



George Gascón
District Attorney

September 6, 2016

The Honorable John K. Stewart
Presiding Judge
Superior Court of California
City and County of San Francisco
400 McAllister Street, Room 206
San Francisco, CA 94102-4512

Re: In the Matter of the 2015-2016 Civil Grand Jury Report “Into The Open: Opportunities For More Timely And Transparent Investigations Of Fatal San Francisco Police Department Officer Involved Shootings”—District Attorney’s Response

Dear Judge Stewart:

Please find attached our response to the Civil Grand Jury’s report, “Into The Open: Opportunities For More Timely And Transparent Investigations Of Fatal San Francisco Police Department Officer Involved Shootings.” I commend the Civil Grand Jury for taking on this critically important issue and for conducting this comprehensive investigation.

In order to have a truly independent review of all law enforcement cases involving violations of individuals’ Fourth and Fourteenth Amendment rights, the San Francisco District Attorney must have actual autonomy and independence in that investigation. Currently, San Francisco Police Department is the lead investigator on officer involved shootings, in custody deaths and excessive use of force. This structure makes it impossible to have an independent investigation. However, with our current staffing we are unable to assign people to this work on a full time basis because they are needed in other assignments.

To remedy this, I proposed the creation of an Independent Investigations Bureau (IIB) within the District Attorney’s Office. The funding request in our budget submission was granted. However, the positions have been placed on reserve, making it impossible for us to hire staff. The IIB would be responsible for investigating and prosecuting cases of law enforcement officers who violate the Fourth and/or Fourteenth Amendment rights of individuals. The unit will handle all law enforcement officer involved shootings, all in-custody deaths, and all cases of on-duty excessive use of force. In addition to the prosecution of these cases, the unit will also be responsible for investigating and remedying colorable claims of factual innocence.

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District Attorney's Office Response to the Civil Grand Jury
September 6, 2016

While the IIB will not cure all the challenges facing us as we deal with these difficult issues, it would certainly be a dramatic improvement to the way the work has historically been done. I am hopeful that this first of its kind, innovative approach will be funded quickly so that it can produce more timely and transparent procedures and outcomes the community can trust.

Thank you for this opportunity to respond to the Civil Grand Jury.

Respectfully,



George Gascon
District Attorney

The District Attorney's Office response to the Civil Grand Jury's findings is as follows:

Finding 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."

Response: The District Attorney agrees with this finding.

Finding 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."

Response: The District Attorney agrees with this finding.

Finding 5: "The DA's Office takes too long to complete its criminal investigations and issue its charging decision letters in OIS cases. In the last five years, it has taken an average of 611 days to issue charging decision letters in fatal OIS cases and 654 days in all OIS cases, both fatal and non-fatal."

Response: The District Attorney agrees with this finding.

Finding 14: "The public's ability to learn of the result of the DA's criminal investigation of an OIS incident is hampered because the DA's Office rarely makes a public announcement that it has completed its investigation and because the DA's charging decision letters are listed in a confusing manner on the DA Office's website."

Response: The District Attorney agrees with this finding.

The District Attorney's Office response to the Civil Grand Jury's recommendations is as follows:

Recommendation 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."

Response: This recommendation will be implemented no later than December 31, 2016. We are hopeful that by this date we will be able to post our new role and responsibilities based on the formation of the IIB.

Recommendation 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."

Response: This recommendation will not be implemented, as we do not have adequate funding to commission the recommended study. However, we have already determined several ways to improve the speed and independence of OIS investigations. In the 2016-17 budget we requested funding to create an Independent Investigations Bureau (IIB). This request was funded and we are waiting for the Mayor and the Board of Supervisors to remove the positions from reserve so that we can hire attorneys and investigators dedicated solely to investigating and prosecuting officer involved shootings and excessive use of force cases. This team will be able to send trained personnel to the scene of OIS cases which will dramatically improve our ability to capture evidence in a timely manner. Additionally, having dedicated personnel on these cases rather than tasking the work to already overburdened prosecutors will mean faster charging and trial preparation than we are currently capable of achieving. The new unit will bring much needed improvement to our process which has been substantially limited by poor resources.

Recommendation 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.

Response: This recommendation has not yet been implemented. We have drafted a proposed MOU and shared it with the SFPD. We are awaiting their feedback and acceptance of the new terms. We hope to reach agreement by September 30, 2016.

Recommendation 5.A: "The DA should immediately give the investigation of OIS cases priority and dedicate the departmental resources required to reduce the time the DA's Office takes to complete its criminal investigation and issue its charging decision letters in OIS cases."

Response: This recommendation has been implemented in part, and will be fully implemented once the funding for the IIB is released and the positions are filled. The District Attorney has always given the investigation of OIS incidents top priority and has used the limited resources available to his office to ensure that each OIS investigation is conducted in a thorough and professional manner. However, the historic lack of funding specifically dedicated to the investigation of OIS incidents has resulted in a much longer than optimal length of time required to complete each investigation and issue the charging decision letters. We have already determined several ways to improve the speed and independence of OIS investigations. As noted in response to Recommendation 2.A, we requested funding to create the IBB and this request was funded in the current fiscal year's budget.

Recommendation 5.B: "The DA should determine the resources necessary to reduce the length of time the DA's Office spends to complete its criminal investigations in OIS incidents and then make sufficient requests for those resources in the proposed budget for fiscal year 2017-2018, and thereafter."

Response: This recommendation has been implemented. Our primary request in the 2016-17 budget was for staffing to improve the way we investigate and prosecute OIS cases. We recognized the long timeframe for completing our work as well as other problems with the process. This compelled us to request funding and push hard for the creation of a new unit in our office dedicated solely to this work because of its paramount importance. Unfortunately, the positions were placed on reserve so we have not been able to hire staff yet.

Recommendation 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 town hall 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."

Response: This recommendation has been implemented in part, and will be fully implemented by no later than December 31, 2016. The District Attorney's Office has attended a number of town hall meetings concerning OIS incidents over the last few years, and the District Attorney has personally met with the concerned community members, including family and friends, in connection with several of them.

Recommendation 14.A: "The DA's Office should make a public announcement each time it issues a charging decision letter so that the public is made aware that it has completed its OIS criminal investigation."

Response: This recommendation has been implemented. We already prepare a letter summarizing each incident and post it to our website. Going forward, the District Attorney's Office will also issue a press statement each time a charging decision has been made relating to an OIS investigation.

Recommendation 14.B: “The DA’s Office should make its charging decision letters on its website more easily accessible to the public by including on the index page the name of the individual shot and the date of the OIS incident.”

Response: This recommendation has been implemented.