



# The Police Commission

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## CITY AND COUNTY OF SAN FRANCISCO

ROBERT HIRSCH  
President

September 13, 2019

The Honorable Garrett L. Wong  
Presiding Judge  
Superior Court of California,  
County of San Francisco  
400 McAllister Street, Room 008  
San Francisco, CA 94102-4512

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Sergeant Jayme Campbell  
Secretary

*RE: 2018-19 Civil Grand Jury, Joint Terrorism Task Force: Balancing Public Safety and Civil Rights*

Dear Judge Wong:

I thank the San Francisco Civil Grand Jury for their commitment to the City and the work which has yielded this set of Findings and Recommendations in its report, *Joint Terrorism Task Force: Balancing Public Safety with Civil Rights*. As the Grand Jury instructed the President of the San Francisco Police Commission to respond to the Findings and Recommendations, and as the Police Commission was operating on a shortened summer schedule, I do so on my own behalf and not on behalf of the full Police Commission.

The San Francisco Police Department (SFPD), in conjunction with the Department of Police Accountability (DPA), the Police Commission, and a variety of public interest groups and individuals has been engaged in a comprehensive reform effort for the past three years – designed to improve public safety, community trust, SFPD transparency, and accountability. Towards that goal, the Police Department is in the process of implementing 272 reform recommendations made by the United States Department of Justice in 2016.

This reform effort includes strong participation from community members, as collaboration is a keystone to establishing community trust and cooperation in law enforcement endeavors.

The SFPD has not participated as a member of the Joint Terrorism Task Force (JTTF) since January 2017 – but only after a working group of law enforcement professionals and community members spent many months attempting to craft an agreement by which the FBI and the SFPD could jointly operate through the JTTF to address potential terrorist threats to the City. Although that effort failed to culminate with a Memorandum

of Understanding by which the SFPD could participate in the JTTF, the Police Department and the FBI remain in regular contact around issues of public safety and have a strong, cooperative relationship. Moreover, the collaborative process remains critical to any effort by the City to reinvigorate its participation in the JTTF.

With these thoughts in mind, I turn to the Civil Grand Jury's Findings and Recommendations from the *Joint Terrorism Task Force: Balancing Public Safety and Civil Rights* report.

## FINDINGS

**Finding 1.** The 2007 MOU providing for JTTF participation expired by operation of the CCSF Charter. The Chief of Police agreed the MOU had to be revised in order for it to be approved by the Police Commission. The Chief also acknowledged the concern of civil liberties groups to include more oversight that is transparent.

**Partially Disagree.** The Police Chief's discussions with the Civil Grand Jury were confidential, thus I am unable to comment on what was discussed or agreed to by the Chief. I am aware that members of the civil rights community have raised a number of concerns related to the SFPD's participation in the JTTF including officer training, compliance with Department General Order (DGO) 8.10, and racial profiling. Transparent oversight is but one concern.

**Finding 2.** Communication and coordination between SFPD and federal authorities is less efficient and more cumbersome than when SFPD was part of the JTTF.

**Partially Disagree.** The SFPD and FBI are in daily communication and I have not seen evidence that either communication or coordination are inefficient or cumbersome. The SFPD, for example, participates in NCRIC, a clearing house for public safety data and criminal activity in the region, and a recipient of JTTF intelligence and data.

**Finding 3.** In the period of 2002-2017 SFPD participated on the JTTF, few formal complaints were made against officers conducting JTTF activities.

**Agree.** I am not aware of a significant number of formal complaints between 2002 and 2017 against SFPD officers conducting JTTF activities.

**Finding 4.** This investigation did not detect any instance of non-compliance with a DGO by SFPD officers that had been assigned to the JTTF. Likewise, this investigation did not find any evidence that SFPD officers assigned to the JTTF were surreptitiously engaged in any form of enforcement associated with federal immigration laws.

**Partially disagree.** I cannot determine what the investigation of the Civil Grand Jury detected or uncovered. I am aware of a finding a few years ago by the DPA, then the Office of Citizen Complaints (OCC), in case #15-0168, that a training failure had occurred resulting in a violation of DGO 8.10.

**Finding 5.** The secrecy obligations of SFPD officers in the JTTF require the said officers not disclose the classified material to individuals without an appropriate level of clearance on a need-to-know basis. These secrecy obligations are necessary but allow or cause speculation and concern by parties without access.

**Agree.** I do note however, some work by participating law enforcement officers in the JTTF involves non-classified information which does not create a secrecy obligation.

**Finding 6.** The Police Commission is an essential party to SFPD's future participation in the JTTF. The Police Commission has the authority to bring any proposed MOU and any related DGO up for discussion and public comment at an open meeting. In addition, the Chief of Police is required to provide them a public report every year with appropriate public information on the Police Department's work with the JTTF.

