



OFFICE OF INDEPENDENT REVIEW

**REPORT FOR THE PERIOD OF
JULY 1, 2018 TO SEPTEMBER 30, 2018**

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ABOUT THE OFFICE OF INDEPENDENT REVIEW

The Office of Independent Review (OIR) works 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
- 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, works 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 everyone in the City of Fresno. The Board also advises the Independent Reviewer (IR) in helping to define, assess, and further develop Community Based Policing citywide.

The Board is comprised of nine individuals appointed by Mayor Lee Brand. 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 non-voting members represent the FPD, Fresno Peace Officers' Association, City Attorney's Office, Fresno County District Attorney's Office, and Mayor Brand's Office.

OIR REPORT FORMAT

The OIR adheres to the following guidelines, format, and definitions in all quarterly reports:

- Definitions for the terms used are consistent with the definition of terms used in California Legislative documents and the FPD.
- Officers are referred to as “O” and where there is more than one officer involved they will be identified as O1, O2, and so on depending on the total number officers.
- The charts are grouped by incident type and cases appear in order of case number.
- The incident type charts 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 are reviewed by the OIR. The findings reached by the OIR for these cases 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 by the OIR.
- All closed Informal Complaint cases, which were addressed by supervisors, are also reviewed by the OIR.
- Cases are not 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 is released to Mayor Lee Brand, City Manager Wilma Quan-Schechter, Chief Assistant City Attorney Francine M. Kanne, and Chief Jerry Dyer, prior to finalization. This allows 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 change(s) in response to the OIR's recommendation(s) listed in the previous quarterly report, the change(s) will be addressed in the section titled “Status of OIR Recommendations.”

STATUS OF OIR RECOMMENDATIONS

The FPD provided the following responses to the eight recommendations issued in the second quarter OIR report.

Recommendation #1: *The pursuit policy should be reinforced to supervisors, who maintain the authority to terminate a pursuit based on factors known at the time. Although, each incident is assessed individually, traffic violations without additional criminal actions are rarely egregious enough to warrant a pursuit. This incident appears to fall within the category of the safety of others outweighing the need to pursue.*

FPD Response: The pursuit in this case was terminated, however it continued to be monitored by the helicopter (AIR1) and ground units as it left the city and entered the county. FPD re-engaged in the pursuit after it re-entered the city for a brief time, shortly before the collision. We will continue to reinforce the Department's pursuit policy to supervisors and officers by having the nighttime Field Commanders cover the issue during patrol briefings.

Recommendation #2: *Supervisors should be aware of all ride-alongs during each shift in the event it becomes necessary to extract an officer's participation in a pursuit or other dangerous situation. It is understood there will be exceptions to the rule but an adequate number of officers were present to justify instructing Vehicle #3 to fall back and provide perimeter assistance.*

FPD Response: While it would not be considered appropriate to require officers to disengage from a police action due to having a ride along, it is important for officers not to expose a ride along to unnecessary risk.

Recommendation #3: *In view of the valuable experiences provided by a ride-along it is recommend the program be restored. Prior to restoring the program, the revised policy should clearly state what is applicable to family members or associates of officers to avoid any confusion for the officers and supervisors.*

FPD Response: In addition to the required liability waiver form signed by all ride alongs, Department policy has been revised to limit ride along participation to only circumstances when there is a demonstrated benefit to the Department and community.

Recommendation #4: *The amended ride-along policy should contain a rule for the participants advising any violation on the recording rule could result in their device being seized as evidence. Additionally, if it is confirmed the participant did record police activity in audio or video format the participant is barred from any future ride-alongs. If the rider refuses to initial this rule, indicating acceptance, they should not be allowed to participate in the ride-along.*

FPD Response: Department policy and the ride along form has been revised to specifically prohibit recordings and warn the consequences of making prohibited recordings could result in the seizure of the recording device and being banned from future ride alongs.

Recommendation #5: It is recommended call takers be continually reminded to remain cognizant of information being provided by callers which may indicate the threat level of the situation officers are about to encounter. It is imperative this type of information be relayed to the responding officers. The FPD is deserving of being acknowledged for self-initiating an IA investigation on this matter when they learned of the omission during the OIS investigation and before it was discovered during the OIR review. However, the investigation was suspended because the employee is no longer with the FPD.

FPD Response: Ensuring that officer safety information regarding the threat level of a situation is relayed to responding officers, is and will continue to be, part of the training provided to complaint takers (911 operators). Corrective measures will be taken when failure to adequately relay safety information is found to have occurred.

Recommendation #6: A written tactical plan should be prepared when planning the arrest of a violent suspect, specifically a homicide with a firearm, whenever feasible, based on time permitting, due to the exigency of the specific operation.

FPD Response: Policy and procedure modifications are underway regarding written tactical plan requirements for pre-planned arrests of violent felony suspects, pending finalization of a revised tactical plan format.

Recommendation #7: The FPD should explore options for an immediate increase in the number of ESD positions in CommCen, or at a minimum prioritize the request in the 2019 – 2020 budget proposal. Although FPD did request an enhancement in the recently passed budget, and it appeared in their top 20 requests, the request was not ranked high enough for it to be considered and approved in view of the budget limitations.

