

[REDACTED]

From: Nancy Beninati <[REDACTED]>
Sent: Tuesday, April 23, 2019 1:17 PM
To: Cunningham, Jason (POL)
Cc: McGuire, Catherine (POL); Scott, William (POL); [REDACTED]
Subject: Compliance Measures 5.1, 8.1, and 18.1

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Dear Jason,

Our office has completed its review of the materials related to three additional compliance measures that have been submitted to us as part of the collaborative reform process. These packages focused on use of force, an area of high priority for the Department and the California Department of Justice. After reviewing the packages and information provided by the Department regarding compliance measures 5.1, 8.1, and 18.1, the California Department of Justice, finds as follows:

Recommendation 5.1.: The SFPD needs to develop and train to a consistent reporting policy for use of force.

Response to 5.1: The San Francisco Police Department published Department General Order 5.01 Use of Force, which was approved by the Police Commission on December 21, 2016. Since that time the Department has published Department Bulletin 17-006 – Supervisor Use of Force Evaluation Form, which was updated by Department Bulletin 18-171 – Updated Supervisory Use of Force Evaluation Form, October 2018. As an additional component to the use of force policy, the Department has published Unit Order 18.02 – Use of Force Evaluation Form – Missing Data Procedures, December 7, 2018, which provides procedures for evaluating information that may not have been properly reported on a use of force report, and also provides for remedial measures including training on reporting. An audit of approximately 5% of the use of force reports is conducted by the Risk Management Division Early Intervention Systems Unit (EIS) on a monthly basis by comparing the use of force report to the underlying offense report. Once the EIS Supervisor has completed their review, the commanding officer is required to return a completed memo that includes the missing information as well as the completed use of force evaluation back to the EIS Unit. The commanding officer is given discretion on how to provide remedial training and any follow up deemed necessary for the supervisor who completed the initial use of force evaluation. Based upon all of the above, the Department of Justice finds that the Department is in substantial compliance with this recommendation; however, to remain in substantial compliance, SFPD will need to engage in ongoing review and improvement, and take remedial action if and when deficiencies are found, in accordance with the detailed compliance measures that have been agreed upon among all parties.

Recommendation 8.1: The SFPD should immediately require supervisors to respond to events in which officers use force instruments or cause injury, regardless of whether there is a complaint of injury by the individual. This will allow the Department to gain greater oversight of its use of force.

Response to 8.1: The San Francisco Police Department published Department General Order 5.01 Use of Force, which was approved by the Police Commission on December 21, 2016. Use of force reporting is addressed in Section VII of the policy. Under that provision, it is the responsibility of the officer to immediately notify their supervisor about a reportable use of force as defined by the policy, and then incumbent upon the supervisor to respond to the scene and conduct a use of force evaluation. Under General Order 5.01, officers shall report (1) any use of force involving physical controls when the subject is injured, (2) complaints of injury in the presence of officers, (3) complaints of pain that persists beyond the use of a physical control hold, and (4) the use of personal body weapons, chemical agents, impact

weapons, ERIWs, vehicle interventions, K-9 bites, and firearms. Notably, the SFPD requires its officers to report the intentional pointing of firearms at an individual as a use of force, a best practice that is commendable. The supervisor is also required to complete the Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable. If the supervisor determines that a use of force was unnecessary or that force resulted in serious bodily injury or death, the supervisor shall notify their superior officer who also has obligations under Section VII of the policy. As discussed above in more detail, there is also an auditing process conducted by the EIS Unit. Therefore, the California Department of Justice finds the implementation of recommendation 8.1 to be in substantial compliance; however, to remain in substantial compliance, SFPD will need to engage in ongoing review and improvement, and take remedial action if and when deficiencies are found, in accordance with the detailed compliance measures that have been agreed upon among all parties.

Recommendation 18.1: The SFPD needs to develop a policy for investigation standards and response for all officer use of force.

