



**Sunnyvale Department of Public Safety
Internal Affairs Investigations**

Standard Operating Procedures Manual



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1 INTRODUCTION

The primary function of the Sunnyvale Department of Public Safety (SDPS) is to provide police, fire and emergency medical services (EMS) services to those who live, work and play in Sunnyvale. SDPS enjoys a high level of trust and satisfaction from our community. Continuously striving to maintain our community's trust and satisfaction is paramount to the provision of effective public safety services. As such, it is imperative that we maintain high ethical standards as professional Public Safety Department members, which in turn will help us provide the high-quality services our community members expect and deserve.

One of the most important ways to ensure we are developing and maintaining professional standards is to make certain our internal affairs (IA) policies and procedures that guide how we receive and investigate complaints against our Department's members are thorough, fair and objective to the complainants and Department personnel involved.

Our Lexipol Policy Manual outlines our required standards of conduct for Department members and the basic requirements for addressing complaints. The purpose of this Internal Affairs Investigations Standard Operating Procedures Manual (SOP or Manual) is to provide a more detailed guide designed to assist SDPS personnel and other Sunnyvale officials responsible for receiving, investigating and adjudicating complaints.

This Internal Affairs SOP is customized and designed to define our Department's official policies and procedures for receiving and investigating complaints. It serves as a guide for all who play a role in handling complaints brought against members of the SDPS, both sworn and non-sworn. Adhering to the procedures and protocols outlined in this manual will help ensure that disciplinary measures taken to address misconduct are consistent and fair.

2 PURPOSE OF DISCIPLINE

Given the paramilitary environment in which public safety personnel operate, maintaining professional discipline among Public Safety Department members is imperative. Whether serving in a police beat or in a firehouse, being able to give and receive orders in stressful field situations can mean the difference between life and death.

Discipline refers to actions taken against a Department member when an IA investigation and subsequent review by command staff and the Chief determine the member violated a Department policy or procedure, or engaged in administrative or criminal misconduct. Many Public Safety Department members commonly think of this type of discipline as punishment. This is understandable, given that such discipline could lead to a loss of pay, rank or even employment. However, discipline is designed to accomplish two primary goals: (1) set a standard for the organization, and (2) change inappropriate work-related behavior to improve an employee's future performance.

Maintaining a thorough, fair and objective approach to investigating and adjudicating allegations of misconduct helps public safety Departments clearly define the expected standards of conduct from its members. These two goals also help those who have violated such standards change their behaviors so they can become productive and respected members of the Department.



A Department's ability to police itself in a thorough, fair and objective manner helps provide to its members a clear and consistent expectation of behavior to which they will be held accountable. It also provides a transparent demonstration of professionalism to all members of our community.

3 COMPLAINT DEFINED

A complaint is defined as any formal expression of dissatisfaction for which the complainant desires follow-up activity on the part of the Department. The complaint may be made in person, by phone, by email, through a written letter or by leaving a voicemail message. A complaint could include, but is not limited to, dissatisfaction with:

- Any SDPS policy or procedure
- Any action a Department member takes or the outcome of such action
- Employee conduct

A complaint can be made by anyone, including:

- The individual involved in any interaction with a SDPS member
- A witness to the interaction in question
- A third party, such as a parent of an individual involved in an interaction with a Department member
- An anonymous individual
- A representative of another agency within the local criminal justice system, such as a judge, defense attorney or a prosecuting attorney
- Any SDPS employee.

Although anyone may file a complaint, ultimately, it is up to the Chief of Public Safety to determine whether there is merit for a complaint investigation, who will conduct the investigation and how the case will be investigated.

4 COMPLAINT TYPES DEFINED

To assist Department members in determining the best course of action to address and/or investigate complaints, upon receipt of a complaint or concern, the IA Unit Lieutenant will review and categorize each complaint as one of the types defined below.



4.1 Policy Complaint Defined

A Policy Complaint is defined as a complaint in which a Department member took action that was in compliance with SDPS policies and procedures, but for which the complainant believes the policy is inappropriate or invalid. In these cases, there is no indication a complaint is being made specifically against the Department member taking the action. Rather, the complaint is made specifically against the SDPS policy or procedure involved.

4.2 Conduct Complaint Defined

A Conduct Complaint is defined as a complaint in which a complainant files an allegation against a Department member, which if true would indicate the member violated (1) a local, state or federal law or, (2) any of the Department's policies, procedures, rules, or regulations, and where such actions could result in the involved member receiving disciplinary action.

4.3 Non-Misconduct Concern Defined

After receiving a complaint alleging misconduct by a Department member, a preliminary investigation may indicate that the allegations do not involve a violation of (1) any local, state or federal law or, (2) any SDPS or City of Sunnyvale policy, procedure, rule or regulation (collectively referred to in this Manual as "SDPS Policies"). Such a complaint will be re-categorized as a Non-Misconduct Concern, meaning it does not meet the criteria outlined in the definition of a Conduct Complaint.

For example, an individual may complain that an officer wrote him a traffic citation because he ran a red light, while the complainant believed he should have received a break. As long as the complaint (1) does not involve any other issue, such as being treated rudely by the officer during the interaction, and (2) there is no violation of a local, state or federal law nor a violation of any Department policy, procedure, rule, or regulation, the case is categorized as a Non-Misconduct Concern.

Re-categorizing complaints as Non-Misconduct Concerns allows the Department to track issues that may need more community education or, if many similar complaints are made, it could indicate that Department members need additional training.

4.4 Decline to Investigate Concern Defined

After receiving a complaint alleging misconduct against a Department member, an initial investigation may indicate:

- 1 The alleged incident could not have occurred based on the details the complainant provides that could best be described as hallucinatory in nature.



- 2 A reasonably objective person would assume the complainant's description of the circumstances is based upon information that is clearly made up or imaginary.
- 3 The complainant's description of the incident is based on what a reasonably objective person would describe as an implausible conspiracy theory.
- 4 The complainant previously made the same complaint against a Department member that has previously been investigated as a Conduct Complaint and was found to be Unfounded.

4.5 Exceptional Clearance Complaint Defined

When the initial investigation of a complaint reveals that the misconduct alleged in the complaint did not occur, based on immediately available evidence and/or recorded media, the complaint is categorized as Exceptional Clearance. Complaint investigators complete formal written documentation of the incident using the Internal Affairs Investigations Report Format to explain why the case was cleared exceptionally.

5 COMPARISON OF EXTERNAL AND DEPARTMENT-INITIATED COMPLAINTS

Due to some distinctions in the way some complaints are handled, complaints and concerns are categorized as either an external complaint or a Department-initiated complaint or concern, as defined below.

5.1 External Complaint Defined

An External Complaint is any complaint made by an individual who is not a member of SDPS. The individuals making these complaints are not as familiar as Department members with SDPS' policies and procedures for handling complaints. Because of this, special care needs to be taken to demonstrate sensitivity to the concerns of the complainant. Even if the complaint appears frivolous, the reasons for making the complaint were important enough for the individual to take the steps necessary to do so. As such, the manner in which Department members receive complaints is just as important as determining any outcome for them. Department members must demonstrate professionalism when fulfilling this responsibility.

5.2 Department-Initiated Complaint Defined

A Department-Initiated Complaint is defined as any complaint made by an individual who is a member of the SDPS. Because the Department members making these complaints may be personally familiar with Department members involved in the internal complaint, special care needs to be taken to maintain the confidentiality of the issues that have led to the complaint, as well as the complaint itself.

Professional public safety agencies, like SDPS, make every effort to reduce and eliminate gossip whenever possible, as it is counterproductive for the operations of the organization. Sharing confidential information



about an internal complaint makes it more difficult to conduct a thorough, fair and objective investigation into any allegations made.

As such, supervisors who receive a Department-Initiated Complaint ensure that those identified as the complainant(s), the subject member(s) of the Department or potential witness members are advised not to discuss the details of the allegation and are provided the reasons for the confidentiality. The exceptions are privileged attorney-client communication and any communication involving the subject officer and the designated labor representative officially representing them, as well as in those instances in which case law may require it.

6 COMPARISON OF ON-DUTY AND OFF-DUTY COMPLAINTS

Complaints may be based on an employee's activities while on duty or off. The following definitions distinguish between the two types of complaints or concerns.

6.1 On-Duty Complaint Defined

An On-Duty Complaint is defined as a complaint associated with any actions a Department member took during the course and scope of his or her regular work responsibilities.

6.2 Off-Duty Complaint Defined

An Off-Duty Complaint is defined as a complaint associated with any actions a Department member took during any off-duty activities that would:

- Be a violation of any local, state or federal law;
- Compromise the reputation and standing of the Department member within the community, which in turn compromises the member's ability to maintain the trust and confidence necessary to continue providing public safety services effectively;
- Negatively impact the reputation and standing of the SDPS within the community, making it more difficult for the Department and its members to maintain the trust and confidence of the community, which is necessary to provide professional public safety services; and/or
- Compromise the ability of the Department member to interact with other local, state or federal law enforcement agencies or court officials in providing public safety services.

7 ALLEGATIONS DEFINED

Once a complaint or concern has been categorized, the IA Unit Lieutenant identifies the specific type(s) of allegation(s) contained within each complaint or concern. The following are the official definitions for each type of allegation.



7.1 Procedural

An allegation that a Department member did not follow appropriate SDPS policies and procedures. Examples include, but are not limited to, failing to adhere to grooming standards, tardiness, or failure to activate a body worn camera (BWC) when required.

