

COMMISSION ON POLICE PRACTICES

Wednesday, April 17, 2024

4:30pm-7:30pm

**REGULAR BUSINESS MEETING
AND AD HOC PERSONNEL COMMITTEE
JOINT MEETING AGENDA**

**Balboa Park Santa Fe Room
2144 Pan American W. Road
San Diego, CA 92101**

Commissioners: Octavio Aguilar, John Armantrout, Laila Aziz, Bonnie Benitez, Alec Beyer, Dennis W. Brown, Cheryl Canson, Doug Case, Stephen Chatzky, Armando Flores, Christina Griffin-Jones, Dwayne Harvey, Brandon Hilpert, Darlanne Mulmat, Clovis Honoré, James Justus, Dennis Larkin, Lupe Lozano-Diaz, Ada Rodriguez, Yvania Rubio, and Gloria Tran

Ad Hoc Personnel Committee: Dennis Brown, Clovis Honoré, James Justus, Darlanne Mulmat

Please be advised that the City of San Diego is presently engaged in a recruitment process to fill the position of Executive Director to the Commission on Police Practices (Commission), which is currently held by an interim director. The Commission does not have appointing authority or subject matter jurisdiction over the recruitment or appointment of the Executive Director. Under San Diego City Charter section 4.1.2, the City Council must appoint and establish the initial annual compensation for the Commission's Executive Director, who will then serve at the direction and will of the Commission following appointment. To recruit and make advisory recommendations related to the selection of an Executive Director, the City Council has established an Ad Hoc Committee that includes two Councilmembers and four members of the Commission. See San Diego Resolution R-315326 (Jan. 29, 2024). The public may find information and meeting notices related to the work of the Ad Hoc Committee at the following links:

https://docs.sandiego.gov/council_reso_ordinance/rao2024/R-315326.pdf

<https://www.sandiego.gov/council-committees/ah-cpp-recruitment-committee-public-comment-form>

The Ad Hoc Personnel Committee Meeting shall only jointly convene where all four commissioners of the committee are in attendance. If the Ad Hoc Personnel meeting is not convened, there will be no discussion or update at the meeting regarding the Executive Director selection or recruitment. No formal action may be taken by the Commission or the Personnel Committee regarding the Executive Director selection pursuant to the City Charter.

Staff: Outside Counsel Duane Bennett (virtual), Interim Executive Director Danell Scarborough, Chief Investigator Olga Golub, Executive Assistant Alina Conde, Administrative Assistant Jon'Nae McFarland, Community Engagement Coordinator Yasmeeen Obeid

The Commission on Police Practices (Commission) meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (a), as amended by Assembly Bill 2249.

The Commission business meetings will be in person and the meeting will be open for in-person testimony. Additionally, we are continuing to provide alternatives to in-person attendance for participating in our meetings. In lieu of in-person attendance, members of the public may also participate via telephone/Zoom.

The link to join the meeting by computer, tablet, or smartphone at 4:30pm is:

<https://sandiego.zoomgov.com/j/1603529848>

Meeting ID: 160 352 9848

In-Person Public Comment on an Agenda Item: If you wish to address the Commission on an item on today's agenda, please complete and submit a speaker slip before the Commission hears the agenda item. You will be called at the time the item is heard. Each speaker must file a speaker slip with the Executive Director at the meeting at which the speaker wishes to speak indicating which item they wish to speak on. Speaker slips may not be turned in prior to the day of the meeting or after completion of in-person testimony. In-person public comment will conclude before virtual testimony begins. Each speaker who wishes to address the Commission must state who they are representing if they represent an organization or another person.

For discussion and information items each speaker may speak up to three (3) minutes, subject to the Chair's determination of the time available for meeting management purposes, in addition to any time ceded by other members of the public who are present at the meeting and have submitted a speaker slip ceding their time. These speaker slips should be submitted together at one time to the Executive Director. The Chair may also limit organized group presentations of five or more people to 15 minutes or less.

In-Person Public Comment on Matters Not on the Agenda: You may address the Commission on any matter not listed on today's agenda. Please complete and submit a speaker slip. However, California's open meeting laws do not permit the Commission to discuss or take any action on the matter at today's meeting. At its discretion, the Commission may add the item to a future meeting agenda or refer

the matter to staff or committee. Public comments are limited to three minutes per speaker. At the discretion of the Chair, if a large number of people wish to speak on the same item, comments may be limited to a set period of time per item to appropriately manage the meeting and ensure the Commission has time to consider all the agenda items. A member of the public may only provide one comment per agenda item. In-person public comment on items not on the agenda will conclude before virtual testimony begins.

Virtual Platform Public Comment to a Particular Item or Matters Not on the Agenda: When the Chair introduces the item you would like to comment on (or indicates it is time for Non-Agenda Public Comment), raise your hand by either tapping the “Raise Your Hand” button on your computer, tablet, or Smartphone, or by dialing *9 on your phone. You will be taken in the order in which you raised your hand. You may only speak once on a particular item. When the Chair indicates it is your turn to speak, click the unmute prompt that will appear on your computer, tablet or Smartphone, or dial *6 on your phone. The virtual queue will close when the last virtual speaker finishes speaking or 5 minutes after in-person testimony ends, whichever happens first.

Written Comment through Webform: Comment on agenda items and non-agenda public comment may also be submitted using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. All webform comments are limited to 200 words. On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided above. To view a meeting archive video, click [here](#). Video footage of each Commission meeting is posted online [here](#) within 24-48 hours of the conclusion of the meeting.

Comments received no later than 11am the day of the meeting will be distributed to the Commission on Police Practices. Comments received after the deadline described above but before the item is called will be submitted into the written record for the relevant item.

Written Materials: You may alternatively submit via U.S. Mail to Attn: Office of the Commission on Police Practices, 525 B Street, Suite 1725, San Diego, CA 92101. Materials submitted via U.S. Mail must be received the business day prior to the meeting to be distributed to the Commission on Police Practices.

If you attach any documents to your comment, they will be distributed to the Commission or Committee in accordance with the deadlines described above.

- I. CALL TO ORDER/WELCOME (Chair Tran)
- II. CPP COMMISSION ROLL CALL (Executive Assistant Conde)
 - A. AD HOC Personnel Committee Roll Call

- III. **PURPOSE OF THE COMMISSION ON POLICE PRACTICES**

The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. **APPROVAL OF MEETING MINUTES (Chair Tran)**
 - A. **CPP Regular Meeting Minutes of April 3, 2024**
- V. **NON-AGENDA PUBLIC COMMENT (Community Engagement Coordinator Yasmeen Obeid)**
- VI. **POLICE PURSUIT AD HOC COMMITTEE (Chair Tran and Ad Hoc Committee Chair Case)**
 - A. **Ad Hoc Committee Update**
 - 1. **Additional Pursuits and Presentation**
 - 2. **Public Comment**
 - 3. **Discussion**
- VII. **Commission Letter to San Diego COO and Mayor (Interim Executive Director Dr. Danell Scarborough)**
 - A. **Letter presentation**
 - B. **Public Comment**
 - C. **Discussion**
 - D. **Action—vote on letter to Mayor and COO**
- VIII. **AD HOC COMMITTEE REPORTS**
 - A. **Ad Hoc Operating Procedures Committee (Co-Chairs Case and Rubio)**
 - 1. **Investigations Procedures Final Draft**
 - **Public Comment**
 - **Discussion**
 - **Action: Vote on Investigations Procedures Final Draft**
 - 2. **Investigative Hearings Final Draft**
 - **Public Comment**
 - **Discussion**
 - **Action: Vote on Investigative Hearings Final Draft**
- IX. **CASES – SDPD DIVISIONS AND REVIEW TIPS (Chief Investigator Olga Golub)**
 - A. **Complaint Cases by Division**
 - 1. **Presentation**
 - 2. **Public Comment**
 - 3. **Discussion**
 - B. **Case Review Tips and Closed Session Prep for Commissioners**

1. Presentation
2. Public Comment
3. Discussion

X. CLOSED SESSION

A. Public comment

B. Outside Counsel Duane Bennett – Lead CPP into Closed Session
(Not Open to the Public)

C. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline (unless the employee requests an open public session) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5–832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be announced and posted on the Commission’s website at www.sandiego.gov/cpp.

- | |
|---|
| <ol style="list-style-type: none">I. San Diego Police Department Feedback on Case Specific Matters (0)II. Shooting Review Board Reports (0)III. Officer-Involved Shooting (0)IV. Category II Case Audit Reports (1)V. Discipline Reports (0)VI. Case Review Team Reports (2)VII. Case-Specific Recommendations to the Mayor/Chief (0)VIII. Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0) |
|---|

XI. REPORT FROM CLOSED SESSION (Outside Counsel Duane Bennett)

XII. COMMISSIONER COMMENTS (Time Permitting)

XIII. ADJOURNMENT

Materials Provided:

- DRAFT Minutes from Regular Meeting on April 3, 2024
- CPP Letter to Mayor/COO Draft
- Investigations Procedures Final Draft
- Investigative Hearings Final Draft
- Case Review Tips Slides
- Cases by Division Slide(s)

Access for People with Disabilities: As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Commission at (619) 236-6296 or

commissionpolicepractices@sandiego.gov.

Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services, or interpreters, require different lead times, ranging from five business days to two weeks. Please keep this in mind and provide as much advance notice as possible to ensure availability. The city is committed to resolving accessibility requests swiftly to maximize accessibility.

Commission on Police Practices

**COMMISSION ON POLICE PRACTICES
REGULAR MEETING REGULAR BUSINESS MEETING
AND AD HOC PERSONNEL COMMITTEE
JOINT MEETING MINUTES**

Wednesday, April 3, 2024

4:30pm-7:30pm

**Balboa Park Santa Fe Room
2144 Pan American W. Road
San Diego, CA 92101**

Click <https://www.youtube.com/watch?v=wgFqFOyhmsk> to view this meeting on YouTube.

CPP Commissioners Present:

Chair Gloria Tran
1st Vice Chair Dennis Brown
2nd Vice Chair Doug Case
Octavio Aguilar
Bonnie Benitez
Alec Beyer
Cheryl Canson (arrived at 4:51pm)
Stephen Chatzky
Lupe Diaz

Armando Flores
Christina Griffin-Jones
Dwayne Harvey
Brandon Hilpert
James Justus
Darlanne Mulmat
Ada Rodriguez
Yvania Rubio

Excused:

John Armantrout
Clovis Honoré
Dennis Larkin

Absent:

Laila Aziz

Ad Hoc Personnel Committee Present:

Committee Chair, 1st Vice Chair Dennis Brown
James Justus
Darlanne Mulmat

CPP Staff Present:

Danell Scarborough, Interim Executive Director
Duane Bennett, CPP Outside Counsel
Olga Golub, Chief Investigator
Yasmeen Obeid, Community Engagement Coordinator
Alina Conde, Executive Assistant
Jon'Nae McFarland, Administrative Aide

- I. CALL TO ORDER/WELCOME: Chair Gloria Tran called the meeting to order at 4:30pm.
- II. ROLL CALL: Executive Assistant Alina Conde conducted the roll call for the Commission; established quorum.
 - A. Executive Assistant Alina Conde conducted roll call for the Ad Hoc Personnel Committee; no quorum. Therefore, Chair Tran did not convene the meeting.
- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES: The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. APPROVAL OF MEETING MINUTES
 - A. CPP Regular Meeting Minutes of March 20, 2024
 1. **Motion:** Commission James Justus moved for approval of the CPP Regular Meeting Minutes of March 20, 2024. Commissioner Alec Beyer seconded the motion. The motion passed with a vote of 15-0-1.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Aguilar, Benitez, Beyer, Chatzky, Diaz, Flores, Harvey, Hilpert, Justus, Mulmat, Rodriguez, and Rubio
Nays: None
Abstained: Griffin-Jones
Absent/Excused: Aziz, Armantrout, Canson, Larkin, and Honoré
- V. UPDATED CALENDAR
 - A. Presentation of added dates – July 17th and August 7th have been added to the calendar and will be held at 525 B St. at either the Procopio Towers large conference room or the new CPP Office space.
 - B. Public Comment - None
 - C. Action – Vote on additional dates on 2024 Calendar
Motion: Commission Ada Rodriguez moved for approval of the CPP Calendar update. Commissioner Darlanne Mulmat seconded the motion. The motion passed with a vote of 17-0-0.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Aguilar, Benitez, Beyer, Canson, Chatzky, Diaz, Flores, Griffin-Jones, Harvey, Hilpert, Justus, Mulmat, Rodriguez, and Rubio
Nays: None
Abstained: None
Absent/Excused: Aziz, Armantrout, Larkin, and Honoré
- VI. NON-AGENDA PUBLIC COMMENT:
In-Person: Kate Yavenditti (*Timestamp 6:52*) – Spoke regarding the CPP meeting minutes, Executive Director position community panel, and parking at the new CPP building.

In-Person: Francine Maxwell (*Timestamp 8:10*) – Spoke regarding community outreach, community engagement, and screening of complaints.

VII. UPDATE ON SDPD PURSUIT POLICY

- A. Presentation by SDPD Personnel – IA Captain Jeffrey Peterson (*Timestamp 10:24*)
He presented an order sent on March 5 to all sworn personnel to complete an hour training by late March. Letter was shared with Commissioners and is attached to the minutes.
- B. Public Comment
In-Person: Francine Maxwell (*Timestamp 15:47*) – Spoke regarding public expectations.
Virtual: Yusef Miller (*Timestamp 17:06*) – Spoke regarding public expectations.
- C. Discussion

VIII. POLICE PURSUIT AD HOC COMMITTEE

- A. Public Comment – None
- B. Discussion – The Committee had its first meeting April 2nd and will be meeting bi-weekly. The Committee includes Chair Doug Case, Commissioners Brandon Hilpert, Ada Rodriguez, Lupe Diaz, and Armando Flores. The Ad Hoc Committee requested the San Diego Police Department provide: 1. The form that an officer is required to fill out after a police pursuit. 2. Copies of evaluations of all pursuits. 3. Copies of all training materials provided.
- C. **Motion:** Chair Tan moved to not send the reiteration policy regarding Police Pursuit, since the SDPD order was sent out on March 5. Commissioner Alec Byer seconded the motion. The motion was passed with a vote of 15-1-1.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Aguilar, Benitez, Beyer, Canson, Diaz, Flores, Harvey, Hilpert, Justus, Mulmat, Rodriguez, and Rubio
Nays: Griffin-Jones
Abstained: Chatzky
Absent/Excused: Armantrout, Aziz, Larkin, and Honoré

IX. COMMISSION LETTER TO SAN DIEGO COO AND MAYOR

- A. Public Comment
In-Person: Francine Maxwell (*Timestamp 59:35*) – Spoke regarding setting the tone in the letter.
Virtual: Yusef Miller (*Timestamp 1:01:10*) – Spoke regarding setting the expectations for the Department.
- B. Discussion
- C. **Motion:** Commissioner Christina Griffin-Jones moved to have the OCPP draft a letter to the Mayor and COO expressing their disappointment and expectations that the Police Department shows up for Commission Hearings. The letter will be reviewed at the next meeting. Commissioner Ada Rodriguez seconded the motion. The motion passed with a vote of 13-3-1.
Yays: 1st Vice Chair Brown, Aguilar, Benitez, Beyer, Canson, Diaz, Flores, Griffin-Jones, Harvey, Mulmat, Justus, Rubio, and Rodriguez
Nays: Chair Tran, 2nd Vice Chair Case, Hilpert
Abstained: Chatzky
Absent/Excused: Armantrout, Aziz, Larkin, and Honoré

X. FULL COMMISSION CONFLICT OF INTEREST POLICY

- A. Presentation by Outside Counsel Duane Bennett (*Timestamp 1:15:39*)
- B. Public Comment
In-Person: Francine Maxwell (*Timestamp 1:31:30*) – Spoke regarding the recusal of the full Commission when involved with complaints.
Virtual: Yusef Miller (*Timestamp 1:33:27*) – Spoke regarding assisting the public with complaints.
- C. Discussion
- D. **Motion:** 1st Vice Chair Dennis Brown moved to approve the Cabinet and Counsel recusal of the full Commission depending on the extent of involvement of Commissioners in cases filed with the San Diego Police Department. The motion failed with a vote of 4-7-6.
Yays: Chair Tran, 2nd Vice Chair Case, Hilpert, and Justus
Nays: 1st Vice Chair Brown, Benitez, Beyer, Flores, Chatzky, Harvey, Griffin-Jones
Abstained: Aguilar, Canson, Diaz, Mulmat, Rodriguez, Rubio
Absent/Excused: Aziz, Armantrout, Larkin, and Honoré

XI. AD HOC COMMITTEE REPORTS

- A. Ad Hoc Operating Procedures Committee
 1. Update –The Committee is requesting feedback on the case review procedures. A permanent procedure needs to be developed that will include investigating officer-involved shooting, review, and evaluation of internal investigations, and adding a procedure that the department will not close out cases until the Commission has reviewed the case as long as it is within year deadline. Staff will have the ability to assist with the review of cases, and the group concept will still be held for the Commission to review cases.
 2. Public Comment
In-Person: Francine Maxwell (*Timestamp 1:56:06*) – Spoke regarding case review and complaints process.
 3. Discussion (*Timestamp 51:29*)

XII. CLOSED SESSION (NOT OPEN TO THE PUBLIC)

- A. Public Comment – None
- B. Outside Counsel Mr. Duane Bennett – Led CPP into Closed Session
- C. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline (unless the employee requests an open public session) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5-832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be posted on the Commission’s website at www.sandiego.gov/cpp or stated at the beginning of the Open Session meeting if the meeting is held on the same day.

