

Dear Acting Captain Altorfer,

Our office has completed its review of the materials related to Recommendation 10.1 that have been submitted to us as part of the collaborative reform process. After reviewing the package and information provided by the Department, the California Department of Justice finds as follows:

Recommendation 10.1:

The SFPD should establish a formal protocol to ensure that a representative of the Homicide Detail [now the Investigative Services Detail (ISD)] provides OCC [now the Department of Police Accountability (DPA)] and District Attorney's Office investigators [provide] a timely briefing about the facts of the case and to make arrangements for a formal walk-through or gain investigative access to the incident scene as soon as possible. The highest-ranking officer on the scene should be responsible for ensuring compliance with this recommendation,

Response to 10.1:

As a threshold matter, on May 4, 2019, SFPD entered a memorandum of understanding with the San Francisco District Attorney's Office regarding officer-involved shootings (OISs). Pursuant to the agreement, the District Attorney's Office will immediately respond to the scene of, and lead the criminal investigation into, officer-involved shootings, in-custody deaths, and uses of force resulting in serious bodily injury. The MOU outlines, among other things, SFPD's responsibilities at the scene of an officer-involved shooting, SFPD's briefing to the District Attorney's Office, and SFPD's role during civilian and SFPD witness interviews. Under the MOU, SFPD will lead the administrative (non-criminal) investigations and any ancillary criminal investigations regarding non-law enforcement personnel.

Consistent with the MOU, SFPD issued ISD Unit Order 20-01, which provides a formal protocol on providing DPA and the DA's office a timely briefing of the facts of an OIS and to conduct a walk-through. Under Unit Order 20-01, the Officer in Charge of ISD must conduct a primary crime scene walk-through of the OIS scene to members of the DA's Officer's Independent Investigations Bureau (IIB), which is the DA bureau in charge of investigating OISs. ISD also conducts a briefing for IIB on the facts leading up to and during the OIS. As part of that briefing, ISD must provide the following information to IIB:

1. All relevant information known at the time;
2. The name(s) and current location(s) of the officers who were involved in, or witness to, the incident;
3. The name(s), address(es), and current location(s) of all material civilian witness(es) to the incident
4. Any statements provided by officers;
5. The nature of any physical evidence discovered (including body worn camera footage); and
6. Location and medical condition of any injured parties

The Officer in Charge must also conduct a secondary walk-through and briefing with members of DPA.

To ensure that SFPD is continually improving its protocol, ISD also conducts a formal debrief of the OIS within fourteen days of the date of the OIS. As part of the debrief, ISD reviews its walk-throughs with the IIB and DPA and any other issues upon which ISD members think need to be improved. The Officer in Charge of the ISD must then prepare a memorandum summarizing the debrief and submit it to the Captain of Risk Management.

Based on the all of the above, the California Department of Justice finds SFPD in substantial compliance with this recommendation.

Please let us know if you have any questions or would like to discuss this further. Thank you.

Tanya

Tanya S. Koshy (she/her)
Deputy Attorney General
Civil Rights Enforcement Section
California Department of Justice
1515 Clay Street, Suite 2100
Oakland, CA 94612

[REDACTED]
[REDACTED]

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

Finding # 10	There is a lack of coordination and collaboration for responding to and investigating an officer-involved shooting.
---------------------	--

Recommendation # 10.1	The SFPD should establish a formal protocol to ensure that a representative of the Homicide Detail provides OCC and District Attorney's Office investigators a timely briefing about the facts of the case and to make arrangements for a formal walk-through or gain investigative access to the incident scene as soon as possible. The highest-ranking officer on the scene should be responsible for ensuring compliance with this recommendation.
------------------------------	--

Recommendation Status	Complete Partially Complete In Progress
	Not Started No Assessment

Summary

The San Francisco Police Department established a formal protocol for investigating officer-involved shooting incidents (OIS). Pursuant to a Memorandum of Understanding, officer-involved shootings incidents will be conducted by the District Attorney's Office of the City and County of San Francisco (SFDA). As a result, the Department's Homicide Unit is no longer involved in the investigation of OIS incidents. However, pursuant to Inspectional Services Division (ISD) Unit Order 20-01 Officer-Involved Shooting Incident Briefing & Walk-Through Procedures, a member of that Unit will conduct a walk-through with the SFDA as a requirement of their administrative investigation of the OIS incident. As the authority in charge of the criminal investigation, the SFDA will determine what OIS briefings are provided to the Department of Police Accountability (DPA), the SFPD, and the public. Unit Order 20-01 requires ISD to conduct a mandatory debrief and review, within 14 days of occurrence, that examines all aspects of OIS investigation. The Department's work in completing this recommendation is sufficient to be designated as Complete, however, the team will continue to monitor this area to ensure these practices are institutionalized.

