April 25, 2018

Chief William Scott
Chief of Police

Dear Chief Scott:

At the meeting of the Police Commission on Wednesday, April 11, 2018, the following resolution was adopted:

RESOLUTION 18-20


RESOLVED, that the Police Commission hereby approves draft dated 4/11/18, as amended, of Department General Order 2.04, “Complaints Against Officers,” and Memorandum of Understanding between the Department of Police Accountability and the San Francisco Police Department for purposes of engaging in the meet-and-confer process with the Police Officers Association, as amended, states as follows:

“COMPLAINTS AGAINST OFFICERS

This order outlines the policies and procedures for receiving, investigating and processing complaints against officers. It also describes the Department of Police Accountability ("DPA") investigative procedures and findings.

It is the policy of the San Francisco Police Department to encourage everyone to bring forward complaints regarding inadequate police service or official misconduct by officers, and receive such complaints with courtesy and without delay. Officers shall cooperate fully with the DPA and provide their full assistance in the expeditious and impartial processing of such complaint.
I. POLICY

A. SFPD members shall immediately receive complaints of official misconduct whether received electronically, by letter, telephone, or in person. If the complaint is made to an employee of the Department, the employee receiving the complaint shall immediately refer the matter to the senior-ranking officer on-duty in the station, division, section, or unit where the complaint is being made. The senior-ranking officer on duty shall be personally responsible for the conduct of the investigation until relieved of responsibility as specified in this order.

B. Attempts to threaten, intimidate, mislead, or harass potential or actual complainants, witnesses, or DPA or IAD investigative staff is prohibited. Sworn employees who are the subject of a complaint shall not contact the complainant or witnesses regarding the issues of the complaint. If such a sworn member must contact the complainant or witness to a complaint in the line of duty, the officer shall not discuss or make any reference to the complaint. This shall not preclude member's representative or attorney from gathering evidence or statements for their defense.

C. Copies of the DPA Complaint Form (SFPD/DPA 293) and DPA's informational brochure shall be available at all District Stations. A copy of the form and the informational brochure shall be offered to any persons inquiring about DPA or requesting information concerning filing a complaint.

II. PROCEDURES

A. RECEIVING A COMPLAINT/DUTIES OF SENIOR RANKING OFFICER

1. EVALUATION. Evaluate the seriousness of the allegation and determine whether an immediate investigation is needed (see Section B).

2. FORM PREPARATION. If the complaint is against an officer, prepare a DPA Complaint Form (SFPD/DPA 293). If the complainant is present, allow him or her the option to personally complete the form or to have an officer prepare the form for them. If the complainant requests that an officer complete the form, write only what the complainant states on this form and allow him or her to review the form and make any corrections. Provide the complainant a copy. If the complaint is received by telephone, read the complainant's statement to the complainant as it is written on the form to assure accuracy. In either case, tell him or her that the complaint will be referred to the DPA for investigation.

3. ADDITIONAL INFORMATION/COMMENTS. If there is any additional information or comments that should be brought to the attention of the investigator, do not
include it on SFPD/DPA 293. Instead, prepare it on a memorandum to your commanding officer for his/her review. The commanding officer shall then forward it promptly to the DPA.

4. ROUTING. Route by mail before reporting off-duty the original DPA compliant form to the DPA and forward a copy to your commanding officer.

5. SFPD MEMBER INITIATED COMPLAINTS. A DPA Complaint form shall not be completed when a complaint is made by any Department employee against another Department member. Instead, prepare a memorandum specifying the nature of the complaint and forward it to the accused officer's commanding officer, who shall forward the matter to the Internal Affairs Division (IAD) for investigation. Third party internal complaints shall be forwarded to IAD for review and if necessary assignment.

6. GOVERNMENTAL AGENCY COMPLAINTS. A complaint referred from a non-law enforcement agency (e.g., Office of the Public Defender, Office of Civil Engagement and Immigrant Affairs, or Department of Public Works) against a member of the SFPD shall be investigated by DPA. Upon receipt of a complaint, the DPA will immediately forward a copy of the complaint to the Chief of Police.

7. LAW ENFORCEMENT AGENCY COMPLAINTS. A complaint initiated by any Law Enforcement Agency against an SFPD member shall be investigated by IAD. The complaint shall be written on an SFPD memorandum form and forwarded through the chain of command to IAD.

8. OFF-DUTY COMPLAINTS. Off-Duty complaints shall be investigated by IAD. The complaint shall be written on a SFPD Memorandum form and forwarded through the chain of command to IAD. Complaints made against members who place themselves on duty by verbally identifying themselves, displaying a department issued star, or department issued ID card or taking enforcement action, shall be forwarded to DPA.

