



OFFICE OF INDEPENDENT REVIEW

**REPORT FOR THE PERIOD OF
JANUARY 1, 2018 TO MARCH 31, 2018**

**John A. Gliatta
Independent Reviewer**

**Maira Aguilar
Community Coordinator**

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 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 operates independently of the FPD and will provide City leaders and the public with an objective analysis of policing data, actions, and outcomes.

The OIR analyzes complaints filed by citizens and those initiated by the department 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.

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.

Additionally in November, Community Coordinator Maira Aguilar became part of the OIR. Per Mayor Brand's vision, she has been instrumental in meeting with community groups and residents of Fresno to build, enhance, and establish trust between the community and the FPD.

OIR REPORT FORMAT

The following changes were implemented in the first report produced by the present IR and will continue for all future quarterly 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 were addressed by supervisors will also be reviewed by the OIR.
- 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.
- Activities of the Board and Community Coordinator will appear before the summary.
- The report will be released to Mayor Lee Brand, City Manager Wilma Quan-Schecter, 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.
- If the FPD implemented policy or procedure changes in response to the OIR's recommendations listed in the previous quarterly report, the changes will be addressed in the section titled “Status of OIR Recommendations.”
- Beginning with this 1st Quarterly Report for 2018 a chart will show the IA cases assigned by each of the five policing districts.

In the fourth quarter report for 2017 two recommendations were made following the review of the IA investigations closed during the review period. To assure the public of the compliance by the FPD, the recommendations made by the OIR, and the action taken by FPD in response to the recommendations appear below.

Recommendation 1: It is recommended the FPD stress the importance of full documentation of any and all complaints, regardless if it is known at the time the allegations is without merit. As previously referenced, the FPD has the applicable policies in place to satisfy this issue; therefore the solution may be to emphasize this to newly sworn officers during orientation.

Below is a summary of the FPD Roll Call Training Bulletin issued in response to the above recommendation:



FPD Policy 1020.2.2, Complaints, reads (in part): *Personnel complaints consist of any allegation of misconduct or improper job performance against any Department member that, if true, would constitute a violation of Department policy, federal, state, or local law.*

Officers and other Department members made aware of alleged misconduct shall immediately notify a supervisor. This includes complaints made against the member him or herself.

When officers have contact with a citizen who alleges misconduct against them or another officer, whether the allegation is of a minor nature, such discourteousness, or serious misconduct, such as racial profiling or unreasonable force, the officer must advise a supervisor. This does not preclude the officer from attempting to answer questions and resolve the inquiry or complaint themselves before a supervisor arrives or becomes involved.

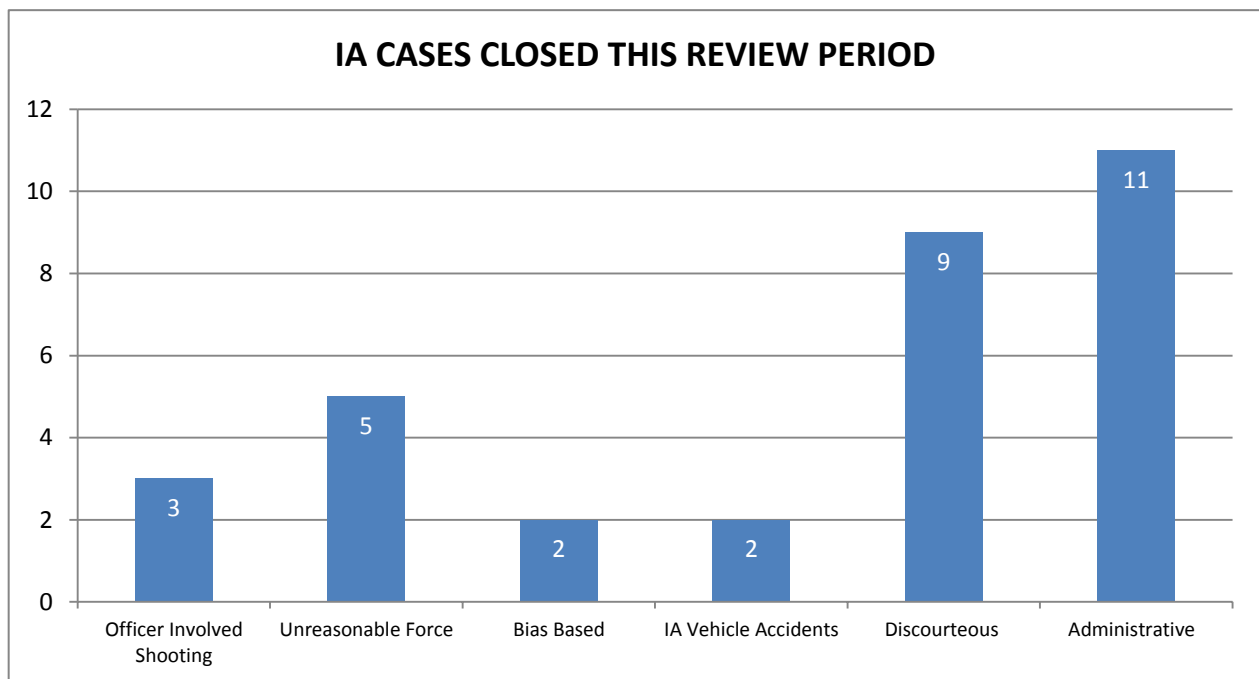
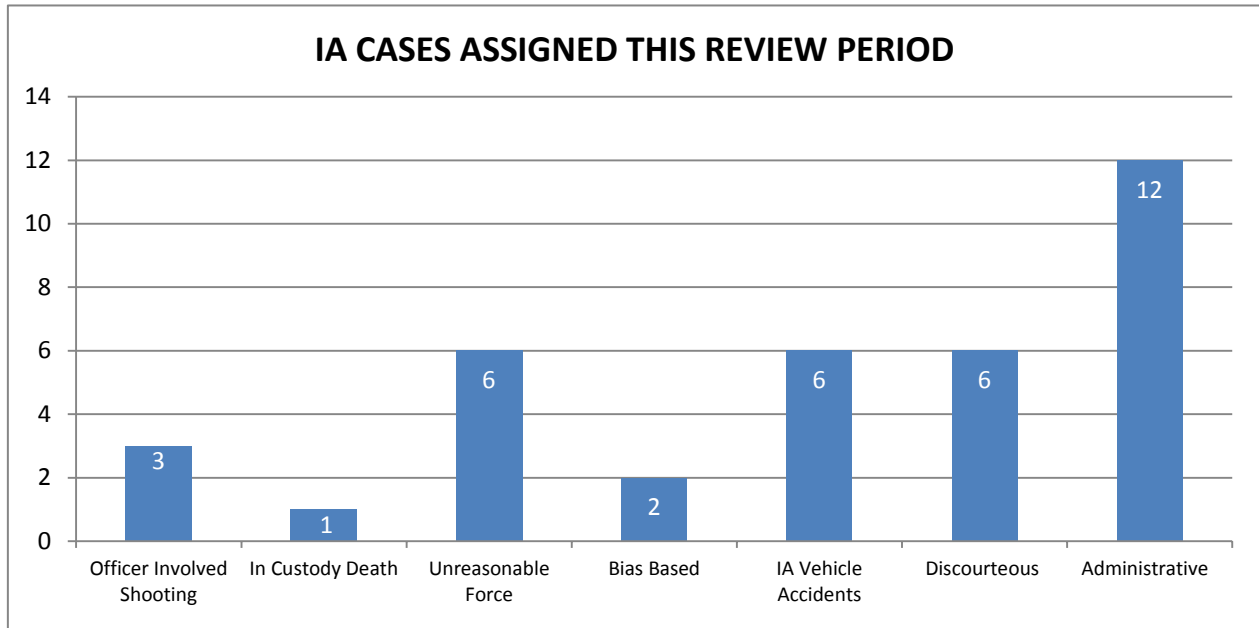
Recommendation 2: It is recommended prisoner transports are, at minimum, audio recorded in order to dispute allegations of improper handling of arrestees. The costs of outfitting all patrol cars may make this financially improbable however the use of existing body cameras may be a temporary solution until funding is secured. The use of body cameras for this purpose will not capture video of the prisoner but the audio can document the officer(s) and CP's actions during the transport. In both instances where the CP's alleged improper treatment, the demeanors of the CPs when arrested were indications allegations were possible. Therefore, based on the level of cooperation displayed by the subject, the recommendation can be implemented at the officers' discretion on when to activate the recording devices.

