDECOM determines whether there is a likelihood for conviction; and follows the Director of Public Prosecution's published standards for charging.

There are many cases resolved by INDECOM with no adverse finding against officers, whether for charges or disciplinary actions. Cases may also be closed by initial intervention, be withdrawn or be mediated.

Actions	2015 (Jan-Dec)	2016 (Jan-Sept)	
No charge or disciplinary action	157	164	
Closed on initial intervention	73	52	
Charge	30	14 officers	8 cases
Disciplinary Action	19	41 officers	25 cases
Civil remedies	8	8	
Retraining/ Sensitization	4	3	
Withdrawn	3	42	
Mediation	1	0	

Table 1: Recommendations of Commission's Reports for the period January 2015 - September 2016

To date, the Commission has completed eight cases, involving 15 Agents of the State, of which six cases resulted in convictions and two acquittals.

8. What categories of incidents can INDECOM investigate?

INDECOM investigates the abuse of citizen's rights by Agents of the State. In addition to the death or injury to any person, the other areas include:

- i) Abuse of office
- ii) Arson
- iii) Assault
- iv) Breach of INDECOM Act
- v) Conduct Unbecoming
- vi) Corruption
- vii) Destruction of Property
- viii) Discharge of Firearm
- ix) Illegal Entry and Search
- x) Misappropriation of Property
- xi) Neglect of Duty
- xii) Perversion of the course of justice

- xiii) Seizure of property
- xiv) Sexual harassment/ offences
- xv) Threat
- xvi) Unduly long detention
- xvii) Unlawful Detention
- xviii) Unlawful wounding
- xix) Unprofessional conduct

PART ONE

NEW COMPLAINTS

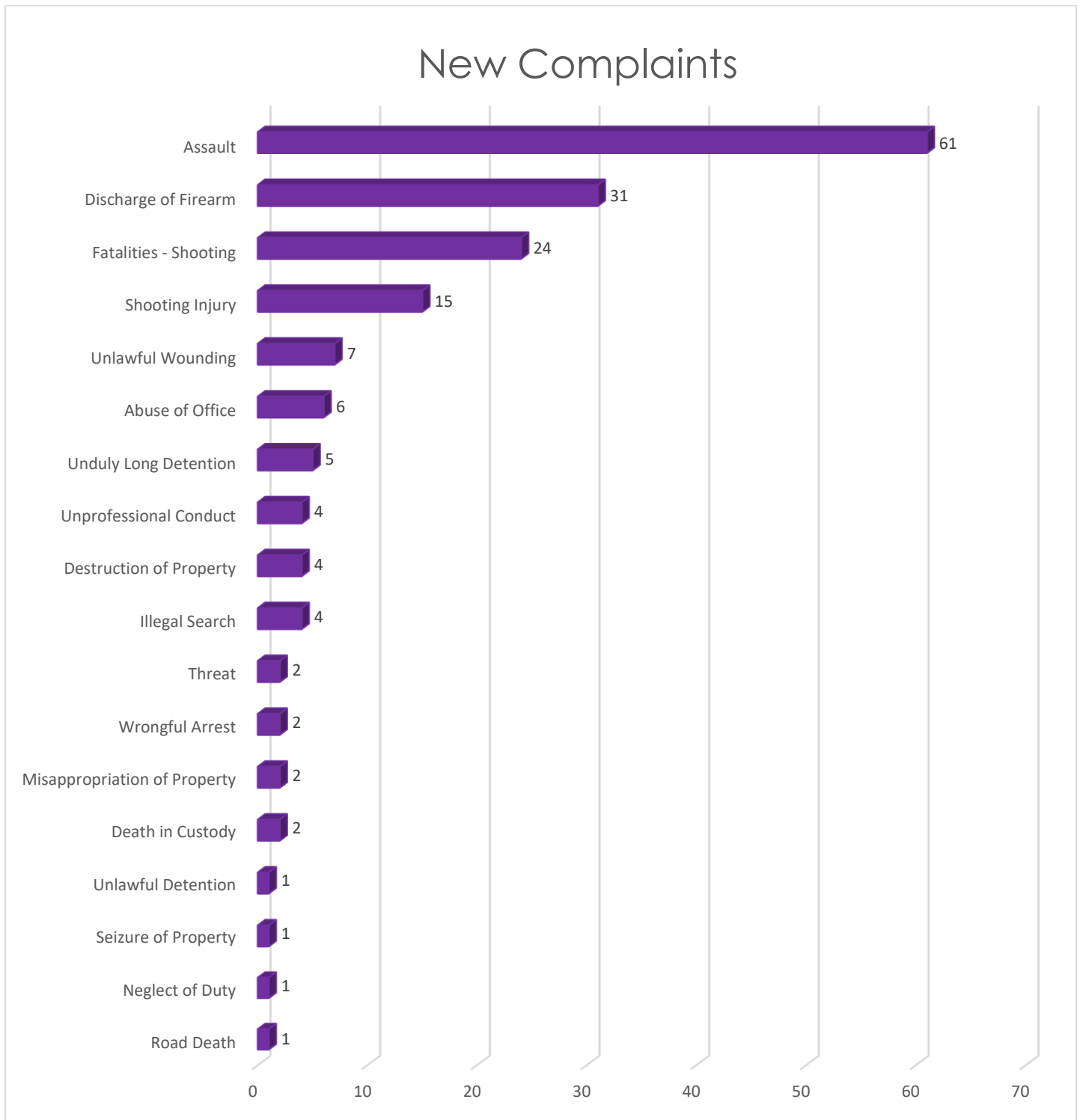


Figure 1: The bar graph shows all complaints in the respective categories received by the Commission for the period of July to September 2016.