B. IMMEDIATE INVESTIGATION/DUTIES OF SENIOR-RANKING OFFICER

1. WHEN. Members must conduct an immediate investigation if a delay imposed by forwarding the complaint to DPA or IAD will jeopardize the investigation or public safety. The following are examples of situations requiring an immediate investigation and report:

a. The conduct is still occurring.
b. The allegation is that an officer is unfit to perform police duties, and that officer is currently on duty.

c. A witness may be unavailable later.

d. The complainant alleges criminal conduct.

e. The complainant alleges unnecessary force, resulting in serious injury and medical treatment.

2. DPA/IAD NOTIFICATION. When an immediate investigation is required, and the complaint is made by anyone other than a Department member or another law enforcement agency, immediately notify the DPA by calling the DPA at 415-241-7711. Calls to that number after business hours will forward to the answering service, which will connect the caller to DPA. IAD shall be notified in all cases of immediate investigations.

3. INVESTIGATION. If the accused officer is assigned to your unit, conduct an immediate investigation. Document your investigation on a memorandum and, if the complaint is made by a member of the public or a non-law enforcement agency, complete the DPA 293 form. Send the DPA 293 form to the DPA before reporting off-duty. Forward the investigation memorandum to your commanding officer for review. The commanding officer shall then forward the report promptly to the DPA for further investigation as well as a copy to IAD.

4. UNIT NOTIFICATION/IMMEDIATE INVESTIGATION. When the officer is assigned to another unit, immediately notify the senior-ranking officer on-duty at that unit who shall assume responsibility for the immediate investigation and memorandum. If the unit is closed, contact the officer-in-charge through the Operations Center. Prepare and forward a copy of DPA 293 to the DPA.

5. INVESTIGATION MEMORANDUM. The immediate investigation memorandum must contain all reasonably obtainable information before you report off duty. This includes, but is not limited to: (1) names, addresses, and telephone numbers of any witnesses, including the complainant; (2) statements from witnesses; and (3) any preliminary findings and recommendations. Document time, date and recipient’s name of any notification made to DPA.

C. MEMBER RESPONSE FORMS
1. RESPONSIBILITIES OF MEMBERS. A Member Response Form (MRF) must be completed by the member and received by the DPA within twenty-one (21) calendar-days of the notice. Members are not required to respond until the member is on duty. A time extension shall not be granted except upon a showing of good cause submitted in writing by the member to the assigned DPA Investigator as soon as possible. The DPA Director or his or her designee shall have sole authority to determine whether good cause exists. Good cause includes, but is not limited to illness, hospitalization, and unexpected family emergencies. If the member cannot meet this deadline, he or she must contact the appropriate DPA investigator prior to the due date.

2. RESPONSIBILITIES OF COMMANDING OFFICERS. Commanding Officer, or designee, shall assure that all MRFs and notice of interviews by DPA are served upon the officer and a copy retained electronically in the Department approved platform. The Commanding Officer, or designee, shall assure copies of all DPA 293 Forms are retained at the Station or investigative unit. These functions may be accomplished electronically utilizing processes as designated by the Department.

E-D. DPA INTERVIEWS. Members shall appear for scheduled interviews and be prepared to proceed. If a member must reschedule, he or she must contact the assigned investigator at least 24 hours prior to the interview. The inability to arrange for a specific representative will not necessarily be cause for rescheduling the interview. If an exigent circumstance presents itself, the officer or their representative shall notify the DPA investigator and the on-duty senior ranking supervisor of the officer to be interviewed. The DPA has sole authority to grant a request to reschedule.

III. DPA PROCEDURES

A. JURISDICTION. The DPA shall completely, promptly, fairly and impartially investigate any incident occurring within the City in which a member of the uniformed ranks of the Department discharges a firearm resulting in the physical injury or death of a person, even if the discharge is accidental, and all complaints regarding police use of force, misconduct or allegations that a member of the SFPD has not properly performed a duty. The DPA shall investigate all such matters, except those complaints which clearly indicate that the acts complained of were proper, and those complaints lodged by other members of the San Francisco Police Department.

B. ALLEGATIONS OF CRIMINAL CONDUCT. If any portion of the complaint alleges criminal misconduct by a Department member, the DPA shall immediately forward the information presented by the complainant to the Department and District
Attorney’s Office. The District Attorney’s Office shall only receive complaint forms or personnel files in accordance with Penal Code section 832.7(a). The OIC of the assigned criminal investigative unit will notify the OIC of IAD that the District Attorney has dismissed or filed charges in the case. The OIC of IAD will coordinate the notification and the production of a copy of the completed criminal case file to DPA.

