

300.16 INTERNAL AFFAIRS

A. The Chief of Police or his designee is responsible for the internal affairs function. The purpose of the internal affairs function is to investigate all allegations of misconduct received from any source within or from outside the Hudson Oaks Police Department.

1. The Chief of Police or his designee shall:

- a. ensure that all personnel complaints are assigned an Internal Affairs Control Number;
- b. ensure that investigations are thorough and accurate;
- c. ensure that investigations are completed without delay;
- d. maintain the confidentiality of the internal affairs investigations and records; and
- e. have the responsibility to investigate certain types of complaints.

2. Each complaint shall be reviewed and then assigned to a Supervisor for the purpose of investigation. The Police Lieutenant shall have the responsibility for investigating the following types of complaints:

- a. complaints against members of the Department holding the rank of Sergeant;
- b. corruption;
- c. excessive use of force;
- d. civil rights violations;
- e. criminal misconduct;
- f. intoxication on duty; or
- g. sexual harassment.

3. A Supervisor may be assigned and have the responsibility for investigating the following types of complaints:

- a. insubordination;
- b. sleeping on duty;
- c. disrespect toward a citizen;
- d. absence without official leave; or
- e. neglect of duty.

4. The immediate Supervisor of the member against whom the complaint has been filed may be responsible for the investigation of minor violations such as;

- a. harassment;
- b. discourtesy;
- c. failure to take prompt action; or
- d. minor misconduct.

5. The Chief of Police shall be notified immediately in the event a Department employee is:

- a. arrested;
- b. charged with a criminal offense; or
- c. found to be under the influence of alcohol or drugs while on-duty.

6. The Chief of Police shall be notified of all complaints made against members of the Department.

B. Internal Affairs File Maintenance and Security

1. The Chief of Police or his designee is responsible for the following files:

- a. allegations of employee misconduct;
- b. administrative and criminal investigative reports; and
- c. non-formalized inquiries into minor citizen complaints.

2. These files shall be segregated from all other Departmental files. These files shall be designated as confidential and secured at all times.

3. Access to the files shall be limited to the following:

- a. Chief of Police;
- b. Patrol Commander;
- c. City Attorney, or members of his staff; and
- d. Affected employee.

4. Review of the files by any other personnel either within or outside the Department shall be permitted only with the authorization of the Chief of Police.

C. Complaints

Filing

1. A person wishing to file a complaint should be directed to the Police Department and a Supervisor. The Supervisor shall give the complainant a Hudson Oaks Police Department Personnel Complaint form and a copy of the "Police Employee Complaint Procedure" brochure.

a. If the complainant is unable to come to the Police Department, a personnel complaint form and brochure may be sent through the mail.

2. The complainant will be required to return the complaint to the Police Department in person and sign the form in the presence of a Police Department Notary Public.

3. The complainant may be requested to take a polygraph test.

D.
Processing

Complaint

1. Once a formal complaint has been received the employee shall be informed, in writing, of the allegation/complaint against him. In addition, the employee shall be informed of his rights and responsibilities in regards to the investigation. Each employee shall be given the Garrity Warning before requiring a response from employees suspected of violations of administrative rules and regulations requiring a formal investigation. The Garrity Warning informs the employee:

a. They are required to respond to the allegations or submit to tests or examinations regarding the allegations of violations of administrative rules or regulations.

b. Failure to respond or submit can result in disciplinary action up to and including termination.

c. Such questions, tests or examinations will be narrowly and specifically related to their performance of duties or fitness for office.

d. Such statements, tests or examinations results cannot and will not be used against the employee in a criminal matter.

2. The Department shall investigate all complaints against the agency or its employees. Complaints shall be classified and handled as follows:

a. **Formal Complaint** - a complaint received, in writing, on the Department complaint form and shall be forwarded to the Police Lieutenant.

b. **Verbal Complaint** - a complaint received verbally from a citizen that is of a minor nature and should be disposed of by the immediate Supervisor of the employee. The Supervisor shall inform the Police Lieutenant, in writing, the nature and disposition

of the complaint. If the verbal complaint is of a more serious nature, the Supervisor should encourage the complaining party to make a formal complaint.

c. **Telephone Complaint** - a complaint received over the telephone shall be handled in the same manner as a verbal complaint.

d. **Anonymous Complaint** - anonymous complaints of misconduct will be courteously accepted. However, an anonymous complaint will be investigated only at the Chief's discretion.

