



OFFICE OF INDEPENDENT REVIEW

**REPORT FOR THE PERIOD OF
JANUARY 1, 2021 TO MARCH 31, 2021**

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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 the community 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

The recently established Fresno Commission for Police Reform recommended the formation of a Citizens Oversight Board (COB), which would be created by and approved by Council. Once formed, appointment of members to the COB will be made by the Mayor, subject to a supermajority Council approval. Recommendation #2 states the COB will consist of 11-13 voting members. Nominees may be recommended by community-based organizations, fellow residents, or by self-application.

The Mayor is currently considering potential candidates to serve on the COB. The selections will reflect the racial, ethnic, and socio-economic diversity of the City. To the extent possible, the potential candidates considered will comply with the directives set forth in Recommendation #2. Mayor Dyer is contacting councilmembers to discuss potential candidates for the COB.

Members of the Police Reform Implementation Team have been appointed, one by each council district and one by Mayor Dyer. Pursuant to the Resolution adopted by Council, the purpose of the Team will be to prioritize, develop, and identify the resources to implement the Commission's recommendations and the manner in which such recommendations may be implemented. The Team shall identify and separate the recommendations based on policies, meet, and confer requirements, and necessity to arrive at agreements with outside entities.

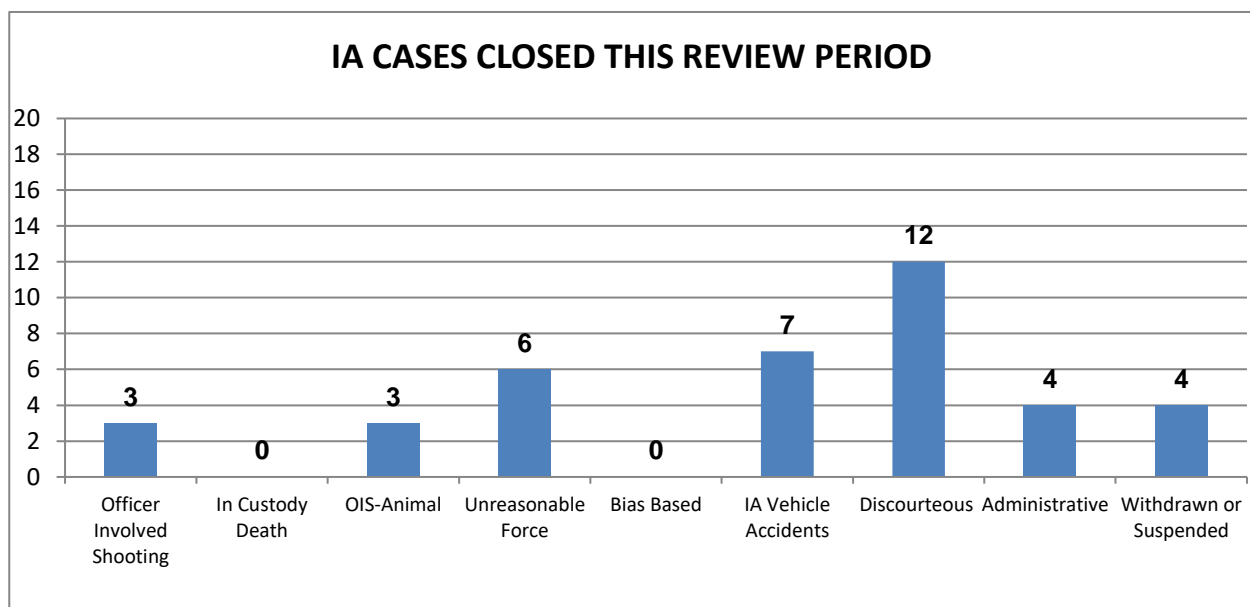
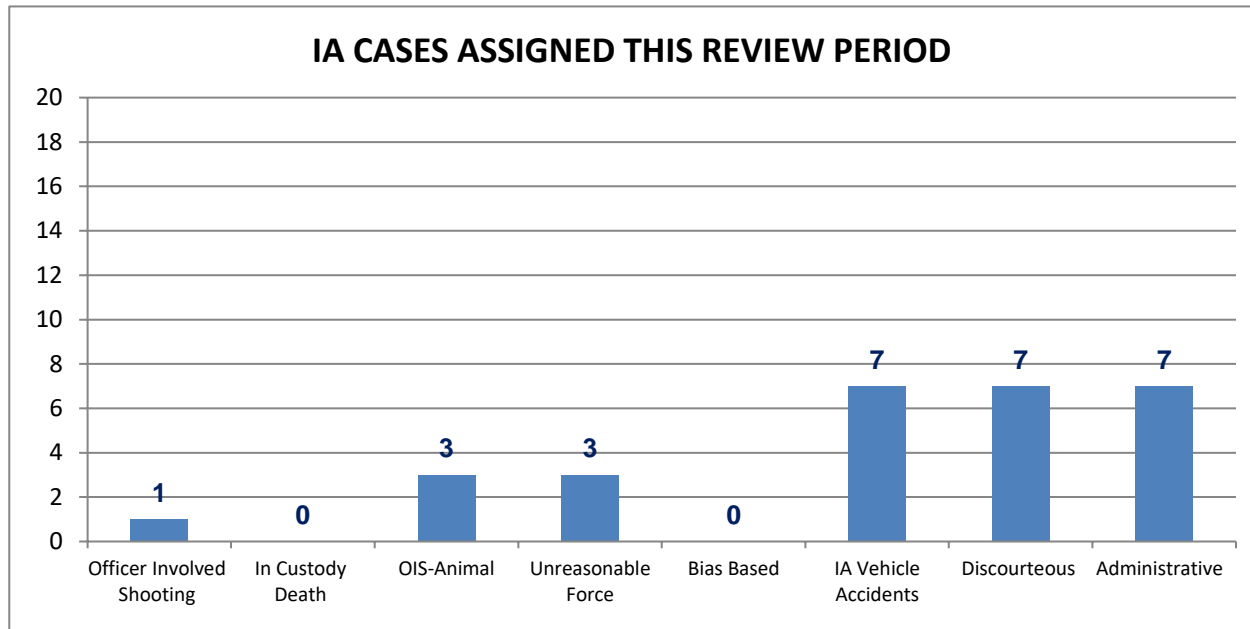
OIR REPORT FORMAT

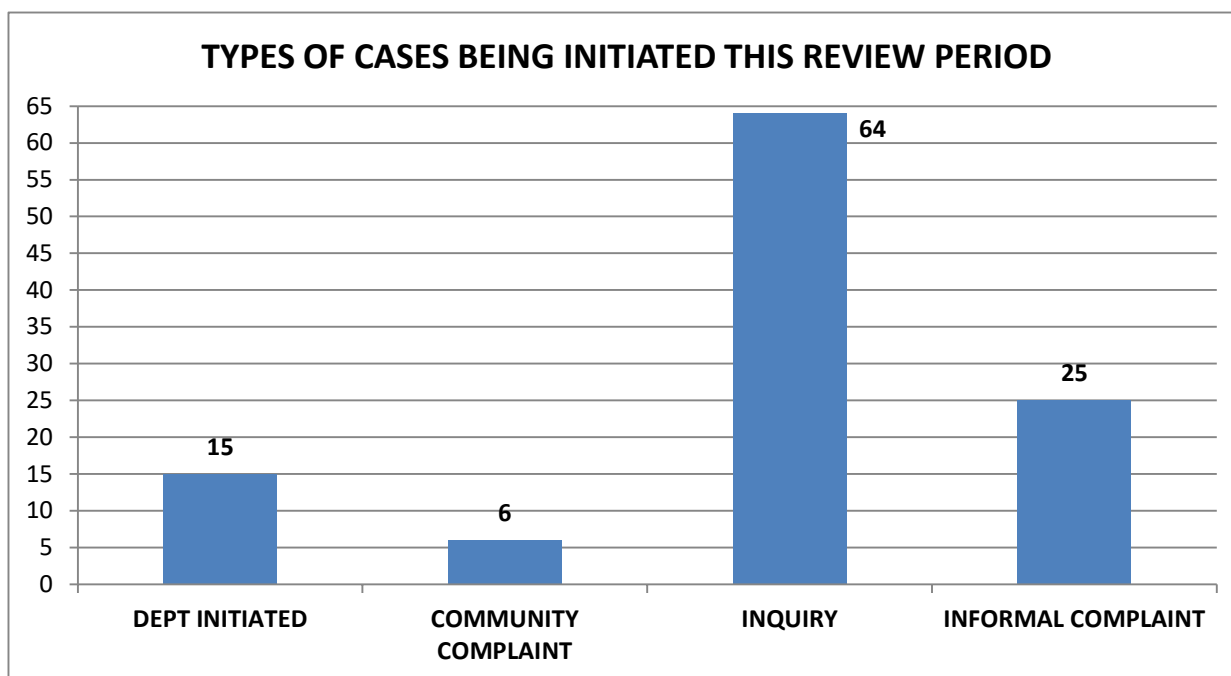
The OIR adheres to the following guidelines, format, and definitions in all quarterly reports:

- 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 of 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.
- The report is previewed by Mayor Jerry Dyer, Assistant City Manager Francine Kanne, Assistant City Attorney Tina Griffin, and Chief Paco Balderrama, 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.
- All FPD responses to OIR recommendations, to include if the FPD implemented policy or procedure change(s) in response to recommendation(s) listed in the previous quarterly report will be addressed before the summary section of this report.
- Previously when the officer or employee’s employment status changed the cases were no longer listed as pending or closed which created doubt on their status. The cases are now listed as SUSP (Suspended). The FPD still reviews the information to improve training and/or policies and procedures when applicable. In view of the fact the officers or employees are no longer with FPD the cases will not be reviewed by the OIR. A bill requiring the investigation be completed, regardless of employment status, did not pass in 2020 but is under consideration for 2021.
- Beginning with the fourth quarter 2019 report, Officer Involved Shootings involving an animal are now listed in the charts on page four. Per FPD Policy 337.7.9, an officer is within policy to use deadly force to stop a dangerous animal, such as a dog.

REVIEW OF INTERNAL AFFAIRS INVESTIGATIONS

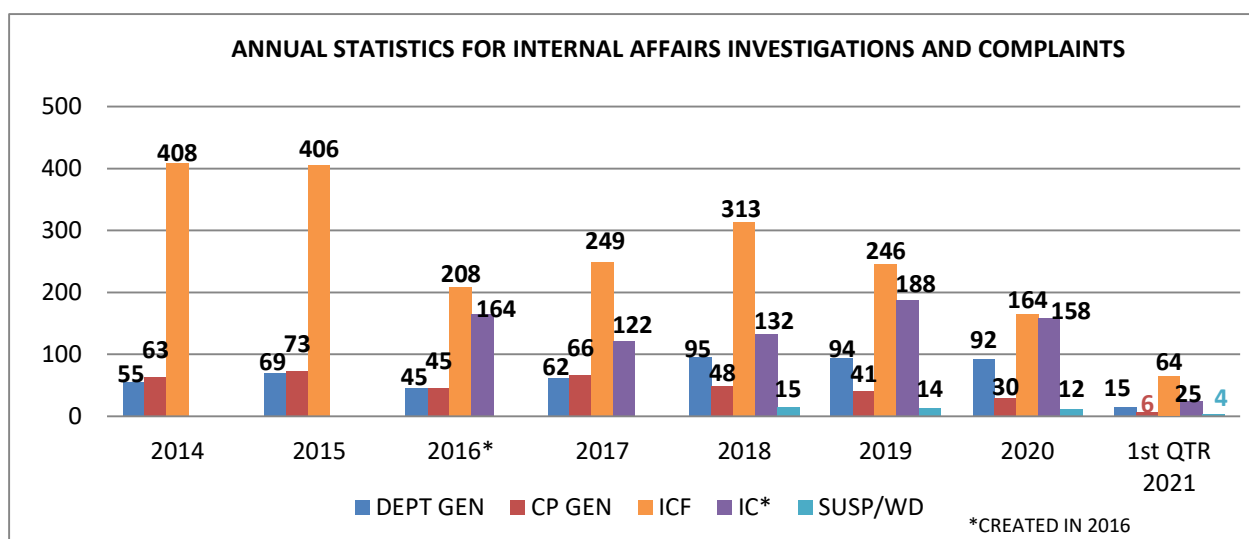
The following charts list the number and types of IA cases assigned and closed during the first quarter of 2021. For classification purposes, Discourteous Treatment also includes cases in which the officer was accused of conduct unbecoming of a police officer. The classification of Administrative Matters 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.



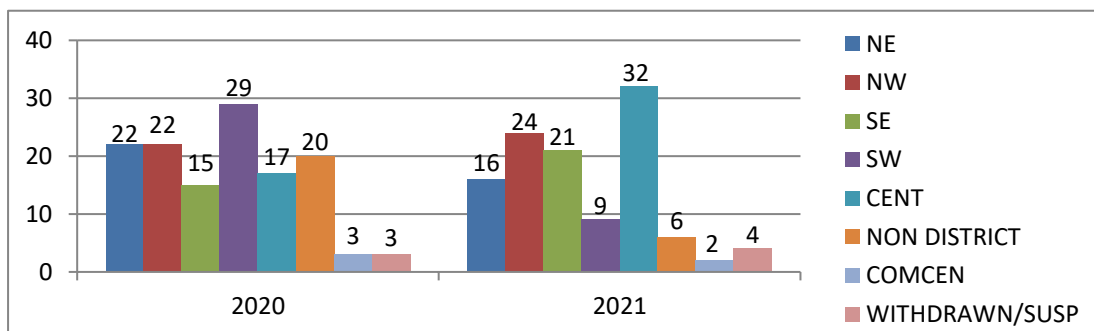
COMPLAINTS ASSIGNED BY POLICING DISTRICT

The following charts reflect the complaints assigned by each of the five policing districts for the first quarter of 2021, and a first quarter comparison between 2020 and 2021. Effective January 1, 2021, the district informal complaints will be listed by the manner in which the complaint was initiated, community complaint (CP), or department generated, (DEPT).

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 WITH FPD

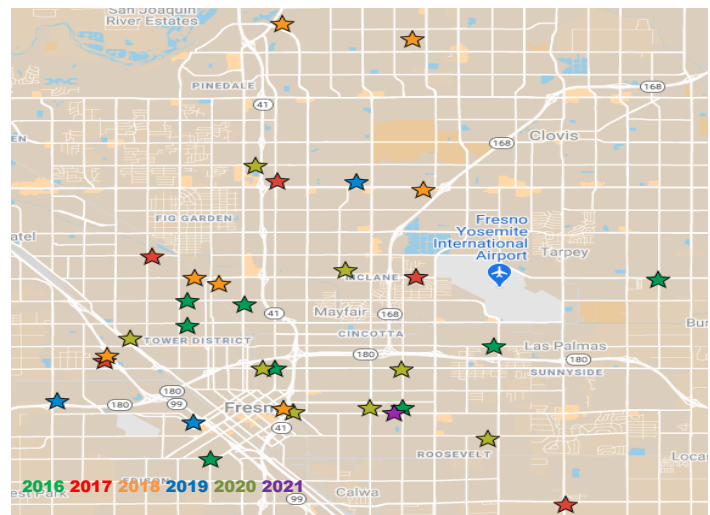
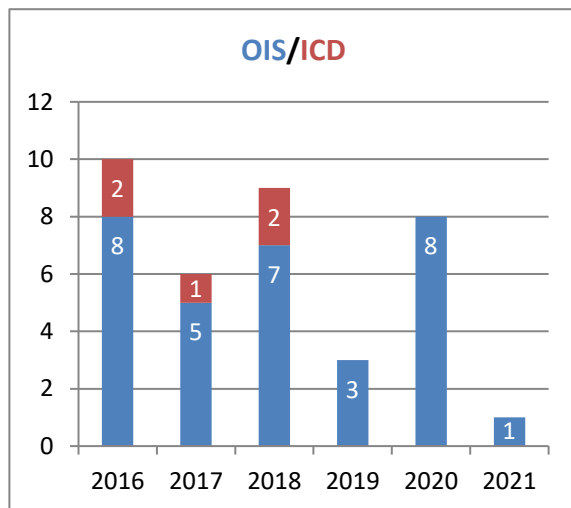
COMPLAINTS ASSIGNED BY POLICING DISTRICTS FOR THE FIRST QUARTER OF 2021									
ASSIGNED	NE	NW	SE	SW	CENT	NON DISTRICT	COMCEN	WITHDRAWN/ SUSPENDED	TOTAL
IA CASES	6	3	5	1	6	0	0	4	25
INFORMAL COMPLAINTS-CP	5	2	5	2	5	1	0	0	20
INFORMAL COMPLAINTS-DEPT	0	1	0	1	1	2	0	0	5
INQUIRIES	5	18	11	5	20	3	2	0	64
1st QTR TOTALS	16	24	21	9	32	6	2	4	114