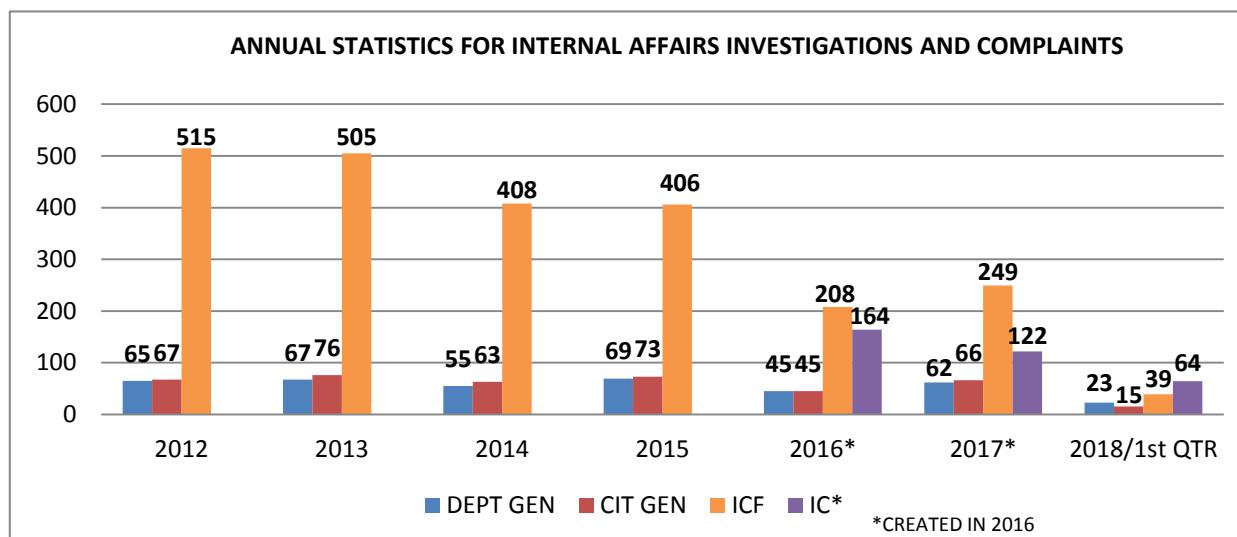
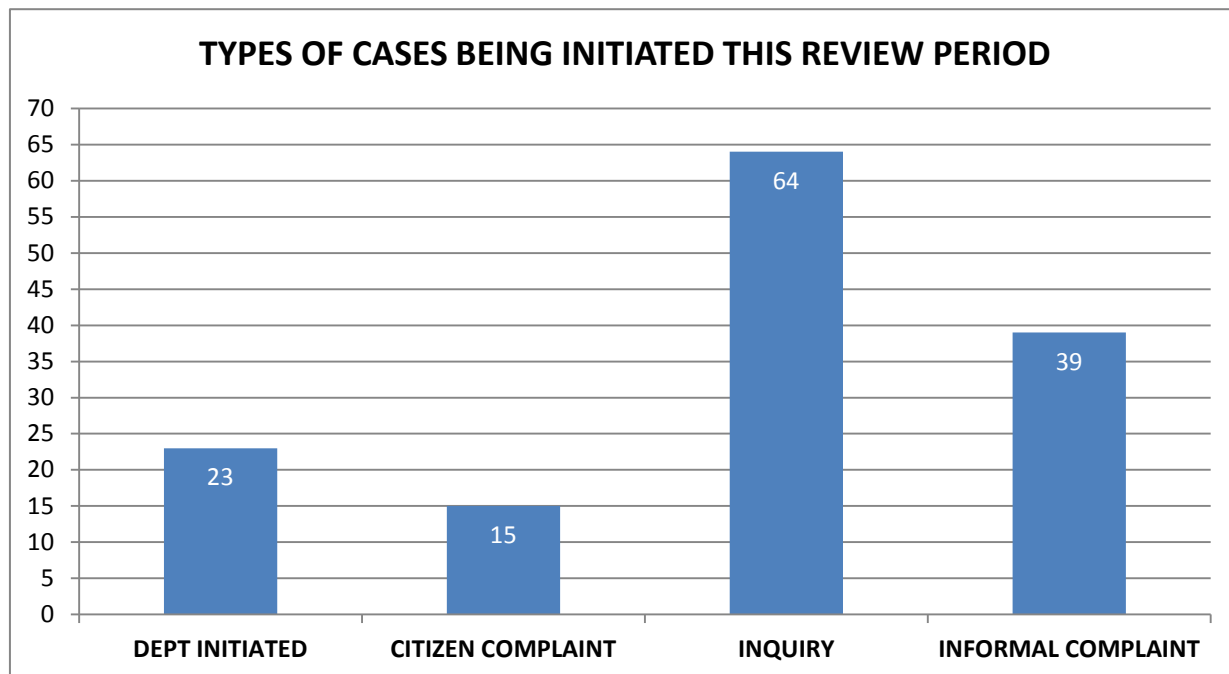
In response FPD amended Policy 450.8, Body Worn Video Cameras to include:

Should an arrestee become confrontational during transport, during processing or booking, officers shall reactivate their camera, if they are able to do so without compromising their safety or the safety of others. When an officer resumes recording under these circumstances, the recorder should remain on until the officer no longer has contact with the subject.

REVIEW OF INTERNAL AFFAIRS INVESTIGATIONS

The following charts list the number and types of IA cases assigned and closed during the first quarter of 2018. 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.





COMPLAINTS ASSIGNED BY POLICING DISTRICT

The following chart reflects the complaints assigned by policing district for the first quarter of 2018. This is the first time this comparison has been published since the OIR was established in 2009. IA should be acknowledged for their cooperation in compiling this information.

Following the changes made to the OIR by Mayor Brand, a request was made to IA to provide this information. Because of software limitations, it was determined the IA support staff would need to manually compile the data. IA began taking steps to compile the data once the request was made. The purpose of displaying the below is to show the residents of the City of Fresno the level of transparency Mayor Brand and Chief Dyer are working to achieve.

As the chart reflects, the number of complaints were relatively even throughout the five policing districts. However, it is recognized this is only three months of data for this category. This chart will now appear in each quarterly report and the number of complaints by policing district, along with case reviews, will be closely monitored to determine if recommendations are needed.

COMPLAINTS ASSIGNED BY POLICING DISTRICTS									
ASSIGNED	NE	NW	SE	SW	CENT	NON DISTRICT	COMCEN	WITHDRAWN/ SUSPENDED	TOTAL
IA CASES	3	3	8	6	8	10	0	2	40
INFORMAL COMPLAINTS	8	4	5	3	5	12	2	0	39
INQUIRIES	11	9	12	14	13	5	0	0	64
TOTAL	22	16	25	23	26	27	2	2	143

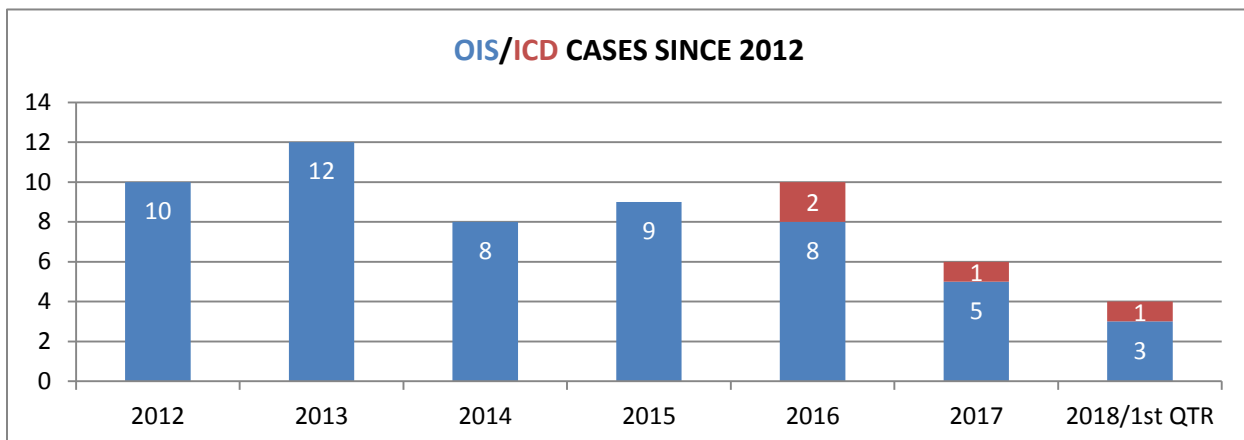
EXPLANATION OF TERMS IN CHART	
NE	NORTHEAST
NW	NORTHWEST
SE	SOUTHEAST
SW	SOUTHWEST
CENT	CENTRAL
NON-DISTRICT	NOT ATTRIBUTED TO A SPECIFIC DISTRICT (OFF-DUTY, ETC)
COMCEN	COMMUNICATION CENTER (DISPATCH)
WITHDRAWN/ SUSPENDED	COMPLAINT WAS WITHDRAWN BY CP OR EMP IS NO LONGER AT FPD

