



Received via email
9/6/2016
File Nos. 160615 and 160616

September 6, 2016

The Honorable John K. Stewart
Presiding Judge
Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, CA 94102

Dear Judge Stewart:

Pursuant to California Penal Code sections 933 and 933.05, the following is in reply to the 2015-16 Civil Grand Jury report, *Into the Open: Opportunities for More Timely and Transparent Investigations of Fatal SFPD Officer-Involved Shootings*. The City is in the process of reforming SFPD practices across the board. Implementing these reforms will likely reduce the number of OIS incidents over time as well as address concerns regarding the use of force.

These reforms - aimed at safeguarding the life, dignity and liberty of all persons - include:

- Revising principles with regard to the application of force options such as expanding time and distance used before engaging with suspects;
- Deploying body worn cameras to better evaluate day-to-day behavior and increase accountability of our officers; and
- Embracing 21 Century Policing Principles to increase transparency and community awareness with regard to police operations.


Moreover, the SFPD will implement U.S. Department of Justice Collaborative Reform Initiative (DOJ-CRI) best practices in addition to many of the Civil Grand Jury's recommendations. SFPD will conduct a comprehensive study of ways to streamline the OIS investigation process with the goal of reducing the overall time to conduct a full investigation. As such, we agree with many of the report's findings, are actively working to improve the practices and policies related to OIS, and are dedicated to timely resolutions, which positively impact the conduct of OIS investigations.



A detailed response from the Mayor's Office, the Police Department, and the Office of the City Administrator to the Civil Grand Jury's findings and recommendations are attached.

Thank you for the opportunity to comment on this Civil Grand Jury report.


Sincerely,



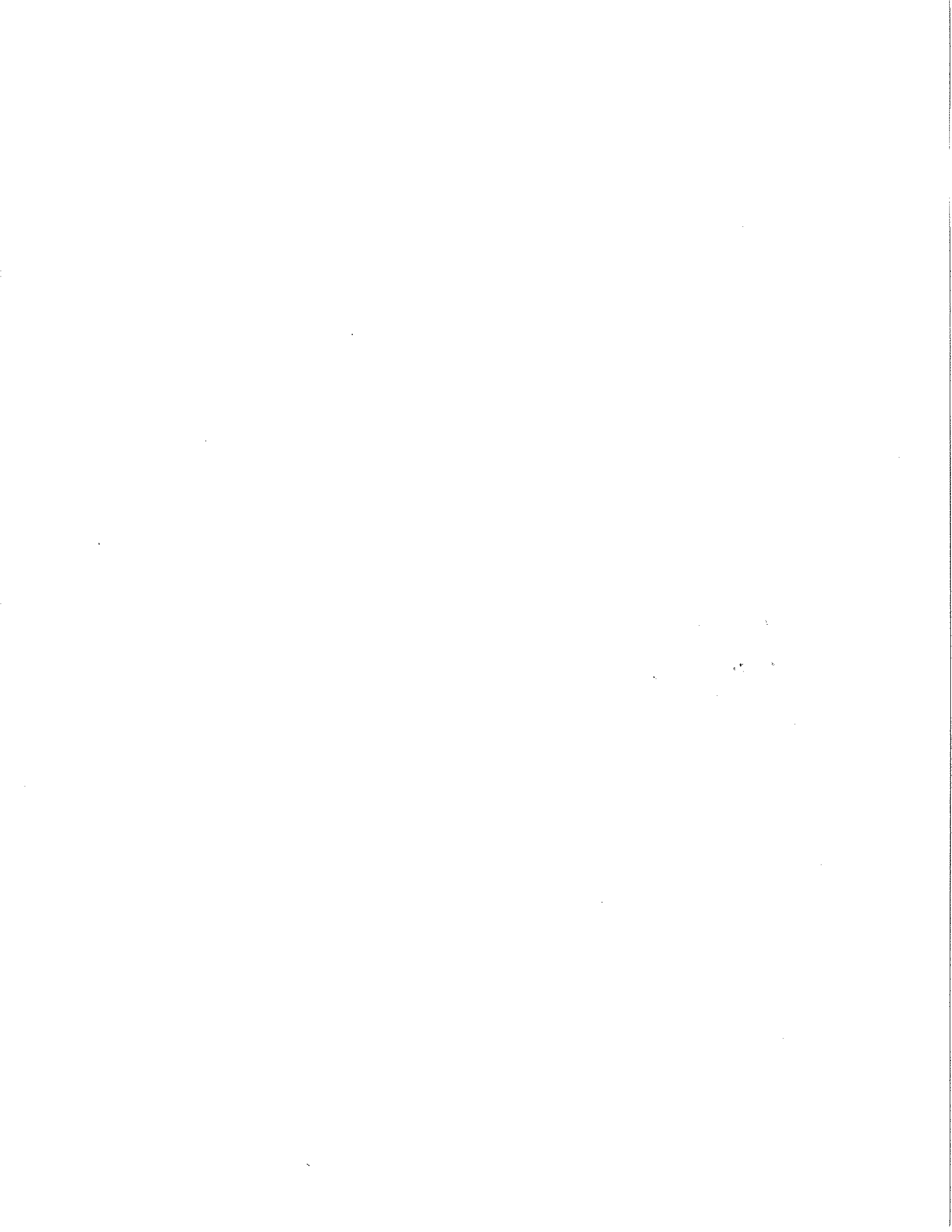
Edwin Lee
Mayor



Naomi M. Kelly
City Administrator



Toney D. Chaplin
Interim Chief of Police



Findings:

Finding F.1: None of the City agencies that are fundamental to OIS investigations has done an adequate job informing the citizens of San Francisco how the process works.

