

	ROSENBERG POLICE DEPARTMENT	
	General Order 2.04 Internal Investigation Process	
	Effective Date: 05-13-2013	Replaces: General Order 330
	<p style="font-size: 1.5em; color: blue;">[Signature]</p> Approved: Chief of Police	
	Reference: TBP 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, and 2.10.	

I. POLICY

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. 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.

II. PURPOSE

To describe procedures for making complaints against department personnel, for investigating complaints, and to list and define the dispositions of complaints.

III. DEFINITIONS

A. *Complaint*: Any allegation of conduct by an employee which is:

1. Unconstitutional;
2. Unlawful; or
3. In violation of Departmental General Orders or City of Rosenberg Policies and Procedures Manual.

B. *Level I Complaints*:

1. *Crime*: Complaint of involvement in criminal conduct, such as bribery, theft, perjury, etc.

2. *Inappropriate use of force*: Complaint that the use of threatened use of force against a person was inappropriate under the circumstances.
3. *Unlawful Arrest/Detention*: Complaint that the restraint of a person's liberty occurred without probable cause, reasonable suspicion or other legally valid reasons.
4. *Entry*: Complaint that entry into a building or other property was improper and/or that excessive damage was caused to the property to gain entry.
5. *Search*: Complaint that the search of a person or property was illegal, improper or unjustified.
6. *Harassment*: Complaint that taking, failing to take, or the method of police action was predicated upon factors that were irrelevant, such as race, attire, sex, age, etc.
7. *Serious Rule Infractions*: Complaint such as disrespect toward a supervisor, intoxication on duty, sleeping on duty, neglect or dereliction of duty, false statements, or malingering.

C. *Level II Complaints*:

1. *Demeanor*: Complaint that an employee's manner, gestures, language or other actions were offensive or inappropriate or gave the appearance of a conflict of interest or misuse of influence.
2. *Minor Rule Infraction*: Complaint such as tardiness, faulty driving or failure to comply with established Department or City policies and procedures.

IV. PROCEDURES – GENERAL (TBP: 2.04)

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 officers are obligated to explain complaint procedures to anyone who inquires.

B. Personnel complaints shall not be accepted more than 90 days after the alleged incident except for the following exceptions:

1. When the complaint involves a criminal violation, the criminal statute of limitations will prevail. However, such limitations shall not prevent the

Chief of Police from taking disciplinary action deemed necessary to preserve the integrity of the Department.

2. When the complainant can show good cause for not making the complaint within the specified time limit, the complaint may be accepted. This determination shall be made by the Chief of Police.
3. When otherwise authorized by the Chief of Police.

C. Responsibilities of supervisors

1. First-line supervisors are primarily responsible for enforcing conformance with departmental standards and orders.
2. First-line supervisors shall know the officers in their charge by closely observing their conduct and appearance.
3. First-line supervisors shall be alert to behavioral changes or problems in their subordinates and, if necessary, document these changes and confer with higher authorities. The first-line supervisor shall assess the behavior, and take or recommend appropriate action.
4. The supervisor shall recommend and, if appropriate, help conduct extra training for officers not performing according to established standards.
5. The first-line supervisor shall 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.

D. How to make a complaint

Instructions on 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.

E. Requirements for making formal complaints

1. Personnel complaints shall comply with Section 614.022, Government Code, as amended.
2. Persons wishing to make formal complaints must do so by submitting a written statement of the complaint accompanied by their signature. A notarized affidavit may be required.
3. A signed letter of complaint may be sufficient after verification that it is not fictitious or signed with a fictitious name. This determination shall be made by the Chief of Police, or his designee.

4. An internally originated complaint may be made by any Department supervisor or other employee by submitting a written statement with signature or by notarized affidavit, if required.
5. The Internal Affairs Investigator or assigned investigator may serve as the complainant of an externally originated complaint that cannot or will not be made by the original complainant as outlined in the first item of this Section. This shall be done only upon substantial evidence that an allegation of a violation of these general orders or law has been presented.