Compliance Measures	Status/Measure Met
1 SFPD establish formal protocol regarding Homicide Detail responsibility to provide OIS briefings.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2 Homicide Detail provides timely briefing to DPA and DAO.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
3 Homicide Detail arrange formal walk-through or access to incident scene as soon as possible.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
4 SFPD highest-ranking Homicide Detail officer on-scene responsible for ensuring that Homicide Detail is providing timely briefings.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
5 Supervisory engagement and review.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
6 Continual review/improvement loop.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Administrative Issues

Compliance Issues



Collaborative Reform Completion Memorandum

Finding #10

There is a lack of coordination and collaboration for responding to and investigating an officer-involved shooting.

Recommendation # 10.1 The SFPD should establish a formal protocol to ensure that a representative of the Homicide Detail provides OCC and District Attorney's Office investigators a timely briefing about the facts of the case and to make arrangements for a formal walk-through or gain investigative access to the incident scene as soon as possible. The highest-ranking officer on the scene should be responsible for ensuring compliance with this recommendation.

Response Date: 8/27/2020

Executive Summary:

In May of 2019, a Memorandum of Understanding ("MOU") [REDACTED] was signed between the San Francisco Police Department ("SFPD") and the San Francisco District Attorney's Office ("SFDA"). The MOU establishes clear guidelines on officer-involved shooting ("OIS") notifications and SFPD briefing procedures. SFDA IIB and SFPD ISD will now assume the OIS investigative responsibility which was previously assigned to the SFPD Homicide Division.

The MOU states the SFDA's role is to lead the independent investigation and assessment of whether SFPD personnel committed any violations of criminal law during a Covered Incident, which includes officer-involved shootings. Independent of SFDA, SFPD's role is to control and manage all OIS-related crime scenes and conduct ancillary criminal and administrative investigations of a covered Incident, including OIS investigations. SFDA and SFPD are to coordinate their respective investigations and work cooperatively to ensure that all evidence and investigative results are shared when legally permissible.

SFDA has designated their Independent Investigations Bureau ("IIB") to lead these OIS investigations. In addition, SFPD has designated the department's Investigative Services Detail ("ISD") to conduct criminal investigations of ancillary crimes which occurred prior to, contemporaneous with, or after an OIS. Additionally, per the MOU, ISD is to maintain the integrity of and manage all OIS-related crime scenes and preserve evidence found within such scenes.

ISD Unit Order 20-01 [REDACTED] provides protocol on "ISD Officer-Involved Shooting Incident Briefing & Scene Walk-Through Procedures."



Collaborative Reform Completion Memorandum

Compliance Measures:

- 1) **SFPD establishes formal protocol regarding Investigative Services Detail (ISD) Homicide-Detail responsibility to provide OIS briefings.**

ISD Unit Order 20-01 [REDACTED] provides protocol regarding documented notifications and briefing procedures for ISD in the event of an officer-involved shooting occurring in the City and County of San Francisco.

- 2) **ISD Homicide-Detail provides timely briefing to DPA and IIB.**

ISD Unit Order 20-01 [REDACTED] directs that as soon as practical, the field supervisor on scene shall conduct a crime scene walk-through and briefing of the events leading up to and including the Officer-Involved Shooting to ISD members. It is imperative that the supervisor who provides the briefing and walk-through is uninvolved and not a witness to the incident.

ISD will provide the following information to designated investigators of SFDA IIB:

- A) All relevant information known at the time
- B) The name(s) and current location(s) of the officers who were involved in, or witness to, the incident
- C) The name(s), address(es), and current location(s) of all material civilian witness(es) to the incident
- D) Any statements provided by officers, including any "Public Safety Statement(s)"
- E) Reveal the nature of any physical evidence discovered; including but not limited to body worn camera (BWC) recordings or other available audio/video recordings
- F) The location and medical condition of any injured parties

ISD will conduct a physical walk-through of the crime scene(s) with members of SFDA IIB. ISD shall preserve and maintain the integrity of the crime scene(s) and any physical evidence, while providing investigators access to examine the scene.

The ISD-OIC or their designee shall conduct a secondary briefing and walk-through with designated members of IAD and DPA.

