

AUGUST 11, 2004

REGULAR MEETING

The Police Commission of the City and County of San Francisco met in the Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:40 p.m.

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

ABSENT: Commissioner Renne

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

Deputy Chief Suhr explained how this MOU came about. The Department met with local and federal agencies to develop strategies in an effort to stem the violence. Officers were placed in public housings as residential foot beats. The officers are to conduct community outreach and take appropriate action and take any other action to address the needs of the community and to be part of that community that they are working in. The concept was modeled from LA Sheriffs Department. The Housing Authority agreed to provide funds for the project if successful and it has been.

Commissioner Chan asked if there will be a way to develop statistics to catalog series of non traditional contacts, non aggressive interactions with the community just so the Commission would have some idea of the nature of the interactions that the members will have with residence. Chief Suhr stated that if the community at large is not in disrepair and the officers are employing calls for service with DPW, Department of Electricity, other public agencies that contribute assistance, the Department is working with the City Attorney's office, the Housing Authority is required to keep records as to the additional service that they are going to be provided in order to justify the expenditure of funds and Department agreed to compile those statistics. Commissioner Chan asked how many officers will be involved when implemented. Chief Suhr stated 16 members are part of the MOU and another four that are assigned to the Buchanan Mall that are outside of this MOU and the officers will act as community resource to cut through the bureaucracy of government in an officer capacity and yet be somebody that hopefully would be on a first name basis with everybody in the community.

Commissioner Sparks is unclear as far as to what the Department is asking the Commission. Deputy Chief Suhr would like the support of the Commission and to approve the concept.

Commissioner Orr-Smith, is there a time line as far as when the final MOU will be submitted? Ms. Morley stated that negotiations should be completed by Friday and will be on the calendar for the 18th.

Commissioner Veronese asked if the officers are same officers assigned to the stations? Deputy Chief Suhr stated that additional personnel were added to Bayview and Ingleside stations so that there would be no drop in regular service; 12 additional added to Bayview and 4 to Ingleside. Commissioner Veronese asked about substations? Chief Suhr stated that these officers will be working out of the substations but the substations are not staffed and they are trying to find venues for officers to work out of so that they don't have to leave their assigned complex.

Commissioner Marshall stated that he thinks it's a great idea and asked if the officers have a list of community agencies to refer young people to? Chief Suhr stated that he welcomes anything that can be given to the officers.

Commissioner Orr-Smith asked about housing authority security are they still enforced? Chief Suhr stated that Director Fortner might be able to answer the question.

Mr. Greg Fortner, Executive Director of Housing Authority, stated that because they are dealing with Federal funds, the service from SFPD is supplemental above and beyond baseline service that's already mandated for the area. He also explained that the substation is a public housing unit that's been converted for office use for officers that are on site so it is not conducive to a full service substation.

Commissioner Keane would like to talk to the Chief regarding relationship with the District Attorney's office. He stated that during the last District Attorney's administration there were a lot adversarial relationship. He stated that the community would like a smooth relationship with the police and the District Attorney's office. Chief Fong stated that she and the District Attorney work well together and both are committed to prosecuting cases and she stated that the Command Staff, the staff of district stations all work with the District Attorney's office. Commissioner Keane talked about the Ramey Warrant article and stated that there's a discussion between the Department and the District Attorney's office over the use of Ramey Warrants. Commissioner Keane stated that he sees that as a healthy discussion to have and not an adversarial discussion. It is good to see the two competing sets of needs and the use of Ramey Warrants and the use of probable cause for arrest by the Police Department.

PUBLIC COMMENT

None

Commissioner Chan asked if action is needed on this item. Ms. Morley stated negotiations are under way and in addition a resolution by the Commission instructing or authorizing the completion of those negotiations and entering into a contract subject to your approval is in order..

Motion by Commissioner Chan. Second by Commissioner Marshall. Approved 6-0.

