



OFFICE OF INDEPENDENT REVIEW

**REPORT FOR THE PERIOD OF JULY 1, 2017 TO
SEPTEMBER 30, 2017**

**John A. Gliatta
Independent Reviewer
October 23, 2017**

ABOUT THE OFFICE OF INDEPENDENT REVIEW

The Office of Independent Review (OIR) was significantly changed when Lee Brand was elected as Mayor for the City of Fresno. Mayor Brand amended the position of Independent Reviewer (IR) to a full time position requiring local residency. Although the mentioned changes were implemented, the foundation of the OIR was not changed. The OIR will continue to work to strengthen community trust in the Fresno Police Department (FPD) by providing a neutral, third-party review of police policies, procedures, strategies, and Internal Affairs (IA) investigations. The OIR will operate independently of the FPD and provide City leaders and the public with an objective analysis of policing data, actions, and outcomes.

The OIR will analyze complaints filed by citizens and those initiated by FPD IA to ensure they have been investigated fairly and thoroughly. Periodically, the OIR will provide an objective analysis of individual units within the FPD to ensure compliance with policy and procedure, best practices, and the law. This includes recommendations and findings to increase thoroughness, quality, and accuracy of each police unit reviewed.

The work of the OIR is guided by the following principles:

- Independence
- Fairness, Integrity, and Honesty
- Transparency
- Participation of Stakeholders, both internally and externally
- Acceptance, Cooperation, and Access
- Obedience to Legal Constraints

In addition, a Citizens Public Safety Advisory Board, hereafter referred to as the Board, was created by Mayor Brand to enhance trust, accountability, transparency, and promote higher standards of services in the FPD. This will increase public confidence in the FPD and work to strengthen and ensure the application of equal protection under the law for all citizens in the City of Fresno. It is Mayor Brand's belief more trust and public confidence in the FPD will establish a foundation that allows our police department to be safer and more effective in the performance of their duties. There are many in the City of Fresno who also share this belief.

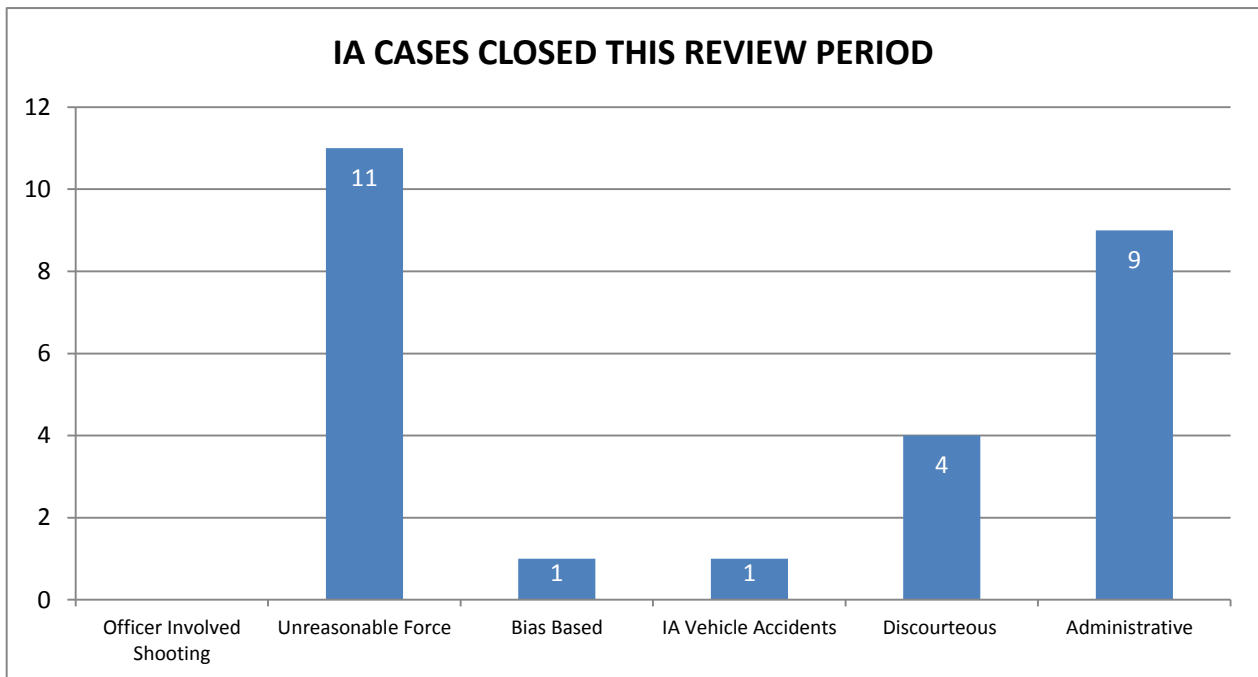
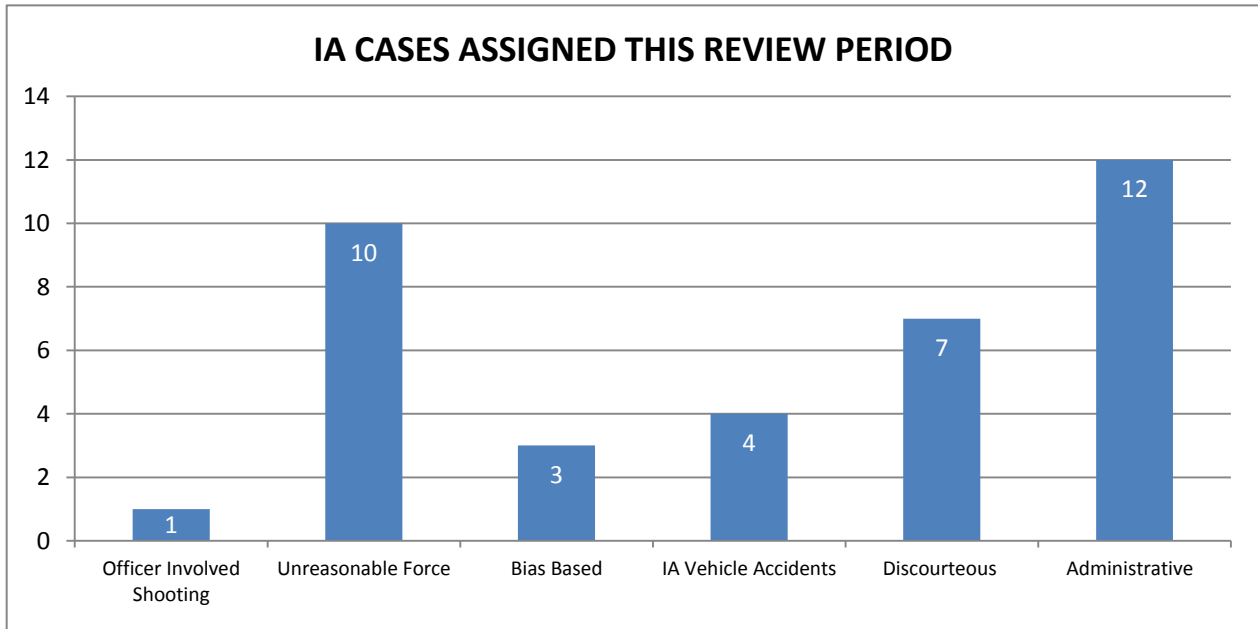
The Board is comprised of nine individuals appointed by the Mayor. The Board members represent the diversity of the community. In addition, there are five non-voting members serving the Board in an advisory capacity. The Board will advise the IR in helping to define, assess and further develop Community Based Policing citywide. The Board will also monitor and develop performance metrics to measure effectiveness of Community Based Policing.

