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Agenda Item: ID#15-731 (2:00 P.M.)

Date: 9/10/15

CITY CLERK, FRESNO

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#15-731 (2:00 P.M.)

Contents of Supplement: PowerPoint Presentation

Item(s)

WORKSHOP on the Office of Independent Review

Supplemental Information:

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Office of Independent Review (OIR) Workshop
September 10, 2015

OIR Recommendations Per Year

2015 Recommendations

1. OIR received a recommendation from a retired police officer who felt that it would be **beneficial for the FPD to conduct an "exit interview" upon retirement.** OIR is supportive of the FPD establishing such a protocol to gain greater insight into areas of concern, that retirees may be aware of, but have not communicated previously, due to their perception of possible retribution, as indicated by the writer in his email to OIR.
2. **OIR recommends that the FPD once again remind officers that "chasing" individuals who are riding bicycles, while in a police car, is generally not the right approach.** A police car, in chase with a bicycle, could come into contact with the rider/bike and result in the death of the rider.
3. OIR recommends that an immediate communication be sent to every officer once again fully explaining the use of temporary storage lockers for evidence, especially high value evidence, narcotics and firearms. This notification should spell out the policy related to properly booking all evidence into the secure confines of the evidence room. It is recommended that the exact time tables involving both procedures be laid out to ensure that evidence is **maintained along with the "chain of custody" so vital to prosecution.**
4. FPD should consider asking the City Attorney to make contact with CRMC, since this facility seems to be the place most injured, and to be arrested, parties are taken for treatment, and determine whether an agreement can be worked out to ensure that HIPPA guidelines are followed along with the FPD obtaining, and retaining, a copy of any salient recording of officers involved in police actions on their property.
5. OIR recommends for the Police Cadet, Recruit, Lateral, which are defined as continuous open until filled positions, place greater emphases on recruiting veterans of honorable service. The diversity of this pool combined with their pre-existing understanding of policing, chain of command and potential advancement, along with a verifiable history of honorable service would provide a great employment pool of men and women to serve, and have a long career with, the FPD. Nationally this is being emphasized both in the public and private sector.
6. OIR recommends that the panel interview process include citizens and business members within the City of Fresno, which may include members of community councils. The community must feel a part of the police department to support and represent those that protect them.

7. OIR recognizes that filling vacant position within FPD has a great sense of urgency, but this process needs to be detailed and deliberate and cannot be hurried. FPD needs to recruit and hire the very best, believing this process is the start of a long and lasting professional career with FPD. Nationally there have been discussions among some police departments and city councils that in an effort to speed up the process and save money, to only conduct background investigation on 50% of applicants by drawing names. This practice, not used in Fresno, is dangerous and creates a great deal of liability for a city. OIR believes this could create a tremendous amount of turnover, which is very costly to FPD and potentially leading to embarrassing conduct within the profession. The hiring process is important, and competitive, and as such, it cannot be hurried.
8. It is recommended that over the next 60 days that the OIR conduct a comprehensive review of personnel practices and policies related to the hiring, selection and promotion of officers. This review is timely given the level of attrition and the number of vacancies, in particular within the command staff that will be occurring over the next few years.
9. It is recommended that the FPD validate the existing inspection process by instituting a department wide, independent, inspection process. FPD has been conducting ongoing series of self- inspections based on CALEA Law Enforcement guidelines; however, these guidelines do not mandate that the inspectors be from outside of the unit and/or agency. This inspection process would entail examining a single unit, from top to bottom, to check for compliance and to determine if there are better practices. The additional independent review of the existing inspections process will not only ensure that every employee is following the policy manual of the FPD, it will also identify supervisors who are not ensuring compliance. Again, it is not the intent to necessarily replace FPD's current process, but instead enhance the process by relying on an outside inspector to go through each unit with fresh eyes and a different perspective.
10. FPD officers participate in mandatory firearms qualification three times a year, for a two hour training period. Furthermore, all officers must accomplish 40 additional hours of training throughout each calendar year; these are opportunities that can be used to provide refreshed training on legal issues, as well as on policy/procedures. Therefore, it is recommended that the FPD plan at least an hour of additional training on topics such as ethics, the obligation to report misconduct and other related items.
11. It is recommended that the FPD examine and review Procedure 1012, which covers employees use of drugs and alcohol and consider revisions, if warranted, for adherence within the department and compliance to current state law(s) (e.g., HIPPA, POBR) while respecting privacy rights of the officers. In the interim, the department, at a minimum, should take steps to ensure that this policy is reviewed with all officers within the next 30 days.
12. CA code 3308 details the use of financial disclosure forms when it comes to police officers and currently, the FPD is within the scope of that law. However it is recommended that all employees within the FPD, who apply to become supervisors, fill out a financial disclosure form, which if legally permissible, would include all sources of income and all assets, including bank accounts and real property.
13. It is recommended that the FPD implement mandatory retraining on Procedure 348 which requires all employees to notify their chain-of-command about any subpoena or voluntary appearance at any court proceeding, whether in or out of town, criminal, civil, or administrative.

