

# Personnel Complaints

## PURPOSE AND SCOPE

The purpose of this procedure is to provide guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members and employees of this department.

## PERSONNEL COMPLAINTS DEFINED

Personnel complaints consist of any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state or local law.

Inquiries about employee conduct which, even if true, would not qualify as a personnel complaint may be handled informally by a department supervisor and shall not be considered complaints. A department supervisor or investigator may conduct an "incident review" in order to provide a department response to such an inquiry. If during this review, information indicates there may be employee misconduct, then the review will be reclassified as a personnel complaint.

This policy shall not apply to any interrogation, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of an employee in the normal course of duty, by a supervisor or any other employee, nor shall this policy apply to an investigation concerned solely and directly with alleged criminal activities (Cal. Govt. Code 3303(i)).

Personnel Complaints shall be classified in one of the following categories:

**Informal** - A matter in which the complaining party is satisfied that appropriate action has been taken by a department supervisor of rank greater than the accused employee. Informal complaints need not be documented on a personnel complaint form and the responsible supervisor shall have the discretion to handle the complaint in any manner consistent with this policy.

**Formal** - A matter in which the complaining party requests further investigation or which a department supervisor determines that further action is warranted. Such complaints may be investigated by a department supervisor of rank greater than the accused employee or referred to the Internal Affairs Unit depending on the seriousness and complexity of the investigation.

**Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Internal Affairs Unit, such matters need not be documented as personnel complaints, but may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

## AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

### AVAILABILITY OF COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public lobby. Forms may also be available at other government facilities.

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#### **SOURCE OF COMPLAINTS**

- (a) A department employee becoming aware of alleged misconduct shall immediately notify a supervisor.
- (b) A supervisor receiving a complaint from any source alleging misconduct of an employee which, if true, could result in disciplinary action.
- (c) Anonymous complaints and third party complaints should be accepted and investigated to the extent that sufficient information is provided.

#### **ACCEPTANCE OF COMPLAINTS**

A complaint may be filed in person, in writing, or by telephoning the Department. Although not required, every effort should be made to have the complainant appear in person. The following should be considered before taking a complaint:

- (a) Complaints shall not be prepared unless the alleged misconduct or job performance is of a nature which, if true, would normally result in disciplinary action
- (b) When an uninvolved supervisor or the Watch Commander determines that the reporting person is satisfied that their complaint required nothing more than an explanation regarding the proper/improper implementation of department policy or procedure, a complaint need not be taken
- (c) When the complainant is intoxicated to the point where his/her credibility appears to be unreliable, identifying information should be obtained and the person should be provided with a Personnel Complaint form
- (d) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint

#### **COMPLAINT DOCUMENTATION**

Formal complaints of alleged misconduct shall be documented by a supervisor on a personnel complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

A supervisor may elect to document informal complaints as a supervisor or Watch Commander log entry.

When a Personnel Complaint form is completed in person, the complainant should legibly write a detailed narrative of his/her complaint. If circumstances indicate that this is not feasible, the complaint may be dictated to the receiving supervisor. In an effort to ensure accuracy in any complaint, it is recommended that a recorded statement be obtained from the reporting party. A refusal by a party to be recorded shall not alone be grounds to refuse to accept a complaint. Whether handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement. The complainant should be provided with a copy of his/her own original complaint per Penal Code § 832.7.

#### **SUPERVISOR RESPONSIBILITY**

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation. Moreover, supervisors shall also maintain the ability to engage in the interrogation of an employee in the normal course of duty, counseling, instruction, or informal verbal admonishment, or other routine or unplanned contact (Cal. Govt. Code 3303(i)).