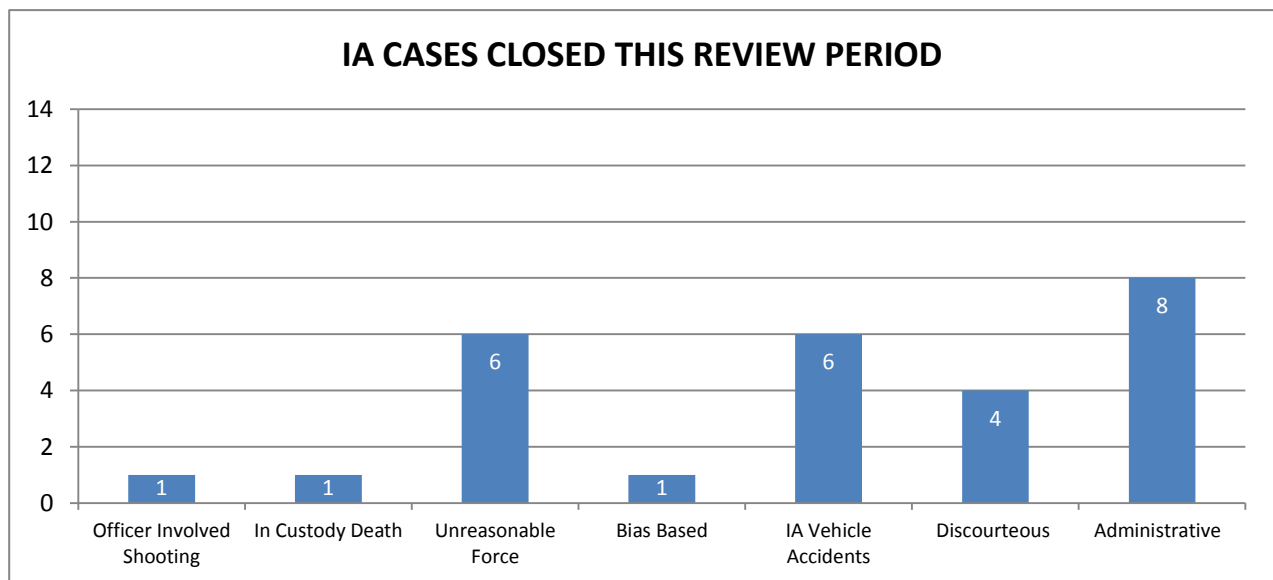
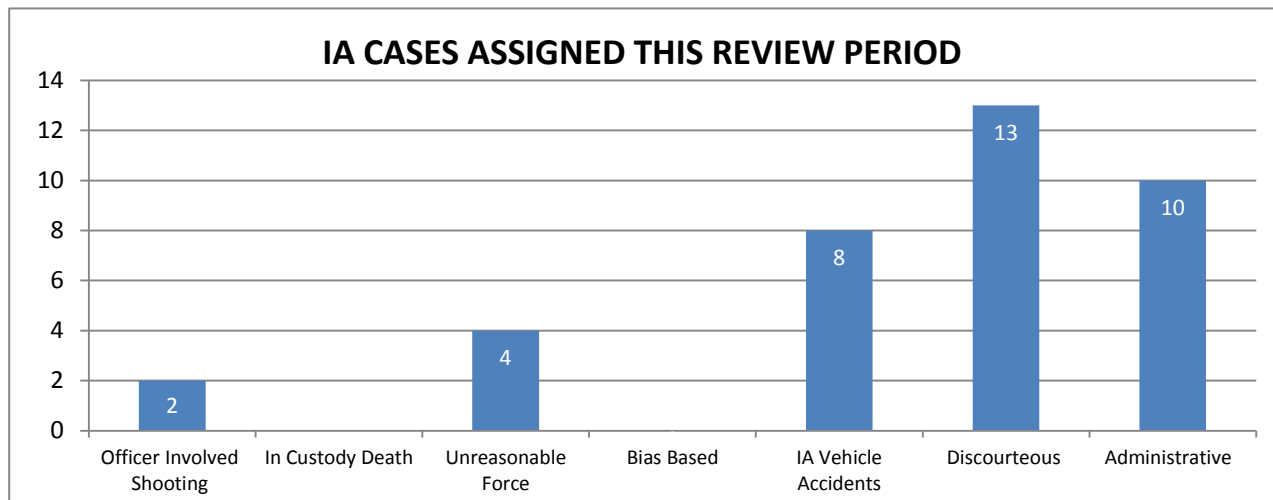
FPD Response: Additional ComCen positions will be requested again during the next budget year.

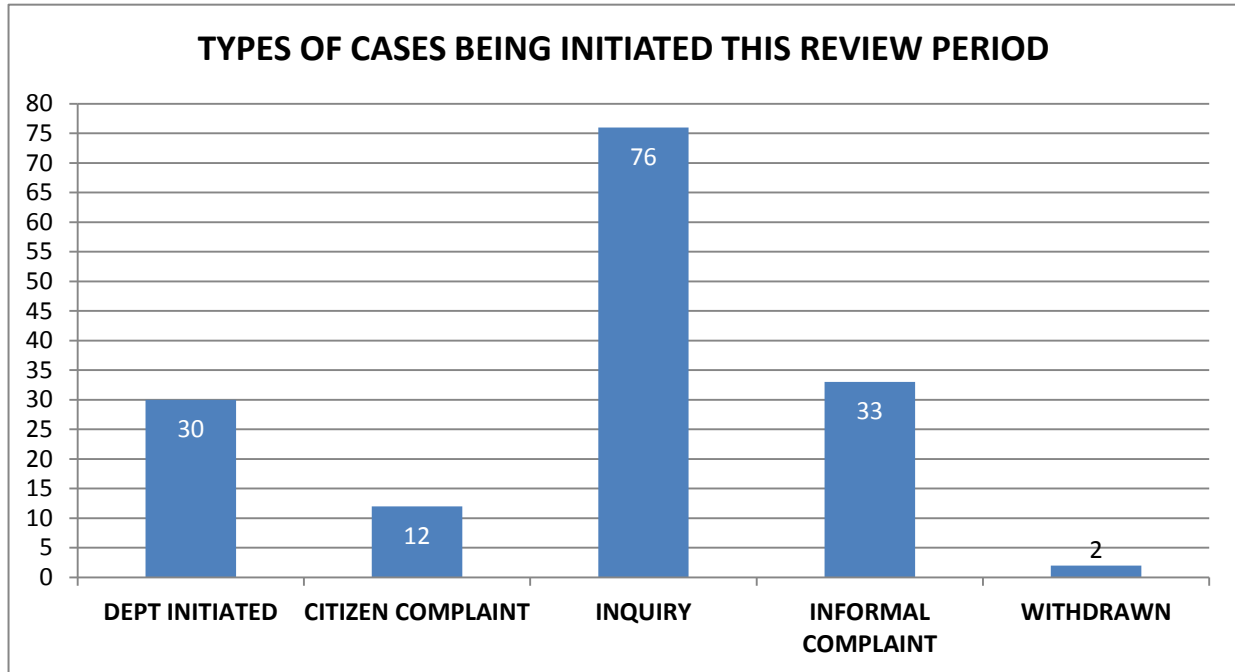
Recommendation #8: Consider airing Public Service Announcements to clarify what calls should be placed to 9-1-1 and which calls should be directed to the non-emergency number.

