

Recommendation 19.1

Gabriel Martinez [Redacted]

Tue 10/20/2020 9:56 AM

[Redacted]

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Dear Lt. Altorfer,

Our office has completed its review of the materials related to Recommendation 19.1 that have been submitted to us as part of the collaborative reform process. This package focused on SFPD developing an officer-involved shooting protocol. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

Recommendation 19.1: The SFPD needs to develop a standard officer-involved shooting protocol within 90 days of the release of this report.

Response to 19.1: On May 4, 2019, SFPD entered a memorandum of understanding with the San Francisco District Attorney's Office regarding officer-involved shootings. Pursuant to the agreement, the District Attorney's Office will immediately respond to the scene of, and lead the criminal investigation into, officer-involved shootings, in-custody deaths, and uses of force resulting in serious bodily injury. The MOU outlines, among other things, SFPD's responsibilities at the scene of an officer-involved shooting, SFPD's briefing to the District Attorney's Office, and SFPD's role during civilian and SFPD witness interviews. Under the MOU, SFPD will lead the administrative (non-criminal) investigations and any ancillary criminal investigations regarding non-law enforcement personnel.

As SFPD no longer leads criminal investigations into officer-involved shootings, Cal DOJ and HH review SFPD for substantial compliance with this recommendation with respect to its administrative investigations. For the administrative investigations, SFPD's Internal Affairs Division (IAD) administratively investigates whether any SFPD personnel violated any general order, regulation, policy, or other workplace rule during an officer-involved shooting. In addition to the memorandum of understanding, SFPD has memorialized its officer-involved-shooting protocols in unit orders. On July 20, 2020, SFPD issued IAD Unit Order 20-01, "Officer Involved Shooting Scene Protocol." Attached to the Unit Order is the "Officer Involved Shooting Protocol Checklist." These documents inform IAD personnel of the protocols for administratively investigating officer-involved shootings. The checklist includes fifteen actions for SFPD officers to complete from arriving at the scene to departure, including reporting to the incident commander, the initial briefing, and the scene walkthrough.

Additionally, SFPD issued IAD Unit Order 19-03, "Internal Affairs Division OIS/ICD Case Closure Procedures and Checklist" on January 15, 2019. This policy requires the investigator to ensure that all supporting documents, reports, photos, recordings, and videos are contained in the investigative file and the file has been scanned and uploaded. The Officer in Charge of IAD will review each case file and ensure that it contains the relevant supporting documents. The checklist attached to the Order includes

[REDACTED]

yes/no boxes for items such as the summary report, administrative witness statements, and training/tactical assessments.

In creating its officer-involved shooting protocols, SFPD reviewed the US DOJ Community Oriented Policing Services Guide for Officer Involved Shootings and the San Jose Police Department Internal Affairs Manual. SFPD borrowed practices from these documents, such as adding a conflict of interest statement for the IAD investigator, to ensure SFPD was aligned with established local and national procedures for investigating officer-involved shooting incidents.

Based upon all the above, the California Department of Justice finds that SFPD is in substantial compliance with this recommendation. Please let us know if you have any questions or would like to discuss these further. Thank you.

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Finding # 19	The SFPD does not maintain complete and consistent officer-involved shooting files.
Recommendation # 19.1	The SFPD needs to develop a standard officer-involved shooting protocol within 90 days of the release of this report.

Recommendation Status	Complete	Partially Complete	In Progress
	Not Started	No Assessment	

Summary

The San Francisco Police Department executed an agreement with the District Attorney's Office of the City and County of San Francisco wherein the District Attorney's office is responsible for the criminal investigation of officer-involved shooting incidents. Proactively, the department then developed a standard officer-involved shooting protocol to facilitate the administrative investigation of officer-involved shooting incidents. Unit Order 20-01 Officer Involved Shooting Protocol was developed in consideration of national recommended practices and is sufficiently flexible to be adopted by other department units, including the Homicide Unit, if necessary. Unit Order 19-03 Internal Affairs Division OIS/ICD Case Closure Procedures & Checklist ensures the investigation contains all relevant documents and evidence before the investigation is closed.