7.2 Arrest or Detention

An allegation that a Department member lacked the probable cause or reasonable suspicion necessary to make an arrest or effect a detention.

7.3 Search or Seizure

An allegation that a Department member conducted a search or seizure in violation of the Fourth Amendment of the U.S. Constitution.

7.4 Bias-Based Policing

An allegation that a Department member's actions were based on an individual's race, ethnicity, religion, national origin, age, gender, marital status, sexual orientation, disability, medical condition or any other protected class, as well as on an individual's homeless status.

7.5 Courtesy

An allegation that a Department member's interaction with an individual lacked courtesy or professionalism. This includes the inappropriate use of profanity. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or derogatory language. The Department recognizes that there are extremely limited number of investigative situations where profane or derogatory language may be a reasonable tactic or tool (i.e. undercover assignments). In these specific situations, the use of profanity or derogatory language must be justified by the Department member based on the totality of the circumstances.

7.6 Force

An allegation that a Department member used unnecessary, unreasonable or disproportionate force on an individual, with the definition of "objectively reasonable force" being the level of force that a reasonably objective public safety Department member would use in such a circumstance according to the Department's policies and procedures.



7.7 Conduct Unbecoming a Public Safety Department Member

An allegation that a Department member engaged in behavior – whether on or off duty – that reflects poorly on the professionalism of the member or the SDPS, which includes, but is not limited to, the following types of behavior.

7.7.1 Criminal Conduct

When a Department member has been arrested.

7.7.2 Dishonesty

Defined generally as when an individual lies, cheats, steals, intentionally withholds evidence, acts deceptively or is unfair.

7.7.3 Insubordination

Defined as refusing to submit to authority by intentionally and deliberately refusing to submit to a lawful order.

7.7.4 Misuse of Authority

Defined as engaging in or creating conflicts of interest or using one's position for personal gain.

7.7.5 Neglect of Duty

An allegation that a Department member failed to take proper action as required by SDPS.

7.7.6 Workplace Harassment

An allegation that a Department member engaged in conduct in violation of the policies and procedures of the SDPS and/or the City of Sunnyvale that pertain to the various forms of workplace harassment or bullying, including sexual harassment.

8 DUTY TO ACCEPT A COMPLAINT AND TAKE ACTION

Every SDPS member is responsible for accepting any complaint brought to their attention. This means that any complaint brought to the attention of any Department member is forwarded to an on-duty supervisor or to the Internal Affairs Lieutenant.



Communication between the Department member accepting the complaint and the supervisor must occur without delay. The communication may be verbal, by email or by a memorandum. The notification should be completed as soon as possible, but in all cases prior to the end of shift.

To protect the privacy rights of the complainant and the subject member, the Department member who received the complaint must ensure that the details of the complaint are only shared with the supervisor with whom they are communicating about the complaint or the Internal Affairs Lieutenant.

If a Department member is unsure whether an individual is making a formal complaint, they must contact his or her supervisor to facilitate the proper handling of the complaint.

9 TEMPORARY RELIEF FROM DUTY

At times, circumstances surrounding an allegation of employee misconduct dictate that an appropriate course of action is to temporarily relieve the subject Department member from duty by placing them on paid Administrative Leave. Typically, these circumstances may occur under the following circumstances, among others:

- When a member becomes the focus of a criminal investigation,
- When a member is on duty while under the influence of alcohol or controlled substance,
- When the nature of the allegation is serious enough that leaving a member on duty is not in the best interest of the Department or the City of Sunnyvale, or
- When allowing the member to continue working would jeopardize the complaint investigation.

A command officer of the rank of Captain or above is authorized to place a Department member on Administrative Leave. Before taking this action, the command officer coordinates this effort with the Internal Affairs Lieutenant, who coordinates this effort with the Chief, the Human Resources Director and the City Manager. If the Captain or other command officer needs to place a SDPS member on administrative leave during non-business hours, the Captain works with the IA Lieutenant and the Chief to ensure the Human Resources Director, Office of the City Attorney (OCA) and the Office of the City Manager are notified as soon as possible by email or text messages.

The Internal Affairs Lieutenant and Human Resources (HRD) assist the command officer with preparing the necessary paperwork to accomplish this effort.

10 INTAKE PROCESSES FOR POLICY AND CONDUCT COMPLAINTS

As previously noted, all complaints and concerns are accepted regardless of who makes the complaint, and all Department members are responsible for initiating the intake process when approached with a



complaint. The following steps outline the required processes that must be taken to ensure all complaints or concerns are handled promptly, appropriately and with consistency.

10.1 Receiving a Complaint

When a Department member receives a complaint, the member provides the complainant with the Internal Affairs Lieutenant's contact information. The complainant will also be referred to a supervisor who will facilitate taking the complaint by completing the Complaint Report (attached in Appendix) and forwarding it to the Internal Affairs Lieutenant.

When feasible, Department members should remind complainants that anonymous complaints may always be made on the Internal Affairs Unit's anonymous hotline, (408) 524-COPS (2677).

Some examples of serious allegations requiring immediate investigation include allegations of criminal behavior, the arrest of a Department member, the unnecessary use of force, cases involving physical injuries to a complainant and/or a Department member, allegations of false arrest, and conduct that could prove embarrassing to the Department member, the Department itself or the City of Sunnyvale. When these instances occur, the Department member shall notify their immediate supervisor, who will also notify a command officer. The command officer shall notify and coordinate with the Internal Affairs Lieutenant who will notify the Chief.

The Department member who receives the initial complaint takes all necessary steps to secure any evidence that would be lost if immediate action was not taken to gather such evidence for use in the investigation.

11 ADDITIONAL INTAKE REQUIREMENTS FOR MEMBERS OF THE INTERNAL AFFAIRS UNIT

Internal Affairs Unit personnel are responsible for maintaining a log of all Policy and Conduct Complaints, and categorizing all complaints as a Policy Complaint, Conduct Complaint, Non-Misconduct Concern, Decline to Investigate Concern or Exceptional Clearance Complaint.

12 AUTHORITY TO CATEGORIZE COMPLAINTS AND CONCERNS

The responsibility and authority to categorize complaints and concerns belongs to the Internal Affairs Lieutenant under the direction of the Chief. It is also the Internal Affairs Lieutenant's responsibility to coordinate with the Chief to determine whether the Internal Affairs Unit will handle the complaint investigation or whether it will be assigned to a command officer in the Department member's chain of command. Working with HRD, OCA and the City Manager, the Chief may also choose to assign the investigation of the case to an external investigator.



13 NOTIFYING SWORN OR NON-SWORN SUBJECT MEMBERS

Once members of the Internal Affairs Unit identify a Department member who is subject to a formal administrative investigation where formal discipline may result, a Notice of Complaint (NOC) is completed and provided to the subject member. An exception to this requirement is when the complaint involves an allegation of criminal conduct and when the revelation of any criminal investigation could jeopardize the investigation through disclosure to the subject member.

The NOC provides the subject member with a brief synopsis of the complaint's allegations that includes the name of the complainant, the date and time the alleged complaint was received and any case number associated with a call for service that may have generated the complaint.

Internal Affairs investigators include a copy of the NOC in the investigative case folder for all investigations requiring a NOC be provided to a Department member. Information is also included in the case folder indicating the date and time the subject member was provided the NOC and who provided it.

14 MAINTAINING SUBJECT MEMBERS' POBR AND FBOR RIGHTS

As previously noted, it is imperative that the policies and procedures SDPS implements to manage the intake and investigation of complaints against Department members be thorough, fair and objective to all involved, not only for a complainant but for the subject member.

In 1977, the California legislature passed legislation that has become known as the Peace Officers' Bill of Rights (POBR). Its purpose is to provide protections for peace officers and ensure they receive due process rights while their employing agencies investigate complaints against them. In 2007, the California legislature passed legislation that has become known as the Firefighters Procedural Bill of Rights (FBOR). Similar to POBR, it was established to ensure firefighters are afforded due process rights when subject to internal investigations.

As one of but two remaining Department of Public Safety in the State of California, SDPS is dedicated to ensuring the policies and procedures employed to investigate allegations of employee misconduct take into account and respect the requirements of both POBR and FBOR. The steps that must be taken to ensure these rights are incorporated into the policies, procedures and protocols that are outlined in this manual, and are updated when changes are made to California law.

15 CONDUCTING COMPLAINT INVESTIGATIONS

To help ensure that complaint investigations are handled appropriately, the following policies and procedures outline the key steps that must be taken when investigating and processing complaints and concerns lodged against Department members. Any questions regarding these policies and protocols should be directed to the Internal Affairs Lieutenant.

15.1 Preliminary Investigations



Because memories can quickly fade and evidence can be lost or deteriorate rapidly, it is imperative that critical information and any incriminating or exculpatory evidence be gathered as soon as possible when handling a complaint against a Department member, particularly when the complaint involves an allegation that could lead to formal discipline. Although many of the investigative steps are eventually handled by investigators from the Internal Affairs Unit, Department members and their immediate supervisors should be proactive in securing as much information and evidence as possible at the inception of a complaint, particularly with respect to the collection of evidence and key statements. For those who receive complaints, additional steps that must be taken during preliminary investigations are described below:

15.1.1 Complainant Information

Ensure the following information regarding the complainant is gathered:

- Full name and any nicknames
- Date of birth
- Street address and mailing address, if they are different
- Phone number(s)
- Email address
- Race and ethnicity
- Gender
- The best time to contact the complainant for any follow-up activity

15.1.2 Allegation Information

Gather specific details about the allegations made in the complaint including:

- Specific details regarding the exact time the alleged misconduct incident occurred, noting that different events may have happened at different locations and at different times.
- This information helps complaint investigators piece together what occurred during an incident from information that often is quite confusing when coming from multiple individuals. This includes identifying any case numbers associated with a call for service involved in the incident.
- If possible, photos of the locations of the incidents should be submitted to the Internal Affairs Unit as soon as possible.
- The names and employee numbers of any Department members named in the complaint.
- The names and any known contact information for other individuals, including first-person and third-party witnesses or relatives, involved in the incident that led to the complaint.