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In general, the primary responsibility for the investigation of a personnel complaint shall rest with the employee's immediate supervisor. The Chief of Police or authorized designee may, however, direct that another supervisor investigate it. The supervisor shall be responsible for the following:

- (a) A supervisor receiving a formal complaint involving allegations of a potentially serious nature shall ensure that the Watch Commander, Commanding Officer and Chief of Police are notified as soon as practicable.
- (b) A supervisor receiving or initiating any formal complaint shall ensure that a Personnel Complaint form has been completed as fully as possible. The original complaint form will then be directed to the Commanding Officer of the accused employee, via the chain of command, who will take appropriate action or forward the complaint to the Internal Affairs Unit for further action.
  1. During the preliminary investigation of any complaint, the supervisor should make every reasonable effort to obtain names, addresses and telephone numbers of additional witnesses.
  2. Once immediate medical attention has been provided, photographs of alleged injuries as well as accessible areas of non-injury should be taken.
  3. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the employee's Lieutenant or the Chief of Police who will initiate appropriate action.
- (c) A supervisor dealing with an accused employee shall ensure that the procedural rights of the employee are followed pursuant to Government Code § 3303, et seq.
- (d) When the nature of a personnel complaint relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination, the supervisor receiving the complaint shall promptly contact the Department of Human Resources and the Chief of Police for direction regarding their role in investigation and/or addressing the complaint.

### ASSIGNMENT TO ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature or when circumstances practically dictate that it would impose an unreasonable risk to the Department, the employee, other employees or the public, a supervisor may assign the accused employee to inactive duty pending completion of the investigation or the filing of administrative charges.

### **ADMINISTRATIVE LEAVE**

An employee placed on administrative leave may be subject to the following guidelines:

- (a) Under such circumstances, an employee placed on administrative leave shall continue to receive regular pay and benefits pending the imposition of any discipline
  - (b) An employee placed on administrative leave may be required by a supervisor to relinquish any badge, departmental identification, assigned weapon(s) and any other departmental equipment
  - (c) An employee placed on administrative leave may be ordered to refrain from taking any action as a departmental employee or in an official capacity. The employee shall be required to continue to comply with all policies and lawful orders of a supervisor
  - (d) An employee placed on administrative leave may be temporarily reassigned to a different shift (generally normal business hours) during the pendency of the
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investigation and the employee may be required to remain available for contact at all times during such shift and report as ordered

- (e) It shall be the responsibility of the assigning supervisor to promptly notify the employee's Lieutenant and the Chief of Police
- (f) At such time as any employee placed on administrative leave is returned to full and regular duty, the employee shall be returned to their regularly assigned shift with all badges, identification card and other equipment returned

#### ALLEGATIONS OF CRIMINAL CONDUCT

Where an employee of this department is accused of potential criminal conduct, a separate supervisor or assigned detective shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practical when an employee is formally accused of criminal conduct. In the event of serious criminal allegations, the Chief of Police may request a criminal investigation by an outside law enforcement agency.

An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a civilian and the employee may not be administratively ordered to provide any information to a criminal detective.

No information or evidence administratively coerced from an employee may be provided to a criminal detective.

Any law enforcement agency is authorized to release information concerning the arrest or detention of a peace officer, which has not led to a conviction, however, no disciplinary action, other than paid administrative leave shall be taken against the accused employee based solely on an arrest or crime report (Labor Code § 432.7(b)). An independent administrative investigation shall be conducted based upon the allegations in the report in accordance with department policy.

#### ADMINISTRATIVE INVESTIGATION OF COMPLAINT

Whether conducted by a supervisor or an assigned member of the Internal Affairs Unit, the following procedures shall be followed with regard to the accused employee(s):