FIRST QUARTER COMPARISON OF COMPLAINTS BY DISTRICT



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 OR THE CASE WAS SUSPENDED
CP	COMPLAINING PARTY: THE PERSON WHO FILED THE COMPLAINT
SUSP	SUSPENDED: THE OFFICER/EMPLOYEE RESIGNED OR RETIRED PRIOR TO THE CONCLUSION OF THE INVESTIGATION
BWC	BODY WORN CAMERAS: Device affixed to uniforms which records audio and video of interaction with public
DATE ASSIGNED IS THE DATE THE CASE WAS ASSIGNED TO AN IA INVESTIGATOR, NOT THE ACTUAL DATE OF OCCURRENCE	

OFFICER INVOLVED SHOOTINGS (OIS) & IN-CUSTODY DEATHS (ICD) 2016 THROUGH 2021



COMPLETED AND PENDING OFFICER INVOLVED SHOOTING

OFFICER INVOLVED SHOOTING (OIS) AND IN CUSTODY DEATHS (ICD)					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
20-0031	3/22/2020	2/8/2021	W/IN POL SUS	W/IN POL NR	Os SHOT SUBJECT ARMED WITH A PISTOL LATER DETERMINED TO BE A PELLET GUN-FATAL OFFICER USED POOR DISCRETION ON BARRICADED SUBJECT
20-0061	6/9/2020	1/13/2021	W/IN POL	W/IN POL	Os SHOT SUBJECT WHO CALLERS STATED POINTED A GUN AT PASSING CARS AND FAILED TO COMPLY WITH Os COMMANDS; NON-FATAL

OFFICER INVOLVED SHOOTING (OIS) AND IN CUSTODY DEATHS (ICD)					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
20-0089	9/8/2020	3/11/2021	W/IN POL	W/IN POL	Os SHOT SUBJECT WHO APPROACHED THEM WHILE HOLDING A REPLICA .45 HANDGUN: NON-FATAL
20-0093	9/19/2020	P			O SHOT SUBJECT WHO REFUSED COMMANDS AND REACHED FOR A WEAPON IN HIS WAISTBAND (REPLICA)
20-0096	10/2/2020	P			O SHOT SUBJECT WHO CHARGED HIM WHILE BRANDISHING A KNIFE, FATAL
20-0098	10/17/2020	P			Os SHOT SUBJECT WHO HAD JUST MURDERED FAMILY MEMBER AND ADVANCED ON Os WHILE ARMED
20-0099	10/18/2020	P			Os SHOT SUBJECT ARMED WITH RIFLE WHO REFUSED COMMANDS TO DROP THE WEAPON, FATAL
21-0001	1/12/2021	1/21/2021	W/IN POL NR	W/IN POL SUS	O FIRED ONE ROUND AT AGGRESSIVELY ADVANCING DOG WHILE RESPONDING TO DV CALL OIR ALLEGED O DID NOT ACTIVATE BWC
21-0002	1/20/2021	P			O1 SHOT SUBJECT WHEN HE LUNGED AT O2 WHILE HOLDING TWO UNKNOWN OBJECTS, FATAL
21-0004	1/27/2021	1/27/2021	W/IN POL	W/IN POL	O FIRED ONE ROUND AT AGGRESSIVELY ADVANCING DOG- WOUNDED
21-0006	2/2/2021	2/2/2021	W/IN POL	W/IN POL	O FIRED ONE ROUND AT AGGRESSIVELY ADVANCING DOG

During the first quarter one OIS case investigation was initiated, and six investigations were completed by IA, three of which involved aggressive dogs. IA determined each of the completed OIS investigations were within department policy. This office reached the same findings but did determine one sustained allegation which was not identified during the IA investigation.

To ascertain if the actions of the officers were within FPD's Use of Force Policy 300, the policy was reviewed, and the applicable excerpts are reprinted below. Readers are strongly encouraged to read the policy excerpts before reading the case summaries.

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 totality of the circumstances known to

or perceived by the officer at the time of the event, to accomplish a legitimate law enforcement purpose (Penal Code §835a).

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 objectively 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 their 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 their right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (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, 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 effect 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.

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

- a) An officer may use deadly force to protect themselves or others from what they reasonably believe is an imminent threat of death or serious bodily injury to the officer or another person.*
- b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that*

deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

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

In addition to the FPD policy, the following United States Supreme Court Case was also considered in the OIS incidents:

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.

OIS CASE SUMMARIES

IA2020-0031: Prior to the incident which resulted in an OIS, the FPD had several recent prior contacts with the subject which are summarized as follows:

- On 2/11/2020, the subject contacted a social worker by phone and claimed he was going to shoot himself. He also claimed to have been using PCP. This information was relayed to police via another social worker. When officers and a mental health professional responded to his location, which was his girlfriend’s address, she stated that there were no firearms in the house and refused to allow officers inside. The subject would not speak with the officers. The officers contacted the original social worker, who stated the subject had not mentioned a firearm. The officers then cleared the call and departed.
- On 3/9/2020, a caller advised that there was a vehicle blocking the roadway. The subject was contacted near his vehicle, which was obstructing traffic. The subject exhibited signs

of being under the influence of PCP. The subject was driven home, and his vehicle was towed.

- On 3/10/2020, the subject's girlfriend called police to report a verbal disturbance with him. A relative in the same home also called to report he was threatening to kill her and other children in the home. The caller added the subject broke down the door leading to the room where they were hiding. When officers arrived, the subject claimed to have been using PCP, and would not feel the effects of a less lethal option. The subject stated *"shoot me b****. I'll sue. My family be rich."* The subject was arrested for vandalism.
- On 3/11/2020, a relative called police to report the subject was under the influence of drugs and was making threats. Responding officers determined no crime had occurred.
- On 3/15/2020, a caller reported the subject was inside a laundromat throwing furniture and making threats. When officers responded, he barricaded himself in a truck in the parking lot and threatened to shoot officers. An acquaintance of the subject responded and advised the officers the subject had been using PCP. After several hours of negotiation, the subject emerged, exhibiting signs of being under the influence of PCP. He was placed on a hold for a mental evaluation and transported to Community Regional Medical Center at approximately 12:30 AM, on 3/16/2020.
- On 3/17/2020, the subject called 9-1-1 to report he was suicidal and inside his truck in the parking lot of the laundromat. The responding officers arrived and attempted to negotiate with him for approximately four hours. The subject refused to communicate so the officers cleared the scene after they determined no crime had been committed.
- On 3/17/2020, a security guard called police to report the subject was barricaded in a truck in the laundromat parking lot. Officers arrived and the subject refused to exit the truck. Once again the officers determined no crime had been committed so they cleared the call.
- On 3/18/2020, a security guard at the business complex where the laundromat was located called FPD to report the subject was trying to fight him. The security guard stated the subject told him he had been using PCP. Officers arrived and contacted the subject, who was outside of his truck. When the subject grabbed a metal fence "t-post" from the bed of his truck and moved toward officers, he was tased and arrested for resisting an officer with threats or violence (PC 69) and brandishing a deadly weapon (PC 417). A mental health clinician also responded, and the subject was placed on a mental health evaluation hold. The FPD was to be contacted when he was released for him to be booked for the open charges. However, the FPD was not notified when the subject was released.
- On 3/21/2020, at 1:10 PM, the subject called the FPD to report he was going to kill someone. The subject disconnected the call and called back saying he would kill his mother. FPD officers arrived at his location and contacted his mother, who stated the subject was experiencing a withdrawal from using drugs and she was not afraid of him.

The officers departed after it was determined he did not meet the criteria for a mental evaluation hold.

- On 3/21/2020, at 5:17 PM, the subject's family called the FPD to report the subject was high on PCP and was attempting to fight with his brother. When officers responded the subject mimicked pointing a gun at police and told them to shoot him. The subject then barricaded himself in an abandoned car in the back yard. Officers determined the disturbance was verbal only, and no crime had occurred. The officers left after advising the subject's family on how to proceed if they elected to pursue an eviction.

On March 22, 2020, at 7:25 PM, a 9-1-1 call placed by the subject's family member from the family's residence requested for the FPD to respond. The caller advised the subject was "all on dope" and fighting with two other family members. The caller said officers were at their house the day before "but this time charges will be pressed." The caller added the subject had a gun and thought it was a BB gun, which he pointed "at the boys." Voices could be heard in the background stating the subject had a gun and the police needed to "come right now."

FPD dispatched officers to the location, listing the call as a family disturbance with the subject being high. EMS was also requested but advised to standby near the location until the FPD had secured the scene, allowing EMS to safely proceed to the scene. The first FPD officer arrived on scene at 7:30 PM.

