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## MEMORANDUM

TO: Brooke Jenkins, San Francisco District Attorney  
Paul Henderson, Director, Department of Police Accountability  
William Scott, Chief, San Francisco Police Department  
Honorable Members, San Francisco Police Commission

FROM: Jon Givner  
Chief of Government Law *JG*

Alicia Cabrera *AC*  
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Deputy City Attorneys

DATE: September 20, 2023

RE: DPA's Access to Investigative Records Related to Officer-Involved Shootings

We understand that the Police Commission plans to hold a public hearing on October 11, 2023, to consider whether the Police Department ("SFPD") may withhold from the Department of Police Accountability ("DPA") certain records related to investigations of officer-involved shootings ("OIS") until the District Attorney's Office ("SFDA") concludes the OIS criminal investigation. SFPD has withheld those records from DPA at the direction of the SFDA, citing Evidence Code Section 1040 and Government Code Section 25303. SFPD and the SFDA maintain that they may continue to withhold records until the conclusion of the OIS criminal investigation where doing so is necessary to protect the integrity of the SFDA's investigatory and prosecutorial role. DPA asserts that it must have earlier access to those records while the SFDA's investigation is ongoing, to perform its Charter duty to investigate complaints involving SFPD officers' use of force. Police Commission Vice Chair Max Carter Oberstone has asked SFPD and DPA to submit briefs explaining their respective legal positions. In our Charter role as legal counsel for SFPD, the Police Commission, DPA, and the SFDA, we write to explain the legal framework that applies in this dispute.

The Charter and Administrative Code require all City agencies, including SFPD and the SFDA, to promptly and fully cooperate with DPA's administrative investigations into OIS. Departments must provide relevant records to DPA "promptly," which in most cases means within five to ten days of a request from DPA. But there is an important exception to the disclosure rule under state law, referenced in the Charter: under Section 25303 of the California Government Code, and as noted in Section 4.136(j) of the Charter, the SFDA is not required to provide information or records to DPA if doing so would impede the SFDA's investigatory or prosecutorial functions under state law. Here, the SFDA leads criminal OIS investigations, and the SFDA can direct SFPD to withhold OIS investigative records in SFPD's possession during the pendency of the criminal investigation—but only if (1) SFPD is acting at the direction of the SFDA as the SFDA's agent and is maintaining the records on behalf of the SFDA, and (2) disclosure to DPA would impede the SFDA's investigation or prosecution.

Accordingly, the dispute here turns on two factual questions:

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- Does SFPD act as an agent of the SFDA in OIS investigations, and does SFPD possess OIS investigative records on behalf of the SFDA?
- If so, does the SFDA have a basis to assert that disclosure of the records to DPA (but not to the general public) during the course of the criminal investigation would impede the SFDA's investigatory or prosecutorial functions?

In the current dispute, within the framework of these legal standards, we defer to SFPD and DPA to present their positions as to whether the records in question are subject to disclosure, and in particular to argue the facts about whether SFPD is retaining those records as an agent of the SFDA, and whether disclosure of those records would impede the SFDA's investigatory and prosecutorial functions. For each record DPA requests from SFPD, SFPD should work with the SFDA to determine whether disclosing information to DPA would impede the SFDA's exercise of authority under Government Code Section 25303, and to document the basis for that determination. We urge the departments to work cooperatively to ensure that DPA receives as much information as the SFDA can disclose consistent with the Charter, the Administrative Code, and Government Code Section 25303. For ease of reference, we include as Attachment 1 the full text of Charter Section 4.136, Administrative Code Chapter 96, and Government Code Section 25303.

**BACKGROUND****1. DPA's Authority to Access OIS Investigative Records and Associated Timelines.**

The City Charter gives DPA authority to administratively investigate "all complaints regarding police use of force, misconduct or allegations that a member of the Police Department has not properly performed a duty, except those complaints which on their face clearly indicate that the acts complained of were proper and those complaints lodged by other members of the Police Department." Charter § 4.136(d). In connection with this general investigative charge, the Charter directs DPA to "use its best efforts to conclude investigations" within nine months of the complaint. *Id.*

The Administrative Code also includes a section specifically directing DPA regarding investigation of OIS, for which it states that "DPA shall conduct a timely and complete investigation," but does not specify a period for completion. Admin. Code § 96.11.

