

**Fwd: Recommendation 60.2**

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**From:** Gabriel Martinez [REDACTED]

**Sent:** Tuesday, February 11, 2020 9:53:38 AM

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**Subject:** Recommendation 60.2

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Dear Captain Bailey,

Our office has completed its review of the materials related to Recommendation 60.2 that have been submitted to us as part of the collaborative reform process. This package focused on SFPD and DPA, establishing a protocol with specific timeframes for completing investigative responsibilities and for transferring cases if criminal allegations are made against SFPD officers. After reviewing the package and information provided by SFPD, the California Department of Justice finds as follows:

- Recommendation 60.2: The SFPD and DPA should establish an investigative protocol within 120 days of the issuance of this report that allocates specific time parameters for accomplishing investigative responsibilities and transfer of cases if criminal allegations are made against SFPD officers.

- Response to 60.2: On May 15, 2019, SFPD published Department General Order (DGO) 2.04, Complaints Against Officers, outlining SFPD's procedures for investigating and processing complaints against officers and describing the Department of Police Accountability (DPA) procedures. Among the procedures outlined, there must be an immediate investigation and report if a complainant alleges criminal conduct and SFPD must immediately notify DPA and the Internal Affairs Division (IAD). DPA, in turn, must also immediately forward the complainants' information to the District Attorney's Office. A disciplinary review board, including DPA, the Police Commission, and SFPD, must meet quarterly to discuss complaint trends, policy, and training failures, as well as SFPD and DPA recommendations. The review board can make recommendations and will meet with the public and Police Commission quarterly.

On May 28, 2019, SFPD and DPA entered into a memorandum of understanding regarding DGO 2.04. This memorandum sets internal deadlines such as:

- Sending quarterly updates on cases to IAD with expected completion dates,
- Notifying the Chief of Police and IAD of all cases that reach the six-month mark, and
- Informing the Chief of Police of the reasons for any delay over nine months.

Additionally, if a complaint alleges SFPD criminal conduct, DPA must immediately forward the complainant's information to the District Attorney's Office. Within 30 days of completing an investigation, DPA will send complainants and named officers a letter containing the disposition of the complaint and instructions for requesting a hearing. When DPA sustains a complaint, the Chief of Police has 45 days to make an action recommendation. The Chiefs of Staff of SFPD and DPA must meet monthly to discuss discipline, policy, and training. The memorandum also details the structure of the SFPD/DPA quarterly reports and meetings.

On August 17, 2018, IAD published Unit Order 18-05, updating its investigative policy. The Unit Order requires monthly reports of open IAD cases, and the Officer in Charge of IAD must review open cases with investigators every 30 days. Investigators should complete their investigations within 7 months and must provide an explanation if they are unable.

SFPD provided agendas documenting meetings with the DPA and a memorandum documenting SFPD and DPA's current discussions regarding complaint deadline issues. As further support, SFPD provided a spreadsheet of sustained complaints that SFPD represented was provided to the Police Commission. While these submitted documents are sufficient to meet the requirements of substantial compliance under this recommendation, Hillard Heinzte requested that SFPD provide status reports to better document the review process. Despite this request, SFPD failed to provide such reports. In the future, to demonstrate its compliance with this recommendation, SFPD should provide all such documentary evidence.

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. Thank you.

[REDACTED]

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|                              |   |
|------------------------------|---|
| <b>Finding # 60</b>          | <b>Internal Affairs case tracking is insufficient to ensure the timely progression of investigations and achieving key deadlines.</b>   |
| <b>Recommendation # 60.2</b> | The SFPD and DPA should establish an investigative protocol within 120 days of the issuance of this report that allocates specific time parameters for accomplishing investigative responsibilities and transfer of cases if criminal allegations are made against SFPD officers. |

|                              |                    |                           |                    |
|------------------------------|--------------------|---------------------------|--------------------|
| <b>Recommendation Status</b> | <b>Complete</b>    | <b>Partially Complete</b> | <b>In Progress</b> |
|                              | <b>Not Started</b> | <b>No Assessment</b>      |                    |

**Summary**

The time parameters of the original recommendation are no longer applicable; however, the SFPD and DPA have entered into an agreed memorandum that addresses both Compliance Measures 1 and 2. DGO 2.04 and IAD Policy 18-05 address Compliance Measure 3. Both the order and the memorandum provide for quarterly meetings. Evidence of these meetings has been presented in other documentation to the recommendation process. At the end of the file, as updated 12/19/19, the documentation regarding ongoing meetings, discussion and action by IAD and DPA identifies a review process is in place. It does not have transparency regarding the investigations past time, but that is not required within this recommendation.

