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2016 OCT 13 PM 2:37

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: David E. Downing
Assistant Chief of Police

SUBJECT: Police Training, Policy, and
Accountability

DATE: September 28, 2016

City Administrator Approval

Date:

10/13/16

RECOMMENDATION

Staff Recommends That The City Council Accept This Informational Report With Information Regarding Internal Affairs Investigations, Police Personnel Trainings, Updates To Police Policy, And Recent Developments In Police Discipline.

EXECUTIVE SUMMARY

This report is responsive to a request from the Oakland Office of the City Attorney (OCA) concerning police training regarding discipline, policy, and accountability within the Oakland Police Department (OPD). The request was based on a recommendation from a report filed with the United States District Court, Northern District of California ("the Court"), concerning discipline in OPD. The report to the Court is a result of litigation initially involving the City of Oakland in the *Delphine Allen v. City of Oakland* matter and ultimately identifying a concern with the imposition of discipline in OPD.

BACKGROUND / LEGISLATIVE HISTORY

On April 16, 2015, the court-appointed attorney investigator, Ed Swanson, filed a report with the Court, resulting from a court-ordered investigation of discipline in OPD. This report ("First Swanson Report") included factual findings and recommendations regarding police discipline in Oakland. On March 21, 2016, the Second Report of the Court-Appointed Investigator in *Delphine Allen v. City of Oakland* ("Second Swanson Report") was filed with the Court.

The Second Swanson Report included 14 recommendations, primarily for the Office of the City Attorney and OPD. Included was a recommendation that:

OCA should report to City Council quarterly on recent arbitration decisions, its efforts to support the police discipline process, and recent developments in police discipline. OPD should simultaneously provide a separate quarterly report to the City Council regarding IAD [Internal Affairs Division] investigations, police personnel trainings, updates to police policy, and recent developments in police

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discipline. Both OPD and OCA should simultaneously provide their reports to the Mayor and City Administrator.

This report is responsive to the OPD portion of the above recommendation.

ANALYSIS AND POLICY ALTERNATIVES

Internal Affairs Division Investigations

As a participant in the White House Police Data Initiative, OPD provides a number of metrics on its website on a regular basis. One of these is a quarterly report providing investigation information from the Internal Affairs Division (IAD). The most recent (Second Quarter 2016 Year-to-date) IAD Report is provided as **Attachment A**. This report provides several important pieces of information, including:

- The number of cases investigated
- The number of allegations investigated
- The type of discipline recommended
- Specific Manual of Rules violations and the number of allegations of each

Police Personnel Trainings

Since April 1, 2016, OPD has provided the following personnel-related trainings:

- Personnel Complaints and Division-Level Investigations for Communications Division Supervisors
- Internal Affairs Division Update – Credibility Assessment for Sergeants

OCA provided additional IAD Investigator training in September 2016. The training was approximately six hours. The audience included Internal Affairs investigators and command staff. Topics included:

- Managing investigations
- Identifying Manual of Rules violations
- IAD interviews
- Credibility assessments
- Analysis of allegations

Updates to Police Policy

As provided in the previous quarterly report, OPD currently has a policy manual made of Departmental General Orders (DGOs). As a voluntary sustainability measure, OPD has entered into an agreement with Lexipol to migrate all OPD policies to a more robust system. The Lexipol system provides OPD with model policies that are reviewed and will eventually be approved and adopted to create a new policy manual. The Lexipol model policies are developed by a team of experts at Lexipol and incorporate federal and state law as well as best

practices. Lexipol employs administrative and legal staff who maintain currency on legal mandates as well as changes in police best practices. Updates to policies are automatically generated by Lexipol to incorporate legal changes and changes in best practices.

As provided in the previous report, the new OPD policy manual made up of reviewed and approved Lexipol model policies went into effect July 1, 2016. Additional Lexipol model policies are expected to go into effect each month until all policies are in place. Though previously reported that all Lexipol policies would be in effect by January 1, 2017, the new target date is March 1, 2017. This is largely due to an increase in the number of policies that need to be cross-referenced with existing policies.