- | | |
|-------|---|
| I. | San Diego Police Department Feedback on Case Specific Matters |
| II. | Officer Involved Shooting (1) |
| III. | Category II Case Audit Reports (1) |
| IV. | Discipline Reports (0) |
| V. | Category I Case Review Reports (2) |
| VI. | Case-Specific Recommendations to the Mayor/Chief (0) |
| VII. | Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0) |
| VIII. | Legal Opinion(s) Request & Response (0) |

XIII. REPORT OUT FROM CLOSED SESSION (7:17pm): Outside Counsel Duane Bennett reported that there was no reportable action.

XIV. COMMISSIONER COMMENTS:

- Commissioner Stephen Chatzky (*Timestamp 1:59:48*) – New Commissioner introduction.
- Commissioner James Justus (*Timestamp 2:00:38*) – Requested a breakdown of complaints by division.

XV. ADJOURNMENT: The meeting adjourned at 7:19pm.

**SAN DIEGO POLICE DEPARTMENT
ORDER**

DATE/TIME: MARCH 5, 2024 1030 HOURS
NUMBER: OR 24-09
SUBJECT: SB 719 ANNUAL PURSUIT TRAINING - 2024
SCOPE: ALL MEMBERS OF THE DEPARTMENT
DEPARTMENT PROCEDURE AFFECTED: 1.03

On October 4, 2005, Senate Bill (SB) 719 was signed into law. This law, which went into effect January 1, 2006, requires law enforcement agencies to establish pursuit policies, continually provide annual pursuit training to their officers, and ensure all pursuits are documented and submitted to the California Highway Patrol (CHP) within 30 days. Penal Code Section 13519.8 and the Commission of Peace Officer Standards and Training (POST) regulation 1081 explains the guidelines of the required training.

San Diego Police Procedure 1.03 Pursuit Procedures, Section XVII, and California Vehicle Code Sections 17004.7(b)(1) and 17004.7(b)(2) mandates annual vehicle pursuit training for all sworn employees and requires all sworn employees to certify in writing that they have received, read, and understood the Department's vehicle pursuit policies and are required to complete the "SB 719 Pursuit Policy Training Attestation" form.


In accordance with SB 719, the Training Unit has created training on Success Factors which addresses the mandates and reviews our Department's pursuit policy.


You must log into your Success Factors Account (Instructions below) in order to complete the training. All sworn members of the Department shall view the video in its entirety on their individual Success Factors account. The training shall be completed by March 22, 2024. **Supervisors will assure completion of their personnel and also sign the employee's attestation form. This training is subject to audit to verify the completion and duration of the training. Failure to complete the entirety of the required training, within the required timeframe, may result in discipline.**

Instructions:

1. Using the Google Chrome browser, log onto Success Factors via SDPD Intranet > SDPD Applications > OKTA Login Portal.
2. At the first OKTA screen, select the "SuccessFactors" (Production) tile to access the application and then select the "My Learning" tile to access the learning module.

3. Go to My Learning Assignments. Click “Priority” to organize required learnings by Priority. “*SDPD Pursuit Policy Training (SB719)*” will be in the “Priority 1” Category. Click on “*SDPD Pursuit Policy Training (SB719)*”. If you’re unable to locate the training follow step 3a.
 - a. Make sure you see the word “Find Learning” in the upper left corner of the screen. There, you will see a box that contains a search line which reads, “What do you want to LEARN today?” In that search box, type “*SDPD Pursuit Policy Training (SB719)*” (note the spacing in the title). Click Search.
4. A list of courses will show up on your screen. Select “*SDPD Pursuit Policy Training (SB719)*” and then click on “Start Course” in the lower left corner of the course’s tile.
5. On the next screen, there will be links to the modules on the left side of the browser. They must be completed in a sequence. You must ensure that you allow pop-ups before you continue. Go to Settings. Click Privacy and Security. Click on Site Settings. Click on Pop-ups and Redirects. Select “Sites can send pop-ups and redirects.”
6. Click on “*D.P. 1.03 Pursuit Procedures Review*” Click “Launch Content. The PDF will open in a new window and may take a few minutes to load. You are allowed to print and/or download the document if needed. This attachment can be used as a reference for the quizzes. At the conclusion of reading the document, you must click “Agree” at the bottom of the screen or the pop window to ensure you receive credit for reviewing the document. The window will close. Go back to the “*SDPD Pursuit Policy Training (SB719)*” home page.
7. Repeat Step 6 for “*2022 Police Pursuits Report to the Legislature*”.
8. Click on “*SB719 Pursuit Policy Training Attestation Form*” and click “Launch Content”. Click Download to access the Word Document form. Print the form. You will need to fill in the document and Ink sign the form. You must click “Agree” at the bottom of the screen or the pop window to ensure you receive credit for viewing the document. The window will close. Go back to the “*SDPD Pursuit Policy Training (SB719)*” home page.
9. Click on “*SDPD Pursuit Policy Training (SB719) Part 1*” Click “Launch Content”. The video will open in a new window and may take a few minutes to load before it plays automatically. **DO NOT FAST FORWARD THE VIDEO. Time stamps will be audited.** At the conclusion of watching the video, you must click “Agree” on the pop-window to ensure you receive credit for viewing the video. The pop-up window will be behind your current browser. Close the video window. Go back to the “*SDPD Pursuit Policy Training (SB719)*” home page.
10. Click on “*SDPD Pursuit Policy Training (SB719) Quiz 1*” and click “Start”. Begin the quiz. A score of 100% is required before continuing to the next module. Click “Submit Quiz” when complete. Select “Yes” to have the quiz graded. If a score of less than 100% is obtained, you can review the questions and Click “Try Again”. When you score 100 % you

must click the Circular Arrow  next to “Verify Course Completion” at the top-right of the screen to receive credit for completing the Quiz. The window will refresh. Proceed to the next quiz.

11. Click on “*SDPD Pursuit Policy Training (SB719) Quiz 2*”, Click “Start”. Begin the quiz. A score of 100% is required before continuing to the next module. Click “Submit Quiz” when complete. Select “Yes” to have the quiz graded. If a score of less than 100% is obtained, you can review the questions and Click “Try Again”. When you score 100 % you must click the Circular Arrow  next to “Verify Course Completion” at the top-right of the screen to receive credit for completing the Quiz. The window will refresh. Proceed to the next module.
12. Click on “*SDPD Pursuit Policy Training (SB719) Part 2*” Repeat Step 9.
13. Repeat Step 10 and 11 for “*SDPD Pursuit Policy Training (SB719) Quiz 3*” and “*SDPD Pursuit Policy Training (SB719) Quiz 4*”.
14. Click on “*SDPD Pursuit Policy Training (SB719) Part 3*” Repeat Step 9.
15. Repeat Step 11 for “*SDPD Pursuit Policy Training (SB719) Quiz 5*”
16. *At the completion of all modules and quizzes you will be able to print your certificate. A certificate and your ink signed SB719 Pursuit Policy Training Attestation Form, with Supervisor’s signature, must be turned in to Officer Shannah Oliveras at MS731A*

The training video and both forms (Certificate and Ink Signed Attestation) shall be sent to In-Service Training MS731A by March 22, 2024.

If you have any questions please email Officer Shannah Oliveras, In-Service Training Unit, at soliveras@pd.sandiego.gov

Please read at squad conferences and give a copy to all personnel.

SAN DIEGO POLICE DEPARTMENT PLEASE PRINT

SB 719 Pursuit Policy Training Attestation

INTERNAL AGENCY USE ONLY – DO NOT SEND TO POST – PLEASE FORWARD TO IN-SERVICE TRAINING MS731A

Officer Identification

Last	First	Middle
ID #		Assignment
Station	Telephone	
Email	Other	

Training Specifications

Training Date	Location (STATION ADDRESS)	
Instructor SUCCESS FACTORS TRAINING	Instructor SDPD IN-SERVICE TRAINING UNIT	
Course Name VEHICLE PURSUIT POLICY TRAINING	ANNUAL MANDATED TRAINING REQUIREMENT-SB719	Hours 1 HOUR
Other/Notes		

Attestation

Pursuant to Vehicle Code §17004.7(b)(2), I have received, read, and understand my agency's vehicle pursuit policy.

Signature (INK SIGNATURE REQUIRED)

Print Name	Date
------------	------

Supervisor Signature (INK SIGNATURE REQUIRED)

Supervisor (Print Name)	Date
-------------------------	------

April 10, 2024

Mayor Todd Gloria
Mr. Eric Dargan
Chief Operating Officer
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Dear Mayor Gloria and Mr. Dargan,

As we anticipate the beginning of a new administration for the San Diego Police Department, we want to share with you how much we look forward to a positive and professional working relationship between the Commission on Police Practices (Commission) and the new Police Chief (Chief). We would also like to take this opportunity to share with you our optimism that the Chief and the Police Department will engage with our new Commission and the communities that we represent.

We believe that in order to fulfill our mission and responsibilities, it is essential that we have a collaborative working relationship with the Department. This includes having the Chief or members of his leadership team attend and actively participate in community conversations regarding Department policies and practices.