Agree with finding.

The SFPD agrees that in order to be more transparent, a document outlining the overall OIS process could be created to share with the public. The document would include the responsibilities of each agency involved in an OIS investigation. However, any detailed information regarding a specific investigation would not be made available due to laws governing the release of information relating to ongoing investigations.

Finding F.2: Because the SFPD consistently does not meet the time frame in its own General Orders by which investigations of OIS incidents are to be conducted and completed, the General Orders create false expectations for the citizens of San Francisco.

Disagree with finding, partially.

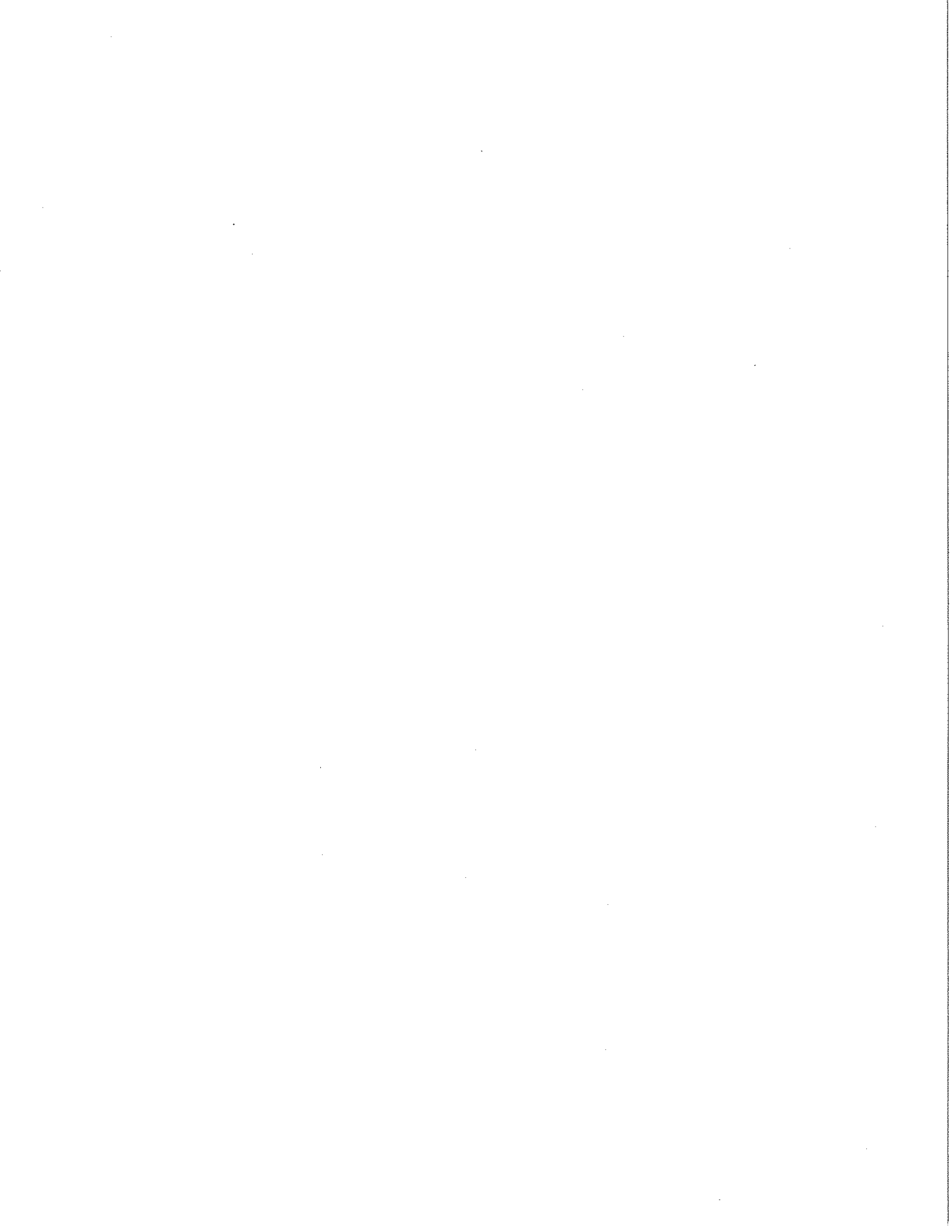
The 30, 45, and 60-day deadlines imposed in General Orders 3.10 and 8.11, when first issued, were considered industry standards. With advancements in technology and science, these investigative deadlines do not reflect inherent complexities such as forensic evidence processing. In addition, the current deadlines did not consider the dependencies of independent investigations now required that are outside the control of the SFPD, including the District Attorney's investigation and, in death cases, the Medical Examiner's investigation.