In addition, a designated ISD member shall complete and maintain a "Call-Out Notes" [REDACTED] records log. The Call-Out Notes shall document the time, location, and participants of the conducted briefings and walk-throughs.



Collaborative Reform Completion Memorandum

3) ~~ISD Homicide Detail~~ arrange formal walk-through or access to incident scene as soon as possible.

ISD Unit Order 20-01 directs that the Officer in Charge of ISD, or her/his designee, lead a primary walk-through of an OIS-related incident scene with IIB investigators as well as a second walk-through with IAD and DPA members. Please refer to response provided in Compliance Measure #2.

4) ~~SFPD highest-ranking ISD Homicide Detail officer on-scene, or their designee, responsible for ensuring that ISD Homicide Detail is providing timely briefings.~~

The ISD-OIC, or his or her designee, is responsible for the control and management of all Officer-Involved Shooting-related crime scenes. ISD Unit Order 20-01 delineates ISD personnel responsibilities related to an Officer-Involved Shooting which includes providing IIB with timely briefings on pertinent information. Please see the information provided in Compliance Measure #2.

5) Supervisory engagement and review.

A designated ISD member shall complete and maintain a "Call-Out Notes" records log. The Call-Out Notes shall document the time, location, and participants of the conducted briefings and walk-throughs. The Call-Out Notes should also document the following relevant information:

- A) Command Post OIC personnel
- B) Officer Public Safety Statement(s)
- C) BWC / Firearm Seizure
- D) Notifications
- E) Involved Member(s)
- F) ISD and IAD Members
- G) Briefing Notes (conducted by, to whom, when)
- H) Walk-Throughs of ISD, IIB, IAD, and DPA (conducted by and when)
- I) CSI personnel
- J) Fire/Medic personnel
- K) Witness Information

** The call out notes shall be reviewed and approved by the OIC of ISD to ensure that proper procedures, protocol, and documentation have occurred. **



Collaborative Reform Completion Memorandum

6) Continual review/improvement loop.

Per **ISD Unit Order 20-01** ISD shall conduct a formal debrief of a covered incident within fourteen days of the date of occurrence. Suggested topics to be discussed are:

- 1) Notifications
- 2) Member response (ISD)
- 3) Outside Agency Response and response Times (IIB, DA, DPA)
- 4) Command Post operations
- 5) Debriefing officers on scene
- 6) Crime Scene Processing
- 7) Debriefing SFPD Personnel (Command Staff, IAD) and outside agencies (IIB, DA, DPA)
- 8) A review of the two walks through with IIB, and then IAD and DPA.
- 9) Witnesses interviews
- 10) Cooperation with outside agencies (IIB, IAD, DPA)
- 11) Any issues that members feel needs to be addressed or improved upon.

A member of ISD will be designated as a note taker, and an intra-departmental memorandum shall be written to the Captain of Risk Management from the OIC of ISD with a summary of the Debriefing.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO
DISTRICT ATTORNEY'S OFFICE AND THE SAN FRANCISCO POLICE
DEPARTMENT REGARDING THE INVESTIGATION OF OFFICER-INVOLVED
SHOOTINGS, IN-CUSTODY DEATHS, AND USES OF FORCE RESULTING IN
SERIOUS BODILY INJURY**

PREAMBLE

Peace officers perform a vital and often dangerous job in our communities. Situations will occur where peace officers must use force, including, at times, deadly force; however, the community expects that such force will be used only when reasonable and necessary under the totality of the circumstances. When peace officers use deadly force or force resulting in serious bodily injury, the public has a right to expect that a thorough and neutral examination will be conducted.

The San Francisco District Attorney's Office ("SFDA") and the San Francisco Police Department ("SFPD") agree that SFDA personnel will immediately respond to the scene of SFPD officer-involved shootings and investigate them as well as in-custody deaths and certain incidents where uses of force result in serious bodily injuries. The policies and procedures to be followed are set forth in this Memorandum of Understanding ("MOU").

PURPOSE

The purpose of this MOU is to outline the agreement between SFPD and SFDA regarding the procedures for the criminal investigation of "Covered Incidents" to determine if an officer committed a criminal offense.

