

**DEPARTMENT GENERAL ORDER 09-01**

OFFICE of the CHIEF OF POLICE  
REPLACES: General Orders 07-24  
SOP 502.10.00

DATE: January 12, 2009

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**INTERNAL AFFAIRS**

**I. PURPOSE.**

To ensure the integrity of the Police Department and maintain the confidence of the public, all complaints against this department and/or its employees will be thoroughly investigated, regardless of the source. This shall be accomplished in an expeditious, thorough, and equitable manner, and will endeavor to ensure an objective and impartial determination of an employee's conduct while identifying potential remedies to preclude similar occurrences in the future.

**II. DEFINITIONS.**

Citizen Complaint Form- A single page form utilized to document complaints against sworn and non-sworn department employees.

Complaint - An allegation of misconduct which, if proven to be based on truth, could result in disciplinary action against a department employee.

Employee - All sworn and non-sworn department members.

Formal Discipline - Disciplinary actions initiated by the department which become permanently incorporated in an employee's personnel file.

Formal Investigation - A process initiated by the Chief of Police to investigate allegations of serious misconduct by one or more department employees.

Informal Investigation - A process initiated by a supervisor, or platoon or division commander to investigate minor allegations of misconduct by subordinate employees.

Misconduct - A violation of law or department policy, procedure, or regulation.

Minor Allegation - Misconduct not affecting the overall mission of the department, that if proven true, will result in the imposition of summary discipline. Examples of such conduct are tardiness, minor rules infractions, etc.

Relief From Duty - The temporary release of an employee from active duty pending the outcome of a departmental investigation. Such relief from duty excludes the employee from performing any official function and may be with or without pay.

Remedial Training - Training provided to correct deficiencies in job performance or conduct. This training will be provided by the department and scheduled as part of an employee's regularly assigned tour of duty.

Summary Discipline - Admonishment, such as a written or oral reprimand, which does not become a part of an employee's permanent personnel file.

Suspension - Disciplinary action placing an employee in either a pay/non-pay, non-duty status for a specified period of time.

Termination - The dismissal of a department employee.

### III. SOURCE AND TYPE OF COMPLAINTS.

All complaints pertaining to department policies and procedures, or those that allege employee misconduct, will be documented via a Citizen Complaint form and subsequently investigated. Complaints will be accepted from any source both within or external to the department and shall also include anonymous sources. Individuals desiring to file a complaint may do so in person, via mail, telephone, or fax, or through the utilization of a third party. However, complainants shall be uniformly encouraged by supervisory and command personnel to submit their complaint in person and in writing.

Anonymous complaints that contain a serious allegation against a department employee shall be reviewed by the Commander of the bureau which initially received the complaint and then forwarded to the Chief of Police. The complaint shall then be judged as to the seriousness of the allegation, the apparent credibility and motivation of the complainant, and the potential for a complete and equitable investigation.

Anonymous complaints having sufficient information to support an investigation shall be assigned to an investigative team based on the same criteria as attributable complaints. Those anonymous complaints which do not have sufficient information to support an investigation shall be maintained in a separate file within the Office of the Chief of Police for a period of one year, at which time the complaint shall be destroyed if no further information is forthcoming.

Complaints in which an employee cannot be identified will be classified as “closed” if, after ninety (90) days, no additional information identifying the employee has been forthcoming.

Where a complaint concerns a law the department must enforce, or is a matter the department has no jurisdiction over or cannot change, the investigating officer will explain the situation and either forward the complaint to the appropriate city department or refer the complainant to the person or agency which has authority over the disputed policy or procedural area.

Internal affairs will also conduct an investigation at the request of any department employee who feels threatened by a false accusation or contrived situation involving false evidence or testimony. Employees should report such concerns to their immediate supervisor who shall transmit same upward through the proper chain of command.

#### A. Type of Complaints Assigned to Line Supervisors

Complaints alleging minor misconduct on the part of an employee (i.e. rudeness, poor driving habits, slow response, etc.) will generally be directed to the employee’s immediate supervisor or, in his absence, the subordinate’s Platoon or Division Commander. It shall then be the supervisor’s responsibility to ensure the complaint is properly documented and investigated. Once a determination has been made, the supervisor shall assign a final disposition to the Citizen Complaint form and make a recommendation for disciplinary action, if any. The completed form will then be forwarded to through the chain of command to the Bureau Commander who shall forward it to the Office of the Chief of Police.