The length of an OIS investigation is largely dependent on the outcome of these investigations, particularly the charging decision of the District Attorney's Office with respect to the officer. All relevant reports, including the Medical Examiner's report, are needed to complete the criminal investigation. Likewise, the trailing administrative investigation would not be complete without the District Attorney's Office determination of the criminal portion. Per California Government Code 3304(d), the time limit investigation of a personnel investigation tolls until (1) a criminal investigation; (6) civil litigation; or (7) criminal litigation where the officer is the defendant in the matter is completed.

While the administrative case could be theoretically closed before conclusion of these investigations, SFPD's administrative investigation has a significant dependency on the finding of the District Attorney, because the officer must have acted lawfully to be within policy. It is conceivable that at the conclusion of an investigation, the District Attorney could charge the officer with a crime that the administrative investigation or the SFPD Homicide investigators had not foreseen.

Finding F.3: The SFPD Field Operations Bureau's use of outdated methods, including a serial, hierarchical phone tree system, to alert some essential responders of an OIS incident is inherently time-consuming and results in slower response times, which can cause delays in OIS investigations both at the scene and afterwards.

Agree with finding.



Although the SFPD's Department Operations Center (DOC), a unit under the command of the Special Operations Bureau, currently has a notification system in place for OIS call outs, the best available technology should be used for all critical incident call outs. The SFPD should perform a review of best practices of similar-sized agencies.

Finding F.4: While there are many factors to consider when determining a timetable to complete an OIS investigation, the lack of a meaningful and enforceable process for establishing a timetable in the current MOU between the SFPD and the DA's Office allows OIS investigations to drag on too long.

Disagree with finding, partially.

The SFPD's Homicide Unit currently completes an OIS investigation and forwards it to the DA's office. However, the case and the Internal Affairs process cannot be closed until receipt of the results of the forensic analysis, the Medical Examiner's report, and the DA's final charging decision. These processes are not under the control of the SFPD.

Finding F.6: Under the leadership of and commitment displayed by the CME since coming aboard in March 2015, the OCME's turnaround time has improved and its final reports have included more photographs and documentation and greater detail.

Agree with finding.

The Office of the Chief Medical Examiner (OCME) prioritized decreasing turnaround time for the release of work product. This has positively impacted the production final reports associated with OIS incidents. The office understands the need for the timeliness of report generation and will remain vigilant in this regard. The OCME continues to stand behind its work product which continues to meet national standards.

Finding F.8: The current structure for investigating OIS cases lacks an oversight body to review the events surrounding the OIS incident and the actions of the SFPD officers, monitor the timeliness and fairness of the investigation, communicate regularly about the status of the investigation, and interpret and share the results of the investigation with the public.

Disagree with finding, partially.

SFPD convenes its Firearm Discharge Review Board in connection with each OIS incident and summaries of incidents are provided to the Police Commission for review. The Firearm Discharge Review Board convenes quarterly and reports on the status of open SFPD OIS investigations.

Finding F.9: While the SFPD has taken important first steps in providing information and statistics regarding OIS incidents and resulting investigations, it must provide much more robust information to reach its stated goal of building public trust, engaging with the community and driving positive outcomes in public safety.

Disagree with finding, partially.

The SFPD agrees that any information that is releasable should be shared with the public. However, as an OIS investigation is considered open and on-going, the SFPD needs to remain cautious not to release



information prematurely that may be inaccurate or any details that would compromise the outcome of the investigation. The SFPD will review other agencies' best practices to determine if similar processes can be implemented that would allow for more transparency without compromising the investigation.

Finding F.10: SFPD's press conferences at the scene of the incident, or soon thereafter, are an important first step in creating a transparent investigation, provide crucial information about the events leading up to the incident, and serve to mitigate false reporting, speculation and the dissemination of misinformation.

Agree with finding.

For the past five years, command staff has responded to the scene of critical incidents along with members of the Media Relations Unit. This allows for initial information to be provided as soon as possible. In addition, a meeting is completed within 10 days of an incident to provide additional information. A "press-exclusive" press conference could be added or substituted.

Finding F.11: As with its press conferences at the scene of the incident, the SFPD's practice of posting "updates" on its website as soon as possible after an OIS incident are an important step in creating a transparent investigation, provide crucial information about the events leading up to the OIS incident, and serve to mitigate false reporting, speculation and the dissemination of misinformation.

Agree with finding.

Following the initial release of information relating to an OIS incident, the SFPD routinely provides updated information to the media by way of press releases, which are posted on its website. However, to help dispel egregious public information, staff should ensure that all information has been vetted prior to distribution to the public. At the conclusion of the investigation, the website could be updated to reflect the outcome.

Finding F.12: SFPD's town hall meetings are crucial to a transparent OIS investigation and provide updated information about the incident and serve to mitigate false reporting, speculation and the dissemination of misinformation.

Agree with finding.