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	

OFFICER INVOLVED SHOOTING (OIS) AND IN CUSTODY DEATHS (ICD)

IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0040	4/15/2017	1/11/2018	W/IN POL	W/IN POL	OFFICER FIRED ONE ROUND FOLLOWING A TRAFFIC STOP AND FOOT PURSUIT-DECEASED
17-0050	5/10/2017	P			O1 & O2 ARRESTED SUSPECT WHO WAS LATER PRONOUNCED DECEASED
17-0057	6/7/2017	1/5/2018	W/IN POL	W/IN POL	O1 & O2 OIS; SUSPECT - DECEASED
17-0076	7/23/2017	P			O1, O2, & O3 FIRED AT SUSPECT FOLLOWING A PURSUIT AND STOP-Non Fatal
17-0121	12/6/2017	3/29/2018	W/IN POL	W/IN POL	O1 SHOT SUSPECT WHO FLED AND PRODUCED A HANDGUN DURING THE FOOT PURSUIT-Non Fatal
18-0001	1/1/2018	P			O FIRED TWO ROUNDS AT SUSPECT UPON ARRIVING ON SCENE OF A BURG IN PROGRESS CALL-NO INJURIES
18-0006	1/13/2018	P			O FIRED AT DOM VIOLENCE SUSPECT - Non Fatal
18-0024	2/27/2018	P			O1 FIRED AT SUSPECTS WHO SHOT VICTIM-NO INJURIES
18-0038	3/20/2018	P			DEPT ALLEGED IN CUSTODY DEATH



During the first quarter of 2018 there were three OIS IA investigation cases completed and closed, which were then reviewed by the OIR. During the same time period there were three new OIS cases opened, along with one In-Custody Death (ICD). The newly assigned cases will not be reviewed until the IA completes their investigation.

As indicated in the previous chart, the FPD IA determined the officers were within policy in each of the OIS cases completed. In order to understand the basis for the findings made by the FPD IA the FPD policies applicable to an OIS should be reviewed, along with the United States Supreme Court cases which are also applicable. The policies and court cases are summarized below:

FPD POLICY 300 USE OF FORCE

POLICY 300.1

“It is the policy of the Department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to accomplish a legitimate law enforcement purpose.

PURPOSE AND SCOPE

The purpose of this policy is to provide officers of the Department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.

The "reasonableness" of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.”

POLICY 300.4 OBJECTIVELY REASONABLE FORCE:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code §835a).

“The legal standard recognizes that Peace Officers are often required to make split second judgments and rapidly respond to dynamic situations that are tense, uncertain, rapidly evolving, and potentially dangerous. Members shall evaluate each situation in light of the known circumstances and apply an appropriate use of force calculated to accomplish a legitimate law enforcement mission. In all cases, members shall consider the seriousness of the crime, the level

of resistance, and the apparent threat to the safety of the community, the arresting officer, and the person or persons to be detained. The degree of force used will be that which is objectively reasonable to bring individual situations under control. The degree of force and the manner of its application shall be consistent with the training the member has received relative to its use and application.”

POLICY 300.4.1 CONSTITUTIONAL GUIDELINES FOR REASONABLE FORCE

“Both Federal and State law authorize Peace Officers to use objectively reasonable force to accomplish a legitimate law enforcement mission. There are five recognized objectives that serve as the basis for the reasonableness of any police use of force. The five lawfully recognized objectives are:

- (a) Self-defense;
- (b) Defense of others;
- (c) Effect an arrest or detention;
- (d) Prevent an escape; or
- (e) Overcome resistance.

Due to the immediacy with which a member must apply force, together with the absence of time and/or physical ability of the member to select alternative methods, it may be objectively reasonable for the member to apply that method of force most readily available that will affect the desired results.”

POLICY 300.4.2 JUSTIFICATION - KNOWN FACTS

The decision to use force, including deadly force, must be made based solely on the facts known to the member at the time force is used. Justification for the use of force shall be based on the situation as it reasonably appeared to the member(s) directly involved in its application. Facts unknown to the member at the time, no matter how compelling, cannot be considered later in determining the reasonableness of the member’s decision to use force.

POLICY 300.6 DEADLY FORCE APPLICATIONS

“As used in all Department documents, the terms "deadly force" and "lethal force" are used interchangeably and have the same meaning.

The intentional discharge of a firearm at an individual, with the exception of those firearms dedicated to less lethal munitions, constitutes deadly force. Deadly force is force that creates a substantial risk of causing death or serious bodily injury. While the discharge of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or serious bodily injury.”

POLICY 300.6.1 GUIDELINES

“An officer may use deadly force:

(a) To protect himself/herself or others from what he/she reasonably believes would be an immediate threat of death or serious bodily injury.

(b) To effect the arrest or prevent the escape of a suspected felon in the following circumstances:

1. Where the officer has probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of serious bodily injury or death; and

2. The officer reasonably believes there is a substantial risk of serious bodily injury or death to others if the suspect is not immediately apprehended; and

(c) To stop a dangerous animal.

1. Exception: An officer may shoot an animal that so badly appears injured that human compassion requires its removal from further suffering and where other dispositions are impractical.

Officers shall, when practical, identify themselves and state their intention to shoot before using a firearm.”

The following United States Supreme court decisions were also considered to determine if the force used was within policy:

Graham vs. Connor, 490 U.S. 396 (1989), which held that courts must look at whether the officer's actions were reasonable based on the information and circumstances confronting that officer at the time. The court stated that the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. Not the best decision, only a reasonable decision.

Tennessee vs. Garner, 471 U.S. 1 (1985), is a civil case in which the Supreme Court of the United States held that, under the Fourth Amendment, when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” It was found that use of deadly force to prevent escape is an unreasonable seizure under the Fourth Amendment, in the absence of probable cause that the fleeing suspect posed a physical danger.

The following are the OIR reviews of the cases in which the FPD IA investigations were completed during the 1st quarter of 2018. In order to maintain the confidentiality afforded the FPD officers under the California Peace Officer's Bill of Rights, and to preserve certain tactical actions used for officer safety, the below is a redacted summary of the hundreds of pages of reports and documents in the IA investigative files. In addition to written reports, the IA files included, but were not limited to, numerous hours of video recordings of interviews of officers, witnesses, and body worn camera.

IA2017-0040: On April 14, 2017, officers from the Northeast Policing District responded to a report of shots being fired near the intersection of East Ashcroft Avenue and North First Street. Additional callers also reported a single vehicle collision into a tree at this location.

Responding officers determined the 19 year old driver had died as a result of the collision. The three passengers in the vehicle were all injured and were transported to area hospitals. Witnesses at the scene reported hearing up to six gunshots just prior to the collision. The follow-up investigation positively identified two males, 16 and 17 years of age, as the shooting suspects.

On April 15, 2017, several specialized FPD units began surveilling the residence where it was believed the suspects were living. After approximately one hour a vehicle containing several individuals arrived and parked across the street from the residence. One individual made several trips from the vehicle to the residence and back to the vehicle. One officer positively identified the individual as one of the suspects while other officers advised the individual closely matched the description of one of the suspects.