Supervisory personnel shall also initiate and conduct investigations when they personally observe or learn of misconduct falling within the scope of their authority. Supervisors shall not look to higher authority for the initiation of such actions.

In order to accomplish their assigned responsibility, any supervisor or command rank officer shall possess the authority to relieve an employee from duty when it appears that such action is in the best interests of the Police Department. Should such a situation occur, the supervisor or commander will immediately notify the appropriate Bureau Commander and the Chief of Police and apprise them of the situation.

In addition, a supervisor can order a subordinate employee to provide a sample for urinalysis or submit to a breathalyzer test where there are reasonable suspicions to believe the employee is under the influence of drugs or alcohol.

Such actions shall be documented by a Citizen Complaint form or if the circumstances do not warrant the use of such document, an inter-departmental memorandum.

#### B. Type of Complaints Assigned to Internal Affairs

Complaints alleging serious misconduct on the part of an employee shall be assigned to internal affairs personnel for investigation. Examples of serious types of misconduct include, but are not limited to:

- 1). Violations of law.
- 2). Corruption.
- 3). Misuse of force.
- 4). Civil rights violations.
- 5). Abuse of power.
- 6). Substance Abuse.

#### C. Type of Complaints Assigned to the City Manager

Complaints against the Chief of Police will be referred to the Commander of the Investigations and Support Bureau who shall notify the City Manager as soon after the receipt of the complaint as possible. Relevant information and/or supporting documentation will then be forwarded to the City Manager, who shall have the responsibility to investigate the complaint and determine its validity. To accomplish this mission, the City Manager may elect to investigate the complaint himself, utilize command personnel from the police department, or arrange for an independent review by an investigative team from an outside law enforcement agency.

Department employees may also submit a complaint directly to the City Manager, however they shall be required to notify the Chief of Police via the chain of command prior to their initiating such action.

#### D. Notification of Chief of Police

Except in those instances where the Chief of Police may be the target of a complaint or investigation, the Chief of Police shall be notified in a timely manner of all complaints against department personnel. In the case of allegations of minor misconduct, the notification process may be verbal. In those cases involving more serious allegations, written documentation will be referred to the Office of the Chief of Police for investigation. Notification will generally be made by a Bureau Commander or his designate.

The City Manager shall be responsible to notify the Chief of Police of any complaints and/or investigation where the Chief is the focus of the action.

#### IV. INTERNAL AFFAIRS FUNCTION.

The internal affairs function shall reside within the Office of the Chief of Police. The Chief shall have full authority to conduct, direct, and/or authorize formal internal affairs investigations, while maintaining oversight responsibility for informal investigations. Further, that while the latter will generally be the operational responsibility of the department's command and supervisory staff, such personnel shall be answerable to the Chief of Police and will be tasked to provide verbal status reports on current investigations, as well as completing necessary documentation and forwarding the files for executive review. Acting on behalf of the Chief of Police, the commander of the Investigations and Support Bureau shall maintain a file of internal investigations cases separate from other records and in a secure location.

##### A. Investigative Guidelines

- 1). Personnel shall be interviewed at reasonable hours, preferably when the accused is on duty and during daylight hours. However, should the exigencies of the investigation dictate otherwise, interviews may be conducted at a time determined most suitable by the investigation team.
- 2). The interview shall take place at a location designated by the investigating team, usually a police department facility.

- 3). The name of the charging officer, complainant, or citizen making the charge shall be disclosed if this information is known to the investigators conducting the internal affairs inquiry. If this information is not known, this shall also be disclosed. Disclosure of the complainant's name will not be required if revealing the name may jeopardize the investigation; however, once the investigation is complete and the issue becomes the subject of a grievance or disciplinary action, the name(s) of the complainant(s) will be revealed at the request of the accused.
  