For the past five years, it has been a practice to hold a town hall, community, or stakeholder meeting within 10 days of an OIS incident in the affected community. The intent of these meetings is to provide preliminary information to the public. These meetings are chaired by the Police Chief and are regularly attended by members of the Police Commission and Board of Supervisors, as well as City officials. As an investigation evolves, further information is developed and disseminated to the public and the media.

Finding F.13: Although the release of the names of officers involved in fatal OIS incidents is an important step in creating a transparent investigation and holding the SFPD and its officers accountable for their actions, SFPD has had a spotty record regarding its release of the names of its officers involved in fatal OIS incidents.

Disagree with finding, wholly.



Since 2014 when the California Supreme Court ruled that agencies must release the names of officers involved in shootings, the SFPD has complied with that decision within 10 days of the incident. The ruling allowed for names to be withheld under certain circumstances, including if a credible threat to the officer's safety existed. As such, the SFPD has done its due diligence when releasing the names of officers by ensuring any known, credible threat has been resolved prior to the release of the name(s) of the involved members. Additionally, the media has requested historical information relating to OIS incidents, including the names of involved officers, and the SFPD has complied with such requests.

Finding F.15. Currently, citizens of San Francisco do not have access to a single, complete, comprehensive summary of the results and findings of a fatal OIS investigation. To restore the public's faith in the integrity of these investigations, such a summary should be made available.

Agree with finding.



Recommendations:

Recommendation R.1: Each of the three City agencies fundamental to OIS investigations — SFPD, DA’s Office and OCC — should create a “OIS Investigations” web page specifically devoted to educating the public about that agency’s role in the investigation of OIS incidents. Each agency’s web page should be comprehensive and answer the following questions:

- Who is involved in the investigation and what are their roles and responsibilities;
- Why is the agency involved in OIS investigations;
- What is the investigation’s purpose, what goals does the investigation attempt to achieve, what parts are disclosable and/or disclosed to the public, and what parts are not and/or cannot be disclosed and why;
- When does the investigation begin, what is the general time frame by which the public may expect the investigation to be completed, and what variables may affect this time frame;
- How does the OIS investigation process work; and
- Where may the public go for more information about OIS investigations generally, as well as about specific OIS investigations.

Each agency should make its “OIS Investigations” web page available in English, Spanish, Chinese and Filipino (Tagalog).

Each agency should provide a link from its home page to its “OIS Investigations” web page, so that it can be accessed easily.

Each agency should add its “OIS Investigations” web page to its website as soon as possible, but no later than six months after the date this report is published.

Recommendation has not been, but will be, implemented in the future.

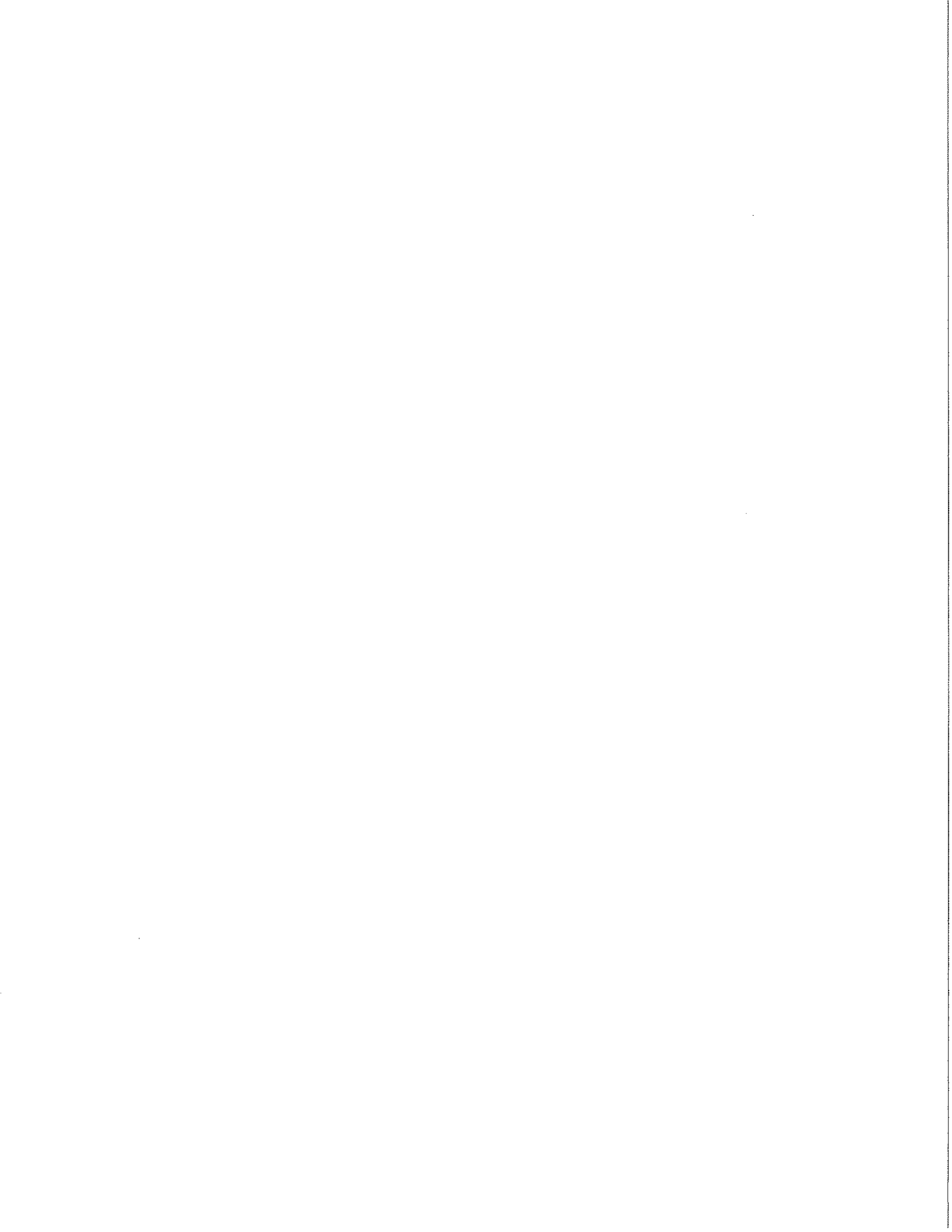
The SFPD agrees that information should be provided to the public consistent with the best practices in 21st century policing. The SFPD is evaluating and adjusting its website to provide improved information to the community. During this process, the SFPD will consider inclusion of the above recommendation, as well as review other agency websites for additional information that could be included. As required by the City and fully supported by the SFPD, information available on the website will meet the requirements of the Language Access Ordinance.

