

Recommendation 80.1

TK

Tanya Koshy [REDACTED]

Thu 8/5/2021 4:24 PM

To:

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

+7 others

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Dear Acting Captain Altorfer:

Our office has completed its review of the materials related to Recommendation 80.1 that have been submitted to us as part of the collaborative reform process. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

Recommendation 80.1: The SFPD should create a policy governing the reporting of criminal activity and administrative misconduct uncovered during any type of covert investigation. Such policies will prepare the department for complex legal situations with multijurisdictional responsibilities for either criminal or administrative investigations into officer conduct.

Response to Recommendation 80.1:

Several of SFPD's existing policies govern the reporting of criminal activity and administrative misconduct that is uncovered during the course of a covert investigation. These policies include Department General Order (DGO) 1.04 (Duties of Sergeants), 2.01 (General Rules of Conduct), 2.04 (Complaints against Officers) and Internal Affairs Division Standard Operations Procedures. SFPD issued Department Notices (DN) 21-046 and 21-059 to synthesize all of the processes and protocols within this wide range of policies.

DN 21-059 reminds members of their obligations under DGO 8.01 (Critical Incidents) to notify their Commanding Officer if they become aware that another member is arrested for a felony or misdemeanor while off-duty. DN 21-046 reminds members that if they observe, or otherwise become aware of another member's suspected violation of the law or SFPD policies and procedures, they are required to immediately report the violation to their immediate supervisors. DN 21-046 further reminds supervisors that

when they become aware of suspected criminal activity or administrative misconduct, they must immediately notify their Commanding Officer via a memorandum. The Commanding Officer must determine if an investigation is necessary and then notify Command Staff and the Department of Police Accountability (DPA). The Commanding Officer must also forward the memorandum describing the alleged misconduct to the Commanding Officer of the Risk Management Office, who will follow existing protocols for administrative and criminal investigations into SFPD members. Those protocols can be found in the Memoranda of Understanding between SFPD and DPA and the San Francisco District Attorney's Office (SFDA) as well as the Internal Affairs Division Standard Operating Procedures. These protocols are discussed in more detail in the packages for Recommendation 19.1, and the recommendation packages under Findings 10 and 60.

SFPD also provided evidence to show its ongoing relationships with the SFDA and the Federal Bureau of Investigation as they relate to investigations into member misconduct. SFPD provided several policies that govern the relationship between the SFDA and SFPD, and in particular, their relationship during various stages of a criminal investigation. As one example, the Risk Management Office's Investigative Services Detail (ISD) must prepare an investigative case file on an investigation into a member's criminal activity. This case file is confidential and is secured within the ISD; however, the SFDA can also review this file. If the SFDA decides to criminally charge a member, the underlying ISD case file will be watermarked and bates stamped prior to forwarding it to the SFDA.

The Officer in Charge (OIC) of the ISD maintains regular contact with their counterpart in the FBI's Public Corruption Squad to discuss cases that might involve both agencies. If the FBI is investigating a SFPD member, it would notify the ISD OIC, who would then report it up the chain of command, consistent with the ISD Unit Order 20-01 and DGO 2.04. Similarly, Chief Scott is also in regular communication with the head of the San Francisco Office of the FBI. If the Chief determines an investigation of a member would fall under federal jurisdiction, he would discuss this with the Special Agent in Charge of the FBI field office and work with the Risk Management Office to provide all relevant information to the FBI.

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.

Tanya

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Finding # 80	The SFPD does not have internal protocols for collaboration with regard to criminal investigations conducted by the district attorney or the United States Attorney's Office for the Northern District of California.
Recommendation # 80.1	The SFPD should create a policy governing the reporting of criminal activity and administrative misconduct uncovered during any type of covert investigation. Such policies will prepare the department for complex legal situations with multijurisdictional responsibilities for either criminal or administrative investigations into officer conduct.

Recommendation Status	Complete	Partially Complete	In Progress
	Not Started	No Assessment	

Summary

For compliance measure one: the department identifies a range of policies that address misconduct by officers. Specific to criminal conduct the department notes that policies identify roles and responsibilities that fall to a ranking and senior officer for criminal conduct. As for ongoing investigations, the policies are silent as to specific internal IA practices, but identify that notice is provided to the appropriate command staff. ISD has responsibility for investigating all criminal conduct by members of the SFPD. DN 21-046 requires all members to report observed criminal conduct by a SFPD member to their immediate supervisor.

For compliance measure two: the department identifies there is a working relationship between the Investigative Services Division (ISD) and the San Francisco DA. The DA is the lead on certain investigations as opposed to the SFPD. ISD presents their cases to the DA in the same way and according to the policy that drives the overall criminal investigations process. The DA is engaged prior to issue of an arrest warrant for a SFPD member. As for federal engagement, the SFPD's Risk Management Office (RMO) has guidelines and protocols that address engagement with federal agencies. Department policy requires notification to the deputy chief for general investigations. Specific to police, the Officer in Charge of the ISD is responsible for liaison with federal partners and evidence is provided for meetings with the FBI, which has been supported by a Chief's directive outlining processes.