As to DPA's investigations generally, the Charter and the Administrative Code both direct SFPD to "promptly" produce records to DPA on request, unless disclosure to DPA is prohibited by law. *Id.* § 4.136(j); Admin. Code § 96.3. Administrative Code Section 96.3 goes on to set a deadline for SFPD disclosure of five business days from DPA's request, unless the Police Commission, by two-thirds vote, sets a longer deadline of up to ten days, or SFPD and DPA agree to a different deadline. Administrative Code Section 96.11, the section addressing DPA's investigation of OIS, includes the less specific direction that SFPD "provide the DPA with prompt and full cooperation and assistance in connection with the DPA's investigations under this Section 96.11."

One reason DPA attempts to gather information and complete investigations quickly is that Government Code Section 3304(d)(1) generally requires the City to commence disciplinary action against a peace officer within one year of learning of the alleged conduct. But

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Government Code Section 3304(d)(2) tolls the one-year period if the alleged conduct is subject to a criminal investigation or prosecution. In other words, the one-year clock set by state law for DPA's administrative investigation is paused during any criminal investigation and prosecution of the officer by the SFDA or SFPD.

Finally, consistent with California case law, Charter Section 4.136(j) clarifies that nothing in Section 4.136 "is intended or shall be construed to interfere with the duties of the Sheriff or the District Attorney under state law, including their constitutional and statutory powers and duties under Government Code Section 25303, as amended from time to time or any successor provisions thereto, or other applicable state law or judicial decision."

**2. The Role of the SFDA and SFPD in OIS Investigations.**

The SFDA plays a lead role in the criminal investigation of OIS, except in cases where an OIS results in the death of an unarmed civilian, which Government Code Section 12525.3 provides will be investigated by the Attorney General or other state prosecutor. With the exception of these state-led Government Code Section 12525.3 investigations, the SFDA has authority to direct OIS investigations in her role as a public prosecutor under state law, and leading these investigations is an exercise of the SFDA's state law authority, but state law does not expressly require a district attorney to lead OIS investigations. *See* Gov. Code §§ 26500, 25303.

In San Francisco, the SFDA and SFPD have agreed as a policy matter that the SFDA will lead OIS criminal investigations. The terms of that arrangement are memorialized in the 2021 Memorandum of Understanding ("MOU") between the SFDA and SFPD regarding OIS investigations, which is currently in effect. *See* MOU, *available at* <https://sfdistrictattorney.org/wp-content/uploads/2021/11/2021-SFDA-SFPD-IIB-MOU.pdf>. Since February 2022, the SFDA and SFPD have been working to negotiate a new MOU that will govern OIS investigations, and DPA's access to OIS investigative records is one disputed issue in that negotiation. The current MOU provides that SFDA will "lead the criminal investigation into the [OIS], with assistance from the SFPD." The SFDA's investigation in OIS cases is handled by the Independent Investigations Bureau ("IIB"), a unit within the SFDA's office that has some separation from other parts of the office.

SFPD leads the investigation into criminal conduct by non-law enforcement personnel connected with the OIS, referred to in the MOU as an ancillary investigation, but does not criminally investigate the officer involved in the OIS. SFPD Internal Affairs Division ("IAD") investigators conduct administrative investigations into SFPD officers involved in OIS. The MOU anticipates that the SFDA and SFPD will coordinate their respective investigations and work cooperatively to ensure that the SFDA and SFPD share all evidence and investigative results when legally permissible. IAD does not receive access to the OIS investigative records until the conclusion of the criminal investigation, with the limited exception of preliminary information provided to IAD to determine immediate training needs, to help the Chief of Police assess whether to return involved officers to duty, and to prepare SFPD's public presentation of preliminary and factual information about the OIS at a public town hall meeting.

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This structure for OIS investigations, with the SFDA's IIB unit leading those OIS criminal investigations, is one result of police reform efforts San Francisco has pursued in collaboration with the California and U.S. Departments of Justice. This structure differs from the one the City uses in other types of criminal investigations, where SFPD generally leads the investigation.

