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Cc: SFPD Commission (POL); SFPD, Chief (POL); Henderson, Paul (DPA)
Subject: DPA 2019 Annual Report -- lack of SFPD discipline (Item 1, Meeting of September 16th)
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Dear Commissioners,

Yesterday, *Mission Local* published a story on the disciplinary disposition information contained in the DPA's annual report for sustained cases over a 31-month period and found --

"In more than one-third of the cases in which the DPA recommended discipline for SFPD officers, Chief William Scott imposed a milder penalty or none at all — even in the many cases where the DPA recommended a relatively light (punishment), such as a written reprimand. Meanwhile, 15 percent of the chief's disciplinary decisions during that period are unknown."

<https://missionlocal.org/2020/09/light-discipline-for-police-misconduct-is-the-norm-in-san-francisco/>

The SFPD's responses to the DPA report published in this story are, at best, deeply misleading and reflect the SFPD's on-going lack of serious commitment to basic accountability and to their very long-standing legal duty to cooperate fully with all aspects of the DPA's work. During the budget process, Chief Scott repeatedly fended off claims that his expensive and greatly expanded command staff had become bloated and could possibly be cut with the argument that this beefed up upper management "infrastructure" was necessary to fuel the reform process. But the DPA annual report documents on-going, consequential failures in SFPD management that reinforce the department's long-standing, obviously entrenched, accountability-averse internal culture. If they don't hold officers accountable and, in turn, the Commission doesn't hold SFPD and DPA management accountable for what's disclosed in this report, why should San Francisco's alleged commitment to police reform and accountability be taken seriously by anyone?

I hope you will follow up tonight on at least these key aspects of the DPA report --

1. LACK OF DISCIPLINE -- S.F.P.D.'S EXCUSE DOESN'T HOLD UP

By way of explaining and excusing the failure to discipline officers in so many sustained DPA cases, *Mission Local* reports (emphasis added) --

"San Francisco Police Department spokesman Sgt. Michael Andraychak said in a statement that "The Chief considers the totality of the circumstances including the involved member's disciplinary history and may determine that an admonishment is more appropriate, especially in cases of a member's first infraction and consistent with progressive discipline."

Admonishments are "non-punitive" warnings and could be represented as "no discipline" in official reports like the DPA's study, he said. *"Admonishments often include retraining, are still part of the member's disciplinary record and could be referenced should the member commit future policy violations."*

That claim is simply not true -- according to the USDOJ COPS report, the current policies of the Commission and state law.

USDOJ COPS reported (pg 138-140 -

- <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceDocuments/An%20Assessment%20of%20the%20San%20Francisco%20Police%20Department%20-%20October%202016.pdf>)

***** "(A)monishment is the most common category of recommended discipline for OCC sustained findings. However, this category is not considered as true discipline because *it is not entered into an officer's disciplinary history....*

(N)either admonishment nor training is noted on an officer's disciplinary record. As identified, admonishment and training are the most frequent outcomes of sustained investigations. This level of discipline appears to be inconsistent with the disciplinary matrix because the matrix does not identify admonishment as a category of discipline. Team members learned that there is no tracking mechanism to confirm that the training was appropriate to the underlying complaint, that the training was completed, or that the training became a matter of the employee's record. *The goal of discipline is correcting action, and regularly imposing discipline of little consequence to misconduct undermines discipline's deterrent value.*"

Here's the Commission's disciplinary matrix adopted in 1994 and represented by USDOJ as still being in effect as of 2016

- <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/AgendaDocuments/PoliceCommission-disciplinaryPenaltyGuidelines.pdf>. As the USDOJ COPS report confirms, the Commission's policy does *not* list "admonishment" as an appropriate outcome for *any* sustained act of misconduct -- even the most minor Class D infractions -- precisely because SFPD can't engage in "progressive discipline" in the event of a second offense if there is literally no written record of the prior admonishment kept in an officer's file as USDOJ confirmed. Written reprimands *are* the lightest punishments... the proverbial "slaps on the wrist" that can lead to suspensions later. Admonishments can't even lead to future reprimands... because they don't exist in the officer's disciplinary records. DGO 2.07 confirms this noting that reprimands are recorded in members' files while admonishments are mere "warnings". (<https://www.sanfranciscopolice.org/sites/default/files/2018-11/DGO2.07%20Process%20for%20Sworn%20Officers.pdf>)

There's a legal reason for why admonishments are not listed on the Commission's 1994 matrix as appropriate results on first offense sustained findings for relatively minor violations. State POBOR due process and appeal rights apply to anything "that could lead to punitive action." "Punitive actions" explicitly include written reprimands or anything that could be used in the promotion process. (See Government Code 3303 & 3304 -- https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=9.7.&article=1.) If a mere admonishment or warning *was* recorded and *was* actually being used as part of a "progressive discipline" system in the event of second offenses -- as the SFPD spokesperson falsely claimed -- then SFPD admonishments *would* be things "that could lead to punitive action" under state law. But as DGO 2.07 makes clear, those state law POBOR rights apply only to "punitive actions" -- reprimands, suspensions and terminations. SFPD does *not* allow members to request a "chief's hearing" for admonishments like they do for reprimands and other minor punitive actions... (as required by state law).

And, there's no evidence that SFPOA has legally waived its members' POBOR rights to *not* have admonishments used as any part of the basis for future punitive actions or denials of promotion. Per the *Examiner's* reporting, the proposed new SFPOA contract granting two *more* three percent pay raises through June 2023 negotiated by DHR contains *no* non-economic reform or accountability concessions at all from the SFPOA. (The Chief told you and the public nearly a full month ago that DHR would be happy to come brief the Commission on the new proposed contract with the SFPOA. Why has that *still* not appeared on the Commission's calendar since what is in -- or not in -- that contract, if approved, will either facilitate or hinder the Commission's work for the next three years?)