The promulgation of appropriate policies and the agreement regarding the criminal investigation of officer-involved shooting incidents demonstrates the department's commitment to the legitimacy and transparency of this important function. The department's response to this recommendation is designated as Complete, however the team will continue to monitor the department to ensure the described policy and supportive practices are institutionalized.

Compliance Measures		Status/Measure Met
1	Develop a standard OIS protocol.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2	Released within 90 days of October 12, 2016 (January 12, 2017).	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A

Administrative Issues

Compliance Issues

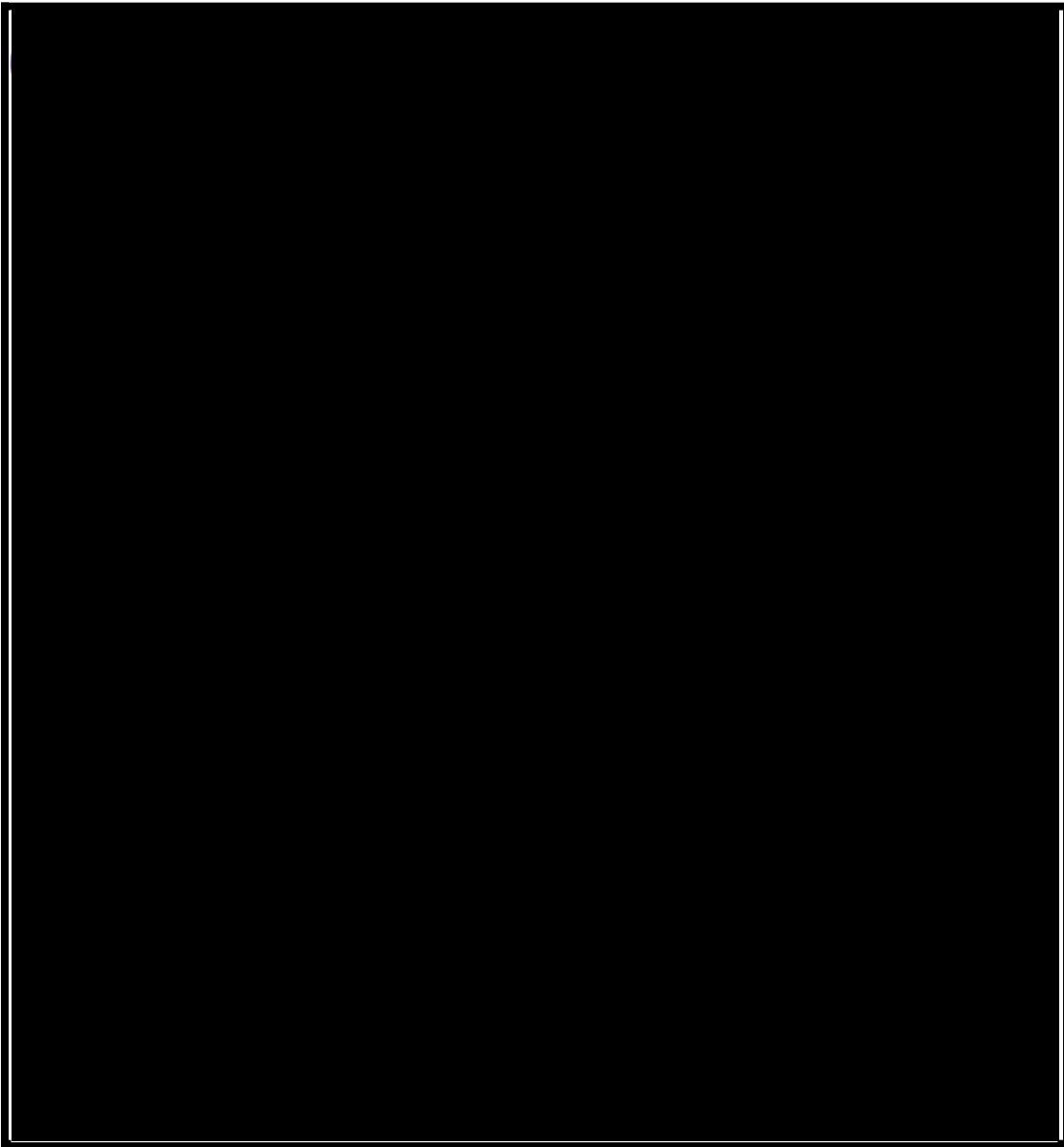


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Recommendation Guidance and Policy Development Process / Executive Summary

On Thursday, May 28th, 2020, SFPD IAD members participated in a conference call with members of Hillard Heintz and the California Department of Justice. In this call, Commander Robert O'Sullivan and Sergeant Graig Wells presented the strategy to address this recommendation in light of the SFDA/SFPD MOU. [REDACTED]

