

109. INTERNAL CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS



RICHFIELD POLICE DEPARTMENT POLICY

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Authority: Chief Jay Henthorne

NOTE: This policy is for internal use only and does not enlarge an employee'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 policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

I. PURPOSE

This Policy establishes a departmental procedure for the initiation and investigation of complaints involving any employee of the Richfield Police Department. This Policy addresses only administrative and internal criminal investigations of the Richfield Police Department.

II. POLICY

It is the policy of this Department to investigate all allegations of misconduct concerning Department employees. Complaints and allegations will be accepted from any source including internal, external, and anonymous sources. Even malicious or false accusations will be appropriately investigated to protect the department and its employees and to instill public confidence.

The complaint process should be used by supervisors when investigating serious or repeat incidents of misconduct by subordinates. All administrative investigations should be conducted as confidentially as possible. Investigations of employee misconduct will be conducted in compliance with the Peace Officer Discipline Procedure Act (MSS 626.89).

III. DEFINITIONS

FORMAL STATEMENT: The questioning of an officer in the course of obtaining a recorded, stenographic, or signed statement to be used as evidence in a disciplinary proceeding against the officer. An officer is compelled to truthfully answer questions during a formal statement.

INVESTIGATOR: The command staff officer assigned the responsibility of coordinating an investigation.

MISCONDUCT: An act or behavior that is contrary to departmental policies, violates a statute or ordinance, or is in conflict with the provisions or intent of the following policies: 1) "Law Enforcement Code of Ethics," 2) "Department Mission Statement," or 3) "Peace Officer Oath of Office."

NONFORMAL STATEMENT: The questioning of an officer in the course of an investigation that is not recorded (although the interviewing officer can take notes) and does not result in a signed statement by the officer. An officer is not compelled to answer questions during a nonformal statement. A nonformal statement does not require a signed complaint. Information gathered in a nonformal statement can be used in an administrative or criminal investigation.

REPEAT MISCONDUCT: A case of misconduct where the employee has been previously warned or disciplined for the same or similar violation.

SUPERVISORY INQUIRY: An inquiry from an employee's supervisor, during or immediately following an incident or event, that serves a legitimate supervisory purpose of obtaining timely information needed for the supervisor to understand the nature of the incident or event. Employees are compelled to truthfully respond to a supervisory inquiry.

SERIOUS MISCONDUCT: A case of misconduct that, if sustained, would likely result in discipline more serious than a written reprimand.

IV. PROCEDURE

RESPONSIBILITY TO ACCEPT COMPLAINTS

Every member of the Department has the responsibility, authority, and duty to accept citizen complaints concerning the Department or individual employees of the Department. The *Initial Citizen Complaint* form should be used whenever possible when receiving complaints. All complaints should be forwarded to the employee's immediate supervisor or section lieutenant as soon as possible for processing and appropriate action.

When a complaint is received from a citizen, the complainant should be referred to the immediate supervisor or section lieutenant if that person is immediately available. If a supervisor or lieutenant is not available, the complaint should be taken by the employee who first became aware of the complaint (if that employee is not the subject of the complaint).

Whenever possible, the complaint should be put in written form and signed by the complainant. All employees are required to explain the complaint procedure to citizens upon request.

Any Department member may file a complaint. Complaints made by Department employees should be made to the employee's immediate supervisor. Employees may also file a complaint with a member of the Command Staff.

INITIAL INVESTIGATION BY SUPERVISOR

Complaints Regarding Officer Discretion

Complaints may be initiated by citizens unfamiliar with departmental rules and procedures or with unrealistic expectations of police authority. Often, a complaint against an officer is based on an act that is within the officer's discretion (e.g. "I didn't deserve this tag"). Supervisors should attempt to resolve complaints of this nature at the time they are received (Figure 1). A resolution to the complaint means an explanation was given by the supervisor explaining why the officer(s) legally and properly performed in the manner they did and an acceptance of the explanation by the complainant.

If the supervisor finds that an officer acted within his/her discretion but used bad judgment, this should be documented in the officer's evaluation file. If the situation occurred as a result of inadequate policy, the supervisor should document the case as a policy failure and forward it to the appropriate lieutenant.

