



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: July 25, 2022

TO: Sharmaine Moseley, Executive Director, Commission on Police Practices (CPP)

FROM: David Nisleit, Chief of Police, San Diego Police Department

SUBJECT: CPP Recommendations and Responses

REFERENCE: May 5, 2022 Memorandum from CPP

1. Body Worn Camera (BWC) Buffering Enhancements

The Commission recommends that SDPD revise its BWC policy to implement a full 2-minute audio and video buffer into their BWC equipment and procedures.

Response: The current contract with Axon Enterprises does not include funding for an upgrade for a full two-minute audio recording capability. It is not feasible at this time due to the high cost of purchasing additional features, storage space, and software licenses. If this was to be purchased in the future, it would also be subject to a meet and confer with the sworn employees' representatives.

This policy recommendation will not be implemented at this time; however, improvements are always being researched and we will take into consideration your recommendation.

2. Investigation of Complaints Involving SDPD Leadership

The Commission recommends that Procedure 1.10 (Citizen Complaints etc.) be updated to incorporate any informal, unwritten process and/or procedure. Further, the Commission recommends that any complaint against an SDPD Captain or above be subject to this revised written procedure.

Response: The San Diego Police Department has no informal, unwritten processes or undocumented procedures when determining if an investigation should be initiated for misconduct for any of its employees. Any allegation of misconduct is reviewed by the Captain of our Professional Standards Unit Internal Affairs and assigned to an investigator for a formal investigation.

All of our department members, to include the Chief of Police and his subordinates, are subject to the same policies and procedures. If a perceived or actual conflict occurs, and the City Attorney concurs, there are other city departments that could initiate and be used to investigate/resolve the complaint.

Our Discipline Manual states in part:

“To guide employees as they carry out their responsibilities, the Department has established standards for employee conduct and performance. The Department expects **all employees** to meet these standards, thereby enhancing the professionalism of the Department and creating a work environment that stands as a source of pride to the members of this Department and to the community.”

This policy recommendation will not be implemented at this time.

3. Discipline Manual and Matrix Changes

The Commission recommends that the Discipline Manual be updated to require that SDPD Command shall complete a discipline memo within 14 days after the discipline is issued.

Response: This recommendation has been implemented and the discipline manual will reflect that Commanding Officers will be required to submit their recommendation for discipline to their respective Assistant Chief of Police within ten (10) days of receipt of sustained findings.

The Commission recommends that SDPD's Discipline Manual be reviewed to correct any errors, conflicting statements, or ambiguities to ensure that officers receive appropriate discipline per the Discipline Matrix.

Response: The Department reviews all operations manuals on an annual basis for consistency and clarity. Units will audit their manuals at any time when a mistake or conflict is brought to their attention.

The Commission recommends that SDPD create and make public a clear definition of what a “Minor Policy Violation” is, as well as, provide a non-exclusive list of examples of “Minor Policy Violations.”

Response: The Department has two types of violations which are investigated as either Category I or Category II type complaints. All Category I complaints are always handled by Internal Affairs and are considered serious allegations of misconduct. Category II complaints, which are investigated at the division/Unit command, would be considered minor misconduct. The Department would like to have more discussion with CPP to clarify what type of document they would like to see created to satisfy their recommendation. Until further information is obtained, this recommendation will not be implemented.

The Commission recommends that SDPD create one (or more) misconduct types addressing sustained force causing injury. The Commission further proposes that the

discipline for sustained excessive force causing injury misconduct have a minimum discipline starting at suspension (what would be a second instance of excessive force, non-injury).

Response: The department will study this recommendation and get back to CPP. The meet and confer requirement would have to be met prior to any changes being made. Until further information is obtained, this recommendation will not be implemented.

4. Formation of Disciplinary Tracking

The Commission recommends that SDPD correct this issue immediately by creating and sharing with the Commission for review, a tracking system of pending discipline of officers with "sustained" findings to ensure that disciplinary action is issued in an appropriate and timely manner.

Response: Any tracking system used where an officer is specifically identified may violate the officer's POBAR rights. This could be considered "red flagging". A legal review will be initiated and a response will be forwarded. For the reasons stated, this recommendation will not be implemented at this time.

5. Be On Lookout (BOLO) Flyers

The Commission recommends that all BOLO flyers be required to have an issue date clearly noted on any BOLO flyer provided to officers.

Response: Any or all BOLO flyers that are specifically disseminated by the San Diego Police Department has a time and date stamp when the email is sent to ALL SDPD. Also on the document itself is the date in which it was generated and is located in the center of the document and under the word BULLETIN. In the future, personnel who are given the authority to disseminate any document determined to be a BOLO will proof the document to see if it has the date shown. This will be implemented.

In cases where allied agencies distribute other BOLOS as a forwarded document, we cannot modify the document.

6. Transmittal of Commission's OIS Reports to Shooting Review Board (SRB)

We believe that our observations can provide additional insight to the cases being reviewed and should be included in the documents provided to the SRB. Therefore, the Commission approved for its reviews/reports of OIS cases be forwarded to SDPD. The Commission further recommends that SDPD update its internal procedures to include the Commission's reviews/reports in the package of information provided to the Shooting Review Board for consideration.

Response: All inquiries, questions or information originating from any investigation used to determine the legal use of the firearm by the involved officer (s) and any discussion of policies or procedures used concerning the involved officer's actions are subject to the Police Officer's Bill of Rights. Currently, the SRB Shooting Review process does not involve having documents generated by CPP included in their

July 25, 2022

review. CPP has the responsibility of reviewing the use of force, policy, and procedures and reporting their conclusions. The focus of the Shooting Review Board is after completing its review, the board shall submit a written report commenting on the appropriateness of the tactics employed and whether or not any training needs were identified. The findings will be submitted to the Chief of Police and all appropriate commanding officers. The SRB may interview officers and witnesses involved in any incidents, and may call additional witnesses, such as supervisory personnel, technical experts, or other persons necessary to make a proper review of the case.

This recommendation will not be implemented at this time as this policy change would need a conference with City Personnel and the employees' representation prior to approval. It is suggested that CPP, since they are independent, reach out to the Police Officer's Association to discuss.

Thank you for your interest and inquiry.

Sincerely,



David Nisleit
Chief of Police, San Diego Police Department

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Attachments: May 5, 2022 Memorandum from CPP

cc: Brandon Hilpert, Chair, Commission on Police Practices