

OGDEN CITY POLICE

Office of the Chief

Policy No: 12

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| Subject Investigation of Complaints of Misconduct | Effective Date February, 2018 |
| Department Police | Replaces Policy Dated |
| Division All Police Personnel | Review Date February, 2022 |
| Authorized Signature  | |

NOTE: This rule or regulation is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this agency, and then only in a non-judicial administrative setting.

I. PURPOSE

The purpose of this policy is to ensure an effective and efficient Internal Affairs investigation process, appropriate resolution of complaints of misconduct, and that all employees are treated fairly during an investigation.

II. LEGAL DISCLAIMER

This directive is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

III. POLICY

A complaint of misconduct is an allegation of behavior or intentional wrongdoing that is a violation of Ogden Police Department or Ogden City Policy by a police department employee.

An agency designated by the Ogden City Attorney's Office or relevant Prosecutor's Office will conduct any criminal investigation and an Internal Affairs Investigator will conduct an independent and separate internal disciplinary investigation. An outside agency's decision not to investigate or prosecute does not preclude departmental administrative action.

It is the policy of the Ogden Police Department to investigate all complaints of misconduct for the following reasons:

- A. To ensure every employee is fairly and impartially treated in all investigations and to protect police employees from unjustified criticism or false allegations of misconduct.
- B. To promote uniform interpretation and compliance by employees with all laws, rules, and regulations.
- C. To provide for the uniform, impartial and expeditious processing of citizen complaints.
- D. Complaints will be investigated by a police supervisor or by an Internal Affairs Investigator as assigned by the Deputy Chief of Police. Internal Affairs Investigations will be conducted solely for administrative disciplinary purposes. Any allegations of misconduct that include possible criminal activity will be referred to the appropriate prosecutorial agency for external investigation. During criminal investigations, department members have the same constitutional rights as any other suspect.
- E. It is the policy of the department that the subject employee will be informed of the allegations at the outset of the investigation unless circumstances preclude this. Such precluding circumstances include accusations of criminal activity where revelation of the incident would place another in danger, where informing the employee would jeopardize the investigation, or other situations which, in the reasonable discretion of the Deputy Chief of Police, merit withholding disclosure for a reasonable time.
- F. The appropriate Division Commander will review each completed investigation for accuracy and completeness. If an investigation contains information bringing into question the credibility or veracity of the officer this finding will be noted in the Division Commander's administrative summary memo to the Deputy Chief of Police. Findings discrediting an officer's credibility or veracity may be discoverable under the "Brady Rule." The Deputy Chief of Police, in consultation with the Chief of Police, will make the final determination whether to release the administrative summary memo to the Weber County Attorney or Ogden City Prosecutor's Office. If the administrative summary memo is released, a memo

detailing the release will be placed in the investigation file indicating to whom and when the summary was released.

IV. PROCEDURE FOR INVESTIGATION OF MISCONDUCT COMPLAINTS

Complaints of misconduct may originate outside the department or may also arise within the department when one member complains against another alleging improper, unethical or unlawful conduct. Complaints of sexual harassment between employees will be investigated separately in accordance with Ogden City policy.

Complaints received from outside the department will be referred to an on-duty supervisor. The supervisor receiving a complaint about a department member will treat the complainant courteously and regard the information as confidential. Complaints received from department members regarding the conduct of another department employee will be made to the supervisor of the complaining employee. If the allegation is about the employee's supervisor then the complaint should be made to the Watch Commander or, if the complaint is about the Watch Commander or another ranking officer, to the Division Commander or Deputy Chief of Police. In an instance where an employee observes alleged criminal conduct by another employee, the investigation will be treated as a criminal investigation from the outset.

Upon receipt of a complaint the supervisor will take the following steps:

- A. The supervisor receiving the complaint will interview the complainant regarding the allegations. The complaint be written and, if willing, the complainant should sign the Personnel Complaint Form (see Page 6). The complainant should be advised that it is a class B misdemeanor to knowingly give a false statement (Utah Code 76-8-504). Anonymous complaints will be considered but by their very nature limit the investigation and the complainant will be advised of such.
- B. If the complaint can be resolved by offering an explanation of the behavior or procedure to the satisfaction of the complainant, and the substance of the complaint does not involve a clear violation of policy or law, the matter will be closed by the supervisor and the completed complaint form forwarded to the Deputy Chief's office through the Division Commander's office. Where appropriate, an entry to the employee's performance evaluation records (Halogen) will be made.
- C. Unresolved complaints will be sent to the appropriate Division Commander on the Personnel Complaint Form for further review and, where the nature of the complaint warrants, to the Deputy Chief's Office for assignment of

an Internal Affairs investigation. If the Division Commander resolves the complaint, the Division Commander will detail that in a memo, including all actions taken, and will attach the memo to the complaint form for filing.