Response to 18.1: The San Francisco Police Department published Department General Order 5.01 Use of Force, which was approved by the Police Commission on December 21, 2016. Use of force reporting is addressed in Section VII of the policy. Under that provision, it is the responsibility of the officer to immediately notify their supervisor about a reportable use of force as defined by the policy, and then incumbent upon the supervisor to respond to the scene and conduct a use of force evaluation. Among other things, that evaluation includes an on-scene investigation which ensures that all officer and civilian witnesses are identified and interviewed, photographs of injuries are taken, and that other evidence is booked. When a superior officer is notified of a supervisor's preliminary determination of unnecessary force or force that results in serious bodily injury or death, the superior officer will notify the commanding officer and ensure all other notifications are made consistent with DGO 1.06, Duties of Superior Officers. In cases of unnecessary force, the superior office notifies and submits any documentation to the Office of Citizen Complaints, consistent with DGO 2.04, (Citizen Complaints Against Officers). Use of force training is provided to the officers and supervisors which included officer, supervisor and commanding officer's responsibilities in reporting and investigating use of force incidents. As discussed above in more detail, there is also an auditing process conducted by the EIS Unit. Therefore, the California Department of Justice finds the implementation of recommendation 18.1 to be in substantial compliance; however, to remain in substantial compliance, SFPD will need to engage in ongoing review and improvement, and take remedial action if and when deficiencies are found, in accordance with the detailed compliance measures that have been agreed upon between all parties.

Please let us know if you have any questions or would like to discuss these further. Thank you.

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Finding # 18	The SFPD does not adequately investigate officer use of force.
Recommendation # 18.1	The SFPD needs to develop a policy for investigation standards and response for all officer use of force.

Recommendation Status	Complete	Partially Complete	In Progress
	Not Started	No Assessment	

Summary

The San Francisco Police Department established policies and procedures to require supervisors to respond to the scene of reportable use of force incidents and guide their investigation or evaluation of those incidents. Department General Order 5.01 Use of Force (December 2016) requires supervisors to respond to the scene and provides investigative guidance by directing supervisors to secure the scene, identify and interview witnesses, and other investigative practices, including identification of injured persons [CM1, CM2 and CM3]. Supervisors and all members of the department completed use of force training, which included officer, supervisor and commanding officer’s responsibilities for reporting and investigating use of force incidents [CM4].

Additional policy guidance provides training and education to supervisors to ensure use of force reports are completed accurately. Department Bulletin 17-006 Supervisor Use of Force Evaluation Form and as updated by Department Bulletin 18-171 Updated Supervisor Use of Force Evaluation Form (October 2018), provide step-by-step instruction for completing the supervisor use of force report. Accuracy and completeness is monitored by the EIS Unit which conducts regular audits of use of force reports and if necessary, may return a use of force report to a supervisor for additional work. Pursuant to EIS Unit Order 18-02 Supervisory Use of Force Evaluation Form – Missing Data procedures, commanding officers are delegated the responsibility of determining remedial or corrective action, including retraining, for a supervisor discovered by the audit to have completed a use of force report that has errors or otherwise is not in compliance with policy [CM5]. A sample memorandum sent from EIS to a station commanding officer regarding missing/incomplete data was included in the package [CM6]. This practice goes beyond auditing of training records as a measure of ensuring standards for investigation and response protocols to use of force incidents are followed. The response to this recommendation is designated as Complete. In upcoming project phases, the team will monitor the department’s use of force investigation files and practices to identify evidence that the policies, procedures, and practices have become institutionalized.

Compliance Measures		Status/Measure Met
1	Develop investigative standards.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2	Develop response standards.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3	Develop policy.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4	Provide training.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
5	Audit of training records and training/continual improvement/feedback loop.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
6	Evidence of supportive and remedial action if deficiencies are found.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Administrative Issues:

Compliance Issues:

Supplemental Document Request:

Requested Documents

Responsive Document(s) and Why

None at this time.



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Recommendation # 18.1 The SFPD needs to develop a policy for investigation standards and response for all officer use of force.

Response Date: 12/21/2018

Screening Questions:

1) Has the recommended action occurred?

- a.) Develop Investigative standards.
-Yes. See question #2.
- b.) Develop response standards.
-Yes. See question #2.
- c.) Develop policy.
-Yes. See question #2.
- d.) Provide training.
-Yes. See question #3.
- e.) Audit of training records and training/continual improvement/feedback loop.
-Yes. See question #2, #3, and #4.
- f.) Evidence of supportive and remedial action if deficiencies are found.
-Yes. See question #4.

2) Does the recommendation require a DGO or other department policy? If not required, is the recommendation supported by a department policy?