INCIDENT SCENE RESPONSE

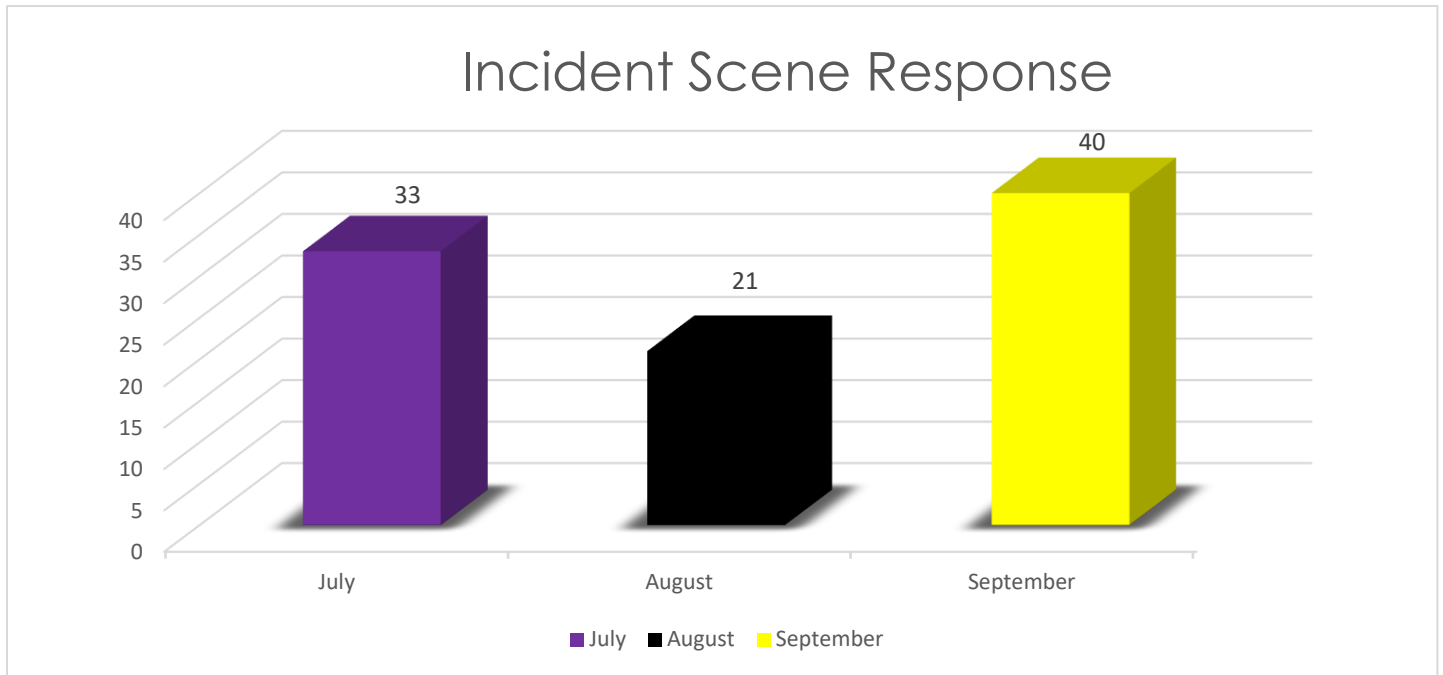


Figure 2: The above figure shows the number of scenes to which the Commission's Forensic Unit responded for the period of July to September 2016.