- D. All complaint forms will be sent to the Deputy Chief's Office for filing, regardless of status.

V. THE INTERNAL AFFAIRS INVESTIGATIVE PROCEDURE

Complex complaints of misconduct will be documented and assigned to a supervisor, usually the rank of Lieutenant or above, as an Internal Affairs investigation. If criminal conduct is alleged, the appropriate prosecutorial agency will be contacted. The following procedure will be used by those assigned as an Internal Affairs investigator:

- A. The employee will be informed of the allegations at the outset of the investigation unless circumstances preclude this. Such precluding circumstances include accusations of criminal activity where revelation of the incident would place another in danger, where informing the employee would jeopardize the investigation, or other situations which, in the reasonable discretion of the Division Commander, would merit withholding disclosure for a reasonable time.
- B. Appropriate investigative techniques, such as interviews with witnesses, taking of statements, and gathering of evidence will be employed.
- C. If the investigation cannot resolve the facts at issue, the complainant and employee may then be requested to submit to a polygraph examination.
- D. The U.S. Supreme Court in *Garrity v. New Jersey* and *Gardner v. Brodrick* has ruled that in an internal investigation conducted solely for administrative purposes the employee being questioned will be required to answer all questions. The *Garrity* (Administrative Proceedings) warning must be read to all employees prior to questioning in an administrative investigation when the employee is required to answer under threat of disciplinary action. This warning will only be used by an assigned internal affairs investigator.

Garrity Warning:

I advise you that you are required to testify or provide evidence as part of an official investigation of the Ogden City Police Department. This inquiry involves the above-described incident and is in accordance with departmental policies and procedures. This is not a criminal investigation. You must answer questions related to your knowledge of the facts

surrounding this incident. The information or evidence you provide for this administrative investigation cannot be used against you in any criminal proceeding. However, your statements may be used against you in a subsequent administrative action. Refusal to answer questions or to testify to matters related to this incident implies that you have violated departmental policies and such refusal is cause for disciplinary action, including termination from the department.

- E. Members being questioned in an administrative investigation are required to answer truthfully. Refusal to answer or answering falsely is cause for disciplinary action, including termination from the Department. Officers should be specifically reminded of this by use of the following admonition:

No employee will knowingly make an untrue statement about a fact, either orally or in writing, in connection with an investigation, assignment or inquiry. No employee will knowingly sign a false official statement or report, commit perjury, give false testimony before any court, grand jury, board, commission, judicial or administrative hearing, or department hearing, whether or not under oath. Employees are required to report completely, honestly, and accurately all facts and information pertaining to any investigation, whether criminal or administrative, or other matter of concern to the department. This rule does not apply to an officer's questioning or interrogation of a person involved in a criminal investigation or where the officer is engaged in an approved undercover role where such misrepresentation is not inconsistent with law or accepted professional practice.

- F. When necessary to protect the integrity of the investigation, investigators may order employees not to disclose the contents of matters discussed.
- G. If a Department member requests an employee representative or an attorney during an administrative interview this will be permitted, however, the department member will still be required to answer the questions during the administrative investigation. Unavailability of the employee representative or the attorney will not be allowed to unnecessarily prolong the investigation. The employee representative's or attorney's role is limited to acting as an observer of the interview.
- H. All interviews will be conducted while the employee is on duty unless the seriousness of the investigation is such that an immediate review is required.

VI. SPECIAL EXAMINATION PROCEDURE

- A. A Department member under investigation may request a breath, blood,

urine, medical examination, or polygraph if it is believed that such an examination would be beneficial to his case.