- 4). The accused shall be informed in a confidential manner of the substance and nature of an investigation (whether administrative or criminal) following a complaint and prior to an interview, and shall be provided with a written copy of the complaint and their rights and responsibilities relative to the investigation. The delivery of the notification will be documented in writing by an "IA Case - Officer Rights Acknowledgement" form. The supervisor or commander issuing said rights and responsibilities will attach the completed form to the Citizen Complaint Receipt

If it is known that the employee being interviewed is a witness only, he/she shall be so informed. If the employee being questioned may be the subject of the investigation, this fact shall be disclosed prior to any interview questions.

Employees shall also be advised that statements obtained via interview, along with other pertinent information, will be used to determine if redirection through training or disciplinary action is warranted.

If they are not already aware of the proceedings, the investigating officer(s) may inform the employee's Bureau Commander, Platoon or Division Commander, and immediate supervisor of the investigation. This shall generally be accomplished in a manner similar to the method in which the employee was notified, however, contingent upon the circumstances surrounding an investigation, such notifications may be delayed or dispensed with entirely.

- 5). The interview shall be completed as soon as possible, with the actual interview time limited as follows:

On-Duty and Off-Duty Personnel - Maximum of three, three-hour sessions within any twenty-four hour period. There shall consistently be a minimum of a one hour break between the sessions, and in no event shall a combination of the employee's assigned tour of duty coupled with interview periods exceed twelve hours.

In all instances, in addition to the one hour break provided, time shall be allotted for personal necessities, telephone calls, and such rest periods as are reasonably necessary.

- 6). Employees shall not be subjected to offensive language, coercion, threats, or promise of reward as an inducement to answering questions. Yet, it should be noted that nothing herein is to be construed to prohibit the investigating team from informing the accused that his conduct could become the subject of disciplinary action.
- 7). The complete interview of the employee shall be recorded mechanically or by stenographer. There will be no "off-the-record" conversation except by mutual agreement. Nothing discussed "off-the-record" during the interview shall be used as part of the investigation, official file, or be submitted for official action. All recesses called during the interview shall be noted in the record.
- 8). Employees must, as a condition of continuing employment, truthfully answer any and all questions in conjunction with an administrative investigation in regard to the performance of their official duties or fitness for duty. This shall apply whether the employee is a participant or a witness to the matter. The determination of whether a question is relevant to the investigation shall be made solely by the officer(s) conducting the interview.
- 9). Officers conducting interviews in regard to an internal affairs investigation shall not be required to advise department employees of their constitutional rights per the Miranda Decision. As such, should an employee refuse to answer questions during an interview session, or otherwise provide false or misleading answers, the employee may be subject to disciplinary action, up to and including dismissal.

Any required statement can be used against an employee in a disciplinary or administrative proceeding, but those statements secured via a formal internal affairs interview process shall be inadmissible, and may not be used, in any subsequent criminal action where the employee is target of the criminal investigation.

- 10). Employees under investigation shall be given an exact copy of any written statement he may execute, or if the questioning has been mechanically or stenographically recorded, the employee shall be given a copy of such recording or transcript per his request. Employees may be permitted to provide their own recording devices.
- 11). The department shall afford an opportunity for the accused, if he/she so requests, to consult with legal counsel prior to being questioned, provided the interview is not delayed more than three hours. Legal counsel, or another person of choice, may not be physically present during the interview, nor shall the accused be permitted to maintain telephone or other type of contact with said representative.
- 12). In cases involving alleged criminal conduct, the investigating team shall maintain close liaison with the St. Louis County Prosecuting Attorney's office or other prosecuting body. Based on available evidence, the investigating team will make a decision to:
  - a. Arrest the suspected employee immediately.
  - b. Obtain a warrant prior to the initiation of an arrest.
  - c. Delay prosecutorial action pending further investigation.

In those instances where an internal affairs investigation may be conducted parallel with a criminal investigation the IA investigating team need not wait until all criminal matters are resolved before it initiates and/or concludes its investigation.

- 13). All formal internal affairs investigations will be classified as confidential and no portion of the investigation will be reproduced or released to any person without the authorization of the Chief of Police.
- 14). Internal affairs reports shall be separate and distinct entities from police incident reports which may be initiated to detail criminal activity arising out of the same investigation.