FPD Response: We are currently in discussions with the City Manager's office as to how we can better address the large number of 911 calls in a timely fashion, which may include an alternative non-emergency number such as 311.

REVIEW OF INTERNAL AFFAIRS INVESTIGATIONS

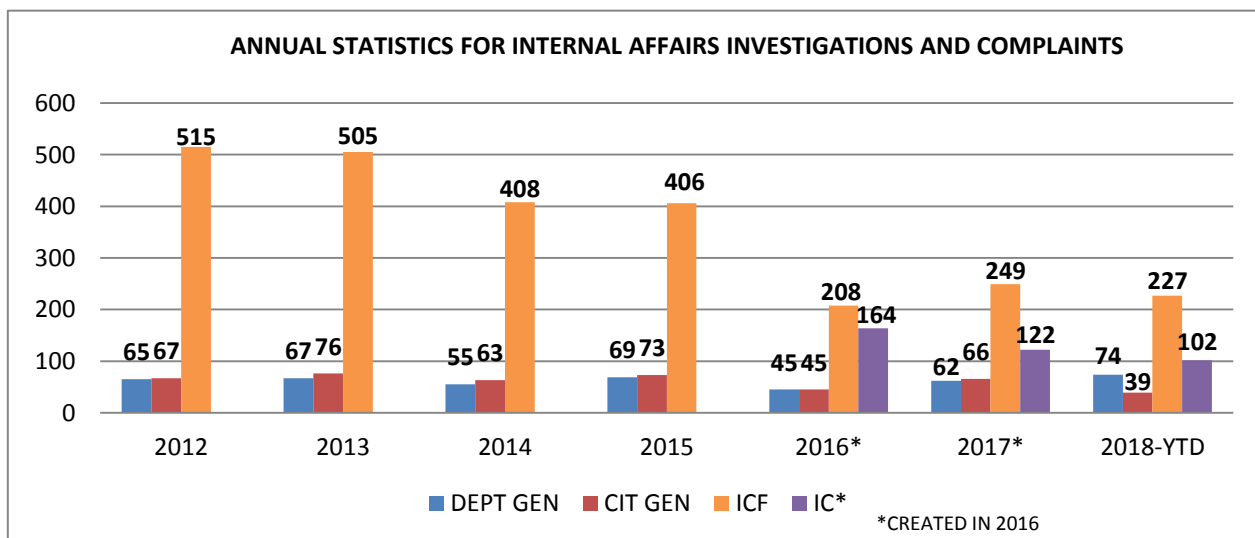
The following charts list the number and types of IA cases assigned and closed during the third quarter of 2018. For classification purposes Discourteous Treatment also includes cases in which the officer was accused of conduct unbecoming of a police officer. The classification of Administrative Matters includes officers accused of violating policies or procedures which do not involve responding to a call for service or interacting with the public.





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 the 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.



COMPLAINTS ASSIGNED BY POLICING DISTRICT

The following chart reflects the complaints assigned by policing district for the third quarter of 2018. The first quarter of 2018 was the first time this comparison had been published since the OIR was established in 2009. IA should be acknowledged for their cooperation in compiling this information. Because of software limitations, the IA support staff manually compiles the data each quarter. 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 remained relatively even throughout the five policing districts. However, it is recognized this is only three months of data for this breakdown. This chart will 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. At the conclusion of the fourth quarter the total number of complaints for all of 2018 will be listed by policing district.

COMPLAINTS ASSIGNED BY POLICING DISTRICTS FOR THE THIRD QUARTER OF 2018									
ASSIGNED	NE	NW	SE	SW	CENT	NON DISTRICT	COMCEN	WITHDRAWN/ SUSPENDED	TOTAL
IA CASES	4	4	6	4	9	14	1	2	44
INFORMAL COMPLAINTS	4	4	8	4	4	7	2	0	33
INQUIRIES	17	8	14	13	15	9	0	0	76
TOTAL	25	16	28	21	28	30	3	2	153

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 EMPLOYEE IS NO LONGER AT FPD