**Agree.** I add that the Police Commission, in addition to having the "authority to bring proposed MOU and related DGO's up for discussion and public comment," also has the authority and responsibility to approve or disapprove such items.

**Finding 7.** Presently, the Police Commission does not have a representative for JTTF matters. It would be beneficial to have a designated commissioner as a point of contact for all parties interested in this issue.

**Partially disagree.** It is beneficial to have a designated Police Commissioner as a point of contact for interested parties. Civil Grand Jury Representatives were advised that the President had appointed himself as the "designated commissioner of contact" for matters related to the JTTF.

**Finding 8.** SFPD DGO 8.10 is considered confusing and ambiguous by many witnesses. It does not contain clear and concise wording and references are inaccurate. In order for JTTF officers to comply with DGO 8.10 it needs to be revised and updated.

**Partially disagree.** While some interviewees may have made statements to the contrary, I believe DGO 8.10 is neither confusing nor ambiguous. The document clearly establishes the requirement that SFPD officers, working with the JTTF, have reasonable suspicion of criminal activity if they are to participate in that investigation. There are corrections which need to be made as noted hereinafter, but the DGO remains clear and specific as to rules and procedures which must be followed where first amendment activities are implicated in a criminal investigation.

**Finding 8-a.** General Order 8.10 does not contain clear and concise wording. Within Section I, the Statement of Principles, A. General Policy 8.10 indicates the First Amendment rights are protected by the United States Constitution. However, in Section II, Definitions, references both United States and California Constitutions causing confusion.

**Partially disagree.** While the references to the California Constitution need to be clarified and corrected, I do not believe, DGO 8.10 fails to contain “clear and concise wording.” The DGO was the product of a lengthy collaborative effort between law enforcement professionals and members of the public, designed to encompass “best practices,” and clearly speaks to the roles and protocols for affected officers, the SFPD, the DPA, and the Police Commission.

**Finding 8-b.** General Order 8.10 contains a factually incorrect legal reference. In Section II, DEFINITIONS, the order incorrectly identifies the provision of the California Constitution that should be applicable to the rights associated with assembly and petitioning the government. The Order incorrectly associates “Article 3” of the California Constitution, which, is generally related to governmental processes and functions of the state. It is believed that General Order 8.10 suffers from a scribing error and that instead of “Article 3” it was intended for the definition to encompass First Amendment protections of the United States Constitution and the California Constitution Article I, Section 2 and Article I Section 3.

**Agree.** References to the California Constitution need to be corrected.

**Finding 8-c.** General Order 8.10 fails to define the term “Criminal Investigation.” Failing to define this phrase, allows the readers of the document to apply their own meaning to the term. What might be considered a “criminal investigation” by a law enforcement officer might differ considerably from how a member of the public or an advocacy group would define that term.

**Partially disagree.** The term criminal investigation is understood within the context of DGO 8.10 to mean an investigation of criminal activity based upon reasonable suspicion of a past, current or impending criminal act. I find no basis for confusion here and find nothing in the Civil Grand Jury’s report to help us understand what the real confusion is.

**Finding 8-d.** General Order 8.10 contains obsolete agency information. The OCC no longer exists. The OCC has been replaced by the DPA.

**Agree.**

**Finding 8-e.** The use of “department” or “departments” presently used in the DGO’s could cause confusion because both the SFPD and the DPA contain those terms.

**Agree.**

**Finding 8-f.** At present, DGO 8.10 contains extraneous material regarding duties required of other than SFPD officers.

**Partially disagree.** DGO 8.10 is designed to address protocols for the SFPD when a criminal investigation involves first amendment activities. The DGO also contains references to matters inextricably intertwined with the rules and procedures for criminal

investigations implicating first amendment activities. Whether the references are to the Police Commission's authority to review compliance with the guidelines, access to information by civilians, auditing by the DPA, or the collection and maintenance of records related to covered investigations, the provisions of DGO 8.10 are tied directly to the guidelines governing the duties of SFPD officers. All members of the SFPD should be aware of these provisions as they are unique to this General Order.

## RECOMMENDATIONS

**Recommendation 1.** The Mayor and the Chief of Police should decide if rejoining the JTTF is in the best interest of the residents of our City and make this publicly known by Feb 3, 2020.

