

## Recommendation 80.2

TK

Tanya Koshy [REDACTED]

Thu 8/5/2021 4:26 PM

To:

- [REDACTED]
- McGuire, Catherine (POL);
- Scott, William (POL);
- [REDACTED]

+7 others

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Dear Acting Captain Altorfer:

Our office has completed its review of the materials related to Recommendation 80.2 that have been submitted to us as part of the collaborative reform process. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

Recommendation 80.2: Clear communication protocols, responsibilities, and roles need to be established among the key partners responsible for investigations into criminal conduct and address administrative misconduct by officers.

Response to Recommendation 80.2: SFPD has two external partners that it works with on investigating misconduct by members. SFPD has a memorandum of understanding with the San Francisco District Attorney's Office (SFDA) delegating SFDA the investigator of criminal conduct in three types of events, which are referred to as "covered incidents" in the MOU: 1) officer-involved shootings, 2) in-custody deaths, and 3) uses of force resulting in seriously bodily injury. The SFPD Risk Management Office's Investigative Services Detail (ISD) retains authority to investigate members for a wide range of other types of criminal conduct. For example, SFPD must investigate any criminal conduct of a member while off-duty as well as any whistleblower complaint of any criminal conduct. The MOU governs the responsibilities and protocols of the respective entities with respect to the types of investigations handled by the SFDA. The SFPD provides more details about these responsibilities and protocols in the package for Recommendation 2.1. As one example, the MOU explains that SFPD retains the primary responsibility to securing the scene of any covered incident but that the SFDA will lead all interviews for the investigations.

In addition, the ISD issued a unit order (20-01) which provides details about various procedures and protocols SFPD must take with respect to criminal investigations that are within SFPD's authority to handle. The unit order provides guidance on the steps that must be taken, and the people who must be involved, if there is an allegation of criminal conduct by a SFPD member; these steps include having a team of four ISD investigators respond to the scene of the criminal conduct, and the lead investigator making appropriate notifications up the chain of command.

With respect to complaints of misconduct, SFPD and the Department of Police Accountability (DPA) entered into a memorandum of understanding delegating DPA as the investigator of all complaints related to on-duty misconduct against sworn members acting under the color of authority. Under the MOU, SFPD, through the Risk Management Office's Internal Affairs Division (IAD), is responsible for investigating any internal complaints made by a member against another member, as well as complaints against non-sworn members, complaints against a member related to off-duty conduct, and complaints by other agencies (such as the SFDA). Under the MOU, DPA provides quarterly updates on its cases to IAD, including the expected completion dates of their investigations and any statutory deadlines. DPA must also notify the Chief and IAD of all investigations that have passed the six-month mark (including those where the 1-year deadline is tolled). DPA also notifies the Chief when its investigation has passed the nine-month mark and provides (1) the basis for why it is unable to complete the investigation and (2) the expected completion dates.

SFPD has also issued unit orders (IAD Unit Order 20-03 and ISD Unit Order 20-02) that govern how IAD and ISD investigators keep track of the progression of criminal and administrative investigations. The Commanding Officer of the Risk Management Office issued a memorandum to the Chief of Staff detailing the regular meetings he has with IAD and ISD staff to maintain progression of investigations that fall under both units. These meetings and the related tracking processes are discussed in more detail in the package for Recommendation 60.1.

SFPD has conducted a variety of trainings that go over the various policies and procedures that govern relationships with the SFDA and DPA. These trainings include a September 30, 2020 training on IAD procedures related to administrative investigations into complaints, a January 14, 2021 joint ISD-IAD training regarding confidentiality of investigations, and an April 20, 2021 training on policies related to reporting criminal conduct of a member. The IAD also issued a unit order (20-04) which requires bi-annual training among IAD members and DPA staff on IAD related trainings.

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 these further.

Tanya

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<b>Finding # 80</b>	<b>The SFPD does not have internal protocols for collaboration with regard to criminal investigations conducted by the district attorney or the United States Attorney’s Office for the Northern District of California.</b>
<b>Recommendation # 80.2</b>	Clear communication protocols, responsibilities, and roles need to be established among the key partners responsible for investigations into criminal conduct and address administrative misconduct by officers.

