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DEPARTMENT OF JUSTICE



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December 28, 2018

Sent via email: [REDACTED]

RE: California Department of Justice Review of

Dear Chief Scott:

The California Department of Justice (Cal.DOJ) has concluded its initial review of the packages submitted to us regarding the compliance measures relating to the U.S. DOJ recommendations 7.1, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 13.1, 14.2, 17.1, 24.4, 26.3, and 34.3. We have reviewed the packages in accordance with both the Memorandum of Understanding (Section 2, paragraph e) and the individual compliance measures prepared by Hillard Heintz as agreed upon between all parties. We appreciate the San Francisco Police Department's (SFPD) cooperative and collaborative engagement with our office in working through these initial 13 compliance measures. This review of each of these packages, and the issues addressed below, have been discussed between both Cal DOJ and the SFPD in a collegial productive manner. Although we are continuing to work out some kinks in this review process, your team has assured us that they are working toward streamlining the package review process for both Hillard Heintz and the California Department of Justice. We look forward to seeing those changes in the near future.

We will also be holding a meeting in January in which the SFPD will be presenting us with additional information on how it intends to meet many of the review loop and/or audit criteria contained in many of the compliance measures. As you will see discussed below, because several of the packages that were submitted to us do not currently contain a plan or any information concerning review loops and/or audits, the Cal DOJ is unable to designate some of the recommendations as being substantially compliant. We hope that this will, however, be resolved once a more robust review and audit process is incorporated into the SFPD package submission process. Based upon the current information provided to Cal DOJ, we respond to the submitted compliance measures as follows:

Recommendation 7.1: The SFPD must develop a policy on the use of the 36-inch baton for the use of interacting with individuals with edged weapons. The policy should also dictate the proper handling of the baton, and the policy should dictate when it is appropriate to use a two-hand stance and when a one-hand approach is needed.

Response to 7.1: The Cal DOJ finds SFPD's implementation of this recommendation to be in substantial compliance given that Department Bulletin 16-162, Issued on 10/7/2016, rescinds Department Bulletin 16-071 which required the use of the 36-inch baton as provided in that bulletin.

Recommendation 7.2: The SFPD must develop training on the use of the 36-inch baton for the use of interacting with individuals with edged weapons. Once developed, the training should be deployed to all officers.

Response to 7.2: The Cal DOJ finds SFPD's implementation of this recommendation to be in substantial compliance given that Department Bulletin 16-162, Issued on 10/7/2016, rescinds Department Bulletin 16-071 which required the use of the 36-inch baton as provided in that bulletin.

Recommendation 7.3: The SFPD should prohibit the use of the 36-inch baton until all officers are properly trained in the intended use.

Response to 7.3: Department Bulletin 16-162, Issued on 10/7/2016, rescinds Department Bulletin 16-071 which required the use of the 36-inch baton as provided in that bulletin; however, Department Bulletin 16-162 states that Department Bulletin 16-006 remains in full effect. Department Bulletin 16-006 specifically states that the 36-inch baton is required equipment, but it was explained to the Cal DOJ that the 36-inch baton is limited to crowd control and that the compliance measure itself was directed at interacting with individuals with edged weapons. Therefore, it should be clarified, within the bulletin itself, that Bulletin 16-006's reference to the 36-inch baton is limited to crowd control. With this understanding, the Cal DOJ finds SFPD's implementation of this recommendation to be in substantial compliance as this is a minor clarification that can be easily implemented.

Recommendation 9.1: The SFPD should work with the Department of Emergency Management to provide it with primary responsibility for timely notification to all stakeholders on the call-out list used immediately after an officer-involved shooting incident

Response to 9.1: The Cal DOJ finds SFPD's implementation of this recommendation to be in substantial compliance in light of its use of the Everbridge notification system.

Recommendation 9.2: Until the Department of Emergency Management protocol is established, when activating the protocols for notification following an officer-involved shooting incident, the Operations Center should notify representatives of IAD, the District Attorney's Office, and OCC, with no lag time occurring in any of the notifications. The Operations Center log for notifications should be included as part of the investigation report case file to accurately and fully depict notifications.

Response to 9.2: The SFPD has adopted the Everbridge notification system which, based upon the information, provided sends out timely notifications of an officer-involved shooting to the Internal Affairs Department (IAD), the District Attorney's Office (DAO), and the Department of Police Accountability (DPA); however, compliance measures 9.2.3, 9.2.4, and 9.2.5 as agreed upon between the parties require the inclusion of the notification log in the investigative report file, an audit for the investigative case files for the log attachment, and supervisory review of officer-involved shooting notifications. The SFPD has provided no evidence of complying with compliance

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measures 9.2.3, 9.2.4, and 9.2.5, and for these reasons Cal DOJ finds that SFPD is not in substantial compliance with this recommendation.

Recommendation 9.3: All notified responders should be required to notify the Department of Emergency Management of the time of their arrival. This will create a comprehensive permanent record of the time of notifications and responses of the units to the scene.

