

SAN FRANCISCO PUBLIC DEFENDER

MANOHAR RAJU – PUBLIC DEFENDER

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To: San Francisco Police Commission
Cc: Paul Henderson, Executive Director of DPA
From: Jacque Wilson
Date: September 10, 2019
Re: Letter to the SF Police Commission regarding DPA

For two days on August 23 – 24, 2019, the Department of Police Accountability (DPA) held a symposium “to promote transparency and accountability in policing.”¹ The symposium discussed, among other topics, policies and procedures related to release of police misconduct records under SB 1421. This discussion between DPA and other visiting oversight agencies was publicly announced the day before. The symposium, however, was closed to the public.

Despite having a vested interest in the policies and procedures related to the release of police misconduct records under SB 1421, the Public Defender’s Office was excluded from participating and learned of the symposium only after it began. When our representatives arrived at the meeting, they were turned away at the door, prohibited from attending even as observers and assured that the discussions would be “administrative, not substantive.” We conclude from this experience that DPA believes the means of obtaining transparency and accountability in policing (i.e., release of records through SB 1421) should occur away from public scrutiny.

As a stakeholder in criminal justice reform whose clients’ Constitutional rights are daily at stake and who has long been at the forefront of holding police accountable, this Office was surprised and disappointed to discover that DPA not only excluded us but denied us entry to the meeting and participation in these discussions, despite being an active member of Criminal Justice Task Force of the Bar Association of San Francisco, a supporting organization for the event. To be clear, SB 1421 records are the public’s business as the Legislature was explicit in declaring them disclosable pursuant to a California Public Records Act request.² As a keeper of those public records, DPA should not discuss which records can or should be released without the public present.

While representatives from this Office were assured that no substantive matters would be discussed behind closed doors, the press release³ indicated that the discussion would focus on “challenges” brought forward by new legislation requiring release of police misconduct records.⁴ Attendees were also asked to discuss “innovative practices and share ideas to improve outcomes in police oversight.”⁵ If outcomes in police

¹ San Francisco Department of Police Accountability Hosts Symposium on Civilian Oversight of Law Enforcement in California, SAN FRANCISCO DEPARTMENT OF POLICE ACCOUNTABILITY,

https://sfgov.org/dpa/sites/default/files/Symposium_Press_Release.pdf (last visited Sept. 10, 2019).

² See PENAL CODE §832.7(b)(1).

³ See Attachment A.

⁴ See *Supra* note 1.

⁵ *Id.*

oversight are discussed in private, are those not present to presume that the improvements sought provide *more transparency*? Further, how can these discussions provide more transparency and accountability without discussing substantive matters?

Sadly, this episode raises again the specter of secrecy, delay, and denial. Since SB1421 became effective January 2019 – **more than eight months ago** – this Office has received a mere **nineteen records** from SFPD and just **five records** from DPA, a total of **twenty-four records**. The symposium’s closed door represents yet another closed door on this Office’s attempts to receive what the law makes public.

Secrecy in police accountability does not serve the public. DPA is supposed to serve an important function in our criminal justice system: increasing accountability and transparency of policing by investigating complaints against officers. Their mission statement makes this plain, “[t]he mission of [DPA] is to promptly, fairly and impartially investigate complaints against San Francisco police officers, make policy recommendations regarding police practices and conduct periodic audits of the San Francisco Police Department.”⁶ How can DPA hold closed-door sessions and fulfill its mission of accountability and transparency? In truth, it cannot. In the press release, DPA Executive Director Paul Henderson states, “The point of the two day meeting is to continue to build and maintain trust amongst *civilian agencies*...”⁷ The Executive Director did not include the public, nor our Department, which is a civilian agency actively engaged in the process of pursuing openness for the sake of justice for our clients.

Shielding this discussion from the public is unwarranted. The Commission has already created and made open to the public an avenue for DPA to discuss the challenges and best practices regarding the release of police misconduct records: the SB 1421 working group. This kind of end-run, closed session without all stakeholders present frustrates the public working group’s clear purpose of quick and efficient release of misconduct records. Moreover, secret meetings undo what the Legislature had in mind when it enacted this law – which is to end secrecy around policing and restore transparency and accountability.

Unfortunately, DPA’s actions at the symposium are just the latest example of a lack of transparency and accountability. The increase in complaints against SFPD officers and the need to review records for release under SB1421 have served to expand DPA’s staff to more than fifty-four fulltime employees⁸ with a current budget of more than \$11.5MM⁹ – more than eleven additional employees and nearly \$4.5MM more than

⁶ See DEPARTMENT OF POLICE ACCOUNTABILITY, <https://sfgov.org/dpa/> (last visited Aug. 30, 2019).