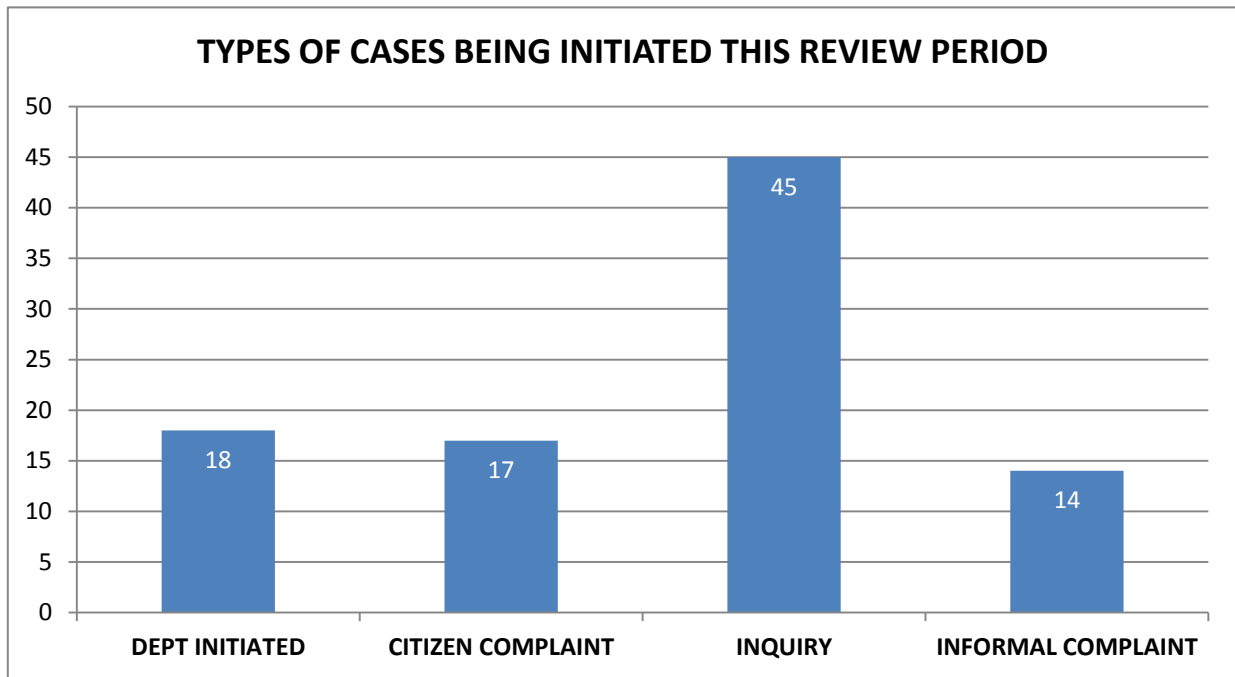
OIR REPORT FORMAT

The OIR was vacated shortly after the end of the first quarter of 2017 and remained vacant until late August 2017. Therefore the first and second quarter reports for 2017 were not prepared. However, specific questions from citizens regarding complaints during those periods were addressed by the present IR. This third quarter report structure and content varies somewhat from previous reports. The following changes will be implemented in this and future reports:

- Definitions for the terms used have been amended to achieve uniformity with the definition of terms used in California Legislative documents and the FPD.
- Officers will be referred to as “O” in lieu of “S” which was used previously.
- The charts are grouped by incident type and cases appear in order of case number.
- The incident type charts will list all cases which were pending, assigned, or closed during the review period, and where applicable a Year to Date (YTD) chart will be listed.
- All cases in which the FPD IA determined the officer(s) was Exonerated, Unfounded, or Not Sustained will be reviewed by the OIR. The finding reached by the OIR will also be listed. If IA and the OIR have not reached the same decision the OIR explanation will appear following the chart. Cases in which IA deemed officer(s) Sustained will not be reviewed a second time by the OIR.
- All Informal Complaint cases which are not investigated by IA will also be reviewed.
- Cases will not be reviewed by the OIR until IA has completed their investigation and the case is classified as closed by IA, thus allowing for all information to be reviewed.
- In the event the OIR proposes a recommendation or corrective action, it will appear directly following the chart summarizing the cases within the specific incident type.
- Recommendations or corrective actions which are not directly related to a charted incident type will appear at the end of the report prior to the summary.
- Additional changes are anticipated but due to the limitations of the IA software program the changes will not appear until the first quarter 2018 report. It should be noted, IA was receptive and responsive to all requests made by the OIR and is presently working on ways to provide the requested data regardless of the limitations of the third party software program.
- The report will be released to Mayor Lee Brand, City Manager Wilma Quan-Schector, Chief Assistant City Attorney Francine M. Kanne, and Chief Jerry Dyer, prior to finalization. This will allow the respective parties an opportunity to respond to recommendations and/or findings, and those responses may be included in the final report. However, their reviews and responses will not alter the recommendations or corrective actions made by the OIR. Responses will appear following the summary.