Over the next 18 minutes officers observed the subject walking around in the back yard, patio, and driveway. At one point the subject argued briefly with someone who exited the home. The subject also encountered someone from the residence and appeared to swing a shovel at that person. He then went back to an abandoned car in the back yard and sat in the front passenger seat. Once he was seated in the vehicle he began placing objects against the windows to block the officer's view.

A sergeant spoke to the family member who the subject tried to hit with a shovel. They stated they dealt with 30 years of frustration but could not take anymore and wanted to press charges. Officers on scene were then informed the subject was arrestable for the assault with the shovel.

Officers approached the vehicle to remove the objects which were blocking their view of the subject. As an officer pulled down a large piece of fabric, the subject was observed sitting in the vehicle and holding a gun. The officer ordered the subject to drop the gun while telling other officers to back up. The officer announced the subject's gun "looks like a BB gun. I can't tell though." A short time later an officer announced the subject was waving a gun out of a window. Another officer broadcast the subject said, "You're going to have to kill me first." In view of the subject's actions and response, officers requested negotiators, additional officers, and a K-9, to respond code-3 (lights and sirens).

Approximately four minutes later a sergeant began talking to the subject to get him to surrender peacefully. Several of the statements the sergeant told the subject, included but were not limited to, *"No one wants to shoot you. No one wants to hurt you... We're gonna help you, buddy. We*

told you that yesterday, we want to get you some help...You don't want to do that, buddy, I assure you."

Over the next 98 minutes the FPD continued to negotiate the subject's surrender. At one point the subject requested to speak to a specific relative. Also, during this time frame other family members were in telephonic contact with the subject to get him to surrender. One family member was standing next to an officer while on the phone with the subject. The family member informed the officer the subject said he had two weapons with him in the car, to include a .22. This statement by the family member was recorded on the officer's BWC at 8:41 PM. The officer immediately broadcast this information over the FPD radio.

Several pleas for the subject to surrender were recorded by the relative he requested to speak to. The pleas were then played over a patrol car's public address system (PA). The family member and the relative also made phone contact with the subject but their pleas were not successful as the subject remained in the vehicle. Three crisis negotiators were now on scene to gain the subject's surrender. It was determined negotiations would continue even though the subject would not surrender and the FPD was meeting the subject's requests.

It was then decided several officers would advance on the vehicle to clear the obstructions away. The purpose was to give the negotiators and officers a better view of the subject's actions while he remained in the vehicle. The obstructions were also muffling any responses from the subject, making it difficult to communicate with him. Clearing a path was also needed in the event they elected to utilize a less-lethal option, such as a K-9, if the subject refused to surrender.

At 9:30 PM, two hours after the FPD arrived on scene, officers slowly approached the driver's side of the abandoned car in which the subject was seated in the front passenger seat. As the officers approached the vehicle PA announcements were being made, *"(subject's name) want to make sure you're OK buddy. Come out. Listen to the directions of the officers."* When the obstruction was cleared away from the driver's side of the vehicle, the subject was observed holding a pistol chest high, and pointed at the officers. An officer fearing for his life, as well as his fellow officers, fired his department issued weapon. Two other officers, who were also in fear for their lives, fired their department issued weapons. The officers quickly retreated and once it was determined the subject did not pose a threat the officers went forward and applied medical aid until EMS arrived. EMS transported the subject to the hospital where he unfortunately was pronounced deceased.

The intent of the officers advancing on the vehicle was only to remove the obstructions, not to engage with the subject. The obstructions were preventing them from observing his actions while in the vehicle. Clearing the obstructions would also aid in hearing the subject's additional demands or responses. Lastly, in the event it was decided to utilize a K-9, which would be a less lethal option, a clear path to the vehicle passenger compartment was needed.

However, when the subject pointed his weapon at the officers his action forced them to utilize deadly force to preserve their own lives and the lives of fellow officers. Although it was suspected the subject possessed a BB gun, his family member advised officers the subject also claimed to have a .22, which can cause death or serious bodily injury. Therefore, the application

of deadly force was **within policy** of the FPD Policy 300, specifically sections 300.1, 300.4, 300.4.1, 300.4.2 and 300.6, which appeared earlier in this review. In addition, the Supreme Court decision in *Graham vs Connor*, is also applicable in this matter.

The following weapon was found on the subject's lap when the officers reapproached to render medical aid.



The department alleged one officer used poor discretion in making a tactical decision during this incident. The department determined the allegation was sustained. As it has been the policy of this office, FPD findings of sustained allegations are not reviewed.

IA2020-0061: On Tuesday, June 9, 2020, at 12:29 AM, officers were dispatched to the area of Blackstone and Barstow Avenues regarding multiple reports of a man armed with a handgun approaching motorists. The actions that took place were rapidly evolving and are best explained by providing a chronological summary of the events as they occurred.

- Prior to the officers being dispatched to the area listed above, a 9-1-1 call was received by the FPD Emergency Services Dispatch Communication Center. On June 8, 2020, at 10:49 PM, a caller advised an unknown male approached his car while he was stopped at a traffic light in the 3500 block of N. Blackstone. The caller advised the male pointed a black handgun at him and his young son, who was also in the car. The caller was in fear for his life and immediately left the area before calling 9-1-1 and providing a description to the FPD. The male was described as a white male, approximately 50 years old, wearing light colored shorts, and no shirt.
- On June 9, 2020, at 12:27 AM, another 9-1-1 call was received by the FPD regarding a male who pointed at gun at their car, which was also occupied by three other individuals. The male approached their car near N. Blackstone and E. Barstow Avenues. The male was described as a Hispanic male, wearing tan shorts and no shirt.
- At 12:29 AM, three officers, O1, O2, and O3, were dispatched to the call. The officers were riding alone in their respective patrol cars.

- At 12:31 AM, another 9-1-1 call was received by a caller driving near N. Blackstone and E Barstow Avenues. The caller advised a male pointed a gun at him as he was driving in the area. The male was described as a Hispanic male, wearing tan shorts, and no shirt.
- At 12:35 AM, O1 arrived in the area and located a subject matching the description provided by the 9-1-1 callers. O1 exited his patrol car and ordered the subject to stop several times. The subject refused to comply with O1's commands and continued walking eastbound on E. Barstow Avenue. O1 then put out a radio broadcast advising the subject was carrying a gun in his right hand and refusing to comply with his commands.
- At 12:35 AM, while driving westbound on E. Barstow Avenue O2 arrived in the area and located the subject who was now riding a bike. O2 stopped and with his overhead emergency lights activated, used the vehicle's public address (PA) system to give commands to the subject "stop where you're at, get on the ground, let go of the gun." The subject ignored O2's commands and proceeded to ride in the direction of O2. The subject was gripping a black object in his right hand which O2 perceived to be a gun.
- At 12:36 AM, O3 arrived in the area driving from a westbound direction on E. Barstow Avenue. O3 parked his patrol car to the right (north) of O2's vehicle. O3 observed the subject, who was now pushing his bike from the south side of E. Barstow Avenue to the north side of the street. O3 had activated his emergency lights and began giving commands to the subject to get on the ground. O3 saw the subject holding a black object in his right hand which he perceived to be a gun.
- At approximately 12:37 AM, as the subject reached the north side of the street he dropped the bike and pointed his right hand in the direction of O2 and O3 while still holding the black object. O2 and O3 believed the subject was going to shoot one, or both of them. Fearing for their lives, both officers fired their department issued weapons.
- The subject then complied with the commands of the officers by laying down on the ground.
- O1 immediately broadcast "shots fired" over the radio.
- The subject was taken into custody and provided medical aid by the officers until paramedics arrived.
- It was then determined the subject was pointing a cell phone at passing cars and in the direction of the officers.
- The subject suffered non-life-threatening wounds and was subsequently transported to Fresno Community Regional Medical Center.

The below was learned after the OIS:

- At approximately 12:16 AM, the Fresno Fire Department (FFD) was en route to a medical call for service. While traveling westbound on W. Barstow Avenue a firefighter observed a Hispanic male, wearing tan shorts, and no shirt, riding a bike. The firefighter witnessed what he perceived was the male pointing a black handgun at their fire engine. After FFD cleared their medical call they responded to the scene of the OIS. The firefighter who observed the male pointing a gun at their engine identified the subject engaged by the FPD as being one in the same.
- The three other passengers in the vehicle the subject encountered at 12:27 AM, were interviewed after the OIS. All the passengers believed the subject had pointed a gun at their vehicle.

- The driver who called 9-1-1 at 12:31 AM, advised in his post-shooting interview he was familiar with firearms and believed the subject was pointing a Glock pistol at him.