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**

Captain O'Leary, Risk Management, stated there is 26 open OIS cases in MCD. Eight of those 26 are waiting charging decision with DA's office. Four of those 26 have been closed by MCD and are currently being evaluated by Lieutenant in charge of MCD and himself. Of the remaining cases, 10 have estimated dates of completion ranging from August 15th to June of next year. He stated that the amount of time from date of occurrence to the DA's charging decision has varied in these 26 cases. Captain O'Leary explained process and steps taken by MCD to investigate these cases. He further explained the process of giving a summary to the Commission. The summary and the OCC Director's recommendations are presented to the Commission but there is a long gap between the occurrence and the charging decision by the DA. The eight cases that are awaiting charging decisions, there is no way to find out when the DA will make that decision.

Commissioner Keane thanked Captain O'Leary for the report.

Commissioner Sparks asked about the 26 cases pending and how many do not involved the OCC? Captain O'Leary stated that he has to go back to

the data to get the information for the Commission. Captain O'Leary stated that cases that can be closed as soon as possible will get a higher priority.

Commissioner Veronese would like to speak about inherent claims regarding the department and the DA's office and stated that the DA should be given all the time needed for their investigation.

Commissioner Orr-Smith stated that once memo from Captain O'Leary is received, a letter should be written to the DA to provide answers to the public.

Commissioner Chan asked are there any category of cases that will take priority over OIS cases? Capt O'Leary stated cases that are close to the end of the statute of limitations takes higher priority and it competes with investigator's attention with the OIS.

Deputy Chief Tabak explained the process of Ramey warrants. Chief Tabak felt that it was important to address this issue due to an article by the Examiner. Chief Tabak stated that the SFPD and DA have a professional relationship with each other to accomplish their missions. The goal is to improve the process and make it more efficient and how to bring back the community support in light of articles that the department is not doing its job.

Chief Tabak explained Ramey warrant primarily dealing with homicides. Chief Tabak explained that it's a court decision based on a 1976 case involving a burglary in Sacramento. This decision established the need for probable cause, warrants, in order for the police to make arrests within certain types of structures primarily that had an expectation of privacy mainly residences, hotels, condominiums et cetera.

A Ramey warrant is a pre-charging arrest warrant and that means a warrant prior to prosecutor formally charging a case for a particular crime. The police do not have to submit the case to a prosecutor prior to requesting a Ramey warrant to be issued by a magistrate.

The process is simple. The police asserts their probable cause in an affidavit along with an application on a Ramey warrant and they submit this information to a magistrate. The magistrate reviews this information, and if the magistrate agrees that probable cause exists in this particular case that tends to show that the suspect committed this crime, then the magistrate will sign the Ramey warrant. And then, only then, it is issued. All Ramey warrants essentially receive judicial review prior to its issuance.

The Ramey warrant has several values. In order to develop additional information in a case that has reached such a point where the department don't have the added information to charge the case or to ask the prosecutor to charge the case. When a suspect is arrested on a Ramey warrant, the Department tends to get more cooperation from that suspect, tend to get more confessions, tend to get more statements from that suspect. It also allows the Department to set up for future search warrants, future arrest warrants and it furthers the investigation. It serves the investigation very well when no other tactics or means are available to the department.

The use of Ramey warrants are on a case by case basis. Chief Tabak stated that he has not instituted a blank policy by which every single case will go to Ramey.

Ramey is an effective, efficient tool to get suspects off the streets in a quick manner. The other impact is it sends a strong message to the community. It has encouraged witnesses from the community to come forward.

Chief Tabak explained, that in homicide cases, the charging standard of other DA's typically is a probable cause standard at the time of charging, with the understanding that that case will not be submitted to trial in that condition and it will be continuously worked on with additional information until it is trial ready and it can be proved beyond a reasonable doubt.

Chief Tabak stated that year- to-date, San Francisco has experienced 60 homicides: June, 13, July, 7, and August, none. Current year clearance rate are 43 percent with homicide. Last year, for the entire year, the Department was at 28 percent.