The following table provides information on the progress of the 164 Lexipol policies. The number provided is the number of policies that have completed that stage of review as of the writing of this report. **Attachment B** provides each stage of review in a flowchart.

Primary Group	Inspector General*	City Attorney**	Bureau Chief	Executive Command	Bargaining Units	Final Approval	Policy Manual
163	4	5	2	4	8	8	8

* The OPD Office of Inspector General reviews those policies with NSA tasks

**The Office of the City Attorney reviews those policies with NSA tasks or legal issues

Swanson Report Recommendations about Discipline

To help with police discipline, the First Swanson Report recommended the appointment of a Civilian Manager position in IAD. The Second Swanson Report recommended that the IAD Civilian Manager develop institutional memory within IAD through the development of an IAD manual.

Recent Developments in Police Discipline Resulting from the Swanson Recommendations

OPD developed a process to review recommendations concerning policy, training, and the discipline process from IAD, Skelly officers, supervisors, attorneys, and others. The process includes

- The IAD Civilian Manager tracks the recommended policy and training changes and provides recommendations from IAD reports to the Research and Planning Manager (policy) and the Training Section Commander (training). The recommendations concerning the discipline process are addressed within IAD.
- The Force Review Board Coordinator continues to route deliverables concerning policy to the Research and Planning Manager and deliverables concerning training to the Training Section Commander.
- Skelly officers notify the Research and Planning Manager of policy recommendations and the Training Section Commander of training recommendations.
- The Office of the City Attorney continues to notify the Research and Planning Manager of policy recommendations and the Training Section Commander of training recommendations resulting from arbitrations.

Regarding the Second Swanson Report recommendations for the OPD IAD manual, OPD has an IAD manual that the IAD Civilian Manager has been revising and updating. Approximately three-quarters of the manual is in final draft form and awaiting review and approval through the chain of command. The remaining one-quarter of the manual is still undergoing revision. A completed revised IAD manual is expected no later than January 2017.

As part of the police discipline process, OPD examines whether a supervisor ordered or otherwise caused the misconduct in question. OPD has further developed the Member/Employee Accountability Section of the Report of Investigation. The revised section includes two subsections: the first addresses whether any member or employee observed misconduct or was otherwise aware of it. The second subsection addresses whether any supervisor ordered or caused the action which led to the violation. OPD developed a process for commanders to review prior discipline issues to determine if adequate supervision was provided for all current disciplinary cases.

FISCAL IMPACT

There is no immediate fiscal impact associated with this informational report.

PUBLIC OUTREACH / INTEREST

As a participant in the White House Police Data Initiative (PDI), OPD provides many metrics online on a regular basis, including information on discipline. The PDI provides information to the public on the OPD website in a number of areas of interest including police discipline, crowd management, stop data, and use of force.

COORDINATION

The Office of the City Attorney reviewed this report for form and legality.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

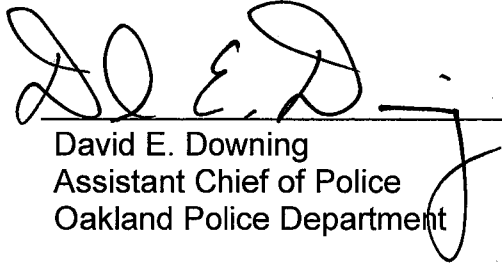
Social Equity: All members of the Oakland community benefit from a police department that is more transparent, more accountable, better trained, and governed by effective policy.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Accept This Informational Report Providing Information Regarding IAD Investigations, Police Personnel Trainings, Updates To Police Policy, And Recent Developments In Police Discipline.

For questions regarding this report, please contact Timothy Birch, Police Services Manager, Office of the Chief of Police, Research and Planning at (510) 238-6443.