The Department of Justice's 2021 Collaborative Reform Completion Memorandum cited this approach to OIS investigations as consistent with collaborative reform objectives, and described it as follows:

The [SFPD] Homicide Detail once performed a criminal investigation of the officer involved in OIS incidents. This function is now performed by the Office of the District Attorney, which is not under the auspices of the [SFPD]; is not compelled to share information with the agency under investigation; and has no direct connection to the SFPD Training Division.

Department of Justice Collaborative Reform Completion Memorandum, at 2 of 7, *available at* <https://www.sanfranciscopolice.org/sites/default/files/2021-09/CollaborativeReformCompletionPacket11.2.Revised090921.pdf>.

\* \* \*

We understand that DPA has asked SFPD to share records regarding ongoing OIS criminal investigations. SFPD has rejected those requests, citing California Evidence Code Section 1040, which allows City departments to withhold information acquired in confidence in certain circumstances. SFPD determined that OIS-related records were "acquired in confidence" for the purpose of Section 1040 because (1) SFPD acquired them while acting as an agent of the SFDA in investigating OIS, and (2) SFPD has determined in consultation with the SFDA that disclosure to DPA would impede the SFDA's investigatory or prosecutorial functions under state law.

**DISCUSSION****1. Record Sharing Requirements Under the Charter and Administrative Code.**

The City Charter and Administrative Code require that SFPD and other City departments respond to DPA requests for information and records to assist in their police officer investigations, but the Charter notes that "[n]othing in this Section 4.136 is intended or shall be construed to interfere with the duties of the Sheriff or the District Attorney under state law, including their constitutional and statutory powers and duties under Government Code Section 25303 ...." Charter § 4.136(j). This provision is a clarifying statement that acknowledges the primacy of state law in setting duties of the SFDA and Sheriff, which may not be impeded by local law, as discussed in Section 2 below.

The City Charter and Administrative Code explicitly direct SFPD to disclose investigative records to DPA upon request, unless prohibited by law, and to do so "promptly." Charter § 4.136(j); Admin. Code § 96.3, 96.11. We are unaware of a law that explicitly prohibits this disclosure. Neither the Charter nor the Administrative Code define "prompt" or "promptly,"

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but the deadlines set out in Administrative Code Section 96.3 for general record disclosure of information to DPA are between five and ten days.

The most flexible reading of the Administrative Code provisions regarding record disclosure to DPA in OIS investigations would apply the requirements in Administrative Code Section 96.11, the provision that specifically addresses OIS investigations, and not those found in Administrative Code Section 96.3, which addresses record disclosure in police investigations generally. Administrative Code Section 96.11 directs that the "Police Department and its officers and employees shall provide the DPA with prompt and full cooperation and assistance in connection with the DPA's investigations under this Section 96.11," without specifically requiring disclosure of records or setting a timeframe for such cooperation and assistance. In contrast, Administrative Code Section 96.3 requires disclosure of records within five days, or up to ten days if approved by a two-thirds vote of the Police Commission. But even if Administrative Code Section 96.11 controls in this context, "prompt and full cooperation" by SFPD must be interpreted with reference to the five-to-ten-day deadline in Section 96.3. And although Government Code Section 3304(d)(1) tolls the one-year deadline for commencing disciplinary action against a peace officer during the pendency of a criminal investigation into the officer's conduct, neither Charter Section 4.136 nor Administrative Code Chapter 96 suggests a DPA investigation must be placed on hold during an ongoing criminal investigation. In the absence of any provision delaying SFPD's record-disclosure obligation, these provisions requiring "prompt and full cooperation" by SFPD do not allow SFPD to postpone disclosure of OIS investigative records for the months or years typically required to conclude a criminal investigation.

The Charter and Administrative Code obligate SFPD to disclose investigative records to DPA, at DPA's request, "promptly," whether or not the criminal investigation is continuing, unless State law provides otherwise. In criminal cases that are not subject to the MOU – that is, cases where officers are not being investigated for criminal violations arising from an OIS – SFPD typically leads the criminal investigation. Because SFPD leads those investigations, SFPD's disclosure of investigative records to DPA does not directly implicate the SFDA's state law function, and SFPD must comply with requests from DPA to disclose investigative records from those cases under the Charter and Administrative Code, except where another provision of state or federal law trumps this obligation.