**No response elicited from this respondent.**

**Recommendation 2.** In the event that the Mayor and Chief of Police decide to re-join the JTTF, the Chief of Police should negotiate a revised MOU with the FBI and submit this to the Police Commission for discussion and public comment at an open meeting. This should be done no later than July 1, 2020

**I will not seek to implement this Recommendation.** Any revision to the MOU between the SFPD and the FBI should involve a working group composed of interested stakeholders, as was the case in 2016-2017. The SFPD Chief and FBI cannot merely negotiate a new agreement. The issues are serious, the public interest high, and the process arduous. Any revision of the expired MOU will take longer than the proposed July 2020 deadline allows.

**Recommendation 3.** The President of the Police Commission shall designate a commissioner as a point of contact for all JTTF interested parties. This appointment should be completed by April 3, 2020.

**Recommendation has been implemented.** The current President of the Commission is the designated point person for JTTF matters.

**Recommendation 4.** The Chief of Police should instruct the Written Directives Unit to expedite the revision process of DGO 8.10 immediately but no later than the first week of January 2020. The Written Directives Unit in considering the revisions to DGO 8.10 should include a review of the R4a-R4f recommendations before submitting the revisions to the Chief of Police. The revised DGO should be forwarded to the Police Commission for approval no later than July 3, 2020.

**I will not seek to implement this Recommendation.** The procedure outlined by the Civil Grand Jury is incorrect. Written Directives is not tasked with rewriting DGO 8.10. A working group composed of interested stakeholders must participate in any revision process relative to this DGO, as the issues are significant and divergent viewpoints and

ideas enhance any effort to recreate an MOU between the SFPD and FBI. The timeframe offered by the Civil Grand Jury for completing any revision effort is unrealistically aggressive. The Police Commission is developing a five-year schedule for reviewing and revising all SFPD's General Orders including DGO 8.10. That DGO is slated for review in 2020.

**Recommendation 4-a.** General Order 8.10 should be revised to eliminate the conflict that exists between the statement of principles only referencing the First Amendment rights guaranteed by the United States Constitution, but the term First Amendment Activity being defined as rights guaranteed by both the Constitution of the United States and the Constitution of the State of California. It is recommended that the statement of principal incorporate wording to be reflective of the protections provided to First Amendment activities by both the state and federal constitutions.

**I will seek to implement this Recommendation so that the preamble of DGO 8.10 is consistent with the body of that document, which references the California Constitution as well as the U.S. Constitution.** Changes to DGO 8.10 will be made in accordance with the Police Commission's schedule for reviewing DGOs.

**Recommendation 4-b.** General Order 8.10 should be revised to correct the error in referencing "Article 3" of the Constitution of California within the definition section to Article I, Section 3.

**I will seek to implement this Recommendation.** Changes to DGO 8.10 will be made in accordance with the Police Commission's schedule for reviewing DGOs.

**Recommendation 4-c.** General Order 8.10 should be revised to define the term "Criminal Investigation". The order should clearly define what is and what is not a criminal investigation.

**I will not seek to implement this Recommendation.** The term "criminal investigation" is understood by the law enforcement community and civilians alike. It is clear from DGO 8.10 that SFPD officers can participate in investigations of criminal activity where reasonable suspicion exists.

**Recommendation 4-d.** General Order 8.10 should be updated to incorporate changes that have occurred since 2008. Obsolete agency names and titles should be corrected. All references to the OCC should be changed to DPA and the Director of OCC should be corrected to the Executive Director of DPA.

**I will seek to implement this Recommendation in accordance with the Police Commission's schedule of review for DGOs.**

**Recommendation 4-e.** The use of "department" should be specific to which one it is referencing (SFPD or DPA).

**I will seek to implement this Recommendation in accordance with the Police Commission's schedule of review for DGOs.**

**Recommendation 4-f.** DGO 8.10 should contain only material that is necessary and pertinent to the functions of SFPD. All material that is unrelated to the SFPD should be removed from DGO 8.10

**I will not seek to implement this Recommendation.** DGO 8.10 contains references to matters inextricably intertwined with the rules and procedures for criminal investigations implicating first amendment activities. Whether the references are to the Police Commission's authority to review compliance with the guidelines, access to information by civilians, DPA audits, or the collection and maintenance of records related to covered investigations, the provisions of DGO 8.10 are tied directly to the guidelines governing the duties of SFPD officers. SFPD members need to understand the related matters addressed in the DGO as they are unique to this General Order.

I want to thank you for the opportunity to respond to the Civil Grand Jury's report, *Joint Terrorism Task Force: Balancing Public Safety and Civil Rights*, and thank the Civil Grand Jury again for their interest in the Department's participation in and its policies surrounding the Joint Terrorism Task Force.

Sincerely,



Robert Hirsch  
President  
San Francisco Police Commission

cc: VIA EMAIL  
Honorable Mayor L. Breed  
Honorable Board of Supervisors  
Chief of Police W. Scott  
Police Commission