Recommendation 64.3



To:

- McGuire, Catherine (POL);Scott, William (POL)

+8 others

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Acting Captain Altorfer,

Our office has completed its review of the materials related to Recommendation 64.3 that were submitted to us as part of the collaborative reform process. This package focused on SFPD collaborating with the Department of Police Accountability (DPA, formerly OCC) to improve the complaint and disciplinary processes. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

<u>Recommendation 64.3</u>: The SFPD should seek to improve interagency communications and identify ways of improving collaboration on investigative practices to ensure timely conclusion of investigations, shared information on prior complaints and finding of misconduct, and appropriate entry of discipline, designed to improve the overall discipline system that holds officers to account.

Response to 64.3: On May 28, 2019, SFPD and DPA entered into a memorandum of understanding (MOU) regarding DGO 2.04. The MOU between DPA and the SFPD sets regularly scheduled monthly meeting with the Chief of Staff of the SFPD and the Chief of Staff of the DPA to discuss discipline, policy, and training recommendations. The MOU tasks DPA with sending quarterly updates on cases to IAD with expected completion dates, notifying the Chief of Police and IAD of all cases that reach the six-month mark, and informing the Chief of Police of the reasons for any delay over nine months.

The MOU also commits SFPD and DPA to formulating consistent language when referring to categories of alleged misconduct. The agreed-upon classifications are

contained within the MOU to help with the consistency of investigations between the two agencies. Also pursuant to the MOU, DPA sends SFPD the "Henderson Report" each week with information on the complaints DPA received.

On May 15, 2019, SFPD published Department General Order (DGO) 2.04, Complaints Against Officers, outlining SFPD's procedures for investigating and processing complaints against officers and describing the Department of Police Accountability (DPA) procedures. The Order establishes a Disciplinary Review Board that meets quarterly to examine inefficiencies, policy gaps, and protocols for the complaint system and discipline process. The board consists of senior staff from SFPD, DPA and the Police Commission, including the Assistant Chief of Staff or designee from the Risk Management Office, the Deputy Chief of the Administration Bureau, and the Deputy Chief of the Field Operations Bureau.

The first disciplinary review board meetings were intended to set up the parameters and processes of the board. After an initial meeting on February 11, 2020, meetings were paused because of the Covid pandemic until September 30, 2020. A third meeting to finalize the setup of the board was held on November 12, 2020, and the first official board meeting occurred on December 18, 2020. Several issues from individual officer actions were raised by both IAD and DPA, including how firearms are handled at the range, how SFPD conducts searches at residences when only a juvenile is present, and how officers communicate with bystanders that are recording officers. DPA recommended policy changes to address these issues. IAD and DPA also identified complaint trends, including recurring issues with officers turning on body-worn cameras, search warrant issues, discourtesy, and interactions with limited English proficient individuals. SFPD and DPA agreed to nine recommendations stemming from these trends, including SFPD exploring modifying the body-worn-camera policy to allow Sergeants to regularly audit body-worn-camera footage in incidents that do not involve the use of force, SFPD requiring officers who receive sustained discourtesy complaints to go to specific training to address discourtesy, and ensuring SFPD training teaches that officers should not question claims from individuals that they are limited English proficient.

The SFPD Risk Management Office and DPA have also agreed to formalize their quarterly meetings to improve interagency communications, promote transparency, and discuss trends and any issues related to concurrent investigations. These meetings did occur previously but were never agendized or formalized. On November 13, 2020, SFPD issued a memorandum outlining a more structured processes for these meetings, including that the Commander of Risk Management or designee and a DPA designee will attend the meetings.

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 further. Thank you.

Finding # 64

The SFPD does not routinely collaborate with the Office of Citizen Complaints (known now as the Department of Police Accountability (DPA)).

Recommendation # 64.3

The SFPD should seek to improve interagency communications and identify ways of improving collaboration on investigative practices to ensure timely conclusion of investigations, shared information on prior complaints and finding of misconduct, and appropriate entry of discipline, designed to improve the overall discipline system that holds officers to account.