The Commission recently held a Community Forum to understand a concern regarding high-speed vehicle pursuits. The Chief was invited to participate or send a representative, however, they declined. We understand the sensitivity around ongoing litigation, yet Commissioners believe there are ways to indicate a willingness to listen while not exposing the City to liability.

Thank you for your support in advance to the Commission's expectations for an ongoing professional, and productive relationship between the San Diego Police Department, its command staff, and the Commission.

Regards,

The Commission on Police Practices

City of San Diego Commission on Police Practices

INVESTIGATIONS PROCEDURES

DRAFT

Table of Contents

I. Jurisdiction	3
II. Complaints by the Public	5
III. Cooperation between the Commission, the Police Department, and Other City Departments	5
IV. Investigation Guidelines	6
V. Investigation Findings	10
VI. Notification of Parties	11
Appendix A	13
Appendix B	14

DRAFT

The City's implementation ordinance directs the Commission to perform independent investigations of all deaths while the person was in custody of the San Diego Police Department (Police Department) (hereinafter referred to as in-custody deaths), all deaths resulting from interactions with a police officer, all police officer-involved shootings, and other significant incidents as defined further in this procedure involving the Police Department, as well as independent evaluations of complaints against the Police Department and its personnel, in a process that is transparent and accountable to the community.

These procedures set forth guidelines for Commission investigations.

I. Jurisdiction

The Commission has the following jurisdiction over incidents and complaints.

A. Type One Incidents

The Commission must independently investigate the following complaints, regardless of whether a complaint has been filed:

1. all deaths that occurred while a person was in custody of the Police Department;
2. all deaths that resulted from interaction with a police officer;
3. all officer-involved shootings.¹

B. Type Two Incidents

The Commission may, but is not required to, investigate a complaint against a police officer that does not involve an in-custody death, a death resulting from an interaction with a police officer, or a police officer-involved shooting (Type One incidents).

The Chief Investigator and Executive Director will advise members of the Cabinet whether a matter merits an investigation. The Cabinet will have the authority to initiate an investigation after consultation with the Executive Director and Chief Investigator. The Commission will be provided a list of received complaints and complaints selected for investigation by the Cabinet and may provide feedback to the Cabinet.

In exercising its discretionary power to investigate a complaint, the Commission must determine that a complaint involves any of the following:

1. an incident in which the use of force by a police officer against a person resulted in great bodily injury;

¹ An officer involved shooting includes all discharges of a firearm whether a person is hit or not, excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal.

2. dishonesty by a police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting or investigation of misconduct by another police officer, peace officer, or custodial officer, including an allegation of perjury, making a false statement, filing a false report, or destroying, falsifying, or concealing evidence;
3. an incident that has generated substantial public interest or concern;
4. an incident where data shows a pattern of misconduct by a police officer; or
5. an incident where data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its members.

In deciding whether to investigate or consider such discretionary cases, the Commission shall consider such factors as a) the nature of the case and public interest, b) resource allocation, c) the number of pending cases/investigations, d) any foreseeable delays in processing ongoing cases and investigations, e) the time commitments required of investigators and Commissioners, f) availability of evidence, g) cooperation of complainants/impacted parties/witnesses, among other.²

C. Type Three Incidents

The Commission may, but is not required to, investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by a police officer, whether or not a complaint has been submitted to the Police Department or the Commission.

The Commission will use the same criteria outlined for Type Two incidents in determining whether to investigate Type Three matters.

D. Additional Jurisdictional Considerations

As related to Type Two and Type Three investigations, the Commission may investigate any allegations of misconduct that become known to the Commission during an investigation. The Commission will not investigate a complaint where the complainant has requested that the complaint be handled without an investigation by the Commission or where no specific allegation or police officer can be identified or discerned. The Commission may also take into consideration the impacted party's desire to proceed or not to proceed with an investigation.

The Commission is also not authorized to investigate a complaint against an employee of the Police Department who is not a police officer unless the complaint also alleges police officer misconduct.

² Impacted party is a person directly affected by at least one or more allegation(s) or instances of police misconduct.

II. Complaints by the Public

Complaints shall include complaints received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant.

Excluding Type One incidents, in order for the Commission to open an investigation, a complaint must be presented as afforded by law. Complaints may be submitted in-person or by fax, phone, mail, email or through any other electronic or physical means available and accessible to the Commission and/or recognized by law.

Complaints are submitted either through the Commission or at multiple locations with the Police Department. Complaints submitted with the Police Department must be transmitted to the Commission within five (5) days of receipt by the Police Department.

III. Cooperation between the Commission, the Police Department, and Other City Departments

The responsibility of responding to complaints against the Police Department is shared between the Police Department, primarily but not exclusively limited to Internal Affairs (IA), and the Commission. The collaborative relationship between the two is important for a fair and objective process that gives serious consideration to community members and the Police Department officers equally. The process is improved by both organizations working together. While cooperation is key, independence of each organization is crucial.

The Department will provide to the Commission all the necessary reference documents, including but not limited to current division maps, command rosters, officer identifying information, radio codes list, surveillance camera locations, and other to aid Commission in the investigation process. Additionally, pursuant to the Commission's implementation ordinance, the Police Department must make available to the Commission its records within ten (10) calendar days after a written request from the Commission, relating to any matter under investigation by the Commission. The Commission is required to maintain the confidentiality of all Police Department records and City personnel records, as well as the confidentiality of the case file, in accordance with applicable laws, and to respond to requests by members of the public for records in the possession of the Commission in a manner consistent with the California Public Records Act and applicable constitutional, statutory, and case law that protects personnel records.

As per the Implementation ordinance, it is the policy of the City that all officers and employees of the City cooperate promptly and fully with the Commission to ensure the Commission can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. This requirement to cooperate includes participation in any investigatory proceeding set forth in the Commission's operating procedures approved by the Council. City employee who fails or refuses to comply with this section is subject to discipline, up to and including termination.

If the Commission seeks to interview any City employee, including an employee who is the subject of a complaint, as part of an investigatory proceeding, the Commission must provide

timely advance written notice to the employee. The Commission must also provide timely advance written notice to the City employee's appointing authority. The written notice must specify the date and time of the interview and provide the employee with reasonably sufficient time to secure union or legal representation by the employee's personal attorney, as applicable, and to make any legal objections to the interview, either before or at the time of the interview. Further guidance related to the interview process is found in the appropriate section of the set forth procedures.

IV. Investigation Guidelines

A. General Provisions

1. The Commission may develop internal investigation process manuals, processes, training materials, and other reference documents to aid investigators and Commissioners with case investigations. Commission investigators must follow all internal protocols and manuals pertaining to investigation procedures.
2. Commission investigations must be in compliance with all the required statutory regulations, including but not limited to Public Safety Officer Procedural Bill of Rights (POBOR).
3. Where notified of a critical incident by the Police Department, Chief Investigator should notify the Executive Director and/or General Counsel as soon as practical to discuss the incident and appropriate approach to the Commission's investigation.
4. The Commission will notify the subject officer and their commanding officer when the officer becomes subject to an investigation.
5. Commission investigators may conduct field visits for the purposes of examining sites of misconduct or locating/interviewing witnesses. Section IV.B. provides guidance regarding Type One Incidents and related investigations.
6. Commission investigators should obtain all relevant to the investigation evidence, including but not limited to Police Department documentation, records and body-worn camera footage, surveillance footage, and other types of evidence. Investigators should not obstruct or interfere with criminal investigations but should seek early access to investigation files of agencies conducting these investigations. Investigators should seek access to any public records/reports related to the investigation.
7. Commission investigators should seek to coordinate investigations with those of Internal Affairs and/or the outside agency investigating the incident, when appropriate.
8. Commission investigators must seek to interview all relevant parties to the investigation, including complainants, impacted parties, witnesses, subject and witness officers, and other identified individuals deemed pertinent to the investigation.

9. Commission may issue subpoenas to compel parties and/or witnesses to participate or provide evidence.
10. Commission investigators should carefully review, analyze, and summarize all pertinent evidence to the investigation.
11. Commission investigators will accurately document their investigative actions in a clear and chronological manner.
12. Commission investigators should review and understand the Police Department's procedures, general orders and standard operating guidelines. Investigators should also identify, review, and understand relevant local, state, and federal codes and laws relevant legal precedents as pertinent to the investigation.
13. After thoroughly analyzing facts and evidence discovered in the investigation, Commission investigators will prepare a report that discusses the facts of the investigation and compares them to the Police Departmental orders, standard operating guidelines, or relevant local, state, and federal codes and case law. Investigators must utilize the preponderance of the evidence standard when making factual and disposition conclusions, which should be supported by facts as opposed to mere simple conclusory statements. Investigators must be impartial, fair, and objective.
14. Pursuant to POBOR, police investigations must generally be completed within one (1) year from the date someone authorized to initiate an investigation discovers the incident giving rise to the investigation. In general, complaints directly received and/or initiated by the Commission must be completed within one-year of receipt. The time period may be tolled if criminal prosecution or investigation is involved, or civil litigation in which the officer is a party exists. The officer may also waive the time period in writing. Other waivers exist where: a) a multijurisdictional investigation is involved; b) numerous employees are involved requiring an extension; c) an officer is unavailable or incapacitated; d) the investigation involves workers compensation fraud by the officer.
15. An investigation may be reopened after the one-year statute of limitation period if both of the following exist: a) significant new evidence has been discovered affecting the outcome of the investigation; and b) the evidence could not have been discovered in the normal course of investigation or the evidence resulted from the officer's pre-disciplinary response or procedure. Request to reopen a case must be submitted in writing to the Commission. The Executive Director and/or Chief Investigator will make a determination as to whether to reopen the case and notify the submitting party in writing as well as notify the Commission. The Commission may also initiate an inquiry regarding reopening of a closed investigation.
16. Where possible criminal allegations exist, it is recommended that the Commission's investigation trail the criminal investigation and await a determination from the district attorney or grand jury.