As stated during their post-shooting interviews, BWC recordings confirmed the actions of the officers. The BWC recordings also confirmed each of the officers had activated their overhead emergency lights and were giving verbal commands to the subject before discharging their weapons. The subject did not comply with the commands and continued walking towards the area where O2 and O3 were standing outside of their vehicles.

The facts known to O2 and O3 at the time included two separate 9-1-1 calls advising a man was brandishing a gun at passing vehicles. In addition, O1 made a radio broadcast of locating a man matching the description and stated he was armed with a gun. Upon arrival O2 and O3 gave verbal commands, several over their public address system, which were disregarded by the subject. When they observed the subject lower his right hand, which was holding a dark object they believed and were told was a gun, they fired their respective weapons as they were in fear of their lives and the life of their fellow officer. Once the subject complied with the officer's commands the officers ceased firing.

The following image was recorded by a Fresno Express (FAX) bus stop. The manner in which the subject was holding the object is very similar, if not exactly, the way a handgun would be held while taking aim or firing it. My assessment is supported by instructing firearms to F.B.I. Special Agents and numerous local law enforcement officers for 25 years.



Therefore, the use of deadly force by O2 and O3 were determined to be **within policy**.

IA2020-0089: On Saturday, September 5, 2020, at approximately 2:00 AM, a male called the Fresno Police Department (FPD) regarding a suicidal male armed with a firearm. The male caller was later identified as the subject. It was determined the subject called and spoke in the third person, describing himself and his location within a trailer park. The subject provided a physical description of himself and indicated he was *“walking in a dirt field”* and *“saying he wants to kill himself.”* Additionally, the subject told the call-taker *“for sure saw the gun.”*

A review of the 9-1-1 call placed to the FPD dispatch showed the subject was coherent and articulate when providing details of the alleged sighting of a man with a gun. The subject advised the call taker he asked the male to put the gun down, but he refused to do so. When the call taker advised she would keep the caller on the line until the officers arrived, the subject terminated the call. The subject was on the line providing details for 2:02 before hanging up.

When the FPD dispatch attempted to call the number back to obtain additional details, the calls went unanswered and straight to voice mail. The outgoing greeting on the number reached identified the subscriber to the cell phone, later determined to be one in the same as the subject. Dispatch tried calling the number three times and each time their call was not answered and the voice mail greeting was reached.

Four FPD officers arrived on scene but had a difficult time locating the man with a gun due to the limited information provided by the subject. Dispatch included the statement by the subject who advised the man was walking around in a dirt field in the trailer park. Several officers located a dirt field north of the mobile home park but advised it was separated by a canal. Based on the limited information available O1 stopped at the entrance to the mobile home park, and O2 pulled in adjacent to him to discuss a plan on canvassing the area.

After discussing their next course of action O2 began to back out of the entrance but noticed a male walking southbound in the park and heading in a direct path towards his vehicle. O1 also spotted the individual walking towards their patrol cars. Both officers illuminated the unknown male, later identified as the subject, and observed him holding a handgun by his side with his left hand. O2 announced six times for the subject to drop the gun and instructed him to stop three times. O1 also made announcements seven times for the subject to drop the gun.

The subject refused to obey either officer's instructions and continued walking directly towards O2's vehicle, who was initially standing behind the open driver's door of his vehicle. To obtain a better tactical position, and to use it as protection, O2 began moving towards the rear of his vehicle. O1 also moved from behind his open driver's door to the opposite side of his vehicle placing the engine of his vehicle between him and the advancing subject.

As O2 was moving towards the rear of his vehicle he observed the subject raise the weapon and point it directly at him. Fearing for his life, O2 fired one round from his department issued handgun. O1 also observed the same action by the subject and fired one round from his department issued handgun. The subject immediately dropped to the ground and they ceased fire. O2 moved to O1's position and they approached the subject who was lying on the ground with the gun nearby. O1 kept his weapon fixed on the subject as they approached and O2 kicked the gun, which later turned out to be a replica, away from the subject's hand. EMS was immediately

requested, and the subject was administered medical aid while they waited on EMS to arrive. The subject suffered a non-life-threatening wound to his left cheek.

The weapon the subject was carrying appears in the below photo:



*Image (Above):
Replica firearm carried in hand by the suspect at the time of the OIS.*

Following the shooting, interviews were conducted of several family members, to include the subject's father and brother. Although he was not officially diagnosed by a professional, both acknowledged the subject was recently having mental health issues and was presently taking medication for his paranoia and depression. The subject's brother was awake at the time of the shooting and confirmed the officers gave several commands for the subject to drop the gun before he heard a gunshot. The brother also confirmed he had purchased the weapon the subject was carrying and advised it was a BB gun which looked like a real M1911 (a well-known military pistol).

The subject stated several times "I wanna die" while he was being attended to by EMS. These statements were also captured on O1's BWC recording. EMS documentation included the subject stating "I wanted them to shoot me." The subject was also interviewed by the FPD investigative personnel following the shooting. He admitted to calling 9-1-1 and reporting there was a man with a gun, who was actually himself. The subject admitted he called the police because he wanted the police to kill him. It was later confirmed the 9-1-1 calls were placed from the cell phone the subject had in his possession at the time of the shooting.

In view of the information known at the time, including evidence, witness statements, and the admission by the subject, O1 and O2's use of deadly force to protect themselves from death or serious bodily injury was determined to be **within policy**.

The three OIS matters all dealt with someone experiencing a mental health crisis or being under the influence of narcotics, while being armed with a weapon, or portraying the possession of a weapon. Recognizing some within the community may doubt the reasoning of a law enforcement response versus a response by a mental health professional, the question was presented to CAHOOTS. The organization also known by the name of Crisis Assistance Helping Out On The Streets, is often mentioned as a model for the manner in which law enforcement responds to calls for service involving mental health crisis or narcotics influenced individuals.

CAHOOTS was contacted to ascertain their general policy when asked to respond to a call for service when someone is armed. CAHOOTS stressed the safety of their personnel is priority, and since they are unarmed, they will respond only if the individual is willing to secure the weapon. If they arrive on scene and the individual is armed they ask them to set the weapon aside for the intervention. CAHOOTS added it was difficult to provide a response to the “hypothetical” call for service, but in general this is the rule they tend to follow when dealing with armed individuals.

In view of the threat to others by the subjects in the three OIS matters, an armed law enforcement response was needed and unfortunately unavoidable. The FPD attempted to de-escalate the situation in each incident but when their efforts were in vain the only option left was the use of force. The [FPD Policy 417](#) does address using mental health professionals when calls for service involve a person in crisis.

IA2021-0001, 0004, and 0006: There were three OIS-DOG case investigations completed by IA during this review period. In each of the OIS-DOG incidents this office arrived at the same finding as the IA investigation, the shootings were **within policy**. In IA2021-0004 and 0006, the officers activated their BWC prior to contacting the reporting party, and before the dogs charged the officers. The recordings clearly showed the officers tried to avoid contact with the charging dogs but were left with no other option than to protect themselves by using deadly force. In both cases the dog’s owners acknowledged the officer’s actions were justified.

Although this office also agreed with the actions of the officer in IA2021-0001, the absence of a BWC recording was not addressed in the IA investigation. The crime scene photos supported the statement by the officer based on the distance of the dog to the front door where it exited the home. However, the homeowner’s initial claims contradicted the officer’s version of the incident. The homeowner eventually concurred with the actual events as provided by the officer. The officer was responding to a call for domestic violence, which would have required the BWC activation. Additionally, the officer parked away from the residence in order to assess the current situation as he approached the home, allowing ample time to activate his BWC. Although the BWC recordings serve as only a portion of the evidence reviewed during an investigation, they can sometimes quickly discount the allegations being disputed.

Therefore, this office determined the officer’s failure to activate his BWC was a violation of the FPD Policy 450, resulting in a finding of **sustained**.

Observation 1: The officer responded to a call for possible domestic violence, which would routinely require BWC activation. However, prior to his arrival the caller advised the FPD dispatch the subject left. A response was still required to confirm the subject left and the caller was not in need of medical attention or law enforcement. The FPD [Policy 450.4](#) requires BWC activation when responding to calls of this nature. There are exceptions to when the BWC is to be activated but the exceptions did not apply to this call.

The sustained finding in this review was brought to the attention of the IA Commander who quickly had the matter addressed with the officer.