Recommendation Status

Complete Not Started Partially Complete No Assessment In Progress

Summary

SFPD has consistently been working with the DPA to address protocol and shared investigations issues. This is linked to Recommendation 64.2 and while the department is in compliance with this recommendation and 64.2, there is concern about the cadence and the outcome of the engagement with DPA. The SFPD needs to ensure the appropriate focus and continuation of the goals of this series of recommendations to ensure long-lasting reform.

For compliance measure (CM) #1, the SFPD and DPA have indicated they will not have shared protocols for investigations. However, they are working to better share information and align practices to a consistent focus as demonstrated in CM#2. There is evidence of ongoing work in this area, including joint training as demonstrated in other recommendations and the compliance with 64.2. Compliance is awarded given the focus on ensuring consistent classification and assignment of investigations in accordance with the existing policies under DGO 2.04 and the MOA with DPA.

For CM#2, the department submits the adoption of DGO 2.04 which established the Disciplinary Review Board (DRB). This is a start to engagement at the policy level, but has a slow start, in part due to the pandemic. There were three meetings in 2020: February, September and November. Evidence of supportive action was submitted on December 18, 2020 with evidence including a policy failure, and correction for the use of the SFPD range equipment; juveniles present during a search warrant; update of DGO 8.03 for communication during protest events; and the right of the public to record police department members engaged in police action. It should be noted that the SFPD references its adherence to 97-04, but this predates the assessment which identified a separated system that did not address the issues under this recommendation. The work since the assessment is what is being evaluated.

As far as an improvement loop, the department identifies the passage of DGO 2.04 to help drive collaboration and communication, specifically through the Discipline Review Board. However, there is sufficient evidence of ongoing engagement and improvement since the delivery of the original assessment. There have been joint trainings, joint review of the complaint classifications and ongoing engagement at several levels across both organizations with the intent to improve a shared understanding of the approach to disciplinary investigations and outcomes at the SFPD. SFPD is in compliance with CM#3. The agencies would be well served in viewing the work to date and establishing specific goals and targets for the DRB to continue to drive improvements.

Hillard Heintze File Review Recommendation # 64.3

Compliance Measures		Status/Measure Met		
1	Concurrent with Rec 64.2, as part of the joint review process, establish shared protocols for investigations.	√ Yes	□ No	□ N/A
2	Concurrent with Rec 64.2, explore ways to better collaborate on investigative practices and administration of investigations.	√Yes	□ No	□ N/A
3	Evidence of evaluation process and improvement loop	√ Yes	□No	□ N/A

Administrative Issues

Compliance Issues

Reference to processes in place before the assessment as evidence are not acceptable – the assessment reviewed those processes and found them lacking. Absent a direct evidentiary support for why these older systems are supportive, e.g., a management focus on redirecting the process or better engaging it, they should not be submitted.



Finding #64: The SFPD does not routinely collaborate with the Office of Citizen Complaints. The transparency of the complaint and disciplinary process is negatively affected by the working relationship between SFPD IAD and OCC. The lack of engagement undermines the effectiveness of both in fulfilling their respective roles and responsibilities. Issues with respect to information sharing between the two entities, timeliness of complaint investigations, and bases for recommending progressive discipline potentially impede the investigative and adjudication processes, potentially eroding the overall integrity of the public complaint resource.

<u>Recommendation</u> # 64.3 The SFPD should seek to improve interagency communications and identify ways of improving collaboration on investigative practices to ensure timely conclusion of investigations, shared information on prior complaints and finding of misconduct, and appropriate entry of discipline, designed to improve the overall discipline system that holds officers to account.

Response Date: 03/17/2021

Executive Summary:

The SFPD has taken measures to improve interagency communications and relations with the Department of Police Accountability. SFPD Internal Affairs Division has worked collectively with DPA to revise DGO 2.04 regarding policies and procedures surrounding the disciplinary process.