B. Guidelines Related to Type One Incident Investigations

The cooperation of the Police Department in making scenes of officer-involved shootings and crime scenes related to deaths in custody or deaths resulting from interaction with the Police Department as well as related evidence is imperative in furtherance of the City implementation ordinance.

The Commission and Police Department will establish liaisons for communication regarding Type One incidents. The Department will work with the Commission's liaison to provide timely information related to Type One incidents. The Commission will provide liaison's or on-call investigator contact information to the Police Department for immediate notifications of Type One incidents. Once a Type One incident occurs, the Police Department will notify the identified on-call liaison or investigator and coordinate Commission's investigator(s) access to the incident scene. In situations when the Police Department determines that a death is likely, the Police Department may also make a notification to the Commission liaison.

The Commission liaison and/or investigator(s) will receive preliminary incident briefing from the Police Department and may be privy to updates while on scene.

The Police Department liaison will escort Commission investigator(s) into, around, and out of the area or facility or designated perimeter areas of Type One incident. The Commission investigator(s) will log their presence on scene as required by the Police Department or other investigating agency. The Commission investigator(s) will not seek access to areas that may obstruct criminal investigation, including crime scenes themselves or areas containing physical evidence.

In Type One investigations, it is important for the Commission to have access to the same information provided to the Police Department consistent with the criminal investigative protocol and briefings. The Police Department will provide all relevant evidence and documentation to the Commission as soon as it becomes available to the Police Department and within the established time frame in this procedure. The City implementation ordinance also requires that the Police Department provide periodic information to the Commission every 30 days after the commencement of investigation into allegations of misconduct.

Nothing in this section supersedes the Department's and/or other investigating agency authority to conduct a proper criminal investigation without interference. Commission investigators will not interfere with criminal investigation and when on scene will always work under the parameters set by the Police Department or other investigating agency.

C. Interviews

When interviewing complainants, impacted parties, and witnesses, investigators must advise them as to the necessity of absolute truthfulness and confidentiality.

All parties interviewed may be accompanied by no more than two representatives/advisors. Advisors/representatives may advise the party as appropriate but may not participate in the interview or provide answers for the party. Advisor/representative may not be party to the investigation.

All interviews will be audio recorded and accurately summarized. In case any party to the investigation refuses for the interview to be recorded, the investigator will make best effort to take detailed notes and accurately summarize the interview.

Interviews of police officers must strictly comply with the requirements of POBOR and follow the following principles:

1. The investigator must conduct the interview at a reasonable hour, preferably when the officer is on duty or during the officer's normal waking hours, unless the seriousness of the investigation requires otherwise.
2. The investigator must inform the officer of the position, name, and command of the person in charge of the investigation, the investigators, and other persons to be present during the interview.
3. All questions directed to the officer shall be asked by and through no more than two investigators at one time.
4. The investigator must inform the officer of the general nature of the investigation prior to any interview.
5. The investigator must allow the officer to attend to their own personal physical needs.
6. The investigator must provide the subject officer access to any recording made of an interview prior to any subsequent interview.
7. The investigator must advise the officer of their Constitutional rights (*Miranda* Rights) as soon as it appears that the officer may be charged with a criminal offense.
8. The investigator may inform the officer that failure to answer questions directly related to the investigation may result in punitive action.
9. The investigator may record the entire interview.
10. The subject officer may record the entire interview.
11. The subject officer may be represented by a person of their choice who may be present during the entire interview. However, the representative may not be a person who is subject to the same investigation. The representative cannot be required to disclose any information obtained from the employee in non-criminal matters.
12. The investigator cannot use offensive language.

13. The investigator cannot use threats of punitive action, other than informing the officer that failure to answer questions related to the investigation may result in disciplinary action up to and including termination.
14. The investigator cannot promise any rewards.
15. The officer's assertion of their rights will not be held against the officer by the investigator.

V. Investigation Findings

Upon conclusion of the investigation, the Commission must make findings. Upon a careful analysis of the totality of facts in an investigation, a finding based on the preponderance of evidence and totality of facts, must be made by the Commission investigator or a supervisor reviewing the investigation. Findings must be supported by the clear facts and circumstances present in the investigation. Findings will generally fall into one of six categories:

1. *Sustained*: meaning that the police officer committed all or parts of the alleged acts of misconduct.
2. *Not Sustained*: meaning that the investigation produced insufficient information to clearly prove or disprove the allegations.
3. *Exonerated*: meaning that the alleged conduct occurred, but was justified, legal, and proper, or was within policy.
4. *Unfounded*: meaning that the alleged conduct did not occur.
5. *No Finding*: where the complainant or impacted party failed to produce information to further the investigation, could not be reached for an interview, or refused to cooperate with the investigation and the complainant's or impacted party's participation is necessary to conduct the investigation or where the complainant or impacted party withdrew the complaint.
6. *Referral or No Jurisdiction*: where the investigation revealed that another agency was responsible and the complaint and/or complainant has been referred to that agency.

The Commission may either adopt one of the noted above findings or take further action as follows:

1. Agree with the investigator(s)' findings or recommend one of the above noted findings.
2. Summarily dismiss the complaint, in whole or in part (as noted in the section below).
3. Refer the complaint back to the investigator for further investigation.
4. Defer further action on the complaint.

5. Conduct an Investigative Hearing.
6. Propose disciplinary action at the conclusion of the investigation.
7. Take any other appropriate action, disposition, make recommendations, or the Commission may refer any matter before the Commission to the grand jury, district attorney, or other governmental agency authorized by law to investigate the activities of a law enforcement agency.

After reviewing the investigation or case report, the Commission may *summarily dismiss* a case, upon recommendation of the Executive Director or Chief Investigator, on its own motion, or that of the subject officer or the complainant/impacted party. Parties to the complaint shall be notified of a proposed summary dismissal and may appear to argue for or against summary dismissal. Summary dismissal may be appropriate in the following circumstances:

1. The complaint was not filed in a timely manner.
2. The Subject Officer is no longer employed by the Department and the Commission determines the investigation is not necessary.
3. The complaint is frivolous or clearly devoid of merit such that no reasonable person could sustain a finding based on the facts.
4. The case investigation is not completed within one year, not including any applicable tolling exemptions.

The Chief of Police must consider any findings or recommendation by the Commission of proposed police officer discipline, prior to Police Department imposition of the discipline. The Commission's findings, evaluation or recommendation must be completed before the statutory timelines set forth in POBOR or other applicable law. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department. After the Commission makes findings, the Chief of Police must provide a written substantive response to the Commission's findings within 30 days of receipt of the findings.

VI. Notification of Parties

At the conclusion of the investigation, the Commission will notify the complainant, impacted party, and the subject officer of the outcome of the investigation within seven (7) days of the Commission vote on the case. The subject officer may appeal any adverse finding of the Commission.

Third-party complainants shall not be provided with confidential information pertaining to the impacted party or as otherwise prohibited by law. Where a third-party complaint is not investigated because the impacted party does not choose to file a complaint, the third-party complainant should be notified as such.

The complainant, impacted party, or subject officer, may check on the status of the case at any time. However, the Commission must provide a notice to complainants on the status of their complaints no less than every 45 days.

DRAFT

Appendix A

Complainant, Impacted Party, Witness Admonition.

Today's date and time is [ENTER DATE] and [ENTER TIME]. This is Investigator [ENTER NAME] and I am conducting an official investigation into the Commission on Police Practices (CPP) case number [ENTER CASE NUMBER]. The case involves an allegation of misconduct against a member of the San Diego Police Department.

This interview is taking place at [LOCATION] and is being recorded.

For the record, please state your name, address, date of birth.

Also present is/are [ENTER RECORD]

Mr./Ms./Mx. [ENTER NAME], you are being asked to provide a statement pursuant to an official CPP investigation under the authority granted the CPP pursuant to Chapter 2, Article 6, Division 11 of the San Diego Municipal Code. All statements made become part of the official investigative file and may be disclosed pursuant to subpoena or other document request to the extent permitted by law and in furtherance of criminal, administrative, or civil litigation.

Please be advised that you will be asked to sign a verification statement at the conclusion of this interview verifying that all of the statements you have provided in connection with this investigation are true to your knowledge.

Mr./Ms./Mx. [ENTER NAME], do you understand what I have just told you?

