

## 1.14 INTERNAL INVESTIGATIONS



### City of Oak Point Department of Public Safety Fire Department

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### 1.0 PURPOSE

The department's image and reputation depend on the personal integrity and discipline of all departmental employees. To a large degree, the public image of the department is determined by a professional response to allegations of misconduct against its employees.

### 2.0 SCOPE

This SOP/SOG pertains to all personnel in this organization.

### 3.0 POLICY/GUIDELINES & INFORMATION

#### POLICY

The department must competently and impartially investigate all allegations of misconduct by employees and complaints bearing on the department's response to community needs. The department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In these situations, actions and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of law enforcement work.

#### I. PROCEDURES – GENERAL

A. Receipt of complaints

The department encourages any person to bring forward grievances regarding misconduct by employees. Department members shall receive all complaints courteously and shall handle them efficiently. All members are obligated to explain complaint procedures to anyone who inquires.

B. Responsibilities of supervisors

1. Supervisors are primarily responsible for enforcing conformance with departmental standards and orders.
2. Supervisors shall know the members in their charge by closely observing their conduct and appearance.
3. Supervisors shall be alert to behavioral changes or problems in their subordinates and, if necessary, document these changes and confer with higher authorities. The supervisor shall assess the behavior, and take or recommend appropriate action.
4. The supervisor shall recommend and, if appropriate, help conduct extra training for members not performing according to established standards.
5. The supervisor may employ counseling techniques sanctioned by the department. Counseling is used to adjust and correct minor, infrequent errors or instances of poor performance and to ascertain the nature of any professional or personal problems that bear on performance.
  - a. The supervisor shall document all instances of counseling.

C. How to make a complaint

A copy of "How to Make a Complaint" will be posted in the public area of the department, provided to media representatives, and may be given to any person requesting information on how to make a complaint.

D. Responsibility for handling complaints

All complaints alleging a violation of the law or policy will be investigated. Complaints involving how fire or EMS service is provided or a failure to provide service or improper attitudes or behavior may be investigated by an assigned supervisor or by the Director. Depending on the nature of the complaint, the Director may request another agency or TxDPS to undertake the investigation.

#### E. Complaint-handling procedures

1. All complaints, regardless of nature, can be filed in person, by mail, or by phone at any time. As part of the follow-up investigation, persons making complaints by mail or phone normally shall be interviewed and a written, signed complaint prepared. A signed letter of complaint will be accepted as a signed complaint without requiring any specific form. Anonymous complaints shall be followed up to the extent possible. In case of an anonymous complaint, the member or other person who receives the anonymous complaint shall reduce the complaint to writing in a memorandum with as much information as possible and forward the report to the Director.
2. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of any person's complaint. An employee of the department, who interferes with, discourages, or delays the making of complaints shall be subject to disciplinary action.
3. Normally, a person with a complaint shall be referred to a supervisor or the Director who shall assist the individual in recording pertinent information. If initially reported to a supervisor, the first-line supervisor shall conduct a preliminary investigation. The Director may, if appropriate, conduct a preliminary investigation. The preliminary investigation consists of questioning the member, complainants, or witnesses, and securing evidence.

Upon completion of the preliminary investigation, the following documents shall be prepared and forwarded through the chain of command:

- a. a report of the alleged violation;
  - b. any documents and evidence pertinent to the investigation;
  - c. recommendations for further investigation or other disposition.
4. If the supervisor or other investigators determine that the complainant is apparently under the influence of an intoxicant or drug, or appears to have a mental disorder, or displays any other trait or condition bearing on his or her credibility, the supervisor or investigator shall note these conditions but continue taking the complaint. Any visible marks or injuries relative to the allegation shall be noted and photographed.
  5. Prisoners or arrestees who have had contact with fire personnel also may make complaints. Circumstances may require a department representative meet the complainant at a jail for an interview. If appropriate, the representative will have photographs taken of prisoners' injuries.
  6. An employee who receives a complaint through U.S. mail shall place the correspondence and envelope in a sealed envelope and forward it to the Director, who shall determine investigative responsibility.