- The details about what occurred before, during and after the incident that led to the complaint. Specific attention should be paid to the complainant's involvement and actions, as well as the complainant's relationship to the other individuals involved in the incident.
- Specific details from the complainant and any other individuals involved in the incident regarding any possible motives for why the subject member may have engaged in misconduct.
- Specific details regarding where the incident(s) that led to the complaint occurred.
- If the complainant was not at the scene of the alleged misconduct, specific details regarding how the complainant became aware of the alleged misconduct.

15.1.3 Evidence

Gather all potential evidence that could prove useful in determining the facts surrounding an allegation of employee misconduct including, but not limited to, the following:

- A printout of the Computer Aided Dispatch (CAD) information for any call for service associated with the complaint.
- Photos of any locations associated with the complaint.
- Photos of any physical injuries to the complainant.
- If the complaint is made immediately after the incident that led to the allegations, photos of the complainant and the complainant's clothes.
- Photos of any physical injuries to the subject member.
- If the complaint is made immediately after the incident that led to the allegation, photos of the subject member and his or her clothes.
- Any potential video of the incident that led to the allegation, including video and audio footage from nearby businesses or residences, cell phones and social media, as well as from SDPS body-worn cameras and in-car cameras.
- Copies of any medical records that may be available to SDPS for medical treatment provided to the complainant or Department member, provided permission is granted by those being treated.

15.2 Planning the Investigation

Developing a clear plan of action that addresses all of the required tasks in advance helps ensure all internal affairs investigations are thorough, fair, objective and complete. This section of the manual provides specific considerations to assist SDPS personnel tasked with the responsibility of conducting an internal affairs investigation. Any questions should be addressed immediately with the Internal Affairs Lieutenant.



15.2.1 Maintaining a Case File

It is important to create a specific case file folder for each individual complaint investigation. The individual conducting the investigation should create the case file folder immediately after receiving the complaint and after having reviewed any information already provided in a preliminary investigation.

Although this file folder could be created electronically, investigators receive many items from a variety of sources that typically require a physical folder. For example, copies of handwritten complaints, photos and other written documents are typically placed within this folder before being scanned and put into an electronic case folder, if desired.

15.2.2 Initial Investigative Steps

The individual assigned to investigate the complaint must take the following initial investigative steps during the initial phase of a complaint or conduct investigation.

- Gather and review all written documents describing the allegations involved in the case that were obtained during the in-person interview when the complainant initiated the allegations and/or that were collected during the primary investigation.
- To the extent possible, identify all Department members who may be involved in the allegation as a subject member or as a witness.
- Recognize that the complaint alleged by the complainant may involve additional violations of Department policies and procedures of which the complainant may be unaware. Ensure these additional violations are included in the investigation.
- Locate and print the specific Department Policy Manual sections that correspond to the allegations against a Department member and place these copies within the physical case file, as well as in any digital file being maintained.
- Based on the allegations, identify the appropriate classification for the complaint or concern.
- Ensure the IA Unit Lieutenant assigns a new Internal Affairs Complaint Case Number to the complaint.
- In coordination with the Internal Affairs Lieutenant or his or her designee, ensure that an official NOC is prepared and forwarded to the subject member(s).
- Contact any individuals who need to be interviewed to schedule appointments as soon as possible, making notes of the date and time of the contact with each individual in the case file. Note the date and time for the scheduled interview.
- It is important to initiate this process immediately so witnesses do not begin to forget details important to the case. Delaying this process also creates the risk that some witnesses may no longer be available at some point in the investigation process.



- Although the complainant provided details of the allegations when filing the initial complaint, consider whether a more detailed interview is necessary to gain additional critical information for the investigation.
- Ensure any evidence that already has been collected or that needs to be collected is secured and noted in the case file.
- Ensure the highest-ranking, on-duty command officer in the subject member's chain of command is apprised of the complaint. Note the date and time of the communication in the case file.
- In coordination with the Internal Affairs Lieutenant or his or her designee, determine the prior history of any complaints filed against the subject member. Make note of the data in the case file.

15.2.3 Conducting Interviews

In general, it is more effective to conduct interviews in the following order, as information gleaned from initial interviews proves helpful during subsequent interviews.

- Any additional interviews of the complainant that may be necessary.
- First-person witnesses who are not SDPS members and have knowledge of the incident that led to the complaint.
- Third-person witnesses who are not SDPS members and may have important information to share.
- First-person witnesses who are SDPS members and have knowledge of the incident that led to the complaint.
- Third-person witnesses who are SDPS members and may have important information to share.
- Any subject-matter experts who may be able to provide important details to assist in the investigation, such as medical personnel, school officials or SDPS trainers.
- Members of SDPS who are the subjects against whom the allegations have been made.

It may be necessary to conduct interviews in a different order to facilitate witnesses who may be unavailable at a given time, but the subject member should nearly always be the last individual interviewed. This allows the investigator to have as much information as possible when interviewing the subject member.

Witness Interviews – Not Members of SDPS

- Conduct witness interviews in a formal setting, such as the Internal Affairs Unit offices, whenever possible. However, practicality often dictates that some interviews may be done at another work location or other site to accommodate a witness.



- At the beginning of the interview, obtain all of the witness' personal information and updated email addresses and phone numbers, as well as information concerning the best time to contact the witness for any needed follow-up questions.
- With the consent and permission of the witness, audio record the interview whenever possible. If consent has been given, ensure the witness signs and dates the appropriate Departmental form to acknowledge such consent.
- Whenever possible, encourage the witness to complete a Voluntary Written Statement in addition to answering the verbal questions.
- At the conclusion of the interview, provide the witness with a business card and invite the individual to contact the investigator with any additional information in the future.

Witness Interviews – SDPS Members Not Subject of Allegations

- Give timely written notifications to SDPS members to accommodate their work schedules. The notifications should include the following information:
 - Date, time and location of the interview.
 - General information about the nature of the reason for the interview.
 - Clear direction that before the interview, they are ordered not to discuss any details of the complaint or any potential testimony they may provide.

Do not include details regarding the subject member or any investigative information.

- Conduct interviews of SDPS members in the Internal Affairs Unit office when possible.
- Ensure the SDPS member is aware the interview is being audio recorded before beginning the interview.
- Be aware of the SDPS member's needs and allow breaks when necessary to attend to personal needs.

Witness members are allowed to have representation with the following conditions:

- 1 The same representative cannot represent the subject member.
- 2 A Non-Disclosure form will be signed by the representative.
- 3 Retaining a representative shall not unreasonably delay the process.
- 4 Breaches of non-disclosure will be subject to discipline.



Interviews of Subject Members

For interviews of the subject members of a complaint that could lead to formal discipline, ensure the following steps are taken.

- Ensure timely notifications are given to the subject member to accommodate his or her work schedule. Conduct the interviews at a reasonable hour and, whenever possible, schedule the interview for when the subject member would typically be on-duty, unless the seriousness of the allegation requires otherwise.
- Provide written notifications to the subject member and include the date, time and location of the interview.
 - In the notification, provide information regarding the nature of the allegation, but do not include details regarding the investigation.
 - Provide clear direction that before the interview, the subject member is ordered not to discuss the details of the complaint or the subject member's potential involvement in the events that led to the complaint, with anyone other than the subject member's attorney or a designated labor representative who may accompany the subject member during the interview and is provided reasons for the need for confidentiality.
- Recognize that at their discretion, SDPS members subject to formal discipline may have an attorney of their choice or a representative of the subject member's labor organization present during the interview.
 - It is the subject member's responsibility to seek out this representation. The subject member needs to make prior arrangements to have these representatives present.
 - The subject member is not entitled to forestall an investigation because a specific labor representative is unavailable.
 - The subject member must avail himself or herself of on-call labor representation to facilitate interviews.
- Ensure the labor representative accompanying the subject member is not subject to formal discipline for involvement in the same investigation.
 - The labor representative is not required to disclose, nor can be subject to any punitive action for refusing to disclose, any information received from the subject member under investigation for non-criminal matters.
- Recognize that the labor representative may speak with and on behalf of the subject member during the interview to elicit any favorable facts or to draw attention to any extenuating circumstances that might assist the subject member.
 - The labor representative may not use this right to disrupt the investigator's ability to complete the interview and investigation.