- B. An on-duty supervisor may order an employee to submit to a breath, blood, or urine test in accordance with Ogden City Employee Policy.
- C. If an identification line-up is solely for administrative purposes and criminal prosecution is not reasonably planned, an officer may be ordered to stand in a line-up and may be disciplined, including termination of employment, for refusal to cooperate.
- D. Property belonging to the Police Department is subject to entry, search, and/or inspection at any time when the Police Department has reasonable suspicion that evidence of misconduct will be found therein. Property includes but is not limited to vehicles, desks, files, and storage lockers. Personal items such as briefcases, boxes, etc., that are located within police property may also be searched when there is a reasonable suspicion that such items may contain evidence of misconduct. This search authority is in addition to regular inspections or entry for emergency reasons. If criminal prosecution is planned, a search of personal property is protected under the Fourth Amendment and a search warrant must be obtained prior to search.

VII. COMPLETION OF INVESTIGATION

When the internal investigation has been completed all reports will be sent to the appropriate Division Commander and will outline the findings of the investigation. The findings are:

- A. **Unfounded:** Complaint not based on facts or alleged incident never occurred.
- B. **Exonerated:** Incident occurred but member's actions were justified and proper.
- C. **Not Sustained:** Insufficient evidence to prove or disprove the allegations.
- D. **Sustained:** Evidence supports allegations. All sustained complaints will cite the appropriate rules, policies, orders, or laws violated.

After reviewing the findings of the investigation, the Division Commander will write a memo to be attached to the investigative report recommending an appropriate disciplinary action based on the findings. All copies of the report will then be forwarded to the Deputy Chief of Police for administrative review and for concurrence with the recommendation(s). The Deputy Chief will issue a memo concurring or non-concurring with the recommendation(s) and will forward the

investigative report, documents, and Deputy Chief's memo to the Chief of Police for final adjudication. The Chief of Police may request information or assistance from the Human Resources Director or the City Attorney's Office prior to adjudicating.

The Chief will review the evidence, documents, reports, and may concur or non-concur with the recommendations and/or direct a different disciplinary course of action. If the Chief concurs, the Chief, through the Division Commander will initiate disciplinary action in accordance with Ogden City disciplinary procedure.

The complainant and employee concerned will be notified of the results of the investigation and the disposition of the case by the Division Commander or the Deputy Chief of Police.

VIII. RECORDS OF INVESTIGATION

All files and reports of Internal Affairs investigations are confidential, and access will be restricted to those with a need to know. The investigator shall not discuss or divulge any confidential information except as may be reasonably necessary in the course of the investigation.

Upon completion of an investigation the accused employee, upon request, may receive a copy of interviews or statements obtained from the accused employee. No other internal affairs files may be released except as required by law.

All internal affairs files will be securely maintained by the Chief of Police or his designate for a minimum of five years. Files will be maintained for longer periods under the following circumstances:

- A. Files that are subject to civil litigation or criminal proceedings shall be retained until final adjudication.
- B. Files that resulted in employee termination or resignation shall be maintained as required by Ogden City Policy.

Attachments:

- 1. Complaint Form
- 2. Complaint Process Flowchart

OGDEN POLICE DEPARTMENT COMPLAINT FORM

| | | |
|---------------------|---------------|----------------------|
| NATURE OF COMPLAINT | DATE RECEIVED | TIME RECEIVED |
| COMPLAINT AGAINST | DIVISION | RECEIVED BY DIVISION |

COMPLAINANT INFORMATION

| | | |
|---------|------------|----------------|
| NAME | DOB | SEX |
| ADDRESS | HOME PHONE | BUSINESS PHONE |

WITNESSES

| | |
|------|---------|
| NAME | ADDRESS |
| NAME | ADDRESS |

DETAILS

| | | |
|---------------------------------|------|------|
| LOCATION | DATE | TIME |
| | | |
| | | |
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| | | |
| [] ADDITIONAL PAGES ATTACHED | | |

****READ BEFORE SIGNING**** A PERSON IS GUILTY OF A CLASS B MISDEMEANOR IF HE MAKES A WRITTEN FALSE STATEMENT (UCA 76-8-504) OR KNOWINGLY GIVES FALSE INFORMATION TO ANY LAW ENFORCEMENT OFFICER (UCA 76-8-506.) I CERTIFY THAT THE INFORMATION

CONTAINED IN THIS COMPLAINT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE OF COMPLAINANT

NOTARY

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____, 20____

| | | |
|--------------------------|------------------------|-------------|
| DATE SUPERVISOR NOTIFIED | DATE EMPLOYEE NOTIFIED | ASSIGNED TO |
|--------------------------|------------------------|-------------|

COMPLAINT PROCESS FLOWCHART