#### V. AUTHORITY OF CHIEF OF POLICE.

The Office of the Chief of Police shall be invested with exclusive and complete authority to authorize and initiate such formal internal affairs investigations that are deemed necessary. In this regard, the Chief of Police reserves the right to conduct such investigations personally, assign command and/or investigative staff to serve as an internal affairs team operating under his direct control, or to arrange for an independent review by an investigative team from an outside law enforcement agency. However, for the purpose of conducting a formal investigation and issuing related orders, department

members and/or others assigned as an internal affairs investigator shall be considered a designee of the Chief of Police and granted full cooperation.

The Chief of Police shall closely monitor each and every formal internal affairs investigation and tender such orders and suggestions as deemed appropriate.

Once a formal internal affairs investigation is complete, the Chief of Police shall review the investigative report and accompanying documentation/evidence. At that time, the Chief of Police may consult with city management and legal staff, interview the accused and/or witnesses, and solicit recommendations/advice from the departmental command staff prior to rendering a written determination on the case. However, irrespective of input from other sources, the Chief of Police shall retain full authority and responsibility to institute disciplinary action as the circumstances and/or evidence warrant.

The Chief of Police will notify the appropriate Bureau and/or Platoon/Division Commanders of the final disposition of each formal internal affairs investigation, except in those cases where disclosure might compromise related investigations.

#### VI. INVESTIGATIVE TIME CONSTRAINTS.

All reasonable efforts will be made to resolve formal internal affairs investigations within ninety (90) calendar days of the date the original complaint was initiated. Informal investigations shall be concluded within ten (10) calendar days of the date the original complaint was initiated. Complainants will be apprised of the preceding time frames during their initial contact with the department and the investigating officers will issue periodic reports to the complainant on the status of their case.

##### A. Extension Provisions

The Chief of Police, acting on the request of the investigating team, may extend the investigation period for formal internal affairs investigations by an additional thirty (30) days as warranted. Further extensions covering a similar period of time may be granted as necessary.

The individual Bureau Commanders, may extend the investigation period for informal internal affairs investigations by an additional seven (7) days as warranted. Further extensions covering a similar period of time may be granted as necessary.

The complainant will be notified of any extensions.

## VII. CASE STATUS REPORTS.

During the course of all formal internal affairs investigations, the investigating team shall issue periodic status reports to the complainant in regard to the investigation. These may be either verbal or written and will be included in the investigative file. At the conclusion of all internal investigations (both formal and informal) the Chief of Police or his designate, acting in response to the facts developed in the case, will notify the complainant (in writing) of the final disposition of the investigation.

## VIII. EMPLOYEE RIGHTS AND RESPONSIBILITIES.

Employees shall be required to answer questions relating to the performance of their official duties or relating to their fitness for duty in all administrative investigations. Failure or refusal to answer questions, or providing false and/or misleading information in those instances can result in disciplinary action, up to and including dismissal. An "Interview Instruction Form" will be used to apprise employees of their rights per *Garrity* in those instances where the Chief of Police directs a command rank officer or investigator to conduct a formal internal investigation of a serious, or alleged criminal violation.

Any required statement can be used against an employee in a disciplinary action or administrative proceeding. Voluntary statements, confessions, or spontaneous utterances made by an employee in an internal affairs investigation which occur outside the scope of official interview and interrogation processes can be used in a criminal proceeding or action where the employee is the object of the investigation. Should incriminating statements or information be obtained while an employee is under *Garrity* or official duress, the statements or information so obtained shall be inadmissible in any subsequent criminal proceeding.

An employee under investigation may request or seek a blood, urine, psychological, or medical examination if it is believed that such an examination would be beneficial to his/her case. The cost of such examinations, which are performed independently of those requested by the department, shall be borne solely by the employee.

## IX. TECHNICAL EXAMINATIONS AND/OR DISCOVERY PROCEDURES.

In order to facilitate an investigation, the Chief of Police may order any member of the department to submit to various technical examinations and/or discovery procedures.

### A. Deception Examinations

Employees may be required to submit to deception examinations, such as the polygraph or computerized voice stress analyzer (CVSA). However, deception examinations shall be employed only after all other reasonable investigative leads have been exhausted. Should an employee refuse to submit to a

deception examination, the employee shall be subject to disciplinary action, including dismissal.