At conclusion of interview:

Is there anything that I haven't asked you about that you wish to add to the record?

I am now going to present for your signature the verification form I mentioned earlier. This form requires your signature and reflects the fact that you have verified that the statements you have made in connection with this case are true to your knowledge.

[Have the person sign the form].

The time is now [ENTER TIME] and the interview is now concluded.

Appendix B

Officer Admonition.

Prior to the commencement of the interviewing of a police officer, the following statement, containing a *Garrity/Lybarger*³ admonition will be read to such officer:

"You are being questioned as a SUBJECT/WITNESS in this matter.

You are being questioned as part of an official investigation of the Commission on Police Practices. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of California, the Constitution of this State, and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

While you have the right to remain silent with regard to any criminal investigation, you do not have a right to refuse to provide a statement or answer my questions in this administrative investigation. Your refusal to cooperate in this matter or your silence can be deemed insubordination and could result in disciplinary action, up to and including termination. Any statement that you make under compulsion of the threat of discipline is for purposes of this internal or administrative investigation only and cannot be used against you in a criminal prosecution. However, statements made here may be used against you in relation to subsequent Police Department charges. Also be reminded that under the San Diego Police Department Policy 9.29, "members shall be truthful in all matters relating to their duties." Do you understand this admonition?"

Where police officer misconduct could involve an allegation of criminal conduct, the officer must be provided with a *Miranda* admonition. If the officer invokes *Miranda*, the officer may be ordered to provide a statement.

Miranda Warning

Due to the nature of this administrative or internal investigation, I am required to advise you of your constitutional rights. Therefore, it is important that you are aware of the following:

- You have the right to remain silent;
- Anything that you say may be used against you in court;
- You have the right to an attorney before and during questioning;
- If you cannot afford an attorney, one may be appointed by law.

Miranda Waiver

³ *Garrity v. New Jersey* (1967) 385 U.S. 493, involved police officers who were questioned about illegal activities and answered questions after a warning that they were entitled to silence, but could be terminated if they refused to answer questions. The Supreme Court held that the protection of the Fourteenth Amendment prohibits use in subsequent criminal proceedings of statements obtained under threat of termination. The Court stated that such statements are involuntary and coerced.

In *Lybarger v. City of Los Angeles* (1985) 40 Cal. 3d 822, the California Supreme Court held that an officer who refuses to cooperate in an investigation involving his or her potential criminal conduct may be administratively disciplined; however, such discipline imposed pursuant to a threat of insubordination for refusal to answer questions involving potential criminal conduct is invalid unless a *Miranda* warning is first provided.

Do you understand each of these rights as I have explained them to you?

Yes/No

With these rights in mind, do you wish to speak to me about this matter?

Yes/No

(Where rights to silence are invoked, the investigator will compel the officer to provide the statement using the following script).

I am now ordering you to provide a statement in this matter and to answer all of my questions truthfully and honestly. Your refusal to cooperate in this matter or your silence can be deemed insubordination and could result in disciplinary action, up to and including termination.

****(If the officer still refuses to provide a statement, a separate ground for insubordination or discipline may exist.)*

DRAFT

City of San Diego Commission on Police Practices

INVESTIGATIVE HEARING PROCEDURES

DRAFT

The complainant, impacted party, subject officer, Executive Director, or a member of the Commission may request an Investigative Hearing for some or all of the allegations of a case. An Investigative Hearing will be conducted, in accordance with the procedures for such hearings, when the Commission determines that such a hearing may facilitate the fact-finding process.

An Investigative Hearing may be deemed to facilitate the fact-finding process when:

1. There has been an undue lapse of time since the occurrence of the incident that is the subject of the complaint;
2. There are additional witnesses, evidence, or information that contradicts or supplements, or is not disclosed by the investigative report;
3. There is reason to question the conclusion of the investigative report;
4. The case of heightened public attention and an Investigative Hearing would advance public confidence in the complaint and investigation process of the Commission; or
5. An appearance in person by the parties would facilitate the fact finding process.

I. Scope of the Investigative Hearing

The scope of an Investigative Hearing may vary. It may consist of a single, narrowly drawn issue, of multiple issues, or of the entire complaint. The scope should be determined by the Commission when authorizing an Investigative Hearing, and all interested parties to the complaint shall be informed of any limitation in scope when notified of the Investigative Hearing.

II. Admission or No Contest Response by Officer

A subject officer may admit or enter a written response of “no contest” at any time prior to an Investigative Hearing. A response of “no contest” indicates that the subject officer accepts the allegations of the Complaint as substantially true in fact and interpretation. The subject officer shall be bound by the terms of the “no contest” response in any further consideration of the complaint.

III. Hearings in General

The Investigative Hearing Process must be conducted consistent with the Brown Act, California Penal Code sections 832.5-832.7, California Evidence Code sections 1040-1047, and California Government Code sections 6250 et seq.

The Investigative Hearing Panel of the Commission shall consist of *five* members of the Commission, as selected by the Chair, with one member designated by the Chair as the Presiding Member. If there is an Investigative Hearing involving an officer-involved shooting or in-custody death, the Commission will sit as a whole with a quorum of the members present.

A. Challenges of Commission members

1. *Challenge for conflicts of interest or bias.* A Commission member sitting on an Investigative Hearing Panel must consider all complaints in a fair and impartial manner. A member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a complaint shall not sit on the Investigative Hearing Panel deciding that Complaint. Personal interest in the outcome of a complaint does not include holding or manifesting any political or social attitude or belief, where such belief or attitude does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:

- a. Familial relationship, or close friendship, with parties material to the inquiry;
- b. Witnessing events material to the inquiry from a non-neutral perspective;
- c. Being a party to the inquiry;
- d. Having a financial interest in the outcome of the inquiry; and/or
- e. Holding a bias against a particular party that is sufficient to impair the Commission member's impartiality.

2. *Procedure for challenges.* Within five calendar days after the date on which Commission furnishes notice of an Investigative Hearing, including the names of the Commission members constituting the Investigative Hearing Panel, any party to the complaint may file a challenge for cause. Challenges for conflict of interest or bias must substantiate the challenge.

When a challenge for cause is filed, the Chair shall notify the challenged member as soon as possible, and if the member agrees that the challenge is for good cause, or otherwise agrees, the Chair shall ask another member to serve. If the challenged member does not agree that the challenge is for good cause, the Chair may poll the other members of the Investigative Hearing Panel, and if they agree that the challenge is for good cause, the Chair shall so notify the challenged Commission member and ask another to serve.

B. Public Comments

Commission members shall avoid public comment on the substance of particular pending complaints and investigations and shall preserve the confidentiality of closed session meetings in accordance with the Brown Act and applicable law.

IV. Investigative Hearing Procedures

Investigative Hearings may be scheduled by the Chair for any regular or special meeting of the Commission consistent with notice requirements under the Brown Act.

Fourteen-day notice requirement. Fourteen days' calendar notice of an Investigative Hearing shall be given to the complainant, impacted party, each subject officer, and any other person whose attendance the Commission deems appropriate. The notice shall state the date, time, and place of the Investigative Hearing, and the names of the Investigative Hearing Panel members.

Hearings are generally closed to the public. The nature of Investigative Hearings, open or closed, will be in closed session consistent with the Brown Act and peace officer confidentiality protections existing at the time of the Investigative Hearing, unless the subject officer requests an open Investigative Hearing.

Where an incident has been or is highly known to the public, there is nothing that prevents the Commission from holding open public hearings to receive community input or comments concerning the incident. The Commission may consider community input or information in conjunction with any investigation underway but shall not form any conclusions or hold deliberations regarding the outcome of the investigation solely based on public opinion or community input.

Authority to compel appearance. The authority of the Executive Director to subpoena witnesses may be used to compel the appearance of witnesses, including subject officers, and/or the production of documents.

Conduct of the Investigative Hearing. Investigative Hearings should be informal and should be conducted in the following manner unless the Chair orders otherwise:

1. The Presiding Member or Chair, as applicable, will conduct the Investigative Hearing subject to being overruled by a majority of the Investigative Hearing Panel or the Commission, as applicable. Members of the Investigative Hearing Panel shall be primarily responsible for obtaining testimony. One Investigative Hearing Panel member may be assigned by the Presiding Member or the Chair to perform the initial questioning of witnesses during an Investigative Hearing convened for a case. Additional questions may be asked by any Investigative Hearing Panel member or by a subject officer or their representative.
2. At the discretion of the Commission or the Investigative Hearing Panel, opening statement(s) may be made on behalf of the complainant, impacted party, and subject officer(s) involved.

3. In the event that the subject officer is compelled to cooperate in an Investigative Hearing, Police Department personnel or Commission investigator shall provide the subject officer with the “*Garrity/Lybarger* warning” when required under the appropriate circumstances. After the Investigative Hearing Panel has taken all relevant evidence, each party may, at the discretion of the Presiding Member or the Chair, be given an opportunity to make a closing statement.