F. Responsibility for handling complaints

All complaints alleging a violation of the law or policy will be reviewed. After initial review, an investigation will be conducted if warranted. Complaints regarding law-enforcement operations will usually be handled through the chain of command, beginning with the first-line supervisor. Complaints involving how law-enforcement service is provided or a failure to provide service or improper attitudes or behavior may be investigated by the IA Investigator. Depending on the nature of the complaint, the Chief of Police may request another agency, DPS, or 3rd party investigators to undertake the investigation. (TBP: 2.06)

G. Complaint-handling procedures

1. All complaints, regardless of nature, can be initiated in person, by land mail or e-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. Anonymous complaints shall be followed up to the extent possible. In case of an anonymous complaint, the officer 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 IA Division Commander.
2. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of any person's complaint.
3. The first-line supervisor shall review the complaint and conduct a preliminary investigation if such action is deemed warranted. The Internal Affairs Investigator may, if appropriate, conduct a preliminary investigation. The preliminary investigation consists of questioning the officer, 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 first-line 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. Any visible marks or injuries relative to the allegation shall be noted and photographed.
5. Prisoners or arrestees also may make complaints. Circumstances may require a department representative meet the complainant at a jail or prison 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 Internal Affairs Lieutenant, 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 Internal Affairs Investigator. The dispatcher or employee shall record the name and telephone number of the complainant and state that a representative from Internal Affairs or a 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 Chief of Police or designee will be notified of any complaint as soon as possible by the supervisor receiving the complaint. Complaints received overnight will be brought to the Chief'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. (TBP: 2.07)

H. Disposition of complaints generally

The Chief of Police or his designee shall:

1. Notify the complainant, in writing or by phone 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.
3. Maintain complaint files separate from personnel files.

4. Take appropriate disciplinary or corrective action following the investigation, if appropriate.

I. 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 excesses of legal authority, 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 Chief of Police will assign these investigations as required.
3. In cases of serious complaints the Chief of Police or his designee shall:
 - a. Determine if the officer 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 Chief shall similarly maintain contact with the city attorney or legal counsel.
4. All investigations will be completed within 45 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 Chief in writing providing justification for the extension. If approved by the Chief, a specific number of days will be approved and a copy will be provided to the involved officer and the original placed in the case file. (TBP: 2.05)
5. Upon completion of any investigation, The Chief of Police or designee will notify the complainant in writing of the results of the investigation and any action taken. (TBP: 2.10)

V. INVESTIGATIVE PROCEDURES

- A. Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case.

- B. Rules for 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 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 employee shall be provided with the name, rank and command of all persons present during the questioning.

- C. Interviews for criminal investigative purposes
 1. 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.
 2. If the Chief of Police 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, as amended.
 - 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.

- D. Interview for administrative purposes
 1. It is the Duty of every employee to cooperate and to answer questions directly related to his or her official duties. The 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, and the interview may be recorded at the interviewer's discretion.

VI. INVESTIGATIVE TOOLS AND RESOURCES

- A. In addition to interviews of the employee and witnesses, the Chief of Police may require other activities in support of a complaint investigation or internal investigation, including:
 1. Medical and laboratory examination
 2. The Chief of Police or officer 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 licensed breathalyzer operator shall administer the test. The IA Investigator or officer in authority shall witness the test and sign the report.
 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 Chief of Police or officer 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 in a criminal 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 Chief of Police or other officers in authority.
6. If an employee refuses to submit to a test, (alcohol or drugs) then the Chief of Police or other officer in authority shall immediately relieve the employee from duty for failure to cooperate in an administrative investigation.

B. Photograph and lineup identification procedures

1. Officers 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 Chief of Police or his designee.
2. The Police Chief or designee 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. Any polygraph examination given under the provisions of this order shall be administered by a licensed polygraph examiner in the State of Texas.

4. 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.

VII. ADJUDICATION OF COMPLAINTS

- A. Once an investigation is completed, the investigation is sent to the Administrative Board for review. The Administrative Board will consist of the Chief of Police or their designee and Command Staff. At least three members of the Command Staff must be present during the review process not including the Chief of Police or the IA Investigator.
- B. The Administrative Board shall determine if the city employee violated Rosenberg Police General Orders, Rosenberg Personnel Policies and Procedures, and/or Rosenberg Employee Safety Manuals.
- C. The Chief of Police or designee will classify completed internal affairs investigations as:
 1. Unfounded - no truth to allegations.
 2. Exonerated – incident occurred, but actions were lawful and proper or were justified under existing conditions.
 3. Not sustained – insufficient evidence to prove the allegations.
 4. Sustained - allegations are true. Complaints will not be classified as sustained unless based on a finding of facts determined during the investigation and a preponderance of evidence. (TBP: 2.04)
- D. Completed investigations classified as unfounded, exonerated, or not sustained will be maintained in internal affairs files in the Administrative Offices. Sustained complaints shall be filed in the individual employee's department personnel file with a copy in the internal affairs files.
- E. 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.
- F. Disciplinary records (TBP: 2.09)
 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 in accordance with state law and city policy.

3. The Chief or designee shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy.

G. Internal Affairs records retention period

1. Records pertaining to Internal Affairs investigations shall be maintained in compliance with the periods set forth by the State of Texas Records Retention Schedule section 1-3: Personnel Records, sub section 4075-01 Internal Affairs Records.