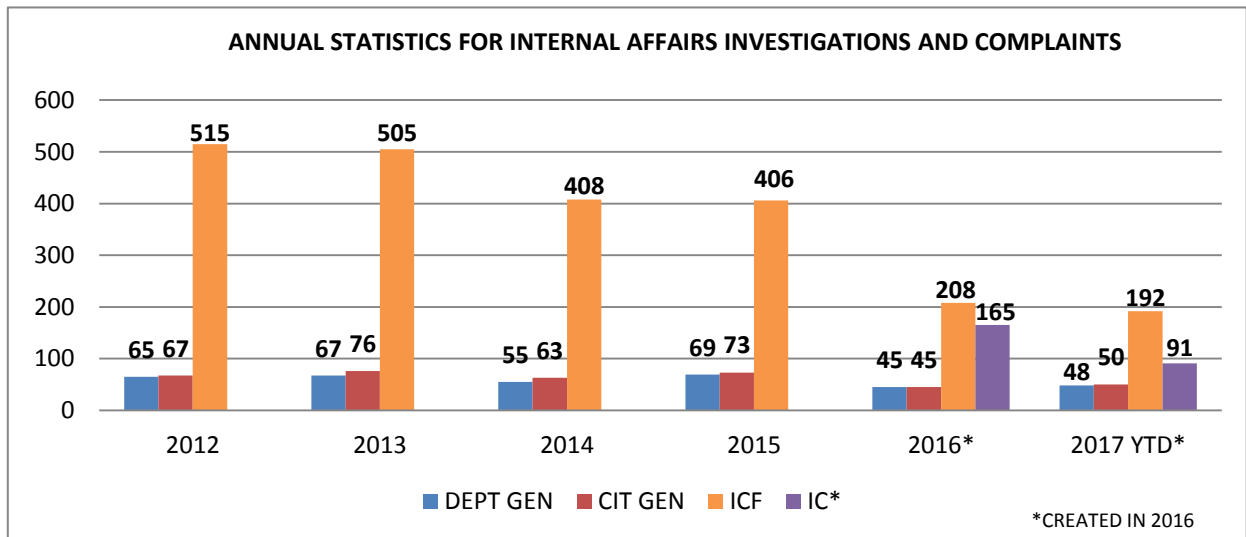
The following charts list the number and types of IA cases assigned and closed during the third quarter of 2017. For classification purposes Discourteous Treatment also includes cases in which the officer was accused of conduct unbecoming of a police officer. The classification of Administrative Matters includes officers accused of violating policies or procedures which do not involve responding to a call for service or interacting with the public.





Inquiry: An inquiry involves a question about the policy or procedures of the FPD. Inquiries may be documented via an Inquiry Complaint Form (ICF).

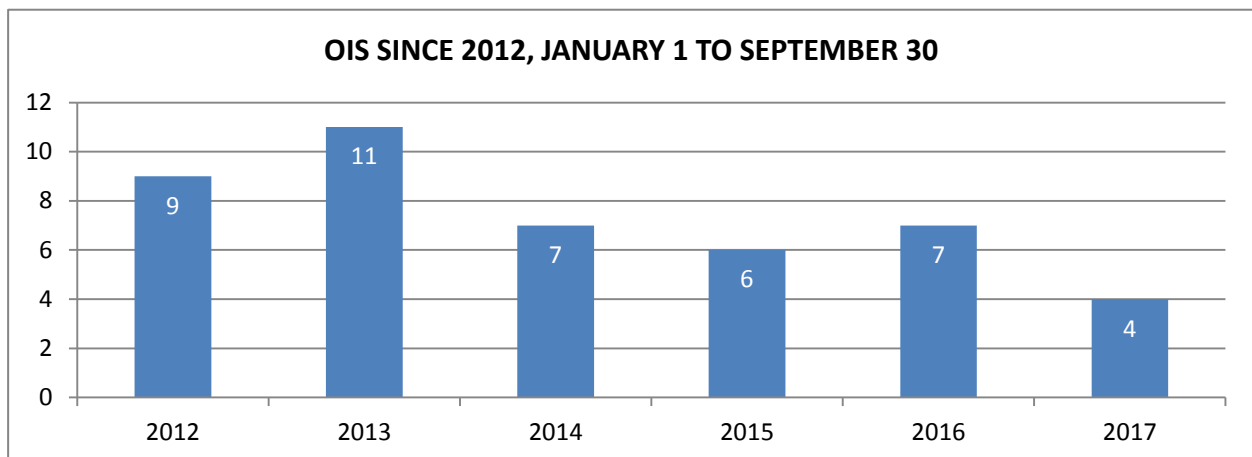
Informal Complaint: A matter which can be handled at a supervisor level within a district/division and is not reasonably likely to result in disciplinary measures. Generally, complaints handled via this process include minor allegations or general violations. A finding of sustained, not sustained, unfounded or exonerated is required.



EXPLANATION OF TERMS AND ABBREVIATIONS	
UNF	UNFOUNDED: THE INVESTIGATION CLEARLY ESTABLISHED THE ALLEGATION WAS NOT TRUE. COMPLAINTS WHICH ARE DETERMINED TO BE FRIVOLOUS WILL FALL WITHIN THE CLASSIFICATION OF UNFOUNDED [PENAL CODE §832.5(C)].
EX	EXONERATED: THE INVESTIGATION CLEARLY ESTABLISHED THE ACTIONS OF THE PERSONNEL WHICH FORMED THE BASIS OF THE COMPLAINT DID NOT VIOLATE THE LAW OR FPD POLICY
NS	NOT SUSTAINED: THE INVESTIGATION FAILED TO DISCLOSE SUFFICIENT EVIDENCE TO CLEARLY PROVE OR DISPROVE THE ALLEGATION WITHIN THE COMPLAINT
SUS	SUSTAINED: THE INVESTIGATION DISCLOSED SUFFICIENT EVIDENCE TO PROVE THE TRUTH OF THE ALLEGATION IN THE COMPLAINT BY THE PREPONDERANCE OF THE EVIDENCE.
P	PENDING: THE INVESTIGATION HAS NOT BEEN COMPLETED
O	OFFICER: IF FOLLOWED BY A 1, 2, 3, ETC., INDICATES MORE THAN ONE OFFICER WAS BEING INVESTIGATED
RAI	REQUESTED ADDITIONAL INFORMATION WAS MADE BY OIR BEFORE A DECISION COULD BE MADE
NR	NOT REVIEWED: OIR DID NOT REVIEW THE CASE DUE TO FPD FINDING OF SUSTAINED
CP	COMPLAINING PARTY: THE PERSON WHO FILED THE COMPLAINT
DATE ASSIGNED IS THE DATE THE CASE WAS ASSIGNED TO AN IA INVESTIGATOR, NOT THE ACTUAL DATE OF OCCURRENCE	

During the third quarter of 2017 there was one new Officer Involved Shooting (OIS) case. A total of four OIS and one In Custody Death (ICD) IA cases are pending and no cases were closed. Therefore, no cases were reviewed by the IR for this report. Although no cases were reviewed, an analysis was conducted for the last five years. In comparing the first three quarters of a year, this year has seen the lowest number of OIS in the last five years, with a 43% reduction since 2016.

