

DO 8.10 -SFPD Policy Working Group Recommendation Grid -as of 6/7/2023

#	Working Group Recommendations	pg. number	Meeting Date	SFPD response	SFPD explanation	Open/Closed
R1	Section 8.10.01 Purpose: Change "investigations directed at First Amendment rights" to "investigations implicating First Amendment rights". A WG member suggested that the word "directed" is too narrow.	1	5/19/23	Recommendation requires further discussion	The Department updated this statement as it reads "involving First Amendment rights" in the active DO 8.10. Per internal discussions and as a result of the DPA DO 8.10 audit (12/7/2021) the word "involving" was considered too broad. DPA's audit noted that "without specific, objective guidance on when the order applies, members may be hindered in the ability to comply". This encouraged the Department to narrow the terminology from "involving" to "directed". The new suggestion that the word "directed" may be too narrow may work in opposition of Department's goal to clarify the guidance.	open
R2	Section 8.10.01 Purpose: Change: "First Amendment rights" to "First Amendment activities"	1	5/19/23	Recommendation has been included in draft DO		closed
R3	Section 8.10.01 Purpose: include "illustrative examples (not exhaustive list)" in the purpose statement.	1	5/19/23	Recommendation has been included in draft DO		closed
R4	Section 8.10.02 Policy: WG member suggest changing to an affirmative tone- instead of telling officers what they cannot do, the policy statement should tell them what they can do.	1	5/19/23	Recommendation has been included in draft DO		closed
R5	Section 8.10.02 Policy: The WG worked together to revise the policy statement to the following: "It is the policy of the San Francisco Police Department to ensure that the First Amendment rights guaranteed by the United States Constitution are protected for all individuals. The First Amendment does allow law enforcement personnel to initiate investigations into alleged criminal conduct involving expressive activity, only if there is a legitimate law enforcement purpose for doing so. SFPD members may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against any person engaged in First Amendment activity for the purpose of punishing, retaliating, preventing, or hindering the person from exercising their First Amendment rights. Members may conduct a criminal investigation directed at the First Amendment activities of persons, groups or organizations in accordance with the procedures of this policy as set forth below."	1	5/19/23	Recommendation has been included in draft DO		closed
R6	The WG suggests the Department use the term "legitimate law enforcement purposes" instead of "reasonable law enforcement" throughout the DO.	1, 2,5, 6	5/19/23	Recommendation requires further discussion		open
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R6	The WG suggests the Department use the term "legitimate law enforcement purposes" instead of "reasonable law enforcement" throughout the DO.	1, 2,5, 6	5/19/23	Recommendation requires further discussion		open
R7	SEC 8.10.02, para 2: add "only if" so "The First Amendment does allow law enforcement personnel to initiate investigations into alleged criminal conduct involving expressive activity, <b>only if</b> there is a legitimate law enforcement purpose for doing so."	1	5/26/23	Recommendation has been included in draft DO		closed

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R8	SEC 8.10.02, para 3: Include "monitor" to the list of activities that SFPD members may not engage in against any person engaged in First Amendment activity	1	5/26/23	Recommendation requires further discussion		open
R9	SEC 8.10.02, para 2, modify the paragraph to read "The First Amendment does allow law enforcement personnel to initiate investigations into alleged criminal conduct involving expressive activity <b>or gather information consisting of such activity</b> , only if there is a legitimate law enforcement purpose for doing so."	1	5/26/23	Recommendation requires further discussion		closed
R10	SEC 8.10.03 Definitions: Can we add a definition for "criminal activity" and/or "pre-investigative activity". The DO should clarify when it applies.	1	5/26/23	Recommendation requires further discussion	The general criteria for a criminal investigations is determining whether a crime happened, is happening or is a crime about to happen.	open
R11	SEC 8.10.03 Definitions : correct the definition of "First Amendment Activity" by replacing the reference to Article 3 with Section 3	1	5/26/23	Recommendation will be modified and included in the draft DO	The department updated this section by deleting the definition of First Amendment Activity and replacing it with a definition for First Amendment Activity Investigations.	closed
R12	SEC 8.10.03 Definitions: Change "Reasonable Suspicion to Detain" to "Reasonable Suspicion" as the term reasonable suspicion to detain does not appear in the entire DO.	1	5/26/23	Recommendation has been included in draft DO		open
R13	A WG member suggested that the final sentence in the definition of "Legitimate Law Enforcement Purpose" is too broad. The sentence currently reads as follows: "A reasonable law enforcement purpose would include acquiring information or intelligence which may be useful in allocating resources for public safety and acquiring information or intelligence which may be useful for future criminal investigations."	2	5/26/23	Recommendation requires further discussion		open
R14	A WG member asked how criminal investigations are triggered		5/26/23	Administrative Question and Answer-not for inclusion in DO	Investigations can be initiated in several ways. Investigations can be self initiated, due to a tip, a patrol incident report, or based on observations or through discovering information. The WG asked the department to clarify what it means to discover information.	open
R15	A WG member suggested that the final sentence in the definition of "Legitimate Law Enforcement Purpose" is too broad. The sentence currently reads as follows: "A reasonable law enforcement purpose would include acquiring information or intelligence which may be useful in allocating resources for public safety and acquiring information or intelligence which may be useful for future criminal investigations."  The WG recommends that SFPD provide clarity on intended scope of this final sentence as it appears to allow for limitless use of gathered information.	2	5/26/23	Recommendation requires further discussion		open
R16	A WG member suggested that the examples provided throughout the DO seem to start after the investigation started but should instead start before the special authorization is provided.		5/26/23	Recommendation requires further discussion		open
R17	SEC 8.10.06(B)(3) : The WG recommend deleting this example or revise it to clearly state what circumstance triggered the investigation	6	5/26/23	Recommendation has been included in draft DO	The department deleted this example	closed
R18	SEC 8.10.03 Definitions: Include a definition for "information gathering"	1	5/26/23	Recommendation requires further discussion		open
R19	Does SFPD investigate any groups or organizations under this DO?		5/26/23	Administrative Question and Answer-not for inclusion in DO		open

DGO 8.10 -SFPD Policy Working Group Recommendation Grid -as of 6/7/2023

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R20	A WG member recommends clearly delineating between "inquiry" and "investigation" during First Amendment activities		5/26/23	Recommendation requires further discussion		open
R21	A WG member suggests including guidelines around social media/online monitoring in this policy		5/26/23	Recommendation requires further discussion		open
R22	SEC 8.10.06(2): Clearly outline the circumstances that would trigger a memorandum requesting authorization for an investigation.	4	5/26/23	Recommendation requires further discussion		open