

OFFICE OF CITIZEN COMPLAINTS

CITY AND COUNTY OF SAN FRANCISCO



Kevin Allen
Director

Date: May 11, 2006

To: Supervisors Aaron Peskin and Fiona Ma
Members, San Francisco Board of Supervisors
Commissioners Deborah Escobedo and Sonia Melara
Members, San Francisco Immigrant Rights Commission

Re: OCC's Proposed Language Access Policy for the San Francisco Police Department

Dear Supervisors and Commissioners:

On behalf of the Office of Citizen Complaints, I thank you for providing our agency the opportunity to speak at the Equal Access to Services hearing. The Office of Citizen Complaints is an independent civilian-run agency that provides oversight to the San Francisco Police Department.

My testimony today will address two areas: 1) the written language access protocol for the San Francisco Police Department that our agency in conjunction with a coalition of community groups is proposing and; 2) the support that city agencies need to effectively implement a meaningful language access policy.

This hearing comes at a crucial time for the collaborative work our agency has been doing. Over the past several months we have worked with numerous community advocacy groups to craft a comprehensive written language access protocol for the San Francisco Police Department.

We initiated this project in response to complaints by both crime victims and criminal suspects who were not able to effectively communicate with SFPD officers. In each of the ten cases we investigated, individuals complained that because an interpreter or an officer speaking the person's primary language was not provided, the accuracy of the information the police obtained and the police service rendered were deficient.

In one of our most recent complaints, an 11-year old child who had recently emigrated from Puerto Rico was taken out of her elementary school classroom, detained, interrogated and arrested on serious felony charges—all without the assistance of an interpreter. Charges were eventually dismissed but the experience was incredibly damaging to both her and her family. The lack of an interpreter resulted in an inaccurate account of the child's involvement and also prevented her from understanding her legal rights in a potentially very serious circumstance.


In meeting with community advocacy groups and talking with our own bilingual OCC investigators, it has become clear that the formal complaints our agency has received are only the tip of the iceberg—many monolingual community members do not access police services because they do not believe and are not informed that language access assistance is available to them.

Our language access proposal establishes detailed guidelines for SFPD officers interacting with limited English proficient (LEP) individuals; it establishes a preference for in-person communication with officers who speak the LEP person's primary language. It restricts the use of children, bystanders, family members as interpreters; it provides for coordination between Emergency Communications Department and the Police Department to identify and dispatch bilingual officers during calls for assistance. It also includes appointment of a language access officer to monitor compliance and to implement training. It provides for data collection and reporting to the Police Commission and the public about LEP services provided, the nature of complaints lodged and their resolution.

In crafting our proposal, it was enormously beneficial to rely upon the Equal Access to Services Ordinance for guidance. However, in our recent meetings with Chief Fong, it became quite clear that while we have an impressive ordinance, the city lacks critical support mechanisms for fulfilling the goals of the ordinance. There is no office where staff who are knowledgeable in language access issues can help agencies identify their language barriers and help resolve them in a fiscally sound and effective manner. There is no language access department that conducts training for city department heads, staff and contractors as to their obligations under the Ordinance and state and federal law. Instead of each Department attempting in a piecemeal fashion to hire interpreters and translators, to research vendors for buying appropriate language access signage, to organize trainings, the City should leverage and centralize our resources. Many departments want to comply with the Equal Access to Services Ordinance but the resources and guidance are simply lacking.

We are engaged in ongoing discussions with Chief Fong about our language access proposal. We hope that our proposal can become a nation-wide model for other police departments that are committed to the principles of the Equal Access to Services ordinance. We request your support and your expertise. We also urge this Commission and the Board of Supervisors to take steps to ensure that city agencies are given the resources they need so that all city agencies can reach the goals set out by the Equal Access to Services ordinance.

Sincerely,



Samara C. Marion
OCC Attorney

Enclosure

San Francisco Police Department
GENERAL ORDER

**LANGUAGE ACCESS SERVICES FOR LIMITED ENGLISH PROFICIENT (LEP)
PERSONS¹**

The purpose of this general order is to establish language access procedures, consistent with federal, state and local law,² for San Francisco Police Department members to follow when encountering a limited English proficient (LEP) person.