NATURE OF INCIDENT SCENE RESPONSE

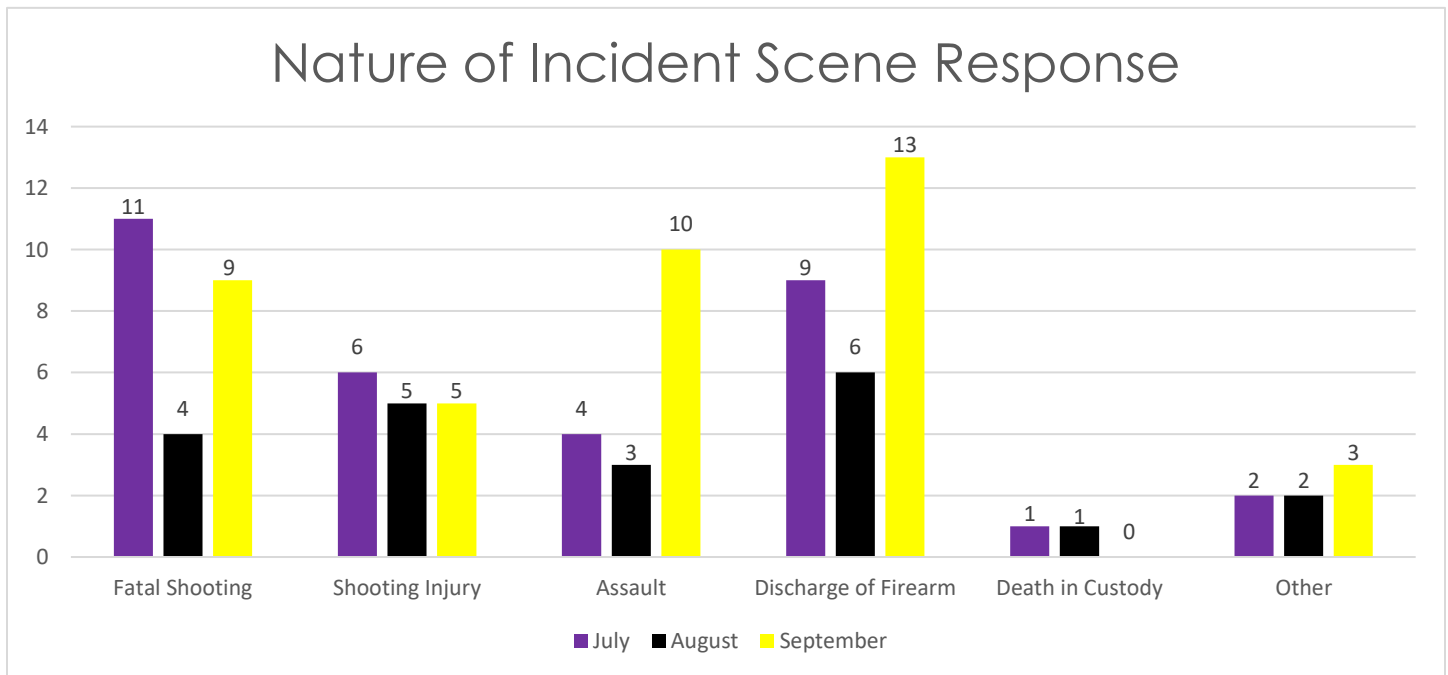


Figure 3: The above graph shows the nature of the incidents to which the forensic unit responded each month for the period of July to September 2016.

COMPLAINTS BY PARISH

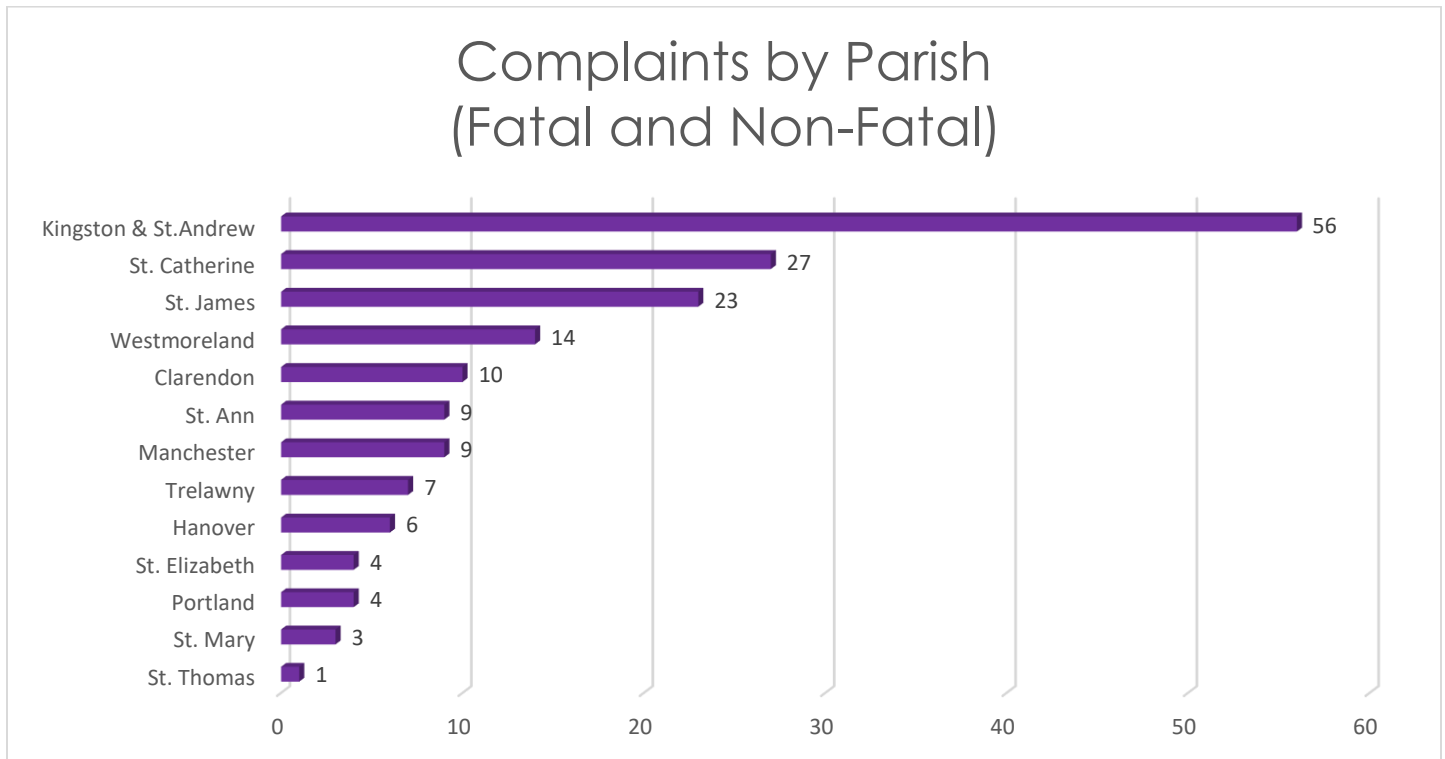


Figure 4: The above graph shows the number of complaints (fatal and non-fatal) related to all parishes for the period of July to September 2016.