The officers elected to wait for the vehicle to leave the area and conduct a traffic stop. A short time later the vehicle departed and within a mile from the residence a traffic stop was conducted with clearly marked FPD patrol vehicles. The stop was recorded on a body worn video camera. The officer gave instructions to the passenger, who was believed to be the suspect, initially he did comply. However, just before the officer was about to take the suspect into custody the suspect looked back at the officers and then fled on foot.

Officers at the traffic stop immediately engaged in a foot pursuit of the suspect. Several other officers who were positioned in the area in their vehicles immediately converged to the area of the foot pursuit. Several witnesses stated the officers were repeatedly identifying themselves loudly and telling the suspect to stop. Another witness also plead with the suspect to stop as he ran by. The pursuit continued for several blocks. During the foot pursuit the suspect was observed reaching for his waistband several times. In view of the fact the suspects had used a firearm the previous day, and the weapon was outstanding, the gestures were interpreted as the suspect possibly reaching for a weapon.

Officers caught up to the suspect as he climbed over the fence of a nearby business. As one officer began climbing over the same fence another officer arrived on scene and once again gave the command for the suspect to stop. The suspect turned and looked back over his right shoulder at the officer and at the same time reached for his waistband area with his left hand. The officer believing the suspect was reaching for weapon fired one round striking the suspect. It was later determined the suspect was not carrying a weapon at the time. Emergency medical aid was immediately provided, however the suspect did not survive.

To arrive at a finding independent from the FPD IA, the above policies and court decisions were thoroughly analyzed to determine which, if any, were applicable in this case. In view of the information known at the time, and the actions by the suspect during the pursuit, it was determined the following policies and court decisions were applicable:

1. **Policy 300.1 Use of Force:** Given the fact the suspect was positively identified as being one of two suspects who committed a homicide with a firearm on 4/14, this policy was applicable. In fact it became applicable based on the actions the suspect elected to take when a traffic stop was initiated. The reasonableness of force is based on the officer making a split second decision after observing the suspect reaching for his waistband area several times during the foot pursuit.
2. **Policy 300.4 Objectively Reasonable Force:** The suspect was accused of committing a homicide with a firearm. Therefore, the amount of force required to accomplish the law enforcement mission when the suspect made several movements to his waistband area would include deadly force.
3. **Policy 300.4.1 Constitutional Guidelines for Reasonable Force:** Categories (a), (c), and (d) are applicable in this instance.
4. **Policy 300.4.2 Justification –Known Facts:** The justification for the use of force, to include deadly force, must be made solely on the facts known to the officer at the time force is used. In this matter the facts consisted of: Suspect was positively identified as being one of two suspects in an unprovoked homicide which occurred one day prior with the weapon being a firearm, which was still outstanding; Suspect was fully aware of the fact law enforcement officers were trying to take him into custody without the use of force when they conducted a traffic stop using clearly marked patrol cars; The officer who fired the shot observed the suspect reach towards the waistband area of his pants during the pursuit. At one point the suspect looked directly back at the pursuing officer while reaching for his waistband. This action coupled with the fact the weapon was still outstanding would justify this policy requirement.
5. **Policy 300.6.1 Guidelines:** Applicable categories: (a), the officer observed the suspect reaching for his waistband during the pursuit and at one point the movement was combined with the suspect looking directly back at the only officer who fired his weapon; (b) 1, the suspect was wanted for the homicide of an individual which occurred on 4/15/2017; and (b) 2, in view of the unprovoked homicide a reasonable officer would reasonably believe the suspect would be a danger to the general public if he was permitted to escape arrest.

In addition to the use of deadly force being within the established FPD policies, the Supreme Court decision of *Graham vs. Connor* is also applicable in this situation. Based on the information known at the time, the subsequent movements made by the suspect as he was fleeing, and when he looked directly at the officer while reaching for his waistband area, an officer making a split second decision would be justified in using deadly force. The officer could not foresee what the suspect was reaching for as he looked back at the officer as he was running away after climbing over the fence. The officer was aware of the fact the suspect was wanted for a homicide with a firearm and the firearm was outstanding at the time. In addition, the officers at the traffic stop, and during the foot pursuit, were heard giving commands to the suspect to “Stop, police!” several times but the suspect refused to comply. At least one witness even told the suspect to stop as he ran by the witness.

Independent Reviewer's Finding:

In view of the justification provided for each applicable policy and court case decision, a finding of **Within Policy** was made.

Recommendations:

Although the OIR finding of the OIS was deemed to be within policy, several administrative and operational issues with this incident warranted recommendations. Below are summaries of each issue and the proposed recommendation.

A written Tactical Operations Plan was not prepared for the operation on this date. Although several officers, who included supervisors, stated it was a tactical operation, a written plan was not prepared. The fact the operation was made up of several different units, Street Violence Bureau's Tactical Team (SVB-TAC), Special Response Team (SRT), and detectives would have made it a necessity in order to coordinate and memorialize assignments and responsibilities for each of the units. Each team was designated to handle specific duties however the unanticipated actions of the suspect many times will result in changes of team assignments. It could also document the exact placement of surveillance personnel in the event a perimeter is needed.

It was also noted, the briefing was not mandated for all participants, as one officer was called in on his day off and was unable to arrive prior to the start of the verbal briefing for the other participants. In the event an officer is unable to attend the briefing the officer's supervisor should be required to approve the participation of that officer in the tactical operation. This situation is an example why a written operational plan should be required. If an officer is unable to attend the "all-hands" briefing the officer can be given a written plan, ensuring inadvertent fact omissions do not occur, as often is the case when relying on verbal only briefings. It is recognized relying solely on providing verbal instructions results in information, regardless of how minimal, being omitted each time the instructions are repeated.

The FPD Policy 323 reads as follows:



Fresno Police Department
Policy Manual

Search Warrants / Pre-Planned Tactical Operations

323.1 POLICY

Officers shall take the necessary steps to plan all warrant services carefully to prevent injury to suspects and members. Search warrants are only to be executed by sworn personnel.

323.1.1 PURPOSE AND SCOPE

A pre-planned tactical operation is any operation where officers plan on taking some sort of enforcement action. Examples of pre-planned tactical operations are search warrants, knock and talks, probation/parole searches, arrest warrants, etc.

The corresponding Procedure 323, which is the internal department manual, is more detailed and specifies the requirement of a Tactical Operation Plan and the required briefing are for planned search warrants only. However, when the tactical operation involves an act of violence with a

firearm, specifically homicide, the Policy and Procedure should be amended to also apply to tactical operations for arrests.

Recommendation #1: Amend Policy 323 and Procedure 323 to include the planned action of the arrest of violent crime suspect(s), specifically homicide with a firearm. The requirement should include the condition of: whenever feasible, based on time permitting, due to the exigency of the specific operation.

Recommendation #2: The mandatory briefing and attendance by all participants should also be extended to apply to this type of operation unless the absence is approved by a supervisor and documented.

Recommendation #3: During the briefing the field of fire when discharging a weapon should be stressed and repeated. One of the pursuing officers stated he was concerned when the suspect entered the fenced-in area of the business. The officer stated he was concerned for the possible presence of occupants in the business due to a multi-passenger vehicle parked by the fence. The officer then fired his weapon in the direction of the suspect but it was also in the direction of the business structure. The adjacent open area was clearly not occupied at the time but an errant round could have entered the building where it was unknown if people were present.

In Procedure 323, the Risk Assessment Matrix scoring is explained. In summary, points are assigned to certain known risks regarding a search warrant location. A threshold is specified as to when to consult with SWAT for their participation. Although the scoring for this search warrant location was more than twice the minimum score as when to consult SWAT, there is no mention SWAT was consulted for participation. In fact one officer stated in his interview they intentionally did not take action when the suspect was spotted at the search warrant location because the previously calculated score would have required SWAT.

If SWAT was involved it may have afforded the surveillance units an opportunity to conduct the arrest of the suspect during the time the suspect was seen traveling to and from a vehicle parked across the street from the location being surveilled. The suspect was spotted arriving at the location and making several trips in and out of the residence over a 15 minute period. It is recognized the presence of two children in the front yard would have prevented any law enforcement action from taking place due to safety concerns. However, the children were picked up from the residence four minutes prior to the suspect leaving the residence in the vehicle he arrived in.

