

AUGUST 18, 2004

REGULAR MEETING

The Police Commission of the City and County of San Francisco met in Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:50 p.m., in a Regular Meeting.

PRESENT: Commissioners Renne, Orr-Smith, Chan, Keane, Marshall, Sparks, Veronese

DISCUSSION AND POSSIBLE ACTION TO APPROVE THE MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO HOUSING AUTHORITY AND THE SAN FRANCISCO POLICE DEPARTMENT

Commander Shinn, FOB, presented the MOU for supplemental law enforcement services between the SFPD and the San Francisco Housing Authority. Commander Shinn stated that this MOU has been reviewed and approved by the San Francisco Housing Commission on August 12th and it's been reviewed by the Department's City Attorney.

PUBLIC COMMENT

None

Motion by Commissioner Chan, second by Commissioner Orr-Smith. Approved 7-0.

RESOLUTION NO. 83-04

APPROVAL OF MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO HOUSING AUTHORITY AND THE SAN FRANCISCO POLICE DEPARTMENT

RESOLVED, that the Police Commission hereby approves the memorandum of understanding between the San Francisco Housing Authority and the San Francisco Police Department.

AYES: Commissioners Renne, Orr-Smith, Chan, Keane, Marshall, Sparks, Veronese

CHIEF'S REPORT

- a. **Report on the number of officer-involved shooting cases being investigated and the status of the investigations.**
- b. **Review of recent activities.**

Chief Fong stated that the first report will be a follow-up to the officer-involved shooting report that was presented last week by Captain O'Leary.

Captain O'Leary talked about a letter forwarded to the Commission where he described the process that the Department go through in investigating officer-involved shootings and with this letter, attached is a list of open OIS investigations.

Commissioner Sparks thanked Captain O'Leary for the list of OIS investigations. Commissioner Sparks asked how are cases prioritized and if the Captain is aware of any circumstances why some of the cases are still open with the district attorney. Captain O'Leary stated that four cases were assigned to the investigators that they were initially assigned to and they are being given due dates of 90 days and then every 60 days after that. As to Commissioner Sparks' second questions, Captain O'Leary stated that he cannot speak for the District Attorney. He stated that the case in 2003 was submitted to Mr. Hallinan's office and is one that Ms. Harris inherited.

Commissioner Veronese thanked Captain O'Leary for his letter and statistics. He asked Captain O'Leary if from the year 2000, has the District

Attorney sustained any charges on any of these cases or have any of the OIS cases come in front of the Commission in the last four years. Captain O'Leary stated that he is not aware of the District Attorney's office filing any charges in any OIS cases since 2000. As far as cases going to the Commission, Captain O'Leary stated that there is currently an OIS case, the Detoy matter, and that case is still before the Commission. Captain O'Leary explained that every one of these cases is on its way to the Commission in the form of a summary as described in General Order 8.11.

Commissioner Sparks asked Captain O'Leary if this schedule can be met and are there sufficient resources to continue these investigations to meet this schedule. Captain O'Leary stated that no Captain is going to tell the Police Commission that they have enough help but to answer that question, there exists the process of finding the right candidate, training that candidate, and putting that person into the Management Control Division and bringing that person up to speed. Captain O'Leary stated that he inherited a backlog of cases at the time when he came into the office in May of 2003 and stated that he can stick with this schedule and is comfortable with these dates.

Lieutenant John Murphy, Gang Task Force, stated that due to the increase in the violence of Spanish gangs, the Department employed the same strategy done in Bayview Hunters Point, the Western Edition, and the Sunnydale areas. That strategy is to identify the most violent offenders and target them for prosecution. Lt. Murphy described what is being done by the Department in regards to gang violence.

Chief Fong updated the Commission and described activities in the department during the past week.

Commissioner Marshall asked about gangs in the Mission. Deputy Chief Tabak stated that Surenios and Nortenos and factions of those two are in the Mission.

Commissioner Veronese asked about terrorism, referring to a Department Crime Bulletin, and if the Department are putting out information to the public on a daily basis and is there a plan if terrorism does occur in the downtown area as to what people should do. Chief Fong stated that the Department is in contact with a number of the buildings that are in the financial district area, not just through the Police Department and the district stations but also through the organizations and other corporate security. This information is shared with them on a daily basis. In terms of the plan, Chief Fong stated that the Department knows that any type of incident will cause a lot of confusion. Chief Fong stated that in large buildings, they have building management that hold meetings with members of the building. The Department works with them and police and fire drills are conducted.