FATAL SHOOTINGS BY PARISH

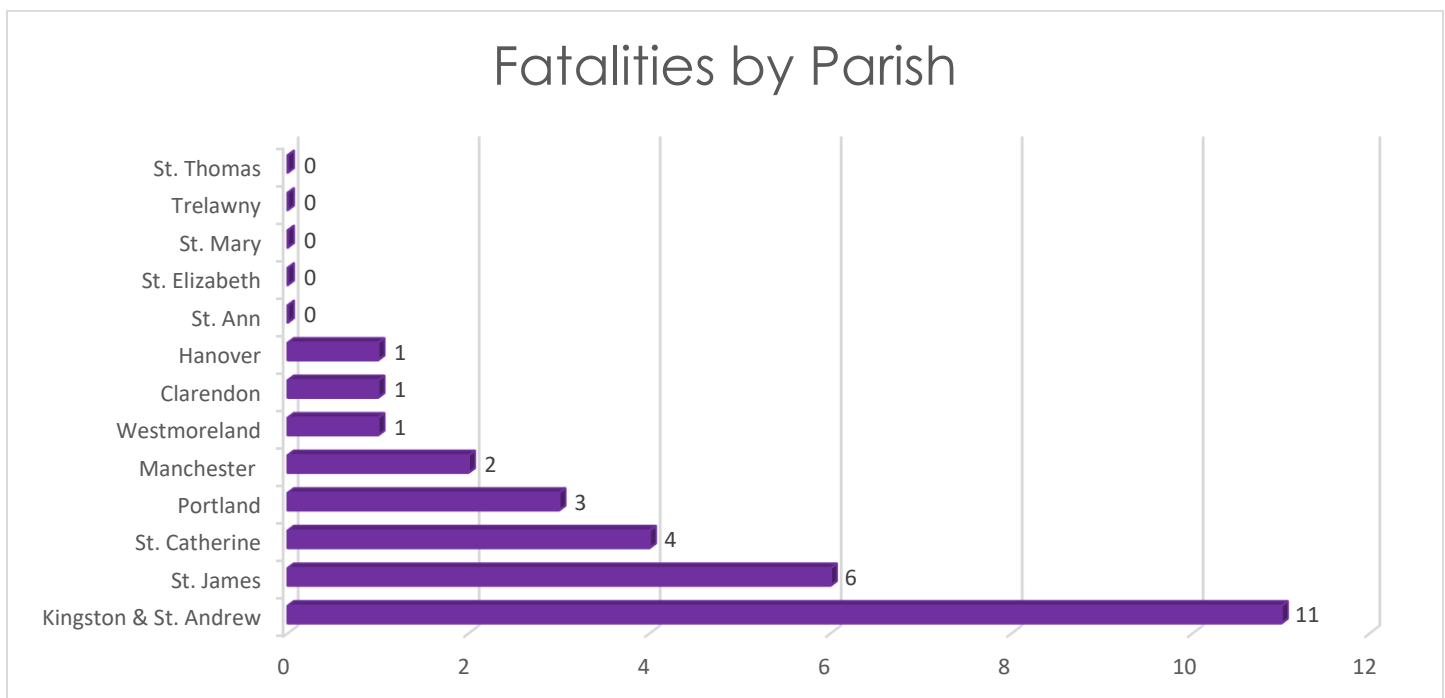


Figure 5: The chart above shows the number of fatalities in relation to parishes for the period of July to September 2016.