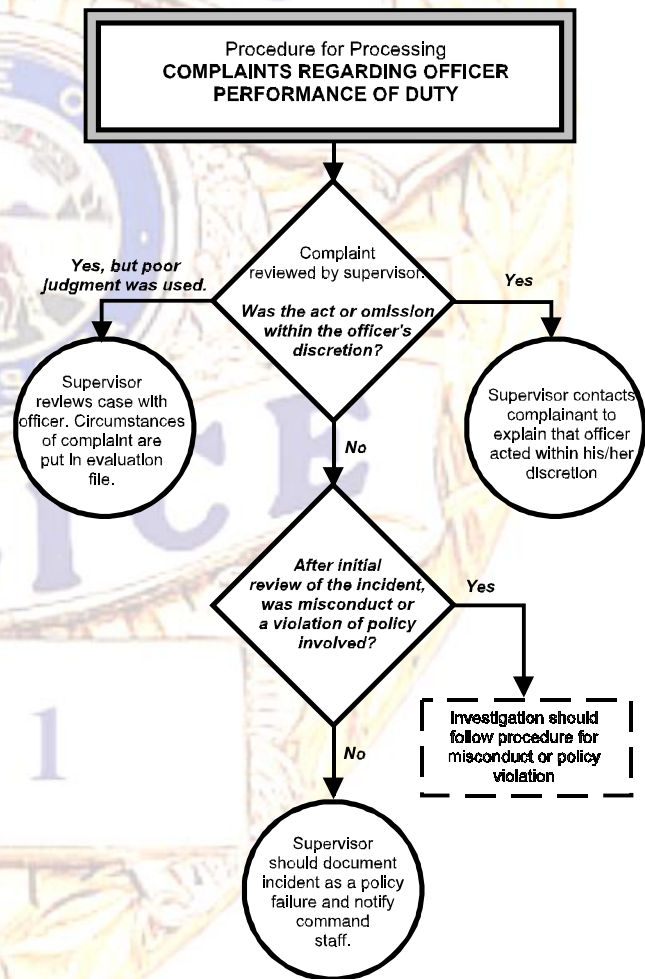


FIGURE 1

Misconduct and Policy Violations

When an allegation of misconduct or policy violation is made by a citizen or by another employee, the supervisor should conduct an initial inquiry to determine the exact nature and seriousness of the violation (see Figure 2). If the violation is not serious and there is no prior record of a similar violation by the officer, the sergeant should investigate and, if the complaint is sustained, take appropriate disciplinary action in accordance with the Policy #110 "Progressive Disciplinary Procedures." If the incident is serious or a repeat violation, the supervisor should refer the complaint to the appropriate lieutenant.

Forms

The *Initial Citizen Complaint* form should be used for all complaints except for simple officer discretion issues that are quickly resolved. A copy of the form should be forwarded to the lieutenant in cases that are not resolved immediately (within 24 hrs.). If the case is resolved by the supervisor, the original form indicating the disposition should go to the lieutenant. A copy of the form should be put in the officer's evaluation file, except for cases that are determined to be unfounded or exonerated.

Any complaint that is forwarded to a command staff officer for investigation must be recorded on an *Allegation of Employee Misconduct* form. The completed form should be forwarded to the section lieutenant, or if the complaint involves a command staff officer, to the Chief of Police.

