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The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

September 15, 2016

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

SUZY LOFTUS
President

L. JULIUS M. TURMAN
Vice President

DR. JOE MARSHALL
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Commissioner

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Commissioner

Sergeant Rachael Kilshaw
Secretary

RE: Civil Grand Jury Report - *Into the Open: Opportunities for More Timely and Transparent Investigations of Fatal San Francisco Police Department Officer-Involved Shootings.*

Dear Judge Stewart:

Pursuant to California Penal Code sections 933 and 933.05, the following is the Police Commission's ("Commission") response to the 2015 -2016 Civil Grand Jury Report entitled, "**Into the Open: Opportunities for More Timely and Transparent Investigations of Fatal San Francisco Police Department Officer-Involved Shootings**" ("Report"). The Commission would like to thank the members of the Civil Grand Jury for their interest in the City's various investigations of Officer-Involved Shootings ("OIS") and for their efforts to improve the timeliness and transparency of OIS investigations.

FINDINGS

Finding F.2: Because the SFPD consistently does not meet the time frame in its own General Order by which investigations of the OIS incidents are to be conducted and completed, the General Orders create a sense of 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 the inherent complexities (forensic evidence processing, etc.) involved in conducting OIS investigations.

In addition, the current deadlines do not consider the dependencies of independent investigations now required that are outside the control of the Commission and 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, and in particular, 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 litigations where the officer is the defendant in the matter is completed. While the administrative case could theoretically be closed before these happen, the 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.

RECOMMENDATIONS

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 implemented but will be 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 Commission 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 implemented but will be in the future.

This recommendation is being reviewed by the DOJ-CRI review team and compared against national best practices. The Commission will review and implement recommendations made by the DOJ-CRI and the Civil Grand Jury.

Recommendation R.7.B: The Police Commission should support the OCC's funding requests in the proposed budget for fiscal year 2017-2018, and thereafter, for transcription services.

Recommendation has been implemented.

The Commission advocates on behalf of the OCC's funding requests each year and has done so for FY 2017-2018. The OCC recently obtained funding for transcriptions services.

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 requires further analysis.

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 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 Media Relations Unit. Updated information is also provided at a town hall meeting or meeting with community leaders, held within 10 days of an OIS incident, as well as at the weekly Commission meetings and at meetings with community leaders, stakeholders, and advocates.

This recommendation is being reviewed by the DOJ-CRI review team and compared against national best practices. The Commission will review and implement recommendations made by the DOJ-CRI and the Civil Grand Jury.

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 requires further analysis.

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 town hall meetings are released to the media and posted on the website. The Commission 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 on the SFPD's website.

This recommendation is being reviewed by the DOJ-CRI review team and compared against national best practices. The Commission will review and implement recommendations made by the DOJ-CRI and the Civil Grand Jury.

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 had been the practice of the SFPD to hold town hall meetings in the area most affected by an OIS; members of the Commission were invited to attend those meetings. No more than three members of the Commission would attend the town hall meetings.

Most recently, as the SFPD has been expanding its collaboration with community stakeholders and interfaith leaders, meetings have been these specific groups who represent those neighborhoods most impacted by the incident. These community leaders then provide information to their respective communities. The SFPD has invited members of the Commission to attend these meetings, with no more than three Commissioners in attendance.

The Commission acknowledges the seriousness of these critical incidents and the importance of transparency, and will collaborate with the SFPD to draft a policy that will allow for information to be shared with the public whether at a town hall meeting or direct meeting with community leaders and stakeholders.

This recommendation is being reviewed by the DOJ-CRI review team and compared against national best practices. The Commission will review and implement recommendations made by the DOJ-CRI and the Civil Grand Jury.

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 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.

Recommendation requires further analysis.

For the past five years, a town hall meeting has been convened within 10 days of an OIS investigation as close as possible to the location of the incident. The SFPD has invited some members of the Commission to attend. All of the members of the Commission cannot attend the same town hall meeting at the same time to avoid violating Administrative Code 67 et seq. and Government Code 549954 and creating a quorum and holding an improperly noticed meeting.

The Commission acknowledges the seriousness of these critical incidents and the importance of transparency, and will collaborate with the SFPD to draft a policy that will allow for information to be shared with the public whether at a town hall meeting or direct meeting with community leaders and stakeholders.

This recommendation is being reviewed by the DOJ-CRI review team and compared against national best practices. The Commission will review and implement recommendations made by the DOJ-CRI and the Civil Grand Jury.

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 officers' 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 rules 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 R13.C: SFPD and the Police Commission should make if 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, 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 investigation (again see Recommendation R.8.A. and R.8.B.), should examine fatal OIS incidents 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 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 investigation 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 town hall meetings to share highlights from the report and the conclusions drawn from the OIS incident and should seek and allow for public comment and feedback.

Recommendation requires further analysis and may be implemented in the future.

The Commission has directed the SFPD to recommend policy changes resulting from OIS investigations where general policy issues have been identified during the course of the administrative investigation, but prior to the investigation being finalized.

This recommendation is being reviewed by the DOJ-CRI review team and compared against national best practices. The Commission will review and implement recommendations made by the DOJ-CRI and the Civil Grand Jury.

Conclusion:

On behalf of the entire Police Commission, I again want to thank you for the opportunity to respond 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.*"

Sincerely,


THOMAS P. MAZZUCCO ^{PA}
San Francisco Police Commission

cc: VIA EMAIL
Honorable Mayor Edwin Lee
Honorable San Francisco Board of Supervisors
Commission President Suzy Loftus
Interim Chief of Police Toney Chaplin
Deputy Chief Garret Tom