

General Order

Houston Police Department



ISSUE DATE:

February 21, 2012

NO.

200-03

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 200-03, dated March 1, 2011

SUBJECT: INVESTIGATION OF EMPLOYEE MISCONDUCT

POLICY

The department shall investigate all incidents of alleged misconduct brought to its attention. All employees, regardless of rank, assignment, or function, are required to cooperate in the investigation of complaints. The department's disciplinary system shall be governed in accordance with all applicable state and federal law and shall be guided by the *Houston Police Department Corrective Action Manual*.

This General Order applies to all employees.

DEFINITIONS

IAD Commanders. The commander of Internal Affairs Division/Central Intake Office (IAD/CIO), the assistant chief of the Professional Standards Command, the executive assistant chief of Strategic Operations, and the Chief of Police.

Reasonable Opportunity. This shall be generally construed as to allow sufficient time to locate counsel or a representative, review the interrogatories and related documents, and obtain advice. However, this always depends on time and circumstances.

Retaliation. Conduct or decisions that a reasonable employee would view as materially adverse and whose purpose or effect is to discourage employees from exercising their rights under policy or under the law. These rights include filing a complaint under policy; filing a complaint with an external government agency such as the Equal Employment Opportunity Commission (EEOC); assisting another employee in the filing of a complaint; providing information during an investigation or testifying in a legal proceed-

ing; or otherwise opposing conduct prohibited by policy.

Types of Complaints

Formal Complaint. A complaint in writing, signed and notarized by a complainant, or a complaint made by a peace officer.

Informal Complaint. Oral or unsigned complaint.

Classes of Complaints

IAD/CIO shall classify all complaints in accordance with the following:

Class I Complaints. Alleged violations of federal or state laws or local ordinances, or alleged use of excessive force (e.g., hitting, slapping, kicking, striking with an object, causing pain, or some other excessive force resulting in bodily injury). All Class I complaints shall be formalized and forwarded to IAD/CIO. If there are any questions as to how a complaint is to be classified, supervisors shall contact IAD/CIO.

Class II (D) Complaints. Complaints involving alleged violations of department policies or those that are not criminal in nature. The employee's immediate supervisor or another supervisor from the employee's division usually investigates these complaints.

Class II (X) Complaints. Expedited cases typically involving allegations administrative in nature (e.g., missed court or failure to qualify) and normally involving one employee.

Dispositions of Complaints

Exonerated. Incident occurred, but was lawful and proper.

Never Formalized. Complainant did not submit a formal sworn statement.

Not Sustained. The evidence was insufficient to either prove or disprove the allegation.

Sustained. Evidence is sufficient to prove the allegation. Any sustained allegation, regardless of its classification, may form the basis for disciplinary action.

Unfounded. Allegation is false or not factual.

1 CLASS II (X) INVESTIGATIONS

Expedited Class II investigations should be used when discipline is the most appropriate response to an employee's continued performance deficiency. The *Houston Police Department Corrective Action Manual* provides a list of administrative violations that may be resolved using an expedited Class II investigation and can be expanded to include misconduct when certain conditions are met.

Supervisors have broad discretion whether to resolve complaints using Supervisory Intervention (SI) or Class II investigations except when expressly limited. Discretion, to the extent that prudence and good order dictate, is encouraged. Likewise, it is encouraged to use expedited Class II investigations in circumstances, other than administrative type violations, when the employee acknowledges culpability and accepts responsibility for all of the alleged misconduct.

Usually, Class II investigations are conducted by the employee's immediate supervisor. If the immediate supervisor is the complainant or a person who has any personal involvement regarding the alleged misconduct, then any other supervisor within the division shall be assigned to conduct the Class II investigation.

2 EMPLOYEE PROCEDURES

All complaints coming to the attention of an employee shall be reported to the employee's immediate supervisor.

Retaliation in any form is strictly prohibited. Any employee found to have retaliated against any employee or non-employee shall receive disciplinary action up to and including indefinite suspension.

Employees who receive information about or observe incidents involving unnecessary or excessive use of force, misconduct, violations of criminal statutes, or abuse of authority by any other employee shall first take immediate action to protect citizens. Employees who receive such information shall report the incident to their immediate supervisor. If there is a need to protect the confidentiality of the information, reporting employees may bring the matter directly to IAD/CIO.

If a complainant is anonymous, the employee receiving the anonymous complaint must certify under oath the complainant was in fact anonymous.

3 SUPERVISOR PROCEDURES

First-line supervisors shall take an active role in the development, motivation, and when necessary, discipline of employees they supervise. Supervisors have broad discretion when implementing the disciplinary process.