<b>Recommendation Status</b>	<b>Complete</b>	<b>Partially Complete</b>	<b>In Progress</b>
	<b>Not Started</b>	<b>No Assessment</b>	

**Summary**

This is a relatively small universe of investigations but has significant impact for the department and the community when they do occur. The department has engaged in ongoing work to ensure that the process is defined, trained and performance is held to account with policies. Compliance measure one: the department has established sufficient policies and protocols, as well as demonstrable evidence of adherence.

Compliance measure two: the department has generalized policies as to the investigation of officers for criminal misconduct, and most of this work is conducted by the Investigative Services Division (ISD) which has more detailed procedures. As of April 2021, the Investigations Bureau released a directive for the Mandatory Reporting of Misconduct. The procedures identified in Recommendation 80.1 apply here as well with ISD tasked with investigative responsibilities. There is not as strong a training focus shared with DPA, but both agencies are aware of the SFPD protocols and there are plans for future ongoing training as documented in Unit Order 20-04.

Compliance measure three: a lot of the ongoing compliance work is relatively new and therefore difficult to fully measure. The department has drafted several Unit Orders aimed at ongoing visibility and review. The Disciplinary Review Board will also have a role in validating and reviewing procedures as they relate to criminal investigations into police officers. There has been work to date that has focused on ensuring compliance with deadlines and drafting policies and protocols for investigation in SFPD officers.

Compliance Measures		Status/Measure Met
<b>1</b>	Establish internal communications and investigations protocols and procedures regarding investigations into officers.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<b>2</b>	Train detectives, IA and DPA personnel on the internal and external policies and procedures regarding investigations into police officers.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<b>3</b>	Continuous review and improvement loop.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

**Administrative Issues**

**Compliance Issues**



## Collaborative Reform Completion Memorandum

### **Finding #: 80**

The SFPD does not have internal protocols for collaboration with regard to criminal investigations conducted by the District Attorney or the United States Attorney's Office for the Northern District of California. Police misconduct uncovered during any type of covert investigation should be reported pursuant to established protocols and protect the integrity of the investigating officers. In situations with shared areas of jurisdiction or responsibility for officer conduct, there should be protocols for roles and responsibilities for all partners.

### **Recommendation # 80.2**

Clear communication protocols, responsibilities, and roles need to be established among the key partners responsible for investigations into criminal conduct and address administrative misconduct by officers.

**Response Date: 04/20/2021**

### **Executive Summary**

Partnerships in policing are a key to the San Francisco Police Departments success in 21<sup>st</sup> Century Policing. We recognize the value of our external partners, which were discussed in recommendation 80.1. Specific to this recommendation our key partners have been identified as the Department of Police Accountability and the District Attorney's Office.

Risk Managements Office roles and responsibilities are documented in IAD Unit order 18-03. The purpose of this order is to establish the formalized communication protocols, responsibilities, and roles of the Risk Management Office (RMO), Internal Affairs Administrative Division (IAD), and Internal Affairs Criminal Investigations (ISD) *IAD Unit Order 18-03 Risk Management Office Roles and Responsibilities (Attachment #1)*.

The SFPD Internal Affairs Division (IAD) is responsible for investigating all internal complaints made by members of the San Francisco Police department, both sworn and non-sworn members, complaints from Law Enforcement agencies, including prosecutors, and complaints of off-duty misconduct, both sworn and non-sworn, and complaints referred to the SFPD by the Whistleblower program.

Investigative Services Division (ISD) investigates all alleged criminal misconduct. The Risk Management Office (RMO) typically conducts criminal and administrative investigations contemporaneously, which requires the strict necessity to keep the two investigations separate as required by law to ensure that the accused member is provided their constitutional rights, which are not applicable when being administratively investigated.

In April of 2019, a Memorandum of Understanding (*Attachment #2*) was signed between the Police Department and District Attorney's Office with an effective date of May 4, 2019. In summary, the District Attorney's office will be the lead investigating agency in San Francisco officer involved shootings, in custody deaths, and use of force resulting in great bodily injury



## Collaborative Reform Completion Memorandum

(hospitalization). Officer involved shootings, and in custody deaths were previously investigated by the Police Department's Homicide Unit. The ancillary crimes, and control of the crime scenes will be the responsibility of the SFPD. The new roles and responsibilities of Risk Management are outlined in *DB 19-092 (Attachment #3)* as well as in the MOU between the DA and the Police Department. *MOU with the District Attorney's Office. (Attachment #2)*

In addition to the "ancillary crimes" ISD is also responsible for investigating the following.