**2. The SFDA's Authority to Direct SFPD to Withhold OIS Investigative Records from DPA.**

The SFDA is generally bound by local laws. And Charter Section 4.136(j) requires "prompt and full assistance" to DPA from *all* City departments, including through disclosure of "criminal investigative and prosecution files." But because a district attorney's prosecutorial and investigative duties derive from state law, a local law cannot constrain the SFDA's operation in a way that would obstruct these core state law duties, as Charter Section 4.136(j) expressly acknowledges. *See* Charter § 4.136(j) ("Nothing in this Section 4.136 is intended or shall be construed to interfere with the duties of the Sheriff or the District Attorney under state law, including their constitutional and statutory powers and duties under Government Code Section 25303 ...."); Cal. Gov. Code § 25303 ("The board of supervisors shall not obstruct the

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investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county.”); *Rivero v. Superior Ct.*, 54 Cal. App. 4th 1048, 1058 (1997).

In *Rivero*, the court held that a blanket requirement under the San Francisco Sunshine Ordinance that closed investigative files be publicly disclosed unlawfully obstructed the SFDA's state law investigative function. The *Rivero* court reasoned that full and proper investigation often requires assurances of continuing confidentiality, and that, “[w]ithout such assurances, potential witnesses could be easily dissuaded from coming forward.” *Id.* at 1058. Therefore, the court held that the Sunshine Ordinance could not compel the SFDA to disclose its investigative records. Consistent with *Rivero*, Charter Section 4.136(j) explicitly states that Section 4.136, which – along with Chapter 96 of the Administrative Code – lays out responsibilities and authority of DPA, shall not be construed in a way that interferes with the SFDA's state law function.

But the mere possibility that a local law could apply in a way that impedes the SFDA's state law duties is not sufficient to invalidate that law or prevent its enforcement. In *Dibb v. County of San Diego*, 8 Cal.4th 1200 (1994), the California Supreme Court declined to invalidate a provision in the San Diego County charter that created the Citizens Law Enforcement Review Board and vested that board with power to subpoena witnesses and documents. The *Dibb* Court assumed, in adjudicating the facial challenge to the charter provision, that the board would not exercise that power in a way that impeded the district attorney's investigative and prosecutorial responsibilities under Government Code Section 25303, or that otherwise conflicted with state law. *Id.* at 1218-1219. Justice Kennard, in a concurring opinion, emphasized that an *exercise* of that subpoena power could be subject to challenge if it was found to unlawfully interfere with the district attorney or sheriff's state law duties. *Id.* at 1219. Following this approach, the *Rivero* court's decision to invalidate the Sunshine Ordinance provision requiring disclosure of all closed investigative files relied on specific examples of the harms that would result from this blanket disclosure requirement. 54 Cal. App. 4th at 1058.

Under *Rivero* and *Dibb*, the SFDA is not bound by the requirement in the Charter and Administrative Code to share investigative records with DPA “promptly” if sharing the records would interfere with the SFDA's state law duties.

Harmonizing the requirements of both state and local law, a court would likely find that the issue of whether SFPD must disclose OIS-related records turns on two factual questions: Does SFPD possess those records on behalf of the SFDA while acting as an agent of the SFDA? And if so, would disclosure of the records to DPA (but not to the general public) during the course of the criminal investigation impede the SFDA's investigatory or prosecutorial functions?

Because of the SFDA's lead role in OIS investigations, a court would likely conclude that OIS investigative records held by SFPD during the pendency of the criminal investigation should be treated as SFDA records for purposes of interpreting disclosure obligations, as long as SFPD is acting at the direction of the SFDA as the SFDA's agent and is maintaining any investigative records on behalf of the SFDA.

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In the current dispute, the Commission may ask SFPD to explain how it is acting as an agent of the SFDA in OIS investigations and to establish that it possesses the records on behalf of the SFDA. And the Commission may ask SFPD to explain why disclosure of OIS investigative records to DPA before the SFDA concludes a criminal investigation in specific cases, or in all cases, would interfere with the SFDA's exercise of one of its state law functions in specific ways.