I. POLICY

- A. The San Francisco Police Department recognizes the importance of effective and accurate communication between its members and the diverse community it serves. Language barriers can impede communication in a variety of ways. Language barriers can prohibit LEP individuals from accessing police services to which they are entitled. Hampered communication with LEP victims, witnesses, suspects and community members can also create unnecessary safety, evidentiary and investigative challenges. Ensuring timely and accurate communication between law enforcement and LEP persons serves the interest of both.
- B. It is the policy of the San Francisco Police Department to provide LEP persons timely and effective access to Department services and to provide the same level of services and information as the Department provides to English speakers. All police members shall provide free language assistance services to LEP individuals whom they encounter or whenever an LEP person requests language assistance services. The Department shall inform the public that language assistance services are available free of charge to LEP persons.

¹ This General Order uses the terms interpretation and interpreter services to refer to the process of orally rendering communication from one language into another language. This General Order uses the term translation and translation services to refer to the preparation of a written text from one language into an equivalent written text in another language.

² Federal law prohibits national origin discrimination and requires federally assisted law enforcement agencies to take reasonable steps to provide meaningful access to LEP individuals. See Title VI of the Civil Rights Act of 1964, the Omnibus Crime Control and Safe Streets Act. State and local law additionally require agencies to provide information and services in the language of a non-English or limited English proficient individual. See California's Dymally-Alatorre Bilingual Services Act, Government Code sec. 7290 et seq. and San Francisco's Equal Access to Services Ordinance, Chapter 91.

II. DEFINITIONS

- A. **Primary Language:** the language in which an individual is most effectively able to communicate.
- B. **Limited English Proficiency (LEP):** describes a person whose primary language is not English and who has a limited ability to read, write, speak, or understand English.
- C. **Interpretation:** the act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.³
- D. **Translation:** the replacement of written text from one language (source language) by an equivalent written text in another language (target language).
- E. **Qualified SFPD Interpreter Member:** a SFPD officer who (1) by language assessment testing demonstrates proficiency in and ability to communicate information accurately in both English and in another language; (2) has knowledge in both languages of specialized law enforcement, legal, and medical terms and of particularized vocabulary and phraseology used by LEP persons commonly encountered by the Police Department; (3) is trained in interpreting technique, roles and ethics and (4) understands and follows confidentiality and impartiality rules for interpreters.
- F. **Qualified Civilian Interpreter:** an individual (city employee or contracted third party) who (1) by language assessment testing demonstrates proficiency in and ability to communicate information accurately in both English and in another language; (2) has knowledge in both languages of specialized law enforcement, legal and medical terms and of particularized vocabulary and phraseology used by LEP persons commonly encountered by the Police Department; (3) is trained in interpreting technique, roles and ethics and; (4) understands and follows confidentiality and impartiality rules for interpreters.

³ In its materials for creating a language assistance policy and implementation plan for law enforcement agencies, the Department of Justice emphasizes that “[i]nterpreting is a sophisticated skill needing practice and training, and should not be confused with simple bilingualism. Even the most proficient bilingual individuals may require additional training and instruction prior to serving as interpreters. Qualified interpreters are generally required to have undergone rigorous and specialized training.” (http://lep.gov/Law_Enforcement_Planning_Tool.htm, pg. 2.)

- G. **Direct Communication:** Monolingual communication in a language other than English between a qualified bilingual SFPD member and an LEP individual (e.g. Spanish to Spanish).
- H. **Exigent Circumstances:** situations that demand unusual or immediate action because of a threat to life or safety. Examples of exigent circumstances may include the need to obtain information about a fleeing suspect or the need to obtain information from a seriously injured person.
- I. **Substantial Number of Limited English Speaking Persons:** this shall mean either 10,000 City residents who speak the same primary language, or 5 percent of those persons who use the Department's services, as set forth in San Francisco Administrative Code sec. 91.2(j).

III. PROCEDURES FOR ORAL LANGUAGE SERVICES:

A. General: The following procedures shall apply to members who encounter LEP individuals while performing critical law enforcement functions. These critical functions include: (1) receiving and responding to requests for assistance (including interactions with victims, witnesses, and bystanders); 2) field enforcement and field investigations (including traffic stops, pedestrian stops, serving warrants and restraining orders, Terry stops, and activities in aid of other jurisdictions or federal agencies); 3) custodial interrogations; 4) the intake and booking process; 5) the care and custody of persons in detention; and 6) the taking of and responding to complaints concerning police service and misconduct.