OFFICER INVOLVED SHOOTING AND IN CUSTODY DEATH					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
16-0051	6/25/2016	P			O1 AND O2 SHOT SUSPECT FOLLOWING A TRAFFIC STOP-DECEASED
17-0040	4/15/2017	P			OFFICER FIRED ONE ROUND FOLLOWING A TRAFFIC STOP-DECEASED
17-0050	5/10/2017	P			O1 & O2 ARRESTED SUSPECT WHO WAS LATER PRONOUNCED DECEASED
17-0057	6/7/2017	P			O1 & O2 OIS; SUSPECT - DECEASED
17-0076	7/23/2017	P			O1, O2, & O3 FIRED AT SUSPECT FOLLOWING A PURSUIT AND STOP



UNREASONABLE FORCE					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0029	03/17/17	8/7/2017	EX	EX	CP ALLEGED O1 AND O2 USED UNREASONABLE FORCE
17-0036	03/31/17	7/17/2017	UNF	UNF	CP ALLEGED O1 & O2 USED UNREASONABLE FORCE
17-0047	04/28/17	8/3/2017	UNF	UNF	CP ALLEGED O USED UNREASONABLE FORCE
17-0048	05/05/17	7/10/2017	UNF	UNF	CP ALLEGED O USED UNREASONABLE FORCE
17-0054	03/21/17	8/28/2017	SUS	NR	CP ALLEGED O1 AND O2 USED UNREASONABLE FORCE
17-0055	05/26/17	7/24/2017	EX	EX	CP ALLEGED O USED UNREASONABLE FORCE
17-0056	06/02/17	8/28/2017	EX	EX	CP ALLEGED O USED UNREASONABLE FORCE WHEN USING PIT
17-0061	06/21/17	8/17/2017	UNF	UNF	CP ALLEGED O1 AND O2 USED UNREASONABLE FORCE
17-0065	06/29/17	6/29/2017	EX/UNF	EX/UNF	CP ALLEGED O1 AND O2 USED UNREASONABLE FORCE
17-0069	07/13/17	8/29/2017	UNF	UNF	CP ALLEGED O USED UNREASONABLE FORCE
17-0072	07/14/17	9/28/2017	UNF/SUS	UNF/SUS	CP ALLEGED O1, O2, O3, AND O4 USED UNREASONABLE FORCE
17-0079	08/01/17	P			CP ALLEGED O1 & O2 USED UNREASONABLE FORCE
17-0080	08/01/17	P			CP ALLEGED O USED UNREASONABLE FORCE
17-0082	08/02/17	P			CP ALLEGED O1 & O2 USED UNREASONABLE FORCE AND FALSIFIED REPORT
17-0089	08/15/17	P			CP ALLEGED AN UNKNOWN OFFICE USED UNREASONABLE FORCE IN 2013
17-0091	08/18/17	P			CP ALLEGED O USED UNREASONABLE FORCE
17-0097	09/12/17	P			CP ALLEGED O1 & O2 USED UNREASONABLE FORCE
17-0098	09/13/17	P			CP ALLEGED O1 & O2 USED UNREASONABLE FORCE
17-0100	09/26/17	P			CP ALLEGED O OF UNREASONABLE FORCE AND SEXUAL ASSAULT

There were eleven Unreasonable Force IA cases closed during the third quarter of 2017. Of the closed cases, ten were determined to be Exonerated or Unfounded by IA and one case was Sustained. The OIR reviewed all cases in which the officer(s) were found to be performing their duties in accordance with FPD policy or procedure. The OIR was in agreement with IA in all of the cases. One case, 17-0072, requires clarification as the findings were listed as Unfounded *and* Sustained. The allegations of Unreasonable Force against the officers were correctly determined to be Unfounded, but IA determined one officer was found to be out of policy due to failing to activate his body camera. However, although the OIR was in overall agreement, several recommendations are being made in an effort to avoid future complaints and minimize department liability.

One case, 17-0036, involved a CP who claimed he suffered a cut to the bridge of his nose and a bruise to his head because of actions by O1 and O2. The CP alleged an officer intentionally applied the vehicle brakes quickly while transporting him to the jail causing him to slam his face into the protective screen between the front and rear seats. It was also alleged an officer pushed his head into the side of the patrol car when they arrived at FPD. A review of the body camera video clearly displayed a pre-existing abrasion on the CP's head when the officers first came in contact with him. A review of the dispatch log then indicated the officers advising dispatch the CP was banging his head against the screen while being transported to FPD. It should be noted the CP appeared intoxicated when the officers located him in a bar. The CP was "cut-off" at another bar earlier that evening due to his level of intoxication. The officers admitted the CP was not secured with a seat belt when they placed him in the patrol car but they were careful while transporting.

The FPD Procedure Manual, Procedure 703 states "Seatbelts are a mandatory use safety item for all drivers and passenger seat occupants, while the vehicle is in motion (Exception: tactical exits and exigent circumstances)."

The FPD Policy Manual, Policy 901 addresses "Transportation of Prisoners." The policy is as follows:

901.5 RESPONSIBILITY DURING TRANSPORT / DELIVERY OF PRISONERS

Members are responsible for the safe delivery of prisoners and the prisoner's property under the member's control. Members shall exercise due care and caution in transporting and processing prisoners to prevent personal injury or property loss by any prisoner for whom they are responsible.

901.7 PRISONER TRANSPORTS TO FCJ/JJC

When a member transports a prisoner(s) to FCJ/JJC (*Fresno County Jail/Juvenile Justice Campus*), he/she is responsible for the safety and security of the prisoner(s) until he/she is turned over to the receiving agency.