[REDACTED]



(Email exchange detailing policy development meeting. Attachment #2)



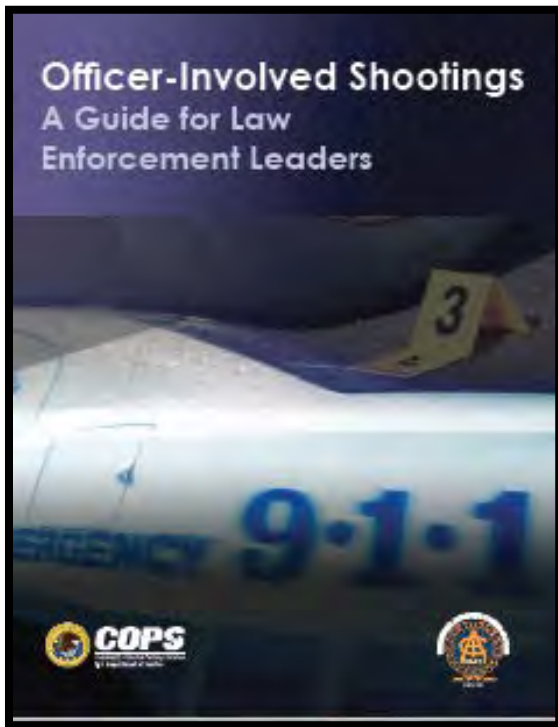
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Based on the guidance provided by Hillard Heintz and California DOJ personnel during this process, SFPD reviewed established local and national procedures for the administrative investigation of Officer-involved shooting incidents. This review included an analysis of several documents to ensure that the policy being designed included best practices locally and nationally. The intent of the review was to:

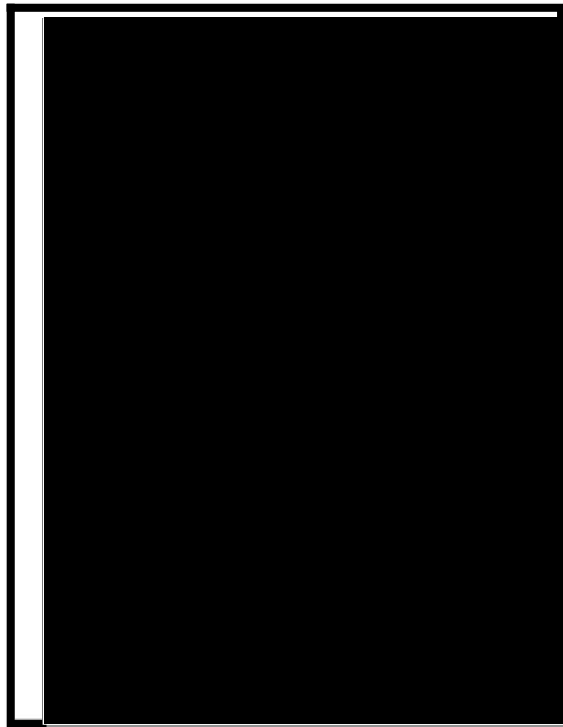
- A. Formally identify the existing procedures in use by SFPD
- B. Understand the best practices in use outside of SFPD
- C. Design a protocol that considers both existing and emerging trends in OIS administrative investigations.
- D. Use the information from this review to create an "OIS Protocol Checklist" to standardize the response to OIS administrative investigations.