Recommendation 1: After conducting hundreds of case reviews to date, the FPD’s efforts in stressing compliance with the BWC policy has been noted as very few violations have been discovered. This was evident when reviewing an unrelated informal complaint, IC21-0007. The officer was not required to activate his BWC since he was simply speaking to a security guard who flagged him down. However, during the review of the matter by his sergeant the officer was told “although it may not have appeared the call required BWC activation, it is always better to activate versus not activate.”

During this review period, officers in two other incidents, see IA2020-0103 on page 24, also failed to activate their BWC. Although the actions of the officers in all three incidents were justified, and within policy, the absence of the BWC recordings may add to the doubt of trust among some within the Fresno community, and may hinder the investigation in other incidents.

It is recognized the overall FPD compliance with BWC activation is high, however, it is recommended a periodic reminder to the officers may aid in achieving total compliance.

UNREASONABLE FORCE					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
20-0019	2/24/2020	1/19/2021	EX x 3 UNF	EX x 3 UNF	CP ALLEGED O USED UNREASONABLE FORCE DEPT ALLEGED O USE POOR DISCRETION
20-0034	3/31/2020	2/11/2021	UNF SUS	UNF NR	CP ALLEGED Os USED UNREASONABLE FORCE DEPT ALLEGED O2 FAILED TO CUFF CORRECTLY
20-0036	3/31/2020	P			CP ALLEGED O USED UNREASONABLE FORCE
20-0037	3/31/2020	P			CP ALLEGED Os USED UNREASONABLE FORCE
20-0037	3/31/2020	P			CP ALLEGED Os USED UNREASONABLE FORCE
20-0059	6/2/2020	1/12/2021	EX x 2 UNF	EX x 2 UNF	CP ALLEGED O1 & O2 USED UNREASONABLE FORCE O3 FAILED TO ACCEPT A COMPLAINT FROM CP
20-0091	9/8/2020	P			CP ALLEGED Os USED UNREASONABLE FORCE
20-0116	12/22/2020	3/26/2021	EX	EX	CP ALLEGED K-9 BITE CAUSED NERVE DAMAGE
20-0123	12/31/2020	3/1/2021	EX	EX	DEPT ALLEGED O USED UNREASONABLE FORCE
21-0007	2/2/2021	P			CP ALLEGED Os USED FORCE AND WRONGLY TOWED VEHICLE
21-0008	2/4/2021	2/17/2021	NOW ICFPD21-0001	NR	CP ALLEGED Os USED UNREASONABLE FORCE-DETERMINED NOT AN IA

UNREASONABLE FORCE					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
21-0009	2/4/2021	P			CP ALLEGED O1 USED UNREASONABLE FORCE CP ALLEGED O2 MADE DISPARAGING REMARKS
21-0010	2/12/2021	P			CP ALLEGED O USED UNREASONABLE FORCE

During the review period five Unreasonable Force case investigation were completed and four new cases were assigned. One of the newly assigned cases was later categorized as an informal complaint and withdrawn from the original IA classification. Of the five completed cases, the allegations of unreasonable force were either unfounded or exonerated. However, although the allegation of unreasonable force was unfounded for IA2020-0034, it was determined the officer failed to double lock the subject's handcuffs before being placed into the rear of the patrol car and an improper handcuffing allegation was **sustained**.

BIAS BASED					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
20-0074	7/24/2020	P			CP ALLEGED Os DISCRIMINATED AND USED UNREASONABLE FORCE

During the review period one Bias Based investigation was pending with no new cases assigned.

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
19-0063	5/17/2019	P			DEPT ALLEGED O's DID NOT HANDLE DV CALL CORRECTLY
19-0133	11/15/2019	1/12/2021	SUSP	NR	FPD ESDs ALLEGED A CO-WORKER IS CAUSING A HOSTILE WORKPLACE
20-0025	3/10/2020	2/8/2021	SUS	NR	CP WAS UNHAPPY HOW O HANDLED HER DV CASE
20-0029	3/20/2020	P			CP ALLEGED Os DAMAGED AND TOOK PROPERTY DURING SEARCH WARRANT
20-0030	3/20/2020	1/28/2021	SUS	NR	DEPT ALLEGED O IS CREATING A HOSTILE WORKPLACE

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
20-0057	5/28/2020	2/12/2021	SUS SUS SUS SUS SUS SUS EX	NR NR NR NR NR NR EX	DEPT ALLEGED THE FOLLOWING POLICY VIOLATIONS: O1 INVOLVED IN AN OFF-DUTY DISTURBANCE/ASSAULT O1 VIOLATING A MISD OR FELONY O1 & O4 INTEGRITY O1 CONDUCT UNBECOMING O1, O3, & O4 IMPROPER ACCESS O5 FAILED TO TAKE ACTION O2 IMPROPER ACCESS OF RECORDS
20-0065	7/8/2020	1/12/2021	EX x 2 NS	EX x 2 NS	CP ALLEGED O1 & O2 DID NOT ARREST SUSPECT CP ALLEGED O3 WAS NOT RESPONSIVE TO CALLS
20-0067	7/8/2020	P			CP ALLEGED Os SEARCHED APT WITHOUT WARRANT
20-0073	7/22/2020	P			CP ALLEGED Os MISREPRESENTED THE FACTS OF A TRAFFIC STOP AND ARREST
20-0075	7/24/2020	3/25/2021	NS SUS	NS NR	DEPT ALLEGED O VIOLATED INFORMANT MANAGEMENT AND SUBMITTED INFORMANT PYMT DOCS LATE
20-0077	8/5/2020	2/17/2021	SUSP	NR	CPs ALLEGED OFF-DUTY O WAS IN QUARANTINE BUT STILL ENGAGED IN RECREATIONAL ACTIVITIES
20-0080	8/12/2020	P			DEPT ALLEGED O DISPLAYED UNPROFESSIONAL CONDUCT
20-0083	8/17/2020	2/12/2021	EX x 2	EX x 2	DEPT ALLEGED O ENGAGED IN OUT OF POLICY PURSUIT
20-0092	9/18/2020	2/2/2021	EX x 3	EX x 3	DEPT ALLEGED Os WERE INVOLVED IN OUT OF POLICY PURSUIT
20-0097	10/12/2020	P			Os ALLEGED SGT HAS BEEN UNPROFESSIONAL
20-0100	10/19/2020	P			DEPT ALLEGED O WAS INVOLVED IN OFF-DUTY DISTURBANCE IN ANOTHER CITY
20-0101	10/19/2020	3/25/2021	UNF x 2	UNF x 2	CP ALLEGED Os ALLOWED SUSPECTS TO ASSAULT HIM WHILE IN A HOLDING CELL
20-0103	10/26/2020	1/28/2021	UNF x 4 NS X 4	SUS x 4 NS x 4	DEPT ALLEGED Os FAILED TO ACTIVATE BODY CAMERAS CP ALLEGED Os FAILED TO DOCUMENT A DV MATTER
20-0106	11/3/2020	P			CP ALLEGED EMP ACCESSED DATA SYSTEM FOR PERSONAL USE
20-0107	11/5/2020	P			CP ALLEGED O FAILED TO ACTIVATE BWC DURING ARREST

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
20-0108	11/5/2020	P			DEPT ALLEGED O DISPLAYED CONDUCT UNBECOMING ON AND OFF-DUTY
20-0109	11/5/2020	P			DEPT ALLEGED Os FAILED TO USE PROPER DISCRETION
20-0111	11/20/2020	1/28/2021	UNF	UNF	CP ALLEGED OFF-DUTY ESD VIOLATED COURT ORDER
20-0113	12/9/2020	P			DEPT ALLEGED O WAS ARRESTED FOR POSSESSION OF CHILD PORNOGRAPHY
20-0119	12/29/2020	P			DEPT ALLEGED EMP VERBALLY THREATENED ANOTHER EMP
21-0012	2/19/2021	P			CP ALLEGED O ASKED INAPPROPRIATE QUESTIONS
21-0014	3/3/2021	P			CP ALLEGED O THREATENED DEPORTATION
21-0017	3/15/2021	P			DEPT ALLEGED O ATTENDED A HATE GROUP PROTEST
21-0018	3/18/2021	P			DEPT ALLEGED O DID NOT PROPERLY HANDLE DV CALLS
21-0019	3/18/2021	P			DEPT ALLEGED O PREPARED A POORLY WRITTEN REPORT
21-0020	3/18/2021	P			CP ALLEGED O UNLAWFULLY HANDCUFFED CP AND THEN WAS UNLAWFULLY PLACED IN REAR OF PATROL CAR
21-0021	3/23/2021	P			CP ALLEGED MONEY AND MARIJUANA WERE MISSING AFTER HE WAS ARRESTED

During the review period 12 Discourteous Treatment or Conduct Unbecoming of a Police Officer investigations were completed and seven new investigations were assigned. Two case investigations were suspended due to the employee was no longer with the FPD. This office agreed with the IA findings in all the cases but one, IA2020-0103, which is summarized below.