The FPD Policy Manual, Policy 306 addresses “Handcuffing and Restraints.” The policy states:

306.3 APPLICATION OF HANDCUFFS

(c) When applying handcuffs, the subject’s hands should be secured behind his/her back with the palms facing outward;

Although the procedure manual does state seatbelts are mandatory, the procedure references passenger seat occupants but does not specifically state it also applies to prisoners. The section of the policy manual specifically addressing Transportation of Prisoners states members are responsible for the safety and security of the prisoners. The policy does not state seat belts are mandatory on all prisoners while being transported. In reviewing ten other law enforcement agency policy manuals, including the Advisory Committee on Highway Safety of International Association of Chiefs of Police, the policies contain language specifically addressing the restraint of prisoners while being transported. All contain statements similar to “all prisoners are to be secured in the vehicle with a seatbelt if the vehicle is so equipped”.

Regardless of how careful an officer is while transporting a prisoner they are unable to anticipate when they will need to apply the brakes quickly to avoid an accident or a careless driver. Because almost all prisoners are handcuffed behind their back they are unable to reduce the impact of hitting the protective screen during a sudden stop. In addition, in the event of a significant accident the unsecured prisoner could possibly be ejected.

Recommendation 1: In an attempt to reduce physical injury to prisoners and claims for those injuries it is recommended FPD Policy 901 be amended to mandate the securing of prisoners with a seat belt while the vehicle is in motion. Also, in view of the fact the patrol vehicles are not equipped with audio/video recorders the activation of a body camera should be considered when a prisoner attempts to self-inflict injury while being transported. Although the video will not be recording the prisoner, the audio will document the cause of injury and reduce, if not eliminate, future allegations by those being transported.

Another Unreasonable Force case was Exonerated by IA, 17-0056, and reviewed by the OIR. The CP alleged the officer used unreasonable force when the Pursuit Intervention Technique (PIT) was used to stop the fleeing CP who was failing to yield and driving extremely recklessly. At the time the CP was wanted on three felony warrants and was believed to be armed. When it was apparent the CP was not going to stop for the officer and was disregarding all traffic controls and public safety, the officer was instructed to use the PIT. The PIT was utilized on a street with no visible traffic or pedestrians in sight. The CP vehicle came to rest after striking a FAX bus parked along the curb line. The CP also alleged the officer was not properly trained in PIT due to his present assignment as a K-9 officer. The IA investigation determined the officer completed the Pursuit Driving Refresher Course within the last year, which is a legislative mandate. IA found the officer was justified in his actions and determine the officer was Exonerated of the allegations.

The OIR reviewed the case and was in agreement with IA that the location was not the preferred spot for a PIT, but due to the actions of the CP it was justified. Although the officer was in compliance with the legislative mandate of annual pursuit training, the OIR determined many other FPD officers did not meet the mandated compliance of annual training and documentation of the training. A recent appellate court case decision provides the foundation for the OIR recommendation on this matter. The following was published on August 25, 2017, by the firm of Manning & Kass, Ellrod, Ramirez, and Trester, who successfully defended the city and police department for the use of the PIT by their officer.

The OIR recognizes the summary of the below is lengthy but believes it is necessary to properly justify and show the importance of the recommendation which follows.

On August 23, 2017, the California Court of Appeals, Second Appellate District, rendered a decision on a case which was similar to the FPD case summarized above. The incident occurred on February 15, 2015, when the Gardena Police Department (GPD) had used a PIT on a fleeing suspect which resulted in the death of the driver. The surviving passenger, Plaintiff Ramirez, filed suit claiming the PIT was negligence and battery under California law. However, in 2007, California Legislature revised public entity immunity under Vehicle Code § 17004(b)(2) when certain criteria are met. Part of the revision included language the entity adopt a vehicle pursuit police to promote officer and public safety by restricting officer's discretion during vehicle pursuits, including specific content requirements the pursuit must meet, the Legislature added "promulgation" as a threshold for the immunity. The promulgation requirement consisted of two elements necessary for the public entity to obtain the Vehicle Code immunity: (1) the entity must provide annual training to all of its police officers on the entity's vehicle pursuit policy; and (2) the entity must require all of its officers to certify, in writing, that the officer had "received, read, and understood" that policy. However, the Legislature included a caveat in the promulgation requirement language: "The failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity."

Ramirez cited the Fourth Appellate District decision in *Morgan v Beaumont Police Department* (2016), Ramirez argued that the City was not entitled to the Vehicle Code immunity because it had not satisfied the promulgation requirement. In *Morgan*, the defendant city had emailed each of its officers its vehicle pursuit policy, but only required them to acknowledge "receipt" thereof: and the evidence was lacking that the officers had done so. Accordingly, in its April 2016 *Morgan* decision, the Fourth Appellate District Court of Appeal held that the City of Beaumont was *not* entitled to Vehicle Code entity immunity. In its analysis, the *Morgan* Court adopted language that could be read to hold that, unless a city actually obtained a POST-approved written certification from each and every one of its police officers that the officer had "received, read, and understood" the vehicle pursuit policy, and proved that each officer actually attended annual training thereon; the public entity would

lose its immunity. In reaching this ruling, the *Morgan* Court reasoned that the second sentence of § 17004.7(b)(2) – that an officer’s failure to certify could not be a basis of liability – had no bearing on whether that city was entitled to immunity under the vehicle code.

Ramirez argued that since the City could not produce the POST pursuit policy certificates for all of its officers from every year leading up to the incident, the City could not show its threshold compliance. Plaintiff also argued that certain sections of the GPD pursuit policy gave officers “unfettered” discretion during pursuits, and thus that the policy failed to satisfy the statute’s content requirement as well.

In August 2017, the *Ramirez* Court issued a strong rebuttal to the *Morgan* Court’s holding and rationale. In *Ramirez*, the Second Appellate District Court of Appeal held and reasoned as follows on the public entity immunity under Vehicle Code § 17004.7. First, the *Ramirez* Court observed that, as to government entities, the default policy in California is immunity: liability is the *exception*. Second, it concluded that although the Legislature sought to expand entity liability in the 2007 statutory revision, the legislative history showed that the Legislature rejected language that would have required the entities to prove that officers had actually understood the policy training before the immunity could operate. Third, and most importantly, the *Ramirez* Court observed that the statutory language of the second sentence of § 17004.7(b)(2) – that an officer’s failure to certify could *not* be a basis of liability – showed that the Legislature did *not* intend that a single officer’s failure to certify could void the entity’s immunity: for such would be an “absurd” result.