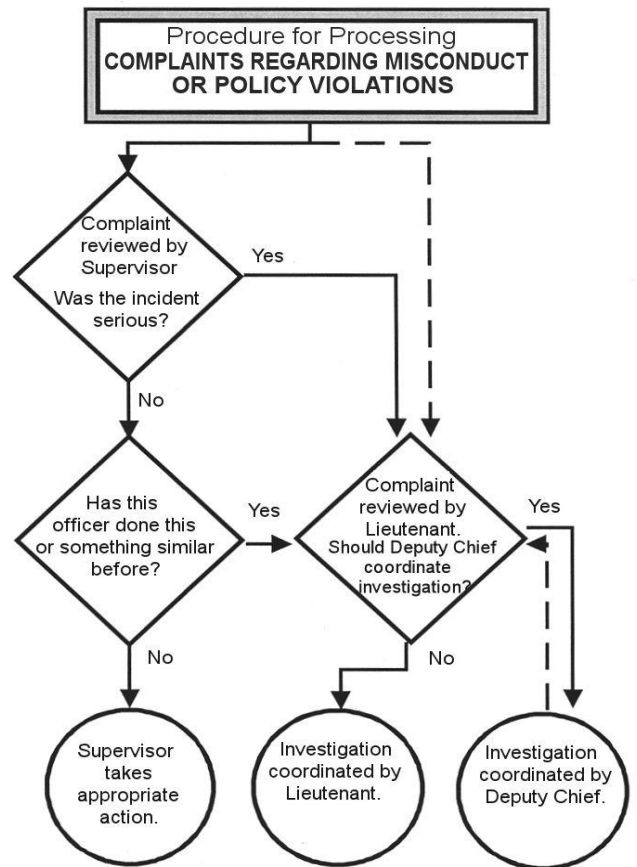
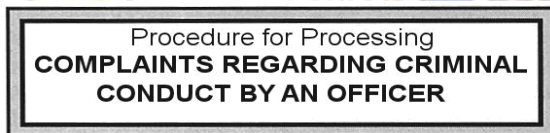


FIGURE 2



If the lieutenant is not available, complaint should go directly to the Deputy Chief. If neither is available complaint should go to the Chief.

FIGURE 3

INVESTIGATIONS OF SERIOUS, REPEAT, OR CRIMINAL MISCONDUCT

Complaints alleging criminal activity, serious misconduct, or misconduct which impairs the employee's ability to perform may require that the employee be immediately placed on leave from duty, with pay.

Alleged crimes, where probable cause exists, may require the employee be immediately arrested. The Chief or a Command Staff Member must be notified as soon as practicable after arrest.

Any employee alleged to have committed a crime must be afforded all protective rights guaranteed by the Constitution. Any action must be recorded on an *Allegation of Employee Misconduct* form. This form should be forwarded immediately to the lieutenant or Deputy Chief if the lieutenant is not available (Figure 3).

Case Assignment

The Deputy Chief has the responsibility to review all complaints of serious, repeat, or criminal misconduct. Complaints alleging criminal conduct, brutality, corruption, misuse of force or a breach of civil rights must be assigned to an investigator, within or outside the Department, selected by the Deputy Chief. The Deputy Chief will ensure that a thorough, impartial, objective investigation is completed.

The investigator is responsible for informing, briefing, and updating the Chief of Police as to the status of all investigations alleging criminal activity or misconduct on the part of any employee. All reports to the Chief should be made verbally. The initial notification should be accomplished as soon as possible. Briefing and updating the Chief must be done at least weekly, although some investigations may require daily updates.

- 1) The investigator should assign a control number to each investigation. Control numbers consist of the year the complaint was received, followed by a two-digit sequential number (92-01). Alleged criminal violations must be assigned a control number and an initial complaint number (ICR).
- 2) All internal investigative reports and information will be securely stored. Access to investigative information and records is subject to Data Practices laws and the Peace Officer Bill of Rights.

Notification of Investigation

It is the responsibility of the investigator to notify the complainant with written verification that the complaint has been received for processing. Certain investigations may require an extended period of time to complete. The investigator should communicate the status of protracted investigations to the complainant regularly.

It is the responsibility of the investigator to notify the affected employee in writing that he/she is the subject of an administrative investigation. Written notification must consist of a statement of the allegations and the employee's rights. The investigator should also inform the employee's immediate supervisor of the investigation if the supervisor did not initiate or process the complaint.

Criminal vs. Administrative Investigation

Once the decision has been made to initiate an internal investigation, a determination must be made whether the investigation is criminal or strictly an administrative investigation.

- 1) The conduct and disposition of the investigation depends on its classification. Generally, information gained in an administrative investigation cannot be used in criminal proceedings. Information gathered in a criminal investigation can be used in an administrative investigation.
- 2) Certain investigations because of their nature may be referred to another law enforcement agency with jurisdictional authority for the investigation. All investigations of felony offenses should be conducted by an outside agency. The decision to refer rests with the Chief or Deputy Chief.