- Before initiating any interview of a subject member, inform the subject member of the rank, name and command of the officer in charge of the interview, the interviewing officers and all other individuals present during the interview.
- All questions to the subject member shall be asked by and through no more than two interrogators at one time.
- Notify the subject member that the interview will be audio recorded, and that the subject member shall have access to the audio recording before any required additional interviews are conducted.
- Advise the subject member that he or she is entitled to a transcribed copy of any notes or reports made by interrogators or other individuals, except those that are deemed by the individual conducting the investigation to be confidential.
- Ensure no notes or reports deemed confidential are entered into the subject member's personnel file.
- Note that the subject member has the right to bring a personal recording device into the interview and to record all aspects of the interview.
- Before beginning any interview, read the subject member the appropriate Lybarger warning.
 - The Lybarger warning reiterates that no statements made will be used in a criminal hearing. The statements are to be used only for administrative purposes, but the subject member may be subject to discipline if the subject member refuses to answer questions for the administrative investigation.
- Remember that an Internal Affairs investigation is an administrative investigation designed to determine whether the policies and procedures have been violated that could lead to formal discipline.
 - An Internal Affairs investigation is not a criminal investigation. Should a subject member begin to make self-incriminating statements involving a criminal violation, cease conducting the investigation. If someone other than the IA Lieutenant is conducting the investigation, notify the Internal Affairs Lieutenant immediately of the circumstances
 - The Internal Affairs Lieutenant then coordinates with criminal investigators who will take over the interview after advising the subject member of his or her constitutional rights.
- During the interview, ensure reasonable accommodations are made to all present. Allow short breaks when necessary to attend to personal needs.
- Do not subject the subject member to offensive language. Do not threaten the subject member with any punitive action, unless the subject member refuses to respond to questions or submit to interviews. In this case, inform the subject member that failure to answer questions directly related to the investigation or interview may result in disciplinary action.



- Ensure no promise of reward shall be made as an inducement to answering any question.
- Ensure no subject member being interviewed is subjected to visits by the press or media without his or her expressed consent.
- Do not provide the subject member's home address or photo to the press or media without the subject member's expressed consent.

Interviews of Command Officers

Because of the paramilitary-style organizational structure within SDPS, investigations in which Command Officers are the focus of complaint allegations or are interviewed as witnesses, some lower-ranking Department members may be reticent to conduct interviews or investigations for fear of future ramifications.

In complaint cases involving Command Officers, the Internal Affairs Lieutenant coordinates with the Chief to determine the most appropriate individual to conduct such interviews.

15.2.4 Gathering and Maintaining Evidence

As with any investigation, it is critical to be as thorough as possible in collecting and maintaining evidence that could prove or disprove an allegation of employee misconduct. This section provides guidance regarding the value of the following types of evidence and the importance of maintaining evidentiary integrity for these items.

15.2.5 Audio Recordings

Audio recordings may come in a variety of forms. For example, a complainant may provide an audio recording of an interaction with a Department member when initiating a complaint. This could be in the form of an audio file from a cell phone.

Audio recordings are typically made of the interviews of complainants, witnesses and subject officers during an investigation. If these files are digital, they may be saved on a computer hard drive. However, at the conclusion of an investigation, the case investigators should create a CD or other appropriately secure electronic record that contains all of the audio recordings associated with the case, as well as all other digital files, such as Word documents and PDF files.

A copy of such electronic record may be required to be forwarded with a copy of the investigative file when a case is forwarded to the subject member's chain of command for findings and recommendations. Accompanying instructions should be included that the electronic record is not to be copied or shared, and must be returned (or access otherwise terminated) at the conclusion of the review to be used to create findings and recommendations.



If audio files are in an older format, such as a cassette tape, these recordings are to be kept in a secured area maintained by Internal Affairs Unit personnel. A digital copy should also be created and added to the digital case folder.

15.2.6 Social Media Posts

Social media posts have the potential to be of great investigative value when handling allegations of employee misconduct. For example, social media posts regarding a complainant's version of events surrounding the complaint may help verify the complainant's statement as being consistent or inconsistent with the one shared with the Department. Such posts also may elicit comments and additional information from acquaintances of the complainant. In some cases, social media posts by Department members may provide useful information related to a complaint. In fact, the post itself may be part of the complaint.

SDPS members responsible for conducting complaint investigations should always consider the value of checking social media sites such as Facebook, Twitter, Instagram and other social media platforms for potential information that could help ensure a thorough, fair and objective investigation.

If social media posts are identified as being relevant to the investigation, the investigators should take screenshots of and print the posts, whenever possible, and include these in the investigative case file.

15.2.7 Cell Phone Evidence

With the proliferation of smartphones, investigators must take steps to secure any potential evidence that may be collected from such devices as it could help prove or disprove an allegation against a Department employee. Examples of such evidence include photos, audio files and text messages.

Great care must be taken to ensure the privacy rights of individuals involved in complaint cases. This may include a legal requirement to seek a search warrant for information residing on a smartphone.

Smartphones owned by the City but used by Department members in the course and scope of their employment may be accessed as noted in City policy, which indicates there is no expectation of privacy for any communications made on or through City devices and accounts. Investigators need to recognize the exigency with which they must secure any evidence located on a smartphone due to the mobile nature of the devices and because of the ability to delete data quickly.

Digital copies of any data collected during the course of a complaint investigation must be kept in the investigative folder, as well as added to the electronic record containing copies of digital evidence for a complaint case.

15.2.8 Mobile Computer Terminal Logs

Investigators conducting complaint investigations must secure copies of all mobile computer terminal logs containing digital communications between a Department member and the subject member if the



information contained in these transmissions would be helpful to prove or disprove the allegations against the Department member.

The collection of such digital communications is not limited to the subject member. Investigators can collect copies of the messages on the mobile computer terminals of other Department members with whom the subject member communicated. Copies of these communications should be secured as soon as possible and placed in the investigative case folder.

15.2.9 Radio Communication Logs and Audio Recordings

Investigators must obtain from the Communications Unit a printed copy of the Computer Aided Dispatch (CAD) log for any call for service involved in a complaint allegation, and this CAD log must be placed into the investigative folder. The investigator must also obtain all relevant recordings, including but not limited to, phone calls and radio communications of involved personnel.

15.2.10 Photos

Photos are an extremely valuable type of evidence that frequently assists in proving or disproving a misconduct allegation against a Department member. These photos may come in the form of traditional photos from film or digital photos from a smartphone, iPad or other electronic device, or digital camera.

Any copies of photos that have been provided by complainant, a witness or others, as well as photos collected from digital devices, are stored in the investigative case folder. The investigator ensures digital copies are made of any printed photos and ensures they and any digital photos are added to the CD in the investigative case folder that contains all digital files associated with the case.

Great care needs to be given to protect the privacy rights of those whose images are contained in any photos gathered as evidence. The existence of the photos and their contents, as well as any copies of the photos, cannot be shared with anyone who does not have a need or a right to know for investigative purposes.

15.2.11 Photo Line-Ups

If a complainant is not able to identify a Department member by name, but states that he or she could identify the member by sight, it may be necessary for an investigator to create a photo line-up to assist in the investigation. Based on information the investigator may have gathered through CAD logs or other sources, the investigator may create a photo line-up.

Photo line-up groupings consist of a photo of the potential subject member and five photos of Department members who look similar (e.g., similar gender, age, race, ethnicity, facial features, uniformed or non-uniformed) drawn from the Department's photo database of SDPS personnel. The subject member's photo is placed randomly within the group of photos, which will be shown sequentially to the witness(es)/



complainant(s). All of the photos should be similar in size so no single photo stands out in any way from all the others.

When presenting the photo line-up to a complainant, the investigator advises the complainant that the subject member may or may not be depicted. The investigator must not coax the complainant in any way to select a particular photo. If a complainant identifies an individual in the photo line-up as the focus of the complaint, the investigator asks the complainant to write his or her initials next to what they believe to be the subject member's photo, along with the date and time. The investigator must add the photo line-up to the case folder and note the outcome of the review in the written report for the investigation.

15.2.12 Chemical Tests

For some Internal Affairs investigations, the investigator may need to obtain a breath or chemical test of the subject member. Such cases could include allegations of consuming alcoholic beverages or controlled substances on duty or being under the influence of alcohol or illicit drugs while on duty.

In these cases, the investigator coordinates with the Internal Affairs Lieutenant or his or her designee before taking the sample, whenever practical. If the subject member refuses to provide a breath or blood sample voluntarily, the subject member is then ordered to provide the sample for administrative purposes only, and the least invasive type of test possible is given whenever possible.

The date, time and identity of the supervisor or investigator who gave the order are noted in the case file. The individual who gave the order writes a memorandum outlining the details of the order, which is given directly to a member of the Internal Affairs Unit staff for inclusion in the case folder.

If the subject member has been accused of a criminal violation and provided a breath or blood sample in the course of being processed for that violation, the test results are used for the administrative investigation rather than repeating the tests.

15.2.13 Polygraph Examinations in Administrative Investigations

POBR limits the use of polygraph examinations in administrative investigations (Government Code 3307) with explicit direction that no subject member may be compelled to submit to a lie detector test against his or her will. As such, any use of a polygraph examination in an administrative investigation should only be conducted (1) if the subject member requests or agrees to it and (2) the exam is coordinated with the subject member's legal representative, the Internal Affairs Lieutenant and the OCA. In the event the subject member requests a polygraph examination, the Chief makes the ultimate decision regarding whether the test will be given.



15.2.14 Monitoring Criminal Investigations Associated with Complaints

Although the investigative tactics used to investigate an administrative complaint filed against a Department member are similar to those used to investigate criminal cases, extensive case law requires clear and distinct separation between a criminal investigation of a public safety Department member and an associated administrative investigation.

When a complaint is made against a Department member that involves criminal conduct that occurred within the City of Sunnyvale, the investigative priorities are the responsibility of the SDPS detectives assigned to handle investigations for the specific type of crime alleged. If a law enforcement agency has filed charges against a Department member for a crime that occurred outside of the City of Sunnyvale, the criminal investigation is handled by the outside law enforcement agency. In both types of cases, the Internal Affairs Lieutenant will conduct an administrative investigation of the incident.