4. At the conclusion of any witness testimony, either the complainant, impacted party, or subject officer may request that Commission or the Investigative Hearing Panel consider any additional areas of inquiry they feel need to be covered. The Presiding Member shall determine whether any further questions will be asked.

5. To the extent possible, the entire Investigative Hearing on a given complaint should be conducted in one meeting. However, if the Commission or the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the Investigative Hearing to a future date unless the parties agree to allow the Investigative Hearing Panel to receive such material in writing without reconvening.

Deliberation. After obtaining evidence, the Investigative Hearing Panel will deliberate in closed session. The Investigative Hearing Panel shall not consider any information not received as part of the Investigative Hearing. The Investigative Hearing Panel may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

Finding and report by the five-member Investigative Hearing Panel. At the conclusion of an Investigative Hearing before an Investigative Hearing Panel, the Panel members shall, by majority vote, adopt a recommended finding with respect to the complaint. The Investigative Hearing Panel shall not consider evidence or information obtained outside of the Investigative Hearing. The Investigative Hearing Panel shall then prepare a written report summarizing the evidence, the recommended finding, the reasons for the recommended finding, any dissenting opinion, and any other information that may be useful to the full Commission in its consideration of the case.

Submission to Commission. A written Confidential Investigative Hearing Panel Report shall be forwarded to all members of the Commission, and the matter calendared as soon as possible at a scheduled regular or special meeting.

The Presiding Member will be responsible for drafting the Investigative Hearing Panel Report, a copy of which shall be forwarded, to the extent afforded by law, to each complainant, impacted party, and subject officer, together with a notice of the time and place of the Commission meeting at which the complaint will be considered. All complainants, impacted parties, and subject officers shall be notified that Commission may accept written objections to the report within 10 days of the date of the submission of the report.

Upon consideration by the Commission, it may:

1. Vote to conclude the matter without further investigation, review, or hearings.
2. Request further information or review by staff, by the Investigative Hearing Panel, or through other appropriate means.
3. Vote to conduct further proceedings on the matter before the entire Commission.
4. Take such other or additional action as it deems necessary and appropriate, such as the making of recommendations regarding policy or rule changes, referral to appropriate agencies, or other appropriate action.
5. Accept the Confidential Investigative Hearing Panel Report as the Final Report of the Commission.

Record of Investigative Hearing. All Investigative Hearings shall be transcribed or recorded by a court or stenographic reporter.

V. Evidence at Investigative Hearings

Investigative Hearings do not need to be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence. However, hearsay shall not be sufficient in and of itself to establish facts unless of the nature generally relied upon in civil actions.

Evidence shall be taken in accordance with the following provisions:

1. Each party and the Investigative Hearing Panel shall have the following rights:
 - a. To call and examine witnesses;
 - b. To introduce exhibits;
 - c. To examine and cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
 - d. To impeach any witness regardless of which party first called the witness to testify.
2. If the subject officer does not testify on their own behalf, they may be called and examined as if under cross-examination.

3. Oral evidence shall be taken only under oath or affirmation.
4. Upon the request of either party, a witness may be excluded from the Investigative Hearing until they are called to testify.
5. Irrelevant and unduly repetitious evidence shall be excluded as determined by the Presiding Member.
6. The rules governing privileged communications shall be effective to the extent that they are otherwise required by constitution or statute.
7. Each party, including the Commission and any witness, shall have the right to have an attorney or representative of their choice present at all times during their own fact-finding interview or at the Investigative Hearing. The representative shall not be a witness or a person involved in the same investigation.

The Commission shall have the ability to have in attendance executive staff, investigators, and legal counsel for purposes of questioning and/or legal guidance.

8. The Chair shall have discretionary authority to provisionally qualify and utilize interpreters. Each party in need of an interpreter shall give notice to the Chair within seven days of receipt of the notice of hearing so that appropriate arrangements can be made.
9. The authority of a Commission subpoena issued by the Executive Director may be used to compel the production of documents and/or the appearance of witnesses, including the subject officer.
10. When either the complainant, impacted party, or the subject officer fails to appear, the Investigative Hearing Panel may receive statements from those persons present and relying on the evidence received, continue with the Investigative Hearing.
11. The Commission shall not disclose to the general public any reports, statements, files, records, documents, tapes, or other items the confidentiality of which is protected by law. This confidentiality may only be waived in accordance with applicable law, statute, ordinance, or legal proceedings. Evidence contained in Commission's file may only be disclosed to the complainant, impacted party, and subject officer to the extent afforded by law.
12. No finding with respect to an allegation of a Complaint shall be sustained unless it is proven by a preponderance of the evidence or totality of facts presented at the Investigative Hearing or otherwise contained in the investigative record.

Case Review Tips

Initial Steps

- Consider whether you have a conflict of interest and submit a Conflict of Interest Disclosure Form to the Executive Director and Chair, if appropriate.
- Familiarize yourself with the contents of the case file and take note of what it contains.
- Read the IA report.
- Review all the files in the case file.
- Treat case files with utmost confidentiality.
- Are all the relevant/necessary documents provided? (BWC index, A9s, arrest report, etc.)
- Make notes of relevant facts as you are reviewing evidence.

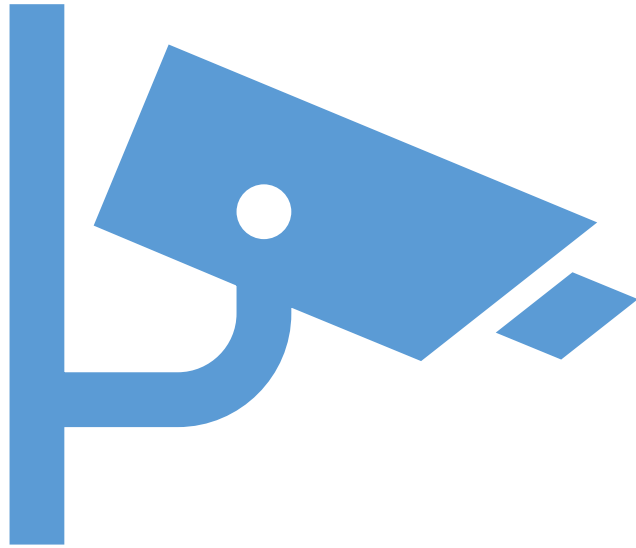


Issues to Focus on During the Review

- Allegations pleaded.
- Other policy/procedure violations occurred but not addressed.
- Investigation thoroughness and quality.
- Other issues/concerns.
- Are there any questions you need to ask the IA investigating Sergeant?

Issues to Pay Attention to when Listening to IA Interview Recordings

- What kind of questions were being asked (open-ended vs leading questions)?
- Were questions relevant to the understanding of circumstances surrounding the allegation asked? (e.g. Help me understand why you did this? What was your intention when you initiated contact with the individual? What was your plan?).
- Were follow up questions to clarify inconsistencies asked?



Issues to Focus on when Reviewing the video footage/BWC footage

- Actual time.
- Actions of the officer whose BWC is recording
- Actions of others in the camera view.
- Write down relevant time stamps for allegations and other observations as you may need to come back to them.
- Identify relevant time stamps to be shared with the entire Commission.

Tips for a Thorough Review

- Are all the allegations made accurately pleaded and addressed in the investigation?
- Are allegations attributed to specific officer and is the attribution accurate?
- Take note of inconsistencies and see if they were addressed.
- Have attempts to contact and interview all the relevant parties been made? Were these attempts/reasons for not contacting/interviewing documented in the report?

Tips for a Thorough Review Continued

Were key observations from the evidence noted in the report (e.g. relevant details to an allegation)?

Was all the relevant evidence obtained? (e.g. surveillance footage, medical records, officer reports, etc.).

Were attempts to reconcile conflicting evidence made?

Are facts analyzed fairly and impartially?

Does the analysis rely on relevant facts, evidence, and proper policies/case law?

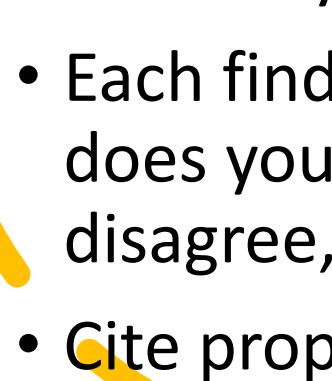


Report Drafting Tips

- Ensure that all the officers listed are properly classified (Subjects vs Witnesses).
- Ensure all allegations have subject officers listed.
- Case notes section should include any relevant observations about the investigation.
- Ensure that the BWC issues tracking table is filled out.
- Provide a brief summary of the incident.



Report Drafting Tips: Allegation Section

- Ensure that the allegation is clearly listed along with the subject officers.
 - Provide facts relevant to the allegation.
 - Provide IA Finding.
 - Provide your Group's Finding with an analysis.
 - Each finding should be backed up by the appropriate analysis (Why does your Group agree/disagree? What is the comment? If you disagree, provide the alternative finding.
 - Cite proper SDPD procedures or case law (if included in the report).
- 

Report Drafting Tips: Allegation Section Continued



Findings fall within the following three categories: Agree, Agree with Comment, Disagree with Comment.