7. Complaints received by telephone by dispatchers or other employees shall be courteously and promptly referred to a supervisor or the Director. The dispatcher or employee shall record the name and telephone number of the complainant and state that the Director or, if unavailable, the supervisor will call back as soon as practical.
8. The above procedure may also be used when department employees desire to enter a complaint against any other employee governed by this order.
9. In every case, the Director will be notified of any complaint as soon as possible by the supervisor receiving the complaint. Complaints received overnight will be brought to the Director's attention the next workday. Complaints alleging a violation of the law or any serious violation should be reported immediately regardless of the time of day.

F. Disposition of complaints generally

The Director or his designee shall:

1. Notify the complainant, in writing, as soon as practical, that the department acknowledges receipt of the complaint, that it is under investigation and that the complainant will be advised of the outcome.
2. Enter the complaint into the complaint log, assign a complaint number, and have the complaint investigated. Minor complaints alleging rudeness, minor policy violations and performance issues may be assigned to a supervisor for investigation and resolution. Allegations of a violation of the law or serious policy violations will be investigated by the Director, an investigator assigned by the Director, or an outside agency as determined by the Director.
3. Maintain complaint files separate from personnel files.
4. Take disciplinary action following the investigation, if appropriate.

G. Disposition of a serious complaint

1. Allegations of misconduct that might result in discharge, suspension, or demotion, or criminal charges being sought are serious complaints. The term "serious complaint," in this manual, is synonymous with "internal investigation." Internal investigations examine alleged brutality, gross negligence or misconduct, or allegations involving supervisory or multiple personnel.
2. If a criminal offense is alleged, two separate investigations shall be conducted, a criminal investigation as well as an administrative or Internal Investigation. The

criminal investigation examines compliance with the criminal law while the Internal Investigation determines compliance with policy and procedure. The Director will assign these investigations as required.

3. In cases of serious complaints the Director shall:
  - a. Determine if the member complained of, should remain on-duty, be assigned to non-contact assignments, or put on administrative leave until completion of the investigations.
  - b. Determine and assign responsibility for the investigations.
  - c. Cause the complaint to be registered and assigned an investigation number in the complaint log.
  - d. Maintain close liaison with the district attorney in investigating alleged criminal conduct. Where liability is at issue, the Director shall similarly maintain contact with the city attorney or legal counsel.
4. Every attempt will be made to complete all investigations within 60 days to include the taking of disciplinary action when necessary. If additional time is necessary to conclude the investigation, a request for extension will be presented to the Director in writing providing justification for the extension. If approved by the Director, a specific number of days will be approved and a copy will be provided to the involved member and the original placed in the case file.
5. Upon completion of any investigation, The Director will notify the complainant in writing, of the results of the investigation and any action taken.

## II. INVESTIGATIVE PROCEDURES

- A. Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case.
- B. Assistance of legal counsel
  1. Employees are not permitted to have an attorney, supervisor, or other representative with them in the room during any interview regarding allegations of policy violation or misconduct.
  2. The employee's representative may be present where the interview focuses on, or leads to, evidence of criminality, the attorney may advise and confer with the employee during that period of the interview.

C. All Interviews

1. Prior to being interviewed, the subject employee shall be advised of the nature of the complaint and provided a copy of the complaint.
2. All interviews will be conducted while the employee is not-on duty, unless the seriousness of the investigation is such that an immediate interview is required.
3. During interviews conducted by the department, there will be one employee designated as the primary interviewer.
4. The complete interview shall be recorded. The recording will note the time at which breaks are taken in the interview process, who requested the break and the time at which the interview resumed.
5. The employee shall be provided with the name, rank and command of all persons present during the questioning.

D. Interviews for criminal investigative purposes

1. If the Director believes that criminal prosecutions are possible and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, he or another interviewer shall:
  - a. Give the employee the rights as specified in Texas Code of Criminal Procedure Article 38.22.
  - b. In addition to the rights set forth in state law, the Chief, or his designee shall advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.
  - c. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceeding.

E. Interview for administrative purposes

1. If the Director wishes to compel an employee to answer questions directly related to his or her official duties, the Director or another interviewer shall advise the employee that:
  - a. You are advised that this is an internal administrative investigation only.