FATALITIES BY TEAMS

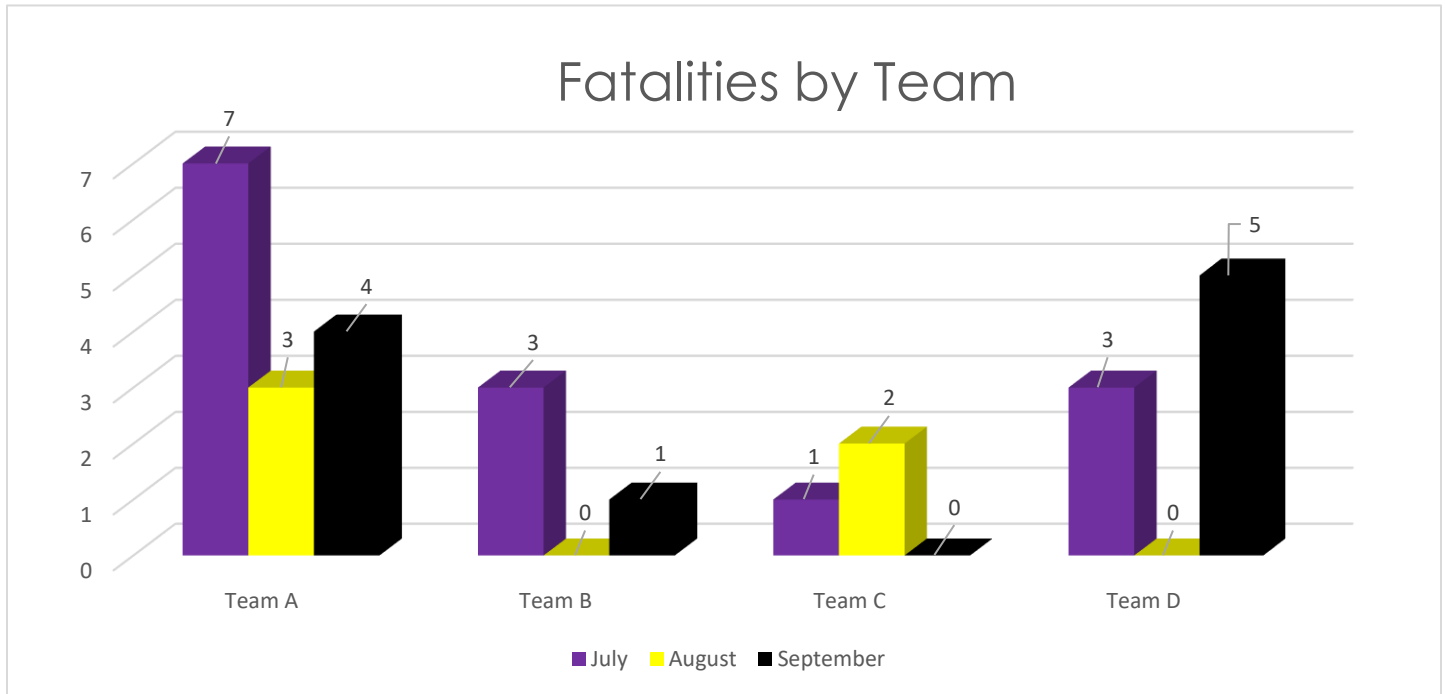


Figure 6: The above graph shows the number of fatalities in relation to the teams within the Commission for the period of July to September 2016.

FATALITIES BY ORGANISATION

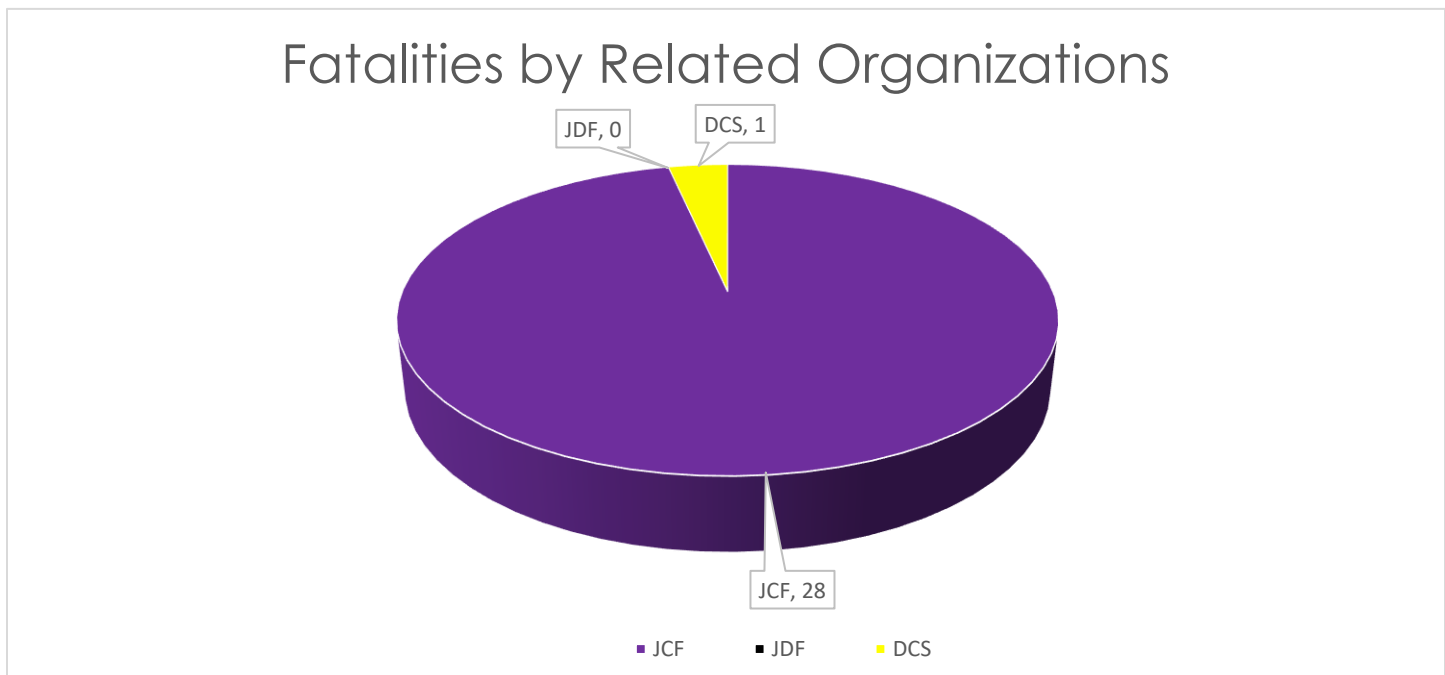


Figure 7: The above pie chart illustrates the State agency to which the fatal shootings recorded for the period of July to September 2016 are related.

