

[REDACTED]

From: Gabriel Martinez [REDACTED]
Sent: Wednesday, April 14, 2021 7:04 PM
To: [REDACTED]
Subject: Recommendation 56.6

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Dear Acting Captain Altorfer,

Our office has completed its review of the materials related to Recommendation 56.6 that were submitted to us as part of the collaborative reform process. This package focused on SFPD working with DPA to identify and resolve complaint investigation issues. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

Recommendation 56.6: The SFPD should encourage the DPA and IAD to identify obstacles that interfere with optimal complaints investigations and accountability, with a goal of implementing changes to better support their intended missions.

Response to 56.6: On May 15, 2019, SFPD published Department General Order (DGO) 2.04, "Complaints Against Officers." The DGO had not been updated since 1994. The revised DGO added procedures for increasing public access in the complaint process. DGO 2.04 also established a Disciplinary Review Board to ensure that SFPD works with both the DPA and the Police Commission to review aggregate trends of complaints and specific sustained complaints to identify policy and training failures and make written recommendations. The DRB consists of the SFPD Assistant Chief of Staff, Deputy Chief of the Administration Bureau, a member of the Police Commission, and the Director of the Department of Police Accountability. The DRB reports quarterly to the public and to the Commission on its recommendations and regarding the success or failure of any implemented recommendations.

The first DRB meeting was held on February 11, 2020, and, after a hiatus due to COVID-19

restrictions, DRB meetings resumed in October 2020. For the Fourth Quarter Disciplinary Review Board Meeting in 2020, the DRB composed a memorandum with nine recommendations. These included recommendations on DPA adding specificity in failure-to-supervise findings, providing the public specific numbers of IAD and DPA cases in addition to trend data, and adding a requirement that officers who receive a

sustained discourtesy complaint go to specific training to address discourtesy. (December 28, 2020 memo from Assistant Chief Moser to Chief Scott).

SFPD and DPA also conduct monthly meetings on policy recommendations called “Sparks Meetings.” These meetings, required by the city charter, Police Commission Resolution 27-06, and SFPD Policy (see e.g., Written Directive’s Unit Order 20-03, "Collaboration with DPA During Policy Development"), are a forum for issues arising between SFPD and DPA, which have included resolving issues in the complaint process. For example, the August 2020 Sparks Meeting included a discussion on complaint log email troubleshooting.

Additionally, on December 2, 2020, representatives of SFPD, DPA, and the Police Commission met to discuss strategies to improve communications with the public regarding the complaint process. The group recommended the development of a common SharePoint communications system for the DRB, additional public educational sessions on the complaint process held at District stations (including each agency publicizing the sessions on their websites), and reviewing the finding letter template for possible additional information. On January 16, 2020, DPA and IAD piloted a presentation to Central Station regarding the complaint process and intend to roll out the presentation to other district stations as Covid restrictions ease.

Based upon all of the above, the 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 further. Thank you.

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Finding # 56	The SFPD does not engage in community outreach and information regarding the discipline process and rights of the community.
Recommendation # 56.6	The SFPD should encourage the DPA and IAD to identify obstacles that interfere with optimal complaints investigations and accountability, with a goal of implementing changes to better support their intended missions.

Recommendation Status	Complete	Partially Complete	In Progress
	Not Started	No Assessment	

Summary

The San Francisco Police Department identifies a range of engagement with DPA, the most relevant being the MOU entered into in May 2019. Since the time of the assessment, the department has engaged with DPA on a range of issues, such as resolution of Sparks recommendations through review of specific disciplinary cases as part of the disciplinary review board - DRB. There are multiple meetings across the SFPD and with the Police Commission to discuss disciplinary issues. This meets compliance measure number one.

Scheduling, getting evidence in timely manner, waiting on attorneys to attend interviews and scheduling with other City agencies are some of the obstacles identified in support of compliance measure number 2.

The SFPD and DPA have established the DRB with the goal of addressing obstacles to complete and thorough complaint investigations. This group did not meet until December 2020. However ahead of that there were three meetings held in 2020 to frame the protocols and framework for review by the DRB. Feeding into the DRB were a series of actions that helped to identify challenges and seek to overcome them. Jointly there was work with the community, internally there was work on data and publicly in combination with the reporting at the Police Commission. SFPD identifies scheduling protocols that are meant to address the obstacles they face. This meets compliance measure three.

The SFPD submits that the OIC will continue to work through and assess the known obstacles as part of their ongoing review and command role. While not included in this file, the DRB will work to address ongoing difficulties. It should be noted that this file is built under the current approach of each entity having distinct roles and challenges. Ideally, as the ongoing review matures, the agencies will be able to work together to jointly solve and address obstacles to timely and complete investigations as a whole, recognizing their distinct roles but mutually shared outcomes – timely, fact driven investigations into complaints of misconduct.

