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Department of Police Accountability

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PAUL DAVID HENDERSON
EXECUTIVE DIRECTOR

To: President Bob Hirsch
Commissioner Thomas Mazzucco
Commissioner Cindy Elias
Members of SB 1421 Working Group

At the July 10, 2019, SB 1421 meeting, the working group discussed the definition of a "sustained" finding. DPA took the position that a DPA finding to sustain a complaint of police officer misconduct following an investigation qualifies as a "sustained" finding under SB 1421. This was based on an initial reading of the plain language of the statute and belief that after the significant investigation conducted by DPA, our recommendation to sustain qualified as a "final determination by an investigating agency." Additionally, DPA is committed to transparency and disclosing as many records as possible under the new law.

At the meeting, DPA indicated that we would be submitting a brief in support of that position. However, after further researching the issue independently and conferring with our Deputy City Attorney, DPA is persuaded that the *Morgado* decision forecloses that argument.

SB 1421 defines "sustained" as a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and **opportunity for an administrative appeal** pursuant to Sections 3304 and 3304.5 of the Government Code...." Emphasis added. In *Morgado v. City & Cty. of San Francisco* (2017) 13 Cal. App. 5th 1, 9, the court rejected the City's argument that the Police Commission's disciplinary process, which includes fact finding hearings in front of the Police Commission, was an "opportunity for administrative appeal" as required under the Public Safety Officers Procedural Bill of Rights. The court held that an "opportunity for administrative appeal" under section 3304 must be an opportunity for an independent re-examination of a Commission decision after it has been made. A DPA recommendation to sustain a complaint of misconduct does not meet this threshold.

As confirmation of our initial perspective, DPA does foresee possible scenarios where a DPA recommendation would qualify as a "sustained" finding under SB 1421. For example, in the case where an officer resigned or retired after a Commission decision but before discipline is imposed and without exercising the opportunity for administrative appeal.

We look forward to continuing work on implementing this important law.

Sincerely,

Paul David Henderson
Executive Director

