

## Recommendation 64.1

GM

Gabriel Martinez [REDACTED]

Wed 5/19/2021 7:50 AM

To:

- Tanya Koshy [REDACTED]
- McGuire, Catherine (POL);
- Scott, William (POL)

+8 others

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Dear Acting Captain Altorfer,

Our office has completed its review of the materials related to Recommendation 64.1 that were submitted to us as part of the collaborative reform process. This package focused on SFPD meeting regularly with DPA to improve processes and policies. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

**Recommendation 64.1:** The SFPD should convene a joint review process within 90 days of the issuance of this report, co-chaired by OCC (now DPA) and SFPD senior staff, to evaluate existing complaint and disciplinary processes, policies, and liaison relationships to enhance trust and legitimacy around these issues.

**Response to 64.1:** SFPD has created a few different recurring meetings with DPA to improve processes and policies. 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. The Order establishes a Disciplinary Review Board that meets quarterly to examine inefficiencies, policy gaps, and protocols for the complaint system and discipline process. The board consists of senior staff from SFPD, DPA, and the Police Commission, including the Assistant Chief of Staff or designee from the Risk Management Office, the Deputy Chief of the Administration Bureau, and the Deputy Chief of the Field Operations Bureau.

The first disciplinary review board meetings were intended to set up the parameters and processes of the board. After an initial meeting on February 11, 2020, meetings were paused because of the Covid pandemic until September 30, 2020. A third meeting to

finalize the setup of the board was held on November 12, 2020, and the first official board meeting occurred on December 18, 2020. Several issues from individual officer actions were raised by both IAD and DPA, including how firearms are handled at the range, how SFPD conducts searches at residences when only a juvenile is present, and how officers communicate with bystanders that are recording officers. DPA recommended policy changes to address these issues. IAD and DPA also identified complaint trends, including recurring issues with officers turning on body-worn cameras, search warrant issues, courtesy, and interactions with limited English proficient individuals. SFPD and DPA agreed to nine recommendations stemming from these trends, including SFPD exploring modifying the body-worn-camera policy to allow Sergeants to regularly audit body-worn-camera footage in incidents that do not involve the use of force, SFPD requiring officers who receive sustained courtesy complaints to go to specific training to address courtesy, and ensuring SFPD training teaches that officers should not question claims from individuals that they are limited English proficient.

Additionally, on May 28, 2019, SFPD and DPA entered into a memorandum of understanding (MOU) regarding DGO 2.04. The MOU between DPA and the SFPD sets regularly scheduled monthly meeting with the Chief of Staff of the SFPD and the Chief of Staff of the DPA to discuss discipline, policy, and training recommendations. The MOU tasks DPA with 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.

Finally, the SFPD Risk Management Office and DPA have also agreed to formalize their quarterly meetings to improve interagency communications, promote transparency, and discuss trends and any issues related to concurrent investigations. These meetings did occur previously but were never agendized or formalized. On November 13, 2020, SFPD issued a memorandum outlining a more structured processes for these meetings, including that the Commander of Risk Management or designee and a DPA designee will attend the meetings.

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.

<b>Finding # 64</b>	The SFPD does not routinely collaborate with the Office of Citizen Complaints (now the Department of Police Accountability).
<b>Recommendation # 64.1</b>	The SFPD should convene a joint review process within 90 days of the issuance of this report, co-chaired by DPA and SFPD senior staff, to evaluate existing complaint and disciplinary processes, policies, and liaison relationships to enhance trust and legitimacy around these issues.

Recommendation Status	Complete Not Started	Partially Complete No Assessment	In Progress
<b>Summary</b>			
<p>The San Francisco Police Department submits DGO 2.04 as the plan for ongoing collaboration between the department and DPA. The Discipline Review Board also identifies the protocol, as arising out of meetings as identified in Recommendation 56.6 and in the file. This meets compliance measure one.</p> <p>This recommendation is closely aligned with other areas of work regarding accountability and the primary vehicle for supporting this compliance measure is the Disciplinary Review Board (DRB). This board has the responsibility under policy to examine disciplinary cases and trends in complaints, as well as make recommendations for training and policy changes. This meets compliance measure two.</p> <p>The first DRB was held in February 2020, and subsequent meetings were not consistent due to the pandemic. However, minutes from the three meetings held were supplied and identified mutual goals in establishing the protocols for the meetings and the outcomes anticipated. There was ongoing review of cases and action items tasked. This meets compliance measure three.</p>			

Compliance Measures		Status/Measure Met
1	Establish a plan and protocol for ongoing, task-driven collaboration between the SFPD and the DPA.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2	Establish a joint review process to examine inefficiencies, policy gaps and protocols for the complaint system	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3	Continuous improvement loop documenting progress and tasking of the joint review process.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Administrative Issues

Compliance Issues



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**Finding #64:** The SFPD does not routinely collaborate with the Office of Citizen Complaints. The transparency of the complaint and disciplinary process is negatively affected by the working relationship between SFPD IAD and OCC. The lack of engagement undermines the effectiveness of both in fulfilling their respective roles and responsibilities. Issues with respect to information sharing between the two entities, timeliness of complaint investigations, and bases for recommending progressive discipline potentially impede the investigative and adjudication processes, potentially eroding the overall integrity of the public complaint resource.