Recommendation R.2.A: The Police Commission, in coordination with the relevant SFPD divisions, the DA and the OCC should immediately commission a comprehensive study of ways to streamline the OIS investigation process with the goal of reducing the overall time to conduct a full investigation.

Recommendation has not been, but will be, implemented in the future.

This recommendation is being reviewed by the U.S. Department of Justice Collaborative Reform Initiative (DOJ-CRI) review team and compared against national best practices. The SFPD will review and implement recommendations made by the DOJ-CRI and the Civil Grand Jury.

Recommendation R.2.B: After receiving the results of the study of ways to streamline the OIS investigation process, the Police Commission should revise the General Orders to more accurately reflect the timeframes by which investigations of OIS incidents are to be completed.



Recommendation has not been, but will be, implemented in the future.

This recommendation is being reviewed by the U.S. Department of Justice Collaborative Reform Initiative (DOJ-CRI) review team and compared against national best practices. The SFPD will review and implement recommendations made by the DOJ-CRI and the Civil Grand Jury.

Recommendation R.3.A: The SFPD Field Operations Bureau should implement standardized, modern methods to notify all essential responders of an OIS incident.

Recommendation has not been, but will be, implemented in the future.

The SFPD's Department Operations Center (DOC), a unit under the command of the Special Operations Bureau, has a system in place to notify all essential responders to OIS incidents. The SFPD has added an additional layer of notification specific to the on-call DA investigator, which requires a direct call from the Captain of the Major Crimes Division to the on-call DA investigator immediately after learning of an OIS incident. The SFPD will research available technology that can improve the notification process.

Recommendation R.3.B: The SFPD Field Operations Bureau should require that all essential responders called to the scene of an OIS incident confirm with the Field Operations Bureau that they received the initial notification. If the Bureau does not receive confirmation from an essential responder within a designated period of time, it should contact an alternate responder for that agency.

Recommendation has not been, but will be, implemented in the future.

The SFPD's Department Operation Center (DOC), a unit under the command of the Special Operations Bureau, will review the current process for notification to an OIS incident to ensure there is a process in place for first responders to confirm receipt of the notification and to log that confirmation. The process also should include a mechanism to ensure follow-up notification is done within a designated time span when a response from a first responder has not been received.