Respectfully submitted,



David E. Downing
Assistant Chief of Police
Oakland Police Department

Prepared by:
Tim Birch, Police Services Manager
OPD, OCOP, Research and Planning

Attachments (2):

- A – Second Quarter 2016 Internal Affairs Division Report**
- B – Lexipol Policy Review Flowchart**

Internal Affairs Division Year to Date 2016

(Reporting Period: 1 Jan 16 to 30 Jun 16)

Cases	588	
Allegations	1,227	(The number of individual policy violations within each case)
Cases Investigated		
Division Level	100	(Division Level investigations are completed by a supervisor)
Internal Affairs(IA)	347	(Internal Affairs investigations are completed by an IA investigator)
Total # of Investigations	447	
Allegations Reviewed and Administratively Closed: 398		
These complaints include but are not limited to:		
Outside Agency Complaints, Complaints of No Merit and Service Complaints*		
*Example of a Service Complaint: Community member alleges the officer took too long to respond to a complaint of dogs barking, however; the officer was sent to an in progress Domestic Violence call.		
Discipline		
Suspension(s)	3	
Counseling and/or Training	17	
Written Reprimand(s)	6	
Termination	0	
Total Sustained Findings	26	
Manual of Rules Violations (MOR)		
MOR	Description	# of Allegations
000.01	Service Complaint (A police practice mandated by policy or law, such as towing a vehicle; or a delay in service, such as a long wait for an officer's presence due to call for service volume)	183
000.02	No Violation of OPD Manual of Rules and/or the Law.	211
000.03	Duplicate Entry	4
234.00	AUTHORITY AND RESPONSIBILITIES Subject to direction from higher command, a commanding officer has direct control over all members and employees within his/her command.	2
285.90	Prevention of harassment, discrimination and retaliation.	4
314.03	GENERAL CONDUCT – Members and employees shall conduct themselves at all times in such a manner as to reflect favorably upon themselves, the City, the Department and the police service. Whether on or off-duty, members and employees shall avoid any conduct that brings disrepute to the Department or impairs its efficient and effective operation.	16

314.04	<p>CONDUCT TOWARD OTHERS – HARASSMENT AND DISCRIMINATION –Members and employees shall treat all persons with courtesy and respect. The Department has a zero tolerance policy for harassment and discrimination against members, employees and persons on the basis of race, religion, national origin, marital status, age, sex, sexual orientation, ancestry, physical or mental disability, or medical condition. The Department prohibits conduct that violates the specified City Administrative Instruction. Any member or employee who harasses or discriminates against another member, employee, or any person, or engages in any inappropriate workplace conduct that violates City Administrative Instruction 71 shall be subject to severe disciplinary action, including discharge from the City service. Any member or employee who has knowledge that another member or employee has engaged in harassment or discrimination or inappropriate conduct that violates the specific City Administrative Instruction is strictly charged with the responsibility for reporting that conduct in accordance with the provisions of Manual of Rules Section 314.48 (Reporting Violations of Laws, Ordinances, Rules or Orders). Any member or employee who harasses or discriminates against another member, employee, or any person, or engages in any inappropriate workplace conduct that violates City Administrative Instruction 71 shall be subject to severe disciplinary action, including discharge from the City service. Any member or employee who has knowledge that another member or employee has engaged in harassment or discrimination or inappropriate conduct that violates the specific City Administrative Instruction is strictly charged with the responsibility for reporting that conduct in accordance with the provisions of Manual of Rules Section 314.48 (Reporting Violations of Laws, Ordinances, Rules or Orders).</p>	36
314.07	<p>CONDUCT TOWARD OTHERS – Demeanor – Members and employees shall perform their duties attentively and courteously, avoiding rude, threatening, harsh, insulting, profane, insolent or demeaning language, and they shall maintain a professional bearing regardless of provocation to do otherwise.</p> <ul style="list-style-type: none"> - Members and employees shall treat superior officers, subordinates, and peers with respect. They shall be courteous and civil at all times in their relationships with one another and shall avoid any inappropriate conduct. - All persons, except the very youthful and those known personally by the member or employee, shall at all times be addressed by their appropriate title followed by their last name. When on duty and in the presence of others, superior officers shall be referred to by rank title. - Members and employees shall attend to requests from the public quickly and accurately, avoiding unnecessary referral to other parts of the Department. - Orders from superior to subordinate members and employees shall be given in a civil manner, without the use of profane or derogatory language. 	123
314.08	<p>CONDUCT TOWARD OTHERS – RELATIONSHIPS – Members and employees shall not inappropriately convert or attempt to convert an on-duty contact to an intimate relationship.</p>	1
314.30	<p>INSUBORDINATION-DISOBEDIENCE TO ORDERS – Failure of any member or employee to obey a lawful order given by a superior officer constitutes insubordination.</p>	1