**Recommendation # 64.1:** The SFPD should convene a joint review process within 90 days of the issuance of this report, co-chaired by OCC and SFPD senior staff, to evaluate existing complaint and disciplinary processes, policies, and liaison relationships to enhance trust and legitimacy around these issues.

**Response Date:** 01/15/2021

### Executive Summary:

This recommendation involves the establishment of a joint review process between the SFPD and DPA. The review process consists of a quarterly meeting between DPA and SFPD and is intended to be the mechanism for a review of data, policy, and recent cases. This review will inform decision making on a macro level and allow decision makers visibility into emerging trends as it relates to IAD and DPA investigations.

The SFPD has also requested to have an additional quarterly meeting with DPA and the Commander of Risk Management in order to have a meeting on a smaller scale to improve interagency transparency and communications.

As outlined in the Memorandum of Understanding Resolution 19-40, which was adopted on May 15, 2019 (**Attachment #1**), there shall be a regularly scheduled monthly meeting, known as the Sparks' Report. The Police Department and DPA shall provide a quarterly 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. The Sparks Report was first adopted by the Police Commission on April 06, 2006. (**Attachment #2**) Resolution 27-06

Resolution 97-04 requires that the Department of Police Accountability and the San Francisco Police Department provide the Police Commission with a quarterly report that reflects the number and type of IAD investigations initiated during each reporting period. This report known as the Quarterly Report includes the number of cases sustained, disciplinary action taken, dismissed cases, and the current number of active IAD investigations. (**Attachment #3**) *Quarterly Report*

DGO 2.04 was revised and became effective on May 15, 2019. The DGO clearly establishes the quarterly meetings, the attendees, and the content to be discussed. The meetings are



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titled the "Discipline Review Board" (DRB) and the meetings have taken place four times. The first meeting was held on February 11, 2020.

### Compliance Measures:

- 1) Establish a plan and protocol for ongoing, task driven collaboration between the SFPD and DPA.

*On Thursday January 07, 2021, SFPD Professional Standards Members participated in a conference call with members of Hillard Heintze and the California Department of Justice. During the prescreening, Suggestions and guidelines were discussed for this recommendation as described below...*

Hillard Heintze thought that the Disciplinary Review Board information was good, but that the information could be supplemented with the meetings discussed in recommendation 56.5, trainings, and the MOU.

As outlined in the MOU between DPA and the SFPD, Section VII, Monthly reports and Meetings. *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.* The Assistant Chief (AC Robert Moser) has had regularly scheduled monthly meeting with DPA. The Chief of Staff of the SFPD and the Chief of Staff of the DPA meet to discuss discipline, policy, and training recommendations. These meetings are not agendized and no minutes are taken. (Attachment # 4) AC Moser's outlook calendar showing meetings with DPA.

In the revision of DGO 2.04, SFPD established a plan for an ongoing collaboration between SFPD and DPA called the "Discipline Review Board". The board consists of members from SFPD, DPA and the Police Commission. The protocol for the members are to have quarterly meetings to examine inefficiencies, policy gaps, and protocols for the complaint system and discipline process. (Attachment #5) DGO 2.04

### QUARTERLY MEETINGS BETWEEN DPA AND THE POLICE DEPARTMENT Disciplinary Review Board (DRB) shall consist of the following:

1. The Assistant Chief of Staff or designee from the Risk Management Office
2. The Deputy Chief of the Administration Bureau
3. The Deputy Chief of the Field Operations Bureau
4. A member of the Police Commission (Advisory)
5. The Director of the DPA, or designee (Advisory)

This recurring review, co-chaired by senior members of both agencies (listed above), satisfies the mandate for quarterly meetings between the agencies.



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- 2) Establish a joint review process to examine inefficiencies, policy gaps, and protocols for the complaint system.

DGO 2.04, established a plan for an ongoing collaboration between SFPD and DPA called the "Discipline Review Board" (DRB). The board consists of members from SFPD, DPA and the Police Commission. The protocol for the members is to have quarterly meetings to examine inefficiencies, policy gaps, and protocols for the complaint system and discipline process.