- b. You will be asked and are required to answer all questions specifically related to the performance of your duties and your fitness for office.
  - c. All questions specifically related to employment must be fully and truthfully answered.
  - d. If you refuse to answer these questions, you can be subject to discipline that can be as much as discharge or removal from office.
  - e. I want to reassure you that any answers given are to be used solely for internal administrative purposes and may not be used in any subsequent criminal prosecution should such occur.
  - f. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
2. In an interview for administrative purpose, no Miranda rights are required or will be given.

### III. INVESTIGATIVE TOOLS AND RESOURCES

- A. In addition to interviews of the employee and witnesses, the Director may require other activities in support of a complaint investigation or internal investigation, including:
  1. Medical and laboratory examination
  2. The Director or supervisor in authority may, based on reasonable suspicion or his observation, require a department employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.
    - a. If the employee is believed to be under the influence of alcohol, a peace officer shall administer a PBT test. The Director or officer in authority shall witness the test and if Positive shall relieve the employee of duty and escort for a blood test.
  3. If the employee has a reading of .02 or higher, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the Director or member in authority.

4. If the employee is believed to be under the influence of self-administered drugs, he may be compelled to submit to a blood or urine test. The test shall be administered under medical supervision where hygienic safeguards are met. The sample shall be handled using the same safeguards as evidence as used in the hiring process.
5. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty as soon as possible by the Director or other member in authority.
6. If an employee refuses to submit to a test, (alcohol or drugs) then the Director or other member in authority shall immediately relieve the employee from duty for failure to cooperate in an administrative investigation.
7. Property assigned to the employee but belonging to the department is subject to inspection where the department has a reasonable suspicion that evidence of work-related misconduct may be found therein. Department property includes files, storage lockers, desks, and vehicles.

B. Photograph and lineup identification procedures

1. Members may be required to stand in a lineup for viewing for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and may result in dismissal if the criminal prosecution is not anticipated.

A book of photos of department employees may be maintained for the purpose of identification of an employee accused of misconduct.

C. Financial disclosure statements

An employee may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain.

D. Polygraph

1. All personnel shall be required to submit to a polygraph if ordered to do so by the Director.
2. The Director may order employees to take a polygraph when:
  - a. The complainant has taken and passed a polygraph concerning the incident. (Unless the complainant is willing to submit to testing but the polygraph operator determines the complainant is not a fit subject due to mental condition, age, or medication).

- b. Regardless if the complainant takes a polygraph or is even known, but the complaint is of such a nature to bring severe discredit and suspicion on the department and cannot be satisfactorily resolved in any other manner.
3. The results of the polygraph examination shall not be used as the sole basis for disciplinary action against any employee.
4. Any polygraph examination given under the provisions of this order shall be administered by a private contractor licensed to administer polygraph examinations in the State of Texas or must be a licensed examiner from another law-enforcement agency. No employee shall administer an examination to another employee.
5. Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination, or deliberately impede the administration of the polygraph shall be grounds for disciplinary action and may result in dismissal from the department.

#### **IV. ADJUDICATION OF COMPLAINTS**

- A. The Director will classify completed internal affairs investigations as:
  1. Unfounded - no truth to allegations.
  2. Exonerated - allegations true, but are the result of adherence to departmental policy or procedure. Exonerated complaints will be reviewed by the Director for policy issues.
  3. Not sustained - unable to verify the truth of the matters under investigation.
  4. Sustained - allegations are true. Complaints will not be classified as sustained unless based on a finding of facts determined during the investigation.
- B. Completed investigations classified as unfounded, exonerated, not sustained, or policy failure will be maintained in internal affairs files in the Director's office. Sustained complaints shall be filed in the individual employee's department personnel file with a copy in the internal affairs files.
- C. Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim, and the officer's prior disciplinary history. It shall be commensurate with the circumstances surrounding the incident and in consideration of the employee's service record and prior sustained complaints.

D. Disciplinary records

1. The department shall maintain a log of all complaints.
2. The complaints and internal investigative files shall be kept in a secure area and shall be maintained state law and city policy.
3. The Director shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy.

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