TERMS AND DEFINITIONS

- A. **Officers:** For purposes of this MOU, the term "officer" shall mean any person employed by SFPD who meets the definition set forth in California Penal Code § 830.6.
- B. **Covered Incidents:** For the purposes of this MOU, "Covered Incidents" shall mean the following incidents wherein SFPD officers are acting under color of law or color of authority: (1) officer- involved shootings, (2) in-custody deaths, and (3) uses of force resulting in serious bodily injury, as outlined below:
 - 1. **Officer-Involved Shooting:** An officer's discharge of a firearm, with or without physical injury or death to a person, or a negligent discharge that results in physical injury or death of a person. For purposes of this MOU, Covered Incidents do NOT include an officer's discharge of a firearm (i) that is intended to kill a dangerous or wounded animal; (ii) that is intended to signal help for an urgent purpose; (iii) that is unintended and does not cause injury or death to a person; (iv) that occurs outside the borders of the City and County of San Francisco; or (v) that occurs as a training, sporting or recreational activity.
 - 2. **In-Custody Death:** Any death that occurs when a person is restrained by an on-duty SFPD officer by means of (i) physical restraints and/or any use of force, as defined by SFPD policy; (ii) detention or confinement in an SFPD vehicle; or (iii) detention or confinement in a jail or detention facility while in the custody of an SFPD officer.

3. **Uses of Force:** Any uses of force resulting in injury that requires admission to the hospital or upon an SFPD supervisory evaluation, as outlined in General Order 5.01 (Use of Force), that the use of force appears unreasonable and resulted in serious bodily injury. "Serious bodily injury" is defined in the California Penal Code, section 243(f)(4), as a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.

Whenever there is a question of whether an incident meets the criteria of this MOU, an SFPD supervisory officer shall consult, as soon as practicable, with the SFPD Commanding Officer of Risk Management who will consult with the on-call SFDA personnel to determine if a Covered Incident investigative response is appropriate.

- C. **Ancillary Criminal Investigation:** Notwithstanding the SFDA's investigation to determine whether an officer committed a criminal offense during any Covered Incident, SFPD shall retain the authority to conduct ancillary criminal investigations. An "ancillary criminal investigation" is a criminal investigation of conduct by non-law enforcement personnel. Should there be an ancillary criminal investigation, including but not limited to underlying criminal activity that preceded or occurred at the same time as the covered incident or an on-going investigation outside of the covered incident, that investigation shall remain with SFPD.
- D. **Administrative Investigation:** An investigation conducted by SFPD administrative investigators to determine whether any involved SFPD personnel violated any general order, regulation, policy, or other workplace rule during the Covered Incident. These investigations are administrative in nature only.

SEPARATION OF CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

SFDA and SFPD will jointly and cooperatively investigate all Covered Incidents. SFDA's role will be to lead the independent investigation and assessment of whether SFPD personnel committed any violations of criminal law during a Covered Incident. Independent of SFDA, SFPD's role will be to conduct ancillary criminal and administrative investigations of a Covered Incident. SFDA and SFPD will coordinate their respective investigations and work cooperatively to ensure that all evidence and investigative results are shared when legally permissible.

SFPD has the responsibility to address several issues. As to any ancillary criminal investigations, SFPD will determine whether criminal law violations occurred. In any administrative investigations, SFPD will determine whether departmental policies were followed. Thus, SFPD may conduct its administrative review and investigation concurrently with all criminal investigations into a Covered Incident.

During the course of an administrative inquiry, a law enforcement agency is authorized by law to compel its officers to give statements regarding matters that are subject of the administrative investigation. (Public Safety Officers Procedural Bill of Rights Act ("POBRA"), Government Code §§ 3300-3313.) However, the law limits the admissibility of such a compelled statement in a criminal prosecution. Therefore, the administrative investigation must be separate from the criminal investigation.

Assistant district attorneys and inspectors from SFDA will respond to the scene and will lead the criminal investigation into the covered incident with assistance from the SFPD. The primary objective of SFDA's investigation is to accurately, thoroughly, and objectively investigate the incident and to determine the potential criminal liability, or lack thereof, of SFPD officers involved in a Covered Incident.

NOTIFICATION REQUIREMENTS

Immediately upon occurrence or discovery of a Covered Incident in San Francisco, SFPD shall notify the on-call SFDA investigator. SFPD shall provide the on-call SFDA investigator with a brief summary of all the facts known at the time, including: the location of the incident, the location of the command post, suggested access routes, and any safety concerns.