SFPD has established quarterly meetings with DPA and the Police Commission to discuss/review trends in both IAD and DPA complaints and to provide recommendations on policy and training. SFPD has also created a protocol for joint trainings with DPA to ensure continuity of current investigative process and procedures.

The value of an effective complaints system serves to build and maintain public confidence and trust by conducting prompt, fair and impartial investigations.

Compliance Measures:

1) Concurrent with Recommendation 64.2, as part of the joint review process, establish shared protocols for investigations.

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 known as the Quarterly



Report includes the number of cases sustained, disciplinary action taken, dismissed cases, and the current number of active IAD investigations. (Attachment #1) Quarterly Report

As outlined in Resolution 19-40 the MOU between SFPD and DPA, the "DPA Morning Reports" instructs the DPA to transmit a Morning Report that will document the number and types of complaints, the district of occurrence, and officer information and if available identification of specific officer(s) involved. The Morning Report which is now referred to as the Henderson Report has summaries of the incident and is sent weekly to IAD for review and analysis. (Attachment #2) Henderson Report

On Thursday January 14, 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...

Last week, Cal DOJ and Hillard Heintze prescreened 64.1, which also discussed SFPD's Disciplinary Review Board (DRB) meetings. As with the draft package for 64.1, this package states that the DRB meetings first started in September 2020, nearly a year and a half after the adoption of DGO 2.04. However, in our meeting last week, SFPD clarified that these meetings have in fact taken place before September 2020 and that the November 13, 2020 Memorandum was to memorialize the existence of these ongoing meetings (rather than to initiate the meetings).

DGO 2.04 was updated and adopted on May 15, 2019. Section 2,04,08 Quarterly Meetings Between DPA And the Police Department establishes the mechanism to improve interagency communication to identify trends and policy failure on a quarterly basis. This meeting is known as the Disciplinary Review Board (DRB) (Attachment #3) DGO 2.04

The DRB shall review and discuss:

- Aggregate trends related to DPA and IAD complaints, both alleged and sustained.
- Policy failure or training failure cases closed in the prior quarter.
- The Department in consultation with the DPA will select sustained cases from the previous quarter for review to determine the need for training or policy changes.
- 4. SFPD and DPA Recommendations.

The DRB shall consist of the following:

- The Assistant Chief of Staff or designee from the Risk Management Office;
- The Deputy Chief of the Administration Bureau;
- The Deputy Chief of the Field Operations Bureau;
- A member of the Police Commission (Advisory);
- The Director of the DPA, or designee (Advisory).



The DRB shall consider whether any policy, procedures or training needs to be revised, added or re-issued if it relates to the subject matter reviewed. The DRB may make written recommendations that include the manner in which the recommendation shall be implemented and a timeline for completion based upon identified priority level and complexity of recommendation. The DRB shall report quarterly to the public and to the Commission those policy and training changes it recommends, and the measurement of the success or failure of each change, in a manner consistent with individual police officer privacy rights. The guidelines for the report are contained within the MOU between SFPD and DPA.

The Chief of Staff, the Commander, Captain and Lieutenant of Risk Management Office and Department of Police Accountability have held several preliminary meetings to lay the foundation for the Discipline Review Board.

The first DRB was held on February 11, 2020 to discuss the parameters set in DGO 2.04 Section .08. A follow up 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. (Attachment #4) DRB Meeting Minutes for the following dates:

February 11, 2020 September 30, 2020 November 12, 2020

***Due to the restrictions with Covid-19, the DRB did not convene during the months of March-August 2020.

SFPD and DPA have worked collectively to develop the layout of the DRB meeting. From the preliminary DRB meetings, SFPD and DPA have agreed to discuss aggregate trends in cases and find common ground between agencies to mitigate the complaints. Both agencies also agreed that the process for the DRB may change or evolve as time progresses.

In order to discuss trends in cases, IAD and DPA selected sustained cases from the previous quarter to review. IAD has coordinated with DPA to share both IAD and DPA case files via Microsoft SharePoint to the attending DRB members. (Attachment #5) This streamlined process is in compliance with the protocol for the joint review board as stated in DGO 2.04.08.