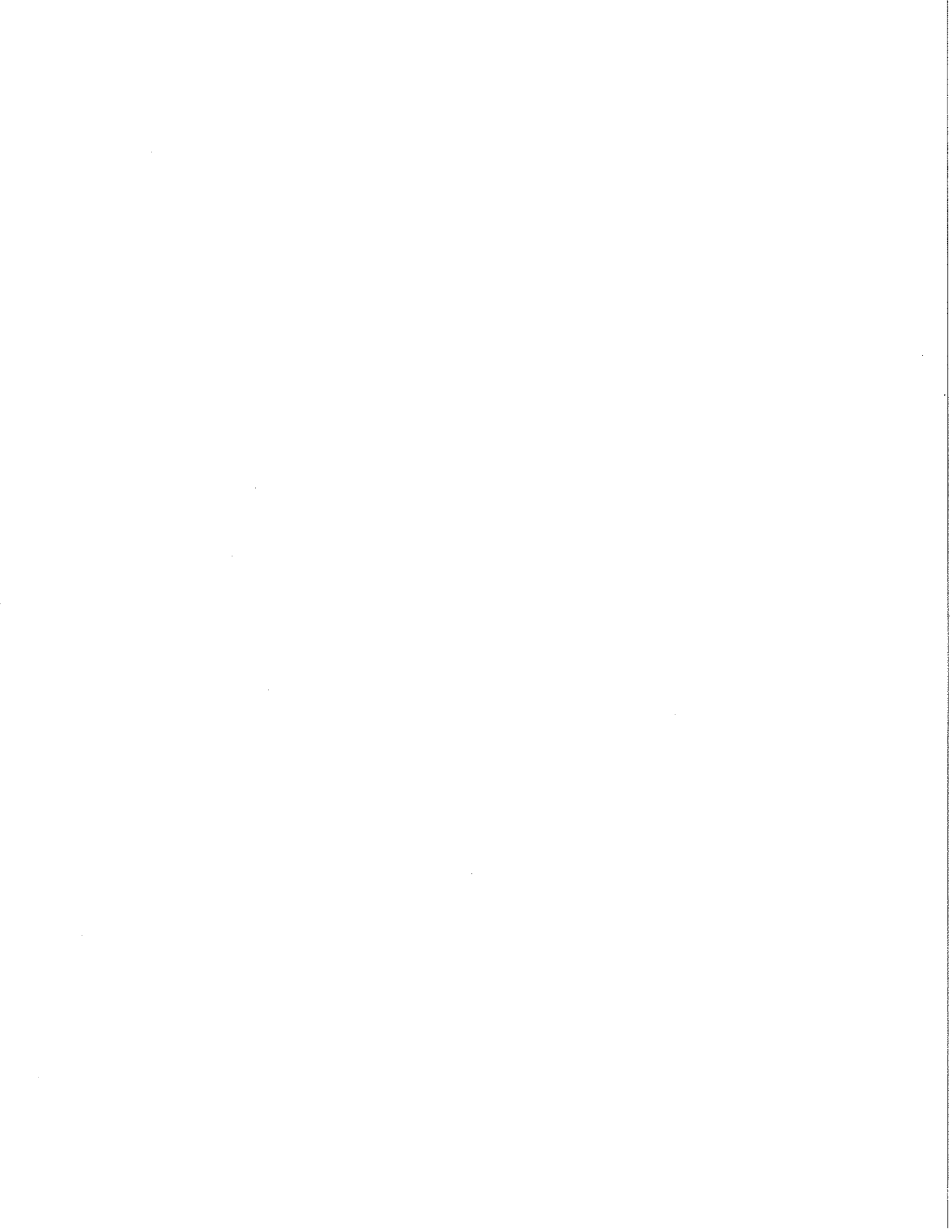
Recommendation R.4: The SFPD and the DA's Office should jointly draft a new MOU in which each commits to an agreed-upon process to:

- Prioritize and expedite their investigations of OIS incidents within an established timeframe;
- Make a public announcement when each completes its OIS investigation, so that the public may be better informed of the investigative results and the time taken by each agency to complete its OIS investigation.

Recommendation requires further analysis.

The SFPD is reviewing the current MOU and is in discussion with the DA's Office, as well as exploring additional resources to investigate OIS incidents.

Recommendation R.5.C: The Mayor and the Mayor's Office of Public Policy and Finance should include in the proposed budget for fiscal year 2017-2018, and thereafter, resource requests from the DA's Office to expedite OIS investigations. Allocation and/or release of these funds should be contingent upon marked,



measurable improvement by the DA's Office in the time it takes to complete its criminal investigations and issue its charging decision letters in OIS cases.

Recommendation has been implemented.

The DA's Office budget for FY 2016-17 and FY 2017-18 includes \$1.8 million in each year and additional staffing of 14 positions to expedite OIS investigations.

Recommendation R.6.A. After the OCME releases each autopsy report in OIS cases, the CME should proactively call a meeting of the SFPD's Homicide Detail, DA's Office and OCC to help those agencies interpret the highly technical findings of the autopsy report. This meeting should be coordinated, if possible, to include reports from the Crime Lab on the results of its firearms comparisons, ballistics examinations and DNA analysis.

Recommendation has not been, but will be, implemented in the future.

The OCME will fully participate in after action conferences with regard to OIS incidents; however, the conference should be initiated by the agency leading the investigation as the agency will have a better understanding of the case status of each participating party.

Recommendation R.6.B. When the new OCME building with autopsy observation facilities is completed, the CME should invite SFPD inspectors and DA and OCC investigators to observe autopsies in all fatal OIS incidents, so that questions can be answered quickly, observations shared early, and the spirit of teamwork and cooperation on the investigation can begin as early as possible.

Recommendation has not been, but will be, implemented in the future.

With a projected opening in Fall 2017, the design of the new OCME facility includes an autopsy observation room. The observation room will allow investigators to participate more fully in autopsies related to OIS incidents. Additionally, the observation room will reduce informational asymmetries, improve the flow of information and enhance information sharing allowing the investigation to begin as early as possible. Investigators will be encouraged to attend examinations in all homicide and suspicious cases.

