

Recommendation 11.4

Gabriel Martinez [REDACTED]

Tue 3/9/2021 3:09 PM

[REDACTED]

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Dear Acting Captain Altorfer,

Our office has completed its review of the materials related to Recommendation 11.4 that were submitted to us as part of the collaborative reform process. This package focused on SFPD's Firearm Discharge Review Board timely reviewing officer-involved shooting incidents. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

Recommendation 11.4: Officer-Involved shooting events need to be reviewed in a more timely fashion as they relate to policy, training, and procedures. The FDRB should review incidents at the conclusion of the IAD investigation rather than waiting for the district attorney's letter of declination for charging of an officer-involved shooting incident, which can take up to two years.

Response to 11.4: At the time this recommendation was issued, SFPD waited for the San Francisco District Attorney's Office to make a charging decision before having SFPD's Firearm Discharge Review Board (FDRB) conduct its administrative investigation. This process could significantly delay the FDRB review.

On September 21, 2005, SFPD issued Department General Order (DGO) 3.10, "Firearm Discharge Review Board." The Order assigns duties to FDRB members and requires the FDRB to meet within 30 days after receiving investigatory reports from the Homicide Detail (criminal investigation) and Management Control Division (administrative investigation). The FDRB then must complete its investigation and issue its findings within 120 days. Furthermore, under DGO 8.11, "Investigation of Officer Involved Shootings and Discharges," if the FDRB report is not completed within the 120 days, an FDRB representative must appear before the Police Commission to explain the reason for the delay.

In practice, case files had not been considered complete for FDRB review until after the District Attorney's Office had made a charging decision. On November 16, 2020, SFPD issued Unit Order 20-05, "Case Presentation of Officer-Involved Shooting, In-Custody Death, and Use of Force with Great Bodily Injury Investigations." The Order clarified that for (1) officer-involved shootings, (2) in-custody deaths, and (3) use-of-force incidents, cases will be deemed conditionally complete at the conclusion of the Internal Affairs Division investigation. The designation of "conditionally complete" allows the FDRB to begin its investigation without waiting on any action from the District Attorney's Office. The Order requires the IAD investigator to notify the IAD officer in charge when a case is conditionally complete, and the officer in charge must advance cases to FDRB for the next FDRB meeting.

The FDRB has continued to meet regularly during the pandemic, holding meetings in July, September, and October of 2020 to review officer-involved shooting incidents.

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 further. Thank you.

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Hillard Heintze File Review Recommendation 11.4

Finding # 11

The Firearm Discharge Review Board is limited in scope and fails to identify policy, training, or other tactical considerations.

Recommendation # 11.4

Officer-involved shooting events need to be reviewed in a more timely fashion as they relate to policy, training, and procedures. The FDRB should review incidents at the conclusion of the IAD investigation rather than waiting for the district attorney's letter of declination for charging of an officer-involved shooting incident, which can take up to two years.

Recommendation Status

Complete

Partially Complete

In Progress

Not Started

No Assessment

Summary

The SFPD published Internal Affairs Division Unit Order 20-05 that establishes a process where officer-involved shooting and serious bodily injury investigations will be presented to the Firearms Discharge Review Board at the conclusion of an internal investigation, even in the absence of a charging decision. The Firearms Discharge Review Board will schedule a meeting within 90-120 days of incident to discuss concluded investigations prior to closure of the criminal investigation.

Compliance Measures

Status/Measure Met

- | | | | | |
|---|--|---|-----------------------------|------------------------------|
| 1 | FDRB schedule review of OIS at conclusion of IA investigation. | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> N/A |
| 2 | FDRB schedule review is held via regular occurrences. | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> N/A |

Administrative Issues

Compliance Issues



Collaborative Reform Completion Memorandum

Finding #11:

The Firearm Discharge Review Board is limited in scope and fails to identify policy, training, or other tactical considerations. The FDRB is a good practice but has devolved to essentially determining whether the shooting officer's actions were consistent in policy. However, several other layers of authority also conduct this determination. The FDRB is better served following its policy mandate to ensure that the Department is continually reviewing its training, policy, and procedures as they relate to officer-involved shooting incidents.

Recommendation # 11.4:

Officer-Involved shooting events need to be reviewed in a more timely fashion as they relate to policy, training, and procedures. The FDRB should review incidents at the conclusion of the IAD investigation rather than waiting for the district attorney's letter of declination for charging of an officer-involved shooting incident, which can take up to two years.

Response Date: 11/9/2020

Executive Summary:

During the initial CRI review period (2016), the SFPD conducted FDRB reviews as IAD administrative cases were completed. At the time, IAD cases were not considered "complete" without the receipt of a declination letter or charging decision from the San Francisco District Attorney's office, or other criminal adjudication. This practice resulted in delayed FDRB reviews in some cases, causing investigations to remain open without administrative adjudication for an extended period of time.