B. Order of Preference: Members shall provide oral language services to LEP persons they encounter in the following order of preference unless temporary deviations are required to respond to exigent circumstances.

1. Direct Communication by Qualified Interpreter Member

Whenever feasible, the preferred method of providing services to LEP persons is through the use of qualified interpreter member who can communicate directly with LEP persons in their primary language.

2. Use of Qualified Interpreter: When qualified interpreter members are unavailable to communicate directly with LEP persons in their primary language or they lack the rank, skills or assignment to provide direct services, members shall use a qualified interpreter (a member, qualified city employee or

contracted third party) to interpret communications with LEP persons. For example, if an investigation involves LEP witnesses and the job cannot be assigned to a bilingual inspector, an available qualified interpreter member shall interpret for the inspector and the witnesses.

3. **Telephone Interpreter:** When qualified interpreters (members, city employee or contracted third party) are not available, members shall call for telephone interpreters as described in (C) (4).

C. Obtaining An Interpreter

1. **Identification of Primary Language.** If members are unable to determine the primary language of an individual, they shall use the Department issued language identification card to permit LEP persons to identify the language they speak. If the LEP person does not appear to be able to read or understand the language identification card, the SFPD member shall seek assistance from other department personnel, call the Emergency Communications Division (ECD) or call for a telephone interpreter with International Effectiveness (IE)⁴ to ascertain the LEP person's primary language.
2. **Direct Services Through Qualified Interpreter Member.** Once the LEP person's primary language has been identified, the member shall seek the assistance of a qualified interpreter member. The member shall radio and request the assistance of an available member who speaks the LEP's primary language or call the Emergency Communications Division (ECD) via the 911 system to request ECD to obtain a qualified interpreter member.
3. **Qualified Bilingual Interpreter.** If a qualified interpreter member is unavailable, the member shall seek the assistance of a qualified city employee or contracted third party interpreter if feasible under the circumstances. The member shall contact the Emergency Communications Division (ECD) to request ECD to obtain a qualified city employee or contracted interpreter.
4. **Telephone Interpreters** (formerly called "Language Line Services") SFPD members may also call for telephone interpreters with International Effectiveness. However, the use of telephone interpreters is not the preferred practice, when a qualified interpreter member, a qualified city employee or contracted interpreter is

⁴ The Department formerly contracted for telephone interpreters through AT&T's "Language Line Service." The Department has recently contracted with International Effectiveness for telephone interpreters. See Department Bulletin 06-034 (02/15/06). This bulletin instructs members to call the Operations Center for the phone number of International Effectiveness.

reasonably available under the circumstances. In addition, telephone interpreters shall not be used when performing certain critical functions, such as custodial interrogations of LEP persons unless the LEP person consents as indicated in Section III (E).

D. Restrictions: SFPD members shall not use family members, neighbors, friends, volunteers and bystanders as an interpreter unless exigent circumstances exist and a more reliable interpreter is not available.⁵ **Members shall exercise particular caution in the use of minors to interpret.**

E. Exigent Circumstances: SFPD members shall follow the procedures outlined above; however, exigent circumstances may require some deviation. In such situations, SFPD members shall use the most reliable, temporary interpreter available. Once the exigency has passed, members are expected to revert to the procedures set forth in this general order.

F. Interrogations

1. Because of the dual role a SFPD officer has when conducting interrogations and acting as an interpreter, SFPD officers and employees shall not be used as interpreters during interrogations. Instead, a contracted third party interpreter shall be used.
2. The contracted third party interpreter shall be physically present with the LEP suspect during the interrogation unless the LEP suspect consents to use of a telephone interpreter.
3. The Miranda admonition, and all other vital written forms shall be provided to the suspect in his or her primary language (e.g. consent to search forms). In the case of forms that have not been translated into the LEP person's primary language and in the case of illiteracy, forms shall be read to the suspect in his or her primary language.

G. Crime Victim and Witness Interviews: The accuracy of victim and witness statements is a priority in criminal investigations.