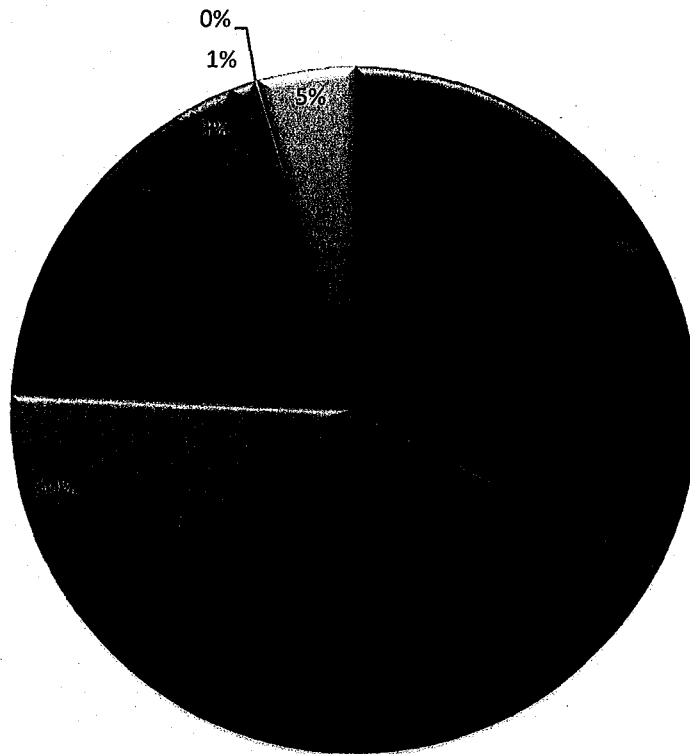
Attachment A

314.32	INSUBORDINATION-DISRESPECT – The act of ridiculing or treating with disrespect a superior officer or his/her orders whether in or out of his/her presence.	1
314.39	<p>PERFORMANCE OF DUTY – All members and employees shall perform their assigned duties and responsibilities as required or directed by law, Departmental rule, policy, or order by a competent authority. Each member and employee is accountable for the exercise of delegated authority, and shall not conceal, divert or mitigate their true culpability. Violations of performance of duty include, but are not limited to, the following:</p> <ul style="list-style-type: none"> - Intentional illegal search, seizure, or arrest; - Unintentional or improper search, seizure, or arrest; - Planting of evidence; - Failure to perform duties as required or directed by law, Departmental rule, policy, or order; - Improper care of the property of persons; and - Changing a work assignment without authority. 	408
314.42	OBEDIENCE TO LAWS – Members and employees shall observe and obey all laws and ordinances. A violation of this section may include, but is not limited to the following: Felony and serious misdemeanor crimes; Other misdemeanor crimes; or Driver's license status.	10
314.48	REPORTING VIOLATIONS OF LAWS, ORDINANCES, RULES OR ORDERS – Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class II violation which indicates a pattern of misconduct of which they are aware, shall within 24 hours or sooner, if practical, report the offense, orally or in writing, to his/her supervisor or the Internal Affairs Division.	4
314.69	GIFTS, GRATUITIES – SOLICITING OR ACCEPTING – Members and employees shall not use their authority or position, whether for him/herself or another, and not otherwise available to them as a private person: Members and employees shall not use their authority to solicit or accept contributions for the Department or for any other agency, organization, event, or cause without the express consent of the Chief of Police or designee.	1
314.70	USES OF PRIVILEGED INFORMATION – Members and employees are prohibited from using information, not available to the public, gained through their position as a law enforcement officer or within the Department to gain a financial or other benefit for themselves or another.	1
328.14	LOITERING – On-duty members and employees, and off-duty members and employees in uniform shall not enter bars, taverns or theaters except to perform a police task. Loitering and unnecessary conversation in such locations is forbidden. Eating in establishments where the primary purpose is the service of alcoholic beverages rather than food is discouraged, although not forbidden.	0