| Compliance Measures |  | Status/Measure Met   |
|---------------------|--|--|
| <b>1</b>            | Established investigative protocol between SFPD and DPA.                         | ✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| <b>2</b>            | Protocol addresses time parameters and transfer requirements for criminal cases. | ✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| <b>3</b>            | Update relevant DGOs and procedures, as needed.                                  | ✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| <b>4</b>            | Evidence of ongoing audit and/or review.   | ✓ Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |

**Administrative Issues**

The department needs to better address the issue of monitoring the timely conclusion of internal investigations. There are no metrics attached to the supporting documentation, and while CM #4 does not require it, the SFPD and DPA can and should do better in developing transparent accountability around the timely resolution of complaints as a matter of procedural justice for BOTH officers and complainants.

Additionally, SFPD provided agendas documenting meetings with the DPA and a memorandum documenting SFPD and DPA's current discussions regarding complaint deadline issues. As further support, SFPD provided a spreadsheet of sustained complaints that SFPD represented was provided to the Police Commission. While these submitted documents are sufficient to meet the requirements of substantial compliance until this recommendation, Hillard Heintze requested that the SFPD provide status reports to better document the review process. Despite this request, SFPD failed to provide such reports. In the future, to demonstrate its compliance with this recommendation, SFPD should provide all such documentary evidence.

### Compliance Issues

The department offers the memo drafted on 12.11.19 that states that the IAD OIC has had verbal engagement with every officer on any investigation past 7 months. Formal tracking to demonstrate the compliance with the above best serves all the stakeholders. Quarterly runs of investigations past 7 months should be conducted with identified resolution as to the overall number and time required to close investigations. This should include DPA investigations as it is the officers and employees of the SFPD that are under investigation – and this should be a priority for both agencies. Document discussion on specific complaint numbers should be used to support the compliance improvement for this recommendation. DPA's delay in investigation then becomes a record, as does any internal delays. The metric is the overall decrease in the number of investigations open beyond 7 months as a result of the focused process.



## Collaborative Reform Completion Memorandum

**Finding # 60:** Internal Affairs case tracking is insufficient to ensure the timely progression of investigations and achieving key deadlines.

**Recommendation # 60.2** The SFPD and DPA should establish an investigative protocol within 120 days of issuance of this report that allocates specific time parameters for accomplishing investigative responsibilities and transfer of cases if criminal allegations are made against SFPD officers

**Response Date: 07/01/19**

### **Executive Summary:**

Per 3304 GC, IAD and DPA have 1 year from the date a member's misconduct is known to either agency to conduct an investigation and serve disciplinary paperwork if the allegation(s) is sustained.

DGO 2.04 (Complaints Against Officers) has been revised and was adopted by the San Francisco Police Commission as of 05/15/19. The DGO dictates the procedures for taking complaints against officers, including the responsibilities of the officer accepting the complaint.

SFPD and DPA have entered into an MOU that specifies investigative responsibilities, DPA's investigative procedures, DPA's investigative timetables, and notification to the department when an allegation may be criminal in nature.

IAD's investigation and case management guidelines are specified within IAD Unit Orders (specifically UO 18-05).

### **Compliance Measures:**

#### **1) Established investigative protocol between SFPD and DPA.**

If DPA determines that an allegation under their purview may be criminal in nature, DPA's Executive Director (or designee) will provide written notice to the department detailing the possible criminal allegation. (DGO 2.04.04 B & SFPD/DPA MOU IV. C).

The case will then be assigned to the Investigative Services Detail (ISD) for investigation.



## Collaborative Reform Completion Memorandum

### 2) Protocol addresses time parameters and transfer requirements for criminal cases.

Per the SFPD/DPA MOU: *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. 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. 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).*

Also per the MOU: *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).*

Per IAD Unit Order 18-05: *Investigators should complete their investigations within 7 months in an effort to adjudicate the case in a timely fashion. If an investigator is unable to complete the investigation within the allotted time, they shall notify the OIC and provide an explanation.*

### 3) Update relevant DGOs and procedures, as needed.

The revised DGO 2.04 (Complaints Against Officers) and MOU between SFPD and DPA were adopted by the San Francisco Police Commission on 05/15/19.

### 4) Evidence of ongoing audit and/or review.

Per the MOU:

#### 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*