Chief Tabak also looked at other jurisdictions that uses Ramey Warrants. He stated that Oakland PD uses them all the time. San Jose also uses them and they feel that it is extremely effective. LAPD uses it 30 percent of their homicide. Contra Costa County uses Ramey warrants exclusively on all homicides, no exceptions. Alameda County uses it so often that they have a form online.

Commissioner Keane thanked Chief Tabak. He stated that this is something that should not be framed as the DA doesn't like Ramey warrants, and the SFPD likes Ramey warrants. He stated that in the report and in the letter from Ms. Harris there is an unnecessary defensiveness on the part of both the DA and the Department, and he thinks that it is unnecessary. Commissioner Keane stated that Ramey warrants are tools and are used in a case-by-case situation.

Commissioner Veronese asked if there is anything that can be done to bridge the gap between the differences in opinion on these cases between the SFPD and the DA's office. Chief Tabak stated that that was discussed and the Department would like the charging standards to be reflective of like counties in California and would like a more timely response to a request or submission of a DA warrant by the Department. Chief Tabak stated there should be a legal understanding with what their responsibilities are and what the Department's responsibilities are and that hopefully both parties can meet somewhere in the middle. He also stated that only six Rameys were issued this year.

Commissioner Chan asked based on survey of practices by different jurisdictions, are current state of practice within the SFPD comports with the practices engaged by other jurisdictions with respect to charging standards with respect to Ramey warrants? Chief Tabak stated that with use of Ramey warrants brings the department up to the best practice standard. He stated that the investigative standard of the Department, those are equal to, if not exceeding, like agencies in California.

Commissioner Marshall is hoping that the two entities can work things out and that he is very happy with numbers stated and he hopes that this can be dealt with to keep numbers the way they are.

Commissioner Orr-Smith thanked Chief Tabak for his report.

Chief Fong reported on activities within the Department. In the Southern district officers arrested a suspect for a stolen vehicle. In the Bayview there was a shooting suspect wanted for homicide, officers found the suspect and were able to stop the vehicle to make the arrest. There was also a robbery call. Officers were able to arrest five suspects. In the Northern the officers were able to identify a suspect wanted for probation violations. They were able to arrest the suspect and recovered a handgun during the arrest. In the Ingleside, there was a citizen who had knowledge about an assault rifle, that firearm was taken into custody and tested for fingerprints. In the Tenderloin there were two suspect that car jacked a vehicle. The officers were able to identify a suspect, make a stop, and take suspect into custody.

Chief Fong reported about an incident regarding threats made by an individual. The individual was identified and a wanted bulletin was issued.

Commissioner Chan asked about follow-up lab work and is the department sufficiently staffed? Chief Fong stated that there is only one firearm analyst. There is a second person who applied for the position and ultimately that individual hopefully will be hired. Chief Fong also stated that in the 2004-2005 budget, the Department was able to obtain funding for four additional criminalists, two of which will be firearm analysts.

Commissioner Sparks asked about the bicycle race coming back to San Francisco. She asked if this should be discussed with the Mayor's office in light of budget issues that the Department have. Chief Fong stated that the department will provide adequate resources to ensure that an event is safe. The Department does bill and those bills go to the Treasurer's Office to the Collections Department but ultimately, if money is recovered, it does not come back to the department. Chief Fong stated that the Department will never not staff an event because of funding issues.

Commissioner Veronese asked about the retirement of Lt. Geeter and what is being done about the task of getting a replacement. Commissioner Veronese stated that he personally thinks that it be a peace officer. Chief Fong stated that the Department is sad that Lt. Geeter is leaving. Chief Fong stated that Commissioner Renne had asked her to prepare a job description that can accommodate either a sworn or non sworn classification.

Commissioner Keane stated that Lt. Geeter is very valuable and would like to discuss as to having the position civilianized. He stated that there is a lot that the Commission has done in terms of showing that the Commission is an independent entity, and that they are civilians and that they take their role of civilian oversight very seriously and that it's quite possible of having a civilian secretary.