Commissioner Keane asked about the Mission gangs and asked if there is an ethnic difference between the two gangs or is it just a question of which block or which neighborhood they live on. Chief Tabak stated that quite often it becomes a neighborhood issue and they are very protective of certain areas in their neighborhood and they are from 12 to 18 years of age. Chief Tabak stated there are probably several hundred on both sides and these are validated gang members that the Department knows about.

PUBLIC COMMENT

Mark Schlosberg, ACLU, thanked the Commission for requesting that a review of officer-involved shooting be done and offered some suggestions regarding officer-involved shooting.

Marylon Boyd, Justice for Cammerin Boyd, would like to hear from the Department on how the Department is going to get accountability for what happened to her son. She said that she has not heard from the Department and has not seen a status report on that.

Malaika Parker, Bay Area Police Watch, discussed concerns regarding

Chief Fong's report and discussed concerns regarding 26 OIS cases that are still pending and open.

Leroy Moore, Justice for Cammerin Boyd Campaign, discussed concerns regarding OIS cases not being resolved.

Mike Molina, Ella Baker Center for Human Rights, stated that cops are just regular people and just like regular people, they should be held accountable.

Steven Curier, Outer-Mission Residence Association, thanked the Commission for holding a meeting in their community on July 28th. He stated that the Outer-Mission Association voted unanimously to support not publishing the names of the officers in officer-involved shootings because it will drive good officers from San Francisco.

Catherine Tyson spoke regarding Operation Impact. She stated that she was pulled over by a CHP officer and stated that she was harassed by this officer.

Lonnie discussed concerns regarding people that have been murdered by the San Francisco Police Department.

Unidentified discussed concerns regarding gang violence and actions by police and how Cammerin Boyd was shot with his hands up in the air.

Justine Fernandez, Books not Bars, asked the Commission to put a stop to police violence and abuse in the San Francisco Police Department.

Camille Boyd stated that she has family in the Police Department and stated that her family is not afraid of names being released and stated that the ones leaving the Department are the ones doing wrong.

Mary Harrison, President of District 11 Council, discussed concerns regarding police bashing. She stated that the officers are afraid for their families. They are afraid for their school children that go to school in the community and they don't want them taunted or ridiculed.

Vanessa Moses discussed concerns and wanted to take a moment to recognize the courage that it takes for family members of Cammerin Boyd and people who have been slain by officers to speak to the Commission.

OCC DIRECTOR'S REPORT

a. Review regarding staffing, budget, and summary of recent events

Director Kevin Allen stated that there are currently seven OIS cases that are being investigated by the OCC and stated that they can only start a formal investigation when a complaint has been filed. He thanked the Bay Area Police Watch for their help in getting people to talk and bring various agencies together in the event people do not want to make multiple statements, they have brought the different agencies together in a neutral location and are currently trying to get the District Attorney, the Police, and the OCC together to do one interview of several witnesses.

Director Allen talked about domestic violence and mediation. He also stated that when the OCC hires its policy person, he will look to do a best practices review of time limitations on releasing information, check other agencies on what they do in relation to releasing information and their investigation processes. He stated that they've met with the District Attorney to see how the OCC's investigation and the Department's investigation coincides with the District Attorney's investigations of criminal cases to see if there is a way that when an incident occurs that all investigations can take place not to taint another investigation and not to inhibit another agency from being able to investigate and so that everybody gets their investigation done in a timely manner.

PUBLIC COMMENT

Mark Schlosberg, ACLU, discussed concerns regarding not having a policy writer and why can't investigators be asked to do policy reviews as has been done in the past.

REVIEW OF OCC POLICY RECOMMENDATIONS PRESENTED TO THE POLICE DEPARTMENT FROM 1999 TO PRESENT

Captain Denis O'Leary, Risk Management, stated that there was a package of information prepared that included Department bulletins, lesson plans for roll call training and stated that there are 25 OCC policy recommendations that are before the Commission; 13 have been done and the rest are either in the process of discussions with the OCC based on Department's objections to the policy recommendation and some of them are partly done. The Department does not object to the policy recommendations. The portions of Department General Orders and Department bulletins that are before the Commission shows the Department's response to the policy recommendations.