The SFPD determined that the delay caused while awaiting a charging decision unnecessarily prolonged IAD cases that were otherwise "complete" and ready to be forwarded to FDRB. To assist in completing administrative OIS investigations in a timely manner, SFPD authored Unit Order 20-05 **(Attachment #1)**, which directs IAD investigators to submit investigations for FDRB review in the absence of a charging decision, if otherwise complete.

The Unit Order was approved, published, and IAD members were trained on the new procedure as required.

End of Executive Summary



Collaborative Reform Completion Memorandum

Compliance Measures:

1. **Compliance Measure #1:** “FDRB schedule review of OIS at conclusion of IA investigation.”

Responsive Documents:

1. Department General Order 3.10 **(Attachment #2)**
2. Department General Order 8.11 **(Attachment #3)**
3. IAD Unit Order 20-05 **(Attachment #1)**

CM #1 Response Summary:

Historically, SFPD awaited a charging decision from the SFDA prior to scheduling the administrative investigation for FDRB review, causing a delay in the adjudication of OIS investigations.

SFPD developed a policy to forward OIS investigations to FDRB once the administrative investigation was complete, even in the absence of a charging decision. The policy was approved and published within IAD in Unit Order 20-05 **(Attachment #1)**, and the investigators were trained on this revised policy.

Compliance Measure #1 involves a three-step process:

1. Historical information and policy at the time of the CRI publication.
2. Policy development process, including unit order meetings and concept plan.
3. Completed policy and advisement to members.

End of Compliance Measure #1 Response Summary



Collaborative Reform Completion Memorandum

CM #1 (Step 1 of 3, a historical review of policy):

During the initial CRI review period (2016), the SFPD conducted FDRB reviews as IAD administrative cases were completed. At the time, IAD cases were not considered “complete” without the receipt of a declination letter from the San Francisco District Attorney’s office, or other criminal adjudication. This practice resulted in FDRB reviews being delayed without administrative adjudication for an extended period of time.

Two SFPD DGO’s codify the procedure for FDRB review. The first policy is DGO 3.10, titled “Firearm Discharge Review Board” (**Attachment #2**). This DGO’s specify the duties of the board, definitions, composition, and function. Additionally, it specifies the timeline required to convene an FDRB at the completion of an administrative investigation:

(DGO 3.10, “Firearm Discharge Review Board”)

D. FUNCTION:

Officer Involved Shootings:

1. Within 30 calendar days following receipt of investigatory reports from the Homicide Detail and Management Control Division regarding a shooting event, the Chair of the Department Firearm Discharge Review Board shall convene the panel to determine whether the shooting was within policy. Within 30 days following the first meeting of the Firearm Discharge Review Board, the Chair shall report the status of the matter to the Commission. Within 120 days following the first meeting of the Firearm Discharge Review Board the panel shall complete its investigation and issue its findings in accordance with this policy.

The FDRB is required to review the incident and issue its findings within 120 days to the Chief of Police. This finding is considered by the Chief of Police for final determination, and then presented to the Police Commission. In the event the FDRB is unable to reach a finding within 120 days, the chair of the FDRB is required to appear before the Police Commission to explain the reason for the delay. This process is codified in DGO 8.11 (**Attachment #3**), below:

(DGO 8.11, Investigation of Officer Involved Shootings and Discharges)

- c. The Firearm Discharge Review Board shall convene within thirty calendar days of receipt of the Management Control Division investigation report. Within 120 calendar days following the first meeting of the Firearm Discharge Review Board, the panel shall complete its investigation and issue its findings in accordance with Department General Order 3.10. If the Firearm Discharge Review Board report is not completed within the required 120 calendar days, a representative of the Firearms Discharge Review Board shall appear before the Commission at the earliest possible meeting to explain why the report has not been completed.



Collaborative Reform Completion Memorandum

End of CM #1 (Step 1 of 3, a historical review of policy)

CM #1 (Step 2 of 3, Policy development process):

On October 5th, 2020, Commander Robert O’Sullivan met with Chief of Police William Scott and Assistant Chief Robert Moser to discuss the issue of FDRB reviews. Existing policy and practice was examined to identify factors that contributed to the delay of FDRB review. Commander O’Sullivan noted that in the past, the absence or delay of a declination letter or charging decision may have prevented IAD administrative cases from being considered “complete.” This incomplete status prevented the otherwise completed IAD investigation from being forwarded to the FDRB.

Chief of Police Scott reviewed the issue and determined that IAD cases should move forward to FDRB in the absence of a declination letter or charging decision, if otherwise complete. This mandate would satisfy the recommendation for the FDRB to “... review incidents at the conclusion of the IAD investigation rather than waiting for the district attorney’s letter of declination for charging of an officer-involved shooting incident, which can take up to two years.”