IAD and DPA are in communication with each other to follow up on action items from the preliminary meetings. IAD has coordinated with the DPA's Chief of Staff via email to compile data and made DPA's additions to the case summary spreadsheet from previous quarters for the DRB members to review prior to the meetings. (Attachment #6)

In addition, IAD and DPA have discussed and provided input on the proposed format of the Disciplinary Review Board (DRB). The OIC of IAD created a PowerPoint and presented the proposed format to members of DPA and RMO. (Attachment #7)



DPA's Chief of Staff offered to assist IAD with the presentation and would ensure all DPA data is provided in a timely manner. Members of DPA and RMO provided positive feedback on the structure and agreed to use the format for the first DRB meeting. Both agencies have worked cohesively together and set the DRB quarterly meeting to be held, on December 18, 2020.

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. (Attachment #8) December 2020 DRB Meeting Minutes

On December 18, 2020, the DRB had identified the following policy and training failures. Policy Failure:

IAD identified one policy failure case:

This case was regarding the process for the use and return of firearms from the SFPD range for training courses. The issue was addressed by Chief Scott and the Training Division has updated their policy and curriculum to delineate a process for the use of the range's equipment.

DPA discussed two policy failure cases:

The first case involved a search warrant, being conducted at a residence when only a juvenile was present. DPA recommended that policy be updated to address what actions the officer should take when faced with this circumstance.

The second case was regarding an officer telling a bystander that they could not photograph the officer while they conducted a traffic stop. DPA recommended that the update of DGO 5.07, Rights of Onlookers, include specific language to address when officers can and cannot prevent the taking of photographs.

Training Failure:

IAD identified one training failure case:

An officer recently graduated from the FTO program failed to attend their bi-annual physical fitness test. This case was reviewed by Assistant Chief Moser and he recommended the FTO Office have a process in place to remind recruit officers of their responsibilities upon completing the FTO program.

DPA identified two training failure cases:

An officer advised a civilian conducting a 1st Amendment audit they could not film inside the station. Upon learning of the incident, a supervisor at the station corrected the officer. DPA recommended updated training be implemented regarding 1st Amendment audits.



Officers failed to properly address a group of protesters located behind police barricades until after they had breached the barricades. Additionally, neighboring police districts did not communicate regarding the protest. DPA recommended that DGO 8.03 be updated to adhere to best practices for communication with individuals engaged in a protest as well as between district stations that may be affected by the activity.

Both IAD and DPA then presented on aggregate trends in cases and complaints for the first three quarters of 2020.

Trends

Internal Affairs Division:

Body Worn Camera- Violation of this policy was the most common trend observed by IAD. Lt. Wilhelm noted the violation was typically the officers failing to activate their BWC's as dictated by policy.

Failure to Appear- The second trend noted was cases where officers failed to appear as required at their bi-annual firearms qualifications, bi-annual fitness test and/or at subpoenaed court appearances.

Failure to investigate / Failure to take a report- The third trend was cases where an officer failed to either properly investigate an incident and/or failed to prepare an incident report as required by Department policy.

Department of Police Accountability:

Body Worn Camera- Violations of the Body Worn Camera policy by officers were the most common violations found by DPA in their investigations. Chief of Staff Hawkins noted that violations of this policy were by far the most prevalent in DPA investigations.

Fourth Amendment- The second trend noted was cases where officers conducted searches and seizures that were in violation of current laws pertaining to the Fourth Amendment.

Limited English Proficiency-The final trend observed was of officers violating the Department policy regarding interactions with individuals with limited English proficiency.

The DRB proposed several recommendations to address these trends.

Recommendation #1: The DPA and IAD to provide specific numbers of cases relevant to the aggregate trends observed in order for this data to be more tangibly relayed to officers and the public so they can quantify the frequency with which these cases occur.