Captain O'Leary referred to the packet that has to do with the policy recommendation regarding transgender communities. He explained that that is a classic example of how many Department General Orders could be impacted by a policy recommendation. Captain O'Leary stated that the Department is half way done with the policy recommendations that the OCC has put before the Department.

Commissioner Sparks asked about a list of policy recommendations that have been completed, what status all of them were, and which of them are still pending and asked if it is possible to actually tell the Commission which ones have been enacted and which ones are in negotiations, and which ones have been thrown out.

Commissioner Renne stated that it might be easier if the Commission had a summary sheet that list status of all policy recommendations. Captain O'Leary stated that what the Commission is asking for he has in his notes and he can include it in the Commission's Friday packet.

Commissioner Renne asked that this item be continued for next week and requested a checklist that will give the status of each of the policy recommendations.

Director Kevin Allen commended the Department for 15 policy recommendations that have been completed.

PUBLIC COMMENT

Mark Schlossberg, ACLU, though it was a good idea that item is continued. He also stated that Charter section 4.127 requires quarterly reports about policy and practice reviews from the OCC to the Commission. He stated that that has not happened. He wants to make sure the this policy recommendation function is fulfilled as required by the Charter.

DISCUSSION AND POSSIBLE ACTION TO INSTRUCT THE CHIEF OF POLICE TO WORK WITH THE CITY'S PURCHASER TO TERMINATE THE KROLL CONTRACT

Commissioner Renne stated that she is concerned that now that the OCC has filed charges with the Commission and the Commission will be the adjudicatory body, to have extraneous evidence presented could potentially create a due process claim. Commissioner Renne stated that if the Commission does vote to continue the contract, that it be made clear that the report go only to the Chief and that in no way the Commission see it or even consider it. She further stated that if the Chief or the OCC decide to take it into account, that's up to them, but she is concerned that a third party's report that would come to the Commission could bring claim of somehow jeopardizing the proceedings.

Commissioner Keane stated that at the end of last year he was solicited by the Police Department to put in a proposal for what became the Kroll contract. He stated that he put in a proposal. He stated that on the final report that Kroll might give to the Chief, if the Chief thinks it's helpful to get this

report, Commissioner Keane stated that's fine. He further stated that he was disturbed and still is disturbed by the letter written by Kroll.

Commissioner Veronese agreed with Commissioners Keane and Renne and further stated that he has the utmost confidence in OCC to present its case to the Commission and stated that he doesn't think that the OCC needs this particular report to do that. He further stated that if the Chief wants an independent investigation done, he believes that she is entitled to it and he thinks that third party information may be useful. However, he stated that he don't believe that that information should come before the Commission unless it is corroborated by independent evidence.

Commissioner Chan asked the Deputy City Attorney if the contract were to go forward and if the report is completed, to what extent would that report be subject to public disclosure pursuant to the Sunshine Ordinance and stated that his concern is that parts or elements of this report would be reported in the media. Ms. Morley, City Attorney, stated that if the Department were to receive a public records act request for this report, she believes that the Department will be advised that this report be treated in the same manner that they would treat a sustained case report from the OCC or a case report from MCD. They would not be subject to disclosure pursuant to a public record act request.

Motion by Commissioner Chan to excuse Commissioners Keane and Renne. Second by Commissioner Veronese. Approved 5-0.

Captain O'Leary went over the contract and stated that this request for proposal came as a result of the Police Commission directing the Acting Assistant Chief of Police, at the time, Heather Fong, to oversee a process to select somebody to review the OCC sustained case report or the investigation. Captain O'Leary stated that the contract described the scope of the work which basically describes what Lt. Doug Carr, Officer in Charge of MCD, and what I do and basically it asks for the person that got this contract to review the provisions of the City Charter, the Police Department's General Orders, to review the entire case file including the investigator's report and listen or view all the tapes that came as a result of the investigation, to read the transcript of the Grand Jury proceeding that resulted in the indictments in this matter, to read the investigator's chronology, and to look at all the evidence that the OCC gathered.