The DRB shall review and discuss: DGO 2.04.08 Section B

1. Aggregate trends related to DPA and IAD complaints, both alleged and sustained.
2. Policy failure or training failure cases closed in the prior quarter.
3. The Department in consultation with the DPA will select sustained cases from the previous quarter for review to determine the need for training or policy changes.
4. SFPD and DPA Recommendations.

*The DRB shall consider whether any policy, procedures or training needs to be revised, added or re-issued if it relates to the subject matter reviewed. The DRB may make written recommendations that include the manner in which the recommendation shall be implemented and a timeline for completion based upon identified priority level and complexity of recommendation. The DRB shall report quarterly to the public and to the Commission those policy and training changes it recommends, and the measurement of the success or failure of each change, in a manner consistent with individual police officer privacy rights. The guidelines for the report are contained within the MOU between SFPD and DPA.*

*On Thursday January 07, 2021, SFPD Professional Standards Members participated in a conference call with members of Hillard Heintze and the California Department of Justice. During the prescreening, Suggestions and guidelines were discussed for this recommendation as described below...*

*clarifying that the quarterly meetings, described in the November 13, 2020 memorandum, have been ongoing and were not a recent development.*

In addition to the DRB and the ongoing meetings with the Assistant Chief, the SFPD Risk Management Office and DPA have also agreed to formerly meet quarterly. Even though these meetings between RMO and DPA have occurred in the past they were never agendaed or formalized. These quarterly meetings will be attended by the Commander of Risk Management or designee and DPA. These meetings will be agendaed and held quarterly to improve interagency communication and promote transparency. The Officer in Charge of IAD will also attend the quarterly meeting should the need arise to discuss trends and/or issues related to investigative practices. The Commander of Risk Management will disseminate the pertinent information from the quarterly meetings with DPA to the Officer in Charge of Internal Affairs Division at the RMO bi-weekly meetings. (**Attachment #6**) Accountability DOJ Recommendation Memo and Agenda



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- 3) Continuous improvement loop documenting progress and tasking of the joint review process.

The Chief of Staff, the Commander, Captain and Lieutenant of Risk Management Office and Department of Police Accountability have held several preliminary meetings to lay the foundation for the Discipline Review Board.

The first DRB was held on February 11, 2020 to discuss the parameters set in DGO 2.04 Section .08. The following meeting was scheduled to occur on March 17, 2020. Due to the Covid-19 pandemic, the meeting was put on hold until September 30, 2020 and the third meeting was held on November 12, 2020. These first three meetings were held to develop the protocols required in DGO 2.04 sec.08. (Attachment #7) DRB Meeting Minutes for the following dates:

February 11, 2020  
September 30, 2020  
November 12, 2020

\*\*\*Due to the restrictions with Covid-19, the DRB did not convene during the months of March-August 2020.

SFPD and DPA have worked collectively to develop the layout of the DRB meeting. From the preliminary DRB meetings, SFPD and DPA have agreed to discuss aggregate trends in cases and find common ground between agencies to mitigate the complaints. Both agencies also agreed that the process for the DRB may change or evolve as time progresses.

In order to discuss trends in cases, IAD and DPA selected sustained cases from the previous quarter to review. IAD has coordinated with DPA to share both IAD and DPA case files via Microsoft SharePoint to the attending DRB members. (Attachment #8) This streamlined process is in compliance with the protocol for the joint review board as stated in DGO 2.04.08.

IAD and DPA are in communication with each other to follow up on action items from the preliminary meetings. IAD has coordinated with the DPA's Chief of Staff via email to compile data and made DPA's additions to the case summary spreadsheet from previous quarters for the DRB members to review prior to the meetings. (Attachment #9)

In addition, IAD and DPA have discussed and provided input on the proposed format of the Disciplinary Review Board (DRB). The OIC of IAD created a PowerPoint and presented the proposed format to members of DPA and RMO. (Attachment #10)

DPA's Chief of Staff offered to assist IAD with the presentation and would ensure all DPA data is provided in a timely manner. Members of DPA and RMO provided positive feedback on the structure and agreed to use the format for the first DRB meeting. Both agencies have worked cohesively together and set the DRB quarterly meeting to be held, on December 18, 2020.



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December 18, 2020 was the first official DRB meeting, which was attended by the Assistant Chief, Commander of Risk Management Office, The Deputy Chief of the Administration Bureau, The Deputy Chief of the Field Operations Bureau, A member of the Police Commission, and the Director of the DPA. **(Attachment #11) December 2020 DRB Meeting Minutes**

*On Thursday January 07, 2021, SFPD Professional Standards Members participated in a conference call with members of Hillard Heintze and the California Department of Justice. During the prescreening, Suggestions and guidelines were discussed for this recommendation as described below...*

*Additionally, SFPD should clarify the improvements it discussed and implemented from the meeting minutes information.*

On December 18, 2020, the DRB had identified the following policy and training failures.

