

SENT VIA EMAIL

November 15, 2019

Paul Kelly
President
San Jose Police Officers' Association (POA)
1151 North Fourth Street
San Jose, CA 95112

Re: Expansion of Review Authority for the Independent Police Auditor's Office (IPA)

Dear Paul:

Thank you for the proposed Side Letter Agreement that was provided by the POA to the City on June 3, 2019. We appreciate and share the POA's desire to reach an agreement on this matter as quickly as possible.

While we understand that the POA believes that due to the passage of Senate Bill 1421 and Assembly Bill 748, greater review authority for the IPA is unnecessary, these enactments largely do not allow for the IPA's review of un-redacted records related to officer involved shootings and uses of force resulting in great bodily injury. Further, in order to obtain such records under Senate Bill 1421 and Assembly Bill 748, the IPA would be required to submit Public Records Act requests, which may unnecessarily delay the IPA's receipt of such records and impact the IPA's ability to then make timely recommendations related to Police Department policies and procedures. Similarly, allowing the IPA to have access to use of force records and reports, including but not limited to, use of force statistics, police reports, and body worn camera footage will enable the IPA to make better informed recommendations regarding Police Department policies and procedures.

However, based on the above issues raised by the POA, the City is amendable to better defining the types of records, reports and data the IPA would have access to and allowing for some redaction of certain information. As such, the enclosed revised proposal allows the IPA to review any records that are non-exempt from disclosure and available for public inspection under the law, but without redactions, provided that such records will not be released until a criminal or administrative investigation involving the specific officer(s) is complete. Additionally, the City has clarified the definition of "great bodily injury" to be consistent with language in the San Jose Police Department Duty Manual. And, lastly, the City has amended its proposal to clarify that officer name(s) and other personal and/or identifiable information will be redacted in any Police records and reports being sought by the IPA, in addition to any other redactions that are required under state law.

As we have previously discussed, any change related to the IPA's review authority would likely require a change to the City Charter; therefore, the City would like to continue *Seal Beach* bargaining with the POA on this issue. It is anticipated that the City will look to place a City Charter amendment related to the IPA before the voters in November 2020.

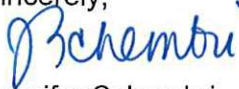
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If you have any questions regarding the information above, please do not hesitate to contact me.

Sincerely,



Jennifer Schembri
Director of Employee Relations
Director of Human Resources

c: Edgardo Garcia, Chief of Police
Gregg Adam, POA Legal Counsel
Rick Doyle, City Attorney

Enclosure

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION

**INDEPENDENT POLICE AUDITOR
EXPANSION OF DUTIES AND RESPONSIBILITIES**

The City of San Jose and the San Jose Police Officers' Association ("POA") agree to the following additional duties and responsibilities for the Independent Police Auditor, or "IPA."

1. To include Department Initiated Administrative Investigations ("DII") of San Jose Police Officers to the Independent Police Auditor's review of internal investigation complaints, in the same fashion the San Jose Municipal Code currently provides for Citizen Initiated Complaints;
2. To provide the Independent Police Auditor the right to review any records that are non-exempt and available for public inspection under the law, but without redactions, to the extent allowed by law for officer involved shootings, or "OIS," and uses of force resulting in great bodily injury if a Citizen Initiated Complaint had not been made concerning the OIS or uses of force resulting in great bodily injury, provided that such records shall not be released until a criminal investigation or administrative investigation involving the specific officer or officers is complete, in order for the IPA to make recommendations with regard to Police Department policies and procedures;
 - a. For purposes of this section, "great bodily injury" shall be defined as a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement as a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.
3. To allow the Independent Police Auditor access to Police redacted records and reports, including but not limited to use of force statistics, police reports, and body worn camera footage, in order for the IPA to make recommendations with regard to Police Department policies and procedures, subject to the following requirements:
 - a. The Police records and reports being sought by the IPA must be directly related to a topic that is the subject of a Department Initiated Administrative Investigation or Citizen Initiated Complaint; and
 - b. The Police records and reports being sought by the IPA must be directly related to a topic that is part of an approved work plan that has been submitted by the IPA and approved by City Council; and
 - c. Officer names and personally identifiable information shall be redacted in any Police records and reports being sought by the IPA in addition to any other redactions that are provided under state law; and