⁵ In materials designed specifically to assist law enforcement agencies to implement language access policies, the U.S. Department of Justice warns against the use of family members, children and acquaintances as interpreters: "Family members, neighbors, friends, acquaintances, bystanders, and children generally should not be used for interpretation, especially for communications involving witnesses, victims, and potential suspects, or in investigations, collection of evidence, negotiations, or other sensitive situations, except temporarily in unforeseen, emergency circumstances while awaiting professional interpretation or bilingual officers." (See http://lep.gov/Law_Enforcement_Planning_Tool.html.)

Thus, to ensure effective communication and accuracy, either a qualified bilingual SFPD member, employee or contracted third party interpreter shall be used when taking any formal statement or conducting any interview of a LEP witness and/or victim. All vital written forms shall be provided to the witness and/or victim in his or her primary language. In the case of forms that have not been translated into the LEP person's primary language and in the case of illiteracy, forms shall be read to the witness and/or victim in his or her primary language.

H. Incident Reports. In any contact with a LEP person that requires an incident report, the incident report shall identify the primary language spoken by the LEP individual and the manner in which interpretation services were provided (e.g. bilingual staff, in-person contract interpreter, telephonic interpreter.)

IV. WRITTEN COMMUNICATIONS (TRANSLATION)

- A. Translated Forms:** The Department shall make available to the public translated forms and documents identified in Appendix A of this General Order in the languages spoken by a Substantial Number of Limited English Speaking Persons.
- B. Notice of Translated Forms:** The Department shall also post notices in the language spoken by a Substantial Number of Limited English Speaking Persons in the public lobby of the Hall of Justice, districts, units and other police facilities open to the public indicating that these translated forms and documents are available. All forms, stationary, brochures, crime prevention or public safety materials shall include a tag line that explains the availability of translated versions in identified languages.
- C. Accuracy:** The Department shall ensure that translated materials are accurate and appropriate for the target audience as set forth in San Francisco Administrative Code 91.4 (d) & (e).
- D. Illiteracy:** Upon request, the Department shall make available an interpreter to individuals who are illiterate or whose primary language is not spoken by a Substantial Number of Limited English Speaking Persons and who needs assistance reading and/or filling out a document or form identified in Appendix A of this General Order.
- E. Transcribing Tapes and Other Evidence Into English:** The Department shall transcribe tapes, documents and other evidence into English when such evidence is necessary to continue the investigation or prosecution of a case.
- F. Correspondence with LEP persons:** The Department shall correspond in the LEP person's primary language.

V. NOTIFYING THE PUBLIC ABOUT SFPD LANGUAGE SERVICES AND COMPLAINT PROCEDURES

- A. Signage:** At each police facility with direct public access, signs shall be posted in languages spoken by a Substantial Number of Limited English Speaking Persons at each public access point or lobby stating that interpreters and translated forms are available free of charge to LEP individuals.
- B. Command Officer Responsibility:** The Commanding Officer of all district stations and units with direct public access shall ensure that the signage is prominently posted and readily visible to the general public in accordance with San Francisco Administrative Code sec. 89.4.
- C. Complaint Procedures for LEP Persons:** Any LEP person who wishes to file a complaint whether such complaint involves language access services, the discharge of Departmental duties and/or misconduct concerning SFPD personnel, shall be provided with OCC complaint forms and information about the OCC complaint process. Such forms shall be available in the languages spoken by a Substantial Number of Limited English Speaking Persons. These forms shall be available in all district stations, units, and other police facilities open to the public.

VI. TRAINING

- A. General:** The Department shall provide periodic training to SFPD members about the Department's language access policies, including how to obtain in-person and telephone interpreters and how to work with interpreters. The Department shall conduct such training for new recruits, at in-service training and at Roll Call for SFPD members at least every two (2) years. Training shall initially be conducted within 180 days of the Police Commission's adoption of this General Order.
- B. Bilingual members and city employees**
 - 1. Police personnel (members and city employees) identified as bilingual who are willing to act as interpreters will have their language skills assessed by a professional interpreter using a structured assessment tool.
 - 2. After assessment, those found proficient in interpreting into and from target language will be placed on a list.
 - 3. All police personnel conditionally placed on the list must successfully complete the prescribed interpreter

training before the individual will be placed on the Department's Qualified Interpreter Personnel List.