It was also noted the vehicle which arrived to pick up the children stopped to talk to the occupants of the vehicle in which the suspect was seated. When the vehicle with the children departed it was not stopped when it was out of sight to ascertain the identities of the occupants of the car the suspect was believed to be in. The departing vehicle could have been stopped and the occupants questioned to determine if the suspect was in fact in the parked vehicle. The officers could have stressed any attempts to deceive them would have resulted in a charge of 32 PC, Accessory After the Fact. The suspect's vehicle remained parked for another four minutes before it pulled away. If SWAT was participating there would have been sufficient personnel to conduct the arrest of the suspect in the parked vehicle while maintaining coverage of the residence for officer safety purposes.

The officers gave up the ability to control the situation when they decided not to conduct the arrest in front of the house because of the Risk Assessment Score. Allowing the suspect to drive away creates numerous unknowns in respects to location, amount of traffic, bystanders, and most of all the possibility the suspect does not stop, and a pursuit, which could endanger the public, ensues.

Recommendation #4: Ensure if the Risk Assessment Matrix scoring warrants certain tactical action, efforts to circumvent this requirement should not be permitted. A supervisor's approval, including specific reasons, should be obtained if the requirements are not being followed.

During the operation the use of cellular phones to exchange information should be kept to a minimum. It is recognized there are times where a lengthy dialogue between officers would monopolize the radio thus preventing other officers from broadcasting pertinent information. However in this incident, one officer stated he positively identified the individual walking from the car parked across the street to the house and back as being one of the two suspects. This same officer is the one who eventually engages the suspect as he tried to flee. However, a review of the transcripts of the radio traffic failed to show the positive identification information was passed on to other officers. In fact this information was not contained in any of the written FPD reports and only appears in the officer's video recorded interview conducted during the follow-up investigation. The officer stated he informed two other officers of the identification.

The officer who positively identified the suspect advised he informed the acting surveillance supervisor of the positive identification. However, this does not appear in the acting supervisor's written report. The report was authored and approved by the same acting supervisor, which is not within FPD Procedure 344 for report preparation. See below for Procedure 344:

Procedure
344

Fresno Police Department Procedures Manual
Report Preparation
Corresponding Policy 344: Report Preparation

A Crime Report shall be prepared whenever any reported crime has been committed or is logically suspected of having been committed in the City.

A. Report Completion

All police reports should be completed legibly and submitted for approval at the end of the duty shift on which the initial incident was handled by the reporting member. When reports cannot be completed prior to the end of a member's duty shift, the report(s) shall be completed during the member's next duty shift.

Recommendation #5: Ensure when pertinent information is exchanged between officers via cell phone the same information is then passed on to all other participants via the radio channel being used for the operation, or at a minimum documented in a report.

Recommendation #6: As outlined in Procedure 344, ensure officers provide their written reports to their supervisor for approval prior to being finalized and entered into the FPD electronic case file.

Recommendation #7: If an officer serves in the role of a supervisor, or acting supervisor for a short time during an operation, he/she should be interviewed during the follow-up investigation. Other supervisors were requested to submit for a video recorded interview with the exception of the officer who served as the acting supervisor. This will memorialize any decisions made, or instructions given, by the acting supervisor during his/her time as acting.

Recommendation #8: The role of the supervisor when approving reports is not to alter the facts being reported but to ensure the statements being documented are clear and not subject to misinterpretation. If so, the officer should be requested to elaborate or amend the specific statements in order to clarify. One officer used the term “hasty” two times in his report when describing the operation on this date. The first time it was documented as “When I arrived at the location the supervisor briefed our team on a hasty operation.” The second statement read as follows: “I responded to the area of Fresno Ave and Barstow Ave at the direction of the supervisor where he briefed our team on a hasty operation.” The word hasty is defined as acting with excessive speed or urgency; hurried; sometimes without the necessary care or thought. However, it is possible the officer was describing the meeting itself was hasty due to the limited amount of time instead of the actual operation. The supervisor should have asked the officer to clarify which part was hasty, the meeting, or the actual operation? As the final report reads the public perception may be this operation was put together with little or no planning.

Additional recommendations are being made which are not based on actions of the officers but due to the absence of valuable necessary equipment assigned to the officers involved.

Recommendation #9: The OIR recognizes the efforts of the FPD to increase the number of body worn video cameras. To date, the priority has been to have every officer on patrol outfitted with a camera. With the latest approved funding for the FPD this may soon be accomplished. In view of the high risk activities of several of the specialized units it is recommended the next acquisition of cameras be assigned to the specialized units such as SVB-TAC and SRT. In this incident neither of the two SVB-TAC officers, who were closest to the suspect at the time of the OIS, were issued a body worn camera. It was also determined two of the SRT officers with assigned body worn cameras did not activate their cameras during the traffic stop and foot pursuit. However, the officers were not within view of the OIS, but were involved in the traffic stop.

Recommendation #10: Officers assigned to specialized units who routinely are involved in high risk or violent offender apprehensions should be issued less than lethal devices, such as Tasers. In this incident neither of the two SVB-TAC officers, who were closest to the suspect at the time of the OIS, were issued a Taser. The recommendation for a Taser is not specific to this incident but due to the probability of encountering resistance from suspects during the course of their day to day operations as it was shown in this case.

Even with compliance to any of the stated recommendations the justified actions of the officer would unfortunately not have changed. Ultimately the suspect elected to make the decision to run from a traffic stop instead of complying with the officer’s instructions which then resulted in an OIS.

IA20117-0057: FPD dispatch began receiving multiple 911 calls regarding shots fired at 3:29 AM. One of the calls was from the residents of the home which was being targeted by the shooter. A total of nine people were in the home at the time, including several small children. It was determined the shooter was a longtime friend of the family. The residents reported shots were coming into the house and striking objects in the home.

The FPD officers quickly responded and should be commended for disregarding their own safety and immediately focusing on the safety of the residents in the home. The officers on scene were able to provide ample coverage to escort the residents from the home while the shooter remained in the rear yard continuing to fire various weapons, to include a high powered assault rifle. At least one witness heard the shooter yell “you’re not going to stop me”. FPD continued to maintain coverage on the home while utilizing the PA system to request the shooter to surrender. This continued for 58 minutes with no response or acknowledgement from the shooter. At one point the shooter aimed his rifle and fired directly at the officers parked in the street who had taken a position of cover behind their vehicles.

While two officers were providing coverage on the NE side of the residence the shooter approached them while still holding an assault rifle. Two officers engaged the shooter by firing a total of 13 rounds. The shooter was pronounced deceased at the scene. The residents of the home being targeted advised they were in fear for their life and thought the shooter was going to enter the residence and kill them. The follow-up investigation revealed the shooter had discharged 97 rounds during the incident and had access to an additional 183 live rounds for the rifle and handgun which were found at the scene. Many of the 97 rounds were fired into the occupied dwelling. The two FPD officers discharged a total of 13 rounds.

To arrive at a finding independent from the FPD IA, the previously listed policies and court decisions were thoroughly analyzed to determine which, if any, were applicable in this case. In reviewing the body camera video footage, officer statements, witness statements, and list of physical evidence, it was confirmed the suspect had fired numerous rounds from different weapons without any regard for the safety of others. When confronted by the FPD officers, the suspect raised the rifle he was holding, pointing it in the direction of the officers. At that point the officers were justified in using deadly force to protect themselves.

Independent Reviewers’ Finding:

Based on the above information, the officers were **Within Policy** when they engaged the suspect.

The nine residents who expressed they were in fear for their lives as bullets were entering their home, along with the officers who were being targeted by gunfire, fully justify use of deadly force in this incident.

IA2017-0121: On Tuesday, December 6, 2017, the Fresno Multi-Agency Gang Enforcement Consortium (MAGEC), were briefed regarding a wanted suspect who was believed to be involved in narcotics sales and in possession of two firearms. In addition to the alleged criminal activity of the suspect, there was an active warrant for his arrest for violating the terms of his probation. MAGEC officers began surveilling the apartment complex where it was believed the suspect was living. A short time later the suspect was observed in the parking lot of the complex and additional officers were requested to respond to assist in the arrest. As officers were responding the suspect spotted the officers and fled on a bicycle.