Captain O'Leary stated that there's a great deal of concern that has to do with the written report. The contract calls for the written report that Kroll is being asked to do to be submitted to the Chief of Police. No where in this contract is it asked that the report be given to the Commission. The contract also takes into account Commissioner Chan's observations and comments about whether or not the report to the Chief of Police is confidential. Captain O'Leary stated he will speak to the person who wrote the letter to make sure that he understands the concerns of the Commission.

Captain O'Leary explained that there were three items that were in the Kroll letter. Two of those items were directed to the OCC and the third one was directed to the Police Department and it had to do with how the Department was able to keep a probationary officer who was a subject of misconduct complaints. Captain O'Leary stated that he doesn't think Kroll was showing any bias because they were looking at the OCC and the Police Department.

Captain O'Leary stated that the money for this contract came from last year's budget and the money has already been budgeted and stated that the Department would like to continue the contract with Kroll. Captain O'Leary stated that he thinks that it will address all the concerns that were raised at the Commission about the bias expressed in the letter and stated that the Department is very much interested in a professional corporation such as Kroll looking at how the Department do things especially in the internal affairs

portion of the SFPD to let the Department know if the Department is doing things right or not and the Department would like to look at new information.

Commissioner Orr-Smith asked Captain O'Leary if he is suggesting that because of the contract language that that supercedes the Commission's Charter authority to review the investigation. Captain O'Leary stated that the Commission can read the report if they wanted to read the report and stated that the contract does not call for the report to go to the Commission. The contract calls for the Kroll's report to go to the Chief of Police.

Commissioner Veronese asked how long will it take to complete the contract. Captain O'Leary stated that he cannot answer on how long the contract is going to take.

Commissioner Sparks stated that she believes that this report should be completed and that it should be completed pursuant to the contract's terms and given directly to the Chief. Commissioner Sparks stated that this may be a way to deflect criticism that the Department is trying to cover up and that the Department is investigating itself. Commissioner Sparks stated that this is a third party independent agency and she believes that more information is good and for additional eyes to look at it, additional policy recommendations would be good for the Department and good for the Chief and stated that with the way the contract is written that the report could be kept from the Commission and thus would be kept from the Commission as part of the materials submitted for the evidentiary hearing. She moves that the Kroll contract continues pursuant to the terms and conditions originally set forth in the letter.

Motion by Commissioner Sparks to instruct the Chief of Police NOT to work with Purchasing to terminate the Kroll contract. Second by Commissioner Veronese.

Commissioner Chan suggested that a motion to table would be more appropriate.

Commissioner Sparks amended motion per Commissioner Chan's statement. Motion by Commissioner Sparks to table this matter. Second by Commissioner Veronese. Approved 5-0.

APPROVAL OF THE MINUTES OF THE POLICE COMMISSION MEETING OF JULY 14, 2004

PUBLIC COMMENT

None

Motion by Commissioner Keane to approve the minutes, second by Commissioner Marshall. Approved 7-0.

PUBLIC COMMENT

Steve Johnson, POA, discussed concerns regarding comments made by the spokesperson for Bay Area Police Watch.

Jim Salinas, Sr., thanked the Commission for bringing issues up relative to the Mission District community. He congratulated Chief Fong and thanked her for her contributions. He stated that on July 26th his vehicle was broken with valuables taken. He stated that because of that incident, he walked into the Mission Station and complained about the demeanor of the officer who assisted him.

COMMISSION ANNOUNCEMENTS

a. Scheduling of items identified for consideration at future Commission meetings

Commissioner Sparks asked that dates regarding OIS summaries that Captain O'Leary presented be placed on the calendar for the first meeting of

the subsequent month so that progress can be reviewed. Commissioner Sparks also asked that a possible resolution be placed on the calendar thanking and congratulating the former Commissioners and the former Commission for their years of service and prepare resolutions to that effect and inviting them to a Commission meeting and presenting those resolutions to each Commissioner.

Lieutenant Geeter announced that the next meeting will be in the Park Police District at the Public Library, at 1833 Page Street, at 6:00 p.m.

Commissioner Renne asked the Commission if they wanted to view a demonstration of the Taser weapon during the week of September 6th through 10th or September 20th through the 24th at the Hall of Justice. The Commission decided on Wednesday, September 22nd, at 3:00 p.m.

Thereafter, the meeting was adjourned at 8:45 p.m.

Lieutenant Edward Geeter
Secretary
San Francisco Police Commission

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