While the criminal investigation is in progress, the administrative investigator's role is to act as a silent witness for the Chief. The administrative investigator monitors what occurs in the criminal investigation without becoming a part of the criminal investigation in any way. The administrative investigator monitors the criminal investigation to provide updates to the Chief on the status of the investigation, so the Chief may be assured the criminal investigation is being conducted (1) in a thorough, fair and objective manner, and (2) in a manner that would be similar to the investigation of any other individual.

During this preliminary phase, the administrative investigator prepares a case folder and begins gathering primary investigation data that will be used after the criminal investigation is concluded and the administrative investigation commences.

The criminal and administrative investigations are kept separate to protect the ability of the criminal investigators to conduct a thorough, fair, objective and complete investigation and present it to the District Attorney's Office for prosecution consideration. If an administrative investigator conducts an administrative interview of the subject member while a criminal investigation is ongoing, compelled administrative statements could become mixed with criminal investigation information. This could taint the criminal prosecution because the subject member's constitutional rights against self-incrimination could potentially be violated.

The administrative investigation is initiated formally when criminal investigators advise SDPS that a criminal allegation has been filed against the subject member or has been rejected. If criminal charges have been filed, the administrative investigation does not begin until the outcome of the criminal justice process has been determined. If criminal charges are not filed against a Department member, the administrative investigation begins immediately after the notification of the conclusion of a criminal investigation.

Due to the sensitivities involved in separating criminal investigations from administrative investigations, all cases involving potential criminality on the part of a Department member require coordination between the Internal Affairs Lieutenant and the Chief. The Internal Affairs Lieutenant and Chief ensure the proper processes are followed that will allow for thorough, fair, objective, and complete investigations to occur during the criminal and administrative investigation.



California law requires administrative investigations to be completed in one year. The one-year period does not begin until the criminal investigation is complete and a decision is rendered regarding whether formal criminal charges will be filed against the subject member.

16 OFFICER-INVOLVED SHOOTINGS AND IN-CUSTODY DEATH INCIDENTS

Due to the sensitive nature of any officer-involved shooting (OIS) or an in-custody death incident (IDI), it is imperative that SDPS take any and all steps necessary to ensure the monitoring of the incident is handled in the most professional manner possible. As such, when an OIS or IDI has occurred involving a SDPS member, on-duty field personnel and on-duty supervising radio communications personnel will coordinate to ensure the IA Lieutenant is notified immediately. The IA Lieutenant then takes the following steps:

- Immediately respond to the scene of the OIS or IDI and actively monitor the preliminary investigation. The lieutenant then reports preliminary observations directly to the Chief. It is not the responsibility of the IA Lieutenant to be engaged in the actual investigation of the incident at this stage, as this responsibility lies with the on-duty field personnel and criminal investigators on the scene. Rather, the IA Lieutenant's responsibility is to observe and monitor the investigation in an effort to provide an objective status briefing for the Chief of the ongoing investigation.
- Once the investigation moves away from the scene of the OIS or IDI to headquarters or wherever follow-up interviews are being held, the IA Lieutenant responds and continues to observe and monitor the ongoing investigation and interviews. The IA Lieutenant does not participate in any of the actual interviews of any suspects, witnesses or Department members involved in the OIS or IDI, nor does the IA Lieutenant direct any personnel involved in the investigation. Rather, the lieutenant continues to brief the Chief regarding the lieutenant's observations and perspective as the investigation continues.
- Once the Department's criminal investigators have concluded their investigation of the OIS or IDI and the District Attorney's Office (D.A.) has completed its formal review, including any Grand Jury review, if no criminal charges are to be filed against any Department member involved in the OIS or IDI, the IA Lieutenant is responsible for conducting a formal administrative review of the incident. The focus of the review is on whether the Department's policies and procedures were followed in the incident. The IA Lieutenant then completes and submits a written report that focuses on these administrative aspects of the OIS or IDI directly to the Chief. If the D.A.'s Office decides to file criminal charges against a Department member involved in the OIS or IDI, the subsequent administrative investigation awaits the conclusion of the criminal proceedings before commencing.
- The purpose for waiting to begin a formal administrative review of any OIS or IDI until after criminal investigators and the D.A.'s Office have concluded all of their investigation is to ensure that any administrative investigation does not interfere with the criminal investigators' investigation, which could jeopardize any potential or ongoing prosecution of a criminal case.



17 CRIMINAL ALLEGATION INVOLVING A SDPS MEMBER

When any Department member becomes aware of an incident involving a SDPS member engaged in alleged criminal conduct, also referred to as a member-involved criminal allegation (MCA), on-duty supervisors shall notify command officers who will ensure the IA Lieutenant is notified immediately. The IA Lieutenant then takes the following steps:

- If the alleged criminal conduct occurred within the City of Sunnyvale, the IA Lieutenant responds either to the scene of the incident or to where the investigation's initial efforts are being coordinated by SDPS investigators. The IA Lieutenant actively monitors the criminal investigation and then reports preliminary observations directly to the Chief. It is not the responsibility of the IA Lieutenant to be engaged in the actual investigation of the incident at this stage, as this responsibility lies with the on-duty field personnel and criminal investigators on the scene. Rather, the IA Lieutenant's responsibility at this point is to observe and monitor the investigation in an effort to provide an objective status briefing for the Chief of the ongoing investigation.
- If the MCA involves an incident that occurred in another jurisdiction, the IA Lieutenant immediately contacts the law enforcement agency handling the investigation to learn more details regarding the incident, reporting what he or she has learned to the Chief. The lieutenant makes arrangements with the investigating agency to establish a mechanism whereby updates to the investigation's status may be shared to the extent possible without jeopardizing the criminal investigation in any way. If appropriate and at the Chief's direction, the IA Lieutenant may travel to the investigating agency to monitor the investigation.
- The IA Lieutenant does not direct the criminal investigation and does not participate in any of the actual interviews of any suspects, witnesses or Department members involved in the MCA, nor does the IA Lieutenant direct any personnel involved in the investigation. Rather, the lieutenant continues to brief the Chief regarding his/her observations and perspective as the investigation continues.
- Once the Department's criminal investigators have concluded their investigation of the MCA and the District Attorney's Office (D.A.) has completed its formal review, including any Grand Jury review, if no criminal charges are to be filed against any Department member involved in the MCA, the IA Lieutenant is then responsible for conducting a formal administrative review of the MCA, with the focus on whether the Department's policies and procedures were followed in the incident. The IA Lieutenant then completes and submits a written report that focuses on these administrative aspects of the MCA directly to the Chief. If the D.A.'s Office decides to file criminal charges against a Department member involved in the MCA, the subsequent administrative investigation awaits the conclusion of the criminal proceedings before commencing.
- The purpose for waiting to begin a formal administrative review of any MCA until after criminal investigators and the D.A.'s Office have concluded their investigation is to ensure that any administrative investigation does not interfere with the criminal investigators' work, which could jeopardize any potential or ongoing prosecution of a criminal case.



18 ADMINISTRATIVE INVESTIGATION REPORTING FORMAT

Investigators must use a standardized administrative investigation report format to document the investigative process for all formal administrative investigations, which consists of five main sections as outlined below. Using a standardized report format ensures consistency in the reporting process for Internal Affairs investigations and for personnel responsible for determining findings and recommendations for these cases.

18.1 Background

The administrative memorandum documenting all formal administrative investigations begins with a section titled "Background." This section of the memorandum consists of a brief synopsis of the allegation and the events that led up to it, including the date, time and location of the incident. The "Background" section provides a brief overview that alerts readers about the type of the investigation. Typically, this section of the report is between one and three paragraphs in length.

18.2 Investigation

The "Investigation" section of the report provides detail about what the investigator learned while investigating the case. It may include the following:

- Statements from complainants, witnesses, medical personnel, subject-matter experts, subject officers and anyone else who provided statements during the investigation.
- Copies of any crime reports, citations or other related reports involved in the event leading to the allegation.
- Copies of any CAD information and related mobile data terminal messages related to a call for service involved in the events leading to the allegation.
- Descriptions of any physical evidence collected in the case, as well as copies of any photos of the evidence and reports indicating where the physical evidence is now located.
- Copies of any medical reports pertaining to any injuries a complainant or subject member is alleged to have received as a result of the events leading to the allegation.
- Any additional photos or other physical evidence that may have been collected in the case, including, but not limited to, copies of social media posts, audio files and video footage.

Copies of photos, medical reports, arrest reports and other items may be referred to in the main body of this section with a notation that the complete copies may be found in an appendix at the end of the report.



18.3 Applicable Authorities

The “Applicable Authorities” section of the report outlines the specific sections of the SDPS Policy Manual the Department member allegedly violated. When describing each potential violation, the investigator should include the exact narrative from the applicable policy manual section to facilitate any subsequent review of the case.

18.4 Analysis

The “Analysis” section of the report is written by the command officer assigned to review the case and analyze the findings and recommendations written by the investigator. The command officer provides the logic and reasons for why he or she determined whether each alleged violation did or did not occur, or whether coming to such a determination was not possible. The command officer must be thorough, fair and objective in their analysis for both the complainant and the subject member, including making a determination as to the credibility of those providing statements during the investigation. The command officer must use the standard of a preponderance of evidence when evaluating the findings and recommendations.

18.5 Findings and Recommendations

The investigator who completed the initial investigative memorandum is responsible for including the heading for the section titled “Findings and Recommendations,” but does not complete the section.