The suspect fled out of the complex parking lot and traveled several blocks into another apartment parking lot with officers in pursuit in their vehicles. Once in the second complex parking lot the suspect fell off of the bicycle and continued to run on foot. At the same time a MAGEC officer exited his vehicle, identified himself, and gave the suspect commands to stop. The suspect continued to run with the officer in foot pursuit. The suspect then turned to look back at the officer and removed a small handgun from his pants pocket. The officer fired one round believing the suspect was about to shoot. The suspect dropped the weapon and fell to the ground as he exited the pedestrian gate of the complex. The officers rendered emergency medical aid to the suspect until the Emergency Medical Services arrived.

During the post-arrest interview, the suspect admitted he was in the first parking lot to sell meth while armed with a handgun. The suspect also admitted to the fact he was aware the individuals trying to apprehend him were police officers. The suspect, and a witness, admitted to hearing the officer yell for the suspect to stop. The weapon was recovered and found to be fully loaded at the time the suspect removed it from his pocket.

Based on the above information the officer was justified in using deadly force to protect himself while trying to apprehend the suspect.

Independent Reviewers' Finding:

The following factors were considered when deciding if deadly force was justified:

1. The suspect was wanted for a felony
2. Previously obtained information indicated the suspect was armed
3. The suspect fled and refused to comply with orders to stop
4. The suspect acknowledged he was aware police officers were trying to stop him
5. The suspect had several opportunities to comply and be arrested without incident
6. Most importantly, the suspect produced a firearm during the foot pursuit, placing the officer in fear for his life and the lives of the public

In view of the above factors the officer was determined to be **Within Policy**

Recommendation #11: As stated in Recommendation #9, in view of the high risk activities of several of the specialized units, it is recommended the next acquisition of cameras be assigned to all members of the specialized units such as MAGEC. In this incident two MAGEC officers

were issued body cameras however the officer who engaged the suspect was not issued a camera. The video would have confirmed the suspect produced a gun before being shot by the officer.

UNREASONABLE FORCE					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0091	8/18/2017	P			CP ALLEGED O USED UNREASONABLE FORCE
17-0098	9/13/2017	P			CP ALLEGED O1 & O2 USED UNREASONABLE FORCE
17-0103	10/6/2017	1/12/2018	EX/EX	EX/EX	CP ALLEGED O1 AND O2 USED UNREASONABLE FORCE DURING THE ARREST
17-0108	10/16/2017	1/20/2018	UNF	UNF	CP ALLEGED O USED UNREASONABLE FORCE
17-0114	10/27/2017	1/31/2018	EX	EX	CP ALLEGED O USED UNREASONABLE FORCE
17-0118	11/15/2017	3/7/2018	EX	EX	CP ALLEGED O INJURED WRIST WITH HANDCUFFS
17-0130	12/19/2017	P			CP ALLEGED UNREASONABLE FORCE
18-0004	1/5/2018	3/7/2018	EX/SUS*	EX/SUS*	CP ALLEGED O USED UNREASONABLE FORCE
18-0013	1/29/2018	P			CP ALLEGED O USED UNREASONABLE FORCE
18-0017	2/2/2018	P			CP ALLEGED O USED FORCE ON A MINOR; DEPT ALLEGED THE INCIDENT WAS NOT DOC IN A REPORT OR BODY CAMERA
18-0020	2/12/2018	P			CP ALLEGED O USED UNREASONABLE FORCE
18-0034	3/19/2018	P			CP ALLEGED O USED UNREASONABLE FORCE
18-0037	3/19/2018	P			CP ALLEGED O USED UNREASONABLE FORCE

During the review period there were five new Unreasonable Force cases assigned and five investigations completed. IA determined the allegations against the officers in each of the five completed investigations were either exonerated or unfounded.

However, in case IA18-0004*, although the officer was exonerated on the allegation of unreasonable force, he was found not to be within FPD policy in regards to activating his body worn video camera. FPD officers were conducting a follow-up investigation on a gang shooting in the parking lot of a local market. The business did have a high resolution exterior camera which recorded the contact with the CP. The video did show the CP using his left hand to push the officer's right hand away as the officer was attempting to have the CP sit down. The officer then applied a compliance strike to the CP's upper body area taking him to the ground. The CP was immediately taken into custody by the officers on scene. The application of a compliance strike was found to be within policy; however the officer failed to activate his body worn video camera to which he was found not to be within policy.

The OIR concurred with IA on all Unreasonable Force findings, to include the findings in IA18-0004.

BIAS BASED					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0033	3/28/2017	2/9/2018	SUS	NR	O1 IS UNCOMFORTABLE WITH CONVERSATIONS WITH FELLOW OFFICER, O2
17-0117	11/15/2017	1/19/2018	UNF	UNF	CP ALLEGED TRAFFIC STOP WAS BASED ON RACE
17-0129	12/19/2017	P			CP ALLEGED THEY WERE ESCORTED OUT OF THE FRESNO FAIR DUE TO RACE
18-0033	3/19/2018	P			CP ALLEGED O WAS BIAS IN MAKING A DECISION
18-0035	3/19/2018	P			CP ALLEGED RACIAL PROFILING

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0067	7/13/2017	2/9/2018	SUS	NR	DEPT ALLEGED O ATTEMPTED TO 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
17-0095	9/12/2017	2/2/2018	O1 UNF O2 SUS	O1 UNF O2 SUS	CP ALLEGED O1 & O2 USED PROFANITY AND WERE DISCOURTEOUS
17-0102	9/27/2017	1/30/2018	NS	NS	DEPT ALLEGED O WAS CITED FOR MISD DOM VIOLENCE
17-0106	10/6/2017	P			CP ALLEGED O IS ABUSING AUTHORITY
17-0110	10/20/2017	1/20/2018	UNF	UNF	CP ALLEGED O1 AND O2 DID NOT HAVE PC TO STOP HIM WHICH RESULTED IN AN ARREST
17-0113	10/27/2017	P			CP ALLEGED OFF DUTY O ASSAULTED HER
17-0120	11/22/2017	1/12/2018	UNF	UNF	CP ALLEGED AN OFF-DUTY O ASSAULTED HIM
17-0122	12/12/2017	2/7/2018	EX	EX	CP ALLEGED O CONDUCTED AN ILLEGAL SEARCH
17-0126	12/19/2017	1/30/2018	UNF	UNF/SUS*	O ALLEGED SUPV WAS DISCOURTEOUS

*SEE EXPLANATION FOLLOWING CHART

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0127	12/19/2017	P			CP ALLEGED CALL TAKER WAS RUDE & CONDESCENDING
17-0132	12/19/2017	P			CP ALLEGED O FAILED TO PROPERLY HANDLE CALL
17-0135	12/20/2017	P			CP ALLEGED O PREPARED A MISLEADING REPORT
17-0136	12/22/2017	3/8/2018	UNF	UNF	CP ALLEGED O MISCOUNTED SEIZED CURRENCY
18-0007	1/16/2018	2/15/2018	UNF	UNF	CP ALLEGED O ENGAGED IN UNETHICAL CONDUCT
18-0014	1/29/2018	P			DEPT WAS CONTACTED BY ALLIED AGENCY ALLEGING O WAS ACCUSED OF IMPROPER CONTACT WITH MINOR
18-0019	2/12/2018	P			DEPT ALLEGED AN OFF-DUTY O INVOLVED IN DV
18-0021	2/14/2018	P			DEPT MEMBER ALLEGED O LACKED DISCRETION
18-0023	2/21/2018	P			ALLIED AGENCY ALLEGED OFF-DUTY O INVOLVED IN A FIGHT
18-0026	3/1/2018	P			DEPT ALLEGED EMP REC CONVERSATION AND DETECTIVE WAS RUDE

During the review period there were six newly assigned IA investigations and nine investigations completed. Of the nine completed investigations, the OIR concurred with each of the IA findings but also discovered an action not within policy which was not previously reported.

IA2017-0126*: The CP, an officer, alleged a supervisor was disrespectful to him and his partner when the supervisor was addressing what he perceived as an officer safety issue. The officers, O1 and O2, had responded to a burglary in progress call and upon arrival contacted a homeowner and neighbor who had detained a suspect. As O2 was speaking to the homeowner, the suspect was seated unrestrained on the curb facing O2 with the homeowner and neighbor to either side of O2. A jacket, which the suspect had in his possession, was on the sidewalk directly behind the suspect. O1 was standing behind the seated suspect and began removing items from the jacket pockets which was recorded on his body camera. O1 removed a semi-automatic pistol and advised O2 “may be a BB gun or something.” O1 began handling the pistol while it was pointed in the direction of O2, the suspect, the homeowner, and the neighbor. O1 tried several times to clear the weapon by racking the slide three times with the magazine still seated in the weapon. When O1 racked the slide back the fourth time he was able to remove the magazine which clearly showed it contained live rounds. A review of the evidence log determined the pistol was a .25 caliber Raven pistol with six rounds loaded in the magazine. Due to the significance of this weapon safety violation, the OIR informed IA on February 6, 2018, instead of waiting on the release of this quarterly report.