SECURITY FORCE-RELATED FATALITIES

JCF – Jamaica Constabulary Force

JCF-OD – Jamaica Constabulary Force Off Duty Officer

JDF – Jamaica Defence Force

DIC – Death in Custody

Date	Name of Deceased	Location of Incident	Related State Agent
JULY (13) (DIC-1)			
2-July	Clive Samuels	Magazine Lane, Bog Walk, St Catherine	JCF
4-Jul	Shane JOHNSON	Georges Valley, Manchester	JCF
5-Jul	Jermaine McKOY	Union Gdns, off Spanish Town Rd, Kingston	JCF
7-Jul	Christopher COMRIE	37, Ken Hil Drive, Pembroke Hall, Kingston	JCF-OD
9-Jul	Alvery MORAGH DIC	Bethel PSTN	JCF
10-Jul	Wesley Dane CLARKE	Hurlock Dist, St James	JCF
13-Jul	ONEIL	Wireless Station Rd, Kingston	JCF
13-Jul	Ricardo CAMPBELL	Corner Lane, Dumfries, St James	JCF
14-Jul	Adrian DONALD, Shane THOMAS	Hope Bay, Main Road	JCF
15-Jul	Dujon SANCHEZ	Payne Land community	JCF
15-Jul	Tevon GORDON	Block 12, Bustamante Highway, Tivoli Gdns	JCF
19-Jul	Sheldon GAYLE, O'Neil DIXON	Spanish Town by pass, St Catherine	JCF
AUGUST (4) (DIC-1)			
10-Aug	Rohan STEPHENS	Webb Lane, Palmers Green, Clarendon	JCF
17-Aug	Nicholas MURRAY	Balcarres, Buff Bay, Portland	JCF
22-Aug	Christopher THOMAS DIC	Tower Street Dept of Corrections	DCS
22-Aug	Male unknown	51, Maxfield Ave, Kingston, 13	JCF
29-Aug	Philmore DARLING	Chudleigh Dist, Manchester	JCF
SEPTEMBER (10)			
1-Sep	Ian TYRELL	Orange St/Charles St, Kingston	JCF-OD
12-Sep	Steve ALLEN	5 Wellington St, Kingston	JCF
12-Sep	Sheldon THORPE	Taylor's Lane, Tucker Dist, St James	JCF
16-Sep	Christopher Edwards	Upper Mall Rd, Kingston 11	JCF

18-Sep	Sheldon GIBBS	King St/Fletchers Land, Linstead	JCF
19-Sep	Oshane Samuels	Green Island, Hanover	JCF
23-Sep	Nicholas Barrett, Romeo James	Lilliput, St James	JCF
23-Sep	Damion Morgan	Grange Pen, Lilliput, St James	JCF
30-Sep	Male unknown	9 Bronzewing Place, Kingston	JCF-OD

Table 2: The above list presents the names of the civilians who died in security force-related incidents for the period of July to September 2016.