IA2020-0103: The CP called the FPD on three separate occasions, July 19, 20, and 24, 2020, regarding incidents with her boyfriend, hereafter referred as the subject. On July 19, the CP alleged the subject was arguing with her teenage son. Two officers responded and before contacting the CP they checked the area for the subject who departed before they arrived. As they approached the CP's apartment she was observed standing on her balcony. While remaining on the balcony, the CP stated the subject left and there was no longer a problem between him and her son.

O1 and O2 requested permission to enter her apartment to ensure the subject was not coercing the CP, or her son, to say he left, and everything was fine. The CP consented to a search of her apartment, which the officers conducted and confirmed the subject was no longer present. The officers did not feel the matter warranted BWC activation or the preparation of a report since a crime was not committed.

On July 20, the CP phoned the FPD again regarding the subject. The CP advised he was in the area of her apartment and she was requesting the FPD locate him. The officers dispatched, O3 and O4, were not the same as the ones who responded the day before. The officers were not sure why they were dispatched on the call since the subject was not arrestable if he was located. After they were unable to locate the subject they contacted the CP. The CP said the officers who responded the day before instructed her to call the FPD if she spotted him or learned of his location.

Based on the demeanor of the CP, the officers believed she was under the influence of alcohol or narcotics. Since they believed no crime had been committed, the officers cleared the scene without writing a report or activating their BWC.

On July 24, the CP called the FPD again alleging a domestic violence incident with the subject and he burglarized her apartment., O5, the officer who responded was not one of the four who responded on the two prior calls. When the officer arrived, the CP alleged she told the officers on the prior calls she was the victim of domestic violence, but they failed to document the matter. The officer documented the CP's claim and photographed injuries which appeared to have been sustained previously. The officer was also able to obtain an Emergency Protective Order from the on-call judge. In response to the CP's allegations against the four officers who responded on the two earlier calls for service an IA investigation was initiated. It should be noted the CP admitted to punching the subject during their physical altercation.

On July 26, 2020, the subject called FPD alleging friends of the CP were trying to kill him. The subject acknowledged there was a physical altercation a week prior and the CP assaulted him. The subject displayed the injuries he sustained at the hands of the CP, which were documented and photographed by the responding officer.

The IA investigation reached a finding of **unfounded** regarding the allegations of failing to activate their BWC against officers O1, O2, O3, and O4.

However, per the interview statement of O2, they asked the CP if they could check the apartment to ensure everyone was fine and the subject was not holding them against their will and instructing the CP to say he was not there. Although the action of checking the apartment was justified, and within policy, if the officers had encountered the subject it would have been essential to have the encounter recorded. The concern of the subject possibly being in the apartment and coercing the CP to say everything was fine, and he was no longer there, warranted the activation of their BWC.

When O3 and O4 were dispatched on July 20 the following information was provided to them by dispatch:

*SEE PRIOR EVENT BA4227, PRIOR DIST W/BF ..APPARENTLY RP WAS TOLD BY PD TO CALL IF SHE SAW HIM (name removed)HE WAS SPOTTED AT A NEARBY NEIGHBORS APT WHO APPARENTLY R KNOWN TO CARRY GUNS AND IF THEY FIND OUT RP CALLED THEY WILL *SHOOT HER WHITE A*** THATS Y SHE DIDNT GIVE THEIR ADDRESS....THE SUBJ WORKS AT A CAR WASH (location removed) NFI...*

Policy 450.4 also includes the following requirements for activating a BWC, and reads in part:

450.4 GUIDELINES FOR CAMERA ACTIVATION

Officers shall record interactions including, but not limited to, the following:

(c) Confrontational interactions with citizens;

(f) Suspect interrogations (including Miranda advisement) and generally, interviews of victims and witnesses

Therefore, when the CP was questioned by O1 and O2 regarding her call to FPD, and whether the subject was still present, subsection (f) was applicable. Since there was a concern the subject was possibly still in the apartment (c) was also applicable. Additionally, the information provided to O3 and O4 warranted BWC activation until the matter was resolved, or the information discounted. Therefore, contrary to IA finding of unfounded, the allegation was found to be **sustained** for all four officers.

The CP was contacted twice for follow-up interviews regarding the domestic violence allegation. When she was first contacted the officers noted the subject was present. The subject advised he and the CP had worked everything out and were back together. The CP reiterated what the subject told the officers. Concerned the CP's statement was influenced by the fact the subject was present officers returned a second time when the subject was not present. The CP advised she and the subject were back together. The CP also admitted she may have been under the influence of alcohol and possibly marijuana when the officers had previously responded.

The second allegation of whether the officers failed to document a crime involving domestic violence was not proven or disproven by the evidence gathered during the calls for service or during the IA investigation. In view of the absence of clear evidence to substantiate the need for the creation of reports, the IA determined this allegation was **not sustained**.

As determined by the IA investigation, the failure to create a report allegation was **not sustained**.

Observation #2: The IA investigation was initiated after the CP complained the officers who responded on July 19 and 20 did not document her claims of being the victim of domestic violence. When the CP called the FPD on July 19 it was to report the subject was trying to "fight with the CP's son and the subject was high on meth." The call for service did not include allegations of domestic violence. The responding officers advised the CP informed them the subject had left prior to their arrival and they were no longer needed. The officers exercised due diligence by conducting a "safety sweep" of her apartment to ensure the subject was no longer on the premises before they departed. However, at no time during the contact with the CP, or the checking of the apartment, were their BWC activated.

On July 20, the CP called the FPD again to advise the subject was seen in the area. Once again the call for service did not include allegations of domestic violence but did include claims of potential threats if it was learned the CP called the FPD. After failing to locate the subject in the area the officers contacted the CP. The CP stated she was told to call the FPD if she observed the subject in the area by the officers who responded on July 19. Based on the demeanor of the CP

the officers believed she was under the influence of alcohol or narcotics. The officers did not activate their BWC when they contacted the CP.

The CP alleged the officers who responded did not document her domestic violence claims in a FPD report, which is required if the claims were made. Since the officers had not activated their BWC it was difficult to ascertain if they also violated FPD Policy 320.24, which reads in part as follows:

320.24 REPORTING PROCEDURES

A police report shall be written to cover all incidents of domestic violence. Officers shall ensure they make the victim(s) confidential by checking the appropriate check boxes in Axon Records. The "Domestic Violence" checkbox in Axon Records shall be checked as well as indicating the report is a domestic violence incident in the Case Factors.

Children in common, or who are present in the home, should be listed in the report.

The system will generate a Controlled Document using the listed confidential information. Confidentiality is not necessary when both parties are listed as victims, suspects or involved parties.

Department members shall also accept and provide written documentation for all calls or reports, including those made anonymously, of domestic violence involving peace officers. These reports shall be turned into records as a "restricted" report and shall maintain that status until the investigation has been completed. This Department's Domestic Violence Investigation Unit shall also deliver a written copy of reports involving peace officers from different agencies to the involved officer's agency.

In addition, domestic violence reports must also specifically include:

- (a) A notation as to whether the officer(s) who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance;
- (b) A notation as to whether any law enforcement agency had previously responded to a domestic violence call, including incidents involving violations of domestic violence restraining orders, at the same address involving the same alleged abuser or victim (PC §13730). This mandate may be accomplished by checking MDS data bases and/or through information received from involved parties.
- (c) A notation as to whether or not children were present;
- (d) A specific description of any weapon(s) used;
- (e) A notation if the officer found it necessary, for the protection of the officer or other persons present, to inquire from the parties whether a firearm or other deadly weapon was present and the results of the inquiry; and

Recommendation #2: It was noted in Recommendation #1, which appears on page 20 of this report, the FPD has displayed exceptional efforts in ensuring the BWC activation policy is widely exercised by the officers. However, during this review period the failure to activate BWC

was noted in three critical incidents. Therefore, as stated in Recommendation #1 on page 20, it is recommended periodic reminders regarding BWC activation is stressed to the officers.