Source Document Review

Sources and documents reviewed during the research phase of this recommendation included:



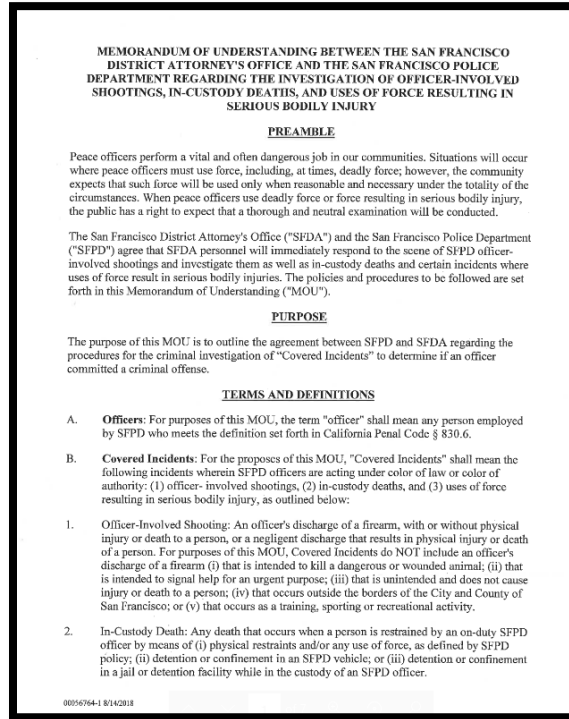
(DOJ/COPS, Attachment #3)





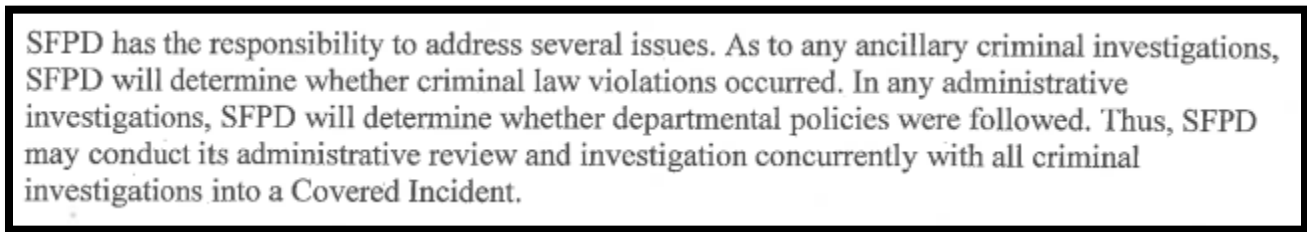
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(Source Document review, Continued)



(SFPD / SFDA MOU, Attachment # 1)

The SFPD / SFDA MOU is the foundational document that codifies the authority of the Internal Affairs Division to conduct an administrative investigation. The MOU specifies that authority on page 2 of the MOU (below):



(SFPD / SFDA MOU, Page 2. Attachment # 1)

Additionally, these documents categorize the *responsibilities and requirements* of the SFPD in Administrative investigations.



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Once the boundaries of the administrative investigation were identified by the MOU, IAD project managers researched existing procedure (both documented and anecdotal within the OIS unit) to create the foundation of an on-scene "OIS Protocol." This protocol is intended to be a comprehensive document that outlines the steps taken by investigators from the time of initial call-out, until the conclusion of their on-scene investigation.

