

## Minutes from the August 5, 2019 SB 1421 Working Group Meeting

The meeting was held at the Public Safety Building, 1245 3<sup>rd</sup> St., Room 1025, San Francisco.

Meeting Called to order at 1pm by Commissioner Mazzucco:

### **Item #1. Roll Call:**

In attendance were: Commissioner Thomas Mazzucco, Commissioner Cindy Elias, Assistant Chief Robert Moser, Lt. Kathryn Waaland, Lt. Andy Cox, Sgt. Maura Pengel (BSU), Director Susan Merritt, Sarah Hawkins for the DPA, Nikesh Patel from the DA's Office, Kathleen Guneratne from the ACLU, Brian Cox from the PD's Office, Sandra Fletcher representing the public, Evan Sernoffsky representing the media, Monique Alonso from the POA, Sgt. Brian Kneuker from APOA, Sgt. Nicolas Buckley from PRIDE Alliance.

There was a quorum

Also present from the City Attorney's Office: Buck Delventhal and Lisa Powell

Commissioner Mazzucco shared with the group that they had received the submissions that were submitted from the interested parties. Shared that they had a meeting with the City Attorney's Office with all the agencies represented by the CA office PD, DA, Police Commissioner Elias and himself, the secretary, Police Department. The City Attorney represents all city departments and received their legal advice regarding SB1421, which is protected by attorney/ client privilege. They were there to give us guidance. We will take their guidance, yet as the commission we will make the policy decisions- generally not independent of what the city attorney says, but there are nuances that are more policy related and there could be changes to it. Thanks to the City Attorney's office for their advice. It is important we listen to their advice because they represent us in court if there is a challenge to this policy, and represent the city and commission when this goes to collective bargaining.

### **Item #2. Adoption of the Minutes from 7/10/19 (Action):**

Motion to adopt the minutes from 7/10/19 made by: Commissioner Elias

Seconded by: Assistant Chief Moser

Public Comment: None

Vote: Motion to adopt the minutes from 7/10/19 passed unanimously

### **Item #3. Review of Stakeholder submissions (Discussion):**

Commissioner Elias reiterated that they received the submissions from the interested parties. It was her understanding that the City Attorney reviewed them as well and tried to incorporate

them into the working draft of their protocol. Redline copy and clean copy given out but not sure if everyone had a chance to read the newer version but if so, asked if there were any comments. The City Attorney's revisions are going to be reviewed by the Commission and not necessarily adopted by the Commission.

Page 13 of Red line version:

- Monique Alonso: Has an issue with Section VI- Notice. While it says who is to be noticed, there is no guidance or procedure on how this notice happens.
- Cmsr. Elias said that this is a policy call that the Commission will make, not a legal issue.
- Cmsr. Mazzucco stated that the concern makes sense because there is no protocol on how to notice retired members so they will have to look into that.
- Monique Alonzo stated that the POA will be anticipating more guidelines regarding this issue.

Further discussion started from the beginning of the document.

### **Section I Disclosable Peace Office Records:**

**Section I.C.1.b-** under "Sustained Findings": Group discussion on clarity of the language. This section is saying that an officer cannot cut off the ability of the Commission to sustain a finding of misconduct by retiring. The concern is that the wording of the second sentence assumes already that the charges are sustained.

- City Atty. Buck Delventhal and Lisa Powell stated that they will clarify the language and invited people to submit language to clarify.

### **Section I.C.1.f-**

- Brian Cox- asked why a sustained finding by the DPA does not fall under the provisions of release by SB 1421 standards.
- Sarah Hawkins- stated DPA alone does not offer an appeals process. The DPA recommends their findings to the Chief of Police or the Police Commission who is the disciplinary body.
- Cmsr. Mazzucco- recommended to Brian Cox that he read the Morgado Decision as that lays out the appeals process and how it came to be.
- Cmsr. Elias- stated that SB1421 is a new law and there have not been any lawsuits yet to help clarify this issue more.
- Monique Alonzo- asked to reserve section **e** of **I.C.1** for comment.
- Brian Cox mentioned DPA again in section d and it was further explained.

### **Section I.C.2- Off Duty Conduct**

- City Attorney to clarify language to include the actual statute.
- Monique Alonso- brought up the issue of officers who are victims and their rights.