As a result, under *Ramirez*, a public entity satisfies the promulgation requirement of the Vehicle Code entity immunity if the entity: (1) trains all of its police officers annually on its vehicle pursuit policy; and (2) requires each of its officers to certify, in writing, that such officer has “received, read, and understood” that pursuit policy. *But*, if an officer fails to comply with the entity’s certification requirement, the entity does *not* lose its Vehicle Code immunity. Additionally, contrary to plaintiff’s claims, the *Ramirez* Court also held that the challenged GPD pursuit policy provisions were specific enough to satisfy the content requirement of the Vehicle Code and that such did not leave the pursuing officers with “unfettered” discretion. Accordingly, the *Ramirez* Court affirmed summary judgment on the immunity grounds.

Given that the Fourth Appellate District (*Morgan*) and the Second Appellate District (*Ramirez*) have issued conflicting interpretations of the Vehicle Code’s promulgation requirement for entity immunity, public entities should expect that the question will likely wind up before the California Supreme Court. At that point, the Supreme Court would then likely choose between the *Morgan* approach (proof of universal officer certification required for entity immunity) or the *Ramirez* construction (an entity satisfies its Vehicle Code immunity

threshold by requiring each officer to certify, regardless of whether the officer actually complies).

In the interim, as a best practice, and to help defend their immunity, public entities should revise their police training procedures as follows. First, entities should include express language in their vehicle pursuit policies which mandate every police officer must attend training on its vehicle pursuit policy at least once per year: and entities should distribute copies of the pursuit policy to each attending officer, as well as maintain documentation of officer attendance in their personnel files. Second, entities should include express language in their vehicle pursuit policies that mandates that, within a reasonable time after attending such training, every police officer must certify, in writing, that he or she has received, read, and understood the vehicle pursuit policy. Third, entities should consider making the POST-recommended certification form a page in their vehicle pursuit policies that the entities then distribute at every vehicle pursuit training; and entities should maintain those officer completed forms in the officer's personnel file.

Recommendation 2: Some may consider the best practice cited by the defense firm to be overly cautious. However, at a minimum the OIR is recommending FPD institute mandatory annual pursuit training and incorporate a tracking mechanism to ensure each and every officer comply with the annual requirement; and document each officer is aware and comprehends the guidelines of the department pursuit policy. The tracking mechanism should have an alert system to identify the officers approaching the one year point who have not complied with the mandate.

Presently, Police Officer Standards and Training (POST) has a free computerized system in place which FPD can utilize to ensure the mandates are met. The POST Electronic Data Interchange (EDI) Course Attendance Report is available for use by all departments in California. The appointed POST EDI administrators at FPD can run a report on every FPD officer who has completed pursuit driver training, a bike school, a drug recognition school, etc. EDI allows the administrator to filter the reports any way they like, such as with course numbers, date ranges, whatever data is needed. The results are instantaneous and can be printed. It is suggested FPD should have several EDI administrators selected, not just one person, to avoid a "single point of failure".

It should be noted after the OIR review of this IA case, and the discovery of the absence of annual training, FPD immediately implemented a training policy change which once in place would satisfy the OIR recommendation. However, the recommendation is being documented in this report to ensure the planned implementation is carried out as soon as possible. Complying with the recommendation will ensure the City of Fresno is afforded the immunity protection as intended in Vehicle Code § 17004.7.

IA VEHICLE ACCIDENTS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0034	5/31/2017	9/7/2017	SUS	NR	DEPT ALLEGED O FAILED TO EXERCISE "LANE TO LANE CLEARANCE" WHEN RESPONDING CODE 3
17-0035	3/28/2017	P			DEPT ALLEGED O FAILED TO OPERATE THE VEHICLE PROPERLY WHILE DRIVING CODE 3, RESULTING IN AN AT-FAULT ACCIDENT
17-0058	6/8/2017	P			DEPT ALLEGED O WAS INVOLVED IN AN OUT OF POLICY COLLISION
17-0059	6/12/2017	P			DEPT ALLEGED O WAS DRIVING IN NEG MANNER WHICH RESULTED IN A PREVENTABLE ACCIDENT
17--0060	6/16/2017	P			DEPT ALLEGED O CAUSED AND AT FAULT ACCIDENT
17-0070	7/13/2017	P			DEPT ALLEGED O WAS INVOLVED IN AT FAULT ACCIDENT
17-0075	7/9/2017	P			DEPT ALLEGED O WAS INVOLVED IN AN AT FAULT ACCIDENT
17-0083	8/4/2017	P			DEPT ALLEGED O WAS INVOLVED IN AT FAULT ACCIDENT
17-0099	9/13/2017	P			DEPT ALLEGED O WAS INVOLVED IN AT FAULT ACCIDENT

BIAS BASED					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0033	3/28/2017	P			O1 IS UNCOMFORTABLE WITH IN-CAR CONVERSATIONS WITH FELLOW BEAT OFFICER, O2
17-0073	7/17/2017	9/8/2017	UNF	UNF	CP ALLEGED ARREST WAS MADE BASED ON GENDER
17-0087	8/15/2017	P			CP ALLEGED RACIAL BIAS
17-0088	8/15/2017	P			CP ALLEGED RACIAL BIAS BY O1 AND O2 REGARDING A TRAFFIC STOP