PART TWO

The Legal Department

NATURE OF COMPLETED COMMISSION'S REPORTS

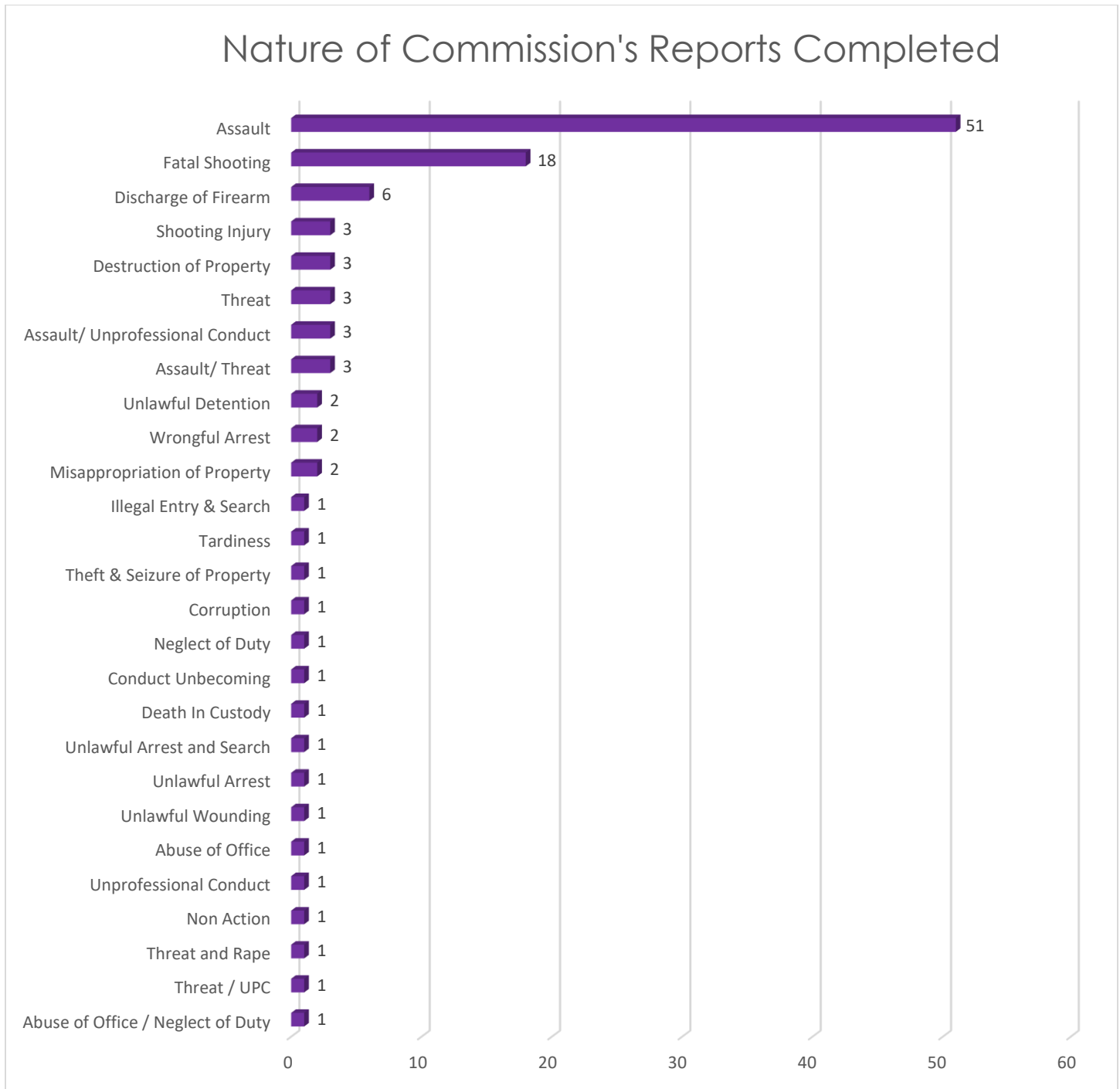


Figure 8: The above graph shows the category of complaints for the Commission's Reports completed during the period of July to September 2016.

COMMISSION'S REPORTS COMPLETED

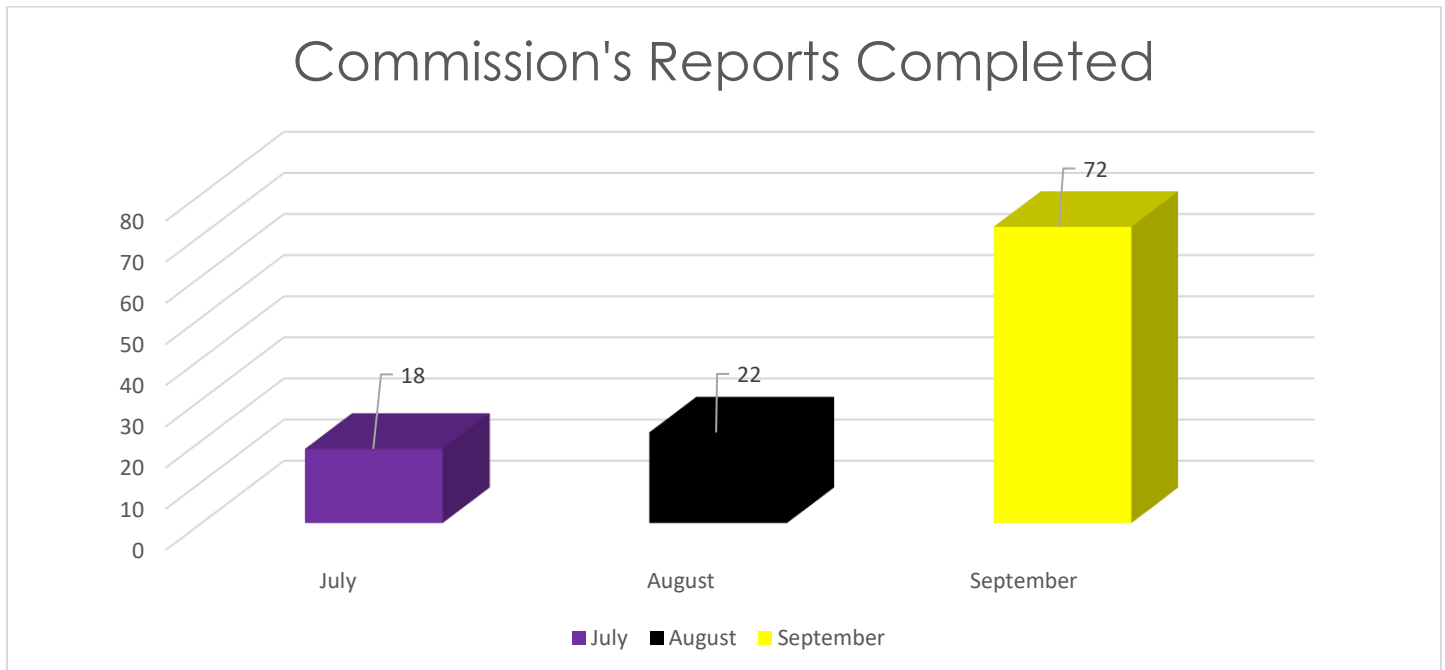


Figure 9: The above chart shows the number of Commission's reports completed and distributed for the period of July to September 2016.