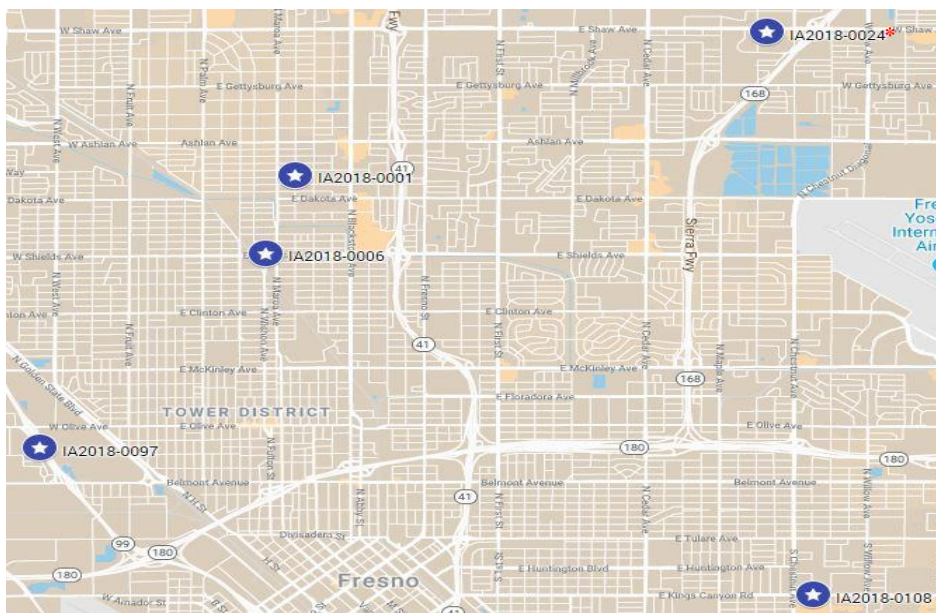
EXPLANATION OF TERMS AND ABBREVIATIONS

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	

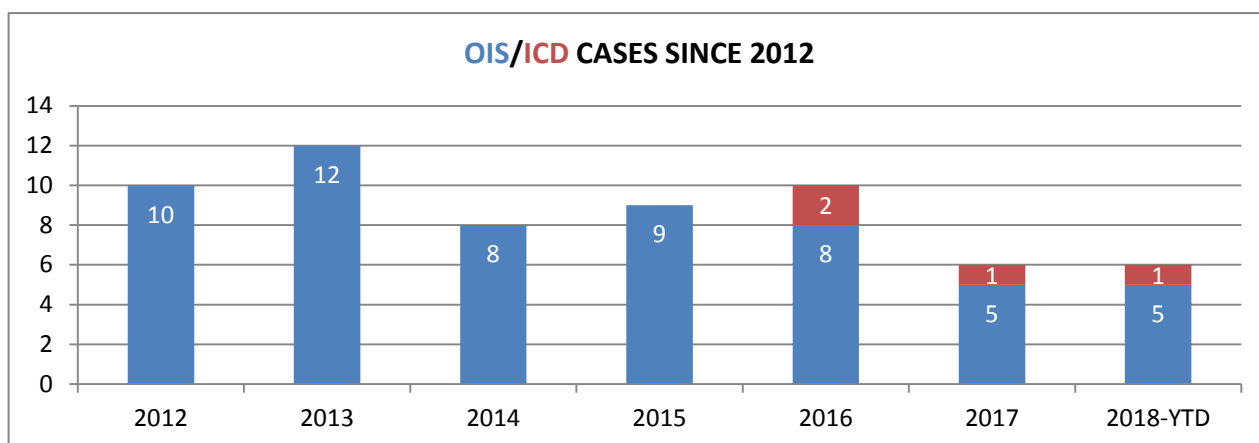
OFFICER INVOLVED SHOOTING (OIS) AND IN CUSTODY DEATHS (ICD)

IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0050	5/10/2017	8/28/2018	W/IN POL	W/IN POL	O1 & O2 ARRESTED SUSPECT WHO WAS LATER PRONOUNCED DECEASED (ICD)
18-0001	1/1/2018	7/10/2018	W/IN POL	W/IN POL	O FIRED TWO RNDs 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
18-0038	3/20/2018	P			DEPT ALLEGED AN IN CUSTODY DEATH (ICD)
18-0097	7/21/2018	P			SUBJECT FIRED AT RESIDENTS AND OFFICERS- FATAL
18-0108	8/14/2018	P			O SHOT SUBJ ARMED WITH KNIFE & FIREARM- FATAL

LOCATION OF OFFICER INVOLVED SHOOTINGS FOR 2018



*IA2018-0024 was completed and reviewed in the second quarter of 2018 and therefore does not appear in the above chart.



During the third quarter of 2018 there was one OIS and one ICD investigation completed and closed, which were then reviewed by the OIR. During the same period there were two new OIS investigations opened and assigned.

As indicated in the chart on page nine, the FPD IA determined the officers were within policy in the completed OIS and ICD cases. In order to better understand the basis for the findings made by the FPD IA, the FPD policies along with the applicable United States Supreme Court cases should be reviewed. The respective 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 third quarter of 2018. In order to maintain the confidentiality afforded to 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 and audio recordings of interviews of officers, witnesses, and body worn cameras.

IA2017-0050: This case was assigned on May 10, 2017, but due to another law enforcement agency having primary jurisdiction the investigation was not completed until August 28, 2018.

On Wednesday, May 10, 2017, at approximately 10:26 AM, a resident from the area of East Saginaw Way in Fresno County contacted Fresno County Sheriff-Coroner's Dispatch Center to report a suspicious person at Saginaw Way and Van Ness Avenues. Additional updates indicated the subject, later identified as Joseph Perez, was at Saginaw Way and Palm Avenue hiding behind a tree. Three Fresno County Sheriff's Office (FSO) Deputies were dispatched to the area.

