

**MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF
POLICE ACCOUNTABILITY AND THE SAN FRANCISCO POLICE DEPARTMENT
DEPARTMENT GENERAL ORDER 2.04, COMPLAINTS AGAINST OFFICERS**

I. PREAMBLE

The Department of Police Accountability ("DPA") and the San Francisco Police Department ("SFPD") hereby enter into this Memorandum of Understanding ("MOU") in order to establish procedures for the complaints and attendant administrative investigations of SFPD personnel.

The 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.

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

II. PARTIES

This MOU is between the SFPD and the DPA (collectively "Parties").

III. TERMS AND DEFINITIONS

- A. **MEMBER.** Member, as that term is used in San Francisco City Charter Section 4.136(d) and DGO 3.02 means; any employee of SFPD.
- B. **SWORN MEMBER.** Sworn member means any employee of the SFPD who qualifies as a peace officer under Penal Code section 830.1.
- C. **UNIFORMED MEMBER.** Uniformed member includes any employee of the SFPD who is either a peace officer as that term is used in Penal Code section 830.1 or a Police Services Aide (PSA).
- D. **CRIMINAL INVESTIGATION.** An investigation conducted to determine whether any person committed a crime during the covered incident.
- E. **ADMINISTRATIVE INVESTIGATION.** An investigation conducted by SFPD or DPA

administrative investigators to determine whether any involved SFPD personnel violated any general order, regulation, or other workplace rule during the covered incident. This includes "internal" investigations.

IV. DPA PROCEDURES

A. DPA Investigations.

1. When there is sufficient evidence to proceed the complaint will be classified as an investigation and will be assigned to a designated DPA investigator, except those complaints which on their face clearly indicate the acts complained of were proper and those complaints lodged by other members of the Police Department.
2. DPA shall quarterly complete and send updates on cases to IAD with expected completion dates and the statute of limitations deadline. (3304) govt. code
3. DPA shall notify the Chief of Police and IAD of all cases that reach the six month mark inclusive of cases which may be tolling. (3304) govt. code.
4. DPA shall use its best efforts to conclude investigations of complaints and, if sustained, transmit the sustained complaint to the Police Department within nine months of receipt thereof by DPA.
5. If DPA is unable to conclude its investigation within such nine-month period, the Director, within such nine-month period, shall inform the Chief of Police of the reasons therefor and transmit information and evidence from the investigation as shall facilitate the Chief's timely consideration of the matter.
 - a. Completed or pending DPA case files sent to the Chief of Police or IAD, shall contain a copy of the original complaint, chronological of investigation, all audio or video evidence, transcripts, investigative notes, investigative summary, pending or final conclusions, and pending or final recommendations.
 - b. For all cases that the DPA fails to meet the nine-month deadline, the Director shall advise the Chief of Police of the specific reasons for said failure and expected completion date(s).
6. The DPA shall send completed investigations to IAD within thirty (30) days of the DPA Director's approval except those over the nine (9) month deadline which shall be sent immediately.

In cases involving concurrent investigations, DPA shall not receive the IAD investigative conclusions and recommendations until IAD has received the completed DPA report.

7. Upon final disposition of an investigation of a complaint, the DPA shall issue a letter to the complainant and every named officer that includes the findings of each allegation in

the complaint.

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B. DPA Morning Reports.

The DPA will 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 should have summaries of the incident and be sent weekly to IAD for review and analysis.

C. Allegations Involving Criminal Conduct.

If any portion of the complaint alleges criminal misconduct by a Department member, the DPA shall immediately forward the information presented by the complainant to the Department and District Attorney's Office. The District Attorney's Office shall only receive complaint forms or personnel files in accordance with Penal Code section 832.7(a).

The OIC of the assigned criminal investigative unit will notify the OIC of IAD that the District Attorney has dismissed or filed charges in the case. The OIC of IAD will coordinate the notification and the production of a copy of the completed criminal case file to DPA.

D. Government Claims.

SFPD will not forward these claims to the DPA. The City Attorney shall be responsible for production of government claims to DPA.

E. Controller's Office Whistleblower Complaints.

The Controller's Office designates the investigating agency. The Whistleblower complaints forwarded by the Controller's office to the SFPD shall remain confidential and not be forwarded to the DPA.

F. Notification and Review.

After completing an investigation, the DPA and SFPD shall ensure that every named officer and complainant receive a letter containing the disposition of the complaint and instructions for requesting a hearing. Notification shall be sent within thirty business days of the disposition.

V. CLASSIFICATIONS

DPA and the SFPD have agreed to formulate consistent language to refer to categories of alleged misconduct. See SFPD/DPA exemplar attached.