14. It is recommended that the FPD consider instituting an in-depth review of all employees to ensure that the standards required upon initial hire, are still in place. Currently, the FPD performs background investigations on all new applicants; an in-depth review will once again support that employees are upholding the same standards required with they were first hired.
15. OIR recommends that consideration be made for the creation of a Community Engagement Unit made up of the top eligible Sergeant candidates. Once a candidate is in the unit and with satisfactory service, he/she will be guaranteed a promotion even if another sergeant testing process is held. This kind of unit allows for the Chief of Police to mentor and teach the departmental vision and core values. FPD currently has a great opportunity to promote several to the rank of Sergeant; this unit would focus on teaching the Chief's policies, philosophy and expectations.

Hiring and Promotional Practices Recommendations per Position

Deputy Police Chief:

1. OIR recommends that the City Manager has the final decision upon consultation with the Chief of Police on promotions of the unclassified position of Deputy Police Chief.
2. OIR recommends that those applying for consideration to compete for a Deputy Police Chief position be required to fill out a financial disclosure background document. This standard is no more detailed than that of a brand new recruit seeking an entry level position. (This request needs further discussion in terms of confidentiality as well as approval from the City Attorney Office.)
3. OIR recommends that any potential conflicts of interest be identified within the interview of the candidate by the Chief of Police. Any such issues must be resolved to the satisfaction of the Chief of Police before further consideration for the position.

Police Captain:

1. OIR recommends that those applying for consideration to compete for a Police Captain position be required to fill out a financial disclosure background document. This standard is no more detailed than that of a brand new recruit seeking an entry level position with FPD. (This request needs further discussion in terms of confidentiality as well as approval from the City Attorney Office.)
2. OIR recommends that any potential conflicts of interest be identified within the interview of the candidate by the Chief of Police. Any such issues must be resolved to the satisfaction of the Chief of Police before further consideration for the position.

Police Lieutenant:

1. OIR recommends that those applying for consideration to compete for a Police Lieutenant position be required to fill out a financial disclosure background document. This standard is no more detailed than that of a brand new recruit seeking an entry level position with FPD. (This request needs further discussion in terms of confidentiality as well as approval from the City Attorney Office.)

2. OIR recommends that any potential conflicts of interest be identified within the interview of the candidate. Any such issues must be resolved to the satisfaction of the Chief of Police before further consideration for the position.
3. OIR recommends that because the promotional process for Lieutenant requires a written exam, the Department of Personnel Services should provide the exact study material from which the written exam questions will be amassed. These study materials should be provided free of charge to each candidate. While this will take more time and have a minimal associated cost, it is far less time consuming and is far less expensive than delays for appeals and or litigation.
4. OIR recommends that following the application closing date, the Department of Personnel Services hold a candidate meeting to explain in detail the testing process and allow for any questions up front from candidates as to the process only and what they should expect. Although time consuming, it defends against appeals and or litigation. This allows for candidates to realize that the process is fair and credible and the results honorable.