With the foundation of the OIS Protocol in place (based on the MOU / SOP's), IAD project managers conducted a wide ranging search of current best practices within law enforcement. The intent of this search was to bolster the "base" OIS Protocol with additional relevant material based in the latest research.

As part of this research, members utilized, "Officer-Involved Shootings – A Guide for Law Enforcement Leaders." This is a comprehensive, high-level guide published by the U.S. Department of Justice that takes a holistic approach to OIS policy development. Topics discussed within the guide incorporate the range of OIS related specialty areas, including criminal and administrative investigations, scene procedures, media, and the importance of transparency at all phases of an investigation.

IAD personnel researching this project utilized information and recommendations from several areas of the manual, including:

1. Pre-Incident Preparations (Response Teams, Policies and Procedures)
2. Incident Scene Procedures
3. Incident Scene Walkthrough
4. Incident Scene Responsibilities
5. Administrative Investigations

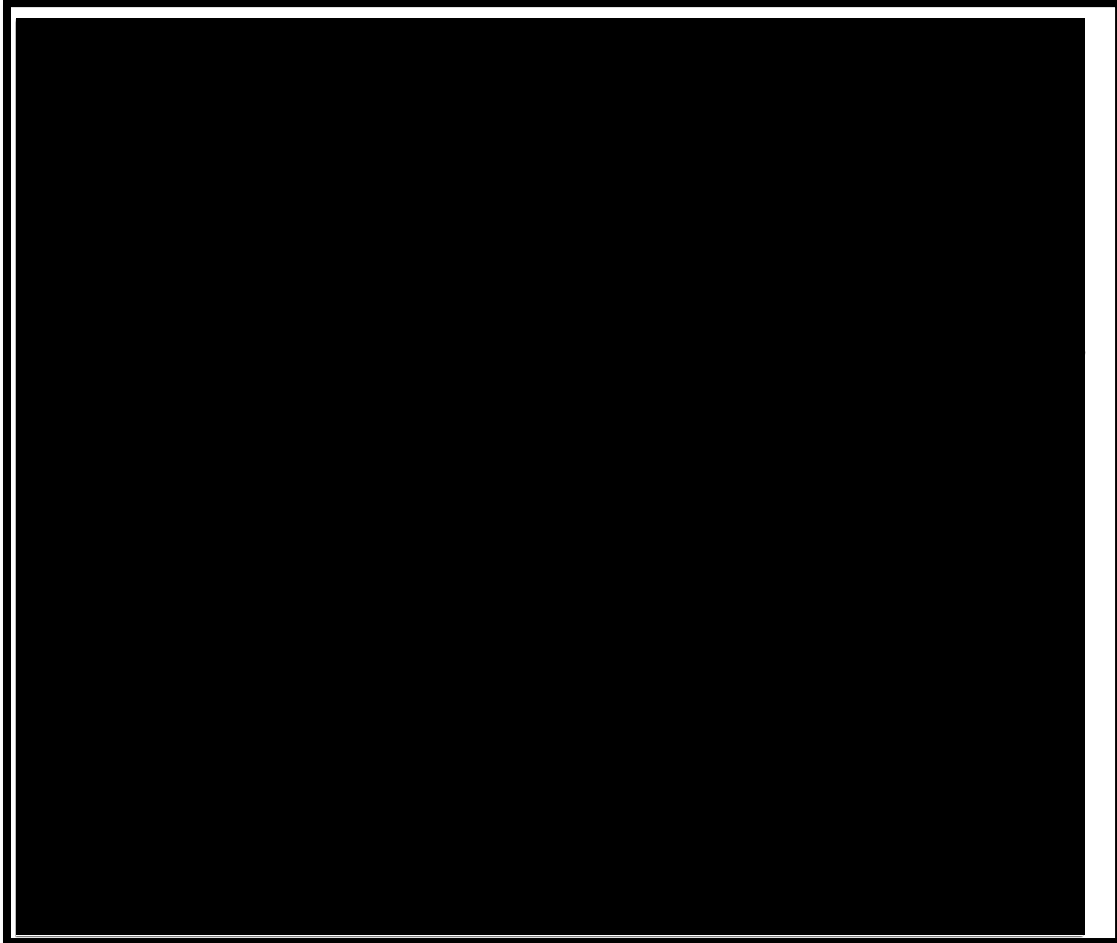


(DOJ OIS Guide, page 3, Attachment # 3)



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IAD members also researched the topic of including a “Conflict of Interest” statement within the OIS Protocol, [REDACTED] on May 28th, 2020. IAD located policy examples at several agencies, including the San Jose Police Department.



