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May 26, 2020

Kelly McAdoo, City Manager
Michael Lawson, City Attorney
Office of the City Manager
777 B Street
Hayward, CA 94541

RE: Hayward Police Department Use of Deadly Force – Independent Investigations

Dear Ms. McAdoo and Mr. Lawson:

We are writing in response to a policy that the Hayward City Council adopted last November concerning investigations of Hayward Police Department (HPD) officer involved shootings (OIS) and to your letter dated January 28, 2020. The use of deadly force by law enforcement is, of course, a critical issue throughout California, and we appreciate Hayward's efforts to ensure that such incidents are thoroughly and objectively investigated. It is our understanding that under the policy, if there is an OIS incident involving HPD officers that results in a death, you will submit a request to our office to conduct an independent investigation. See "Response to City Council Referral: Hayward Police Department Use of Deadly Force – Independent Investigations," November 5, 2019. It is further our understanding that any such investigation would be in addition to independent criminal investigations by the Alameda County District Attorney's Office and administrative investigations by the Hayward Police Department. In your letter of January 28, you specifically reference an incident that occurred on November 15, 2018, and you note that with respect to that incident, administrative and criminal investigations by the Hayward Police Department, as well as an independent criminal investigation by the Alameda County District Attorney's Office, have already been concluded. You ask for guidance regarding whether such an incident would warrant an independent investigation by our office as well as the "scope and potential outcomes of any review" that we might conduct.

As your letter notes, a criminal investigation into the November 15 incident has already been conducted, consistent with Alameda County protocols. We would need more information, including if there is any basis to question the results of that investigation, in order to consider your request. Of course, in certain individual cases it may be appropriate for our office to either conduct a criminal investigation into such an incident or perform a review of a completed investigation and/or decisions made on the basis of such an investigation. At the same time, we have limited resources that require us to be selective in deploying them where necessary.

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With respect to civil investigations, the Department's Civil Rights Enforcement Section does indeed conduct pattern and practice investigations, and on two occasions has engaged in collaborative reform initiatives (CRI) with local law enforcement agencies in the state. For example, we are currently engaged in such investigations or CRI with the Sacramento Police Department, the San Francisco Police Department, the Kern County Sheriff, and the Bakersfield Police Department. While these investigations and CRI have often come after a single high-profile incident, they are not intended to serve as a review of only that incident. Rather, our focus in these systemic investigations and CRI focus on the agency as a whole and are therefore extremely resource-intensive. Because of this, we take great care to assess the most effective use of our limited resources.

We hope that you will understand and consider that we have neither the funding nor the staffing to conduct independent investigations of OIS incidents throughout the State, regardless of whether those investigations are criminal or civil in nature. We encourage you to review several recent reports released by our office, which include recommendations on what localities can do to ensure oversight and integrity of investigations of use of force incidents: 1) Sacramento Police Department, Report and Recommendation (2019)¹; 2) San Francisco Police Department Collaborative Reform Initiative, Phase I – Initial Progress Report (May 16, 2019)²; and 3) Racial Identity and Profiling Advisory Board Annual Report (2020).³

If you or City officials would like to engage in further discussions on this extremely important topic, we hope you will not hesitate to reach out.

Sincerely,



PHILIP A. FERRARI and CHRISTINE P. SUN
Special Assistants to the Attorney General

For XAVIER BECERRA
Attorney General

cc: Toney Chaplin, Chief of Police, City of Hayward

¹ Available at: <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>.

² Available at: <https://oag.ca.gov/system/files/attachments/press-docs/hillard-heintze-initial-progress-report-sfpd-phase-i.pdf>.

³ Available at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>.