At approximately 10:28 AM, three FPD Officers were riding in the same marked police vehicle when they observed Perez in the roadway at Palm and Santa Fe Avenues. The officers were unaware of the pending FSO call for service. Perez was yelling at passing motorists and appeared to be in need of assistance. The officers stopped and made contact with Perez. Although cooperative, Perez was handcuffed for his own safety due to being under the influence of narcotics coupled with his erratic behavior. One FPD Officer did activate his body worn camera.

A short time later the FSO Deputies, who also responded to the suspicious person call, arrived on scene and determined Perez was the subject of their call. At approximately 10:36 AM, one of the FPD Officers requested emergency medical services (EMS) respond "Code 2" (urgent – no lights or sirens) for Welfare and Institutions 5150 hold. Moments later the officer upgraded EMS to "Code 3" (lights and sirens) due to the continued erratic and combative behavior of Perez.

Although handcuffed, Perez had become uncooperative and resistant to the efforts of the officers and deputies to control him and prevent self-inflicted injuries. Perez was held against the ground on his stomach until EMS arrived. Both the officers and deputies could be heard numerous times telling Perez to relax and they were trying to help him.

Once on scene EMS instructed officers not to turn Perez over but place their back board on the back of Perez until he could be restrained to the board. While being restrained Perez continued to be combative and EMS twice requested an officer sit on top of the back board. Once restrained it was determined Perez was unresponsive. EMS then performed cardiopulmonary

resuscitation (CPR) on Perez and continued CPR while enroute to the hospital. Unfortunately Perez was later pronounced deceased at Community Regional Medical Center (CRMC).

The coroner's report indicated the cause of death was compressive asphyxia during restraint. However, it was also determined Perez' level of methamphetamine was more than 24 times above the established toxic level.

It is reasonable to conclude officers given the same set of circumstances would have determined Perez' behavior as dangerous to himself, as well as the safety of the officers, FSO deputies, and the public. The FPD officers used the minimal force which was reasonable to control Perez from what they viewed were his attempts to harm himself. Also, a FPD Sergeant was the on-scene supervisor and was present for the duration of the incident. The actions of the officers were consistent with Department Policy/Procedure 300 and Graham vs Connor in respects to the level of force applied.

Also reviewed were the applicable Policies and Procedures (PP) 417, Crisis Intervention; PP 418, Mental Illness Commitments; PP 321, Field Contacts, Detentions and Arrests; PP 333, Drug Influence Cases, and it was determined the officers were within policy for each.

In addition, the officers on scene were following the direction of the medical staff when they were instructed to sit on the backboard, which was also recorded by the body worn camera and confirmed by an Emergency Medical Technician and a FSO Sergeant during follow-up recorded interviews.

IA18-0001: This incident was initiated by the suspect, David Olivas, placing a 9-1-1 call to FPD dispatch at 3:48 AM, which was terminated shortly after being connected. Prior to the call being disconnected Olivas requested officers respond to his home because someone was attempting to break in. Attempts to contact Olivas after the call was terminated were unsuccessful. At 4:02 AM, a second 9-1-1 call was received from Olivas' neighbor, who advised Olivas instructed him to call because someone was breaking into his house, which was next door. FPD Officers were then dispatched and arrived on scene with body cameras activated. An unknown male, later identified as Olivas, was observed on the front porch of the residence. The officers took up two positions of cover at different angles facing the front porch.

Several commands were given by both officers for Olivas to come to them. Olivas did not comply with either officer's requests. One officer observed Olivas with what appeared to be a weapon in his hand which he then broadcast over the radio. When Olivas raised his arm and hand which was holding the weapon the officer could be heard yelling several times for Olivas to "drop it." One officer was in fear for his partner's life since Olivas was focusing on the other officer at the time. In response, the officer fired two rounds from his department weapon. The fired rounds struck the door frame just to the left of Olivas. No injuries were sustained by Olivas and he later surrendered after a 90 minute standoff.

In view of the actions of Olivas when the officers arrived the officer was justified in firing his weapon. It was later determined Olivas was holding a BB gun, which a reasonable officer would interpret as an actual firearm if someone raised it in the direction of a police officer. Both

Supreme Court cases listed earlier in this document were applicable in this situation. In addition FPD Policy 300.6.1 (a) is applicable.

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
17-0130	12/19/2017	7/11/2018	EX(2) UNF	EX(2) UNF	CP ALLEGED UNREASONABLE FORCE
18-0013	1/29/2018	P			CP ALLEGED O USED UNREASONABLE FORCE
18-0020	2/12/2018	7/11/2018	UNF/EX/EX	UNF/EX/EX	CP ALLEGED O USED UNREASONABLE FORCE
18-0034	3/19/2018	7/11/2018	UNF/EX	UNF/EX	CP ALLEGED O USED UNREASONABLE FORCE
18-0046	4/4/2018	8/23/2018	UNF/SUS*	UNF/SUS*	CP ALLEGED O USED UNREASONABLE FORCE
18-0052	5/1/2018	P			DEPT ALLEGED O USED UNREASONABLE FORCE
18-0053	5/9/2018	9/5/2018	EX/UNF/EX	EX/UNF/EX	CP ALLEGED CUFFS WERE TOO TIGHT AND REC'D A CONTACT BURN BY HOOD OF PATROL CAR
18-0073	6/20/2018	8/14/2018	EX/UNF	EX/UNF	CP ALLEGED Os USED UNREASONABLE FORCE/RUDE
18-0086	7/9/2018	P			CP ALLEGED O USED UNREASONABLE FORCE
18-0106	8/2/2018	P			DEPT ALLEGED O USED UNREASONABLE FORCE
18-0110	8/30/2018	P			CP ALLEGED O USED UNREASONABLE FORCE
18-0116	9/11/2018	P			CP ALLEGED O USED UNREASONABLE FORCE
18-0119	9/19/2018	P			CP ALLEGED O USED UNREASONABLE FORCE

Each of the above cases which were closed during the third quarter were reviewed to confirm the IA finding of Exonerated or Unfounded. The review confirmed the IA findings were appropriate.