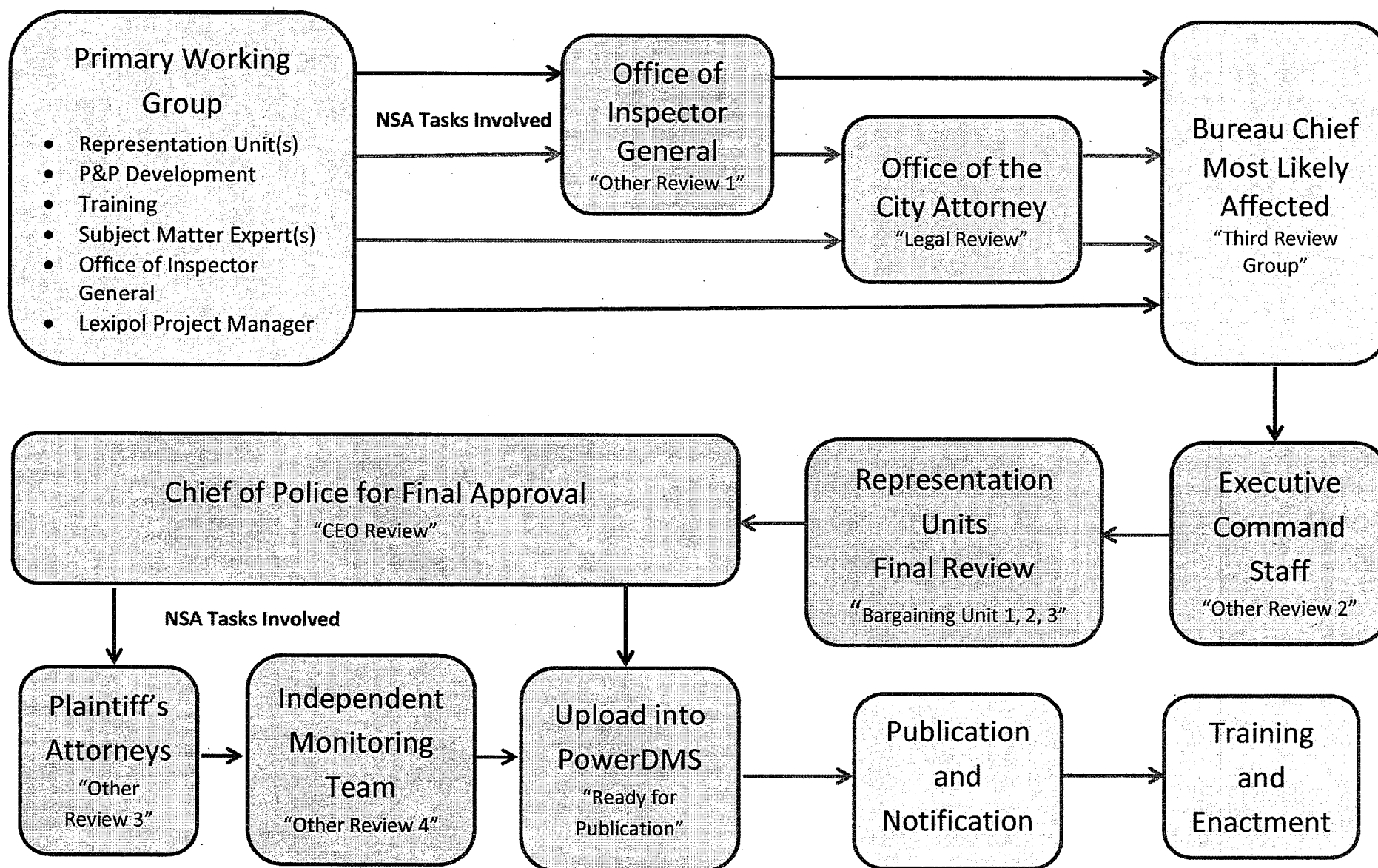
328.49	ABSENCE FROM DUTY – Every member or employee who fails to appear for duty at the date, time and place specified without the consent of competent authority is "absent without leave." Absences without leave in excess of one day shall be reported in writing to the Chief of Police.	1
328.63	CONSUMPTION OF INTOXICANTS – Members and employees shall not at any time.	2
342.00	DEPARTMENT PROPERTY AND EQUIPMENT – Preventable Collision	36
356.30	ACCESSING, VIEWING, DOWNLOADING, PROVIDING, SHARING INAPPROPRIATE MATERIAL – Members and employees shall not intentionally access, view, download, provide, or share inappropriate material while on-duty or in a police facility, except in the performance of an official police task.	2
370.27	PHYSICAL FORCE, USE OF – The use of physical force (Level 1-4) shall be restricted to circumstances specified by Departmental policies and law.	123
370.36	CUSTODY OF PRISONERS – Arrestees and/or detainees shall be reasonably controlled in order to prevent their escape. They shall be treated humanely and shall not be subjected to unnecessary restraint. The arresting officer(s) shall notify the transportation officers of any special care the prisoner may need. Responsibility for both the prisoner and his/her personal property transfers from the arresting officer to the transportation officer when they accept custody of the prisoner	4
398.73	RETALIATION – Under no circumstances shall members or employees retaliate against any other member, employee, or any other person for engaging in a protected activity. Members and employees shall not engage in any adverse action that: - Would cause a reasonable member, employee, or any other person to be deterred from engaging in a protected activity; or - Is based on a retaliatory motive arising out of a member, employee, or any other person engaging in a protected activity. Any member or employee who becomes aware of such conduct shall immediately report the misconduct to a commander/manager, and/or directly to the Internal Affairs Division. The presumptive penalty for violation of this section shall be termination.	3