With the assistance of SFPD Legal Division attorney’s, IAD members designed a “Conflict of Interest Statement” for OIS investigations. This statement must be read by the lead investigator, and signed during the initial response to an OIS. The Conflict of Interest statement was designed to identify any potential conflicts between involved and investigating personnel. The elimination of potential conflicts related to personnel friendships, supervisory status, financial interests, and similar relationships reduce the actual or perceived bias among all investigation participants.



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Compliance Measures #1:

1) Develop a standard OIS protocol.

As a result of this review, the SFPD developed an "OIS Protocol" that has been memorialized in three documents:

1. IAD Unit Order #20-01, (Attachment #5), titled, "Officer Involved Shooting Scene Protocol."
2. "Officer Involved Shooting Protocol Checklist" (attachment #6)
3. IAD Unit Order #19-03, titled, "Internal Affairs Division OIS/ICD Case Closure Procedures and Checklist" (attachment #7)

These documents "introduce" the new OIS protocol (Unit Order #20-01), provide the actual protocol checklist itself (OIS Protocol), and document that it is required to be included in the completed case file (Unit Order 19-03).



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Additional Information on Each Document

1. IAD Unit Order #20-01 (attachment #5), titled, "Officer Involved Shooting Scene Protocol."

- This Unit Order further explains the responsibilities of SFPD and SFDA during OIS incidents, including the responsibility of IAD to complete an administrative investigation. The unit order then "introduces" the "Officer-Involved Shooting Protocol Checklist," and mandates its use during OIS investigations.

UNIT ORDER	UNIT INDEX NUMBER	20-01
	DATE ISSUED	7/20/20
	DATE REVISED	
SUBJECT: Officer Involved Shooting Scene Protocol		
ISSUED TO: All Members of Internal Affairs Division	ISSUED BY: Commander Robert O'Sullivan Risk Management Division	

The Memorandum of Understanding between the San Francisco Police Department and the San Francisco District Attorney's Office, effective May 4th, 2019, designates the investigative responsibilities of SFPD related to Officer Involved Shootings (OIS), In-Custody Deaths (ICD), and Officer Involved Discharges (OID). These incidents are considered "Covered Incidents" under the MOU, and require separate, parallel investigations to be conducted by different investigative bodies.

In the event of a covered incident, the San Francisco District Attorney's Offices' Independent Investigation Bureau (IIB) is responsible for completing a criminal investigation of these incidents. The SFPD Investigative Services Detail (ISD) conducts an investigation into the ancillary crimes surrounding the incident. The Internal Affairs Division (IAD) maintains the responsibility to conduct an administrative investigation.

The purpose of this Unit Order is to inform IAD members of a "OIS Scene Protocol" that has been developed to assist with IAD Administrative investigations of covered incidents. This protocol is intended to be used as a checklist for IAD members during the initial response and investigation of covered incidents.

The "OIS Scene Protocol" (attached) shall be utilized throughout the initial investigation to memorialize the indicated information. The OIS Scene Protocol shall be completed and included in the administrative investigation case file, under "Attachment L" in the case binder.

See attached "OIS Scene Protocol."



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2. "Officer Involved Shooting Scene Protocol" (attachment #6)

- This protocol is the actual document that the lead investigator will carry to the scene when responding to OIS incidents.

