



DPA

San Francisco Department of Police Accountability

Paul Henderson
Interim Executive Director

February 20, 2019

Honorable Robert Hirsch, President of the San Francisco Police Commission
Members, Police Commission

Re: 2018 FIRST AMENDMENT COMPLIANCE AUDIT OF SFPD RECORDS PURSUANT TO DEPARTMENT GENERAL ORDER 8.10

Dear President Hirsch and Commissioners:

This letter is submitted in accordance with the Department of Police Accountability's (DPA) responsibility to conduct an annual compliance audit of San Francisco Police Department Records pursuant to Department General Order 8.10, Guideline for First Amendment Activities.

1. Introduction

Department General Order 8.10 sets forth requirements for when an SFPD officer conducts a criminal investigation involving the First Amendment activities of a person, group or organization. DGO 8.10 (I) (B) states in pertinent part:

The Department may conduct a criminal investigation that involves the First Amendment activities of persons, groups or organizations when there is an articulable and reasonable suspicion to believe that:

1. They are planning or are engaged in criminal activity
 - a. which could reasonably be expected to result in bodily injury and/or property damage in excess of \$2500
 - b. or which constitutes a felony or misdemeanor hate crime, and
2. The First Amendment activities are relevant to the criminal investigation.

DGO 8.10 (II) (A) defines First Amendment Activity as “[a]ll speech, associations, and/or conduct protected by the First Amendments and/or California Constitution Article I, section 2 (Freedom of Speech) and Article 3 (Right to Assemble and Petition the Government, including



but not limited to expression, advocacy, association or participation in expressive conduct to further any political or social opinion or religious belief.)”

To conduct a criminal investigation that involves First Amendment activities, an officer must provide a written justification for the investigation and obtain written approval by the Commanding Officer of the Special Investigations Division, Deputy Chief of Investigations, and the Chief of Police. (See DGO 8.10 (I) (C)(2)).

An officer’s written authorization must include:

1. The identity of the subject of the proposed investigation, if known;
2. The facts and circumstances that create an articulable and reasonable suspicion of criminal activity as defined in Section 1.B.; and
3. The relevance of the First Amendment activities to the investigation. (See DGO 8.10 (III) (B) (1-3).

Only after obtaining prior written approval by the Commanding Officer of the Special Investigations Division, Deputy Chief of Investigations, and the Chief of Police may the investigation commence. Written approval is in effect for 120 days. Investigations past 120 days require a new memorandum and approval. (See DGO 8.10 (III) (A)-(F)). Department General Order 8.10 (III) (F) also states that “if any member of the Department becomes aware of a criminal investigation that involves First Amendment activities as defined in these guidelines, the member shall refer the case to SID for a determination as to how the investigation should be conducted.”

In addition to written justification and approval for criminal investigations involving First Amendment activities, DGO 8.10 requires a designated member of the Police Commission to review monthly the written requests and authorizations for the initiation or continuance of investigations required by these guidelines. DGO 8.10 also mandates that the DPA conduct an audit of the Department’s records and prepare a report regarding the Department’s compliance with these guidelines. (See DGO 8.10 (VI)(A-C).

On January 11, 2019, Deputy Director/Chief of Investigations Erick Baltazar met with Lieutenant David O’Connor, Officer-in-Charge of the Special Investigations Division, to conduct the Department of Police Accountability’s 2018 annual audit of SFPD records pursuant to Department General Order 8.10.

2. Guidelines, Regulations, Rules and Memoranda Interpreting the Guidelines

Pursuant to DGO 8.10 (VI) (C) (1) (a), the DPA reviewed the following guidelines, regulations, rules and memoranda interpreting the guidelines:

- Department General Order 8.10 (Guidelines For First Amendment Activities)
- Department General Order 5.17 (Policy Prohibiting Biased Policing)

- SFPD's officer training video on DGO 8.10

3. Documents and Information DPA Requested From SFPD as Enumerated by DGO 8.10 (VI) (C)

- All documents relating to investigations subject to Section III (Authorization Required For An Investigation) and undercover techniques subject to Section (IV)(C), including 1) the number of investigations authorized; 2) number of investigations sought, but denied; 3) number of times that undercover officers or infiltrators were approved; 4) the number and types of unlawful activities investigated; 5) the number and types of arrests and prosecutions that were the direct and proximate cause of investigations conducted under the guidelines; and 6) the number of public record requests pursuant to this guidelines including the number of requests where documents or information was produced, denied, and/or did not exist.
- All Agency Assist Forms or other documentation relating to the transmittal of documents to other criminal justice agencies as described in Section IX.B. including the number of such requests granted and denied.
- DGO 8.10 officer training records of Special Investigations Division (SID) personnel.
- The Monthly Police Commission review log.
- Any violation of the guidelines.

4. Audit Results

The DPA reviewed the records SFPD provided in response to the DPA's request. Below is an account of the audit.

- a. There were no records of investigations authorized during 2018.
- b. There were no records of any request for investigation that was denied.
- c. There were no records of undercover officers or infiltrators being used during the prior year.
- d. There were no records of unlawful activities within the scope of this order investigated.
- e. There were no records of arrests or prosecutions that were the direct result and proximate cause of investigations conducted under the guidelines.
- f. According to Police Legal and SID, no public records request was made expressly pursuant to DGO 8.10 guidelines.

- g. There were no records of requests from outside law enforcement agencies, as documented by the Agency Assist Forms, for access to records of investigations conducted pursuant to DGO 8.10.
- h. No violations of these guidelines were discovered during this audit.

5. Training

Lieutenant O'Connor provided documentation that four (4) new members of the Special Investigations Division (SID) participated in DGO 8.10 training.

6. Areas of Concern

The audit did not identify any areas of concern.

7. Police Commission Log

An examination of the Police Commission log indicated that from January through December 2018, a designated Police Commissioner signed the log thereby attesting that a Police Commissioner had reviewed written requests and authorizations for the initiation or continuance of an investigation as required by DGO 8.10.

8. Recommendations

The DPA urges adoption of the following recommendations that the DPA made in its 2017 First Amendment Compliance Audit:

1. SFPD immediately update its DGO 8.10 training to address the standards for conducting an investigation that involves First Amendment activities, including the range of activities protected by the First Amendment, the reasonable suspicion standard, written documentation and supervisory approvals and develop numerous training scenarios in which officers have an opportunity to test their understanding of DGO 8.10's application and requirements.

Sincerely,



Paul D. Henderson
Executive Director

Investigator Assigned: Erick Baltazar
Chief of Investigations

Attorney Assigned: Samara Marion