AT THE SCENE

SFPD shall remain the lead agency responsible for securing the location, collecting all physical evidence, and photographing and diagramming the scene; thereby maintaining the chain of custody and proper processing of all evidence. Both parties agree and understand that SFPD will be in command of and direct the activities of all SFPD personnel and SFDA will be in command of and direct the activities of all SFDA personnel. SFDA and SFPD criminal investigative responsibilities at the crime scene location are as follows:

SFDA responsibilities:

- A. Check into the crime scene with the officer maintaining the crime scene log upon arrival and before departure.
- B. Lead all interviews related to the criminal investigation of a Covered Incident. SFPD investigators shall participate in and ask questions related to any ancillary criminal investigations during such interviews.
- C. When feasible, advise investigating SFPD personnel about criminal legal issues as they relate to SFDA's investigation.
- D. Record their observations.
- E. Consult with SFPD investigative personnel regarding the collection of evidence.
- F. Conduct an independent investigation of the facts and circumstances of the Covered Incident, which may include independent analyses of evidence collected and logged by SFPD and witness interviews.

SFPD responsibilities:

The SFPD ranking member, or his or her designee, shall brief the ranking member of SFDA personnel of the following:

- A. All relevant information known at the time.

- B. The names and current locations of the officers who were involved in, or witnesses to, the incident.
- C. The names, addresses, and current location of all civilian witnesses to the incident.
- D. The statements of the officers, including any "public safety statements."
- E. The physical evidence discovered, including any Body Worn Camera recordings or other audio or video recordings.
- F. The medical condition of any injured parties.

Ensure that SFDA personnel have access to the scene of the Covered Incident once approved by the ranking police member of the unit on scene that is responsible for the investigation.

DEPARTMENT OF POLICE ACCOUNTABILITY

SFDA and SFPD acknowledge that pursuant to Prop D, the Department of Police Accountability (DPA) is responsible for "conducting timely and complete [administrative] investigation of any incident occurring within the City and County of San Francisco in which a member of the uniformed ranks of the San Francisco Police Department discharges a firearm resulting in the physical injury or death of a person, even if the discharge is accidental." S.F. Admin. Code §96.11

INTERVIEWS OF CIVILIAN WITNESSES

SFDA personnel, along with SFPD, shall make every attempt to locate, identify, and interview all potential witnesses to an incident. SFDA personnel will lead interviews of all civilian witnesses related to the Covered Incident. SFPD investigators shall participate in and may ask questions related to any ancillary criminal investigations during such interviews. In addition, SFDA investigative personnel shall ascertain from SFPD officers at the scene the names, addresses, and contact information of any civilian witnesses who cannot or will not remain at the scene. All witnesses shall be interviewed separately from each other by investigative personnel to maintain the integrity of their statements. All interviews shall be electronically recorded by both SFPD and SFDA, unless the civilian witness refuses to be electronically recorded.

INTERVIEWS OF SFPD OFFICERS

Prior to interview, all SFPD officers directly involved in, or witness to, a Covered Incident shall be physically sequestered from one another and directed not to communicate with each other to maintain the integrity of their statements. All SFPD officers who are witnesses to the incident shall be separately interviewed. The interviews shall take place as soon as practicable after the incident and shall be electronically recorded.

1. Criminal Investigations
 - (a) Police Officers have the same rights and privileges regarding criminal investigations as other citizens.

- (b) SFDA personnel shall lead criminal interviews of all SFPD personnel involved in a Covered Incident with SFPD participation, when SFPD deems necessary, to conduct any ancillary criminal investigations.
- (c) SFDA personnel shall advise an officer at the outset of the interview that the interview concerns a criminal matter and is voluntary.
- (d) No punitive action can be taken by the Employer Agency against the interviewee if he/she exercises his or her right against self-incrimination when speaking with investigators.
- (e) If the interview is or becomes a custodial interrogation, the officer will be so advised. *Miranda* is applicable if and when the interview becomes a custodial interrogation.
- (f) Officers have the right to consult with representatives and/or support personnel prior to interviews and to have their representatives present during criminal investigation interviews. Representatives are usually lawyers or union officials, while supporters are usually spouses, co-workers, friends or clergypersons.
- (g) SFDA acknowledges that the Police Commission's General Order 10.11 (DGO 10.11), concerning body-worn cameras, applies to SFPD officers so long as General Order 10.11 is in effect and is not superseded by state law.
- (h) SFPD administrative investigators shall not be physically present during criminal interviews. However, SFPD administrative investigators may monitor criminal interviews either through visual observation and audible reception of the interview through glass or through observation of real-time video or closed-circuit transmission of the criminal interview.