Recommendation #2: When the DPA makes a finding of failure to supervise that they provide specificity in which way the supervisors failed in their duties so it may be more appropriately addressed by the Department.



Recommendation #3: That the statistics regarding Body Worn Camera violations be communicated to officers more frequently as a mechanism to remind them of this ongoing issue and serve as a training tool to gain more compliance with the policy.

Recommendation #4: The SFPD require officers who receive sustained discourtesy complaints to go to specific training to address that issue.

Recommendation #5: SFPD training should emphasize that if someone claims to be hearing impaired or have limited English proficiency the officers should not question the claim but shall adhere to SFPD policy in their interaction with the individual(s).

Recommendation #6: The SFPD should provide their officers with annual updates regarding local laws, ordinances, or municipal codes to ensure they are still in effect and have not changed to ensure their proper application.

Recommendation #7: That when relevant, the SFPD's training courses such as Critical Mindset Coordinated Response (CMCR), should emphasize and reinforce motor skills for the use of the Body Worn Camera to help officers maintain compliance with the policy.

Recommendation #8: The SFPD should explore the possibility of modifying the Body Worn Camera policy to allow Sergeants to regularly audit Body Worn Camera footage in incidents that do not involve the use of force to ensure officers are in compliance with the policy regarding activation of their cameras.

Recommendation #9: That DPA and IAD should conduct training at supervisory promotional courses to illustrate the aggregate trends of DPA and IAD investigations in order to make supervisors aware of present and ongoing issues.

These Recommendations were unanimously approved and upon approval, will be implemented through coordination with the relevant Department division and/or units, as necessary. (Attachment #9) Fourth Quarter Disciplinary Review Board Meeting Memo

On Thursday January 14, 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...

SFPD will clarify in this package that the quarterly meetings, described in the November 13, 2020 memorandum, have been ongoing and were not a recent development. The language in 64.1 and 64.3 should be consistent with one another.



In addition to the DRB the Chief of Staff of the SFPD shall schedule monthly meeting with the Chief of Staff of DPA to discuss discipline, policy, and training recommendations. (Attachment #10) Resolution 19-40 MOU Between SFPD and DPA Sec VII

SFPD Risk Management Office and DPA have also agreed to formerly meet quarterly. Even though these meeting between RMO and DPA have occurred in the past they were never agendized or formalized. These quarterly meetings will be attended by the Commander of Risk Management or designee and DPA. These meetings will be agendized and held quarterly to improve interagency communication and promote transparency. The Officer in Charge of IAD will also attend the quarterly meeting should the need arise to discuss trends and or issues related to investigative practices. The Commander of Risk Management will disseminate the pertinent information from the quarterly meetings with DPA to the Officer in Charge of Internal Affairs Division at the RMO bi-weekly meetings. (Attachment #11) Accountability DOJ Recommendation Memo and Agenda

After a few scheduling conflicts, the first agendized meeting between the Commander of RMO and DPA's Chief of Staff was scheduled and held on January 11, 2021 at 1300. The next meeting is tentatively scheduled for late March 2021.

(Attachment #12) DPA/SFPD Case and Trend Discussion Agenda

Concurrent with Recommendation 64.2, explore ways to better collaborate on investigative practices and administration of investigations.

On May 15, 2019 The San Francisco Police Commission adopted Resolution 19-40. This Resolution is a memorandum of understanding between the Department of Police Accountability and the San Francisco Police Department General Order 2.04, Complaints Against Officers.

Section V. Classifications, establishes that the DPA and the SFPD agree to formulate consistent language to refer to categories of alleged misconduct. (Attachment #10) MOU Between SFPD and DPA

CLASSIFICATIONS

DPA and the SFPD have agreed to formulate consistent language to refer to categories of alleged misconduct. The classifications are contained within the MOU between SFPD and DPA and DGO2.04. DGO 2.04.07 requires that the DPA and SFPD shall use the following terms and definitions to maintain consistency at the conclusion of investigations.