- A SFPD member is arrested for off duty conduct within the City and County of San Francisco. All cases of a San Francisco Police Department member who is arrested in the City and County of San Francisco shall be immediately reported to ISD for investigation, arrest or rebooking.
- A SFPD member is accused of on duty criminal conduct. All cases in which an on-duty member is accused of criminal conduct shall be immediately referred to the Captain RMO for assessment and then to ISD for investigation.
- A SFPD member is accused of off duty criminal conduct within the City and County of San Francisco. All cases in which an on-duty member is accused of criminal conduct shall be immediately referred to the Captain RMO for assessment and then assigned to ISD for investigation.
- Internal Affairs Detail referral. When Internal Affairs Detail receives a complaint against a member of the San Francisco Police Department which includes an allegation of criminal misconduct, the Captain RMO shall review the case and immediately refer it to ISD for investigation. This type of referral may take the form of a department memo, letter from a citizen or a phone call / voicemail message.
- Department of Police Accountability (DPA) referral. When the DPA receives a complaint against a member which includes an allegation of criminal misconduct, the investigation shall be routed to the Captain of RMO who will refer it to ISD for investigation.
- Whistleblower. When the San Francisco Police Department receives a whistleblower complaint which includes an allegation of criminal misconduct by a member of the San Francisco Police Department, the complaint shall be immediately referred to Captain of RMO who will forward it to ISD for investigation.
- When a member makes an allegation. When a member of the San Francisco Police Department authors a department memo alleging criminal conduct by a member or employee of the San Francisco Police Department, the memo shall be forwarded to the Captain of RMO who will refer it to ISD for investigation.
- Incidents designated by the Chief of Police, Assistant Chief of Staff, Commander Chief of Staff or Captain of Risk Management. Any incident that the COP, Assistant Chief COS, Commander COS or Captain of RMO deem appropriate shall be investigated by ISD.
- Investigating the aforementioned cases should be at the direction of one of the following: the COP, the Assistant COS, the Commander COS, the Captain of RMO. In the event one of the above listed incidents may have occurred Department Operations Center (DOC) notifications are made through the on-call notification protocol. Such DOC notifications are typically initially made to the Captain of RMO or the OIC of ISD.



## Collaborative Reform Completion Memorandum

However, if DOC contacts the investigator directly, the investigator shall immediately notify the OIC of ISD. Cases referred to the ISD will not be accepted until one of the listed Commissioned officers has directed an investigation to commence. *Investigative Services Detail Unit Order 20-01 – ISD Procedures* (Attachment #4)

IAD Unit order 20-01 *Officer Involved Shooting Scene Protocol*, (Attachment #5) was drafted to inform IAD members of "OIS Scene Protocol" that was developed to assist with IAD Administrative investigations of "covered incidents", which are outlined in the MOU with the District Attorneys Office. This protocol is intended to be used as a checklist for IAD members during the initial response and investigation of "covered incidents".

The Internal Affairs Division and Department of Police Accountability (DPA) 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 #6) and the Memorandum of Understanding between the San Francisco Police Department and DPA, which was signed on May 21, 2019. (Attachment #7).

DPA is required to investigate all complaints against sworn members of on-duty police misconduct and off-duty police misconduct in which the sworn member is acting under the color of authority. The DPA shall completely, promptly, fairly, and impartially investigate any incident occurring within the City in which a member of the uniformed ranks of the Department discharges a firearm resulting in the physical injury or death of a person, even if the discharge is accidental, and all complaints regarding police use of force, misconduct, or allegations that a member of the SFPD has not properly performed a duty. The DPA shall investigate all such matters, except those complaints which clearly indicate that the acts complained of were proper, and those complaints lodged by other members of the San Francisco Police Department.

Investigating Police Officer misconduct whether it be administrative or criminal in nature requires extensive training. Internal affairs investigations are unique and special due to the nature of the investigation. It is critical that the training coordinators and officers in charge in each respective unit do their best to have investigators properly trained.

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