Commissioner Sparks stated that as Commissioner Keane stated there is positive elements to having a civilian secretary and also a sworn member in the office. She stated maybe looking at a blended staffing and a larger staff rather than just one.

PUBLIC COMMENT:

Katherine Tyson stated that department has done an excellent job and stated that her son was murdered and stated that if warrants were issued earlier, her son would have been alive. As far as forensics, the guns were located that murdered her son.

Marylon Boyd, Campaign for Cammerin Boyd, stated that the DA has stated that information is not yet to be release about her son's case. She asked that the status of investigation into her son's death is insufficient.

Dennis Cunningham stated that he was curious as to the district attorney can hold back information regarding the Boyd matter. He stated that he doesn't feel assured that the Commission is on top of what is happening to investigation.

Vannessa Moses, Bay Area Police Watch, discussed concerns regarding drawn out investigations.

OCC DIRECTOR'S REPORT

a. Review of Recent Activities

Director Allen discussed the OCC's function in OIS cases and explained that their function in OIS cases, if there is no complaint, is a review process after MCD has completed its investigation. He stated that the OCC have been working with the Chief, and trying to incorporate the District

Attorney also, is regarding an OIS policy in an event that there are multiple investigations going on to have the District Attorney meet with the Department, MCD, and OCC so that everyone will know what people are doing and that everyone will be aware of the fact that the OCC has a one-year statute and that they would like to know when a case is able to proceed forward if there is a criminal investigation.

Director Allen also discussed OIS cases and stated he met with Captain O'Leary regarding the cases. He also met with the Chief regarding having a master calendaring system that to make sure cases move forward.

Commissioner Keane made a motion to conditionally adopt the OCC policy recommendation subject any future amendments as recommended by the Chief after the Department and the POA meet to discuss the impact of the OCC policy recommendations on the terms and conditions of employment, and also, direct the Chief to prepare changes to the Department's General Orders for Commission approval, as necessary, to implement the OCC's policy recommendation.

Commissioner Chan stated, as point of order, should the item be called first. Mariam Morley, Deputy Chief Attorney, stated that public comment should be asked for Item 3 before moving on to Item 4 unless it is decided that Items 3 and 4 be discussed together and if that is so, that should be made clear on the record.

PUBLIC COMMENT

Mark Schlosberg, ACLU, stated that he supports the OCC policy recommendation and also offered amendments in regard to release of information basically encouraging public disclosure of information, however, allowing the department to withhold information under narrow circumstances as stated in his recommendations. He went on to explain the ACLU's proposed amendments.

Commissioner Orr-Smith asked that the record be amended to include Mr. Schlosberg's comments under Item 4.

OCC POLICY RECOMMENDATION ON OFFICER-INVOLVED SHOOTINGS AND IN-CUSTODY DEATHS

- a. **Discussion of Department's recommended changes to the OCC policy recommendation.**
- b. **Discussion and possible action to: 1) conditionally adopt the OCC policy recommendation subject to any future amendments as recommended by the Chief of Police after the Department and the POA meet to discuss the impact of the OCC policy recommendation on the terms and conditions of employment; and 2) direct the Chief to prepare changes to the Department's General Orders for Commission approval as necessary to implement the OCC's policy recommendation.**

Captain O'Leary, Risk Management, stated that he sat down with Director Allen to discuss this policy recommendation. He explained the Department's response to the OCC policy recommendations.

Commissioner Sparks asked about the Public Records Act and other laws that are called out in this policy statement, then the Department will not have a problem with adding presumption in favor of disclosure as long as factual data as contained in the Public Records Act and the Sunshine Ordinance are in fact followed. Captain O'Leary stated that the department is in favor of keeping the law in the policy. He asked that ACLU's recommendation be stricken and that we just stick with the language of the law which is a factual basis for releasing or not releasing information.