All complaints (except those going directly to IAD/CIO) shall be referred to a supervisor. The supervisor shall record all complaints (except as specified in the following) including complaints from third party witnesses, and forward them as provided by this General Order. When receiving complaints, supervisors shall:

- a. Accept complaints from third party witnesses to an incident. Any third party

non-witnesses attempting to make a complaint shall be referred directly to IAD/CIO. The IAD/CIO commander may determine whether to accept a complaint from persons other than the aggrieved party.

- b. Accept and record phone-in complaints that involve allegations of serious misconduct (Class I). Other phone-in complainants shall be advised to make the complaint in person in order that a notarized statement can be obtained with the complaint. Supervisors may also advise complainants they can mail their notarized statement with specific details of the incident directly to IAD/CIO.
- c. Forward all mailed written complaints to IAD/CIO for processing.
- d. Record complaints on the *Issue Record Form* (IRF). Upon receipt and recording of complaints, supervisors shall immediately notify their commander.
- e. Immediately notify IAD/CIO, pursuant to General Order 300-32, **Processing Complaints and Employee Issues**, if they receive a Class I complaint under either of the following circumstances:
 1. The investigation of the complaint would be hindered by a delay.
 2. The complaint involves a felony or a breach of the peace that is occurring or just occurred.

If an involved employee is present at the complaint scene, supervisors shall not allow the employee to leave until authorized by IAD/CIO.

An employee's immediate supervisor or a supervisor discovering an infraction shall determine whether to proceed through the formal complaint process as a Class I or II complaint or as an SI.

When supervisors discover possible infractions by employees not within their command, they should consult with the employee's immediate supervisor or a supervisor within the employee's chain of command before initiating a Class II complaint.

Supervisors have the right, duty, and responsibility at any time to inquire as to the facts of a circumstance or situation in order to make management, operational, administrative, or organizational decisions. A 48-hour notice is not required before discussing the original infraction with an employee.

However, if the inquiring supervisor becomes the complainant in a Class I or II complaint, the same inquiring supervisor may not further investigate such alleged violation.

Additionally, if the inquiring supervisor becomes the complainant in a Class I or II complaint, the same inquiring supervisor may not participate in the process of recommending discipline for the violation.

Supervisors should keep in mind that job performance and productivity issues do not equate to disciplinary issues. Concerns regarding an employee's job performance and productivity, or lack thereof, should not be handled through the disciplinary process. Job performance and productivity issues should be addressed by implementing appropriate management techniques (e.g., scheduled and unscheduled job performance reviews). Discovered violations of department policy while addressing job performance or productivity concerns should be handled through the disciplinary process.

4 INVESTIGATIVE RESPONSIBILITIES

All Class I allegations against an employee shall be investigated by IAD/CIO, except by order of the commander of IAD/CIO.

All Class II allegations against an employee shall be investigated by the employee's division, unless otherwise determined by the commander of IAD/CIO.

The commander of IAD/CIO shall have the authority and discretion to assign the criminal aspects of a Class I complaint to the appropriate criminal investigative division for investigation.

The concerned employee and the complainant shall be notified in writing by the assigned investigator whenever a complaint has been received and filed. However, if an *IAD commander* designates the complaint confidential, the employee shall not be notified.

Internal Affairs Division

IAD/CIO shall serve as a fact-finding entity for investigations of employee misconduct. IAD/CIO shall classify all complaints brought to the attention of the department as either a Class I or II complaint.

IAD/CIO shall notify employees and complainants of the disposition of Class I and II complaints upon receiving the final decision from the Chief of Police. If a complaint is deemed confidential, notification shall be made at the discretion of an *IAD commander*. Division commanders shall notify employees and complainants of SI dispositions.

No employee, regardless of rank, assignment, or function, shall contact or interfere with IAD/CIO personnel or other department investigators regarding ongoing administrative or criminal investigations of any employee. Any inquiries regarding these matters shall be directed to the Professional Standards Command or Strategic Operations.

Confidential Complaint

The commander of IAD/CIO may designate a complaint as confidential and may restrict

access to the file of the investigation to only those persons deemed necessary. The assistant chief of Professional Standards Command, the executive assistant chief of Strategic Operations, and the Chief of Police shall be notified when a complaint is designated confidential. They may review any file at their discretion. The IAD/CIO commander may report any matter directly to the Chief of Police; however, the assistant chief of Professional Standards Command, and the executive assistant chief of Strategic Operations must be notified as soon as possible.

Progress Reports

At any time, the commander of IAD/CIO, the assistant chief of Professional Standards Command, or the executive assistant chief of Strategic Operations may require progress reports regarding any complaint against an employee being investigated by the department.