4. To successfully complete interpreter training, police personnel must:
 - a. demonstrate proficiency in and ability to communicate information accurately in both English and the target language.
 - b. demonstrate knowledge in both languages of specialized law enforcement and legal terms and concepts and of particularized vocabulary and phraseology used by LEP persons commonly encountered by the Police Department; and
 - c. demonstrate knowledge in interpreting techniques and ethical restrictions;
 - d. understand and adhere to their role as interpreters without deviating into other roles.
5. Those persons included on the Department's Qualified Interpreter Personnel List shall receive refresher training on interpreting every two years. The Language Access Liaison officer shall be responsible for coordinating the LEP training and interpreter refresher training and will maintain training records.

VII. COORDINATION WITH EMERGENCY COMMUNICATIONS DIVISION

- A. On a quarterly updated basis the Department shall provide the Emergency Communications Division (ECD) the Department's Bilingual Personnel List.
- B. The Department shall devise a system that maintains a directory of all qualified interpreter employees, including a list of the non-English language(s) they speak, their contact information, assignments and shifts. The purpose of this system is to provide ECD and the Department the ability to identify and dispatch qualified interpreter members to calls for service when appropriate.
- C. The Department in cooperation with the Emergency Communications Division (ECD) shall devise a system for LEP callers that identifies LEP callers and provides telephonic interpreting directly via speed dialing if the dispatcher or an available qualified bilingual dispatcher cannot directly communicate in the LEP's primary language.

- D. ECD shall note in its broadcast that the person needing assistance or other involved party is an LEP individual and indicate the LEP's primary language.
- E. The Department in cooperation with ECD shall make every reasonable effort to dispatch a qualified interpreter officer to calls for service when appropriate and consistent with this General Order.

VIII. RECORDING AND TRACKING OF LANGUAGE ACCESS EFFORTS

A. Language Access Liaison Officer

- 1. The Department shall designate a Language Access Liaison officer.
 - 2. This officer shall report directly to the Chief of Police.
 - 3. The Language Access Liaison officer's duties include but are not limited to 1) ensuring compliance with the General Order; 2) implementing language access training at the Academy; 3) implementing interpreter training for qualified bilingual members and employees; 4) establishing telephonic and third party interpreter services as required by this Order; 5) establishing with the Emergency Communications Division a system that immediately identifies LEP calls and promptly dispatches language assistance, preferably with a bilingual officer speaking the needed language; 6) meets quarterly with the Office of Citizen Complaints and other community groups to discuss and resolve language access complaints and compliance with this DGO; 7) oversees the LEP data collection as detailed below; 8) reports bi-annually upon language access efforts to the Police Commission; 9) annually reviews this DGO and related department protocols and makes recommendations to the Chief regarding improvements.
- B. Each year, the Department shall collect the information required by San Francisco Administrative Code sec. 91.9(b)(1)-(14). In addition, the Department shall collect LEP data as to all calls for service, contacts and investigations that require an incident report.
- C. In a yearly report to the Police Commission, the Department shall provide data concerning 1) the number of calls for service, contacts and investigations involving LEP persons where an incident report was required; 2) the manner in which interpretation services were provided; 3) any complaints concerning language access; and 4) the Department's resolution of any language access complaints and recommendations to improve services involving LEP persons. This report shall be a public document that is posted on the Police Department and Police

Commission's website and provided to the Office of Citizen Complaints in advance of its presentation to the Police Commission.

APPENDIX A

SFPD Documents To Be Translated into Languages Spoken By a Substantial Number of Limited English Speaking Persons⁶

1. Miranda Warnings
2. Consent to Search
3. Documents Relating to Motor Vehicle Stops, including citations, accident reports, notices of rights, warnings, and general information
4. Documents relating to accessing emergency services, call for police assistance etc.
5. Documents relating to intake/detention/incarceration
6. Notices and posters containing important information on the availability of language services
7. Documents relating to criminal citations, summons and warrants
8. Documents relating to complaints

⁶ In materials specifically designed to assist law enforcement agencies in implementing a language access policy, the Department of Justice recommended translating vital documents associated with the aforementioned topics. See http://lep.gov/Law_Enforcement_Planning_Tool.html.