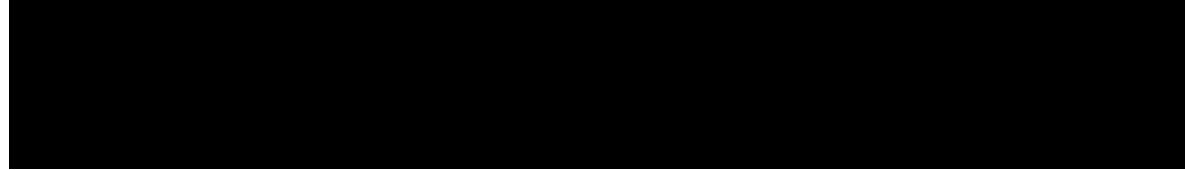


Recommendation 80.3

TK

Tanya Koshy [REDACTED]

Thu 8/5/2021 4:32 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 80.3 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 80.3:

The SFPD should develop clear and defined policies and protocols to address reporting and confidentiality requirements for officers investigating criminal activity and administrative misconduct of other police officers uncovered during any type of investigation.

Response to Recommendation 80.3:

Several of SFPD's existing policies provide reporting and confidentiality requirements for criminal activity and administrative misconduct that is uncovered during the course of a covert investigation. These policies include Department General Order (DGO) 1.04 (Duties of Sergeants), 2.01 (General Rules of Conduct), 2.04 (Complaints against Officers) and Internal Affairs Division (IAD) Standard Operations Procedures.

With respect to reporting requirements, SFPD issued Department Notices (DN) 21-046 and 21-059 to synthesize all of the processes and protocols within the wide range of policies, listed above. DN 21-059 reminds members of their obligations under DGO 8.01 (Critical Incidents) to notify their Commanding Officer if they become aware that another member is arrested for a felony or misdemeanor while off-duty. DN 21-046 reminds members that if they observe, or otherwise become aware of another member's suspected violation of the law or SFPD policies and procedures, they are required to immediately report the violation to their immediate supervisors. DN 21-046

further reminds supervisors that when they become aware of suspected criminal activity or administrative misconduct, they must immediately notify their Commanding Officer via a memorandum. The Commanding Officer must determine if an investigation is necessary and then notify Command Staff and the Department of Police Accountability (DPA). The Commanding Officer must also forward the memorandum describing the alleged misconduct to the Commanding Officer of the Risk Management Office, who will follow existing protocols for administrative and criminal investigations into SFPD members. Those protocols can be found in the Memoranda of Understanding between SFPD and DPA and the San Francisco District Attorney's Office (SFDA) as well as the Internal Affairs Division Standard Operating Procedures. These protocols are discussed in more detail in the packages for Recommendation 19.1, and the recommendation packages under Findings 10 and 60.

With respect to confidentiality requirements, the IAD Standard Operating Procedures requires investigators not to discuss their investigations with anyone outside of the Risk Management Office and more specifically, not to disclose case specific information or case findings with members of the Investigative Services Detail (ISD), who are charged with conducting investigations into members' criminal conduct (except for investigations that are delegated to the San Francisco District Attorney's Office). This one-way firewall protects ISD investigations and ensures adherence to state laws known as the Peace Officer Bill of Rights.

SFPD has also issued unit orders (IAD Unit Order 20-03 and ISD Unit Order 20-02) which govern how IAD and ISD investigators keep track of the progression of criminal and administrative investigations. These unit orders discuss regular meetings that the investigators have with the Commanding Officer of the Risk Management Office. These meetings and the related tracking processes are also discussed in more detail in the package for Recommendation 60.1. Where there are concurrent criminal and administrative investigations into the same allegations, the ISD Lieutenant presents their cases first during these meetings with the Commanding Officer and then leaves the meeting so that they cannot hear any information gained through the administrative investigation (such as compelled statements). This is consistent with contemporary best practices as set forth in the United States Department of Justice's Community Oriented Policing Services' Standards and Guidelines for Internal Affairs. Moreover, SFPD notes that the offices of IAD and ISD are in different locations, and their case files stored in different buildings.

Finally, the SOP Manual and Unit Order 20-02 require a quarterly meeting between the Commander of the Risk Management Office and the IAD Lieutenant to discuss the status and maintenance of spreadsheets that track IAD cases. These meetings provide an opportunity for the Commander and the IAD Lieutenant to ensure separation of administrative and criminal case information and files.

SFPD does not identify consequences specifically designed to address violations of disclosure requirements; rather, it notes that such a violation would trigger the standard disciplinary process that would follow any other violation of policy or procedure. The California Department of Justice agrees with Hillard Heintze's assessment that this constitutes substantial compliance of this recommendation, but that SFPD should

consider identifying consequences/remedial action specifically tailored to disclosure violations, which would further support the Department's accountability efforts. SFPD has conducted trainings on these reporting and confidentiality requirements. On September 30, 2020, IAD conducted a training on IAD procedures related to administrative investigations into complaints and on January 14, 2021, ISD and IAD conducted a joint training regarding confidentiality of investigations. 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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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.
Recommendation # 80.3	The SFPD should develop clear and defined policies and protocols to address reporting and confidentiality requirements for officers investigating criminal activity and administrative misconduct of other police officers uncovered during any type of investigation.