⁷ See *Supra* note 1.

⁸ See 2019-2020 & 2020-2021 Salary Ordinance, CITY AND COUNTY OF SAN FRANCISCO, 36, available at <https://sfcontroller.org/sites/default/files/Documents/Budget/FY2019-20%20%26%202020-21%20Salary%20Ordinance%20FINAL%20adopted%20%28with%20tails%29.pdf> (last visited Sept. 10, 2019).

⁹ See Budget and Appropriation Ordinance, CITY AND COUNTY OF SAN FRANCISCO, 87, available at <https://sfcontroller.org/sites/default/files/Documents/Budget/AAO%20FY2019-20%20%26%20FY2020-21%20FINAL%20190802%20-PY%20col%20fix.pdf> (last visited Sept. 10, 2019).

the previous fiscal year¹⁰ – but not to further their mission of oversight and transparency. The budgetary requests also raise questions about what the additional funding and positions are meant to do. This summer we watched in real time as DPA asserted its ability to sustain findings of misconduct and recommend punishment to the Chief. DPA changed their position and informed the working group that in fact their “sustained findings” are merely recommendations. They make no independent determinations.

These facts illustrate the fundamental disconnect between DPA’s actions and mission. But those facts are not isolated:

- A majority of DPA’s findings of misconduct that have been posted are agency-created complaints regarding body-worn camera violations – essentially creating their own work rather than investigating use of force complaints or responding to SB 1421 requests.¹¹ According to the undated 2018 3rd quarter report, fully twenty-five of the forty-one allegations (61%) DPA sustained were related to failure to comply with SFPD Bulletins related to body-worn camera use.¹²
- According to DPA’s most recent quarterly report – the third quarter of 2018 – of the eighteen officers DPA recommended discipline for after a sustained finding of misconduct, the Chief either lowered or declined to discipline twelve of those officers. Has DPA filed charges on those twelve cases with the Commission pursuant to its powers under the Charter?¹³ The report does not provide that information. We do not know how often DPA has ever filed charges when the Chief declines to do so.
- DPA is currently six months behind in posting their openness reports. The most recent monthly report posted online is from March 2019.¹⁴
- DPA is currently four quarters behind on quarterly reports, the most recent one is from third quarter 2018. The 2018 annual report is also not posted online.¹⁵
- DPA’s first quarter report of 2018 published on June 18, 2018 provides even less clarity. In that report, the Chief decided to impose discipline in four of the ten

¹⁰ See *Budget and Appropriation Ordinance*, CITY AND COUNTY OF SAN FRANCISCO, 12 & 28, <http://sfcontroller.org/sites/default/files/Documents/Budget/AAO%20FINAL%20with%20Signature%20%2BOrdinancen%20No%202017.07.27%203.30PM.pdf> (last visited Sept. 10, 2019).

¹¹ See *2018 Third Quarter Report*, Department of Police Accountability, available at https://sfgov.org/dpa/sites/default/files/DPA_3Q18.pdf (last visited Sept. 10, 2019).

¹² See *Ibid* at 3-7 (though the number of sustained allegations could possibly be forty-eight as the report offers both numbers).

¹³ SAN FRANCISCO CITY CHARTER ARTICLE IV §4.136(e).

¹⁴ See *Reports & Statistics*, SAN FRANCISCO DEPARTMENT OF POLICE ACCOUNTABILITY, <https://sfgov.org/dpa/reports-statistics> (last visited Sept. 10, 2019).

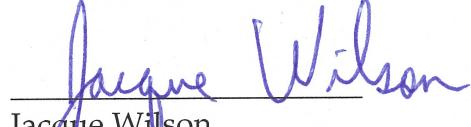
¹⁵ See *Ibid*.

cases in which DPA sustained an allegation.¹⁶ Of the remaining six cases, did DPA file charges with the Commission? The public doesn't know.

Stale, missing, and limited data does not promote transparency and accountability but instead suggests ineffectiveness. The police have the awesome and terrifying power of taking away a person's life or liberty. DPA is charged with serving as an independent monitor and check on that power. The lack of results and transparency undermine that mission.

I expect this Commission to investigate what was discussed at this symposium; why it had to be discussed privately; when the plans for the symposium were created; why the symposium was advertised with a press release if it was not going to be open to the public or press; and if there will be similar gatherings in the future. We can expect more transparency and accountability from DPA. We should expect more. We do expect more.