Police Sergeant:

Bargaining Unit 4 – Police Basic; this is a classified position. The Department of Personnel Services is charged with this promotional testing process. Upon review OIR finding are that this process is done in a very fair and reliable way. The Department of Personnel Services uses Donnoe & Associates as a resource for testing procedures and identifies desired characteristics for the position of Sergeant as well as a job description.

1. OIR recommends that any potential conflicts of interest be identified within the interview of candidate. Any such issues must be resolved to the satisfaction of the Chief of Police before further consideration for the position.
2. OIR recommends that because the promotional process for Sergeant requires a written exam, the Department of Personnel Services should provide the exact study material from which the written exam questions will be amassed. These study materials should be provided free of charge to each candidate. While this will take more time and have a minimal associated cost, it is far less time consuming and is far less expensive than delays for appeals and or litigation.
3. OIR recommends that following the application closing date, the Department of Personnel Services hold a candidate meeting to explain in detail the testing process and allow for any questions up front from candidates as to the process only and what they should expect. Although more time consuming, it defends against appeals and or litigation. This allows for candidates to feel that the process is fair and credible and the results honorable.

Past Year Recommendations

Status

2012

Adopted and implemented

OIR suggests that FPD's Primary Firearms Instructor audit all officers' weapons including their primary handgun, along with any Department approved secondary weapons as well as any and all "long weapons" to ensure all officers are current and qualified with those weapons. If an officer fails to remain current with a specific weapon, he/she should be notified that he/she is no longer authorized to carry that weapon on duty, or when performing law enforcement activity.

Not adopted

FPD should consider doing an arrest check, also called a 10-15 check wherein a Sergeant responds to each arrest, conditions permitting, and asks the arrestee the following questions: Are you injured, do you know why you were arrested, and do you have a complaint about what has occurred. By doing such an arrest check, the FPD will be greater prepared to gather information real time to prove or disprove any such allegation. It also is a good technique to ensure all officers are aware of their duties and recognize that each of their arrestees will be spoken to by a street level supervisor.

Adopted and implemented

The FPD has instituted and implemented the software program known as IA Pro. This system allows for OIR to have full, unfettered access to every allegation **made against an employee of the FPD. Included within this system is an "early alert" program that looks for trends in officer conduct.** The use of this data management program ensures transparency and easy access to any case and/or file contained within that IA case. The IA Squad is to be commended on the amount of work needed to bring the system fully on line as is the leadership of the Department as this system resulted in a great financial commitment to transparency.

2013

Adopted and implemented

Upon completion of an audit of a case it was recommended that the FPD establish some very specific guidelines on the best way to load a hobbled prisoner into the wagon. Once that determination is made, that needs to be widely **publicized since two officers stated that they have used the "flip" technique** on other arrested parties.

Not adopted

Upon completion of an audit concerning an Accidental Discharge (AD), it was noted that although a single individual failure hardly reflects upon the hundreds of officers that handle weapons daily, it is still a good reason to once again go back to basics in the next series of qualification courses. A little used, but highly effective training method is to have officers operate their unloaded weapons, with a Firearms Instructor present, while blind folded or in a very low light condition. Drills such as making weapons safe, ejecting and then replacing magazines, and basic clearing exercises can be demonstrated occasionally to ensure all officers can operate every weapon they use in low, or even zero light situations. It seems that many ADs occur in poor lighting conditions.

Adopted and implemented

Upon completion of an audit, it was recommended that FPD remind all officers through a training bulletin of the restricted techniques while offering advice and guidance on how to stop someone from potentially swallowing an object that could fatally harm the citizen.

Adopted and implemented through IA Pro Blue Team component

Currently, the FPD uses two systems to track and investigate Internal Affairs complaints, those two being IA Pro and the ICF system. Both systems are run on secure PD data bases with procedural inquiries and complaints that appear to be less severe or needing some initial investigation being assigned to the ICF system while complaints that are assigned for internal affairs investigations , being immediately placed into IA Pro. OIR recommends that the FPD consider

using IA Pro for all complaints, including those that are not as serious as other complaints, such as allegations of improper use of force, as this will be more efficient. Cases that were previously assigned to the field via the ICF system can, and should, still be assigned to field investigators but via the routing of IA Pro.