Response to 9.3: The SFPD has adopted the Everbridge notification system, which based upon the information provided, sends out timely notifications of an officer-involved shooting to the Internal Affairs Department (IAD), the District Attorney's Office (DAO), and the Department of Police Accountability (DPA); however, compliance measures 9.3.2, 9.3.3, and 9.2.4 as agreed upon between the parties require that a permanent record of the notifications be maintained, evidence of a continual review/improvement loop, and evidence of supportive and remedial actions if deficiencies are found. The SFPD has provided no evidence of complying with compliance measures 9.3.2 or 9.3.3. It does appear from the information provided that there is documentation via email exchange about printing out a notification report, however, there is no documentation discussing how that report will be analyzed or used as part of a review improvement loop. There is also some email documentation about some corrective measures taken after the first deployment of this system, but this appears to be on an ad hoc basis, as opposed to a more structured approach to improving these notifications. For these reasons, Cal DOJ finds that SFPD is not in substantial compliance with this recommendation.

Recommendation 9.4: The SFPD should explore the option for timely electronic notification to all oversight partners.

Response to 9.4: The SFPD has adopted the Everbridge notification system which, based upon the information, provided sends out timely notifications of an officer-involved shooting to the Internal Affairs Department (IAD), the District Attorney's Office (DAO), and the Department of Police Accountability (DPA) and therefore is in substantial compliance.

Recommendation 13.1: The practice of hosting a town hall meeting in the community shortly after the incident should continue with a focus on only releasing known facts.

Response to 13.1: The SFPD has hosted and publicized town halls that provided factual representation within ten calendar days of an officer involved shooting in the community where the incident occurred, as such it appears that SFPD has met the criteria with respect to compliance measure 13.1.1, 13.1.2, and 13.1.3; however, compliance measure 13.1.4 as agreed upon between the parties requires that SFPD establish a continual review or improvement loop. While the SFPD has informed us verbally that it has an informal review process, it has provided no documentation of complying with 13.1.4, and for this reason, Cal DOJ finds that SFPD is not presently in substantial compliance with this recommendation.

Recommendation 14.2: The SFPD should ensure that media outreach is immediate and that information conveyed is succinct and accurate.

Response to 14.2: The SFPD has drafted and implemented a media outreach strategy that on its face appears to provide accurate and succinct information immediately following an officer involved shooting; however, compliance measure 14.2.3 as agreed upon between the parties requires that SFPD establish a continual review or improvement loop. While the SFPD has informed us verbally that it has an informal review process, the SFPD has provided no documentation of complying with 14.2.3, and for this reason, Cal DOJ finds that SFPD is not in substantial compliance with this recommendation.

Recommendation 17.1: The SFPD should immediately prohibit the carotid restraint technique as a use of force option.

Response to 17.1: The SFPD has prohibited the carotid restraint technique as a use of force option; however, compliance measures 17.1.2 and 17.1.3 as agreed upon between the parties require that SFPD conduct periodic audits of use of force reporting, and that SFPD provide evidence of supportive and remedial action if deficiencies are found. The SFPD has provided no evidence of complying with 17.1.2 and 17.1.3, and, for this reason, Cal DOJ finds that SFPD is not in substantial compliance with this recommendation.

Recommendation 24.4: The SFPD should implement a policy and a Department General Order stipulating that there is no right to privacy in any use of department-owned equipment or facilities.

Response to 24.4: The Cal DOJ finds SFPD's implementation of this recommendation to be in substantial compliance as this recommendation relates to department-owned equipment or facilities only. However, we do note that SFPD may wish to enact a policy with respect to public business conducted on personal devices in light of the California Supreme Court's holding that "when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act." (*City of San Jose v. Santa Clara* (2017) 2 Cal.5th 608, 629.)

Recommendation 26.3: The SFPD should implement an immediate public education campaign on the policies and procedures for reporting misconduct as centered on anti-bias and the initiatives underway.

Response to 26.3: Compliance measures 26.3.1, 26.3.2, 26.3.3, and 26.3.4 respectively require the following: (1) immediate implementation of a public education campaign; (2) publicize via multiple media the procedures for reporting bias misconduct; (3) publicize via multiple media the SFPD's initiatives for bias-free policing; and (4) ongoing evaluation loop and audit. The information provided to Cal DOJ is that these objectives are accomplished by SFPD through posting complaint information on its website, posting through social media including Facebook, Next Door and Twitter, and permitting the district Captains to engage in outreach and publicity at the local level as they see fit. Based upon the information provided, Cal DOJ does not find the SFPD to be in substantial compliance with this recommendation for several reasons. The media used to conduct this public education campaign does not reach the entire community, only those members who have access to computers, cell phones, and electronic communication. There was also

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no information provided in the package that this media campaign is being carried out in any language other than English. The San Francisco community is exceptionally rich and diverse, and in order for this public education campaign to be successful it should be carried out in more than one language. There is also no information provided with respect to the work that the Captains are doing in the district stations as part of this objective. Finally, no information has been provided with respect to SFPD's plans or processes regarding compliance measure 26.3.4, which requires an ongoing review and/or audit loop. For these reasons, Cal DOJ finds that SFPD is not in substantial compliance with this recommendation.