On October 7th, 2020, Commander O’Sullivan met with Sgt. Graig Wells of IAD regarding this recommendation. Commander O’Sullivan directed that a Unit Order be issued for IAD personnel that includes the following three points of clarification:

1. When an administrative OIS investigation is complete, even in the absence of a charging decision, the case shall be forwarded to the next quarterly FDRB for review.
2. It shall be the responsibility of the assigned OIS investigator to notify the Officer-in Charge (OIC) when an OIS case is complete, to facilitate the scheduling of the FDRB.
3. The OIC will notify DPA that the investigation will be presented at the next quarterly FDRB.

End of CM #1 (Step 2 of 3, policy development process)



Collaborative Reform Completion Memorandum

CM #1, (Step 3 of 3, completed policy and advisement to members):

On 11/16/20, the Risk Management Office published Unit Order 20-05 (Attachment #1). The unit order codifies a revised procedure for presenting cases to the FDRB in the absence of declination letters:

UNIT ORDER	UNIT INDEX NUMBER	20-05
	DATE ISSUED	11-16-2020
SUBJECT: Case Presentation of Officer-Involved Shooting, In-Custody Death, and Use of Force with Greath Bodily Injury Investigations		
ISSUED TO: Internal Affairs Division	ISSUED BY: Lieutenant Angela Wilhelm #716	

Intent of this Unit Order:

The intent of this Unit Order is to:

1. Clarify the procedures to advance "conditionally completed" Officer-involved shooting (OIS), In-custody death (ICD), and Use of Force (UOF) cases at the conclusion of an IAD administrative investigation, even in the absence of a charging decision from the local district attorney. A case shall be considered "conditionally complete" when it has been reviewed and approved through the IAD Chain of Command, but is still pending Firearm Discharge Review Board (FDRB), In-Custody Death Review Board (ICDRB), or Chief of Police review.
2. Clarify the responsibilities of the assigned investigator and Officer-in charge regarding the scheduling of FDRB, ICDRB, or Chief of Police review.

Historically, the presentation of "conditionally completed" investigations to the FDRB, ICDRB, or the Chief of Police have been delayed due to the absence of a charging decision from the SFDA (or outside agency, if applicable). This has caused a lengthy delay in the administrative adjudication of cases.

To prevent delay and to assist in the timely adjudication of administrative cases, IAD shall advance OIS, ICD, and UOF cases to the next appropriate level of review when conditionally complete, even in the absence of a charging decision or declination letter.

The following section describes the required process to be followed by IAD personnel at the conclusion of an OIS, ICD, or UOF administrative investigation, when an investigation is conditionally complete:

Procedure:

1. When an investigator conditionally completes their investigation, the case should be scheduled to be reviewed at the next available FDRB, ICDRB, or Chief of Police review. The sole absence of a charging decision shall not delay the case from being presented at the next FDRB, ICDRB, or Chief of Police Review.





Collaborative Reform Completion Memorandum

Once the above unit order was approved, Commander O'Sullivan disseminated the Unit Order on 11/16/20 to the members of the Internal Affairs Division, to advise members of the new requirements:

Email Correspondence regarding IAD Unit Order 20-05, (Attachment #4)

IAD Unit Order 20-05

 O'Sullivan, Robert (POL)
Mon 11/16/2020 10:02 AM

 IAD Unit Order 20-05.pdf
861 KB

Dear OIS Investigators,

I am writing to provide notice of a new unit order that was approved on 11/11/2020, and is now in effect. This unit order codifies a new procedure for submitting OIS investigations once they have been approved through the Assistant Chief of Staff. Under this new Unit Order, the investigation will be forwarded to the next available FDRB, even in the absence of a charging decision or declination letter.

The intent of this unit order is to prevent unnecessary delay in the adjudication of OIS cases.

Please read the unit order and familiarize yourself with the contents.

Thank you,

Rob

Commander Robert O'Sullivan
San Francisco Police Department
Risk Management Office
1245 Third Street
San Francisco, Ca. 94158

End of CM #1 (Step 3 of 3, completed policy and advisement to members)



Collaborative Reform Completion Memorandum

2. CM #2, (Step 1 of 1, FDRB schedule review is held via regular occurrences):

The Firearms Discharge Review Board has met regularly since the publication of the original Collaborative Reform Initiative. Note: Q1 2020 FDRB was canceled due to Covid-19 restrictions beginning in March 2020.

For the calendar year 2020, FDRB's were convened on the following dates, as evidenced by the below findings and recommendation memorandums prepared for Police Commission review (See attached for all documentation memorandums):

1. July 28th, 2020
2. September 3rd, 2020
3. October 29th, 2020

End of CM #2, (Step 1 of 1, FDRB schedule review is held via regular occurrences)