Compliance Measures		Status/Measure Met
1	Concurrent with actions recommended in 56.1, discuss challenges faced in investigations against police officers.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2	Identify obstacles.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3	Develop a plan and process to minimize and/or overcome the identified obstacles.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4	Periodic review and assessment of the plan to determine its effectiveness in overcoming the identified obstacles.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Administrative Issues

Compliance Issues

The data provided for Compliance Measure #1 is not on point – honesty and tolling should not be a challenge.



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Finding # 56: The SFPD does not engage in community outreach and information regarding the discipline process and rights of the community.

Recommendation # 56.6 The SFPD should encourage the DPA and IAD to identify obstacles that interfere with optimal complaints investigations and accountability, with a goal of implementing changes to better support their intended missions.

Response Date: 01/15/2021

Executive Summary:

The San Francisco Police Department has had a long and productive working relationship with the Department of Police Accountability, formerly known as the Office of Citizen Complaints (OCC)

On Thursday January 07, 2021, SFPD Professional Standards Members participated in a conference call with members of Hillard Heintze and the California Department of Justice. During the prescreening, Suggestions and guidelines were discussed for this recommendation as described below...

Hillard Heintze thought that SFPD had shown discrete tasks that are responsive to the recommendation, but that those tasks could be better linked to show they are part of a broader department plan to engage DPA. Relatedly, Hillard Heintze noted that SFPD could add support from other related recommendation files to show prior and ongoing work with DPA. Cal DOJ agreed with Hillard Heintze

Since November of 2004, with the adoption of Police Commission Resolution 97-04, the Department of Police Accountability and the San Francisco Police Department have been providing the Police Commission with a quarterly report that reflects the number and type of IAD investigations initiated during each reporting period. This report is known as the *Quarterly Report* and it includes the number of cases sustained, disciplinary action taken, dismissed cases, and the current number of active IAD investigations. DPA also tracks new complaints filed against officers and are distributed to the appropriate Captains known as the *Henderson Report*.

The DPA has also been involved in policy development since the adoption of Resolution 27-06 which was signed on April 06, 2006. This Resolution which is now referred to as the "Sparks Report" requires that the SFPD and DPA meet monthly to discuss DGO's, Department Bulletins, and Department Manuals. SFPD and DPA must submit a quarterly report to the Police Commission regarding any policy proposals.

May 21, 2019 the Police Commission adopted Resolution 19-40, which is an MOU of understanding between the DPA and the SFPD regarding the updated Department General Order 2.04.



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DGO 2.04, established a plan for an ongoing collaboration between SFPD and DPA called the "Discipline Review Board" (DRB). The board consists of members from SFPD, DPA and the Police Commission. The protocol for the members is to have quarterly meetings to examine inefficiencies, policy gaps, and protocols for the complaint system and discipline process.

The DRB was held on February 11, 2020 to discuss the parameters set in DGO 2.04 Section .08. The following meeting was scheduled to occur on March 17, 2020. Due to the Covid-19 pandemic the meeting was put on hold until September 30, 2020 and the third meeting was held on November 12, 2020. These first three meetings were held to develop the protocols required in DGO 2.04 sec.08.

December 18, 2020 was the first official DRB meeting, which was attended by the Assistant Chief, Commander of Risk Management Office, The Deputy Chief of the Administration Bureau, The Deputy Chief of the Field Operations Bureau, A member of the Police Commission, and the Director of the DPA.

The Internal Affairs Division (IAD) and the Department of Police Accountability (DPA) are responsible with the investigation of police officers. Each agency faces different challenges and obstacles that interfere with complaint investigations. The SFPD will continue to work with DPA and IAD to improve upon the completion of more timely, fair, and unbiased investigation practices and findings.

The San Francisco Police Department began their journey on Collaborative Reform in 2016. Since then, they have continued to work with the Department of Police Accountability on Collaborative Reform. Below are a just few of the successful Compliance Measures that have been met by partnering with DPA.

Rec #56.3 DPA and SFPD partnered together to give a joint presentation to members of the community on the discipline process.

Rec #56.4 The translation of form 293 DPA Complaint Form into multiple languages and displaying them in the lobby of District Stations.

Rec #56.5 Inviting DPA to present at the Biannual Captains Community Meetings.

Rec #64.5 DPA giving presentations at the Police Academy to recruits on the complaint process. Joint training between DPA and IAD on the Classification on Complaint and Findings outlined in DGO 2.04. (Attachment# 1) *Historical documents of SFPD and DPA working together*

The SFPD will encourage ongoing training for both DPA and IAD investigators in an effort to improve investigative practices. The SFPD will work with DPA and IAD to implement a periodic review and assessment plan to determine its effectiveness in overcoming the identified obstacles.