It should be noted case *IA18-0046 included a finding of Sustained. The Sustained finding was not related to the use of force, but due to the fact the officer was not aware his body worn camera did not activate when he pressed the activation button.

BIAS BASED					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
18-0035	3/19/2018	8/15/2018	UNF	UNF	CP ALLEGED RACIAL PROFILING
18-0074	6/20/2018	P			CP ALLEGED TRANSGENDER DISCRIMINATION

IA2018-0035: This incident was the result of a traffic stop for a moving violation. The officer activated his body worn camera prior to making contact with the driver (CP). The video showed the CP requesting the officer's supervisor as soon as the officer made contact with the CP. The CP also repeatedly dialed 9-1-1 due to his belief the officer was "trying to set him up" although there was never an indication the officer was less than professional.

Due to the tint of the vehicle windows and time of the stop it was extremely difficult to determine the race of the CP prior to the stop. The driving infraction was confirmed by IA when reviewing the Real Time Crime Center camera which covered the intersection where the infraction took place. During the course of the IA investigation it was discovered the officer stopped the CP approximately one month before this incident for a different traffic infraction. In the previous stop the CP was released with just a warning after a brief and professional conversation between the two.

It is worth noting this CP was stopped by another officer on July 13, 2017, and dialed 9-1-1 during the stop stating he was "in fear for his life." During the most recent stop the body worn camera video showed the officer was professional from the first contact through the conclusion of the stop. Therefore, a finding of Unfounded was also reached by the OIR.

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0068	7/13/2017	P			DEPT ALLEGED O RECORDED CONVERSATION WITHOUT 3RD PARTY CONSENT
17-0113	10/27/2017	P			CP ALLEGED OFF DUTY O ASSAULTED HER
17-0127	12/19/2017	P			CP ALLEGED CALL TAKER WAS RUDE & CONDESCENDING
18-0026	3/1/2018	P			DEPT ALLEGED EMP REC CONVERSATION AND DET WAS RUDE
18-0042	4/4/2018	7/19/2018	UNF/SUS*	UNF/SUS*	CP ALLEGED O LOST/MISPLACED/TOOK PROP
18-0043	4/4/2018	9/27/2018	SUS	NR	DEPT ALLEGED O ACTED UNPROFESSIONAL WITH CI
18-0045	4/4/2018	P			CP ALLEGED O TOUCHED BODY IMPROPERLY
18-0051	5/1/2018	P			DEPT ALLEGED O1&O2 INVOLVED IN OFF-DUTY ISSUE

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
18-0054	5/9/2018	9/28/2018	SUS	NR	CP ALLEGED O MADE DISPARAGING REMARKS
18-0060	5/18/2018	P			DEPT ALLEGED SGT SEXUALLY HARASSED O
18-0061	5/18/2018	P			CP ALLEGED EMP CREATING HOSTILE WORK ENVIRONMENT
18-0067	6/7/2018	P			DEPT ALLEGED O1 & O2 VIOLATED PURSUIT POLICY
18-0071	6/12/2018	9/28/2018	SUS	NR	DEPT ALLEGED O WAS CARELESS WITH OFF-DUTY WEAPON
18-0077	6/20/2018	P			DEPT ALLEGED O APPEARED IN CIVIL COURT IN UNIFORM
18-0078	6/20/2018	P			DEPT ALLEGED Os MISSED FIREARM ON ARRESTEE
18-0079	6/20/2018	P			CP ALLEGED O IMPROPERLY TARGETED GANG MEMBERS
18-0081	7/9/2018	P			DEPT ALLEGED O WAS ARRESTED FOR OFF-DUTY DUI
18-0082	7/9/2018	P			DEPT ALLEGED OFF-DUTY O WAS INVOLVED IN DV
18-0085	7/9/2018	P			CP ALLEGED O WAS DISCOURTEOUS
18-0090	7/17/2018	P			CP ALLEGED FPD IS CONSPIRING AGAINST HER
18-0094	7/17/2018	P			DEPT ALLEGED O WAS INVOLVED IN DV MATTER
18-0098	7/23/2018	p			O ALLEGED OFF-DUTY O MADE RACIAL COMMENT
18-0099	7/23/2018	P			DEPT ALLEGED OFF-DUTY O WAS INVOLVED IN DV
18-0104	8/1/2018	P			DEPT ALLEGED O HAD OFF-DUTY NEG DISCHARGE
18-0111	8/30/2018	P			DEPT ALLEGED OFF-DUTY O INVOLVED IN ROAD RAGE
18-0112	9/10/2018	P			CP ALLEGED Os TREATED CP UNFAIRLY DUE TO PAST
18-0115	9/11/2018	P			CP ALLEGED Os MISPLACED OR REMOVED CURRENCY
18-0117	9/11/2018	P			CP ALLEGED OFF DUTY O OF DOM VIOLENCE
18-0118	9/11/2018	P			CP ALLEGED FPD EMP IS VIOLATING CHILD CUSTODY

***IA2018-0042:** In this case the CP alleged the arresting officer either misplaced or kept his property consisting of United States currency. Seven witnesses, including school administration, provided statements which contradicted the CP's allegations. Therefore, the allegation was determined to be Unfounded by IA and the OIR. However, the officer was found to be in violation of the body worn camera policy for failing to activate his camera during this incident.