2. S.F.P.D. OBSTRUCTION OF D.P.A.

The DPA's ability to comprehensively collect and report this disciplinary data on its sustained cases was undermined by the fact that -- "Over the entire 31-month study period, the DPA received Final Orders and Declination Letters (from SFPD) for only 27% of officers." (Page 17.) This is not a new problem. The report describes this as part of *"DPA's persistent difficulties obtaining case-related records from the SFPD."* (Footnote 4, page 15, emphasis added.)

SFPD's response? Per *Mission Local* --

"(SFPD spokesperson) Andraychak said the SFPD is working to "improve the communications process between our organizations" and working to create "internal procedures to streamline the process to ensure documents are sent to DPA in a timely manner."

The SFPD's legal duty to fully cooperate with *all* of DPA's information needs has been part of the City Charter since the voters put it there *38 long years ago*. It's been *four years* since that legal duty was reinforced by the voters when we adopted Supervisor Cohen's DPA charter amendment. And, yet, SFPD *still* can't manage to just provide the DPA with the "Final Orders and Declaration Letters" for 73% (!) of the DPA's sustained cases? How is "we're still working on it" possibly an acceptable response to *this* problem after all these years.. and decades? Why is the DPA not holding the SFPD to its legal duty to provide this information. Why hasn't the Chief held his command staff accountable? Why has the Commission held neither the DPA Director nor the Chief accountable for allowing this problem -- this obstruction of the civilian oversight demanded by the voters, incorporated into law, and generously funded by taxpayers -- to continue year after year?

3. ALLOWING OFFICERS TO ESCAPE PUNISHMENT -- LAPSED DEADLINE

According to the DPA's report there were *four* (!) separate sustained cases where "although the DPA's investigations were complete and the Chief's final orders were ready" the officers involved were inexplicably just not served by SFPD within the one-year statutory and presumably escaped punishment. (Footnote 7, pg. 15.) Why? How is this *same* mistake made on four separate occasions? When should negligent acts be presumed to be intentional? These cases variously involved misconduct by a Field Training Officer (FTO), multiple officers failing to activate their body worn cameras and an improper custodial arrest. Who in SFPD management has been held accountable for allowing these acts of misconduct to go unpunished based on such a simple "error" that was somehow allowed to occur in four unrelated cases? Is the failure to punish officers for violation of your body worn camera policy part of the previously-established pattern of the SFPD just not holding officers accountable to the terms of that policy? Is that FTO found guilty of misconduct who escaped punishment *still* being allowed to serve as a role model for new officers during their probationary periods?

4. REVISED DISCIPLINE SCHEDULE -- *STILL* IN "MEET & CONFER"?

The Commission is set to discuss this in closed session tonight. How long has this been allowed to languish in "meet & confer"? Why?

Former Commission President Turman had been working on this at the time of his death in May 2018. Subsequently, former Commission President Hirsch worked with Commissioner Elias to bring it to the Commission for adoption as a "meet and confer" draft in early 2019. With the DPA report detailing the SFPD's failure to follow the *existing* disciplinary matrix and with the on-going pattern of SFPD officers not being held accountable for proven acts of misconduct, the Commission should publicly explain why it has allowed negotiations with the SFPOA over how officers should be punished for misconduct to drag on for so very long.

The negotiations have been kept secret but you don't have to be a rocket scientist to know that the SFPOA has been seeking weaker levels of punishment for some offenses than the levels the Commission has already approved in its draft. Even assuming the levels of punishment for at least some offenses involving misconduct towards the public are *not* managerial prerogatives beyond the scope or representation under state labor law, the legal duty to "meet and confer" is *not* a duty to "meet and agree." Your obligation is merely to engage in talks in good faith. You have the right to say "no". There is no need to let the SFPOA (and DHR) drag this out for so very long. Why did they? Especially since, per Commissioner Hirsch's February 2019 public explanation, the Commission's revised schedule is based on similar penalty schedules already in place with other law enforcement agencies (including LAPD), there is little to no risk that an arbitrator would overrule the Commission's judgement as being arbitrary or somehow "beyond the pale" if the SFPOA wants you to weaken this or that proposed punishment. They would have no legal basis for doing so. You can hear them out and, if you are unpersuaded, you can and should say "no."

So why did DHR and the Commission let this drag on for so very long... if not to just needlessly allow the SFPOA to continue to set the pace and scope of reform? Why does San Francisco unnecessarily allow SFPOA to slow walk everything it doesn't like... and then encourage them to keep doing so for years into the future by rewarding them with *more* pay raises without any contract concessions that could deter or prevent this? If your negotiators agree that you will almost certainly prevail in arbitration -- should SFPOA actually pursue such a frivolous case -- is their concern avoiding the City's share of the costs of arbitration? If so, why would they offer the SFPOA pay raises in a new contract *without* asking for new contract terms requiring a switch to a "loser pays" approach to arbitration costs to deter their attempted obstruction and delay of anything the Commission does that may eventually increase the possibility that officers might ... maybe... just possibly... someday be consistently held accountable for proven acts misconduct?

Because, as the DPA report documents, that day is still a *long* way off. And, every day you waste on legally-unnecessary extended "meet and confer" talks with the SFPOA rather than saying "no" in a timely manner after hearing them out... every year the SFPOA is awarded pay raises unconditionally... the day when the SFPD holds its members reasonably and consistently accountable to the people it serves gets pushed ever farther into the distance.

As always, thank you for considering my views.

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cc. San Francisco Police Commission Office
SFPD Chief William Scott
DPA Director Paul Henderson