VI. TRANSMITTAL TO AND ACTION BY DEPARTMENT ON COMPLAINTS SUSTAINED BY THE DPA

- A. When a complaint has been sustained by a preponderance of the evidence, and the DPA investigation has been completed, the DPA's complete case file and findings shall be transmitted to the Police Chief or the Chief's designee for review and actions.
- B. The Chief or the Chief's designee shall complete his or her review and make an action recommendation within forty-five (45) days of receipt of a DPA case. (Section 4.136.(e))
- C. If, however, the Chief or Chief's designee cannot meet the deadline he/she shall seek an extension of time from the Police Commission. The Commission shall be advised of the reasons for the request for deadline extension, and accused officer(s), complainant(s) and witness(es) shall be informed of any delays and time extensions beyond the initial 60-day period.
- D. DPA shall recommend disciplinary action to the Chief of Police on those complaints that are sustained. The Director, after meeting and conferring with the Chief of Police or his or her designee, may verify and file charges with the Police Commission against members of the Police Department arising out of sustained complaints; provided, that the Director may not verify and file such charges for a period of 60 days following the transmittal of the sustained complaint to the Police Department unless the Director issues a written determination that the limitations period within which the member or members may be disciplined under Government Code Section 3304, as amended from time to time or any successor provisions thereto, may expire within such 60-day period and (1) the Chief of Police fails or refuses to file charges with the Police Commission arising out of the sustained complaint, (2) the Chief of Police or his or her designee fails or refuses to meet and confer with the Director on the matter, or (3) other exigent circumstances necessitate that the Director verify and file charges to preserve the ability of the Police Commission to impose punishment pursuant to Section A8.343.
- E. In cases where the DPA has sustained a complaint by a preponderance of the evidence against the Chief of Police, the DPA shall transmit its complete case file and findings to the Police Commission for review and action.

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VII. MONTHLY REPORTS AND MEETINGS.

- A. Reporting on the status of Sustained Complaints.
The SFPD shall adhere to section SF Admin Code 96.2 (a-c) and San Francisco Police Commission Resolution 97-04 or successor resolution in the reporting of all DPA and IAD sustained complaints, per an agreed template.
- B. SFPD DPA Monthly Meeting.
There shall be a regularly scheduled monthly meeting, in which the Chief of Staff of the SFPD and the Chief of Staff of the DPA meet to discuss discipline, policy and training recommendations.

VIII. QUARTERLY REPORTS AND MEETINGS

A. DPA Policy Recommendations.

The Police Department and the DPA shall provide a quarterly report (commonly known as the Sparks' Report) to the Police Commission concerning the status of revisions to Department General Orders, new General Orders and DPA policy recommendations. Both the Department and the DPA shall collaborate on prioritizing the recommendations in the Sparks Report.

1. High-Priority: Mandated by law, Police Commission, immediate public safety issue.
2. Medium Priority: The issue is important, but does not necessitate immediate implementation
3. Low Priority: The issue(s) identified occur infrequently and do not affect the day to day operations between the SFPD and the public.

B. Statistics and Recommendations.

1. The DPA, as directed by the Police Commission, compiles and publishes monthly summaries and quarterly reports of complaint statistics.
2. DPA submissions shall include statistical data reports specifically related to the following; total number of complaints, the status of all investigations related to those complaints and data specific to their findings.
3. DPA shall identify the categories and demographic information of all complainants and sworn members. (Age, gender, ethnicity, occupation, or other demographic information collected on the DPA Form 293)
4. These summaries and reports include, but are not limited to, the disposition by the Chief of Police and the Police Commission of complaints and allegations referred to the Chief of Police by the DPA Director.
 - a. The DPA, as directed by the Police Commission, prepares and publishes quarterly recommendations concerning policies and practices of the Department.
 - b. The Department and DPA shall review quarterly statistical reports within two weeks of receipt. The Department and DPA shall cross-check information on cases sustained by the DPA, and confer on discrepancy and accuracy.

IX. DECONFLICTION OF REVIEW BOARDS

In cases where incidents being examined fall under multiple review board jurisdictions, the SFPD shall in consultation with DPA, determine the appropriate review board.

X. DOCUMENT CONTROL AND DISTRIBUTION

Immediately upon receipt, the DPA will provide a copy of any request for police personnel records to the Commanding Officer of Risk Management, unless prohibited by State or Federal law.

Dated: _____

WILLIAM SCOTT
CHIEF OF POLICE
SAN FRANCISCO POLICE DEPARTMENT

Dated: _____

PAUL HENDERSON
DIRECTOR
DEPARTMENT OF POLICE ACCOUNTABILITY

DRAFT 01/29/19