Recommendation Status	Complete	Partially Complete	In Progress
	Not Started	No Assessment	

Summary

The department has undertaken a lot of work in this area to address a relatively small area of concern – but one with significant importance to trust building internally and externally with community and stakeholders.

Compliance measure one: the department provides sufficient evidence of the existing policies to mandate and require reporting.

Compliance measure two: the department has provided training for members of IA. There was a joint training session held on the policies. The department meets compliance but as part of its ongoing review and audit the SFPD should consider expanding this training to any SFPD member conducting an investigation and mandating renewal training annually.

Compliance measure three: the department references sign in to the automated directives that is audited by the Staff Inspections Unit. The department does not specifically address this policy in identifying consequences but references its overall approach to holding officers accountable. The department reaches compliance but focus on actions required under disclosure and the specific consequences as a result would be beneficial to driving organizational accountability.

Compliance measure four: the department identifies that there are meetings in which reviews are held at multiple points during an investigation and review. The department has achieved compliance but it would benefit from greater focus on specifically ensuring knowledge, training and adherence to the requirement to report criminal conduct by officers.

Compliance measure five: the department identifies that no failure to report has occurred in the duration of this review.

Compliance Measures		Status/Measure Met
1	Establish policy regarding how and when officer criminal conduct is to be disclosed when uncovered as part of any SFPD investigation.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2	Ensure appropriate training to all investigative officers within the SFPD.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3	Identify specific consequences for failure to adhere to disclosure policies.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4	Ongoing review and audit.	√ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
5	Evidence of remedial actions if warranted.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A



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 # 80.3

The SFPD should develop clear and defined policies and protocols to address reporting and confidentiality requirements for officers investigating criminal activity and administrative misconduct of other police officers uncovered during any type of investigation.

Response Date: 04/15/21

Executive Summary:

To ensure that the San Francisco Police Department is honest and transparent with the community in which we serve, it is paramount that internal policy and investigative protocols and clearly defined and instituted through the Risk Management Office (RMO) to ensure mandated reporting and confidentiality requirements are adhered to while investigating allegations of criminal activity and administrative misconduct by any member of the San Francisco Police Department.

To facilitate investigations regarding allegations of criminal activity and administrative misconduct by any member of the San Francisco Police Department, the department utilizes the Risk Management Office (RMO), which resides under the Bureau of the Chief of Staff, and the Department of Police Accountability (DPA) – a non-affiliated civilian oversight organization. Furthermore, as with all criminal investigations involving law enforcement officers, there is always the possibility that the alleged crimes fall under federal jurisdiction and/or scope. Though the responsibility to investigate and prosecute normally resides at the local District Attorney's Office, it may be necessary to bring the investigation to the attention of the Federal Bureau of Investigations (FBI) Public Corruption Unit, which will be discussed in further detail under Compliance Measure 1.

Within the San Francisco Police Department, the Risk Management Office (RMO) is tasked with investigating all acts of misconduct by a member while off-duty. Conversely, all alleged misconduct that occurs on-duty reported by a member of the community, is investigated by the Department of Police Accountability (DPA), which is codified in San Francisco Police Department General Order 2.04 – Complaints Against Officer (Attachment # 1).



Collaborative Reform Completion Memorandum

The Risk Management Office (RMO) oversees two divisions, who are the sole entity to investigate all allegations of misconduct. Generally, all allegations of misconduct are either administrative in nature; meaning the member/s violated a policy or procedure, or criminal in nature, meaning that the member/s is alleged to have committed a statutory offense.

The Internal Affairs Division (IAD) investigates all alleged administrative misconduct while the 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. (Attachment # 2 – COPS: Standards and Guidelines for Internal Affairs).

If the Internal Affairs Division (IAD) receives a whistleblower or anonymous complaint regarding a member's on-duty conduct, the complaint is reported to the Commanding Officer of the Risk Management Office, who in turn will decide if the case should be investigated by the Internal Affairs Division (IAD), Investigative Services Division (ISD) [if criminal in nature] or referred to DPA. If it is determined that the case should be investigated by the Internal Affairs Division (IAD) or the Investigative Services Division (ISD), DPA is alerted and consulted for de-confliction purposes, as codified in in the Internal Affairs Division – Standard Operations Procedures (Attachment # 3). If the Internal Affairs Division (IAD) receives a whistleblower or anonymous complaint regarding a member's off-duty conduct, the complaint is reported to the Commanding Officer of the Risk Management Office, who in turn will decide if the case should be investigated by the Internal Affairs Division (IAD) or the Investigative Services Division (ISD) if it is an allegation regarding criminal activity.

To support the Risk Management Office in facilitating their investigative responsibilities to develop clear and defined policies and protocols to address reporting and confidentiality requirements, the department has implemented several policies and procedures to ensure that the department is explicit regarding expectations and preemptive in all misconduct, including holding those assigned to the Risk Management Office (RMO) accountable to all policies and procedures while investigating allegations of misconduct by any Member of the San Francisco Police Department.

[REDACTED]

[REDACTED]

[REDACTED]