RECOMMENDATIONS MADE FOR COMPLETED COMMISSION'S REPORTS

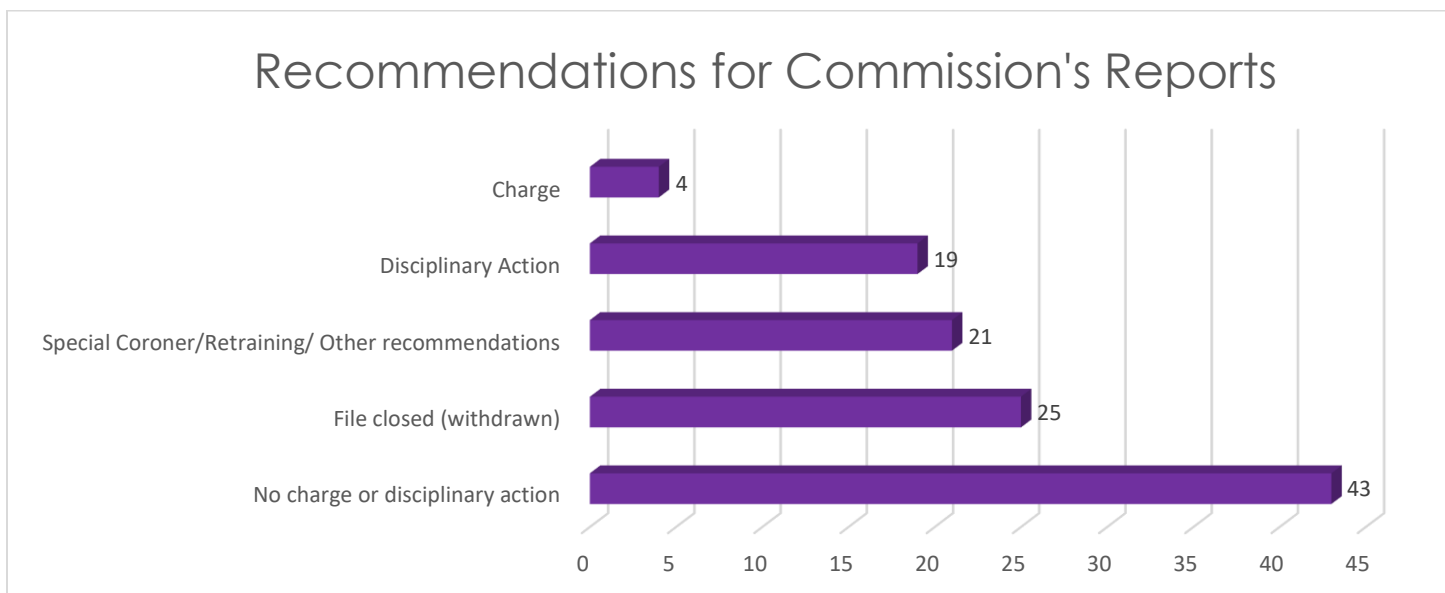


Figure 10: The above graph shows the recommendations made for Commission's Reports completed for the period of July to September 2016.

ARRESTS MADE/CHARGES LAID (JULY - SEPTEMBER 2016)

Name and Rank	Charge	Date of Arrest	State Agency
Cpl. Shawn Abrahams	Misconduct and Breach of INDECOM Act	July 13, 2016	JCF
Cons. Archibald Wright	Misconduct and Breach of INDECOM Act	July 13, 2016	JCF
Cons. Warren Ramsey	Misconduct and Breach of INDECOM Act	July 13, 2016	JCF
Cons. Damion Gillespie	Misconduct and Breach of INDECOM Act	July 13, 2016	JCF
Cpl. Kirk Haye	Wounding with Intent and Breach of INDECOM Act	July 13, 2016	JCF
Cons. Lynval Banner	Assault	August 19, 2016	JCF

Table 3: The above table shows all the police officers arrested and charged for various offences for the period of July - September 2016.

PART THREE

PUBLIC INFORMATION

Meetings with Security Forces and INDECOM:

In the 3rd quarter of 2016, INDECOM senior managers in the Operations Unit had two (2) meetings with members of the JCF High Command and the Inspectorate of Constabulary. The following matters were discussed:

- Specific Multiple Shooting Cases
- Body worn cameras
- JCF Policies, Practices and Protocols

OUTREACH – AWARENESS EXERCISES

Unit/Division/Station	Group Size	Contact hours
Department of Corrections	40	2
St. Ann Justice Fair	43	6
May Pen Justice Fair	30	5
Parottee Citizens Association Benevolent Society Church Service	200	1

PRESS RELEASES

For the 3rd quarter of 2016, The Public Relations Unit issued nine press releases. They are as follows:

1. INDECOM secures 6th conviction
2. INDECOM arrests 5 JCF members in Alpha shooting incident
3. INDECOM charges 5 JCF members in relation to Alpha student shooting incident
4. INDECOM is here to stay
5. "Informer" is not a bad word
6. Save the date – INDECOM Week 2016
7. INDECOM Statistics – Second Quarter 2016
8. INDECOM does not hinder law enforcement
9. INDECOM is investigating the allegation at Central Police Station

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