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Compliance Measures:

- 1) **Concurrent with actions recommended in 56.1, discuss challenges faced in investigations against police officers.**

Prior to discussing any challenges, it should be noted that San Francisco Police Officers when questioned on matters relating to their employment with the Department by a superior officer or by one designated by a superior officer, or by a member of DPA, answer all questions truthfully and without evasion. (Attachment# 2) DGO 2.01Rule #21

If the investigation is administrative, the officer must answer all questions posed during the administrative investigative investigation. All statements, declarations, or answers to questions regarding the investigation, however, shall be truthful and non-evasive. Members failing to do so shall be subject to disciplinary action. (Attachment# 3) DGO 2.08

Statements made during an administrative investigation cannot be used against an officer to prove a criminal violation in a subsequent criminal action against the officer (Lybarger v. City of Los Angeles, 40 Cal.3d 822 (1985)) Prior to being questioned, the member shall be advised of and accorded all his or her rights mandated by law or Memorandum of Understanding (see DGO 2.08, Peace Officers' Rights).

The Internal Affairs Division and Department of Police Accountability are tasked with the investigation of police officers for allegations of misconduct. Each agency has their own roles and responsibilities as outlined in the revision of DGO 2.04 *Complaints Against Officers* (Attachment# 4) and the MOU between DPA and SFPD (Attachment# 5). IAD primarily investigates officers for complaints of off-duty misconduct and internal complaints made by Department members. Respectively, DPA investigates all complaints against officers for on-duty allegations of misconduct and neglect of duty.

IAD receives complaints from its members, civilians, and other government agencies. One of the challenges IAD investigators encounter are cases involving uncooperative complainant or whistleblower complaints. Without the cooperation from the complainant, additional witnesses or supporting evidence, the investigators are unable to thoroughly investigate the allegation of misconduct, if they are given limited information to follow up on.

On the other hand, IAD investigators may receive cases that are more complex involving multiple officers, various jurisdictions, and allegations of criminal misconduct. These investigation may require additional investigative steps or resources to ensure the timeliness of the investigation per Government Code 3304.

Lastly, a challenge IAD investigators may face is late or delayed notification of administrative cases. The Internal Affairs Division will occasionally receive late memorandums or delayed reporting of misconduct at the patrol/bureau level, which affects the "statute of limitations" for administrative investigations.



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Investigators must complete their investigation and notify the subject officer of the possible discipline within one (1) year of the discovery of the underlying conduct by "a person authorized to initiate an investigation." (Attachment #6) This is codified in the IAD Standard Operation Procedure on page 29, which is listed below.

Statutes of Limitations and Tolling:

Administrative investigations have a "statute of limitations" that requires IAD to complete their investigation and notify the subject officer of the possible discipline within one (1) year of the discovery of the underlying conduct by "a person authorized to initiate an investigation." (3304 Government Code)

2) Identify obstacles.

IAD reached out to DPA Chief of Operations to coordinate a joint training/review session to discuss and understand DPA's challenges/obstacles. With Covid-19 restrictions, both agencies conducted a virtual meeting with all investigators using Microsoft Teams, which took place on November 18, 2020. IAD created an agenda (Attachment# 7) to discuss various topics including classification of complaints, training, and investigative challenges. IAD also took meeting minutes (Attachment# 8) to ensure actionable items are followed up.

From the group discussion, DPA and IAD investigators shared insight on some of the common challenges and obstacles. IAD and DPA Investigators have identified a shared obstacle that they encounter with investigations is the scheduling of witnesses and accused officers for interviews. Officers work various shifts (ie. day, swing, and night) with rotating days off, while investigators work regular office hours. The investigator has to also accommodate the schedule of the attorney or Union Representative /Shop Steward of the accused officers or civilian members. This can cause timely delays due to schedule conflicts and other interference.

Another common challenge/obstacle that DPA mentioned in the meeting was working with other city agencies. It is often difficult to find a contact person from a city agency or outside agency to ask for assistance in seeking evidence such as surveillance footage or police reports. Investigators find that often the directory/website is not updated with the most current info. On other occasions, the contact person does not respond to email or calls in a timely manner, thus causing additional delays.

3) Develop a plan and process to minimize and/or overcome the identified obstacles.

Within IAD Office

To deal with scheduling conflicts that may occur because of officers, union representation work schedules, IAD can adjust their work schedule. IAD Investigators are also expected to respond to district stations, private residences of members, and/or to attend Police Commission hearings upon necessity. Members will be compensated (per the IA SOP) if their



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duties extend beyond their scheduled tour of duty with the OIC's approval. (Attachment #9) *IAD Standard Operation Procedure on page 3*. IAD Investigators have also been encouraged to use the technology that is available, to conduct virtual meetings.