**CONCLUSION**

The Charter and Administrative Code most likely require disclosure of OIS investigative records to DPA before the conclusion of the SFDA's criminal investigation as a general matter, but under Charter Section 4.136(j), Government Code Section 25303, and Evidence Code Section 1040(b)(2), do not compel disclosure of these records if such disclosure would impede the SFDA's state law duties to investigate and prosecute crimes.

# ATTACHMENT 1

*Charter Section 4.136  
Administrative Code Section 96  
California Government Code Section 25303*



#### **CHARTER SECTION 4.136 (DEPARTMENT OF POLICE ACCOUNTABILITY.)**

(a) There shall be under the Police Commission a Department of Police Accountability (“DPA”).

(b) The Mayor shall appoint a nominee of the Police Commission as the Director of DPA, subject to confirmation by the Board of Supervisors. The Director shall serve at the pleasure of the Police Commission. If the Board of Supervisors fails to act on the appointment within 30 days, the appointment shall be deemed approved. In the event the office is vacant, until the Mayor makes an appointment and that appointment is confirmed by the Board, the Police Commission shall appoint an interim Director who shall serve at the pleasure of the Police Commission. The appointment of the Director shall be exempt from the civil service requirements of this Charter. The Director shall never have been a uniformed member or employee of the Police Department. The Director shall be the appointing officer under the civil service provisions of this Charter for the appointment, removal, or discipline of employees of DPA.

(c) The Police Commission shall have the power and duty to organize, reorganize, and manage DPA. Subject to the civil service provisions of this Charter, DPA shall include investigators and hearing officers. The staff of DPA shall consist of no fewer than one line investigator for every 150 sworn members. Whenever the ratio of investigators to police officers specified by this section is not met for more than 30 consecutive days, the Director shall have the power to hire, and the City Controller must pay, temporary investigators to meet such staffing requirements. No full-time or part-time employee of DPA shall have previously served as a uniformed member of the Police Department. Subject to rules of the Police Commission, the Director may appoint part-time hearing officers who shall be exempt from the civil service requirements of this Charter. Compensation of the hearing officers shall be at rates recommended by the Commission and established by the Board of Supervisors or by contract approved by the Board of Supervisors.

(d) DPA shall promptly, fairly, and impartially investigate all complaints regarding police use of force, misconduct or allegations that a member of the Police Department has not properly performed a duty, except those complaints which on their face clearly indicate that the acts complained of were proper and those complaints lodged by other members of the Police Department. DPA shall use its best efforts to conclude investigations of such complaints and, if sustained, transmit the sustained complaint to the Police Department within nine months of receipt thereof by DPA. If DPA is unable to conclude its investigation within such nine-month period, the Director, within such nine-month period, shall inform the Chief of Police of the reasons therefor and transmit information and evidence from the investigation as shall facilitate the Chief’s timely consideration of the matter.

(e) DPA shall recommend disciplinary action to the Chief of Police on those complaints that are sustained. The Director, after meeting and conferring with the Chief of Police or his or her designee, may verify and file charges with the Police Commission against members of the Police Department arising out of sustained complaints; provided, that the Director may not verify and file such charges for a period of 60 days following the transmittal of the sustained complaint to the Police Department unless the Director issues a written determination that the limitations period within which the member or members may be disciplined under Government Code Section 3304,

as amended from time to time or any successor provisions thereto, may expire within such 60-day period and (1) the Chief of Police fails or refuses to file charges with the Police Commission arising out of the sustained complaint, (2) the Chief of Police or his or her designee fails or refuses to meet and confer with the Director on the matter, or (3) other exigent circumstances necessitate that the Director verify and file charges to preserve the ability of the Police Commission to impose punishment pursuant to Section A8.343.

(f) The Director shall schedule hearings before hearing officers when such is requested by the complainant or a member of the Police Department and, in accordance with rules of the Commission, such a hearing will facilitate the fact-finding process. The Board of Supervisors may provide by ordinance that DPA shall in the same manner investigate and make recommendations to the Chief of Police regarding complaints of misconduct by patrol special police officers and their uniformed employees.

(g) Nothing herein shall prohibit the Chief of Police or a commanding officer from investigating the conduct of a member of the Police Department under his or her command, or taking disciplinary or corrective action, otherwise permitted by this Charter, when such is warranted; and nothing herein shall limit or otherwise restrict the disciplinary powers vested in the Chief of Police and the Police Commission by other provisions of this Charter.