O2 remained focused on the suspect while interviewing the homeowner and was not advised by O1 the pistol was a .25 caliber weapon and not a BB gun. O1 then placed the pistol and magazine on the patrol car hood and used the vehicle spotlight to illuminate the hood. O1 then walked back to the area where the suspect was seated, turning his back to the patrol car, and began talking to the suspect. O2, the homeowner, and neighbor left the area to inspect the location where the homeowner spotted the suspect. Five minutes and ten seconds later the supervisor arrived on scene and immediately noticed the pistol on the hood of the vehicle and the still unsecured suspect seated at the curb. The supervisor questioned O1 on why the suspect was not handcuffed and requested O1 handcuff the suspect. The supervisor had to repeat the request several times before O1 complied. Once the suspect and pistol were properly secured the supervisor addressed both officers on the respective safety violations.

O1 alleged the supervisor was disrespectful and used profanity when the supervisor was addressing them on the safety violations. IA conducted interviews of one witness and O2. The allegations of the use of profanity and disrespectful treatment could not be corroborated.

In reviewing this matter the OIR concurred with the IA finding of unfounded for the allegations against the supervisor. However, the review revealed egregious safety violations by O1. The FPD Procedure 312 (C) states:

C. Safe Handling and Storage of Firearms

Officers will ensure that all firearms and ammunition are secured consistent with the provisions of Penal Code §25100. Members will maintain the highest level of safety when handling firearms and consider the following:

- Officers will not display any firearm unless deadly force is authorized, for officer safety reasons, training, or at a Department range;
- Off-duty handguns shall be concealed;
- Officers shall only dry fire with an unloaded firearm and in a safe manner;
- **Members shall treat all firearms as if loaded; and**
- Weapons will not be carried by any officer who has consumed any amount of an alcoholic beverage or taken any drugs that would tend to adversely affect the officer's senses or judgment.

In addition, the following PowerPoint slide is part of the FPD Firearms Training presentation:



The situation could have resulted in an accidental discharge due to the manner O1 was handling the loaded weapon while it was pointed in the direction of the four individuals. Due to the many different weapons in production today it is unreasonable for an officer to be familiar with the functions of every weapon. However, there are four common safety rules for every weapon, regardless of how it functions, which are referenced in the FPD PowerPoint slide.

In view of the actions of O1, the OIR determined the officer was in violation of the FPD Policy and Procedure regarding weapon safety.

Recommendation #12: Ensure O1 receives additional training regarding the safe handling of firearms, regardless of the level of familiarity with weapons which are seldom encountered. The body worn camera footage recorded by O1 should be used to aid in this training.

IA VEHICLE ACCIDENTS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0058	6/8/2017	2/8/2018	SUS	NR	DEPT ALLEGED O WAS INVOLVED IN AN OUT OF POLICY COLLISION
17-0083	8/4/2017	2/8/2018	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0099	9/13/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0107	10/12/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0116	11/9/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0131	12/19/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0133	12/19/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0134	12/19/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0010	1/18/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0011	1/23/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0012	1/29/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0018	2/6/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0029	3/13/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0039	3/26/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT

There were six vehicle accident IA cases assigned during the review period and two case investigations were completed. IA determined the officers were not within policy in each of the completed investigations.

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	2/1/2018	SUS	NR	DEPT ALLEGED O1 FAILED TO PREPARE PURSUIT CRITIQUE & O2 AND O3 INVOLVED IN OUT OF POLICY PURSUIT
17-0037	3/31/2017	2/8/2018	SUS	NR	DEPT ALLEGED OFFICER LOST PROPERTY USED FOR K-9 TRAINING
17-0051	5/11/2017	2/15/2018	SUS	NR	DEPT ALLEGED O USED DEPT VEH FOR PERS BUSINESS AND FALSE OR MISLEADING STATEMENTS TO SUPERVISOR
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
17-0064	6/28/2017	P			CP ALLEGED HER ESTRANGED HUSBAND, O1, COMMITTED DOMESTIC VIOLENCE
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	2/8/2018	SUS	NR	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 OVERTIME/TIME OFF REQUESTS WERE NOT SUBMITTED PROPERLY
17-0085	8/15/2017	2/8/2018	SUS	NR	DEPT ALLEGED O ENGAGED IN DANGEROUS HORSEPLAY BY POINTING WEAPON AT OFFICER
17-0086	8/15/2017	3/12/2018	UNF/UNF/ SUS	UNF/UNF/ SUS	CP ALLEGED O1, O2, & O3 LOST PROPERTY OF SUSPECT

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0093	9/7/2017	3/1/2018	SUS	NR	DEPT ALLEGED O FAILED TO SECURE A PRISONER
17-0096	9/12/2017	P			DEPT ALLEGED O WAS INSUBORDINATE
17-0101	9/26/2017	2/15/2018	SUS	NR	DEPT ALLEGED COMM EMP DELAYED PERFORMING DUTIES DUE TO BEING ON PERS CELL PHONE
17-0104	10/6/2017	P			DEPT ALLEGED O HAD TIME OFF THAT WAS UNACCOUNTED FOR IN SYSTEM
17-0111	10/26/2017	1/12/2018	SUS	NR	DEPT ALLEGED O DID NOT COMPLETE REPORT PROPERLY RESULTING IN COSTS FOR CITIZENS
17-0112	10/26/2017	3/12/2018	SUS	NR	DEPT ALLEGED O MISPLACED FPD PROPERTY
17-0115	11/2/2017	P			O IGNORED SEVERAL DEPT FINANCIAL EMAILS
17-0119	11/15/2017	P			DEPT ALLEGED O1,2, &3 DID NOT PREPARE WRITTEN TACTICAL PLAN & FAILED TO CARRY LESS THAN LETHAL
17-0124	12/12/2017	3/12/2018	SUS	NR	DEPT ALLEGED EMP FAILED TO PERFORM DUTIES
17-0128	12/19/2017	P			CP ALLEGED O1 & O2 MISPLACED HIS WALLET
17-0137	12/30/2017	P			DEPT ALLEGED O LOST PRISONER PROPERTY
18-0003	1/5/2018	P			DEPT ALLEGED O TOOK LEAVE WITHOUT PAY WITHOUT APPROVAL
18-0015	1/29/2018	P			DEPT ALLEGED O MISPLACED FPD PROPERTY
18-0016	2/2/2018	P			DEPT ALLEGED IMPROPER USE OF FIREARM
18-0022	2/15/2018	P			DEPT ALLEGED O MISPLACED PRISONER PROP
18-0025	3/1/2018	P			CP ALLEGED INVESTIGATION NOT CONDUCTED & UNPROF
18-0026	3/1/2018	P			DEPT ALLEGED EMP REC CONVERSATIONS
18-0027	3/6/2018	P			DEPT ALLEGED O FAILED TO PERFORM DUTIES
18-0030	3/19/2018	P			DEPT ALLEGED O MISPLACED PRISONER PROP
18-0031	3/19/2018	P			DEPT ALLEGED O MISPLACED PRISONER PROP
18-0032	3/19/2018	P			CP ALLEGED O1 AND O2 FAILED TO FULLY INVESTIGATE

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
18-0036	3/19/2018	P			CP ALLEGED O FAILED TO FULLY INVESTIGATE
18-0040	3/29/2018	P			DEPT ALLEGED O PARKED IN TOW AWAY ZONE

During the review period there were 12 newly assigned IA cases for Administrative or Performance Matters. It should be noted each case was self-initiated by the FPD, which indicates the department does monitor the actions of their personnel. Eleven IA investigations were completed with IA determining the allegations were sustained in all but the below case.