C. NOTIFICATION AND REVIEW. After completing an investigation, the DPA shall ensure that every named officer and complainant receive a letter containing the disposition of the complaint and instructions for requesting a hearing.

IV. INTERNAL AFFAIRS INVESTIGATIONS

Internal Affairs shall investigate complaints of members made by any Department member or Law Enforcement Agency, and all off-duty alleged misconduct. Additionally, all EEO complaints shall be referred to IAD's EEO Liaison, who shall in turn forward the complaints to the Department of Human Resources.

V. COMPLAINTS AGAINST DPA

Members who have a complaint regarding a DPA investigation, investigator, or attorney may file a written complaint with the DPA.

VI. CLASSIFICATIONS OF COMPLAINTS AND FINDINGS

A. Investigative Findings

The DPA and SFPD shall use the following terms and definitions to maintain consistency at the conclusion of investigations.

1. IMPROPER CONDUCT

   A preponderance of the evidence proves that the alleged conduct occurred and that the conduct violated Department policy or procedure.

2. INSUFFICIENT EVIDENCE

   The evidence fails to prove or disprove that the alleged conduct occurred.

3. PROPER CONDUCT

   The evidence proves that the alleged conduct occurred; however, the conduct was justified, lawful, and proper.

4. POLICY FAILURE

   The evidence proves that the alleged conduct occurred but was justified by Department policy or procedures; however, the SFPD or
DPA recommends that the policy or procedure be changed or modified.

5. SUPERVISION FAILURE The evidence proves that the alleged conduct occurred and was the result of inadequate supervision.

6. TRAINING FAILURE The evidence proves that the alleged conduct resulted from inadequate or inappropriate training.

7. UNFOUNDED The evidence proves that the conduct alleged did not occur or that the accused officer was not involved.

8. REFERRAL TO OTHER AGENCY The evidence proves that the alleged conduct did not involve a sworn member of the Department or that the complaint raised issues not within the scope of DPA or IAD. Referral to other agency allegations are not counted as complaints against sworn members of the Department.

9. WITHDRAWAL The complainant failed to provide additional requested evidence, or the complainant requested a withdrawal of the complaint.

10. MEDIATED The complainant and officer agreed to mediation as a non-disciplinary resolution. (DPA finding only)

B. CLASSIFICATIONS

DPA and the SFPD have agreed to formulate consistent language to refer to categories of alleged misconduct. The classifications are contained within the MOU between SFPD and DPA.

VII. QUARTERLY MEETINGS BETWEEN DPA AND THE POLICE DEPARTMENT

A. Disciplinary Review Board (DRB) shall consist of the following:

1. The Assistant Chief of Staff or his or her designee of the Risk Management Office;
2. The Deputy Chief of the Police Academy;

3. The Deputy Chief of the Principled Policing and Professional Standards Bureau (or its successor);

4. A member of the Police Commission (Advisory);

5. The Director of the DPA, or his or her designee (Advisory).

B. The DRB shall review and discuss

1. Aggregate trends related to DPA and IAD complaints, both alleged and sustained.
2. Policy Failure or Training Failure cases closed in the prior quarter.
3. The Department in consultation with the DPA will select sustained cases from the previous quarter for review to determine the need for training or policy changes.
4. SFPD and DPA Recommendations.

The DRB shall consider whether any policy, procedures or training needs to be revised, added or re-issued if it relates to the subject matter reviewed. The DRB may make written recommendations that include the manner in which the recommendation shall be implemented and a timeline for completion based upon identified priority level and complexity of recommendation.

The DRB shall report quarterly to the public and to the Commission those policy and training changes it recommends, and the measurement of the success or failure of each change, in a manner consistent with individual police officer privacy rights. The guidelines for the report are contained within the MOU between SFPD and DPA.”
MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF POLICE ACCOUNTABILITY AND THE SAN FRANCISCO POLICE DEPARTMENT

I. PREAMBLE
The Department of Police Accountability ("DPA") and the San Francisco Police Department ("SFPD") hereby enter into this Memorandum of Understanding ("MOU") in order to establish procedures for the complaints and attendant administrative investigations of SFPD personnel.