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0005	1/17/2017	8/30/2017	SUS	NR	DEPT ALLEGED O1 AND ESD1 FAILED TO REPORT MISCONDUCT AND ALSO ACCESSED CLETS FOR PERSONAL REASONS
17-0044	4/21/2017	8/31/2017	SUS	NR	CP ALLEGED O1, O2, AND O3 TOOK PROPERTY AND TOWED VEH WITHOUT CAUSE
17-0046	4/28/2017	8/23/2017	SUS	NR	CP ALLEGED O1, O2, AND O3 EITHER LOST OR STOLE \$52 FROM BOOKED PROPERTY
17-0063	6/21/2017	P			CP ALLEGED O1, O2, O3, AND O4 STOLE MONEY FROM HER PURSE
17-0064	6/28/2017	P			CP ALLEGED ESTRANGED HUSBAND, O1, COMMITTED DOM VIOLENCE
17-0067	7/13/2017	P			DEPT ALLEGED O ATTEMPTED CONCEAL POOR WORK BY MISLABELING BODY CAMERA VIDEO AS A TEST AND WAS DISCOURTEOUS TO CITIZEN
17-0068	7/13/2017	P			DEPT ALLEGED O RECORDED CONVERSATION WITHOUT 3RD PARTY CONSENT
17-0090	8/15/2017	P			CP ALLEGED MONEY WAS TAKEN FROM HIS WALLET
17-0092	8/30/2017	P			DEPT ALLEGED OFFICER FAILED TO OBEY ALL LAWS
17-0094	9/12/2017	P			CP ALLEGED O1,O2 & O3 STOLE CASH AND BANK CARD SUBSEQUENT TO HIS ARREST
17-0095	9/12/2017	P			CP ALLEGED O1 & O2 USED PROFANITY AND WERE DISCOURTEOUS
17-0102	9/27/2017	P			DEPT ALLEGED O WAS CITED FOR MISD DOM VIOLENCE

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
15-0086	8/12/2015	P			DEPT ALLEGED O1 FAILED TO USE DISCRETION & O2 FAILED TO SUPERVISE
16-0010	2/26/2016	P			DEPT ALLEGED O1 FAILED TO PREPARE PURSUIT CRITIQUE & O2 AND O3 INVOLVED IN OUT OF POLICY PURSUIT
16-0086	11/22/2016	7/27/2017	SUS	NR	DEPT ALLEGED POOR PRISONER SEARCH
16-0089	12/8/2016	9/27/2017	SUS	NR	DEPT ALLEGED O1 & O2 FAILED TO MAKE DUI ARREST AND COMPLETE FORM
17-0010	1/25/2017	P			DEPT ALLEGED O USED POOR DECISION MAKING AND DISCRETION WHEN CONTACTING CP
17-0013	1/31/2017	9/26/2017	SUS	NR	CP ALLEGED O1 & O2 LOST PROPERTY
17-0016	2/1/2017	P			DEPT ALLEGED O DELAYED PERFORMING AND/OR CARRYING OUT PROPER ORDERS WITHOUT A REASONABLE AND BONAFIDE EXCUSE
17-0017	2/7/2017	P			DEPT ALLEGED O FAILED TO PROPERLY CATEGORIZE BODY CAMERA VIDEO AND ATTEMPTED TO CONCEAL FAILURE
17-0019	2/21/2017	8/17/2017	SUS	NR	DEPT ALLEGED UNSAFE WEAPON USE BY O
17-0024	2/28/2017	8/29/2017	SUS	NR	DEPT ALLEGED O USED POOR JUDGMENT WHEN CALLING IN SICK AND LATER ATTENDED A SOCIAL FUNCTION
17-0025	3/10/2017	7/18/2017	SUS	NR	FOWLER PD CONTACTED FPD REGARDING OFF DUTY CONDUCT OF A FPD O
17-0037	3/31/2017	P			DEPT ALLEGED OFFICER LOST NARCOTICS USED FOR K-9 TRAINING
17-0042	4/18/2017	7/24/2017	SUS	NR	O FAILED TO REMOVE GAS PUMP FROM VEHICLE CAUSING DAMAGE TO CITY PUMP
17-0043	4/21/2017	P			DEPT ALLEGED O LEFT WORKPLACE WITHOUT APPROVAL AND FAILED TO SUBMIT PROPER REQUEST
17-0049	5/5/2107	P			DEPT ALLEGED O FAILED TO COMPLETE AND SUBMIT REPORTS IN A TIMELY MANNER
17-0051	5/11/2017	p			DEPT ALLEGED O USED DEPT VEH FOR PERS BUSINESS AND FALSE OR MISLEADING STATEMENTS TO SUPERVISOR
17-0053	5/12/2017	9/8/2017	UNF	UNF	CP ALLEGED PROPERTY WAS LOST BY ARRESTING O1 AND O2
17-0062	6/21/2017	P			DEPT ALLEGED OFFICER WAS DISCOURTEOUS AND INSUBORDINATE TO A SUPERVISOR
17-0063	6/21/2017	P			CP ALLEGED O1, O2, O3, & O4 STOLE MONEY FROM HER PURSE

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0064	6/28/2017	P			CP ALLEGED HER ESTRANGED HUSBAND, O1, COMMITTED DOMESTIC VIOLENCE
17-0066	7/6/2017	P			DEPT ALLEGED O LACKED DISCRETION WHEN O CONDUCTED AN TRAFFIC STOP WHILE OFF DUTY IN PERS VEH
17-0071	7/14/2017	P			DEPT ALLEGED O FAILED TO RESTRAIN PRISONER ALLOWING AN ESCAPE
17-0074	8/28/2017	P			DEPT ALLEGED O ATTENDED TRAINING WITHOUT APPROVAL
17-0078	8/1/2017	P			CP ALLEGED O1 & O2 USED ILLEGAL FIREWORKS WHILE CELEBRATING 4TH OF JULY
17-0083	8/24/2017	P			DEPT ALLEGED O FAILED TO DRIVE WITH DUE REGARD AND LEFT THE SCENE OF AN ACCIDENT WHILE ENROUTE TO A PRIORITY CALL
17-0084	8/15/2017	P			DEPT ALLEGED TIME OFF REQUESTS WERE NOT SUBMITTED PROPERLY
17-0085	8/15/2017	P			DEPT ALLEGED O ENGAGED IN DANGEROUS HORSEPLAY BY POINTING WEAPON AT OFFICER
17-0086	8/15/2017	P			CP ALLEGED O1, O2, & O3 LOST PROPERTY OF SUSPECT
17-0093	9/7/2017	P			DEPT ALLEGED O FAILED TO SECURE A PRISONER
17-0096	9/12/2017	P			DEPT ALLEGED O WAS INSUBORDINATE
17-0101	9/26/2017	P			DEPT ALLEGED COMM EMP DELAYED PERFORMING DUTIES DUE TO BEING ON PERSONAL CELL PHONE