IA VEHICLE ACCIDENTS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0116	11/9/2017	7/11/2018	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0134	12/19/2017	7/12/2018	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0041	4/4/2018	7/11/2018	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0048	4/17/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0063	5/21/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0065	5/28/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0069	6/11/2018	8/13/2018	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0070	6/11/2018	8/28/2018	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0087	7/12/2018	9/17/2018	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0088	7/12/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0089	7/12/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0096	7/19/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0101	7/26/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0105	8/1/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0113	9/10/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
18-0122	9/27/2018	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT

In view of the fact IA reached a finding of Sustained in each of the Vehicle Accident investigations the cases were not reviewed by the OIR.

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
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 ESTRANGED HUSBAND, O1, COMMITTED DV

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0071	7/14/2017	P			DEPT ALLEGED O FAILED TO RESTRAIN PRISONER ALLOWING AN ESCAPE
17-0074	8/28/2017	7/27/2018	SUS x 2	NR	DEPT ALLEGED Os ATTENDED TRAINING WITHOUT APPROVAL
17-0084	8/15/2017	P			DEPT ALLEGED OVERTIME/TIME OFF REQUESTS WERE NOT SUBMITTED PROPERLY
18-0016	2/2/2018	P			DEPT ALLEGED IMPROPER USE OF FIREARM
18-0025	3/1/2018	8/9/2018	UNF x 3	UNF x 3	CP ALLEGED Os FAILED TO INV CASE & UNPROFESSIONAL
18-0049	4/19/2018	8/30/2018	SUS	NR	DEPT ALLEGED O DAMAGED PRISONER PROP
18-0064	5/24/2018	8/28/2018	SUS	NR	DEPT ALLEGED O MISSED COURT DATE
18-0066	6/4/2018	P			DEPT ALLEGED O MISPLACED DEPT PROPERTY
18-0068	6/7/2018	9/28/2018	SUS	NR	DEPT ALLEGED O MISPLACED/LOST PRISONER PROP
18-0072	6/13/2018	8/2/2018	SUS	NR	DEPT ALLEGED EMP HAS HISTORY OF BEING TARDY
18-0076	6/20/2018	8/23/2018	SUS	NR	DEPT ALLEGED O LOST FPD PROPERTY
18-0083	7/9/2018	P			CP ALLEGED O LOST/MISPLACED PROPERTY
18-0091	7/17/2018	P			DEPT ALLEGED Os OCCUPIED VEHICLE STOLEN
18-0092	7/17/2018	P			DEPT ALLEGED FPD Os LOST PRISONER PROP
18-0093	7/17/2018	P			DEPT ALLEGED O HAD A NEGLIGENT DISCHARGE
18-0100	7/24/2018	9/28/2018	SUS	NR	DEPT ALLEGED O MISHANDLED EVIDENCE
18-0107	8/10/2018	P			DEPT ALLEGED O HAD A NEGLIGENT DISCHARGE
18-0120	9/19/2018	P			DEPT ALLEGED O DID NOT SECURE FPD PROPERTY
18-0121	9/27/2018	P			DEPT ALLEGED O DAMAGED PRISONER PROP
18-0123	9/28/2018	P			DEPT ALLEGED O FAILED TO LABEL BODY CAM VIDEO
18-0124	9/28/2018	P			DEPT ALLEGED O FAILED TO LABEL BODY CAM VIDEO

Each of the listed cases the IA completed during the third quarter were reviewed by the OIR. In each case the OIR reached the same finding as the IA.

INFORMAL COMPLAINTS				
NUMBER	DATE RECEIVED	DATE COMPLETED	ALLEGATION(S)/TYPE-FPD FINDING(S)	OIR FINDING(S)
IC18-0070	3/12/18	7/23/18	UNREASONABLE FORCE - UNFOUNDED	UNFOUNDED
IC18-0071	3/17/18	7/23/18	HARASSMENT - UNFOUNDED HARASSMENT - UNFOUNDED	UNFOUNDED x 2
IC18-0072	5/7/18	7/23/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNFOUNDED
IC18-0073	5/16/18	7/23/18	GENERAL CALL HANDLING - UNFOUNDED	UNFOUNDED
IC18-0074	5/18/18	7/23/18	GENERAL RESPONSIBILITIES - NOT SUSTAINED	NOT SUSTAINED
IC18-0075	5/26/18	7/23/18	REPORT PREPARATION - SUSTAINED	SUSTAINED
IC18-0076	6/3/18	7/23/18	DISCRETION - SUSTAINED	SUSTAINED
IC18-0077	7/2/18	7/23/18	GENERAL CALL HANDLING - UNFOUNDED	UNFOUNDED
IC18-0078	5/30/18	7/24/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNFOUNDED
IC18-0079	7/2/18	7/24/18	REPORT PREPARATION - UNFOUNDED	UNFOUNDED
IC18-0080	7/10/18	7/24/18	PERFORMANCE - SUSTAINED	SUSTAINED
IC18-0081	3/20/18	8/17/18	DEPT PROPERTY - LOST - SUSTAINED	SUSTAINED
IC18-0082	6/5/18	8/17/18	DEPT PROPERTY - LOST - SUSTAINED	SUSTAINED
IC18-0083	6/11/18	8/17/18	DISCOURTEOUS - NOT SUSTAINED	NOT SUSTAINED
IC18-0084	7/13/18	8/17/18	DEPT PROPERTY - LOST - SUSTAINED	SUSTAINED
IC18-0085	7/17/18	8/17/18	SEARCH/SEIZURE ISSUES - UNFOUNDED	UNFOUNDED
IC18-0086	7/18/18	8/17/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNFOUNDED
IC18-0087	7/18/18	8/17/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNFOUNDED
IC18-0088	7/18/18	8/17/18	GENERAL RESPONSIBILITIES - UNFOUNDED GENERAL RESPONSIBILITIES - UNFOUNDED	UNFOUNDED x 2
IC18-0089	7/14/18	8/30/18	DISCOURTEOUS - SUSTAINED	SUSTAINED
IC18-0090	7/26/18	8/30/18	DEPT PROPERTY - LOST - SUSTAINED	SUSTAINED
IC18-0091	8/7/18	8/30/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNFOUNDED
IC18-0092	8/15/18	8/30/18	GENERAL CALL HANDLING - SUSTAINED	SUSTAINED
IC18-0093	3/12/18	9/20/18	VEHICLE OPERATIONS - UNFOUNDED	UNFOUNDED
IC18-0094	6/8/18	9/20/18	DEPT PROPERTY - LOST - SUSTAINED	SUSTAINED
IC18-0095	6/11/18	9/20/18	GENERAL CALL HANDLING - UNFOUNDED	UNFOUNDED
IC18-0096	8/6/18	9/20/18	UNREASONABLE FORCE - UNFOUNDED	UNFOUNDED
IC18-0097	8/8/18	9/20/18	SEARCH/SEIZURE ISSUES - UNFOUNDED	UNFOUNDED
IC18-0098	8/18/18	9/20/18	PROPERTY- NOT DEPT OWNED - LOST/DAMAGED - UNFOUNDED	UNFOUNDED
IC18-0099	9/6/18	9/20/18	GENERAL CALL HANDLING - UNFOUNDED	UNFOUNDED
IC18-0100	8/20/18	9/28/18	GENERAL CALL HANDLING - UNFOUNDED GENERAL CALL HANDLING- UNFOUNDED GENERAL CALL HANDLING- UNFOUNDED	UNFOUNDED x 3
IC18-0101	8/22/18	9/28/18	GENERAL RESPONSIBILITIES - UNFOUNDED	UNFOUNDED
IC18-0102	9/11/18	9/28/18	GENERAL CALL HANDLING - UNFOUNDED RACIAL/BIAS BASED PROFILING - UNFOUNDED	UNFOUNDED x 2