Recommendation R.7.C. The Mayor and the Mayor's Office of Public Policy and Finance should include in the proposed budget for fiscal year 2017-2018, and thereafter, resource requests from the OCC for transcription services.

Recommendation has been implemented.

The FY 2016-17 and FY 2017-18 budget includes ongoing \$231,000 for the OCC for transcription services.



Recommendation R.8.B. The Mayor should charge the new task force to:

- Monitor the progress of each OIS investigation and hold each involved agency accountable for timely completion of its portion of the OIS investigation;
- Provide periodic press releases and/or press conferences to update the public on the status of each OIS case;
- Compile a summary of the findings from each involved agency and then evaluate those findings in group meetings to address any inconsistencies or unanswered questions;
- Facilitate a joint discussion among its members to formulate conclusions and “lessons learned”;
- Identify necessary policy or procedural changes; and
- Share its summary of the overall OIS investigation in public sessions so that the public has a voice in the.

Recommendation has not been, but will be, implemented in the future.

The Mayor’s Office works with the DA’s Office and the SFPD to monitor progress of each OIS investigation, provide periodic and timely updates to the public on the status of OIS cases, summarizes and evaluates findings, and jointly discuss OIS investigations. The dedication to timely resolutions coupled with additional resources have positively impacted the conduct of OIS investigations, and includes \$800,000 for the California Department of Justice’s ongoing research of best practices related to OIS incidents. In implementing policy and procedural changes, SFPD has modified department general orders to assure time and distance and preserve the sanctity of life.

Recommendation R.9: SFPD should make publicly available and prominently display on its website a more robust set of statistics, data and information on OIS incidents where its officers are involved, using the data release practices of law enforcement agencies like the Dallas Police Department and the Los Angeles County Sheriff’s Department.

Recommendation has not been, but will be, implemented in the future.

As part of the SFPD’s participation in the White House Initiative, staff began the process of implementing the items in this recommendation. The City’s Department of Technology will be developing and enhancing the City’s IT infrastructure which will include developing new websites for both the SFPD and Police Commission. At this time, the current website needs to be redesigned to make it more user-friendly and information readily accessible on a dedicated reports page. It is anticipated that the SFPD’s IT Department will have the infrastructure developed within the second quarter of 2017.

Recommendation R.10.A: SFPD and the Police Commission should make it official policy for the SFPD to hold press conferences as soon as possible after each OIS incident.

Recommendation has been implemented.

The SFPD’s current practice is to have a press briefing/conference as immediately as possible after each OIS incident, including a briefing at the scene of, or in close proximity to, the incident. At these briefings, preliminary information is provided by the Media Relations Unit, the Police Chief, or designee.



Updated information is provided to the public through press releases, and any media inquiries are addressed through the Media Relations Unit. Updated information also is provided at community stakeholder or public meetings, held within 10 days of an OIS incident, as well as at the weekly Police Commission and at meetings with community leaders, stakeholders, and advocates.

Recommendation R.10.B: SFPD should limit comments made during these press conferences to the facts as they are known at that time and refrain from making statements and using language to prematurely attempt to justify the actions taken by SFPD officers involved in the OIS incident.

Recommendation has been implemented.

The SFPD strives to meet the highest operational and ethical standards and to continually improve how we meet the City's public safety objectives. The SFPD's goal is to incorporate the recommendations of the President's Task Force on 21st Century Policing, especially relating to transparency. These policies and practices are intended to provide accurate, timely, and reliable information to the public.

The SFPD realizes that emerging technology, including the use of social media to post real-time video, provides additional information and evidence that may be different than the preliminary information gathered from witnesses and involved officers. As such, the SFPD will continue to explore best practices in transparency and media relations in an effort to disseminate accurate and reliable information that has been vetted.

Recommendation R.11.A: SFPD and the Police Commission should make it official policy for the SFPD to post "updates" on its website as soon as possible after each OIS incident.

Recommendation has not been, but will be, implemented in the future.

The SFPD currently posts information released to the media as a "press release" relating to critical incidents, including OIS incidents, on its website. In addition, information relating to community and/or stakeholder meetings are released to the media and posted on the website. The SFPD will review best practices of other agencies to determine a process by which updated information can be shared on its website that will not compromise the ongoing investigation.

As part of the SFPD's participation in the White House Police Data Initiative, datasets relating to officer involved shootings between 2009 and 2015 are posted. In addition, a website link to OIS incidents could be developed.

Recommendation R.11.B: SFPD should limit comments made in these updates to the facts as they are known at that time and refrain from making statements and using language to prematurely attempt to justify the actions taken by SFPD officers involved in the OIS incident.

Recommendation has been implemented.

The SFPD has developed a process by which the Media Relations Unit, Homicide, and Internal Affairs coordinates with the Chief's Office to ensure that only verified information is disseminated.



Recommendation R.12.A: SFPD and the Police Commission should make it official policy for the SFPD to hold town hall meetings within a week after each OIS incident.

Recommendation requires further analysis.