Recommendation 34.3: The SFPD should consider expanding the functionality of the E-585 traffic stop incident report data collection system to include data collection for all pedestrian and non-motorized conveyances.

Response to 34.3: The Cal DOJ finds that in light of the state mandate to collect this type of data under AB 953 that the SFPD has met its obligations under compliance measures 34.1 and 34.2. With respect to compliance measure 34.3, SFPD has provided verbal representations that they have a process to analyze the data which is required by local rule. As such, Cal DOJ finds that SFPD is in substantial compliance, but to remain in substantial compliance SFPD will need to engage in ongoing review and analysis of the data to ensure sufficiency and accuracy of data collected as agreed upon in the compliance measure.

We look forward to receiving and reviewing the information with respect to those compliance measures as noted above. Please let us know if you have any questions or would like to discuss anything addressed herein.

Sincerely,



NANCY A. BENINATI
Supervising Deputy Attorney General

For XAVIER BECERRA
Attorney General

[REDACTED]



DOJ Request For Information (RFI) Sheet

Recommendation # 7.1 The SFPD must develop a policy on the use of the 36-inch baton for the use of interacting with individuals with edged weapons. The policy should also dictate the proper handling of the baton, and the policy should dictate when it's appropriate to use a two-hand stance and when a one-hand approach is needed.

Response Date: 11/7/2018

Screening Questions:

1) Did the Department implement these Compliance Measures?

a.) Develop policy on use of 36-inch baton with individuals with edged weapons.

-No. The Department has decided not to implement this compliance measure, and has rescinded DB 16-071.

Department Bulletin 16-071 (Department Issued Impact Weapons) came into existence as a short gap by adding the 36-inch baton as a counter-measure against edged weapons. Using the longer baton would allow members another less-lethal option and distance from a person armed with an edged weapon.

In order for officers to become proficient in the use of 36" baton against an edged weapon or knife, the officers would have to be trained to an exceptionally high level. Once an officer reached a proficient level, they would have to continue to train in order to maintain and not lose this skill set. This training regimen would be impracticable due to personnel and resource limitations. SFPD should utilize other less lethal options including ERIW's, OC (Pepper Spray) and ECW's (Taser) when confronting subjects with edged weapons or knives.

Using time and distance as well as incorporating de-escalation techniques provide a safer, more effective option for both officers and subjects in these situations

No formal training policy or class was devised to teach officers how to specifically use the 36-inch baton during an encounter with a person armed with an edged weapon. The policy has been rescinded by the issuance of 16-162 (Department Issued Impact Weapons Update) dated October 7, 2016. As such, Department Bulletin 16-071 has been rescinded.

This question is also addressed in question #2.

b.) Ensure the policy effectively dictates the proper handling of the baton.

-See question #3.

c.) Ensure the policy offers sufficient and appropriate guidance on when to use a one-handed and two-handed approach.

-See question #3.



DOJ Request For Information (RFI) Sheet

2) Does the recommendation require a DGO or other department policy? If not required, is the recommendation supported by a department policy?

Department Bulletin 16-071 (Department Issued Impact Weapons) came into existence as a short gap by adding the 36-inch baton as a counter-measure against edged weapons. Using the longer baton would allow members another less-lethal option and distance from a person armed with an edged weapon.

No formal training policy or class was devised to teach officers how to specifically use the 36-inch baton during an encounter with a person armed with an edged weapon. The policy has been rescinded by the issuance of 16-162 (Department Issued Impact Weapons Update) dated October 7, 2016.

As such, Recommendation #7.1 should be considered "completed," as the policy of the use of the 36-inch baton against edged weapons has been rescinded.

3) Does the recommendation require training and/or education?

It should be noted that Department Bulletin 16-006 (Required Equipment- 36" Baton, Riot Helmet, Gloves) is still in effect for crowd control and/or riot situations. According to the Course Arrest & Control Manual, the 36" baton is instructed during the SFPD Regular Basic Course. See the following documents.

- Basic Course: Arrest & Control Manual
- 36" Baton Course Lesson Plan
- Crowd Control & Crowd Management
- Crowd Control- 36" Baton Strike Review- Power Point Slides
- Crowd Control Power Point Slides; - Training Feedback/Course Evaluation

4) Does the recommendation require an audit or continuous improvement loop?

- Audit Summary for DB 16-162- Audit conducted on 9-4-2018
- Audit for DB 16-162- Audit conducted on 9-4-2018
- Audit Summary for DB 16-006
- Audit for DB 16-006
- Audit Summary for DB 15-141- Audit conducted on 9-4-2018
- Audit for DB 15-141- Audit conducted on 9-4-2018

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