INTERNAL CRIMINAL INVESTIGATIONS

An internal criminal investigation will generally take precedence over any administrative investigation. This does not prevent an administrative investigation from being done while the criminal investigation is being conducted.

- 1) If a delay would harm the investigation, the employee's immediate supervisor or section lieutenant should begin the investigation. Otherwise, the investigation should be conducted by an investigator assigned by the Chief or Deputy Chief.
- 2) In all instances where probable cause to arrest exists, the employee may immediately be placed on leave with pay whether or not an arrest has occurred. An allegation of a serious nature, where probable cause to arrest does not exist may still require that the

employee be immediately placed on leave, with pay. This decision will be made by the Chief or a Deputy Chief.

Evidence and Statements

The investigation must be conducted within the same Constitutional parameters as any other criminal investigation.

Prior to questioning, if the employee is being detained, the employee must be advised of Miranda rights. If the employee is not being detained, the employee must be advised that the employee is free to leave and that no disciplinary action will result from refusal to answer questions solely related to the criminal investigation. The employee has the right to be represented by counsel, but has no right to union or other representation during the criminal investigation.

Any search or seizure of evidence must be in accordance with rules of criminal procedure. Unless the employee initiates the request, no polygraph can be administered, requested, or suggested. Physical and photo lineups may be conducted within rules of criminal procedure.

Report of Findings

In all instances of alleged criminal activity where charges may result, the investigator must inform and frequently consult with the appropriate prosecuting authority.

Investigations lasting more than one week require that the investigator provide the Deputy Chief with at least weekly updates.

If an internal criminal investigation reveals a need for training, that information will be forwarded to the training coordinator by the Chief of Police.

ADMINISTRATIVE INVESTIGATIONS

Most administrative investigations will deal with alleged, non-criminal misconduct. However, alleged criminal acts, where probable cause to arrest may or may not be present, can also result in an administrative investigation.

- 1) Most investigations will be conducted by a section lieutenant assigned by the Deputy Chief. Investigations of a serious nature should be assigned by the Deputy Chief. No investigation should be jeopardized by the delay necessary for review and assignment by the Deputy Chief.
- 2) The subject employee should be notified of the administrative investigation as soon as practicable without jeopardizing the investigation. Notification will only be made by the investigator. Notification must be in writing and include a detailed list of the allegations, the employee's rights and responsibilities. The notification must be made before the employee's formal statement can be taken.
- 3) The Department must receive a written, signed complaint stating the complainants' knowledge prior to taking an employee's formal statement. Complaints stating the signer's knowledge also may be filed by members of the Department. In cases where a complaint is anonymous or unsigned, a member of the Department may state his or her knowledge of the complaint on the *Allegation of Employee Misconduct* form and sign as the reporting party. An employee signed *Allegation of Employee Misconduct* form can serve as the written, signed complaint required for taking an officer's formal statement.
- 4) An investigation need not be delayed awaiting a signed complaint. The only delay necessary is in the taking of the subject employee's formal statement.

Evidence and Statements

- 1) Constitutional guarantees associated with criminal investigations do not generally apply to administrative investigations. The employee has no absolute right to remain silent. However, the employee must be read the Garrity/Tennessee Warning in its entirety. The employee is required to provide all job-related information requested. Failure to do so is considered gross insubordination and may result in disciplinary action up to, and including, termination.
 - a) During questioning for the purpose of obtaining a formal statement, the employee has the right to have an attorney or union representative, of the employee's choosing, present during questioning.