Officer-Involved Shooting Protocol Checklist

IAD Case Number: _____

Date of Occurrence: _____

Location of Occurrence: _____

IAD Investigator Assigned: _____

Conflict of Interest Statement:

I, _____, have been designated as an assigned investigator for this covered incident, as defined in the SFPD / SFDA Memorandum of Understanding effective May 4th, 2019. I am directed by the Chief of Police to conduct an administrative investigation in this incident. As an Internal Affairs Division (IAD) Investigator with the San Francisco Police Department, I hereby swear and attest that:

- I am not a family member of the complainant(s) or involved officer(s).
- I am not a family member of any material witness.
- I am not a former spouse, domestic partner, or close personal friend of any subject officer(s), material witness, or complainant.
- I have not directly supervised any of the subject officer(s) or complainant officer(s) in the preceding two year period.
- I do not have a financial association or interest related to this incident, such as landlord / tenant, roommate, or business relationship with any complainant(s), involved officer(s), or material witness.
- I am unaware of any other relationship that would affect my ability to conduct this investigation.

In the event a potential conflict of interest has been identified, I have notified the Lieutenant of the Internal Affairs Division.

As of the date and time of the signing of this document, I have not identified a conflict of interest that would prevent me from participating in this investigation. I further attest that I will complete a fair and unbiased investigation regarding this incident.

Investigator: _____ Signature: _____ Date: _____
(Print Name / Star)

Lieutenant: _____ Signature: _____ Date: _____
(Print Name / Star)

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3. IAD Unit Order #19-03, titled, "Internal Affairs Division OIS/ICD Case Closure Procedures and Checklist" (attachment # 7)

- This unit order explains the case closure requirements for all OIS cases. An attached case closure checklist also requires that the "OIS Protocol" be included in the case file.

UNIT ORDER	UNIT ORDER NUMBER	19-03
	DATE ISSUED	1/15/19
	DATE REVISED	6/24/20
SUBJECT: Internal Affairs Division OIS/ICD Case Closure Procedures & Checklist		
ISSUED FOR: Internal Affairs Division Officer-Involved Shooting Team		ISSUED BY: Commander Robert O'Sullivan, Jr. #411 Office of Chief of Staff
<p>The Internal Affairs Division (IAD) is responsible for completing and maintaining administrative investigation files for all Officer-Involved Shootings (OIS) and In-Custody Death (ICD) cases. It is imperative in these cases that all relevant documents are contained in the case file prior to final closing of the case.</p> <p>Case File Closure Procedures</p> <p>1. Investigator Responsibilities</p>		

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(Unit Order, cont)

Unit Order			
(continued): _____			
Date of Incident: _____		Location: _____	
Case#: _____		IAD#: _____	
Lead Admin Investigator _____			
Section	Documents in Case File	Yes	No
A	ADMINISTRATIVE SUMMARY REPORT		
B	ADMINISTRATIVE CHRONOLOGICAL		
C	SFPD FORM 83 / SUMMARY		
D	PERSONNEL HISTORY		
E	FORMS / LOGS / REPORTS		
F	COMPELLED STATEMENTS(S)		
G	ADMIN. WITNESS STATEMENT(S)		
H	RETURN TO DUTY DOCUMENTS		
I	TRAINING / TACTICAL ASSESSMENTS		
J	ADMIN EXPERT REPORTS / ANALYSIS		
K	APPLIED LAW / POLICY		
L	OIS PROTOCOL		



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Compliance Measure #2: Released within 90 days of October 12, 2016.

The San Francisco Police Department began working on the Collaborative Reform Initiative (CRI) process upon the issuance of the report in October 2016. During the process, the Department has worked on establishment of the CRI program, identification of Executive Sponsors and internal and external stakeholders, and guidelines and materials for stakeholders. In 2017, the United States Department of Justice's Community Oriented Policing Services' (COPS) office ended the program. Despite not having any support, SFPD continued on working towards the implementation of the recommendations. In February 2018, California Department of Justice took over the oversight of the implementation of the CRI process.

End of Document