- Sgt. Brian Kneuker- raised issue that members of the public are offered and can request confidentiality when they are victims of a crime such as DV so why isn't an off-duty officer, as a private person, afforded the same confidentiality.
- Sandra Fletcher indicated she agreed with the concerns of the POA and APOA.
- CMSR. Elias went on to explain that each unit subject to releasing PRA's should refer to the City Attorney's office for advice when responding to this type of request.

#### **Section I.C.4 Use of Force Records**

- Cmsr. Elias asked that this section reflect the statute in its language. And separate the last sentence of 4.a)- "However, no 'sustained finding' is required for this category" to have its own subsection.
- Kathleen Guneratne ACLU- Section 4.c – mentioned the difference in language regarding Great bodily injury vs. serious bodily injury. Went on to mention court cases where multiple officers were involved in an incident where someone suffered serious bodily injury and when it could not be determined which officer specifically caused the injury, then they all were held accountable for it.
- Monique Alonso stated she was not quite sure what subsection b adds to this.
- Cmsr. Elias suggested possibly taking out any examples.

#### **Sub-Section 5- Sexual Assault**

- City Attorney- for subsection d, what they mean is the facts have to prove statute of sexual assault.

#### **Sub-Section 6- Dishonesty**

- Kathleen Guneratne brought up the point that the SFPD does not have a specific section for "Dishonesty."
- A/C Moser concurred that there is no exact way to search for cases of "Dishonesty."
- Lt. Waaland added that similarly, "Sexual Assault" falls under DGO 2.01 but there is not a specific category for Sexual Assault.
- Kathleen Guneratne asked if the Dept. is looking to have a category added.
- Lt. Waaland confirmed that the Dept. is working on it in conjunction with DPA.
- Cmsr. Elias requested parties provide proposed language for the category.
- Monique Alonso suggested that Section 6.b does not need examples.

### **Section II- Redactions**

**Section II.A.2.a-** The issue of the language of "Analyze whether the complainant or witness is anonymous." The point was made that the statute does not allow for analyzing.

- Evan Sernoffsky suggested using the language of "Meets the standard of confidentiality."
- City Attorney indicated they would clean up the language in section a.i and added that this section would be a case by case determination.

- Kathleen Guneratne indicated that when materials are redacted, the reasoning under the statute should be referenced.
- The section of the statute will be added to subsection 3 under II.A.
- City Attorney stated that subsection II.A.3a was a matter of Hippa which are mandated redactions.

**Section II.A.3.b**

- Should be part of the balancing decision of the benefit of releasing vs. the damage to the person.

**Section II.A.4.a**

- City Attorney- this section is not a legal issue but rather more of a policy call.

**Section II.A.5**

- Kathleen Guneratne stated that the ACLU’s concerns are the same as from their initial brief in that the word “Notwithstanding” overrides any statutes that came before it. Meaning, there should be no attorney client privilege as indicated in subsection. They also disagree with redacting autopsy photos and believes this should be case by case and take the “victim’s” family into account.
- In regards to the “notwithstanding” argument posed by the ACLU, the City Attorney feels that it is not explained broadly enough to wipe out all other provisions of the law prior to SB1421.

**Section III- Production of Records**

**Sub-Section E-Priority of release**

- ACLU requested adding language to include family members impacted by OIS’s

**Section V- Coordination**

- City Attorney believes the involved departments should have some discussion on materials being released so there is consistency.
- It was emphasized that “If there is disagreement between departments with respect to a legal issue, the Commission and the Departments will seek the advice of the City Attorney’s Office. But where that office advises that the decision to disclose requires an exercise of judgement each agency must exercise its own independent discretion.”

**Section VI- Notice**- Request to change the title to Notifications.

- ACLU requested the addition of family members of those impacted by OIS’s to the notifications.
- City Attorney’s Office Pointed out that the consideration of advanced notice could slow up the process of releasing records. But as of now, there is notification at the time the documents are released.
- DPA- Sarah Hawkins stated that the DPA sends out notification while they are creating the files to release.

**Item #4. Review of each Section in 1421 Protocols (Discussion):**

- This was essentially covered in item #3.

**Item #5. Items for follow-up discussion regarding SB1421 (Discussion):**

- Final request by the group was to organize the 4 categories into sections that require a sustained finding, ie. sexual assaults and dishonesty, and then those that do not require sustained findings, ie. Use of Force and Officer Involved Shootings.
- Commissioners Mazzucco and Elias requested two weeks for submissions for proposed revisions.

**Item #6. Adjourn (Action):**

- Meeting adjourned at 1445hrs.