For the past five years, it has been a practice of the SFPD to hold a town hall, community, or stakeholder meeting in the area most affected by an OIS incident. Most recently, as the SFPD has been expanding its collaboration with community stakeholders and interfaith leaders, meetings have been held with these specific groups who represent those neighborhoods most impacted by the incident. The intent of these meetings is to provide information directly to community representatives and to engage in open dialogue to address concerns in a more productive environment. These community leaders then provide the information to their respective communities. The SFPD acknowledges the seriousness of these critical incidents, and the importance of transparency, and will draft a policy that will allow for information to be shared with the public whether at a public meeting or direct meeting with community leaders and stakeholders.

Recommendation R.12.B. The Chief of Police, the Supervisor for the district in which the OIS incident occurs, the DA, the Director of the OCC, all members of the Police Commission, and all members of the newly formed OIS Task Force (see Recommendations R.8.A. and R.8.B.) should attend the public and/or community stakeholder meetings to show that they acknowledge the seriousness of the situation, understand how critical it is to have a thorough, accountable and transparent investigation and analysis of what occurred, and are united toward the goal of making that happen. Faith leaders and other community advocacy groups should also be invited to participate.

Requires further analysis.

The SFPD and the Police Chief recommend and implement best practices with respect to procedures following OIS incidents including: (i) notification to the public; (ii) transparency of investigations; and (iii) updates on the status of investigations. SFPD currently partners with local faith based leadership and other community groups including the Street Violence Reduction Team and the San Francisco Interfaith Council.

For the past five years, a town hall meeting has been convened within 10 days of an OIS incident as close as possible to the location of the incident. It is the practice of the SFPD to invite members of the Police Commission and Board of Supervisors, other City agency executives (OCC and DA), community and faith-based leaders, and media outlets. Staff attending from the SFPD include the Police Chief, Chief of Staff, Command Staff members, representatives of the Investigations Division and the District Station captain. This process is under review by Command Staff and Media Relations to ensure an orderly and transparent dissemination of the information continues to occur with technological advancements.

Recommendation R.13.A: SFPD and the Police Commission should make it official policy for the SFPD to release the names of all officers involved in each OIS incident within 10 days, unless it has knowledge of credible threats to the officer's safety. In those instances in which the SFPD has knowledge that such credible threats exist, the SFPD should issue a statement stating it is withholding release of the names of the officers because of a credible threat to their safety.

Recommendation has been implemented.

Since 2014, when the California Supreme Court ruled that agencies must release the names of officers involved in shootings, the SFPD has complied with that decision within 10 days of the incident. When a credible threat to the safety of the involved officer(s) exists, the SFPD will issue a statement to clarify why the information is being withheld.

Recommendation R.13.B: Simultaneous with its release of the names of the officers involved in an OIS incident or the statement that it is withholding release of that information, the SFPD should make the information available on its website.

Recommendation has not been, but will be, implemented in the future.

This is in process. The City's Department of Technology will be developing and enhancing the City's IT infrastructure which will include developing new websites for both the Police Department and Police Commission. At this time, the current website needs to be redesigned to make it more user-friendly and information readily accessible on a dedicated reports page. We anticipate the SFPD's IT Department will have the infrastructure developed within the second quarter of 2017.

Recommendation R.13.C: SFPD and the Police Commission should make it official policy that in those instances when the names of officers involved in an OIS incident are not released due to a credible threat to the officers' safety, the SFPD shall release the names of all officers involved as soon as the SFPD determines that the credible threat has passed.

Recommendation has been implemented.

The SFPD ensures that prior to releasing officers' names that any known, credible threat has been resolved.

Recommendation R.15: The Police Commission or the newly created OIS Investigation Oversight Task Force (see Recommendations R.8.A. and R.8.B.), in addition to summarizing the findings and conclusions of the various OIS investigations (again see Recommendations R.8.A. and R.8.B.), should examine each fatal OIS incident with a view to developing "lessons learned" and answering the following questions:

- What circumstances contributed to the OIS incident?
- What aspects of the interaction between the SFPD officers and the suspect, if any, could have been handled differently so that the loss of a life would not have occurred?
- What alternatives to deadly force may have been tried? What lessons can be learned?
- Should any SFPD policies and procedures be reviewed or revised because of the incident?

The entity making this review of the fatal OIS incident should publish its findings, as well as those from each of the other City agencies involved, in one comprehensive report that is made available to the public. The entity should then hold a community meeting to share highlights from the report and the conclusions drawn from the OIS incident and should seek and allow for public comment and feedback.

Requires further analysis.

The Police Commission currently oversees and reviews the conduct of OIS investigations. Many of the reforms already implemented by SFPD – including time and distance / zone of danger, body worn cameras and use of force - are based on the findings from OIS investigations. The Police Commission also engages



the Police Officers Association (POA) and provides a public forum for community members to comment on current practices and proposed reforms.

In November 2016, San Francisco citizens will vote on a City Charter Amendment to rename the Office of Citizen Complaints to the Department of Police Accountability; and will add new responsibilities to the Department of Police Accountability. If approved by the voters, the Charter Amendment would require that the Department of Police Accountability investigate claims of officer misconduct and use of force. Certain other reforms are pending and additional reforms will be proposed in the future.