(h) DPA shall prepare in accordance with rules of the Commission monthly summaries of the complaints received and shall prepare recommendations quarterly concerning policies or practices of the Police Department which could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while insuring effective police services.

(i) DPA shall prepare a report for the President of the Board of Supervisors each quarter. This report shall include, but not be limited to, the number and type of complaints filed, the outcome of the complaints, and a review of the disciplinary action taken. The President of the Board of Supervisors shall refer this report to the appropriate committee of the Board of Supervisors charged with public safety responsibilities. Said committee may issue recommendations as needed.

(j) In carrying out its objectives, including the preparation of recommendations concerning departmental policies or practices referenced above, the investigations referenced above, and the audits noted below, DPA shall receive prompt and full cooperation and assistance from all departments, officers, and employees of the City and County, which shall, unless prohibited by state or federal law, promptly produce all records and information requested by DPA, including but not limited to (1) records relevant to Police Department policies or practices, (2) personnel and disciplinary records of Police Department employees, (3) criminal investigative and prosecution files, and (4) all records to which the Police Commission has access, regardless of whether those records pertain to a particular complaint. The DPA shall maintain the confidentiality of any records and information it receives to the extent required by state or federal law governing such records or information. The Director may also request and the Chief of Police shall require the testimony or attendance of any member of the Police Department to carry out the responsibilities of DPA. Nothing in this Section 4.136 is intended or shall be construed to interfere with the duties of the Sheriff or the District Attorney under state law, including their constitutional and statutory powers

and duties under Government Code Section 25303, as amended from time to time or any successor provisions thereto, or other applicable state law or judicial decision.

(k) Every two years, DPA shall conduct a performance audit or review of police officer use of force and how the Police Department has handled claims of officer misconduct. DPA shall also have the authority to conduct performance audits or reviews of whether Police Department personnel and management have complied with federal and state law, City ordinances and policies, and Police Department policies. The Director shall have the discretion to determine the frequency, topics, and scope of such performance audits or reviews. To the extent permitted by law, DPA shall also allow public access to information on the progress and disposition of claims of misconduct or use of force, and the results of the performance audits and reviews conducted by DPA.

(l) The DPA budget shall be separate from the budget of the Police Department. Notwithstanding Section 4.102(3), the Director shall submit DPA's proposed annual or two-year budget directly to the Mayor.

**ADMINISTRATIVE CODE CHAPTER 96 (COORDINATION BETWEEN THE POLICE DEPARTMENT AND THE DEPARTMENT OF POLICE ACCOUNTABILITY.)**

**SEC. 96.1. DEFINITIONS.**

- (a) "Chief of Police" shall mean the Chief of the Police Department or his or her designee.
- (b) "DPA" shall mean the Department of Police Accountability.
- (c) "Sustained complaint" shall mean a determination by the Department of Police Accountability that a preponderance of the evidence proves that the misconduct or failure to perform a duty complained of did occur.

**SEC. 96.2. REPORTING ON STATUS OF SUSTAINED COMPLAINTS.**

(a) The Chief of Police shall report in writing to the DPA and the Police Commission not less than once per month on the status of all sustained complaints the DPA has transmitted to the Police Department for review and determination of appropriate action.

(b) (1) For each sustained complaint for which the Chief of Police has not issued a decision on the discipline to be imposed, if any, the report shall set forth the number of the complaint, the date the complaint was filed with the DPA, the date on which the DPA transmitted the complaint to the Police Department, the type of complaint, a summary of the DPA's findings, the current status of the complaint within the Police Department, the date by which the Chief of Police expects to issue a decision, and any other information the Commission may direct. The report shall be a public record, and shall be posted on the website of the Police Commission.