The DPA is required to investigate all complaints against sworn members of on-duty police misconduct and off-duty police misconduct in which the sworn member is acting under the color of authority. The DPA shall completely, promptly, fairly and impartially investigate any incident occurring within the City in which a member of the uniformed ranks of the Department discharges a firearm resulting in the physical injury or death of a person, even if the discharge is accidental, and all complaints regarding police use of force, misconduct or allegations that a member of the SFPD has not properly performed a duty. The DPA shall investigate all such matters, except those complaints which clearly indicate that the acts complained of were proper, and those complaints lodged by other members of the San Francisco Police Department.

The SFPD is responsible for investigating all internal complaints made by members of the San Francisco Police department, both sworn and non-sworn, complaints against non-sworn members, complaints from Law Enforcement agencies, including prosecutors, and complaints of off-duty misconduct, both sworn and non-sworn, complaints referred to the SFPD by the Whistleblower program.

II. PARTIES
This MOU is between the SFPD and the DPA (collectively "Parties").

III. TERMS AND DEFINITIONS

A. Member: Member, as that term is used in San Francisco City Charter Section 4.136(d) and DGO 3.02 means; any employee of SFPD.

B. Sworn Member: "Sworn member" means any employee of the SFPD who qualifies as a peace officer under Penal Code section 830.1.

C. Uniformed Member: "Uniformed member" includes any employee of the SFPD who is either a peace officer as that term is used in Penal Code section 830.1 or a Police Services Aide (PSA).
D. **Criminal Investigation:** An investigation conducted to determine whether any person committed a crime during the covered incident.

E. **Administrative Investigation:** An investigation conducted by SFPD or DPA administrative investigators to determine whether any involved SFPD personnel violated any general order, regulation, or other workplace rule during the covered incident. This includes "internal" investigations.

IV. **DPA PROCEDURES**

A. **DPA Investigations**

1. When there is sufficient evidence to proceed the complaint will be classified as an investigation and will be assigned to a designated DPA investigator, except those complaints which on their face clearly indicate the acts complained of were proper and those complaints lodged by other members of the Police Department.

2. DPA shall quarterly complete and send updates on cases to IAD with expected completion dates and the statute of limitations deadline. (3304) govt. code.

3. DPA shall notify the Chief of Police and IAD of all cases that reach the six month mark inclusive of cases which may be tolling. (3304) govt. code.

4. DPA shall use its best efforts to conclude investigations of complaints and, if sustained, transmit the sustained complaint to the Police Department within nine months of receipt thereof by DPA.

5. If DPA is unable to conclude its investigation within such nine-month period, the Director, within such nine-month period, shall inform the Chief of Police of the reasons therefor and transmit information and evidence from the investigation as shall facilitate the Chief’s timely consideration of the matter.

   a. Completed or pending DPA case files sent to the Chief of Police or IAD, shall contain a copy of the original complaint, chronological of investigation, all audio or video evidence, transcripts, investigative notes, investigative summary, pending or final conclusions, and pending or final recommendations.
b. For all cases that the DPA fails to meet the nine-month deadline, the Director shall advise the Chief of Police of the specific reasons for said failure and expected completion date(s).

6. The DPA shall send completed investigations to IAD within thirty (30) days of the DPA Director’s approval except those over the nine (9) month deadline which shall be sent immediately.

In cases involving concurrent investigations, DPA shall not receive the IAD investigative conclusions and recommendations until IAD has received the completed DPA report.

B. DPA Morning Reports

The DPA will transmit a Morning Report that will document the number and types of complaints, the district of occurrence, and officer information and if available identification of specific officer(s) involved. The Morning Report should have summaries of the incident and be sent weekly to IAD for review and analysis.

C. Allegations Involving Criminal Conduct

If any portion of the complaint alleges criminal misconduct by a Department member, the DPA shall immediately forward the information presented by the complainant to the Department and District Attorney’s Office. The District Attorney's Office shall only receive complaint forms or personnel files in accordance with Penal Code section 832.7(a).

The OIC of the assigned criminal investigative unit will notify the OIC of IAD that the District Attorney has dismissed or filed charges in the case. The OIC of IAD will coordinate the notification and the production of a copy of the completed criminal case file to DPA.

D. Government Claims

SFPD will not forward these claims to the DPA. The City Attorney shall be responsible for production of government claims to DPA.

E. Controller’s Office Whistleblower Complaints
The Controller’s Office designates the investigating agency. The Whistleblower complaints forwarded by the Controller’s office to the SFPD shall remain confidential and not be forwarded to the DPA.

F. Notification and Review

After completing an investigation, the DPA and SFPD shall ensure that every named officer and complainant receive a letter containing the disposition of the complaint and instructions for requesting a hearing. Notification shall be sent within thirty business days of the disposition.