### Policy Failure:

IAD identified one policy failure case:

This case was regarding the process for the use and return of firearms from the SFPD range for training courses. The issue was addressed by Chief Scott and the Training Division has updated their policy and curriculum to delineate a process for the use of the range's equipment.

DPA discussed two policy failure cases:

The first case involved a search warrant, being conducted at a residence when only a juvenile was present. DPA recommended that policy be updated to address what actions the officer should take when faced with this circumstance.

The second case was regarding an officer telling a bystander that they could not photograph the officer while they conducted a traffic stop. DPA recommended that the update of DGO 5.07, Rights of Onlookers, include specific language to address when officers can and cannot prevent the taking of photographs.

### Training Failure:

IAD identified one training failure case:

An officer recently graduated from the FTO program failed to attend their bi-annual physical fitness test. This case was reviewed by Assistant Chief Moser and he recommended the FTO Office have a process in place to remind recruit officers of their responsibilities upon completing the FTO program.

DPA identified two training failure cases:



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An officer advised a civilian conducting a 1st Amendment audit they could not film inside the station. Upon learning of the incident, a supervisor at the station corrected the officer. DPA recommended updated training be implemented regarding 1st Amendment audits.

Officers failed to properly address a group of protesters located behind police barricades until after they had breached the barricades. Additionally, neighboring police districts did not communicate regarding the protest. DPA recommended that DGO 8.03 be updated to adhere to best practices for communication with individuals engaged in a protest as well as between district stations that may be affected by the activity.

*Both IAD and DPA then presented on aggregate trends in cases and complaints for the first three quarters of 2020.*

### Trends

#### Internal Affairs Division:

Body Worn Camera- Violation of this policy was the most common trend observed by IAD. Lt. Wilhelm noted the violation was typically the officers failing to activate their BWC's as dictated by policy.

Failure to Appear- The second trend noted was cases where officers failed to appear as required at their bi-annual firearms qualifications, bi-annual fitness test and/or at subpoenaed court appearances.

Failure to investigate / Failure to take a report- The third trend was cases where an officer failed to either properly investigate an incident and/or failed to prepare an incident report as required by Department policy.

#### Department of Police Accountability:

Body Worn Camera- Violations of the Body Worn Camera policy by officers were the most common violations found by DPA in their investigations. Chief of Staff Hawkins noted that violations of this policy were by far the most prevalent in DPA investigations.

Fourth Amendment- The second trend noted was cases where officers conducted searches and seizures that were in violation of current laws pertaining to the Fourth Amendment.

Limited English Proficiency-The final trend observed was of officers violating the Department policy regarding interactions with individuals with limited English proficiency.

The DRB proposed several recommendations to address these trends.

Recommendation #1: The DPA and IAD to provide specific numbers of cases relevant to the aggregate trends observed in order for this data to be more tangibly relayed to officers and the public so they can quantify the frequency with which these cases occur.



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Recommendation #2: When the DPA makes a finding of failure to supervise that they provide specificity in which way the supervisors failed in their duties so it may be more appropriately addressed by the Department.

Recommendation #3: That the statistics regarding Body Worn Camera violations be communicated to officers more frequently as a mechanism to remind them of this ongoing issue and serve as a training tool to gain more compliance with the policy.

Recommendation #4: The SFPD require officers who receive sustained courtesy complaints to go to specific training to address that issue.

Recommendation #5: SFPD training should emphasize that if someone claims to be hearing impaired or have limited English proficiency the officers should not question the claim but shall adhere to SFPD policy in their interaction with the individual(s).

Recommendation #6: The SFPD should provide their officers with annual updates regarding local laws, ordinances, or municipal codes to ensure they are still in effect and have not changed to ensure their proper application.

Recommendation #7: That when relevant, the SFPD's training courses such as Critical Mindset Coordinated Response (CMCR), should emphasize and reinforce motor skills for the use of the Body Worn Camera to help officers maintain compliance with the policy.

Recommendation #8: The SFPD should explore the possibility of modifying the Body Worn Camera policy to allow Sergeants to regularly audit Body Worn Camera footage in incidents that do not involve the use of force to ensure officers are in compliance with the policy regarding activation of their cameras.

Recommendation #9: That DPA and IAD should conduct training at supervisory promotional courses to illustrate the aggregate trends of DPA and IAD investigations in order to make supervisors aware of present and ongoing issues.

These Recommendations were unanimously approved and upon approval, will be implemented through coordination with the relevant Department division and/or units, as necessary. **(Attachment #12) Fourth Quarter Disciplinary Review Board Meeting**