(2) In any instance where the DPA sustains a complaint and transmits it to the Police Department with a recommendation that discipline be imposed, and the Chief of Police has failed to act within 45 days from the date of transmittal, the secretary to the Police Commission shall place the sustained complaint on the agenda for the next regularly scheduled meeting of the Police Commission, consistent with applicable laws governing notice of public meetings. At this meeting, the Police Commission shall inquire into the status of the complaint and any reasons for the delay on the part of the Chief of Police. The Commission shall require that the Chief of Police provide an explanation for the delay in acting upon the complaint, and shall impose a deadline not to exceed 14 calendar days from the date of the meeting by which the Chief of Police shall act on the complaint, unless the Police Commission finds good cause for a reasonable extension in excess of 14 calendar days, and the Chief of Police establishes that such additional delay will not preclude the imposition of discipline pursuant to California Government Code Section 3304.

(3) At the first Commission meeting following passage of the deadline, the Chief of Police shall report to the Commission on the status of the complaint. If the Chief of Police has failed to take final action on the complaint, the secretary to the Police Commission shall send written notice to the Mayor and the Board of Supervisors of the Chief's failure to act. For each complaint on which the Chief of Police has failed to act, the notice of inaction shall state the number of the complaint, the date the complaint was filed with the DPA, the date on which the DPA transmitted

the complaint to the Police Department, the type of complaint, and a summary of the DPA's findings.

(c) For each sustained complaint for which the Chief of Police has issued a decision on the discipline to be imposed, if any, the report shall set forth the number of the complaint, the date the complaint was filed with the DPA, the date on which the DPA transmitted the complaint to the Police Department, the type of complaint, a summary of the DPA's findings, the date on which the Chief of Police issued a decision, the discipline imposed, if any, and the date of any discipline imposed.

(d) The Police Commission shall hold a public hearing at least once every quarter to consider the status of all sustained complaints awaiting action by the Police Department. The Commission shall submit a report to the Mayor and the Board of Supervisors within 30 days from the date of the hearing setting forth the number of each complaint, the date each complaint was filed with the DPA, the date on which the DPA transmitted the complaint to the Police Department, the type of complaint, a summary of the DPA's findings, and the current status of the complaint within the Police Department.

### **SEC. 96.3. DISCLOSURE OF DOCUMENTS TO DPA.**

(a) In accordance with the obligation of the Police Department and members of the uniformed ranks under Charter Section 4.127 to provide prompt and full cooperation and assistance in connection with complaints being investigated by the DPA, the Police Department shall promptly disclose all documents and records requested by the DPA except where disclosure to the DPA is prohibited by law. Unless (i) the Police Department and the DPA mutually agree in writing to an alternative deadline(s), or (ii) the Police Commission, by a two-thirds vote, establishes an alternative deadline(s) not to exceed ten business days, the Police Department shall disclose all such documents within five business days from the date of DPA's request.

(b) Unless the Police Department and the DPA have mutually agreed in writing to alternative procedures, where the Police Department intends to withhold a document or record from being disclosed to the DPA, the following procedures shall apply:

(1) Within five business days of the receipt of DPA's request, the Police Department shall notify the DPA in writing of the proposed objection. Both the Police Department and the DPA shall submit written requests to the City Attorney for a determination of whether disclosure of the document or record to DPA is prohibited by law. The City Attorney shall respond to the requests within five City business days of receiving the requests, unless the City Attorney notifies the Police Department and DPA that due to the complexity of the legal issues presented, more time is required to respond.

(2) Within two business days of receiving the City Attorney's response, the Police Department shall either transmit the requested documents or records to the DPA or notify the DPA that it does not intend to comply with the DPA's request. Where the Police Department declines to disclose the documents or records, the Department and the DPA shall meet and confer within three business

days of the Department's notice to the DPA to discuss resolving the objection. The time for the meeting may be extended by mutual agreement of the Police Department and the DPA.

(3) If the Police Department and the DPA have been unable to reach agreement concerning disclosure of the documents or records within five calendar days from the date of the meet and confer, the DPA shall notify the secretary to the Police Commission, who shall calendar the question of disclosure for hearing before the Police Commission at the next regularly scheduled meeting of the Commission, consistent with applicable laws governing public notice of meetings. The Police Commission shall inquire into the dispute. Unless the Police Commission determines based on the advice of counsel that the law prohibits the Police Department from releasing the requested document or record to the DPA, the Commission shall order the Chief of Police to disclose the requested document or record to the DPA within two business days unless at the meeting the Commission: (i) determines that unusual circumstances warrant a longer deadline; (ii) explains the basis for that determination; and (iii) sets a different deadline.