#### B. Medical Examinations

The Chief of Police can also order any member of the department to submit to any medically acceptable technique to secure non-testimonial evidence including, but not limited to: chemical, mechanical, and/or biological means (Ex. urine, blood, DNA samples). Should an employee refuse to submit to a medical examination, the employee shall be subject to disciplinary action, including dismissal.

#### C. Administrative/Photo Line-ups

An employee may be compelled to stand in an administrative line-up. A photo line-up utilizing photographs on file in the employee's personnel file may precede a physical line-up. Should the employee's appearance at the time of the alleged incident differ from that of the file photograph, the employee may be required to pose for updated photographs. Failure to stand in an administrative line-up may result in disciplinary action against the employee, up to and including dismissal.

#### D. Search and Seizure

Personal property shall not be subjected to unreasonable or unlawful search or seizure, and in the case of a criminal investigation not without consent, or a duly authorized search warrant where required by law.

Should personal property be seized as evidence or to further the investigative process, the employee shall be provided a receipt for the property except in those instances where the property constitutes contraband.

Departmental property may be searched at any time even if it is assigned to or used exclusively by a single person. Department property includes, but is not limited to: vehicles, desks, files, computers, cabinets, and storage lockers.

The investigating officer(s) may, at any time during the course of an investigation, order an employee to deliver to the investigating team any property, document, file, or other item which belongs to the department.

#### E. Financial Disclosure

When financial matters are at issue or need to be verified, department employees may be required to provide those personal financial records which are related to or directly pertain to the investigation. Failure of an employee to comply with the requested disclosure may result in disciplinary action, up to and including dismissal.

#### X. DOCUMENTATION OF INTERNAL AFFAIRS INVESTIGATIONS.

Complaints registered against the department or its employees shall initially be recorded on a Citizen Complaint Receipt form by the receiving supervisor or commander. This shall include:

- A. Name of complainant or anonymous.
- B. Complainant's home address and phone number.
- C. Complainant's business address and phone number.
- D. The location of the incident.
- E. The date and time of the incident, along with IA Case Number.
- F. The nature of the complaint.
- G. Identity of employee(s) involved.
- H. Identity, address and phone number of any witnesses.
- I. Name of investigating officer.

Those complainants who appear in person to file a complaint shall be provided with a copy of the Citizen Complaint Receipt form which shall act as a receipt acknowledging that the department has received the complaint and will investigate same. The receiving supervisor or commander will retain the original Citizen Receipt Summary form which shall then serve as the department's internal investigations report for allegations of minor misconduct and as an investigative foundation concerning allegations of serious misconduct. Individuals who file complaints via mail or telephone will also receive a copy of the Citizen Complaint form as a receipt. In such instances a copy of the form will be mailed to the complainant's residence or business, whichever may be most appropriate.

Each and every complaint will be assigned an internal affairs case number, which shall contain specific numerical designators (i.e. IA 98-1, IA 99-2, IA 99-5, etc.). Internal affairs case numbers shall commence on January 1<sup>st</sup> of each calendar year and run from one to infinity. Individual case data will be entered on a departmental Internal Affairs log sheet which shall be maintained by the Commander of the Investigations and Support Bureau, yet also be accessible to the Commander of the Field Operations Bureau. Supervisors and/or mid-level commanders who receive a complaint will provide the necessary information to their proper bureau commander, who shall then enter same on the log and draw a case number.

Each complaint will be adequately investigated and a Citizen Summary Complaint Form prepared. An investigative report shall also be prepared in those circumstances where the seriousness of the allegations warrant same, and this report, (supplementing the IA Complaint and surrounding facts) along with any attached documentation, will be subsequently forwarded to the Chief of Police within the designated time frame.

Should the “finding of fact” indicate a conclusion of “exonerated, unfounded, or not sustained,” case records shall be entered in the internal affairs files only, with no concurrent entry into an employee’s personnel file. No copies shall be forwarded to any other city department, except when necessary to defend the city against a civil claim.

Should the “finding of fact” indicate a conclusion of “sustained,” case records shall be entered into the internal affairs files, with an incident summary listing disciplinary action, being placed into the employee’s personnel file.

The disposition approved and/or determined by the Chief of Police in all formal internal affairs investigations shall be contained in a letter to the employee which shall set forth the disposition and the ultimate facts which support the disposition. If termination is imposed, the dismissed employee will be provided with a termination letter which includes:

- A. A statement citing the reason for dismissal.
- B. The effective date of the dismissal.
- C. A statement as to how the dismissal will be reflected in the employee’s personnel record.