Commissioner Chan asked the City Attorney if there is a presumption in favor of disclosure. He stated that his concern with the language proposed by the ACLU is that we incorporate a presumption that may be contrary to the statutes as well as any relevant case law or the body of law pertaining to privacy standards. Ms. Morley stated that the Brown Act and the Sunshine Act do favor disclosure and that is their general intent. Ms. Morley explained the public records act. She explained records that are not public e.g. CLETS records, medical records. Then she explained exceptions to the public records act which are discretionary where the public entity is given the discretion to decide whether or not to turn over documents and she stated that one of those is one of the records being looked at now. About who makes decisions in the City about what documents are turned over? In general, the Department that gets the request would make the decision as to what they are going to turn over. The Commission can advise the department to turn over that document if it is discretionary.

Commissioner Marshall commended Captain O'Leary and Director Allen on efforts made regarding the recommendations.

Commissioner Veronese asked about the clause "to the extent no portion of the report shall be redacted to the extent that that conflicts with laws," should there be a provision that doesn't invalidate the entire clause? Mariam Morley, Deputy City Attorney, stated that the Commission might either add language to this or read it to mean that the Department and the City are not going to violate the law by turning over information and it's all subject to the caveat that as is consistent with prevailing law.

Commissioner Chan commented on the amendments and the Department's response regarding policy recommendations. Commissioner Chan stated with respect to OCC recommendation #1 that he is concern with the Department's response to recommendation #1 and that he views it to be more restrictive than what should otherwise be the standard. He stated that from what the City Attorney has said, there is a body of law outside of the two statutes that have been specifically cited that may trump the presumption in favor of disclosure. In the interest of precision, he stated that he would favor an amendment that would state the policy of the Department to provide as much information as possible consistent with applicable law, including, without limitation, thereto to the relevant provisions of the Sunshine Ordinance and the California Public Records Act. Commissioner Chan also commented to the proposed amendment to the section by the ACLU regarding the matter of the construction of the standards sent forth in the paragraph as to who would make the determination that a particular exception may or may not apply in a specific case and if the Commission is to adopt the language proposed by the ACLU, he suggests that after the word "construed" that the phrase "by the Commission" be inserted. Commissioner Chan further commented on recommendation #3 in the Department's response. He stated that if the Commission is to adopt the revisions suggested by the ACLU, specifically on line 3, he believes that the listing of the grounds that the Chief would assert as an objection to providing the report is a bit too restrictive and that he suggests that it be revised to read to the effect "that unless the Chief of Police asserts that providing the report would endanger the successful completion of the investigation or a related investigation, or endanger the safety of the officers or other persons involved in the investigation," Commissioner Chan requested that the word "or" which appears before the word endanger be stricken and insert a phrase after the word investigation words to the effect "or contrary to law."

Commissioner Keane second suggestions by Commissioner Chan.

Captain O'Leary thanked Commissioner Chan for his input. The

policy change regarding #3 is acceptable to the department and the department is in agreement with the Commissioner Chan's suggestions.

PUBLIC COMMENT:

Mark Schlosberg, ACLU, spoke in support of the OCC policy recommendations and also to offer amendments.

Dennis Cunningham discussed concerns regarding policy recommendations and the release of OIS information. He urged that the Commission should be on top of the investigation and fully informed on what has been learned by the investigators.

Marylon Boyd thanked the OCC for recommendations brought before the Commission. She also thanked the ACLU for their input. She discussed concerns that there are no indications as far as time lines. She stated that there is nothing about allowing the family about gathering evidence when there is an officer-involved shooting. There is also no indication that OCC be called to the scene of an OIS incident. There is also no indication as to how family members will be notified. She would like to see details and definitions in the policy. She commented on recommendation number 1.

Motion to approved policy recommendations by the OCC to conditionally adopt the OCC's policy recommendation by Commissioner Keane and, in addition to that, to incorporate the drafting of Commissioner Chan and the clarity that he brought and any proposed motions to that regard. Second by Commissioner Sparks.

Ms. Morley stated that if an OIS occur before the adoption of the general order, the Commission can direct a liaison to work with and to contact the victim's family. Ms. Morley stated that the General Orders are the Commission's rules.

Commissioner Sparks asked if the ACLU's recommendations are included in the motion. Commissioner Keane stated that yes, it is included in the motion.