Adopted and implemented

OIR recommends that increased emphasis be made on admonishing subject officers to have no contact with any person involved in the complaint, to include complainants, witnesses and co-workers so that the record can remain unblemished and to ensure that no one can assert an act of intimidation.

Adopted and implemented

OIR recommends that the FPD take urgent steps to clarify their pursuit policy, as related to bicycles and infractions, and ensure that all officers weigh the suspected criminal actions of the person being stopped versus the potential deadly consequences pursuits have caused in the past.

2014

Adopted and implemented

The OIR recommends that the FPD Firearms Training sessions emphasize that officers **conduct a thorough check and maintain awareness of the "back drop" or background** prior to firing their weapon.

Implemented by having involved officers attend a pre-warrant service briefing to cover these matters

FPD should review and update procedures on Search/Seizures (reference 14-0024). OIR recommends that all officers involved in the serving of a search warrant read, at the minimum, the affidavit in support of the warrant as well as the **full list of "items to be seized" and in most cases, be provided with that list** to ensure they do not overstep the limits of the warrant. It is a best practice to document that all officers have read the affidavit and items to be seized to ensure the officers do not exceed the scope of the warrant.

Photographs taken before and after the search, including valuables

OIR notes that when valuables are left behind, it is a best practice to photograph those items where they were left and to notify an occupant about their location and then document that conversation. It seems extreme to take such measures but if that occurs, no claims would be filed against the City and no administrative reviews would occur.

Adopted and implemented

OIR encourages the FPD to promote to officers their use of "officer discretion" when making a decision to tow a vehicle. In cases reviewed, the FPD always followed the law and towed vehicles when the driver was illegally operating the vehicle, for multiple reasons. However, there may be situations wherein family members are present and the vehicle can lawfully be turned over to them rather than having it towed. Again, OIR recognizes that there may be investigative reasons, or the driver may be a repeat offender, wherein turning the vehicle may **not serve the overall public's best interest. But, if no aggravating circumstances** exist, not towing the vehicle will save a great deal of money for the family and will show that officers used discretion in such a way as to bring closer together the police and the public.

Adopted and implemented

OIR reviewed a single case wherein the officer had with him an "on-body" camera. In the matter, two allegations were put forth by the citizen and the videotape provided by the officer absolutely proved that no unreasonable force was used during the encounter. In fact, the recording demonstrated that the complainant's version did not occur in any manner he described. Therefore, his second allegation, which lacked evidence from either point of view, was viewed in light of his inaccurate first complaint. OIR cannot stress how helpful officer worn cameras are in figuring out the actual events in any complaint. Additionally, antidotal data coming in from around the nation tends to support that when officers are wearing video cameras, conduct by officers and citizens alike is much improved and complaints decrease. But in any case, when a video recording is made, sorting out the submitted complaints becomes incredibly easier. OIR speculates that the expense of equipping all officers with video cameras is likely to be offset by the decreased costs associated with investigating allegations due to a marked decrease in such complaints combined with the costs incurred by defending allegations in court.

Adopted and implemented

When a homeless person is cited for a minor infraction or misdemeanor they are given a Notice to Appear in court. However, it is believed by some in the community that a common practice of the Police Department is to enter the address of the Fresno Rescue Mission, 310 G Street, as opposed to the actual address of the person being cited, an address at which that person actually receives mail. This creates a problem because any information will be mailed to the Rescue Mission and there apparently is no process for changing the address on these citations. A citizen reportedly asked an officer at the Police Department how that G Street address got on the citation, and he said that "We routinely use that address for anyone who appears to be homeless." This seems like a practice that could lead to an undue number of cases of failure to appear among the homeless population. Officers should attempt to determine if anyone they cite has a valid address where they receive mail.

Adopted and implemented

OIR cannot stress directly enough that all officers collect and record the demographic data of the people they stop during traffic enforcement duties. OIR recommends that the Department remind all officers of this policy as there has been more than one case in the last 12 months wherein demographic data was crucial to determine the actions of an accused officer.