Information regarding the dismissed employee’s fringe and/or retirement benefits will be issued by the city’s personnel staff in a separate document or statement.

Informal internal affairs investigations which may be handled by a supervisor, or Platoon or Division Commander shall not require a separate report beyond the Citizen Complaint Summary form. This will contain a summary of the of the complaint and surrounding facts, a “finding of fact” and any disciplinary measures either meted out or recommended. The Platoon and Bureau Commander must approve any disciplinary action resulting from an informal internal affairs case prior to its implementation. The Chief of Police will also be consulted and advised of recommended disciplinary measures in such cases. The Chief of Police shall have undisputed authority to alter proposed disciplinary actions, concur with the proposed recommendations, or to order additional investigation.

Once a decision has been reached in informal cases, the appropriate supervisor or commander will verbally inform the employee of the disposition of the complaint and the facts which support the disposition. Data concerning disciplinary measures and the notification of the employee shall be entered onto the Citizen Complaint Summary form and the document forwarded to the Office of the Chief of Police, either electronically or in hard copy form.

The Commander of the Investigations and Support Bureau shall maintain internal affairs case files that shall be designated as such, distinct and separate from other administrative and personnel records. Such files will be secured from unauthorized access at all times.

Internal investigative reports shall be considered personnel records and pursuant to Section 610.021 (3) RSMo, will be properly closed to public disclosure. Should an internal investigation lead to criminal charges being issued against an employee, the formal investigative reports and supporting evidence shall serve as part of the public record and be subject to such disclosure as the law permits.

#### XI. WRITTEN CONCLUSION OF FACT.

At the conclusion of each investigation into a complaint, a written finding of fact will be issued in conjunction with the submission of an investigative report and all supporting documents to the Office of the Chief of Police. The investigative report shall detail the various facets and points of the investigation, and will provide a finding of fact in regard to the final disposition of the complaint. Available options in disposition are listed as follows:

- A. Sustained - Evidence sufficient to prove allegations.
- B. Not sustained - Insufficient evidence to either prove or disprove allegations.
- C. Exonerated - Officer's actions were lawful and proper.
- D. Unfounded - Allegations have no bearing in fact.

A copy of the written finding of fact shall be provided to both the complainant and the accused.

With the exception of those complaints involving minor allegations, the investigating authority shall generally not include disciplinary recommendations in regard to the findings of fact.

#### XII. DISCIPLINARY ACTION.

The administration of discipline resulting from internal affairs investigations shall be applied in as consistent manner as possible. The forms and severity of discipline will generally be incremental in nature and shall adhere to the policy and procedural guidelines outlined in the applicable general order.

#### XIII. EMPLOYEE APPEAL PROCESS.

Disciplined employees may file a written appeal in regard to the action in accordance with the procedural guidelines established in the appropriate general order.

XIV. ANNUAL STATISTICAL SUMMARY.

The Chief of Police shall direct that an annual statistical summary be prepared, based on the records of complaints and internal affairs investigations. This summary will detail the number and type of complaints/investigations, the findings of fact (to include final dispositions and the percentage each type of disposition comprises of the whole), the number of personnel disciplined, a comparison with internal investigation figures compiled in prior years, and any other such data as may be deemed pertinent. The statistical summary shall then be reviewed to determine if changes in training and/or department policy are warranted.

Copies of the annual statistical summary shall be made available to both the employees of the department and the general public. Where possible, the latter shall be accomplished via the city newsletter.

XV. DISSEMINATION OF PUBLIC INFORMATION.

To enhance the department's community relations effort, information on how a citizen may file a complaint against a department employee, and the subsequent investigative process, will be placed on one or more mediums the City uses to disseminate information to its residents. This shall include options such as the city newsletter and the City of Clayton website. A copy of the internal affairs annual report and other similar related material shall also be posted for public consumption and employee review.

Should an inquiry be received by a department employee on the proper procedure relative to filing a complaint, the employee will provide the requested information or refer the individual to someone who can satisfy their need.

BY ORDER OF:

THOMAS J. BYRNE  
Chief of Police

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