V. CLASSIFICATIONS

DPA and the SFPD have agreed to formulate consistent language to refer to categories of alleged misconduct. See SFPD/DPA exemplar attached.

VI. TRANSMITTAL TO AND ACTION BY DEPARTMENT ON COMPLAINTS SUSTAINED BY THE DPA

a. When a complaint has been sustained and the DPA investigation has been completed, the DPA’s complete case file and findings shall be transmitted to the Police Chief or the Chief’s designee for review and actions.

b. The Chief or the Chief’s designee shall complete his or her review and make an action recommendation within forty-five (45) days of receipt of a DPA case. (Section 4.136.(e))

c. If, however, the Chief or Chief’s designee cannot meet the deadline he/she shall seek an extension of time from the Police Commission. The Commission shall be advised of the reasons for the request for deadline extension, and accused officer(s), complainant(s) and witness(es) shall be informed of any delays and time extensions beyond the initial 60-day period.

d. DPA shall recommend disciplinary action to the Chief of Police on those complaints that are sustained. The Director, after meeting and conferring with the Chief of Police or his or her designee, may verify and file charges with the Police Commission against members of the Police Department arising out of sustained complaints; provided, that the Director may not verify and file such charges for a period of 60 days following the transmittal of the sustained complaint to the Police Department unless the Director issues a written
determination that the limitations period within which the member or members may be disciplined under Government Code Section 3304, as amended from time to time or any successor provisions thereto, may expire within such 60-day period and (1) the Chief of Police fails or refuses to file charges with the Police Commission arising out of the sustained complaint, (2) the Chief of Police or his or her designee fails or refuses to meet and confer with the Director on the matter, or (3) other exigent circumstances necessitate that the Director verify and file charges to preserve the ability of the Police Commission to impose punishment pursuant to Section A8.343.

VII. MONTHLY REPORTS AND MEETINGS.

Reporting on the status of Sustained Complaints

The SFPD shall adhere to section SF Admin Code 96.2 (a-c) and San Francisco Police Commission Resolution 97-04 or successor resolution in the reporting of all DPA and IAD sustained complaints, per an agreed template.

SFPD DPA Monthly Meeting

There shall be a regularly scheduled monthly meeting, in which the Chief of Staff of the SFPD and the Chief of Staff of the DPA meet to discuss discipline, policy and training recommendations.

VIII. QUARTERLY REPORTS AND MEETINGS

A. DPA POLICY RECOMMENDATIONS.

1. The Police Department and the DPA shall provide a quarterly report (commonly known as the Sparks’ Report) to the Police Commission concerning the status of revisions to Department General Orders, new General Orders and DPA policy recommendations. Both the Department and the DPA shall collaborate on prioritizing the recommendations in the Sparks Report.


   b. Medium Priority: The issue is important, but does not necessitate immediate implementation
c. Low Priority: The issue(s) identified occur infrequently and do not affect the day to day operations between the SFPD and the public.

B. STATISTICS AND RECOMMENDATIONS

1. The DPA, as directed by the Police Commission, compiles and publishes monthly summaries and quarterly reports of complaint statistics.

2. DPA submissions shall include statistical data reports specifically related to the following; total number of complaints, the status of all investigations related to those complaints and data specific to their findings.

3. DPA shall identify the categories and demographic information of all complainants and sworn members. (Age, gender, ethnicity, occupation, or other demographic information collected on the DPA Form 293)

4. These summaries and reports include, but are not limited to, the disposition by the Chief of Police and the Police Commission of complaints and allegations referred to the Chief of Police by the DPA Director.

   a. The DPA, as directed by the Police Commission, prepares and publishes quarterly recommendations concerning policies and practices of the Department.

   b. The Department and DPA shall review quarterly statistical reports within two weeks of receipt. The Department and DPA shall cross-check information on cases sustained by the DPA, and confer on discrepancy and accuracy.

IX. DECONFLICTION OF REVIEW BOARDS

In cases where incidents being examined fall under multiple review board jurisdictions, the SFPD shall in consultation with DPA, determine the appropriate review board.

X. DOCUMENT CONTROL AND DISTRIBUTION

Immediately upon receipt, the DPA will provide a copy of any request for police personnel records to the Commanding Officer of Risk Management, unless prohibited by State or Federal law."
AYES: Commissioners Turman, Mazzucco, Marshall, Melara
ABSENT: Commissioners, DeJesus, Hirsch

Very truly yours,

Sergeant Rachael Kilshaw
Secretary
San Francisco Police Commission

949/rct

cc: President M. Halloran/POA
    Attorney S. Marion/DPA
    Deputy City Attorney A. Cabrera