2. Administrative Investigations

- (a) If an officer chooses not to make a voluntary statement, SFPD may notify SFDA before compelling the officer to submit to an interview.
- (b) If an officer is subjected to a compelled interview, the officer will be provided with all rights afforded under the Public Safety Officers' Procedural Bill of Rights Act and the *Lybarger* cases.

Administrative interviews shall be conducted pursuant to SFPD General Orders, including General Order 10.11 (DGO 10.11), concerning body-worn cameras.

MEDICAL EVIDENCE

SFDA personnel should remain at the scene of a fatal shooting or in-custody death until the Medical Examiner's personnel arrives and completes its on-scene investigation. When medical personnel determines an individual shall be transported to a medical facility, SFDA and SFPD personnel shall attempt to question the medical personnel who treated the individual and make efforts to preserve evidence.

JOINT TRAININGS

SFPD and SFDA will endeavor to conduct joint training regarding Covered Incidents and other related issues.

INVESTIGATIVE REPORTS

It is the intent of SFDA and SFPD to complete their respective reviews of Covered Incidents as quickly as possible, consistent with the primary goal of conducting thorough and objective reviews of the facts.

As the criminal investigation proceeds, and as the information becomes available, copies of all reports, statements, forensic analysis, chronological records, digital recordings (video, audio, photos), and any other information received by SFPD shall be forwarded to the assigned SFDA personnel. This procedure will permit SFDA's review process to proceed simultaneously with the investigation, and it will permit SFDA to request SFPD to clarify reports or conduct any additional investigation, if required. Any requests by SFDA for additional crime scene investigation or laboratory tests shall be made in writing to SFPD. Upon written request by SFDA, SFPD shall promptly provide copies of all materials as permitted by applicable law.

In any event, SFDA and SFPD shall endeavor to complete the criminal investigation within six months of the Covered Incident, depending on the complexity of the investigation. SFDA will notify SFPD, in writing, when it is determined the investigation will take longer than six months to complete.

DISCLOSURE OF SFDA INVESTIGATIVE MATERIALS

SFDA shall maintain and preserve all evidence it gathers during its investigation of a Covered Incident and all documentation of such investigation. SFDA shall designate materials as either "Evidentiary" or "Protected," which are defined as:

1. Evidentiary Materials: All evidence collected, received, or otherwise discovered during the course of the investigation. For illustration purposes only, "Evidentiary Materials" includes photographs, videos, the identities of witnesses to a Covered Incident, and factual portions of recorded statements of witnesses to a Covered Incident, to the extent that SFDA does not have an articulable and reasonable legal basis to believe that disclosure of the Evidentiary Materials will create a legitimate security risk or risk to subsequent criminal prosecutions.
2. Protected Materials: All materials upon which SFDA has an articulable and reasonable legal basis to claim privilege or protection, or materials which could create a legitimate security risk or risk to subsequent criminal prosecutions if disclosed.

Upon declination of criminal charges or upon completion of all prosecutions relating to the investigation, SFDA shall review all of its investigative materials and provide all Evidentiary Materials and, at its discretion, any appropriate Protected Materials to SFPD.

FINAL ACTION

At the conclusion of SFDA's investigation of a Covered Incident, the District Attorney or his/her designee, shall review and analyze all the evidence to determine whether any SFPD officer acted unlawfully. If the District Attorney declines to file criminal charges, the District Attorney or his/her designee shall notify the SFPD of the findings in writing. SFDA's policies regarding crime charging are set forth in the 2016 CDAA Professionalism Manual, which states in pertinent part:

The prosecutor should [file criminal charges] only if the following four basic requirements are satisfied:

1. There has been a complete investigation and thorough consideration of all pertinent information.
2. There is legally sufficient, admissible evidence of corpus delicti.
3. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime.
4. The prosecutor has considered the probability of conviction by an objective fact finder hearing the admissible evidence.

The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor. (See Uniform Crime Charging Standards, CDAA 1989.)

Effective Date: This MOU shall be effective on May 4th, 2019.

Duration of MOU: This MOU shall remain in full force and effect for a period of two (2) years or until terminated by the District Attorney or the Chief of Police after providing fifteen days' written notice to the other party. If there is any disagreement regarding the implementation of the provisions contained in this MOU, both parties agree to immediately meet, no later than five business days thereafter, to resolve the disagreement.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as indicated below.



George Gascon, District Attorney



William Scott, Chief of Police

Date: 4-10-19

Date: 04/09/2019