



February 8, 2022

Via Email

Malia Cohen, President
Cindy Elias, Vice President
John Hamasaki, Commissioner
Max Carter-Oberstone, Commissioner
James Byrne, Commissioner
Larry Yee, Commissioner
Jesus Gabriel Yanez, Commissioner
San Francisco Police Commission

Email: sfpd.commission@sfgov.org

Chief of Police, William Scott
Via Email: william.scott@sfgov.org

Dear President Cohen, Vice President Elias, Commissioners, and Chief William Scott,

We write this letter to register our opposition to Chief Scott's unilateral move to terminate the MOU between SFPD and the San Francisco District Attorney's office concerning the Independent Investigations Bureau's (IIB) investigation of covered incidents, including officer-involved-shootings, in-custody deaths, and other serious use of force cases. We urge you in the strongest possible terms to assert your oversight authority and take all necessary actions to reinstate and maintain this agreement.

The ACLU of Northern California is an enduring guardian of justice, fairness, equality, and freedom working to protect and advance civil liberties for all Californians. The genesis of the ACLU of Northern California was the 1934 San Francisco General Strike, where lawyers and organizers were called upon to protect the rights of Bay Area Maritime workers against vicious attacks by police, and two trade unionists were shot and killed. Since our founding, we have worked continuously to hold the institution of policing and Police Departments across the state, including SFPD, accountable to the communities they serve and to the rights of people enumerated in the Constitution. The ACLU of Northern California has over ~7,500 members who are residents of the city and county of San Francisco who support this mission.

Chief Scott's unilateral move to terminate the above-mentioned MOU is deeply problematic for a number of reasons, but we briefly enumerate our most pressing concerns here:

1. **Chief Scott's Justification for Breaching the MOU Is Based on a False Premise.**

As justification for his decision to abandon the MOU, Chief Scott alleges a violation of the MOU by the DA's office, claiming that the DA has been wrongfully withholding investigative materials in the case of SFPD officer Terrance Stangel:

[I]t appears that the DA's Office has an ongoing practice of investigations against SFPD officers that includes withholding and concealing information and evidence the SFPD is entitled to have to further ancillary criminal investigations in accordance with the MOU.¹

However, the 2019 MOU, which is the MOU in question at the time of this incident, explicitly states that "the SFDA's office should provide the evidence that it gathers *upon declination of criminal charges or upon completion of all prosecutions.*"² And here, the prosecution of officer Terrance Stangel for the unlawful beating of an unarmed Black man, Dacari Spiers -- the first ever jury trial of an SFPD officer -- is ongoing, with opening statements having just occurred on Monday February 7, 2022. In short, the DA's office has neither declined criminal charges nor completed all prosecutions, meaning that its current withholding of investigative materials from the SFPD is rightful as expressly contemplated by the 2019 MOU. Chief Scott's statement to the contrary is therefore false and a transparent to renege on the SFPD's own prior agreement. We urge the commission to reject Chief Scott's stated reasoning and clarify the relevant facts for the public.

2. **The Current Political Context Suggests that SFPD's Withdrawal Is Pretextual.**

The timing and method of Chief Scott's termination of this MOU raises serious questions. As mentioned above, San Francisco is in its first ever jury trial against officer Terrance Stangel for the unlawful assault and beating of Dacari Spiers while on duty. Chief Scott sent his letter to the District Attorney on February 2nd 2022 just before the start of that trial. Significantly, the MOU allows both parties to notify the other when intending to terminate the agreement, providing five days for the parties to meet and confer. That the Chief did not follow that procedure makes plain that greater urgency was required. And indeed, various media outlets have reported that, the day after Chief Scott's announcement, the SFPOA had a meeting scheduled for February 3rd 2022 to discuss a potential vote of no confidence on Chief Scott.³ The SFPOA's meeting was abruptly

¹ <https://www.sfchronicle.com/sf/article/S-F-police-chief-will-no-longer-cooperate-with-16827409.php>

² <https://twitter.com/meganrcassidy/status/1491178981151821827?s=21> (emphasis added)

³ <https://missionlocal.org/2022/02/stangel-dacari-spiers-boudin-scott-stefani-trial/>

cancelled after Chief Scott sent the announcement that he is moving to terminate the MOU with the DA's office.

There is no way to know whether Chief Scott's decision was influenced by the SFPOA's impending no-confidence vote. But the circumstances of the decision, coupled with the patently incorrect basis cited by Chief Scott, are highly suspect.

3. **Independent Investigations Are Central to Police Accountability.**

In March 2020, the California Department of Justice highlighted the importance of the 2019 MOU's insistence upon independent investigation and oversight as critical to meaningful reform and accountability, stating:

A key focus for the U.S. DOJ in its reform recommendations was ensuring independent investigation and oversight over OIS incidents. Under CRI Phase II, the department completed the MOU for the Investigation of OIS incidents with the District Attorney's (DA's) Office of the City and County of San Francisco. This *critical reform* ensures an independent investigation into an OIS. An independent skilled investigator brings knowledge and legal understanding of use of force incidents that allows for a thorough review. The San Francisco DA's Office is responsible for conducting the criminal investigation of OIS incidents involving SFPD officers. *This provides professional investigation and review, independence and accountability, as the DA is an elected official and responsible to the community.*⁴

The importance of independent investigations in cases of police violence and killings cannot be overstated. Simply put, police cannot police themselves. The bias in favor of police officers by internal investigators is inherent, unavoidable, and has been demonstrated in case after case for many decades. That status quo, and the lack of accountability it created and perpetuated, is a big reason why a gap in trust between the SFPD and the community has developed and widened. And this in turn is why we need institutions like the Police Commission to provide oversight, and, in fact, why this very MOU was created. Since the establishment of this MOU, instances of police killings have decreased and police accountability has increased. In other words, the MOU is working as intended. No single incident or case warrants the wholesale discarding of such an important agreement, which has so far been successful in achieving its goals.

⁴ <https://oag.ca.gov/system/files/attachments/press-docs/Final%20Hillard%20Heintze%20Phase%20II%20Report%20for%20the%20San%20Francisco%20Police%20Department-1.pdf> (last accessed Feb. 7, 2022)



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Conclusion

We urge the San Francisco Police Commission to assert the full range of their oversight powers and authorities to maintain this MOU. The MOU has definitively increased police accountability in San Francisco by ensuring robust, professional, and independent investigation of police violence and unlawful use of force incidents. It should not be undermined in such hasty, unilateral fashion, lest the Commission risk further division between the SFPD and the community at large.

Regards,

A handwritten signature in black ink, appearing to read 'Yoel Y. Haile', with a long horizontal stroke extending to the right.

Yoel Y. Haile
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