In the “Findings and Recommendations” section of the report, the investigator only notes that the reader can find the findings and recommendations by referring to the memorandum that will be completed and attached to the investigation’s report by the command officer assigned to make the findings and recommendations for the case.

The command officer assigned to make findings and recommendations for the case completes a separate administrative memorandum after reviewing and analyzing the first four sections of the investigative report. This memorandum provides a detailed analysis for the determinations for this section of the investigative report. This memorandum is attached as an addendum to the report. The complete report and memorandum are forwarded up the chain of command for review and additional recommendations using a transmittal form as the coversheet.

In the “Findings and Recommendations” section of the report, the command officer who analyzed the case outlines the findings and recommendations he or she believes are relevant. Each individual allegation has its own distinct finding and recommendation in a bulleted list, as cases may involve situations where some, but not all, allegations may be sustained. Command officers completing this section must use the formal findings defined in this manual in Section 19.6.

The command officer conducting the analysis also provides specific recommendations for the level of discipline he or she believes is warranted for each allegation. In cases where the findings do not sustain the



allegations against the subject member, the command officer is not precluded from making recommendations for counseling and training that could serve to help the subject member avoid such complaints in the future. Recommendations could also outline the need for additional Department-wide training that might prove useful to help the Department prevent future complaints. Command officers completing this section of the Findings and Recommendations Report must use the formal recommendations defined in this manual in Section 25.1 for Informal Actions and Section 25.2 for Formal Discipline.

18.6 Findings Defined

To help ensure consistency for the terms used to identify the findings in a disciplinary case, the following are the official definitions for the findings that a command officer uses when documenting his or her findings and recommendations at the conclusion of the review and analysis of an Internal Affairs investigative report:

- **Unfounded:** The investigation determined conclusively that the act(s) alleged in the complaint either did not occur or that the Department member named in the allegation was not involved in the alleged act(s).
- **Exonerated:** The act(s) alleged in the complaint occurred. However, the investigation revealed the acts were justified, lawful and proper.

The Command Officer making this finding should consider whether training and counseling might still be recommended for the subject employee if such actions may provide ways for the employee to provide public safety services in a manner that does not lead to a complaint. Consideration should also be given as to whether the Strategic Services Captain may need to consider altering or updating training content for all personnel to avoid similar complaints in the future.

- **Not Sustained:** The Internal Affairs investigation determined that there was not sufficient evidence to prove clearly that the alleged act(s) did or did not occur.

The Command Officer making this finding should consider whether training and counseling may still be recommended for the subject employee if such actions might provide ways for the employee to provide public safety services in a manner that does not lead to a complaint. Consideration should also be given as to whether the Strategic Services Captain may need to consider altering or updating training content for all personnel to avoid similar complaints in the future.

- **Sustained:** The internal affairs investigation determined that sufficient evidence existed to prove that the act(s) alleged in the complaint occurred.
- **No Finding:** The complainant failed to provide information promised to complete the investigation, the complainant is no longer available to clarify details needed to make a finding in the case, the complainant has advised he or she is no longer willing to cooperate in the investigation, or the SDPS employee is no longer employed with the City of Sunnyvale before the internal affairs investigation could be completed.



- **Complaint Withdrawn:** The complainant alleging the act(s) involved in the case indicates he or she would like to withdraw the complaint. This finding will only be used with the approval of the Chief of Public Safety, as misconduct issues may have been brought to light that need to be investigated even though a complainant expresses a desire to withdraw the complaint.

19 PROCESSING OF COMPLETED COMPLAINT INVESTIGATIONS

Upon completion of a command officer's findings and recommendations work, the investigative report and the command officer's memorandum containing the findings and recommendations are forwarded up the command officer's chain of command using a transmittal form. On the form, each individual up the command officer's chain of command comments regarding whether they concur with the findings and recommendations.

If a command officer in the chain of command disagrees with any finding or recommendation, the command officer lists the specific reasons why he or she disagrees on the transmittal form or on a separate memorandum addressed to the Chief with a copy included in the transmittal packet. Each reviewing command officer signs and dates the transmittal form with his or her comments and then forwards the package to the next level of command in the subject member's chain. The transmittal package is ultimately delivered to the Chief, who makes the determination regarding the next steps in the case.

20 ROLES AND RESPONSIBILITIES FOR INVESTIGATING AND PROCESSING COMPLAINTS

The Internal Affairs Lieutenant and the individual assigned to investigate the complaint or concern primarily guide the investigative process. However, other roles and responsibilities in the investigation are described below.

20.1 Internal Affairs Lieutenant

The Internal Affairs Lieutenant is responsible for overseeing all investigations of formal complaints made against Department members. The Internal Affairs Lieutenant is also responsible for maintaining logs of all informal complaints and concerns involving Department members and complaints about Department policies and procedures.

Even for Non-Misconduct Concerns and Decline to Investigate Concerns, Department members must ensure the Internal Affairs Lieutenant or his or her designee is aware of the complaints and/or concerns and copies of the reports documenting these incidents are forwarded to the Internal Affairs Lieutenant without delay.

The Internal Affairs Lieutenant has the ultimate authority to determine and designate the official type of complaint based on the allegations. However, the Chief retains the executive authority to direct the actions of the Internal Affairs Lieutenant.



20.2 Complaint Investigator

Most investigations involving misconduct allegations against Department members that could lead to formal discipline are handled by the IA Lieutenant. However, the Internal Affairs Lieutenant may assign individuals who do not work primarily in the Internal Affairs Unit to handle internal affairs investigations, including some instances in which external investigators may be chosen to investigate a case with the Chief's approval after the Chief has coordinated with HRD, OCA and Office of the City Manager.

The Internal Affairs Lieutenant may do this because of the number of complaint cases that need to be handled or if because of the allegations, the case may best be handled by a Department supervisor with specific knowledge or skills that would facilitate the case being handled in the most thorough, fair and objective manner. The Internal Affairs Lieutenant's decision to assign an investigation to a supervisor outside of the Internal Affairs Unit must be approved in advance by the Chief.

Supervisors assigned to handle complaint investigations follow the policies and procedures of the Internal Affairs Unit. The supervisors are free to contact the Internal Affairs Lieutenant at any time for guidance and assistance.

When the Internal Affairs Lieutenant forwards a complaint or concern to a supervisor not assigned to IA for investigation, the case is forwarded with a memorandum indicating the due date for its return to the Internal Affairs Lieutenant.

If the individual assigned to investigate the case is unable to complete and return the case by the due date, he or she must contact the Internal Affairs Lieutenant to arrange for a new date when the complaint should be completed. If the investigator has any additional delays, he or she must contact the Internal Affairs Lieutenant.

It should be noted that California Government Code 3304 (d) (1) states that all complaint investigations must be completed within one year from the date that Department receives the complaint, with exceptions noted within the section.

20.3 Supervisors

All Department supervisors, including command officers, have an important role in ensuring the professional standards of the SDPS are upheld at all times. Part of their responsibility is to ensure all complaints made against a Department member or about the Department's policies and procedures are handled in a timely manner, according to the direction outlined in this manual.

All Department supervisors are held accountable for the work product of those who report for them. If a supervisor does not take action to receive, investigate and report on complaints he or she or a subordinate receives, the supervisor could be subject to a Department policy violation defined as a failure to supervise. Supervisors are encouraged to direct all questions regarding actions they should take regarding complaints to their supervisors and/or the Internal Affairs Lieutenant at any time.



Supervisors should take a keen interest in the outcome of any administrative investigation completed for a subordinate. First-line supervisors typically have the greatest ability to be able to influence the work product and behaviors of a subordinate due to their day-to-day interactions with one another.

Supervisors must address any counseling, training and assistance provided to subordinates in the appropriate narrative sections of their annual performance appraisals.

20.4 Command Officers

Command officers play a key role in sustaining an effective complaint investigation process. Command officers have the following responsibilities:

- 1 Guiding their subordinates on the appropriate methods to receive and report on complaints they receive.
- 2 Providing the Findings and Recommendations after an initial complaint investigation has concluded, when required.
- 3 Maintaining awareness of potential Department-wide training needs based on the complaints they review and the quality of services delivered by their subordinates.
- 4 Serving as a member of a Disciplinary Review Panel, when required.
- 5 Maintaining a working knowledge of the guidelines for handling complaints and concerns.

20.5 Chief of the Sunnyvale Department of Public Safety

The Chief is responsible for overseeing all Department operations, including all activities involved in the processes for handling complaints against Department members and Department policies.

The Chief makes the final determination on behalf of the Department regarding the discipline given to Department members who have engaged in misconduct, in accordance with the City's civil service policies and with the concurrence of the City Manager.

The Internal Affairs Lieutenant reports directly to the Chief and as such, the Internal Affairs Lieutenant is considered a member of the Chief's Office.

The Chief works with representatives from OCA, HRD and the City Manager. The Chief ensures all disciplinary decisions are made in accordance with Department and City of Sunnyvale policies, as well as State of California law.



21 PROGRESSIVE DISCIPLINE AND THE PROCESSING OF SUSTAINED COMPLAINTS

The Department's philosophy on handling disciplinary matters is rooted in the concept of progressive discipline. Progressive discipline focuses on implementing the lowest level of discipline against a Department member that is appropriate to correct behavior. The level of discipline increases when efforts to correct the behavior have failed or depending on the severity of the employee's misconduct.

