



Recommendation 23.2

Tanya Koshy [Redacted]

Thu 1/7/2021 3:34 PM

[Redacted]

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Acting Captain Altorfer,

Our office has completed its review of the materials related to Recommendation 23.2 that were submitted as part of the collaborative reform process. After reviewing the package and information provided by SFPD, the California Department of Justice finds as follows:

Recommendation 23.2:

The FDRB should be tasked with review of all prior officer-involved shooting and discharge incidents in which firearms are discharged at a moving vehicle to

- evaluate and identify commonalities with recommendations for policy and training as a result of the review;
- oversee training and policy development aimed at eliminating the need for such actions;
- report to the Police Commission about the outcomes of the review and the actions taken to overcome those situations that contribute to such incidents.

Response to Recommendation 23.2:

Shortly after the U.S. Department of Justice issued this recommendation, SFPD amended its department general order (DGO) on use of force (DGO 5.01) to prohibit members from discharging their firearm at or from a moving vehicle. The California Department of Justice and Hillard Heintze agree that the amendment of DGO 5.01 obviates the need for the Firearm Discharge Review Board to review incidents involving this type of firearm discharge for purposes of recommending changes to training or policies.

It is nonetheless worth noting the work SFPD did to amend DGO 5.01 and to familiarize its members of the amendments. In revising its DGO, SFPD sought input from a number of sources, including the U.S. Department of Justice which commended SFPD for its involvement of community members and other stakeholders. Once the Police Commission approved the amended DGO in late 2016, SFPD issued a department bulletin to members notifying them of the changes. SFPD then conducted training sessions on the changes to DGO 5.01 as part of a use of force update class provided to members.

Furthermore, it is worth noting what mechanisms SFPD has in place to review firearm discharges. The FDRB meets on a quarterly basis to review any officer involved shooting cases, including those that may involve discharges from or at a moving vehicle, in violation of DGO 5.01. The FDRB will then determine whether the firearm discharge was consistent with policy and forward its finding recommendation to the Chief for concurrence. After the Chief makes a decision on the FDRB finding recommendation, the Chair of the FDRB must make a presentation to the Police Commission on the FDRB's quarterly findings. This review process is codified in DGO 3.10 (Firearm Discharge Review Board).

In short, because of the policy change prohibiting the discharge of a firearm and the process the Department developed to regularly review firearm discharges, the California Department of Justice finds SFPD in substantial

[REDACTED]

compliance with this recommendation.

Please let us know if you have any questions or would like to discuss this further. Thank you.

Tanya

Tanya S. Koshy
Deputy Attorney General
Civil Rights Enforcement Section
California Department of Justice
1515 Clay Street, Suite 2100
Oakland, CA 94612

[REDACTED]
[REDACTED]

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

[REDACTED]

Finding # 23	The SFPD allows members to shoot at moving vehicles under certain circumstances pursuant to Department General Order 5.02 – Use of Firearms.
---------------------	---

Recommendation # 23.2	<p>The FDRB should be tasked with review of all prior officer-involved shooting and discharge incidents in which firearms are discharged at a moving vehicle to</p> <ul style="list-style-type: none"> • evaluate and identify commonalities with recommendations for policy and training as a result of the review; • oversee training and policy development aimed at eliminating the need for such actions; • report to the Police Commission about the outcomes of the review and the actions taken to overcome those situations that contribute to such incidents.
------------------------------	--

Recommendation Status	<table style="display: inline-table; border: none;"> <tr> <td style="background-color: yellow; padding: 2px;">Complete</td> <td style="padding: 2px;">Partially Complete</td> <td style="padding: 2px;">In Progress</td> </tr> <tr> <td style="padding: 2px;">Not Started</td> <td style="padding: 2px;">No Assessment</td> <td></td> </tr> </table>	Complete	Partially Complete	In Progress	Not Started	No Assessment	
Complete	Partially Complete	In Progress					
Not Started	No Assessment						

Summary

The San Francisco Police Department promulgated DGO 5.01 Use of Force which prohibits officers from shooting at or from a moving vehicle unless the occupant of the vehicle is discharging a firearm at the officer. The policy requires officers to consider the totality of the circumstances to determine whether their decision to discharge their firearm is reasonable.

In drafting the policy, the department considered input from internal and community stakeholders, reviewed use of force policies of similar police organizations, and reviewed guidelines recommended or published in police literature. The policy has been modified or updated as new information is learned.

The Internal Affairs Unit and the Firearms Discharge Review Board is tasked with reviewing and making recommendations on officer-involved-shooting incidents. This practice of review and auditing of incidents helps to ensure the department conducts a robust review of officer-involved-shooting incidents for policy violations, including an incident involving shooting at or from a motor vehicle. Remedial action for violating the policy is broad and includes termination.

The department's response to this recommendation is considered complete. The team will continue to monitor the department to ensure the policy and related practices are institutionalized.

Compliance Measures	Status/Measure Met
1 FDRB review all OIS and discharge incidents involving moving vehicles.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
2 Identify and evaluate commonalities.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
3 Develop recommendations for policy and training as a result of review.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4 Oversee policy and training development responsive to issues identified.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
5 Report to Police Commission.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
6 Inclusion of a continual review/improvement loop of development process and adherence to policy.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

7 Evidence of supportive and remedial actions/outcomes.

Yes No N/A

Administrative Issues

Compliance Issues

As discussed previously, the file needs to include an explanation on the conflict regarding DGO 5.02 prior to submitting this recommendation to Cal DOJ for status designation.



Collaborative Reform Completion Memorandum

Finding #23.2

SFPD policy provides for a variety of exceptions that allow officers to shoot at a moving vehicle, which effectively nullifies the general statement that officers are prohibited from discharging their firearm at the operator or occupant of a moving vehicle. The department's pending draft order on use of force allows shooting at vehicles when there is an immediate threat of death or injury by means other than the vehicle.

Recommendation #23.2

The FDRB should be tasked with review of all prior officer-involved shooting and discharge incidents in which firearms are discharged at a moving vehicle to:

- evaluate and identify commonalities with recommendations for policy and training as a result of the review;
- oversee training and policy development aimed at eliminating the need for such actions;
- report to the Police Commission about the outcomes of the review and the actions taken to overcome those situations that contribute to such incidents.

Response Date: 11/05/2020

Executive Summary:

Recommendation 23.2 was originally published in October of 2016. This recommendation concerns examining historical OIS data to identify commonalities in vehicle related OIS incidents, with the end goal of modifying SFPD Use of Force policy. At the time of the CRI publication, SFPD was concurrently drafting a revised Use of Force policy addressing vehicle related OIS incidents, which resulted in the combination of Department General Order (DGO) 5.01 (Use of Force) **(Attachment # 1)** and DGO 5.02 (Use of Firearms) **(Attachment # 2)**.

The revised DGO 5.01 addressed the need for policy change in this area. SFPD consulted with our oversight partners to determine if an extended historical review was still required for the purposes of policy development, and determined that a full historical review was not warranted in light of the revised policy. As a result, this recommendation was tailored to address compliance measures #4-#7.

SFPD worked in cooperation with the community, Police Commission and other stakeholders to revise DGO 5.01, and fully implemented the policy in December 2016. SFPD members were trained with a combination of DGO's, Department Bulletins (DB), and classroom instruction.

Since the policy change, Firearm Discharge Review Boards (FDRB's) are held regularly which result in a quarterly report to the Police Commission. This recommendation also includes documentation of a related case that resulted in discipline under this revised use of force policy.

(End of Executive Summary)