Commissioner Veronese asked if this is approved as a DGO. Ms. Morley stated that no, the Commission is instructing the Chief to put this in DGO form.

Commissioner Keane stated that in the motion itself, they are conditionally adopting the recommendations including the ACLU's proposals as clarified in the language of Commissioner Chan subject to any future amendment as recommended by the Chief after the Department and the POA meet to discuss it. The Commission have put forth a conditional approval of something that has some further processes to it and those further processes will have the input of the Department and the POA and come back to the Commission with proposed amendments.

Motion by Commissioner Keane to conditionally adopt the OCC's policy recommendations subject to future amendments, including Commissioner Chan's clarification, which includes the ACLU's recommendation. Also, to direct the Chief to prepare the changes to the Department's General Orders for the Commission's approval. Approved 6-0.

Commissioner Marshall asked when would this item be revisited. Put on the agenda in three weeks, September 1st.

DISCUSSION AND POSSIBLE ACTION TO SET THE LOCATION(S) OF ONE OR MORE OF THE MONTHLY "DISTRICT" COMMISSION MEETINGS, WHICH ARE HELD IN A NEIGHBORHOOD LOCATION TO DISCUSS ISSUES ARISING IN THE PARTICULAR POLICE DISTRICT

September 29th in the Mission. Lt. Geeter explained that November and December is very close to the holidays.

Commissioner Keane asked that the Richmond be added and suggested that this be done in community centers rather than police stations.

Commissioner Orr-Smith asked Commissioner Keane if he has any suggestions for the Richmond District. Commissioner Keane stated that Captain Tong might have some suggestions.

Lt. Geeter stated that August in the Park District, September in the Mission, and in October in the Richmond.

PUBLIC COMMENT

None

RESOLUTION NO. 80-04

SETTING THE LOCATION(S) OF ONE OR MORE OF THE MONTHLY "DISTRICT" COMMISSION MEETINGS, WHICH ARE HELD IN A NEIGHBORHOOD LOCATION TO DISCUSS ISSUES ARISING IN THE PARTICULAR POLICE DISTRICT

RESOLVED, that the district meeting on September 29, 2004 will be in the Mission District. The district meeting on October 27, 2004 will be in Richmond District.

FURTHER RESOLVED, that, due to the holidays in November and December, there will be no district meetings for the months of November and December 2004.

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

COMMISSION ANNOUNCEMENTS - SETTING OF HEARING DATES

- a. **Assignment of disciplinary charges filed in Case No. C040-137 JWA to an individual Commissioner for the taking of evidence.**
(Assigned to Commissioner Marshall, Resolution No. 81-04)

PUBLIC COMMENT

None

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

APPROVAL OF THE MINUTES OF THE POLICE COMMISSION MEETING OF JULY 7, 2004

Motion by Commissioner Marshall. Second by Commissioner Keane. Approved 6-0.

PUBLIC COMMENT

None

PUBLIC COMMENT

Unidentified commended Lt. Geeter. He discussed concerns regarding

vehicle codes and street closures. He also discussed an event tomorrow and that posting takes away cab stands so that cabs can pick up on this location.

Mark Schlosberg, ACLU, thanked the Commission for approval of OIS policy recommendations. He also urged the Commission to attend a civilian oversight conference. He also stated that he will be leaving his position in the ACLU for six months and John Crew will be replacing him at the time of his absence.

George Jones, 60-year resident of the city, discussed concerns regarding violence in the city.

SCHEDULING OF ITEMS IDENTIFIED FOR CONSIDERATION AT FUTURE COMMISSION MEETINGS

Commissioner Sparks asked that OIS shooting packet be put under Chief's Report for next week. Commissioner Sparks also asked that the department don't block all of cab stops by the Bank of America Building on California Street.

PUBLIC COMMENT

None

Thereafter, the meeting was adjourned at 8:50 p.m.

Lieutenant Edward Geeter
Secretary
San Francisco Police Commission

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