1) If, during the course of an investigation of a verbal, telephone or anonymous complaint, a serious breach of conduct is discovered, the investigating Supervisor shall immediately notify the Police Lieutenant.

3. Any citizen making a formal complaint against the agency or its members shall be provided with:

- a. a copy of the completed Departmental complaint form;
- b. a letter or verbal communication from the Department acknowledging receipt of the complaint;
- c. information on the status of the investigation; and
- d. written notice advising final disposition of the complaint.

4. The investigative process shall begin within one working day of the receipt of the formal complaint.

a. Progress reports shall be submitted to the Chief of Police on a weekly basis by the investigating Supervisor.

b. Internal investigations shall be completed within thirty (30) days of initiation.

1. Any extension to the thirty (30) day limit must be requested, in writing, by the investigating Supervisor and approved by the Chief of Police.

E. Special Examination

1. An accused employee may submit a written request for a Behavioral Cause Investigation or breath, blood, urine, polygraph test or physical examination if he believes such would be beneficial to his defense. The Department may require such tests of the accused employee. The results of these tests would be limited to administrative use except as provided by law.

2. Any member of the Department accused of a criminal offense or any other incident that might seriously affect his future with the Department may be asked to submit to a polygraph examination but he shall not be required to submit to the examination.

a. When the polygraph is used, the accused will be informed of the questions to be asked prior to taking the test. The polygraph examiner may add response questions of his choice but these response questions will be common in nature and not related to any other incident.

b. Refusal to take a polygraph examination by the accused will not be a factor in weighing the evidence in determining guilt.

3. An internal affairs investigation may require that an employee submit to certain specific examinations. These examinations may consist of laboratory or medical examinations, photographs of the employee, a live line-up with an employee participating, or disclosure of the employee's financial records. Other examinations, as ordered by the Chief of Police, may also be necessary. All such orders shall be issued by the Chief of Police, in writing, and given to the employee.

a. Medical examinations must be performed under the supervision of a licensed physician. These tests may involve the taking of blood, body fluids, removal of body hairs or fingernail clippings and scraping.

b. Photographs may be taken of the employee to show to complainants or witnesses. If the photographs are to be used for identification purposes, they must be shown in accordance with the rules of evidence.

F. Classification of Allegations

1. Except in cases of investigations of the Use of Force, the investigative findings will be classified in one of the following ways:

a. **Unfounded:** the evidence tends to disprove the allegation of misconduct.

b. **Not Sustained/Insufficient Evidence:** there is insufficient evidence, either to prove or disprove the allegation of misconduct.

c. **Sustained/Improper Conduct:** the evidence tends to support the allegation of misconduct.

d. **Exonerated/Proper Conduct:** the evidence tends to support factual occurrence, but conduct does not appear improper.

e. **Misconduct Not Based On Complaint - Sustained:** substantiated misconduct, not alleged in the complaint, but disclosed by the investigation.

f. **Policy Failure:** the allegation is true; the action of the agency or the Officer was consistent with agency policy.

G. Concluding Administrative Duties

1. If one or more of the allegations is sustained, the complainant shall be so informed at the conclusion of the disciplinary process.

2. At the conclusion of all administrative investigations, the following shall occur:

a. the Chief of Police or his designee shall inform the complainant, by letter, the findings; and

b. the affected employee may review copies of all investigative reports to be placed in his internal affairs file.

3. No record of any allegation of employee misconduct, excluding finalized disciplinary action, will appear in the employee's personnel file maintained in the Police Department and City Personnel files.

4. All records of all allegations of employee misconduct will be permanently filed in the Chief of Police Office Internal Affairs file and copies of finalized disciplinary action shall be retained in the affected employee's Police and City Personnel files.