- (a) Interviews of accused employees shall be conducted during reasonable hours and, if the employee is off-duty, the employee shall be compensated (Government Code § 3303(a)).
  - (b) No more than two interviewers may ask questions of an accused employee (Government Code § 3303(b)).
  - (c) Prior to any interview, an employee shall be informed of the nature of the investigation (Government Code § 3303(c)).
  - (d) All interviews shall be for a reasonable period and the employee's personal needs shall be accommodated (Government Code § 3303(d)).
  - (e) No employee shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively or be subject to discipline for insubordination. Nothing administratively ordered may be provided to a criminal investigator (Government Code § 3303(e)).
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- (f) Absent circumstances preventing it, the interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview (Government Code § 3303(g)).
- (g) If the allegations involve potential criminal conduct, the employee shall be advised of his/her Constitutional rights pursuant to *Lybarger*. This admonishment shall be given administratively whether or not the employee was advised of these rights during any separate criminal investigation. (Government Code § 3303(h)).
- (h) All employees subjected to interviews that could result in punitive action shall have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual employee's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).
- (i) All employees shall provide complete and truthful responses to questions posed during interviews.
- (j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).
- (k) No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

### **ADMINISTRATIVE SEARCHES**

Any employee may be compelled to disclose personal financial information pursuant to proper legal process; if such information tends to indicate a conflict of interest with official duties, or, if the employee is assigned to or being considered for a special assignment with a potential for bribes (Government Code § 3308).

Employees shall have no expectation of privacy when using telephones, computers, radios or other communications provided by the Department.

Assigned lockers and storage spaces may only be administratively searched in the employee's presence, with the employee's consent, with a valid search warrant or where the employee has been given reasonable notice that the search will take place (Government Code § 3309).

All other departmentally assigned areas (e.g., desks, office space, assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes. (e.g., obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

### **ADMINISTRATIVE INVESTIGATION FORMAT**

Investigations of personnel complaints shall be detailed, complete and essentially follow this format:

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**Introduction** - Include the identity of the employee(s), the identity of the assigned investigator(s), the initial date and source of the complaint.

**Synopsis** - Provide a very brief summary of the facts giving rise to the investigation.

**Summary Of Allegations** - List the allegations separately (including applicable policy sections) with a very brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

**Evidence As To Each Allegation** - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of employee and witness statements. Other evidence related to each allegation should also be detailed in this section.

**Conclusion** - A recommendation regarding further action or disposition should be provided.

**Exhibits** - A separate list of exhibits (recordings, photos, documents, etc.) should be attached to the report.

#### DISPOSITION OF PERSONNEL COMPLAINTS

Each allegation shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel. Complaints which are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.5(c)).

**Exonerated** - When the investigation discloses that the alleged act occurred, but that the act was justified, lawful and/or proper.

**Not Sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

**Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance which was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

#### COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation. In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1. If the nature of the allegations dictate that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed or formally charged within one year of discovery.

Upon completion, the report should be forwarded through the chain of command to the commanding officer of the involved employee(s).

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Once received, the Chief of Police may accept or modify the classification and recommendation for disciplinary action contained in the report.

Within 30 days of the final review by the Chief of Police, written notice of the findings shall be sent to the complaining party. This notice shall indicate the findings, however, will not disclose the amount of discipline, if any imposed. The complaining party should also be provided with a copy of his/her own original complaint (Penal Code § 832.7).

Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the Chief of Police to discuss the matter further.

#### **1020.8.1 CONFIDENTIALITY OF PERSONNEL FILES**

All investigations of personnel complaints, whether originating from a citizen or internally, shall be considered confidential peace officer personnel files. The contents of such files shall not be revealed to other than the involved employee or authorized personnel except pursuant to lawful process.

In the event that an accused employee (or the representative of such employee) knowingly makes false representations regarding any internal investigation and such false representations are communicated to any media source, the Department may disclose sufficient information from the employee's personnel file to refute such false representations (Penal Code § 832.5).

All sustained citizen's complaints shall be maintained for a period of at least five years (Penal Code § 832.5). All internally initiated complaints shall be maintained at least two years (Government Code § 34090 et seq.).

Sustained complaints shall be maintained in the employee's personnel file. Complaints which are unfounded, exonerated or not sustained shall be maintained by the Internal Affairs Unit apart from the employee's personnel file.

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