For example, sustained cases of misconduct involving lower-level policy violations that result only in informal discipline (e.g., training, counseling, documented oral counseling) are processed differently than cases involving misconduct that results in formal discipline (e.g., letter of reprimand, suspension, disciplinary transfer, demotion, termination).

The Chief makes the ultimate decision regarding the level of informal discipline for employees who engaged in misconduct. The Chief makes this decision after reviewing the investigative report and all corresponding recommendations from command officers who also reviewed the report.

The Internal Affairs Lieutenant is responsible for coordinating with the appropriate Department members to institute the disciplinary measures and record these actions in the appropriate logs in the Internal Affairs Unit. The Internal Affairs Lieutenant is also responsible for ensuring that the investigative case folders and information about these cases are maintained for the appropriate amount of time before they are purged according to California law.

To ensure consistency and fairness in any formal discipline given to employees who have engaged in misconduct, the Chief reviews the case and leads a discussion with the appropriate members of the Department in a Disciplinary Review Panel (DRP) before determining the level of discipline.

The Internal Affairs Lieutenant is responsible for the following:

- Ensuring the appropriate steps are taken to notify the subject member of the discipline.
- Facilitating the appropriate appeals process the subject member may choose to invoke.
- Coordinating with the subject member's supervisor to ensure the discipline is implemented.
- Coordinating with the subject member's supervisor to ensure the discipline is logged and recorded in the required database files in the Internal Affairs Unit.

22 DISCIPLINARY REVIEW PANEL (DRP)

SDPS has a process to assist the Chief in making a determination of the appropriate level of discipline for a sustained case of misconduct that could lead to formal discipline. This process includes the implementation of a Disciplinary Review Panel in which supervisors and command staff members in the subject member's chain of command gather to discuss a disciplinary case. This discussion provides the Chief with various points of view on the merits of the case, as well as recommendations regarding the level of discipline that should be given.



The goal of the Disciplinary Review Panel is to ensure the discipline resulting from all formal discipline cases is consistent with cases of similar misconduct, while taking into account the subject member's past disciplinary history and any personal, extenuating circumstances.

The Disciplinary Review Panel's functions are described below.

22.1 Disciplinary Review Panel Initiation

Whenever an internal affairs case results in a sustained finding for employee misconduct that could result in formal discipline, the Internal Affairs Lieutenant coordinates with the Chief's Office to determine whether to institute a Disciplinary Review Panel.

At the Chief's direction, the Internal Affairs Lieutenant sets a date and time for the implementation of a Disciplinary Review Panel.

22.2 Panel Members

The Disciplinary Review Panel consist of the following individuals:

- Chief
- Internal Affairs Lieutenant or his or her designee
- Subject member's immediate supervisor
- Command staff members in the subject member's direct chain of command
- Strategic Services Captain

22.3 Disciplinary Review Panel Process

The purpose of the panel is not to reinvestigate the complaint as it has already been sustained. The purpose is to guide the Chief as he or she makes the ultimate decision on the level of discipline that will be imposed upon the subject member.

After the DRP members have gathered in a secure location that allows for confidential discussions, the Chief opens the panel by stating the purpose of the meeting and a reminder of the sensitive nature of the discussion. The Chief provides a verbal confidentiality order that, out of respect for the subject member whose actions are about to be discussed and to preserve the ability of DRP members to speak openly and freely, the DRP members are not to discuss the details of the panel's discussions after the DRP concludes without the Chief's expressed authorization.



The Chief calls on the Internal Affairs Lieutenant to provide a brief synopsis of the details of the case including the date, time and location of the events involved in the complaint, as well as the findings and recommendations.

The Internal Affairs Lieutenant provides a brief overview of the subject member's past disciplinary history, as well as an overview of the ratings the subject member received for the previous three evaluation periods. The Internal Affairs Lieutenant provides highlights of the awards and commendations the subject member has received. The Internal Affairs Lieutenant also provides an overview of the types of discipline that have been implemented in similar cases involving other Department members, if they exist.

The Chief asks the subject member's supervisor to describe the subject employee and the current quality of his or her work efforts. The supervisor shares any information about any personal circumstances he or she is aware of that may be affecting the employee's work performance.

The Chief asks certain panel members, starting with the subject member's direct supervisor and then working, in order, up the chain of command, to make a recommendation for the level of discipline that should be given. The Chief also asks for the reasons why the individual believes the recommendation to be appropriate.

The Chief asks the Strategic Services Captain whether there are any steps he or she believes could be taken to prevent similar misconduct by Department members in the future. These steps may include updated or new training. These steps may be discussed among the panel members after the training supervisor has spoken.

The Chief then thanks the members of the panel and reminds them of the confidentiality order given at the beginning of the Disciplinary Review Panel before closing the panel. After the meeting has concluded, the Chief makes a determination of the level of discipline to be given and coordinates with the Internal Affairs Lieutenant to ensure any necessary consultation and coordination with the appropriate representatives of the City's HRD and OCA occurs, and that the Notice of Intended Discipline (NOID) is prepared.

The Internal Affairs Lieutenant ensures the NOID is served to the subject member and that the appropriate steps are taken to accommodate any appeals to which the subject member is entitled. The Internal Affairs Lieutenant also ensures appropriate steps are taken to meet legal requirements before the implementation of any formal discipline, including a Skelly meeting.

The Internal Affairs Lieutenant works with the City's HRD and OCA to impose and implement the final discipline in accordance with City policies.

22.4 Coordinating Disciplinary Outcomes with the Training Unit

The Chief and the Training Unit supervisor meet and collaborate to determine (1) what training needs exist for the individual subject member or for the Department as a whole, (2) how they could be implemented, (3) how to budget for them, and (4) what steps would need to be taken to carry out the training.



23 NOTIFYING SUBJECT MEMBERS OF COMPLAINT INVESTIGATION OUTCOMES

As previously noted, the responsibility for notifying the subject member of the intended discipline belongs to the Internal Affairs Lieutenant or his or her designee. The Internal Affairs Lieutenant provides the subject member with a NOID and verbal notification. Face-to-face notification and hand delivery of the NOID is preferred whenever possible.

The Internal Affairs Lieutenant should notify the subject member as soon as possible and practical, but generally no longer than 30 days after the DRP has concluded, the Chief has determined the level of discipline and the appropriate coordination has taken place between the City's HRD and OCA.

24 ACTIONS

The following are the actions available to the Chief for sustained complaints against Department members.

24.1 Informal Actions

Counseling

Counseling is appropriate when misconduct violations are not serious or egregious in nature. In this situation, counseling would educate the subject member about the violated policies and procedures, and steps that he or she could take to prevent violations in the future. Typically, counseling should be provided by the subject member's direct supervisor after the supervisor consults with his or her own supervisor and the Internal Affairs Lieutenant. Counseling is often combined with training.

Training

Requiring documented training is often appropriate when such training would educate the subject member about the violated policies and procedures, and steps that could be taken to prevent violations in the future. The Internal Affairs Lieutenant coordinates the required training with the supervisor overseeing Department training and the subject member's chain of command. Training is often combined with counseling. Training records are managed and maintained by the Training Unit for all personnel.

Documented Oral Counseling

Documented oral counseling (DOC) is appropriate when written confirmation is necessary to document the subject member's misconduct and to identify the specific changes in work performance or behaviors that need to occur to avoid future misconduct.

The subject member's immediate supervisor is responsible for writing and serving the DOC after being notified by the Internal Affairs Lieutenant of some of the specifics of the misconduct and after conducting an oral counseling session with the employee. The DOC includes details about the policy violations that occurred, as well as the specific direction and orders the supervisor gave the subject member during the oral counseling session to avoid future misconduct.



The subject member and supervisor are required to read, sign and date the DOC. The supervisor then provides the subject member with a copy of the DOC and the original is forwarded to the Internal Affairs Lieutenant.

Without mentioning the DOC, the supervisor notes in the subject member's performance appraisal for the current rating period details about the underlying conduct that was addressed in the counseling session and any recommendations given to the employee to improve work performance.

After receiving the original copy of the DOC, the Internal Affairs Lieutenant retains it in the investigative case file. It is ultimately purged in accordance with California law and Department retention schedules.

24.2 Formal Discipline

Written Reprimand

A Written Reprimand is appropriate when written confirmation is necessary to document a subject member's misconduct because (1) it represents a more serious violation than what would go into a DOC, (2) previous disciplinary measures have not been successful to change the subject member's performance, or (3) there has been continued misconduct.

The first command officer or manager in the subject member's chain of command is responsible for writing and serving the Written Reprimand to the subject member. This occurs after the command officer or manager is notified by the Internal Affairs Lieutenant of some of the specifics of the misconduct and after the first command officer or manager has conducted a face-to-face meeting with the employee to issue the Written Reprimand.

The Written Reprimand includes details about the policy violations that occurred, as well as the specific direction and orders the command officer gave the subject member when presenting the Written Reprimand during the reprimand session to avoid future misconduct. The command officer coordinates what will be discussed in the face-to-face reprimand meeting with the subject member's direct supervisor, keeping him or her apprised of what was discussed during the meeting to facilitate direct supervision that addresses the employee's future work performance.

The employee and command officer are required to read, sign and date the Written Reprimand. The command officer provides a copy of the Written Reprimand to the subject member and forwards the original to the Internal Affairs Lieutenant.

Unlike a DOC, the Internal Affairs Lieutenant forwards the original Written Reprimand document to HR for processing and filing, with a copy of the Written Reprimand placed into the subject member's personnel file at SDPS.