Compliance Measures		Status/Measure Met
1	Establish an internal policy and protocol for ongoing criminal investigations into SFPD officers.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2	Work with both the DA and the AUSA for the Northern District California to establish policies and protocols for criminal investigations into SFPD officers.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Administrative Issues

Compliance Issues



Collaborative Reform Completion Memorandum

Finding #: 80.1

The SFPD does not have internal protocols for collaboration with regard to criminal investigations conducted by the district attorney or the United States Attorney's Office for the Northern District of California. Police misconduct uncovered during any type of covert investigation should be reported pursuant to established protocols and protect the integrity of the investigating officers. In situations with shared areas of jurisdiction or responsibility for officer conduct, there should be protocols for roles and responsibilities for all partners.

Recommendation # 80.1 *The SFPD should create a policy governing the reporting of criminal activity and administrative misconduct uncovered during any type of covert investigation. Such policies will prepare the department for complex legal situations with multijurisdictional responsibilities for either criminal or administrative investigations into officer conduct.*

Response Date: 04/20/2021

Executive Summary:

To ensure that the San Francisco Police Department is honest and transparent with the community in which we serve, it is paramount that internal policy and investigative protocols are instituted to guarantee that all forms of misconduct, both administrative and criminal, by any member of the San Francisco Police Department (sworn or non-sworn) is proactively investigated and those, to include the department, are held responsible to our core values of partnering and engaging with our community.

To facilitate investigations regarding allegations of misconduct by any member of the San Francisco Police Department the department utilizes the Risk Management Office (RMO), which resides under the Bureau of the Chief of Staff, and the Department of Police Accountability (DPA) – a non-affiliated civilian oversight organization. Furthermore, as with all criminal investigations involving law enforcement officers, there is always the possibility that the alleged crimes fall under federal jurisdiction and/or scope. Though the responsibility to investigate and prosecute normally resides at the local District Attorney's Office, it may be necessary to bring the investigation to the attention of the Federal Bureau of Investigations (FBI) Public Corruption Unit, which will be discussed in further detail under Compliance Measure 2.

Within the San Francisco Police Department, the Risk Management Office (RMO) is tasked with investigating all acts of misconduct by a member while off-duty. Conversely, all alleged misconduct that occurs on-duty reported by a member of the community, is investigated by the Department of Police Accountability (DPA), which is codified in San Francisco Police Department General Order 2.04 – Complaints Against Officer (Attachment # 1).



Collaborative Reform Completion Memorandum

If the Internal Affairs Division (IAD) receives a whistleblower or anonymous complaint regarding a member's on-duty conduct, the complaint is reported to the Commanding Officer of the Risk Management Office, who in turn will decide if the case should be investigated by the Internal Affairs Division or referred to DPA. If it is determined that the case should be investigated by the Internal Affairs Division, DPA is alerted and consulted for de-confliction purposes, as codified in the Internal Affairs Division – Standard Operations Procedures (Attachment # 2),

The Risk Management Office (RMO) oversees two divisions, who are the sole entity to investigate all allegations of misconduct. Generally, all allegations of misconduct are either administrative in nature; meaning the member/s violated a policy or procedure, or criminal in nature, meaning that the member/s is alleged to have committed a statutory offense.

The Internal Affairs Division (IAD) investigates all alleged administrative misconduct while the Investigative Services Division (ISD) investigates all alleged criminal misconduct. The Risk Management Office (RMO) typically conducts criminal and administrative investigations contemporaneously, which requires the strict necessity to keep the two investigations separate as required by law to ensure that the accused member is provided their constitutional rights, which are not applicable when being administratively investigated. (Attachment # 3 – COPS: Standards and Guidelines for Internal Affairs)

To support the Risk Management Office in facilitating their investigative responsibilities and to work collaboratively with the Department of Police Accountability (DPA) and other law enforcement partners, the department has implemented several policies and procedures to ensure that the department is explicit regarding expectations and preemptive in all misconduct investigations and findings. These policies, which will be expanded upon in the following compliance measures prepares the department for complex legal situations with multijurisdictional responsibilities for either criminal or administrative investigations into officer conduct.

Compliance Measures:

- 1) Establish an internal policy and protocol for ongoing criminal investigations into SFPD officers.**

To demonstrate that the department has established internal policy and protocol for ongoing criminal investigations into SFPD Members, the department will rely on the following Department General Orders, Department Manual, Unit Orders, and Department Notices:

1. Department General Order 1.04 – Duties of Sergeants
2. Department General Order 2.01 – General Rules of Conduct
3. Department General Order 2.04 – Complaints Against Officers
4. Department Manual 16 – Supervisors Manual