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
20-0068	7/8/2020	P			DEPT ALLEGED O TEMPORARILY MISPLACED RIFLE
20-0086	8/26/2020	P			DEPT ALLEGED Os FAILED TO DETECT A FIREARM ON PRISONER
20-0105	11/3/2020	1/12/2021	SUSP	NR	CP ALLEGED PROPERTY WAS MISAPPROPRIATED
20-0114	12/14/2020	1/28/2021	NS	NS	DEPT ALLEGED O WAS RESPONSIBLE FOR DAMAGED FPD PROPERTY
20-0115	12/22/2020	3/19/2021	SUS	NR	DEPT ALLEGED EMP ABUSED LEAVE POLICY
20-0117	12/22/2020	3/11/2021	SUS	NR	DEPT ALLEGED EMP CONTINUED WITH EXCESSIVE TARDIES AFTER BEING COUNSELED
21-0003	1/20/2021	P			DEPT ALLEGED O MISPLACED MAGAZINE AFTER TEST FIRING A WEAPON IN EVIDENCE

Four Administrative or Performance Matters investigations were closed during the review period and one new case was assigned.

IA VEHICLE ACCIDENTS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
19-0077	6/21/2019	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0012	2/7/2020	1/20/2021	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0053	5/11/2020	1/28/2021	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0079	8/11/2020	2/12/2021	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0084	8/18/2020	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0085	8/20/2020	2/11/2021	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0087	8/31/2020	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0094	9/24/2020	1/12/2021	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0102	10/23/2020	3/4/2021	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0110	11/9/2020	3/1/2021	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT

IA VEHICLE ACCIDENTS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
20-0112	12/3/2020	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0118	12/23/2020	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0120	12/29/2020	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0121	12/29/2020	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
20-0122	12/29/2020	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
21-0005	1/29/2021	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
21-0011	2/19/2021	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
21-0013	3/1/2021	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
21-0015	3/3/2021	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
21-0016	3/8/2021	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
21-0022	3/26/2021	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
21-0023	3/30/2021	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT

Seven Vehicle Accident investigations were completed during the review period, all resulting in sustained findings. There were seven new investigations assigned during the same period.

COMMUNITY GENERATED INFORMAL COMPLAINTS				
INFORMAL COMPLAINT	DATE CLOSED	FINDINGS	ALLEGATION(S)	LOCATION
21-0001	2/22/21	UNF	GENERAL CALL HANDLING	SE
21-0002	2/22/21	SUS	PRISONER'S PROPERTY LOST/DMGD/RETURN	SW
21-0003	2/22/21	UNF	RACIAL/BIAS BASED PROFILING	NON-DISTRICT
			DISCOURTEOUS TREATMENT	
21-0004	2/22/21	UNF	UNREASONABLE FORCE	SE
21-0005	2/22/21	UNF	DISCOURTEOUS TREATMENT	SE
			REPORT PREPARATION FALSE/MISLEADING	
21-0006	2/22/21	UNF	GENERAL CALL HANDLING	SW
21-0007	2/22/21	UNF	DISCOURTEOUS TREATMENT	NE
21-0008	2/22/21	UNF	GENERAL CALL HANDLING	SE
21-0009	2/22/21	UNF	PROPERTY- NOT DEPT OWNED-LOST/DAMAGED	CEN
21-0010	3/18/21	NS	VEHICLE OPERATIONS	CEN
21-0011	3/24/21	UNF	GENERAL RESPONSIBILITIES	NW
21-0012	3/24/21	UNF	GENERAL CALL HANDLING	CEN

COMMUNITY GENERATED INFORMAL COMPLAINTS				
INFORMAL COMPLAINT	DATE CLOSED	FINDINGS	ALLEGATION(S)	LOCATION
21-0013	3/24/21	UNF	PROPERTY- NOT DEPT OWNED-LOST/DAMAGED	NE
21-0014	3/24/21	EX	GENERAL RESPONSIBILITIES	SE
21-0015	3/24/21	UNF	GENERAL RESPONSIBILITIES	CEN
21-0016	3/24/21	EX	TOW/IMPOUND ISSUES	NW
21-0017	3/24/21	EX	GENERAL RESPONSIBILITIES	NE
21-0018	3/24/21	SUS	GENERAL RESPONSIBILITIES	NE
21-0019	3/29/21	UNF	PROPERTY- NOT DEPT OWNED-LOST/DAMAGED	NE
21-0020	3/29/21	EX	GENERAL RESPONSIBILITIES	CEN

DEPARTMENT GENERATED INFORMAL COMPLAINTS				
INFORMAL COMPLAINT	DATE CLOSED	FINDINGS	ALLEGATION(S)	LOCATION
21-0001	2/17/21	EX	UNREASONABLE FORCE	NW
21-0002	2/22/21	SUS	PERFORMANCE	NON-DISTRICT
21-0003	2/22/21	NS	DISCOURTEOUS	NON-DISTRICT
21-0004	2/22/21	SUS	CONDUCT UNBECOMING	NON-DISTRICT
21-0005	2/22/21	EX	DISCRETION	SW

As of January 1, 2021, the informal complaints will be listed by the manner the complaint was generated, community (CP) or department (DEPT). This will allow the FPD to provide a more accurate method for tracking the informal complaints. During the first quarter, 20 community generated complaint investigations were completed, and five department generated complaint investigations were completed. The 25 completed investigations were reviewed by this office and it was determined the FPD arrived at the appropriate findings.

IA INVESTIGATION RESULTS

Below are the annual totals for the allegation findings following the investigations and the levels of discipline issued, or options chosen by the officers/employees, who were determined to be in violation of a FPD policy or procedure.

FINDINGS FOR FORMAL IA INVESTIGATIONS (Based on Closed Date)	TOTAL OF FINDINGS FOR IA CASES CLOSED IN 2021			
	DEPT	CP	OIS	TOTALS
SUSTAINED	12	2	0	14
NOT SUSTAINED	1	2	0	3
UNFOUNDED	1	2	0	3
EXONERATED	3	2	0	5
WITHIN POLICY*	N/A	N/A	6	6
*OIS-Person/OIS Dog/Firearm Discharge/Lethal Force				
WITHDRAWN/CASE SUSPENDED	1	3	0	4
TOTAL FINDINGS	18	11	6	35

DISCIPLINE ISSUED	2015	2016	2017	2018	2019	2020	1 st QTR 2021
TERMINATIONS	5	7	3	2	8	5	1
RESIGNED IN LIEU OF	0	0	1	0	5	8	2
RETIRED	0	0	0	0	3	3	1
DEMOTION	0	0	0	0	1	0	0
SUSPENDED	13	16	17	32	29	52	4
PAYMENT IN LIEU OF	0	0	0	0	3	1	0
FINES	1	0	0	0	0	0	0
MEDICAL SEPARATION	NA	NA	NA	NA	3	0	0
LETTERS OF REPRIMAND	11	9	10	15	19	15	9
TOTAL	30	32	31	49	71	84	17

FPD RESPONSE TO OIR RECOMMENDATION

In the last quarterly report, one recommendation was made to the FPD. To enhance transparency and trust it has always been the practice of this office to print the FPD's response to each recommendation in the subsequent report. The responses are printed verbatim as they are received from the FPD. Since the release of the report the following response was received. Below is the reprinted recommendation, and the respective response received from the FPD.

RECOMMENDATION #1: As a result of Government Code 7286, the POST publication, and the decisions by the Ninth Circuit Court, it is recommended the FPD amend their policy of reportable use of force to include the pointing of a firearm at an individual. Although the requirement has been established, the manner of which the use of force is documented has been left to the discretion of the individual department. It is suggested the reporting process not impede the ability of the officer to defend themselves. If the process is overly cumbersome and viewed as an infraction an officer may subconsciously hesitate, or even refrain, from drawing their firearm when it is justified to protect their life or the life of another. The requirement to report does not include when an officer draws their weapon and maintains a "low-ready or depressed position."

FPD Response: The Fresno Police Department recognizes the importance of the California POST Use of Force Standards and Guidelines, and the fact these Standards and Guidelines indicate the intentional pointing of a firearm at an individual by an officer should be reported as a Use of Force. The Department is currently working to update policy, training and implement a reporting format for these instances, as outlined by POST.

SUMMARY

A collateral function of this office is to engage in community outreach. However, due to the ongoing COVID-19 pandemic, in-person group meetings and community events have been postponed. In an event to continue our outreach efforts we have begun offering to provide presentations via any of the virtual meeting platforms available, such as ZOOM, WebEX Meeting, and Microsoft Teams, to name a few. We have also recently created an [OIR Facebook](#), [Instagram](#), and [Twitter](#) page for the public to contact us or view our quarterly reports as they are released.

We recognize this is a very critical time regarding law enforcement accountability and community trust. There are several ways to contact this office and it is our policy to return all correspondence within a 24-hour period except for communications received over the weekend. Our contact information is listed below.

<https://www.fresno.gov/oir>

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