5 PREINTERROGATION PROCEDURES

If the complainant to an incident does not verify the complaint in an affidavit, an investigation may still be conducted. However, the employee cannot be required to respond to an interrogation.

Employees who are the subject of the following types of complaints may be required to respond to an interrogation.

- a. When a peace officer is the complainant. (No affidavit is necessary.)
- b. If a third-party witness of police misconduct is a complainant.

If employees inquire, they must be told the identities of all investigators taking part in their interrogation.

If the investigator or the employee intends to record the interrogation, prior notification must be given to the other party.

48-Hour Notice

Supervisors have the right, duty, and responsibility at any time to inquire as to the facts of a circumstance or situation in order to make managerial, operational, administrative, or organizational decisions. Therefore, a 48-hour notice is not required before discussing the original infraction with an employee.

The department shall provide employees with a 48-hour notice of the time and location of a meeting or hearing (including interviews and interrogations) that is administrative in nature. (See *Corrective Action Manual*, Part Three, section 1, subsections A., B., and C.)

Any employee under investigation for a Class II violation investigated at divisional level by an internal affairs investigator shall be required to receive only one Notice of Interrogation at least 48 hours prior to the first interrogation in any form. Any subsequent interrogation of the same employee on the same complaint or any extension or collateral issue related to the same complaint, shall require the employee be afforded a *reasonable opportunity* to consult with counsel or a representative before responding to such subsequent interrogations. A 48-hour notice may be voluntarily waived.

Supervisors and investigators shall follow the guidelines in the *Corrective Action Manual*, Part Three, section 1, subsections A., B., and C. If an investigator is conducting an investigation at the scene immediately after an incident occurred, the investigator may proceed with the investigation and furnish the concerned employee with written notification as soon as possible.

6 INTERROGATION PROCEDURES**Supervisor's Presence**

Accused employees have the option of having their immediate supervisor present dur-

ing interrogations regarding investigations of non-criminal misconduct.

Counsel's Presence

Accused employees are not permitted to have counsel present during an interview regarding an investigation of non-criminal misconduct.

Accused employees are permitted to have counsel present during an interrogation regarding an investigation of criminal conduct.

Investigators shall not threaten employees with punitive action during interrogations. Investigators may inform employees that failure to truthfully answer reasonable questions directly related to the investigation or failure to fully cooperate in the investigation may result in punitive action.

Requirement to Answer Questions

Employees can be required to answer questions and are subject to discipline with measures up to and including indefinite suspension for refusal to answer questions. Any required statements may be used against employees in a disciplinary action or other civil proceeding.

Time, Place, and Length of Interrogations

Employees may be interrogated only during their normal duty hours, unless the Chief of Police or an *IAD commander* determines the seriousness of the investigation requires interrogation at another time. If employees are interrogated during a time other than their normal duty hours, they shall receive overtime for that period. The Chief of Police shall not hold employees responsible for normal duty time missed because of their required participation in an investigation.

Employees shall not be interrogated at their home without their permission. The interrogation shall not be unreasonably long and provision must be made for physical necessities.

Attorney General Letter

If a letter is sent to the Texas Attorney General, a copy shall be furnished to the employee under investigation at the time of the interrogation or at the time of issuance (if issued after the initial or subsequent interrogation).

Photographs Taken of Employees

An employee can be required to be photographed to aid in conducting investigations in which the identity of the employee is in question or when it is necessary for comparison with other photographs.

Polygraph Examinations

The Chief of Police may order an employee to submit to a polygraph examination in compliance with state law.

Submission to Examination

Employees can be required to submit to a medical or laboratory examination at the department's expense as part of an internal investigation.

7 DIVISIONAL ADMINISTRATIVE DISCIPLINARY COMMITTEE (DADC)

The DADC reviews all non-Class I investigations that result in a divisional discipline recommendation for category B or lower. The DADC reviews cases and either agrees or disagrees with the recommendation stated in Step Four of the Disciplinary Category Worksheet (*Corrective Action Manual*).

If the committee disagrees with the original recommendation, correspondence shall be attached to the file and the Disciplinary Action Unit (DAU) shall forward the investigation to the division for a final determination of discipline. The DAU shall follow all procedures as outlined in the *Corrective Action Manual*.

8 ADMINISTRATIVE DISCIPLINARY COMMITTEE (ADC)

The ADC shall review investigations of complaints submitted to it by the Chief of Police.

Upon completing the review of a complaint, the ADC shall submit a report to the Chief of Police documenting the sufficiency of the investigation and describing recommended disciplinary action.