Department General Order 5.01 (Section VII B 2 Supervisor's Responsibility) describes in detail how a supervisory evaluation is conducted during a use of force investigation. Under "Supervisor's Responsibility" it states:

"When notified of the use of force, the supervisor shall conduct a supervisory evaluation to determine whether the force used appears reasonable and within the provisions of this order. The supervisor shall:

- a) Immediately respond to the scene unless a response is impractical, poses a danger, or where officers' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior supervisor;
- b) Ensure the scene is secure and observe injured subjects or officers;



DOJ Request For Information (RFI) Sheet

- c) Ensure that witnesses (including officers) are identified and interviewed, and that this information is included in the incident report. The number of witnesses may preclude identification and interview of all witnesses, however supervisors shall ensure identification to the best of their ability;
- d) Ensure photographs of injuries are taken and all other evidence is booked;
- e) Remain available to review the officer's incident report, supplemental incident report and written statement at the direction of the superior officer. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth in VII.B. 1. above;
- f) If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.
- g) Complete and submit the Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable, by the end of watch;
- h) Complete the Use of Force Log (SFPD 128) and attach one copy of the incident report by the end of watch."

Department Bulletin (DB) 17-006 mandates that supervisors must complete a Supervisory Use of Force Evaluation Form for each reportable use of force and submit through the chain of command before the end of their watch. The Supervisory Use of Force Evaluation has been rolled out department wide as of 1/9/17.

Included with DB 17-006 was a step by step guide which showed line by line how to fill out the form and where to get this information from. This guide was attached to the Department Bulletin and is easily accessible to all Supervisors who reference the DB on the proper procedures.

On 10/11/2018, the DB 18-171 was issued in order to reflect the updated and improved changes on the Supervisory Use of Force Evaluation Form. Included with DB 18-171 is a step by step guide which shows line by line how to fill out the form and where to get this information from. This guide was attached to the Department Bulletin and is easily accessible to all Supervisors who reference the DB on the proper procedures. This shows a continual improvement loop as the department improves on procedures around Use of Force policies.

-**Department Bulletin (DB) 18-171** (Updated Supervisory Use of Force Evaluation Form) (Issued 10/03/18- Supersedes DB 17-006, Amends DGO 5.01)

-**DGO 5.01**



DOJ Request For Information (RFI) Sheet

-DB 17-006 (Superseded by DB 18-171)

3) Does the recommendation require training and/or education?

-Step by Step Form Completion Guide (Updated 09/18- Issued through DB 18-171)

-DGO 5.01 (10 Hours) Power Point

-DGO 5.01 Expanded Course Outline

-DGO 5.01 (10 Hours) Sign-in Sheet/Course Evaluation.

-DGO 5.01 Use of Force Training Audit

4) Does the recommendation require an audit or continuous improvement loop?

DB 18-171 (Updated Supervisory Use of Force Evaluation Form) (Issued 10/03/18- Supersedes DB 17-006, Amends DGO 5.01) mandates that supervisors must complete a Supervisory Use of Force Evaluation Form for each reportable use of force and submit through the chain of command before the end of their watch. The Supervisory Use of Force Evaluation has been rolled out department wide since 1/9/2017 when DB 17-006 was issued. The EIS unit receives the completed Supervisory Evaluation Forms daily by email. EIS then compiles the corresponding incident report and Use of Force log to look for discrepancies. (See Use of Force Details Summary Report and Monthly Use of Force Audit Reports below).

In the past, SFPD did not track clerical errors involving the completion of Use of Force Log. Previously, the Supervisory Use of Force Evaluation forms were sent back to the Captain at the district level for corrections. The data from the Supervisory Use of Force Evaluation form is then entered into the Administrative –Investigative Management (AIM) database where all use of force data can then be disseminated to the mandated divisions or units, and used as part of the Early Intervention System.

In October 2018, SFPD started tracking clerical errors on a using an excel spreadsheet. On 12/7/2018, Unit Order 18-02, Supervisory Use of Force Evaluation Form-Missing Data procedures, was established to address this compliance measure.

See sample of Memorandum sent from EIS Unit to Commanding Officer at Northern Station regarding missing data/incomplete. The memorandum now asks two questions:

- 1) Was the supervisor given remedial training on how to complete the form?
- 2) Is further follow up needed with the Supervisor?

-Use of Force Details Summary Report- July 2018 (Retrieved from Administrative – Investigative Management (AIM) database).

-Monthly Use of Force Audit

-Screen shot from SFPD AIM Database.

-DB 17-006 - Audited on 9-27-2018



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-It is recommended that supervisor(s) at the EIS Unit conduct local audits per their regular management duties

-Table of Contents