- b) An employee's formal statement should be taken at the Police Department, whenever possible. When not taken at the Police Department, the location must be agreed upon by both the investigator and the employee. When possible, an employee's formal statement should be taken during scheduled work hours. The session at which the statement is taken should be of reasonable duration and provide the officer with reasonable periods of rest and personal necessity.
 - c) Rules of evidence generally do not apply to administrative investigations. The employee must provide all germane evidence requested. Refusal to do so constitutes gross insubordination and may result in disciplinary action up to and including termination.
 - d) The employee can be ordered to participate in a lineup. Photo lineups may also be used. Unless absolutely necessary, other Department employees should not be used in physical or photo lineups. A polygraph examination cannot be suggested, requested or administered unless the employee initiates the request.
- 2) All statements taken during the investigation must be duty related and must be recorded on the appropriate report form. Statements may be taken either orally or in writing from witnesses or victims of misconduct. The investigator is required to audio tape any oral formal statement taken from the employee being investigated. Nonformal statements do not have to be audio taped.

Report of Findings

If the misconduct is serious enough, the employee may be immediately placed on leave with pay. In most instances, the decision to place an employee on leave should be made by the Deputy Chief after a thorough review of the case.

The Deputy Chief must be informed of the status of any investigation on a minimum of a weekly basis. All investigations must be completed within 30 days, except with the approval of the Deputy Chief.

Upon completion, the entire investigative file must be forwarded to the Deputy Chief for final disposition and secure storage. No disciplinary order or written reprimand may be included in the employee's personnel file unless the employee has been given a copy.

If an administrative investigation reveals a need for training, that information will be forwarded to the training coordinator by the Deputy Chief.

DISCIPLINARY ACTION FOLLOWING AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION

Findings

Upon completion of an administrative investigation, the investigator must recommend classifying the incident in one of the following categories:

- 1) **Unfounded.** The allegation is false or not factual.
- 2) **Exonerated.** The allegation is true but was consistent with policy.
- 3) **Not Sustained.** There is insufficient evidence to prove or disprove the allegation.
- 4) **Policy Failure.** The action is not a violation of policy, but the policy is not adequate.
- 5) **Sustained.** The allegation is supported by sufficient evidence.

Action to be Taken

- 1) **Unfounded.** If at any time during the investigation, it is determined that the allegation is unfounded, the investigation will be terminated. The file will be forwarded to the Deputy Chief for review. After review by the Deputy Chief, the file will be forwarded to the Chief for review and storage.
- 2) **Exonerated.** When the conduct is classified as exonerated, the completed file will be forwarded to the Deputy Chief for review. The file will be forwarded to the Chief for review and storage.

- 3) **Not Sustained.** Incidents or conduct which are classified as not sustained are forwarded to the Deputy Chief for review. If the Deputy Chief concurs with the findings, the file will be forwarded to the Chief for review and storage.

Policy Failure. The policy should be examined and appropriate policy modifications considered. The file will be forwarded to the Deputy Chief for review. The file will be forwarded to the Chief for final review and storage.

Sustained. If investigation indicates the allegation to be sustained, the file will be forwarded to the appropriate supervisory or administrative level for disciplinary action. Disciplinary procedures are outlined in the Policy #110 "Progressive Disciplinary Procedures."

Action by the Chief of Police

The Chief of Police will review disciplinary actions. The Chief has the authority to sustain, increase, reduce, or dismiss the recommended action.

The Chief **shall** notify the accused of his decision as stipulated by Labor Contracts, and Public Employee Labor Relations Laws.

Appeals

An employee may appeal any disciplinary action. Appeals should follow the grievance procedure specified by the employee's Labor Contract on and off duty. Employees may also appeal disciplinary action through Veteran's Preference procedures if applicable.

Notifications

After the Chief has notified the employee of the findings of the investigation and any resulting disciplinary action, the investigator should notify the complainant and the employee's immediate supervisor of the case disposition.


Dissemination of information related to the investigation is limited due to data practices.

EXPECTATION OF PRIVACY ON CITY PROPERTY

Employees should be aware that equipment assigned to the employee for work purposes remains the property of the City of Richfield. This includes lockers, desks, briefcases and cabinets. Employees are discouraged from storing personal items in or on city equipment. Any items stored on City property is at your own risk.

Any equipment provided by this department is subject to entry, search, and inspection by supervisor(s) and/or investigative officers of this department without further notice. Any privately owned property contained in such equipment (including the contents of closed or sealed items and containers) may also be opened and examined without further notice or without permission.

By Order Of:



Chief of Police

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