To deal with delayed reporting at the station level, newly promoted Lieutenants and Captains are sent to the Police Academy for instruction and training, regarding their new rank. One aspect of the training is a presentation (Attachment #10) given by IAD reminding superior officers of DGO 1.06 Duties of *Superior Officers Sec (a) Prepare an initial investigative report on memorandum (SFPD 68) addressed to his/her commanding officer before reporting off duty. The report shall contain information that can be reasonably obtained e.g., full identification of witnesses, summary of statements from witnesses, preliminary findings, and recommendations where appropriate* (Attachment #11)

In order to minimize some of the obstacles IAD investigators face, the Officer in Charge of IAD conducts bi-weekly meetings to conduct case reviews with each investigator. These meetings allow for the OIC of IAD to review, discuss and provide feedback to the investigator on his/her cases. The OIC utilizes *IAD check list* (Attachment #12) as a reference during the case reviews. The check list includes important investigative steps from the Standard Operations Procedure Manual such as compliance with 3304 date, case updates, sending form letter to citizen complainants, and interviewing all witnesses etc.

In addition to the bi-weekly meetings, the IAD investigators are encouraged to discuss their cases with senior investigators in the unit, who are more experienced and versed. IAD investigators can also seek guidance from the IAD attorneys to ensure proper handling of the cases. The OIC also encourages IAD investigators to attend various training to gain knowledges/skills pertaining to their administrative investigations.

Within DPA

The Internal Affairs Division has taken the initiative to work collectively with DPA on multiple levels to identify obstacles that interfere with complaint investigations and accountability. Both agencies will strive to implement changes to better support their intended missions. In order for DPA to overcome their obstacles they should use IAD as a resource to identify and reach out to any Department Head of City Agencies. IAD has a long list of contacts in law enforcement and in the City of San Francisco. DPA requested that a directory with contacts be shared between the two agencies.

A memorandum titled *Accountability DOJ Recommendations* was written to establish quarterly meetings with the Commander of Risk Management Office and a DPA representative to discuss various topics such as concurrent investigations, trends, policy/training issues and other related matters. (Attachment #13) The Commander of RMO, who oversees the Internal Affairs Division will then disseminate the pertinent information to the investigators of IAD.

In addition to the Commander's meetings, the Internal Affairs Division has reached out to DPA Chief of Operations to have joint review/training sessions with all the investigators. The first meeting was conducted via Microsoft Teams on Wednesday 11/18/2020 to discuss



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classification of cases, bi-annual training, and other relevant topics. Both IAD and DPA investigators had the opportunity to share resources and best practices in investigation to overcome the challenges in following up with cases.

Lastly, the Unit Order 20-04 "*Internal Affairs Division and Department of Police Accountability Trainings and Seminars*" (Attachment #14) was established to ensure bi-annual trainings between both agencies. This will allow for members of the IAD and DPA investigators to attend Internal Affairs related trainings and seminars to keep up to date with current case law and trends related to officer disciplinary issues and Officer Bill of Rights updates.

4) Periodic review and assessment of the plan to determine its effectiveness in overcoming the identified obstacles.

The OIC of IAD will continue to review and monitor the progress of the IAD investigators in the biweekly meetings for case updates as codified in the IAD SOP, under the section "Responsibilities of the OIC of IAD". The purpose of these meetings is to identify any potential delays or constraints that would jeopardize the completion of the investigation. The OIC of IAD will be able to provide guidance and feedback to the investigator to overcome any challenges or obstacles in his/her investigation. As outlined in the IAD Standard Operating Procedure, The OIC of IAD shall do the following:

- *Oversee the daily operations in the Internal Affairs Division.*
- *Review all complaints sent to IAD and have Duty Officer assign the cases accordingly.*
- *Review and discuss all open cases with the assigned IAD investigator on bi-weekly basis. The OIC reserves the right to review any case at any time due to the needs of the Department and or unit.*
- *Available to provide ongoing advice, direction, and guidance to IAD investigators.*
- *Ensure all members of IAD adhere to all policies and procedures set forth in the SOP and conduct quarterly audits of the SOP for updates/changes in Dept. policy and case law. Failure to comply with any policy or procedure may result in disciplinary action.*
- *Attend bi-weekly meetings with the Commander of Risk Management Office, Captain of Risk Management to provide updates on IAD cases. In biweekly meetings, the OIC of IAD will also meet with the OIC of ISD to ensure the timely transfer of cases.*

(Attachment #15) IAD Standard Operation Procedure on page 4

In addition, the OIC of IAD will discuss and assess the effectiveness of the joint review and bi-annual trainings with DPA with members of the Internal Affairs Division. This process will occur quarterly as a part of reviewing IAD's policies and practices from the SOP. IAD members can discuss the effectiveness of the bi-annual trainings and joint review sessions with DPA. (Attachment #16) IAD Standard Operation Procedure on page 5