Each of the above 33 Informal Complaint complaints were reviewed to confirm the assigned classification of the complaint, along with the FPD finding. The review confirmed the complaints were properly assigned as Informal Complaints, along with the FPD findings indicated above.

UPDATE TO THE 9-1-1 CALL MATTER

A segment of the second quarter OIR report was devoted to the occasional excessive hold times encountered when a call is placed to 9-1-1. Shortly after the OIR report was released the USA Today newspaper printed an article outlining the difficulties many law enforcement agencies across America are experiencing with staffing their 9-1-1 call centers. The article referenced hold times similar to what callers in Fresno have been experiencing. A link to the September 24, 2018, article appears below:

<https://www.usatoday.com/story/money/2018/09/24/911-centers-struggle-hire-operators-slowing-response/1196541002/>

The FPD took an aggressive approach to addressing the call center staffing issue by holding two job information meetings for those interested in applying for an Emergency Services Dispatcher (ESD). Contrary to what the rest of America is experiencing, the turnout was very promising as 184 interested people attended the two meetings. In addition, the FPD has begun working with TJ Miller, Director, Customer Relations and Analytics, to update the current Police Online Reporting System, which allows for certain property type complaints to be filed electronically. It was also discovered certain outdated publications listed the FPD non-emergency number instead of the number for the actual responsible City department. This contributed to the volume of calls to the non-emergency number. The result was excessive hold times on the non-emergency number which caused some callers to hang up and dial 9-1-1. As the staff identifies other sources and situations where residents are directed to the non-emergency number, efforts are being made to provide alternative solutions for handling those calls. Another important step was the financial incentive being offered for 9-1-1 ESDs with other law enforcement agencies to lateral transfer to the FPD.

It should also be pointed out the FPD responses to the two recommendations made in the second quarter OIR report regarding the 9-1-1 Call Center, which are reprinted below:

Recommendation #7: *The FPD should explore options for an immediate increase in the number of ESD positions in CommCen, or at a minimum prioritize the request in the 2019 – 2020 budget proposal. Although FPD did request an enhancement in the recently passed budget, and it appeared in their top 20 requests, the request was not ranked high enough for it to be considered and approved in view of the budget limitations.*

FPD Response: Additional ComCen positions will be requested again during the next budget year.

Recommendation #8: *Consider airing Public Service Announcements to clarify what calls should be placed to 9-1-1 and which calls should be directed to the non-emergency number.*

FPD Response: We are currently in discussions with the City Manager's office as to how we can better address the large number of 911 calls in a timely fashion, which may include an alternative non-emergency number such as 311.

REPORT SUMMARY

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 YTD
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	16
PAYMENT IN LIEU OF	0	1	0	0	0	1
FINES	0	0	1	0	0	0
LETTERS OF REPRIMAND	11	7	11	9	9	7
TOTAL	32	26	30	32	32	24

The intent of the quarterly report is to ensure the residents of Fresno there is a neutral review conducted of the FPD's actions, to include when a complaint is filed. In this report there were no issues identified, therefore no recommendations were made. The fact there were no issues identified should be viewed as a positive, keeping in mind it is only for one three month period. Although there were no recommendations made, the OIR will continue to review each and every IA complaint and investigation with the same level of thoroughness and issue recommendations when necessary.

If you would like the OIR to speak to your group or organization please contact our office at the number or email listed below. Residents are once again reminded there is a process in place to review, and if warranted, initiate an investigation. Also, 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

John A. Gliatta
Independent Reviewer
Office of Independent Review