H. Actions

Administering

Disciplinary

1. Whenever an employee violates any provision of the Department General Orders, the Rules and Regulations of the City of Hudson Oaks or any criminal laws, he shall be disciplined in accordance with Chapter 143 of the Local Government Code.

2. Upon the receipt of a sustained allegation of misconduct the Chief of Police or his designee shall forward the completed report to the affected employee's Supervisor for review and recommendations. The supervisor will then forward the report up the chain of command for their review and recommendations. The completed report, including the recommendations, will be forwarded to the Chief of Police for final disposition.

3. In accordance with Chapter 143, Subchapter D. Disciplinary Actions, Section 143.051, Cause for Removal or Suspension, Officers may be removed or suspended for the following violations:

a. conviction of a felony or other crime involving moral turpitude;

b. acts of incompetency;

c. neglect of duty;

d. discourtesy by an employee to the public or to fellow employees in the line of duty;

- e. acts of an employee showing a lack of good moral character;
- f. drinking of intoxicants while on duty, or intoxication while off-duty;
- g. conduct which is prejudicial to good order;
- h. refusal or neglect to pay just debts;
- i. absence without leave;
- j. shirking duty, or cowardice; or
- k. violation of any of the rules, regulations or special orders of the Police Department.

4. If an investigation of Officer misconduct results in the dismissal of that Officer, he shall be provided with the following information:

- a. a statement citing the reason for dismissal;
- b. the effective date of the dismissal;
- c. a statement of the status of fringe and retirement benefits after dismissal; and
- d. a statement as to the content of the Officer's employment record relating to the dismissal.

5. There are several forms of Departmental discipline that may be used when dealing with employee misconduct. Minor violations should be dealt with by the immediate Supervisor of the employee. The types of discipline that may be used by the Supervisor are:

- a. **Training** - this is the preferred method to be used when the Supervisor feels that the employee's behavior, or work habits, can be changed, or more effectively dealt with, through training. Supervisors will be required to coordinate the training through the Department.
- b. **Structured Counseling Session** - this method is used to document undesirable work performance, or behavior that may appear to be a recurring problem. The Department structured form shall be used for this purpose and copies are to be forward to the Police Lieutenant.
- c. **Oral Reprimand** - this method is to be used to more strongly emphasize the seriousness of the violation and/or the need for further avoidance of the violation. Oral reprimands will be documented by the Supervisor and forwarded to the Police Lieutenant for placement in the employee's personnel file.
- d. **Written Reprimand** - this method is used to document undesirable work performance or behavior. The written reprimand is used when the Supervisor feels an oral reprimand is inadequate to accomplish the stated purpose. The employee should acknowledge receipt of the written reprimand and a copy of the

reprimand will be forwarded to the Police Lieutenant for placement in the employee's personnel file.

6. A Supervisor may relieve an employee from duty whenever he believes the person's continued presence is dangerous to himself or others, or that his presence constitutes interference with the effective operations of the Department. Such a relief from duty shall be reviewed by the Chief of Police at his earliest convenience and the appropriate action taken.

7. If an Officer is suspended he shall be required to surrender his Police identification, Police badge and Department weapon.

8. All Officers shall have the right of appeal in accordance with Chapter 143 of the Local Government Code.

I. Behavioral Cause Investigation

1. The Chief of Police may order a Behavioral Cause Investigation to be initiated whenever he feels it is in the best interest of the employee and/or the Department.

2. Behavioral Cause Investigation is based upon the nature of the complaint and/or the accused employee's disciplinary record.

3. The Behavioral Cause Investigation shall be conducted by a licensed Ph.D. Psychologist furnished by the Department.

4. The testing procedure will be approved by the psychologist and the Chief of Police.

5. The following employees may be ordered to undergo a Behavioral Cause Investigation:

a. Those who receive complaints which are sustained and/or receive repeated complaints of a similar nature; or

b. Those who exhibit behavior which may be indicative of severe emotional disturbance.