9 INDEPENDENT POLICE OVERSIGHT BOARD (IPOB)

The Mayor's Executive Order 1-5, *Independent Police Oversight Board* describes the IPOB and its role within the department's internal investigations involving any of the following allegations or circumstances:

- a. Use of force.
- b. Discharge of firearms.
- c. Incidents resulting in serious bodily injury or death.
- d. Any other investigations requested and approved for review by the Chief of Police.

Each IPOB member and panel is purposed to review applicable internal investigations and make a written recommendation as to whether the investigative findings are accurate and complete. A panel or panel member who believes the investigation is inaccurate or incomplete, may request further investigation be conducted. The request shall be made in a manner prescribed by the department in compliance with the requirements of Executive Order 1-5.

Notwithstanding the authority vested within the IPOB, the Chief of Police or designee shall retain final authority over the outcome of internal investigations.

10 DISPOSITION OF CASE

Mid managers shall prepare a written recommendation on all sustained IAD/CIO investigations on employees under their supervision. Depending on the violation, the recommendation shall be forwarded through the offending employee's chain of command to at least the assistant chief level.

After the Chief of Police receives the file of a completed investigation in which IAD/CIO sustained an allegation, the Chief of Police may:

- a. Choose to sustain the allegation, impose the recommended discipline, or impose other disciplinary action. The Chief of Police shall forward the entire file to IAD/CIO for final processing.
- b. Resubmit the file to the ADC for further review and recommendations.
- c. Return the case to IAD/CIO or the investigating division for further investigation.

After the commander of IAD/CIO receives the final recommended disposition signed by the Chief of Police, the commander of IAD/CIO shall notify the employee of the disposition of the complaint in writing. The commander of IAD/CIO must ensure the final disposition of the case is entered into the Issue Tracking System.

If the recommended discipline is indefinite suspension, the Chief of Police shall have the affected employee relieved of duty by IAD/CIO personnel. The Chief of Police shall allow a meeting with the affected employee. At the meeting, employees shall be allowed to state their case before the Chief of Police makes a final decision.

The employee's division shall handle disciplinary suspensions of 15 *calendar* days or less. In those cases, employees shall be allowed to retain their HPD identifications, badges, and hat shields. The suspension

documentation shall instruct employees regarding any limitation of activities and use of credentials during the term of suspension.

All disciplinary suspensions of 16 *calendar* days or more shall be handled by IAD/CIO. In those cases, the HPD identification, badge, and hat shield shall be confiscated and stored in the Employee Services Division.

Relieved of Duty

The Chief of Police may relieve an employee of duty at any point during the course of a misconduct investigation, especially when allowing an employee to remain on duty may compromise the integrity of the department.

If any supervisor becomes aware of a situation requiring an employee be relieved of duty, the supervisor shall immediately contact IAD/CIO. IAD/CIO shall handle all cases in which an employee is relieved of duty and the commander of IAD/CIO shall determine the course of action to be taken.

When an IAD/CIO supervisor places an employee on relieved-of-duty status, the IAD/CIO supervisor (and the employee when practical) shall sign a letter explaining what is expected of the employee. A copy shall be given to the employee.

The IAD/CIO supervisor shall take custody of the following items from the employee:

- a. Official police identification
- b. Badge and hat shield
- c. Security identification
- d. Keys as defined in General Order 400-22, **Keys and Passwords**

These articles shall be sent to the Employee Services Division along with a copy of the *Relieved of Duty* letter.

The IAD/CIO supervisor shall notify the employee's commander of the relieved-of-duty status.

When an employee is relieved of duty, any leave requested by the employee must be approved by the commander of IAD/CIO prior to being scheduled by the regular assigned division. In addition, IAD/CIO shall be responsible for notifying the Administration and Regulatory Affairs Department relieved of duty desk of employees' relieved of duty status to ensure correct compensation and documentation of employment status.

Return to Duty

Upon notification by the Chief of Police, an *IAD commander* shall formally reinstate an employee who is relieved of duty. The IAD/CIO supervisor receiving the information shall prepare a *Return to Duty* letter advising the affected employee of his or her status.

Employees shall deliver their letters to the Employee Services Division in order to obtain their department issued property. A copy

of the reinstatement letter shall also be forwarded to the employee's commander authorizing the employee's return to work.

11 RELATED GENERAL ORDERS AND REFERENCE MATERIAL

300-02, Transfer of Classified Employees
300-32, Processing Complaints and Employee Issues

400-02, Badges and Credentials

400-22, Keys and Passwords

600-42, Racial Profiling Prohibited

Executive Order 1-5, Independent Police Oversight Board. Effective 9-23-11.

Houston Police Department Corrective Action Manual

Meet and Confer Agreements (Classified and Civilian)



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