IC CASES CLOSED DURING THIRD QUARTER OF 2017					
IC CASE NUMBER	DATE RECEIVED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0067	6/10/17	7/21/17	NOT SUS	NOT SUS	CP ALLEGED O WAS RUDE
17-0068	6/15/17	7/21/17	UNF	UNF	CP ALLEGED O WAS DISCOURTEOUS
17-0069	6/19/17	7/21/17	UNF	UNF	CP ALLEGED O WAS DISCOURTEOUS
17-0070	6/22/17	7/21/17	EX	EX	CP UNHAPPY WITH INCIDENT HANDLING BY O
17-0071	5/28/17	8/2/17	UNF	UNF	CP UNHAPPY HOW O1 - O7 HANDLED INCIDENT
17-0072	6/6/17	8/2/17	SUS	NR	DEPT ALLEGED EMPLOYEE WAS BEING UNFAIRLY CRITICAL OF ANOTHER EMP
17-0073	6/21/17	8/2/17	UNF	UNF	CP ALLEGED O CONDUCT WAS UNPROFESSIONAL
17-0074	7/12/17	8/2/17	EX	EX	CP ALLEGED O WAS DISCOURTEOUS
17-0075	5/11/17	8/18/17	UNF	UNF	CP ALLEGED O CONDUCT WAS UNPROFESSIONAL
17-0076	6/13/17	8/18/17	SUS	NR	DEPT ALLEGED AN EMPLOYEE WAS DISCOURTEOUS
17-0077	6/30/17	8/18/17	SUS	NR	CP ALLEGED EMP WAS DISCOURTEOUS
17-0078	7/6/17	8/18/17	UNF	UNF	CP UNHAPPY WITH INCIDENT HANDLING BY O
17-0079	7/13/17	8/18/17	EX	EX	CP ALLEGED OFF DUTY O WAS DISCOURTEOUS
17-0080	7/14/17	8/18/17	UNF	UNF	CP ALLEGED O1 AND O2 WERE DISCOURTEOUS
17-0081	6/5/17	8/22/17	UNF	UNF	CP ALLEGED O WAS DISCOURTEOUS
17-0082	8/2/17	8/22/17	EX	EX	CP ALLEGED O WAS DRIVING OVER SPEED LIMIT
17-0083	7/10/17	9/14/17	NOT SUS	NOT SUS	CP UNHAPPY WITH INCIDENT HANDLING BY O
17-0084	7/25/17	9/14/17	SUS	NR	DEPT ALLEGED EMPLOYEE WAS DISCOURTEOUS
17-0085	7/20/17	9/14/17	UNF	UNF	CP ALLEGED O1 AND O2 WERE DISCOURTEOUS
17-0086	8/31/17	9/14/17	UNF	UNF	CP UNHAPPY HOW O1 AND O2 HANDLED INCIDENT
17-0087	8/1/17	9/26/17	UNF	UNF	CP FELT O DID NOT LISTEN TO HIS COMPLAINT

IC CASES CLOSED DURING THIRD QUARTER OF 2017					
IC CASE NUMBER	DATE RECEIVED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0088	8/21/17	9/26/17	UNF	UNF	CP WAS UNHAPPY WITH O WHO HAD RESPONDED NUMEROUS TIMES REGARDING SOUNDS IN HIS ATTIC
17-0089	8/24/17	9/26/17	SUS	NR	CST REFUSED TO PHOTOGRAPH THE ENTIRE SCENE
17-0090	8/13/17	9/28/17	UNF	UNF	CP REQUESTED RESTRAINING ORDER AGAINST O WHO HANDLED THE COMPLAINT
17-0091	9/12/17	9/28/17	UNF	UNF	REPORT PREPARATION

The OIR did review each of the preceding cases in which IA determined the allegations against the officer(s) were Unfounded, Exonerated, or Not Sustained. This included reviewing each of the 25 Informal Complaint cases which were closed this quarter to ensure the matters were handled at the appropriate level. In all cases reviewed it was determined the IA findings were justified and the OIR concurred on all findings.

Below are the levels of discipline applied to the officers and employees who were found to be operating outside of the department's policies and procedures.

DISCIPLINE ISSUED	2012	2013	2014	2015	2016	2017 YTD
TERMINATIONS	8	5	3	5	7	2
RESIGNED IN LIEU OF	2	1	1	0	0	1
RETIRED	0	0	0	0	0	0
DEMOTION	0	0	0	0	0	0
SUSPENDED	11	15	14	13	16	11
PAYMENT IN LIEU OF	2	0	1	0	0	0
FINES	2	0	0	1	0	0
LETTERS OF REPRIMAND	23	11	7	11	9	8
TOTAL	48	32	26	30	32	22

Summary: Two of the guidelines the OIR operates under are fairness and transparency. Up to this point this report has focused on IA cases with allegations against officers or employees of the FPD. In adhering to fairness and transparency it should be pointed out many positive actions were observed while reviewing the IA investigations. The actions are rarely observed or brought to the attention of the public. In one video an officer was attempting to gain control of a female driver who was acting irrational and being combative along the shoulder of Highway 41. The actions of the driver were putting the safety of the officer and driver in jeopardy as traffic sped by. The officer maintained a calm demeanor and used minimal force to gain control of the driver and avoided serious injury to both parties. Another video recorded an officer recommending an elderly suspect stand in the doorway of a business to avoid the cold wind as the officer was taking the suspect into custody. These are just two of the many examples of the professionalism which are worthy of mentioning observed by the OIR while reviewing the investigations.

The use of the body cameras is proving to be a valuable tool to both the FPD and the citizens of Fresno when dealing with complaints. In many of the cases the video clearly contradicts allegations levied against officers. However, in the event the actions of the officer are not within department policy or procedure the video can assist in confirming the allegations. The body camera is only a portion of the information used to determine the validity of the allegations against an officer. The video along with numerous other investigative tools all factor into the decision. Although, the present OIR has only been staffed for a short period of time the responses from FPD officers have also been favorable regarding the use body cameras.

John A. Gliatta
Independent Reviewer
Office of Independent Review

The OIR informed the FPD of the two recommendations made during this third quarter review. The FPD promptly responded with the below actions:

#1: Although FPD has a policy requiring passengers wear seat belts; in an abundance of caution FPD will clarify the policy to also apply to prisoners since the present policy could be subject to interpretation.

#2: Upon learning of the training issue FPD immediately developed a Roll Call Training Bulletin and placed it in PowerDMS, which is a software program that automatically disseminates, collects signatures on, and tracks the department's important policies and procedures.