398.76	REFUSAL TO ACCEPT OR REFER COMPLAINT – Members and employees shall not refuse to accept a citizen complaint, fail to refer a citizen to the IAD (when the citizen can be reasonably understood to want to make a citizen's complaint), fail to forward a complaint to the IAD, discourage a person from filing a complaint, and/or knowingly provide false, inaccurate, or incomplete information about the IAD process. Members and employees shall not fail to follow any of the procedures for accepting, referring, or forwarding a complaint.	25

398.77	REFUSAL TO SUPPLY NAME AND SERIAL NUMBER – Upon request, members and employees shall supply their names and serial numbers to any person who seeks such identification.	21
398.80	TRUTHFULNESS – Members and employees are required to be truthful at all times whether under oath or not, except when necessary in the performance of official duties.	4

IAD Allegations



- Service, No MOR, Duplicate Entry
- Performance of Duty
- Use of Force
- Conduct, General Responsibilities, Supervisor Responsibilities
- Care of Property
- Insubordination, Obedience to Laws, Authority & Responsibility
- False Report Illness, Absence from Duty, Consumption of Intoxicant, Loitering
- Fail to Accept/Refer Complaint, Supply Serial, Retaliation, Court Appearance, Truthfulness



**All reviewers have the ability to send documents back to the Primary Working Group for revision and clarification.*

***Content issues noted in the review/approval process will be routed back to the Primary Working Group for consideration, modification, and implementation as appropriate.*