IA2017-0086 was initiated by a complaint filed by a CP. The initial complaint alleged O1, O2, and O3 misplaced the property of the CP following a vehicle accident. All three officers who were on scene were named in the complaint due to the uncertainty on which officer actually misplaced the property. The IA investigation determined O1 and O2 were never in possession of the CP's property, thus O3 was determined to be the one who was responsible. The OIR finding concurred with the findings by IA.

IC CASES CLOSED DURING THE FIRST QUARTER OF 2018				
CASE NUMBER	DATE RECEIVED	DATE COMPLETED	ALLEGATION(S)/TYPE - FPD FINDING	OIR FINDING
IC18-0001	4/15/17	01/16/18	BODY CAMERA ISSUES - SUSTAINED BODY CAMERA ISSUES - SUSTAINED	SUS SUS
IC18-0002	8/22/17	01/16/18	DISCOURTEOUS - SUSTAINED	SUS
IC18-0003	9/8/17	01/16/18	GENERAL RESPONSIBILITIES - NOT SUSTAINED GENERAL RESPONSIBILITIES - NOT SUSTAINED GENERAL RESPONSIBILITIES - NOT SUSTAINED	NOT SUS NOT SUS NOT SUS
IC18-0004	9/10/17	01/16/18	PERFORMANCE - SUSTAINED DISCRETION - SUSTAINED	SUS SUS
IC18-0005	10/16/17	01/16/18	DISCOURTEOUS - SUSTAINED	SUS
IC18-0006	11/8/17	01/16/18	DEPT PROPERTY - LOST - SUSTAINED	SUS
IC18-0007	11/9/17	01/16/18	DEPT PROPERTY - CARE/USAGE/DAMAGED - NOT SUSTAINED	SUS
IC18-0008	11/20/17	01/16/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNF
IC18-0009	11/25/17	01/16/18	GENERAL CALL HANDLING - EXONERATED GENERAL CALL HANDLING - EXONERATED	EX EX
IC18-0010	11/25/17	01/16/18	GENERAL CALL HANDLING - UNFOUNDED	UNF
IC18-0011	11/27/17	01/16/18	GENERAL CALL HANDLING - UNFOUNDED GENERAL CALL HANDLING - UNFOUNDED	UNF UNF
IC18-0012	11/29/17	01/16/18	DEPT PROPERTY - LOST - SUSTAINED	SUS
IC18-0013	12/9/17	01/16/18	DISCOURTEOUS - NOT SUSTAINED DISCOURTEOUS - NOT SUSTAINED	NOT SUS NOT SUS
IC18-0014	12/11/17	01/16/18	SEARCH/SEIZURE ISSUES - EXONERATED SEARCH/SEIZURE ISSUES - EXONERATED	EX EX

IC CASES CLOSED DURING THE FIRST QUARTER OF 2018				
CASE NUMBER	DATE RECEIVED	DATE COMPLETED	ALLEGATION(S)/TYPE - FPD FINDING	OIR FINDING
IC18-0015	12/15/17	01/16/18	DISCOURTEOUS - NOT SUSTAINED	NOT SUS
IC18-0016	12/16/17	01/16/18	DISCOURTEOUS - UNFOUNDED	UNF
IC18-0017	12/23/17	01/16/18	DEPT PROPERTY - LOST - SUSTAINED	SUS
IC18-0018	12/23/17	01/16/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNF
IC18-0019	1/9/18	01/16/18	CONDUCT UNBECOMING ON/OFF DUTY - NOT SUSTAINED	NOT SUS
IC18-0020	12/13/17	02/13/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNF
IC18-0021	12/12/17	02/13/18	ARREST AUTHORITY/PROCEDURES - UNFOUNDED	UNF
IC18-0022	12/27/17	02/13/18	DISCOURTEOUS - EXONERATED DISCOURTEOUS - EXONERATED	EX EX
IC18-0023	1/7/18	02/13/18	DISCOURTEOUS - SUSTAINED	SUS
IC18-0024	1/10/18	02/13/18	PERFORMANCE - SUSTAINED	SUS
IC18-0025	1/11/18	02/13/18	DISPARAGING REMARKS/CRITICISM OF MEMBERS - SUSTAINED DISPARAGING REMARKS/CRITICISM OF MEMBERS - SUSTAINED DISPARAGING REMARKS/CRITICISM OF MEMBERS - SUSTAINED	SUS (3)
IC18-0026	1/12/18	02/13/18	PERFORMANCE - SUSTAINED PERFORMANCE - SUSTAINED	SUS SUS
IC18-0027	1/16/18	02/13/18	PERFORMANCE - SUSTAINED	SUS
IC18-0028	1/29/18	02/13/18	GENERAL RESPONSIBILITIES - SUSTAINED	SUS
IC18-0029	10/31/17	02/21/18	DISCOURTEOUS - SUSTAINED	SUS
IC18-0030	9/5/17	03/14/18	ABUSE OF AUTHORITY - UNFOUNDED	UNF
IC18-0031	12/20/17	03/14/18	DEPT PROPERTY - LOST - SUSTAINED	SUS
IC18-0032	1/8/18	03/14/18	DISCRIMINATION - NOT SUSTAINED	NOT SUS
IC18-0033	2/14/18	03/14/18	GENERAL CALL HANDLING - UNFOUNDED GENERAL CALL HANDLING - UNFOUNDED	UNF UNF
IC18-0034	2/28/18	03/14/18	GENERAL CALL HANDLING - NOT SUSTAINED GENERAL CALL HANDLING - NOT SUSTAINED	NOT SUS NOT SUS
IC18-0035	2/9/18	03/29/18	GENERAL CALL HANDLING - UNFOUNDED GENERAL CALL HANDLING - UNFOUNDED	UNF UNF
IC18-0036	2/22/18	03/29/18	INSUBORDINATION - SUSTAINED	SUS
IC18-0037	3/2/18	03/30/18	GENERAL CALL HANDLING - EXONERATED	EX
IC18-0038	3/17/18	03/30/18	PROPERTY- NOT DEPT OWNED - LOST/DAMAGED - UNFOUNDED	UNF
IC18-0039	3/22/18	03/30/18	GENERAL CALL HANDLING - UNFOUNDED	UNF

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 39 Informal Complaint cases which were closed this quarter to ensure the matters were handled at the appropriate level.

Below are the levels of discipline implemented by the FPD for officers and employees who were determined to be in violation of FPD Policies or Procedures.

DISCIPLINE ISSUED	2013	2014	2015	2016	2017	2018/1 st QTR
TERMINATIONS	5	3	5	7	3	0
RESIGNED IN LIEU OF	1	1	0	0	1	0
RETIRED	0	0	0	0	0	0
DEMOTION	0	0	0	0	0	0
SUSPENDED	15	14	13	16	19	10
PAYMENT IN LIEU OF	0	1	0	0	0	0
FINES	0	0	1	0	0	0
LETTERS OF REPRIMAND	11	7	11	9	9	1
TOTAL	32	26	30	32	32	11

Correction: The last quarterly report contained a statement which read “The OIR analyzes complaints filed by citizens and those initiated by FPD IA to ensure they have been investigated fairly and thoroughly.” The statement should have read “The OIR analyzes complaints filed by citizens and those initiated by the *department* to ensure they have been investigated fairly and thoroughly.” The OIR apologizes for the error.

Summary: The intent of the quarterly reports is to ensure the residents of Fresno there is a neutral review conducted of the FPD’s actions when a complaint is filed. In this report 12 issues were identified and recommendations made. These recommendations should not be viewed as criticism of the FPD, but as suggestions on possible ways to improve the operations of the FPD. In view of quick responses to the prior report’s recommendations it is apparent the FPD shares the same desires as the Fresno residents to have trust and pride in their police department.

The OIR will continue to review each and every IA investigation and make recommendations when necessary. The quarterly reports will also incorporate periodic changes if the changes will improve transparency or the level of communication with the residents of Fresno. This report listed the IA case assignments by policing districts, which had not been done since the OIR was created in 2009. Another change was the production of the OIR information pamphlet in Spanish. The pamphlet link can be found on the OIR website along the right side of the page.

Residents are once again reminded there is a process in place to review, and if warranted, initiate an investigation. Answers to questions regarding this process can be found on the OIR website, or by contacting the OIR directly at the following telephone number or email address:

<https://www.fresno.gov/citymanager/office-of-independent-review/>

Telephone: (559) 621-8617

Email: Maira.Aguilar@Fresno.gov