Respectfully submitted,



Jacque Wilson
Deputy Public Defender
Chair of SB 1421 Committee

¹⁶ See *Quarterly Reports: First Quarter 2018*, SAN FRANCISCO DEPARTMENT OF POLICE ACCOUNTABILITY, 3, available at https://sfgov.org/dpa/sites/default/files/DPA_1Q18.pdf (last visited Sept. 10, 2019).

ATTACHMENT A



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PAUL DAVID HENDERSON
EXECUTIVE DIRECTOR

**PAUL HENDERSON
EXECUTIVE DIRECTOR**

FOR IMMEDIATE RELEASE

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**SAN FRANCISCO DEPARTMENT OF POLICE ACCOUNTABILITY HOSTS SYMPOSIUM ON
CIVILIAN OVERSIGHT OF LAW ENFORCEMENT IN CALIFORNIA**

San Francisco—On August 23rd and 24th (Friday & Saturday), the San Francisco Department of Police Accountability (DPA) will host its first Symposium on Civilian Oversight, Accountability and Transparency of Law Enforcement in California. The symposium will discuss innovative practices and share ideas to improve outcomes in police oversight. Topics will include: dealing with challenges brought forward by SB 1421 and AB 748; best practices and budget development for civilian oversight agencies; outreach, community engagement, and mediation; technology; auditing; and crisis management. The symposium will focus on sharing of information and valuable resources among civilian oversight agencies to promote transparency and accountability in policing. Symposium sessions will include speakers with great experience in their respective fields, including the DPA’s mediation and outreach teams – leading developers of programs for the public

The DPA will be joined by several agencies from across California who will share their struggles and successes as the state adapts to the voters’ request for increased civilian oversight. As the agency’s jurisdiction and mission continue to grow, the DPA works to serve the community as a whole, bridging the gap between civilian complainants and the unique situations that officers must navigate by providing open lines of communication and policy recommendations. Fostering strong relationships improves the interactions between the police and the community, ultimately leading to a significant decrease in cases of officer misconduct. The symposium will provide a unique opportunity for participating agencies to discuss ways to increase effective communication between police departments and communities across the state.

“The concept of civilian oversight has existed in various forms since the 1950s and there are now more than 200 oversight boards across the nation. However, the form of civilian oversight agencies varies by jurisdiction. The DPA is hosting this statewide symposium to help agencies across the state collaborate as they make efforts to expand police oversight. The point of the two day meeting is to continue to build and maintain trust amongst civilian agencies, ensure the quality of the services they deliver, and enhance their mechanisms for local accountability to ensure effective policing in the state’s varied communities,” says DPA Executive Director Paul Henderson when asked about the Symposium. “The DPA is proud to support regional agencies in making informed decisions to more effectively serve their missions.”

SUPPORTERS AND PARTICIPATING AGENCIES/ORGINIZATIONS INCLUDE:

- Bar Association of San Francisco (BASF)
- California State Board of Equalization
- City of Long Beach, Citizen Police Complaint Commission
- The Coalition for Police Accountability – Oakland
- The Community Police Review Agency – Oakland
- Los Angeles Office of the Inspector General
- Lyft
- The Oakland Police Commission
- Office of Professional Accountability - Richmond
- The Rosenberg Foundation
- South East Consortium for Equitable Partnership (SECEP)
- City of San Diego Community Review Board on Police Practices
- San Francisco Department of Police Accountability (DPA)
- San Francisco Police Commission
- San Francisco Police Department (SFPD)
- San Francisco Office of the Controller
- San Francisco Office of the Mayor
- San Francisco Sheriff's Department

To learn more about the DPA's pioneering work in police accountability or the Symposium on Civilian Oversight, Accountability and Transparency of Law Enforcement in California, contact DPA's Project and Outreach Manager, Danielle Motley-Lewis at 415-241-7728, or email Danielle.Motley-Lewis@sfgov.org

The DPA, formerly the Office of Citizen Complaints (OCC), has a thirty-five year legacy of strong community support for its mission to provide civilian oversight of the San Francisco Police Department (SFPD). It was first established by San Francisco voters through the Board of Supervisor's ballot initiative in 1982. The mission of the Department of Police Accountability is to promptly, fairly and impartially investigate complaints against San Francisco police officers, make policy recommendations regarding police practices and conduct periodic audits of the San Francisco Police Department.