DGO 2.04.07 CLASSIFICATIONS OF COMPLAINTS AND FINDINGS

A. INVESTIGATIVE FINDINGS

 IMPROPER CONDUCT A preponderance of the evidence proves that the alleged conduct occurred and that the conduct violated Department policy or procedure.



- INSUFFICENT EVIDENCE The evidence fails to prove or disprove that the alleged conduct occurred.
- PROPER CONDUCT The evidence proves that the alleged conduct occurred; however, the conduct was justified, lawful, and proper.
- POLICY FAILURE The evidence proves that the alleged conduct occurred but was justified by Department policy or procedures; however, the SFPD or DPA recommends that the policy or procedure be changed or modified.
- SUPERVISION FAILURE The evidence proves that the alleged conduct occurred and was the result of inadequate supervision.
- TRAINING FAILURE The evidence proves that the alleged conduct resulted from inadequate or inappropriate training.
- UNFOUNDED The evidence proves that the conduct alleged did not occur or that the accused officer was not involved.
- REFERRAL TO OTHER AGENCY The evidence proves that the alleged conduct did not involve a sworn member of the Department or that the complaint raised issues not within the scope of DPA or IAD. Referral to other agency allegations are not counted as complaints against sworn members of the Department.
- WITHDRAWAL The complainant failed to provide additional requested evidence, or the complainant requested a withdrawal of the complaint.
- MEDIATED The complainant and officer agreed to mediation as a nondisciplinary resolution. (DPA finding only) (Attachment #13) DGO 2.04.07 Classification of Complaints and Findings

To ensure proper classification and investigative findings, Internal Affairs Division reached out to DPA Chief of Operations to coordinate a joint training/review session. With Covid-19 restrictions, both agencies attended a virtual meeting with all investigators using Microsoft Teams, which took place on November 18, 2020. IAD created an agenda to discuss various topics including classification of complaints, future training, and investigative challenges. (Attachment #14) IAD Meeting Agenda. IAD also took meeting minutes to ensure actionable items are followed up. (Attachment #15) Meeting Minutes

In the training session, IAD discussed Unit Order 20-04 "Internal Affairs Division and Department of Police Accountability Trainings and Seminars," which was established to ensure bi-annual trainings between DPA and the SFPD. 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. On occasion, Internal Affairs training may preclude non-sworn personnel. IAD members attending such training or seminars will ensure that information applicable to DPA investigators be relayed to DPA, if permissible. (Attachment #16) Unit Order 20-04 "Internal Affairs Division and Department of Police Accountability Trainings and Seminars.



The IAD Training Coordinator will also provide the Department of Police Accountability with a list of available Internal Affairs related trainings/seminars for DPA members to attend.

(Attachment #17) IAD Standard Operating Procedures

3) Evidence of evaluation process and improvement loop.

SFPD has taken measures to improve interagency communications and has identified ways of improving collaboration with DPA.

With the revision of DGO 2.04, the establishment of the Discipline Review Board (DRB) has served as a mechanism for both SFPD and DPA to identify trends in complaints and training/policy failures on a quarterly basis. This process allows for SFPD and DPA to evaluate sustained cases and provide recommendations to improve upon the overall discipline system that holds officers accountable.

On the upper management level, the Chief of Staff has biweekly meetings with DPA's Chief of Staff to discuss various cases/trends and other current issues that arise from the Risk Management Office (RMO). In addition, the Commander of (RMO) has of quarterly meetings with DPA Chief of Staff to discuss IAD concurrent investigations, trends, policy/training issues and other related matters. The pertinent information from the meetings is then disseminate through the chain of command to the Officer in Charge of the Internal Affairs Division and then to the IAD members in their weekly meeting.

On the investigator level, IAD members have conducted a joint training/review session with DPA management and investigators. Due to Covid-19 restrictions, IAD will continue to hold these virtual trainings/review sessions on a needed basis to discuss challenges in investigations, current trends, and upcoming training. The next joint meeting is tentative for April 2021.