#### **SEC. 96.4. NOTICE TO DPA OF PROPOSED ACTION.**

Whenever the Chief of Police proposes to act on a complaint sustained by the DPA and the proposed action is not consistent with the DPA's recommendation to refer the matter to the Police Commission for discipline because the Chief of Police is proposing either a suspension of ten days or less, or no discipline, the Chief of Police shall, prior to taking action, notify the DPA in writing of the proposed action, and shall meet and confer with the DPA Director within five business days of the written notice to resolve the disagreement over the appropriate discipline. Where the DPA and the Chief of Police are unable to reach agreement on the appropriate discipline, the DPA and the Chief of Police shall send written notice to the Police Commission identifying the sustained complaint and describing the disagreement. This notice shall be a part of the Director's Report at the next Commission meeting, consistent with applicable laws governing public notice of meetings.

#### **SEC. 96.5. GUIDELINES FOR FAILURE TO COMPLY.**

Not later than 90 days from the effective date of this Chapter, the Police Commission shall promulgate guidelines for penalties to be imposed against an officer in instances where a police officer, including an officer functioning in an administrative or supervisory role, fails to produce documents or records in accordance with this Chapter, or fails to comply with the duty imposed by Charter Section 4.127 to cooperate with and assist the DPA. The Police Commission shall transmit a copy of the guidelines to the Board of Supervisors.

#### **SEC. 96.6. SUBPOENA POWER.**

The Director of the DPA shall have the authority to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other items relevant to investigations under the jurisdiction of the DPA. This subpoena power shall not extend to departments, officers or employees of the City who are obligated to provide prompt and full cooperation to the DPA pursuant to Charter Section 4.127.

## **SEC. 96.7. NOTIFICATION TO CLAIMANTS IN POLICE MATTERS.**

When the City receives a claim alleging improper conduct by a police officer, other than a claim seeking only damages for damage to property resulting from the operation of a Police Department vehicle, the City Attorney shall send the claimant a notice that describes the DPA's role in investigating complaints of police officer misconduct, and includes information on how to contact the DPA.

## **SEC. 96.8. TRAINING REQUIREMENTS FOR POLICE COMMISSIONERS AND POLICE OFFICERS.**

(a) The Police Commission shall provide, and each commissioner shall attend within six months of appointment, training provided by experts in the state and local laws and Police Department policies governing public safety officer discipline. This training shall include instruction in DPA's process and procedures for investigating citizen complaints, and shall be not less than three hours in length.

(b) Following the effective date of this Chapter, the Police Department shall include a written summary in the training materials provided to police officer trainees of the requirements of Chapter 1 of the San Francisco Campaign and Governmental Conduct Code, entitled "Reporting Improper Government Activity; Protection of Whistleblowers," as amended from time to time. The summary required by this paragraph shall be approved by the City Attorney.

## **SEC. 96.9. PROTECTION OF PEACE OFFICER PRIVACY.**

Nothing in this Chapter shall be construed to require the disclosure of any information the disclosure of which would constitute a violation of a peace officer's privacy interests under the California Constitution, California Penal Code Sections 830 et seq., or California Government Code Sections 3300 et seq. (the Public Safety Officers Procedural Bill of Rights).

## **SEC. 96.10. NONCOMPLIANCE AS NOT INVALIDATING DISCIPLINE.**

The failure of the Chief of Police or the DPA to follow the requirements of this Chapter shall not constitute a basis for invalidating a decision by the Chief of Police or the Police Commission to impose discipline.

## **SEC. 96.11. INVESTIGATIONS OF OFFICER-INVOLVED SHOOTINGS.**

The DPA shall conduct a timely and complete 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. The Police Department and its officers and employees shall provide the DPA with prompt and full cooperation and assistance in connection with the DPA's investigations under this Section 96.11.

**SEC. 96.12. SEVERABILITY.**

If any provision, subdivision, section, paragraph, phrase or clause of this Chapter or the application thereof is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Chapter. The remainder of this Chapter shall remain effective and enforceable to the fullest extent allowed by law. All clauses and provisions of this Chapter are hereby declared to be severable.



### **CALIFORNIA GOVERNMENT CODE SECTION 25303**

The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.

This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county.

Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.