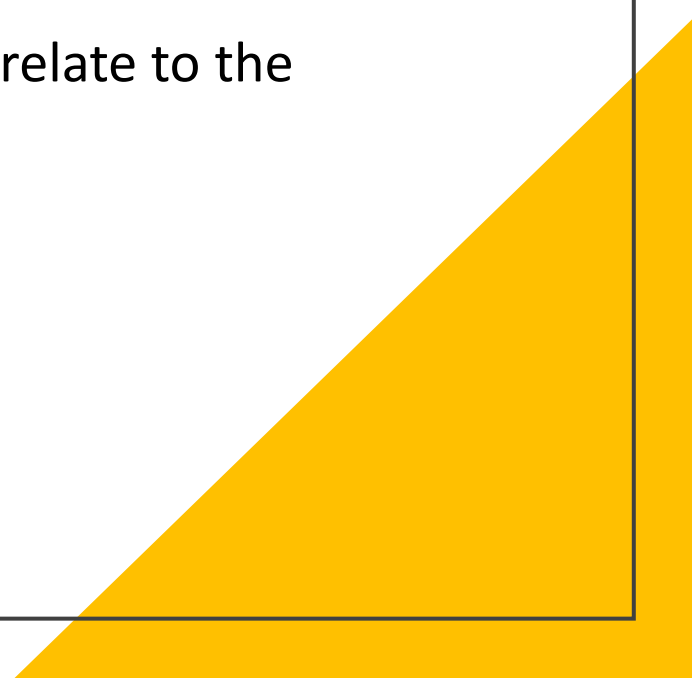


Findings should be based on the analysis of facts as compared to the relevant procedures and laws. The findings must be impartial and free of bias.



Report should be a team effort and be written to represent overall discussion/consensus of the Group.

Examples of Issues to Note in the Other Concerns/Issues Section

- Policy/procedure violations that occurred but were not addressed in the report.
 - Observations about incident/conduct that do not necessarily relate to the allegations.
 - Recommendations to SDPD related to the incident.
 - Observations of reoccurring patterns.
 - Suggestions on handling similar investigations in the future.
- 
- A large yellow triangle is positioned in the bottom right corner of the slide, pointing towards the top right.

Preparing for the Closed Session



- Read the IA report and watch the identified video footage.
- Read the CPP Case Review Report.
- Note any questions/comments about the case.
- Come to the CPP meeting with a good understanding of the case and prepared to ask questions/participate in the discussion.
- Consider whether you have a conflict of interest and make the appropriate notification, if necessary.

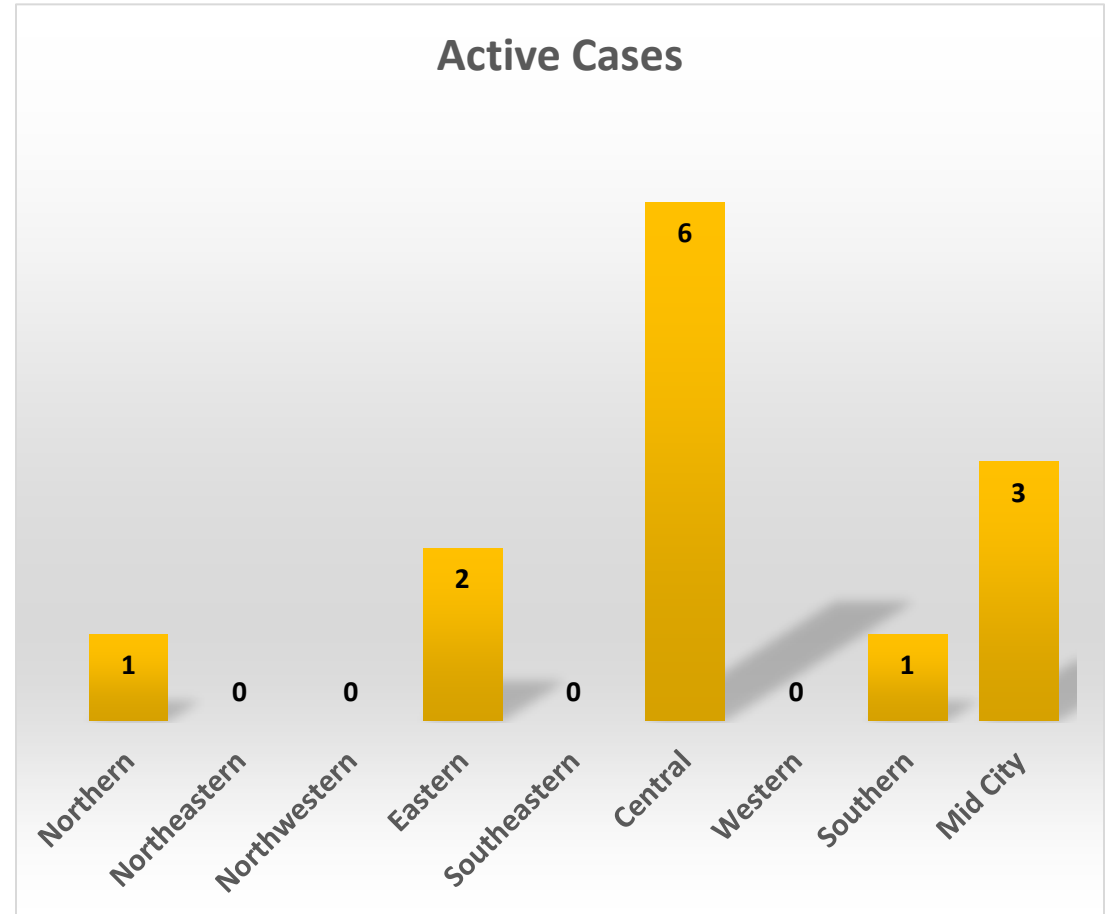
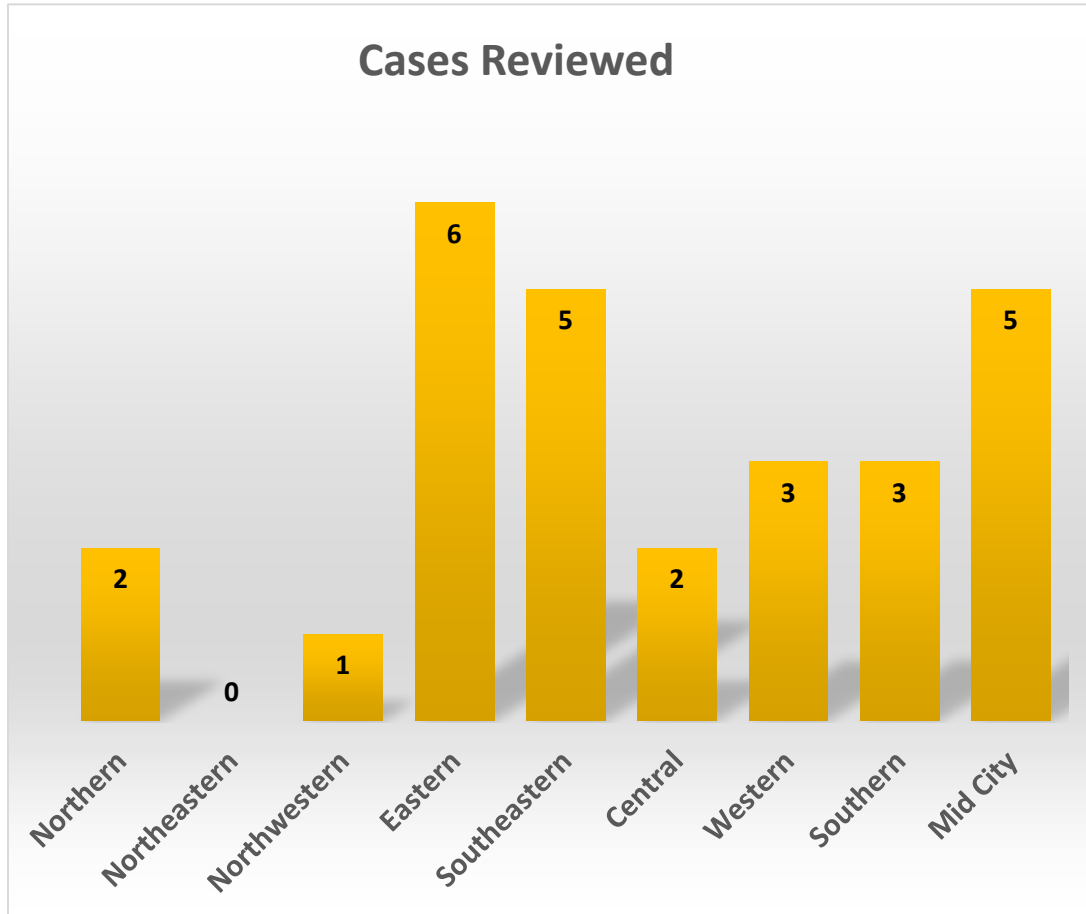


Questions?



Case Numbers by Division

FY24 Category I and OIS Cases



FY24 Category II Cases