Suspension

A suspension is a form of formal discipline that occurs for serious violations of Department policies and procedures, as well as for repeat violations for which lower levels of discipline have not changed a subject member's work performance or behavior. A suspension involves ordering a subject member to be



suspended without pay for a certain number of work hours. The number of hours is determined based on the subject member's past disciplinary history and the seriousness of the misconduct violations.

The Internal Affairs Lieutenant and the subject member's chain of command coordinate closely to determine the appropriate time for the employee's absence. The Internal Affairs Lieutenant works closely with the appropriate representatives from HRD, Finance Department, and OCA to ensure the appropriate administrative steps are taken to effect the discipline.

A pay reduction in lieu of suspension may also be implemented. The amount of pay lost must be the same as the amount of pay that would have been lost during a suspension.

Demotion

A demotion is a form of formal discipline that occurs when serious and egregious violations of Department policies and procedures indicate that the subject member no longer possesses the capacity to serve in the current supervisory or command officer role in which he or she serves. Demotions also occur when the precipitating misconduct violations are the result of ongoing violations for which lower-level forms of formal discipline have not succeeded in changing the subject member's negative behaviors or misconduct.

Termination

Terminations from employment with the SDPS may occur in the following situations:

- The subject member has committed a felony, a serious misdemeanor or repeated misdemeanors for which previous discipline has not served to change the subject member's behavior.
- The subject member has committed a serious and egregious misconduct violation or repeated misconduct and violations of Department policies and procedures, which indicate an inability of the subject member to be able to continue to perform as a public safety Department member.
- The subject member has committed serious misconduct that has compromised his or her ability to maintain the trust and confidence required of someone who serves as a public safety Department member in the City of Sunnyvale.

25 MAINTAINING INVESTIGATIVE FILES – RECORDS AND RETENTION ISSUES

The Internal Affairs Lieutenant is responsible for ensuring the appropriate investigative files are maintained and available when needed for review regarding any future misconduct investigation or for when subject members are considered for an assignment in a specialized unit or a promotion.

The Internal Affairs Lieutenant also ensures a process exists so records may be purged and destroyed according to the report retention policies of the City of Sunnyvale, as well as in accordance with the requirements outlined by the California Government code, POBR and FBOR, with the following serving as the protocols that will be followed to ensure compliance:

- IA cases that do not involve potential criminal conduct will be retained for a period of six years



- IA cases involving a criminal investigation or an officer-involved shooting will be kept for 10 years, except that cases involving a Department member who was convicted of a crime will be kept permanently.

Prior to purging any IA case, the IA Lieutenant will advise the Chief of the pending purge and then ensure the appropriate representatives from HR and OCA also are aware of the pending purge and that they concur the timing of the purge is appropriate.

26 ADDITIONAL CONSIDERATIONS

26.1 Handling Media Inquiries

Per POBR and FBOR, a public safety Department member under investigation will not be subjected to visits by the press or news media without the member's expressed consent, nor shall his or her home address or photo be shared with the press or news media without his or her expressed consent. SDPS policy specifies these regulations also apply to non-sworn members of SDPS who are the subjects of misconduct investigations. Additionally, any interviews of the subject member by the press will not be facilitated by the Department without the Chief's express approval.

26.2 Tolling of One-Year Investigation Requirements

Per California law [Subdivision (d) of Government Code Section 3304], the Department has one year from the date of being notified of a complaint until the case must be investigated and a NOID served on a subject member who has had a complaint of misconduct sustained. However, if a subject member is the focus of an ongoing criminal investigation, the requirement to complete an Internal Affairs investigation within a one-year period is suspended temporarily. In this instance, the one-year period does not begin until the completion of the criminal investigation.

The Chief of Public Safety or his or her designee ensures the City's HRD and OCA are aware of such cases and corresponding timing requirements.

POBR and FBOR state that a subject member may waive in writing the one-year time requirement to complete an investigation, and the time period shall be tolled for the period of time specified in the written waiver [Section 3305 (d) (2) of the Government Code]. Acceptance of any such waiver must be coordinated between the Internal Affairs Lieutenant and representatives from HRD and OCA.

A variety of other circumstances also allow the time to complete an administrative investigation to be extended (see Government Code Section 3305).



26.3 Time Limitations for Filing Complaints and Concerns

Department members are required to accept and forward all complaints and concerns received from individuals following the policies already outlined in this manual. However, if a case is brought forward after considerable time has elapsed since the events that precipitated the complaint or concern, the Chief or his or her designee must approve of the investigation before initiating a formal investigation. This requirement allows the Chief to determine whether what the complainant provides and the preliminary investigation reveals would allow for a thorough, fair and objective investigation. The Chief also considers the seriousness of the allegations when making this determination.

26.4 Complaints Involving EEOC Issues

When complaints against Department members involve potential violations that fall within the scope of the oversight of the Equal Employment Opportunity Commission (EEOC), the Department member conducting the administrative investigation must immediately contact, consult with and coordinate the particular aspects of the investigation with representatives from HRD and OCA to ensure the Department and City comply with EEOC requirements. EEOC issues typically involve circumstances of harassment, discrimination or retaliation, hence the need for close coordination with HRD and OCA.

26.5 Avoiding Conflicts of Interest

To protect the fairness and objectivity of any investigation of a complaint against a Department member, Department members assigned to participate in the investigation or case review must determine whether he or she has any conflict of interest. This conflict of interest could be due to any special relationship with a complainant, witness, witness officer, subject officer or other individual directly involved in the matter. Examples include familial relationships, business relationships or other relationships that exist where there is a possibility that the individual asked to participate in the investigative process may be influenced to treat any matter in the investigation differently than they would if the relationship did not exist.

26.6 Respecting Confidentiality of Internal Affairs Matters

As previously noted, Department members must maintain strict confidentiality in matters involving the investigation of complaints against Department members to protect the integrity of the investigation and the privacy rights of those making the complaints and those named as subject members. Department personnel need to be knowledgeable about the privacy rights requirements outlined in California law, as well as POBR and FBOR. Department members who violate these confidentiality requirements in matters concerning internal affairs investigations are subject to discipline.

SDPS adheres to a strict policy that Department members who come forward to share information about potential misconduct by other Department members or participate in any investigation are not subjected to any form of retaliation for having done so. Examples of retaliation include being ostracized by other



Department members, becoming the target of rude comments or cruel jokes, hazing, intentional exclusion from specialized assignments, and being prevented from having an opportunity to be promoted.

Department members who engage in subtle or overt retaliatory actions against Department members who report misconduct or participate in investigations are subject to discipline. Department members who are aware that a Department member is being subjected to retaliatory actions but fail to report this information to a supervisor are also subject to discipline.

26.7 Handling Highly Sensitive Complaints

On occasion, because of the nature of a complaint or the high-profile status of those involved, a complaint may draw much more attention than it normally would. Examples may include complaints made by well-known members of the community or cases involving elected officials or community leaders.

In these instances, the Internal Affairs Lieutenant works with those involved in the investigation to ensure special precautions are taken to ensure a thorough, fair and objective investigation occurs without interference from the media or any potential conflict of interest. The actions of the Internal Affairs Lieutenant are coordinated with the Chief and any other city officials as deemed necessary.

26.8 Searches of Department Property during Administrative Investigations

Some complaints involve allegations that could potentially be proven or disproven by a search of property belonging to the subject member or Department property that is used by a Department member. Because of the sensitive nature of such searches, as well as legal considerations, any search of property belonging to a subject member or Department property being used by a subject member must adhere to appropriate legal standards.

26.9 Search of Locker or Storage Space

Per California Government Code (Section 3309), no public safety Department member shall have his or her locker, or other space for storage that may be assigned to him or her, searched except in his presence, or with his or her consent, or unless a valid search warrant has been obtained, or where he or she has been notified that a search will be conducted. This code applies only to lockers or other storage space owned or leased by SDPS.

26.10 EMSA Reporting Requirements for EMTs

Sworn Public Safety Employees, below the rank of Deputy Chief, are required to hold a valid EMT certificate. The Emergency Medical Services Authority (EMSA) has specific guidelines on discipline and the reporting of alleged misconduct which apply to personnel whom hold an EMT certificate. These guidelines are governed by California Code of Regulations §100208.1 and California Health and Safety Code §1798.200. The IA Lieutenant will be responsible for making the appropriate notifications to EMSA.



27 ACCESS TO INTERNAL AFFAIRS RECORDS

To access Internal Affairs records, an authorized individual is required to have approval from the Chief of Public Safety. Once approval is received, the individual accessing the file must complete and sign a log entry on an appropriate form located in the Internal Affairs Unit. The log notes the date, time and reason for accessing the records. This information is entered by the authorized individual onto a sheet maintained on the inside front cover of any Internal Affairs folder.

Authorized individuals accessing internal affairs records must be aware of the sensitive and confidential nature of the contents of such records. Those who share confidential information with individuals who do not have a need or a right to know about the contents of the Internal Affairs records may be subject to disciplinary action.

The following are examples of circumstances in which access to Internal Affairs records might be considered for approval by the Chief of Public Safety:

- The Department member who is the subject of the complaint for which the records are being sought.
- Command officers who may need the information when the subject member has applied for a specialized unit, is being considered for promotion or for any other administrative purpose that assists supervisors and managers to perform their official duties.
- A member of the Internal Affairs Unit or an individual authorized by the Internal Affairs Unit, who is accessing the file during the process of investigating a separate case.
- An individual who is authorized to access the file after having been approved by the OCA in accordance with California Evidence Code Section 1043 or when required as result of a federal court order.